

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 22ND DAY OF DECEMBER 2020 / 1ST POUSHA, 1942

WP(C).No.34025 OF 2019(C)

PETITIONER/S:

FUTURE GAMING AND HOTEL SERVICES PVT. LTD.  
(FORMERLY FUTURE GAMING SOLUTIONS INDIA PVT.  
LTD.), HAVING ITS REGISTERED OFFICE AT DOOR  
NO.54, G. N. MILLS POST, METTUPALAYAM ROAD,  
COIMBATORE - 641 029 AND PLACE OF BUSINESS AT  
DOOR NO.15/651, KUNNATHUR MEDU, PALAKKAD - 678  
013, THROUGH ITS DIRECTOR, SHRI.G.NATARAJAN.

BY ADVS.

SRI.A.KUMAR

SMT.G.MINI(1748)

SRI.P.J.ANILKUMAR

SRI.P.S.SREE PRASAD

SRI.JOB ABRAHAM

SRI.NEERARJ KAUL SR.,

RESPONDENT/S:

- 1 THE STATE OF KERALA, REPRESENTED BY THE CHIEF  
SECRETARY TO THE GOVERNMENT OF KERALA,  
GOVERNMENT SECRETARIAT, TRIVANDRUM - 695 001.
- 2 THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF  
KERALA  
TAXES (H) DEPARTMENT, GOVERNMENT SECRETARIAT,  
TRIVANDRUM - 695 001.

-:2:-

- 3 THE STATE OF NAGALAND,  
REPRESENTED BY THE CHIEF SECRETARY TO THE  
GOVERNMENT OF NAGALAND, KOHIMA - 797001.
- 4 THE ADDITIONAL CHIEF SECRETARY AND FINANCE  
COMMISSIONER, GOVERNMENT OF NAGALAND, KOHIMA -  
797001.
- 5 THE DIRECTOR, NAGALAND STATE LOTTERIES,  
GOVERNMENT OF NAGALAND, KOHIMA - 797001.
- 6 DIRECTOR OF STATE LOTTERIES,  
DIRECTORATE OF STATE LOTTERIES,  
THIRUVANANTHAPURAM - 33.

R1 BY ADV. PALLAV SHISHODIA

R3-4 BY ADV. SRI.P.S.SREE PRASAD

BY SENIOR ADVOCATE, SRI.PALLAV SHISHODIA  
BY SPECIAL GOVERNMENT PLEADER,  
SRI.C.E.UNNIKRISHNAN BY GOVERNMENT PLEADER,  
SMT.PRIYA SHANAVAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
P05-10-2020, THE COURT ON 22-12-2020 DELIVERED THE  
FOLLOWING:

-:3:-

**J U D G M E N T**

**Dated this the 22<sup>nd</sup> day of December, 2020**

This writ petition was filed by a private limited company engaged in marketing and sale of lottery tickets organised by the State of Nagaland in the State of Kerala. The petitioner challenges an amendment brought to the Kerala Paper Lotteries (Regulation) Rules, 2005. These amendments were brought into force in the State with effect from 28/4/2018 vide Government order, G.O.(P).No.66/2018/TD. Pending the writ petition, the writ petition was amended by incorporating challenge to Ext.P12 and P17 communications. These communications issued by the Principal Secretary to the Government and Director of State Lotteries respectively are in tune with the amendment directing the petitioner to comply with the amended rules to market lotteries of other States.

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2. In exercise of the power conferred upon the State Government to make Rules under Section 12 of the Lotteries (Regulation) Act, 1998 (hereinafter referred to as the "Central Act 17 of 1998"), the State of Kerala formulated the Kerala Paper Lotteries (Regulation) Rules, 2005. This came into effect from 20/4/2005. These Rules originally conceived to regulate lotteries organised by the State of Kerala. The Rules underwent amendment on different intervals. The amendment now impugned in this writ petition is having the characteristics to impact upon the lotteries organised by the other States. The rule making power of the State Government is traced out to Section 12 of Act 17 of 1998. The lottery is in Entry 40 in the Union List under Schedule VII of the Constitution of India. The essential question that arises for consideration in this writ petition is

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regarding the power of the State Government under Section 12 of Central Act 17 of 1998 to make Rules that govern a lottery organised by the State other than the State of Kerala.

3. It is appropriate to refer the relevant Rules as brought in by the amendment in the year 2018 to understand the issue in a perspective as raised in the writ petition. The amended rules are reproduced hereunder:

**2. Amendment of the Rules.-** In the Kerala Paper Lotteries (Regulation) Rules, 2005,-

(1) in rule 2,

(a) after clause (3), the following clause shall be inserted, namely:-

“(3A) ‘Authority’ means the Secretary to Government, Department or authority or officer specifically appointed by the Government to organise State Lottery and regulate the sale of other State lotteries within the state as provided in the Act.”

(b) after clause (6), the following clause shall be inserted, namely:-

“(6A) ‘Enforcement agency’ means the District Collector, District Superintendent of Police, Commissioner of Police or any other officer authorised by the Government or officers mentioned herein before and they shall exercise the powers of enforcement as specified in these rules.”

(2) In rule 4 after sub-rule (3), the following sub-rule shall be inserted, namely:-

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“(4) The Secretary to Government, Taxes Department or any authority specifically appointed by the Government for this purpose shall be the authority for the conduct of all or any particular lottery in the State including lotteries run/organized/promoted by other States.

(5) The authority shall have the powers to monitor the sale of all lotteries including the lotteries run/organized/promoted by other States and Union Territories in accordance with the provisions of the Act and the rules.

(3) After rule 9 the following rule shall be inserted namely:- “9A Sale of other state paper lottery tickets in Kerala.- (1) Any other State or Union Territory organising, conducting or promoting lottery as per section 4 of the Lotteries (Regulation) Act, 1998 (Central Act 17 of 1998), it shall submit to Taxes Department, of the Government the following documents and details before starting the sale of paper lotteries namely:-

(a) details as per section 4 of the Act;

(b) copy of the rules, if any, made under section 12 of the Act;

(c) specimen ticket shall be submitted with name of lottery, type of scheme, order of draws along with details of the prize structure of every scheme and any subsequent addition or deletion to the scheme made from time to time;

(d) details of the distributors, agents, selling agents, or sellers appointed for selling its lottery tickets in the State and the cancellation and fresh appointment thereof;

(e) the details of methodology for conducting the draw by the concerned State Governments/Union Territory and details of prize winners of each scheme;

(f) Details of the designated authority or body entrusted to conduct the lottery draw by the concerned State Government;

(g) details of the venue and periodicity of draw within the Organising State

(h) details of procedure for publishing the lottery results;

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(i) any other relevant information as directed by the authority so as to enable it to verify that the scheme is conducted as per the provisions of the Act.

(2) In the absence of the details, specified in sub-rule (1) the Secretary to Government may return the scheme to the State Government/Union Territory concerned directing to furnish the complete details within a period of fifteen days. The Secretary to Government of Kerala, Taxes Department shall assess the report independently taking in to account of various other information available with him from the Goods and Services Tax Department, Police or any other source if any, and decide as to whether the scheme satisfies all the provisions of the Act and shall pass appropriate orders.

(3) No lottery shall be marketed in the State until appropriate orders under sub-rule (2) above are passed by the Secretary to Government. Enforcement agencies may seize such tickets marketed before passing any order in this regard.

(4) The enforcement agency may,-

(a) seize for the purpose of further examination or securing information or investigation any lottery, thing, machine, document, account books or data on or in such premises or facility which has a bearing on conduct of lottery;

(b) seal or otherwise secure any such premises, facility, thing or machine or in which any document or data which has a bearing on the conduct of lottery is stored;

(c) take such legal action as per the Act, which are necessary to protect the integrity and conduct of lottery.

(5) The other States or Union Territories who organise conduct or promote their lottery tickets in the State shall ensure the following:-

(a) in lottery tickets issued by the Government of other States, the name of the agents in any form or their logo shall not be printed;

(b) the result of the draws shall be announced by the Government of other States which shall be published in at least one national daily and two state level newspapers out of which one shall be in English. The result shall also be published in the official Gazette;

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(c) the particulars of prize winners shall be furnished within three months from the date of draw to the authority.

(6) Respective State Governments shall also obtain prior approval of the authority for its distributors, agents and selling agents for point of sales in the state by furnishing all relevant details. Such distributors, agents and selling agents shall satisfy the following qualifications/requirements.-

(a) he must have completed 18 years of age;

(b) Proof of credit worthiness should be furnished;

(c) place of business should not be within a distance of 100 meters from the vicinity of educational institutions/religious institutions like temple, church, mosque and the like;

(d) distributors, agents and selling agents shall have a place of business with clear title or ownership or on lease or rent;

(e) to Government should not have black listed him/her or the firm in the last three years;

(f) The person acting as distributors, agents and selling agents should not have been convicted for any criminal offence in the last three years with imprisonment of six months or with fine of Rs. 5000 or above or with both.

(7) If any other State lottery is approved by the Government of Kerala for sale within the State, it shall require the respective State, distributors, agents and selling agents to allow the authority or any officer authorised by him or enforcement agency to, -

(a) enter any premises or facility belonging to or under the control of the distributor, agent or a member of management of the agent or any selling agent or employee of contractor of the agent or premises to which the agent has a right to access, at any reasonable time, if such entry is necessary for the public interest or protection of the integrity and interest of the lottery;

(b) examine or inspect anything, machine, document or data captured in any form found on or in the premises or facility and make copies of or make extracts from that thing, machine, document or data;

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(c) to take copies of any document including any information kept by the distributors, agents, and selling agents relating the lottery or all other ancillary activity within the State;

(d) assist to inspect and take copies of the information in a visible and legible form from the computer or to inspect and check the operation of any computer and any associated apparatus or materials that is or has been in use in connection with keeping of the information.

(8) No other State selling their tickets in the State of Kerala shall use a name of prefix or suffix in the name of lottery (eg:- Kerala, name of the cities and town or any such other name which can be used as a prefix or suffix or otherwise) which could mislead people to believe that the said lottery is organised, conducted or promoted by the Government of Kerala and where the State Government is satisfied that such use is misleading or is likely to mislead people to believe that the lotteries organise, conduct or promote by the Government of Kerala, the Government may cause seizure of such tickets within the State of Kerala through its enforcing agency.

(9) Any agent selling lottery tickets of any particular draw should have in possession, a copy of the certificate issued by the Authority to the effect that licensing fee as may be notified as per Central Lottery (Regulation) Rules, 2010 in respect of the draw has been paid to the Government and they shall show it to the Enforcement Agency whenever it is demanded. On non-production of such certificate, Enforcement Agency is empowered to seize such tickets.

(10) Where the Government either suo-motu or on a complaint in that behalf are satisfied after verifying the necessary information that sale of tickets in the State, of a lottery organised, conducted or promoted by any other State, is in contravention of the provisions of the Act or the Rules made thereunder, it may temporarily suspend the sale of such tickets within the State and report the matter to the Government of India seeking its final order in the matter under section 6 of the Act.

(11) Details of tickets printed meant for sale within the State of Kerala and the details of unsold tickets after sales shall be submitted to Goods and Services Tax authorities as prescribed in the Kerala Goods and Services Tax Rules, 2017.

(12) The registered agents of Kerala State Lottery shall not sell other State lottery tickets. If any agent is found selling other State lotteries, his/her agency shall be liable to be cancelled by the Director of State Lotteries.

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(13) The registered agents shall ensure that the sub-agents/sellers/ retailers under them strictly comply with the above said conditions or else severe action will be taken against those agents under whom the violation is reported.

4. On a reading of the amended rules, the power exercised by the State Government or the authority constituted under the rules is of the following nature:

- i. Creating an accountability of the lotteries organised by other State to the Government of Kerala;
- ii. Power to regulate and power to suspend the other State lotteries;
- iii. Power to interfere with other State lotteries.

The rules, as amended now, will have to be classified as above to understand the validity of the rules.

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5. Section 4 of Central Act 17 of 1998 enumerates three essential powers conferred upon the State, to organize, conduct and promote a lottery. This power clearly delineates the authority of the State. Section 5 confers the power on the State Government to prohibit the sale of other State lottery tickets alone in a State. It is therefore essential to understand the meaning of organising, conduct and promotion. The word 'organising' in the context of lottery enactment means systematically arranging lottery in accordance with the Central Act 17 of 1998 directives and Rules of the Central Government. Conduct of lottery means, conducting the lottery in a manner indicated under Section 4 of the Central Act 17 of 1998 and any other directives issued by the Central Government. Promotion means marketing lottery

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subject to any right available to other States to prohibit such sale.

6. Before entering into the question of the legality of the Rules as above, it is appropriate to refer to the Scheme of the Central Act 17 of 1998 as expounded in various precedents of the Apex Court. The Central Act 17 of 1998 was enacted by the Parliament, to protect the interest of the gullible public and poor. The State Government is empowered to organise or promote a lottery with the objectives to protect the interest of the public. Keeping in mind the larger interest of the public, the State is also given the power to prohibit the sale of lottery tickets within the State. The Apex Court in **H.Anraj and Others v. State of Maharashtra [(1984) 2 SCC 292]** and in **B.R. Enterprises v. State of U.P. and Others [(1999) 9 SCC 700]** ruled that the State Government is not competent to impose a ban on

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the sale of lottery organised by the other States and has no power to make laws to ban lottery organized by other States. However, it was held that nothing prohibits the State Government in prohibiting the sale of lottery tickets of other States, if the State Government chooses to prohibit its own lottery and to treat its territory as a lottery free zone.

7. Though the Lotteries (Regulation) Act was originally enacted to protect the gullible public, the turf of Regulation Act has come to a level of a tussle for market domination. The lottery is a revenue model. The revenue generated through the sale of the lottery has become a new market model for fiscal governance by different States. This creates tensions. The State Governments are very ambitious not only to protect their own market interest but also want to see that lottery tickets of other

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States do not penetrate into their own territorial market. Other State Lottery tickets are sold in the State through the agents appointed. The State of Kerala suspects these agents operate in connivance with the officials of the organising States to defraud revenues to the State by way of tax. The competing interest of the State on the one hand and the fraudulent operations of lottery agents to defraud tax on the other, perhaps, are the best reasons one could assume to defend the amended Rules.

Scope of Rule making power of the State:

8. It is apposite to adumbrate the power of the State Government under Section 12 of the Central Act 17 of 1998 to make Rules. The State Government is authorised to make rules to carry out provisions of the Central Act. The State Government is also authorised to make rules in particular on matters relating to prize money,

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period to be fixed for draws, etc. under the aforesaid Rules. The power conferred to the State Government, therefore, has to be understood as a power conferred on a delegate. The power conferred on the State Government is a delegated power. The Parliament alone has exclusive power to make laws with respect to lotteries as seen from Item No.40 of List I- Union List, Seventh Schedule of the Constitution of India. What is the extent of the scope of power is the real issue in this case. The State Government has been exclusively authorised to make Rules to carry out the provisions of the Act. This power has to be culled out from the Central enactment itself as the subject of legislation exclusively falls within the domain of the Parliament. What are the powers given to the Central Government are also visible from the Central Act. The State Government alone is having the power to

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organize, conduct and promote lotteries. Section 4 of the Central Act 17 of 1998 is related to the conduct of lotteries in the manner which is indicated in the said provision. The State Government, therefore, is free to make any Rules related to Section 4. Section 5 of the Central Act 17 of 1998 permits the State Government to prohibit the sale of tickets of lottery organised, conducted or promoted by every other State. Following the dictum of **B.R. Enterprises** case (*supra*), the Apex Court in **All Kerala Online Lottery Dealers Association v. State of Kerala and others** [(2016) 2 SCC 161] also held that the State Government could also prohibit the sale of the online lottery if the State is not running its lotteries. The power of the State Government to prohibit paper lottery or online lottery under Section 5 is available only when the State is not running its own said type of

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lotteries. Therefore, the State can also invoke Rule 9A(12) of the Kerala Paper Lotteries (Regulation) Rules, 2005 to prohibit the sale of other State lotteries, if the State is not running any such type of lotteries.

9. The power to interfere with other State lotteries is only to the extent of prohibition of sale of lottery tickets. That is only possible if the State has declared its territory as a lottery free zone. In that background, the Court has to conclude the nature of the power that can be exercised by States under the Central Act 17 of 1998 as follows:

i. Formulate Scheme of their own lottery conducted, promoted in accordance with Section 4 of the Central Act 17 of 1998.

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ii. The prohibition of the sale of tickets if the State has chosen its territory as a lottery free zone.

Role of the Central Government and its power to make rules:

10. The Parliament conferred the power on the Central Government under Section 6 of the Central Act 17 of 1998 to prohibit a lottery organized by any State in contraventions of Section 4. The Parliament also conferred power on the Central Government under Section 10 to give necessary direction to the State Government to the manner in which provisions of the Act and Rules have to be carried out. The Central Government was also given power to make rules to carry out the provisions of the Central Act 17 of 1998. The Central Government formulated Rules in the year 2010. These Rules refers the manner in which lotteries have to be

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organized, conducted and promoted. It also prescribes procedure of prohibition for sale of lottery tickets by the Central Government. Apart from that, the Central Government invoking its power under Section 10, issued directions to all States on 2/8/2011. These directions prescribe responsibility of the State Government organizing lottery.

11. The Scheme of Central enactment has been outlined to maintain the delicate balancing of federalism conceived under the Constitution. Since lotteries are organised by the State, it is likely to give rise of tension between different States. The Parliament contemplating this, conferred power on the Central Government to prohibit lottery organised by any State, if such lotteries are organised, conducted or promoted in contravention of the provisions of Section 4; or when tickets are sold when there is valid

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prohibition effected by a State in its territory. The Parliament also thought that one State should not decide its own cause if any lotteries are organised, conducted and promoted by other State contravening the provisions of the Central Act 17 of 1998 and the Central Government has to decide as a neutral Arbiter. This is how Section 6 enables the Central Government to take a decision. Though the Central enactment was of the year 1998, there were no clear guidelines for dealing with complaints of one State over other State. In exercise of the powers conferred on the Central Government under Section 11(1) of the Central Act 17 of 1998, the Central Government framed the Lotteries (Regulation) Rules, 2010. Rule 5 of the Central Rules contemplates the procedure to invoke the power of the Central Government under Section 6 of the Central enactment. This procedure delineates the mechanism of

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complaints and redressal of the grievances of the State Government. The first procedure is, bringing to the notice of the States, organising lottery, the details of violations or irregularities noticed, by simultaneously addressing the Central Government also. The organising States are bound to give a suitable response within a period of 30 days of receipt of such communication. If the State Government concerned is not satisfied with the response received from the organising State, the Central Government will take up the matter, and final decision will be taken-up thereon. The final decision also includes the decision to the extent of prohibiting such lotteries of organising State. The directions issued under Section 10 of the Central Act 17 of 1998 are intended to sustain the cordial relationship between different State Governments in the matter of sale of lottery tickets and to avoid

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inter-State disputes. The Central Rules clearly establish authority on the Central Government to regulate, control and interfere with lottery run by any State Government.

12. Federalism in its true spirit, establishes a structure to sustain relationship amongst States as accorded under the Constitution, whether be inter-State relationship or the State-Central relationship. The overarching role of the Central Government disposed in equanimity to states under our constitutional scheme is to sustain the relationship amongst States within the bounds of the Constitution and to uphold true federalism. Federalism fosters co-operation among States in a unitary scheme. The Parliament, therefore, designed the fabric of Central Act in such a way in not allowing one State to interfere with the right of the other State to carry on the business of lottery,

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except in a manner indicated under the provisions of the Act.

Rule making power of the Central and State Governments vis-a-vis Sections 4 to 6 of the Central Act 17 of 1998 :

13. As aforementioned, Section 4 of the Central Act 17 of 1998 refers to the manner in which lotteries have to be organised, conducted and promoted. Section 5 of the Central Act 17 of 1998 confers power to any State to prohibit sale of lotteries organised by other States. Section 6 of the Central Act 17 of 1998 confers power on the Central Government to prohibit lotteries organized by any State if the same is conducted or promoted in contravention of the provisions of Section 4 or overlooking prohibition affected by Section 5 by a State.

14. On analysis and consideration of various provisions of the Central Act 17 of 1998 within the ambit of federalism, it can be concluded

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that the State has been given the exclusive power to organise, conduct and promote the lottery. That power of a State cannot be tinkered or interfered by other States. The three essential elements of the power conferred on the State Government are to organise, conduct and promotion of lotteries. This runs with the authority of the State as conferred upon them by the Parliament. The Parliament has bestowed those powers upon all the States within the Union. Each State has the power to pursue their authority to organise, conduct and promote lottery in a manner indicated. This authority is not subservient to the power of any other State. If any right is exercised in such a manner by other States to interfere with organising, conduct and promotion other than the sale of lottery tickets, that would amount to interfering with the authority of other States as conferred upon them by the

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Parliament. The Union Government alone has the power to interfere with the organising, conduct and promotion of lotteries, and no other States have such right. The power conferred on the State under Section 5 is the only power of prohibition of sale of tickets of other State lotteries. That means the State Government has no power to interfere with organising, conduct or promotion of lottery by other states. The distribution of legislative powers between the Union and States is the bedrock of the federal system under the Constitution. In matters related to the subject over which the Parliament alone has the exclusive power to legislate, the State Government can exercise the powers conferred upon them only in the manner indicated under the legislation of the Parliament.

15. No State can exercise its authority by making Rules in such a way to impact upon

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authority of other States to organise, conduct and promotion of lottery. That power is exclusively given to the Central Government under Section 6. The Central Government alone has the power to regulate, control and interfere with lotteries, if it is run in violation of law. Any Rules, therefore, has to be tested against three essential elements of authority conferred upon the State Government. If the Rules are framed in such a way to interfere in the authority of other State to organise, conduct and promote (except the sale of lottery tickets) that would amount to usurping the power of the Central Government. Therefore, the Court has to test any Rules framed by the State Government other than the Rules for promotion of their own lottery on the parameters as above.

The nature of impugned amended rules:

16. The amendments brought by the Government of Kerala are essentially featured to regulate the lotteries, organised, conducted and promoted by other States. An 'authority' has been created under Rule 2(3A) of the Kerala Paper Lotteries (Regulation) Rules, 2005 to regulate the sale of other State lotteries in the State. The Secretary to Government, Taxes Department or any authority as constituted under Rule 4(4) has the power to conduct all lotteries organised by other States. Under sub rule 5 of Rule 4, that authority has the power to monitor the sale of all lotteries of other States. Rule 9A of the Kerala Paper Lotteries (Regulation) Rules, 2005 stipulates submission of a scheme before the authority before starting the sale of paper lotteries in the State. Sub rule 3 to Rule 9A, confers power on the enforcement agencies to seize tickets

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marketed in the State without the approval of the Scheme by the authority. Under sub rule 6 of Rule 9A, it is insisted that respective State Governments have to obtain prior approval of the State of Kerala for approval of distributors, agents etc. Sub rule 9 of Rule 9A stipulates that if an agent fails to produce a certificate issued by the authority, the enforcement agency is empowered to seize the tickets in possession of the agents. Sub rule 10 of Rule 9A also empowers the Government to suspend the sale of tickets in the State, pending proceedings for prohibition initiated before the Central Government under Section 6. These Rules are in the nature to regulate, control and interfere with lotteries of other states.

17. It is also appropriate to refer the relevant paragraphs of the directions under Section 10 of the Central Act 17 of 1998 issued in the year 2011 (ExtP7):

3.2. It has also come to the notice of this Ministry that many of these violations are often inadvertent and result from improper understanding of the Act and the Rules. While this Ministry appreciates the fact that the Rules came into force only w.e.f.1<sup>st</sup> April, 2010 and it takes some time in dissemination of the rules to all authorities and stakeholders and in understanding the import of each provision, it is the responsibility of the Organising State Governments to understand and implement the provisions of the Act/Rules in their true letter and spirit.

4.(iv). to keep the State Government, in whose territory the tickets are being sold, duly informed of marketing arrangements established by the Organizing State and give them all details of persons/firms involved in selling/distribution/printing of lotteries.

4.(viii). to keep in direct touch with the officers of the State Government, in whose territory the tickets are being sold. It is advisable that officers of both Governments should meet every few months so that issues are mutually resolved. It is also expected of a State Government, who is aggrieved with any other State Government, to first raise the issues directly with the State concerned as per the provisions of Rule-5 of the Lotteries (Regulation) Rules, 2010.

18. The Central Government Rules 2010 and directions issued in the year 2011 clearly establish that the Central Government Rules and directions occupy the field in regard to creation of accountability, regulation and interference of lotteries organized by a State. Therefore, the State Government is incompetent to create one more tier to regulate and control

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other State lotteries. This Court, in **Teesta Distributors & Others v. State of Kerala and others [(2018) 53 GSTR 82 (Kerala)]**, in a challenge made by a lottery distributor of the State of Mizoram against exercise of police power as well as scope of interference by the Tax officials of the Government invoking provisions of the Kerala State Goods and Services Tax Act, 2017, held as follows:

In a federal set up, one State cannot frown upon and decide the legitimacy of lottery of other State. Federalism works on mutual co-operation. If there is any violation of Lotteries (Regulation) Act, the State in fact, is raising a complaint against other State. Therefore, such complaint can be dealt only by the Central Government and not by the State itself. The State Government or its officials are not the authority to decide that lottery conducted by other State is not in compliance with the Lotteries (Regulation) Act.

This Court also declared Rule 56(20A)(iii)(d) of the Kerala State Goods and Services Tax Rules, 2017 as ultra vires holding that the

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State has no power to constitute one more authority under the Kerala State Goods and Services Tax Rules to enter satisfaction of the violation of lotteries conducted in accordance with the Central Act 17 of 1998.

19. The nature of power that is conferred upon the State Government authority and the enforcement agencies under the amended Rules clearly establishes that such power amounts to interference with the power of other organizing States to organize, conduct and promote their State lottery tickets in the State of Kerala. No State is conferred with any power under the Central Act 17 of 1998 to regulate Rules to interfere with the power of other States to organize, conduct and promote lotteries of such States. The power conferred upon the State Government is to formulate rules for promotion of their own lotteries and to prohibit sale of lotteries promoted by other States, if the

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State has chosen its territory as a lottery free zone. The Rule making power of the State Government under Section 12, therefore, cannot be exercised in such a manner to interfere with the authority of other State to organise, conduct and promote their lotteries. Parliament never conferred such power on the State Government to make Rules in such a manner to interfere with the authority of other States.

20. The concern of the State about malpractices by the distributors/agents cannot be a reason to frame the Rules beyond the power under Section 12 of the Central Act 17 of 1998. The Parliament conferred authority upon the Central Government under Section 6 to prohibit lottery organized/conducted/promoted in contravention of the Central Act 17 of 1998 and Rules made thereunder. The Central Government also framed Lotteries (Regulation) Rules, 2010. These Rules provide a mechanism to redress the

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grievances of other States as against organizing States and their agents. These rules confer authority on the Union to decide on such complaints and grievances. It is in tune with the federalist character contemplated under the Constitution. Any usurpation of the authority of the Central Government certainly would run counter to basic ideas conceived on federalism under the Constitution. Parliament was wise enough while drafting lottery regulation to uphold the federalistic characteristics of the State governments. Any act on the part of the State negating constitutional scheme and authority of the Parliament would run counter to practice of federalism.

21. The State's power to make rules with respect to the lottery has to be understood in such a manner as enumerated under Section 4 of the Central Act 17 of 1998 to organize, conduct and promote their own lottery. The Rules

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framed by the Central Government in the year 2010 clearly lays down the procedure to deal with the violations. The entire scheme of the Central Government regulations occupied the field to deal with the violations. The Court only needs to examine the object of the rules for the purpose of ascertaining the true character of the rules. It is not the objectives or good intention behind the rules to make the rules as valid. If the rules in substance transgress the rule making power of the State, such a rule is ultra vires. The Court relies upon the doctrine of colourable legislation to nullify the rules and not on the ground of lack of power to make rules; but by really looking at the substance by finding it transgress the power. The Central Act 17 of 1998 really intend to distribute power of making rules amongst the State and Central Governments. The power of the State is marked

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out by specific criteria as referable under Section 4 and to prohibit sale invoking Section 5. Any other violation in regard to conduct of the sale of lotteries, the Act confers authority on the Central Government. The Apex Court in **Union of India and others v. S.Srinivasan [(2012) 7 SCC 683]**, **welfare Association, A.R.P., Maharashtra and another v. Renjit P.Gohil and others [(2003) 9 SCC 358]**, **Karimbil Kunhikoman v. State of Kerala [(1962) Supp. (1) SCR 829]**, held that rules become ultra vires not because of lack of source of power but for the reason that, in substance, in reality, these rules transgress the powers.

Precedents relied by the learned Senior Counsel for the State:

22. The learned Senior Counsel placed reliance on certain observations of the Apex Court in the judgment reported in **All Kerala**

**Online Lottery Dealers Association v. State of Kerala and others [(2016) 2 SCC 161]** to defend the validity of the rules. The Apex Court considered an appeal filed by the dealers of the online lotteries as against the judgment of the Division Bench of the Kerala High Court. That case had arisen out of a challenge raised against the notification issued by the Government of Kerala prohibiting sale of all computerised online lottery tickets marketed and operated in the State. This prohibition was effected by virtue of Section 5 of the Central Act 17 of 1998. The State of Kerala also declared that Kerala shall freeze all online and internet lotteries. The sole consideration before the Court was whether the State Government can discriminate paper lotteries and online lotteries. One of the reasons for the State to invoke the power under Section 5 was that the organizing State was having least

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control over online lottery and major source of income was siphoned off by middlemen who were acting as the sole agents. After referring to the **B.R. Enterprises** case (*supra*), the Apex Court was of the view that if the State has chosen to prohibit running of any type of lottery, it can also prohibit that particular form of lottery of other States. The conclusion clearly would show that the Apex Court was referring to the power of the State Government under Section 5.

23. Much argument has been raised by the learned Senior Counsel appearing for the State Government to defend the Rules based on a Division Bench judgment of this Court in **Tashi Delek Gaming Solutions (P) Ltd. v. State of Kerala** [2004 (2) KLT 461]. The Division Bench considered almost a similar rule framed by the State Government to regulate online lotteries. That regulation is called the Kerala State

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Lotteries and Online Lotteries (Regulation) Rules, 2003. The learned Senior Counsel for the State argued that the above Division Bench judgment holds the field and binds this Court as well. It is further submitted that the civil appeal filed before the Apex Court was closed without any adjudication. This appeal was closed for the reason of abrogation of the impugned rules, the Kerala State Lotteries and Online Lotteries (Regulation) Rules, 2003. Therefore, this Court has to consider whether the judgment of the Division Bench would hold as a precedent or not. In the counter affidavit filed by the State, the rules under challenge in **Tashi Delek Gaming Solutions (P) Ltd.** case as well as the rules impugned in the present writ petition have been tabulated as follows.:

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|   | <b>The Kerala State Lotteries &amp; Online Lotteries (Regulation) Rules, 2003</b>                                                                                                                                                                                                                                                                                | <b>The Kerala Paper Lotteries (Regulation) Amendment Rules, 2018</b>                                                                                                                                                                                                                                  |
|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | <b>Rule 2(8)</b> : 'Authority' means the <b>Director of State Lottery and includes any other Authority appointed u/R.3</b> to organize State Lottery and regulate the sale of other State Lotteries within the State.                                                                                                                                            | <b>Rule 2(3A)</b> : 'Authority' means <b>the Secretary to Government, Department of authority or officer specifically appointed by the Government</b> to organize State Lottery and regulate the sale of other State lotteries within the State as provided in the Act.                               |
| 2 | <b>Rule 2(12)</b> : 'Enforcement Agency' means the District Collector or District Superintendent of police, Commissioner of Police, <b>Commissioner Commercial Taxes Department</b> and includes any other officer authorized by the Government or the officer mentioned hereinbefore, and they shall exercise powers of enforcement as specified in these rules | <b>Rule 2(6A)</b> : 'Enforcement Agency' means the District Collector, District Superintendent of Police, Commissioner of Police or any other officer authorized by the Government or officers mentioned herein before and they shall exercise the powers of enforcement as specified in these rules. |
| 3 | <b>Rule 3(1)</b> : <b>The Director of State Lotteries or any Authority, specifically appointed by the Government</b> for this purpose will be the Authority for the conduct of all or any particular lottery in the State. The authority shall implement the State Lottery according to the provisions of the Act and the rules made thereunder.                 | <b>Rule 4(4)</b> : <b>The Secretary to Government, Taxes Department or any authority specifically appointed by the Government</b> for this purpose shall be the authority for the conduct of all or any particular lottery in the State including lotteries run/organized/promoted by other State.    |
| 4 | <b>Rule 3(3)</b> : The authority shall also be vested with <b>the powers to monitor the sale of lotteries of other States/Union territories or any country having bilateral agreement or treaty with the Government of India</b> , in accordance with the provisions of the Act and the rules made thereunder.                                                   | <b>Rule 4(5)</b> : The authority shall have <b>the powers to monitor the sale of all lotteries including the lotteries run/organized/promoted by other States and Union Territories</b> in accordance with the provisions of the Act and the rules.                                                   |
| 5 | <b>Rule 24(1)</b> : Any other State or Union Territory or any Country having bilateral Agreement or treaty with Government of India organizing, conducting or promoting Lottery as per S.4 of the Act, shall submit to                                                                                                                                           | <b>Rule 9A</b> : Sale of other State paper lottery tickets in Kerala –<br>(1) Any other State or Union Territory organising, conducting or promoting                                                                                                                                                  |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| <p>Taxes Department, Government of Kerala <b>through the Director of State Lotteries</b>, the following documents and details before starting the sale through <b>On-line Lottery/other Lotteries</b> namely:-</p> <ul style="list-style-type: none"> <li>(a) the details as per S.4 of the Act</li> <li>(b) copy of the rules, if any, made u/S.12 of the Act.</li> <li>(c) specimen ticket shall be submitted with name of the On-line Lottery/other Lotteries and type of scheme, order of draws along with details of the prize structure of every scheme and any subsequent addition or deletion to the scheme made from time to time.</li> <li>(d) details of the Agents-sub agents or selling agents appointed for selling its Lottery tickets in the State and the cancellation and fresh appointment thereof.</li> <li>(e) details of methodology for conducting the draw by the <b>concerned State Government/Country</b> and details of Prize Winners of each scheme.</li> <li>(f) details of the designated Authority or body entrusted to conduct the lottery draw by the <b>concerned State Government/Country</b>.</li> <li>(g) details of the procedure for publishing the lottery results.</li> <li>(h) any other relevant information as directed by the authority so as to enable it to verify that the scheme is conducted as per the provisions of the Act.</li> </ul> | <p>lottery as per S.4 of the Lotteries (Regulation) Act, 1998 (Central Act 17 of 1998), it shall submit to Taxes Department of the Government the following documents and details before starting the sale of paper lotteries namely:-</p> <ul style="list-style-type: none"> <li>(a) details as per S.4 of the Act.</li> <li>(b) copy of the rules, if any, made u/S.12 of the Act.</li> <li>(c) specimen ticket shall be submitted with name of lottery, type of scheme, order of draws along with details of the prize structure of every scheme and any subsequent addition or deletion to the scheme made from time to time.</li> <li>(d) <b>details of the distributors</b>, agents, selling agents or sellers appointed for selling its Lottery tickets in the State and the cancellation and fresh appointment thereof.</li> <li>(e) the details of methodology for conducting the draw by the <b>concerned State Government/Union Territory</b> and details of Prize Winners of each scheme.</li> <li>(f) details of the designated authority or body entrusted to conduct the lottery draw by the <b>concerned State Government</b>.</li> <li>(g) details of procedure for publishing the lottery results.</li> <li>(h) any other relevant information as directed by the authority so as to enable it to verify that</li> </ul> |
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|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | the scheme is conducted as per the provisions of the Act.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 6 | <p><b>Rule 24(2):</b> In the absence of complete details the Authority may return the scheme to the concerned <b>State Government/Country</b>, directing to furnish the complete details within a period of 15 days. The Authority shall verify all the details furnished and sent report to Secretary to Government, Taxes Department who shall assess the report independently taking into account various other information available with him from the Commercial Taxes Department, Police or any other source if any, and decide as to whether the scheme satisfies all the provisions of the Act and pass appropriate orders.</p> | <p><b>Rule 9A(2):</b> In the absence of the details, specified in sub-rule (1) the Secretary to Government may return the scheme to the <b>State Government/ Union Territory</b> concerned directing to furnish the complete details within a period of 15 days. The Secretary to Government of Kerala, Taxes Department shall assess the report independently taking into account of various other information available with him from the Goods &amp; Services Tax Department, Police or any other source if any, and decide as to whether the scheme satisfies all the provisions of the Act and shall pass appropriate orders.</p> |
| 7 | <p><b>Rule 24(3):</b> No lottery shall be marketed until appropriate orders under sub -rule (1) above, are issued by the Secretary to Government, Taxes Department, Enforcement Agency may seize such Ticket marketed before passing any order in this regard.</p>                                                                                                                                                                                                                                                                                                                                                                      | <p><b>Rule 9A(3) :</b> No lottery shall be marketed in the State until appropriate orders under sub-rule (2) above are passed by the Secretary to Government, Enforcement agencies may seize such tickets marketed before passing any order in this regard.</p>                                                                                                                                                                                                                                                                                                                                                                        |
| 8 | <p><b>Rule 24(4):</b> The enforcement Agency may-</p> <p>(a) seize, for the purpose of further examination or securing information or investigation any lottery, thing, machine, document, account books or dare excluding proprietary software, on or in such premises of facility which has bearing on conduct of <b>On-line Lottery</b>.</p> <p>(b) seal or otherwise secure such premises, facility, thing or machine or in which any document or data which has bearing on the conduct of <b>On-line lottery</b> is stored.</p>                                                                                                    | <p><b>Rule 9A(4):</b> The enforcement agency may-</p> <p>(a) seize for the purpose of further examination or securing information or investigation any lottery, thing, machine, document, account books or date on or in such premises or facility which has a bearing on conduct of <b>lottery</b>.</p> <p>(b) seal or otherwise secure any such premises, facility, thing or machine or in which any document or data</p>                                                                                                                                                                                                            |

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|    | (c) take such legal action as per the Act, which may be necessary to protect the integrity and conduct of <b>On-line lottery</b> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | which has a bearing on the conduct of <b>lottery</b> is stored.<br>(c) take such legal action as per the Act, which are necessary to protect the integrity and conduct of <b>lottery</b> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 9  | <p><b>Rule 24(5):</b> The Other States or Union Territories or any Country having bilateral Agreement or treaty with the Government of India while selling the Lottery Tickets in the State shall ensure the following namely;</p> <p>(a) In lottery tickets issued by the Government of other State, the name of the agents in any form or their logo shall not be printed.</p> <p>(b) The results of the prize Winners shall be announce by the Government of other State, which results alone shall be reproduced <b>in the newspapers</b> by the agent and the agents shall not publish the results on their own or in a form or method of their own.</p> <p>(c) The particulars of the prize winners shall be furnished <b>every month</b> to the Authority, after furnishing copy of the same to the Director of concerned State Lotteries.</p> | <p><b>Rule 9A(5):</b> The other States or Union Territories who organize conduct or promote their lottery tickets in the State shall ensure the following:</p> <p>(a) in lottery tickets issued by the Government of other States, the name of the agents in any form or their logo shall not be printed.</p> <p>(b) The result of the draws shall be announced by the Government of other States which shall be published in at least one national daily and two State level newspapers <b>out of which one shall be in English</b>. The result shall also be <b>published in the official Gazette</b>.</p> <p>(c) The particulars of prize winners shall be furnished <b>within three months</b> from the date of draw to the authority.</p> |
| 10 | <p><b>Rule 24(6):</b> Respective State Government shall also obtain prior approval of the Authority for its sub-agents/retailers for point of sales in the State by furnishing all relevant details. Such sub-agents/retailers shall satisfy the following qualifications/requirements., namely-</p> <p>(a) He must have completed eighteen years of age.</p> <p>(b) Proof of credit worthiness should be furnished.</p>                                                                                                                                                                                                                                                                                                                                                                                                                              | <p><b>Rule 9A(6):</b> Respective State Government shall also obtain prior approval of the authority for its distributors, agents and selling agents for point of sales in the State by furnishing all relevant details. Such distributors , agents and selling agents shall satisfy the following qualifications/requirements-</p> <p>(a) he must have completed 18 years of age.</p> <p>(b) Proof of credit worthiness should be furnished.</p>                                                                                                                                                                                                                                                                                               |

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|    | <p>(c) Place of business should not be in the near vicinity of educational institutions/religious institutions like temple, church, mosque and the like;</p> <p>(d) Place of business should be with the clear title on ownership or lease or rent;</p> <p>(e) Government of Kerala should not have been blacklisted him in the last three years.</p> <p>(f) Person should not have been convicted for any criminal offence in the last three years for any offence with imprisonment of six months or with fine of <b>rupees five thousand only</b> or with both.</p>                                                                                                                                    | <p>(c) Place of business should not be within a distance of 100 meters from the vicinity of educational institutions/religious institutions like temple, church, mosque and the like;</p> <p>(d) Distributors, agents and selling agents shall have a place of business with clear title or ownership or on lease or rent.</p> <p>(e) To Government should not have black listed him/her or the firm in the last three years.</p> <p>(f) The person acting as distributors, agents and selling agents should not have been convicted for any criminal offences in the last three years with imprisonment of six months or with fine of <b>Rs.5000 or above or with both.</b></p> |
| 11 | <p><b>Rule 24(7):</b> If any other State On-line lottery is approved by the Government for sale within the State, it shall require the respective State, their/agent or its sub-agent/retailer to allow the Authority or any Officer authorized by him or Enforcement Agency to,-</p> <p>(a) Enter any premises or facility belonging to or under the control of the <b>agent or a member of the management of the agent or any sub-agent/retailer or employee of contractor of the agent or premises to which agent has a right of access</b>, at any reasonable time, if such entry is necessary for the public interest or protection of the integrity and interest of the <b>On-line Lottery.</b></p> | <p><b>Rule 9A(7):</b> If any other State lottery is approved by the Government of Kerala for sale within the State, it shall require the respective State, distributors, agents and selling agents to allow the authority or any officer authorized by him or enforcement agency to,-</p> <p>(a) Enter any premises or facility belonging to or under the control of the <b>distributor, agent or a member of management of the agent or any selling agent or employee of contractor of the agent or premises to which the agent has a right to access</b>, at any reasonable time, if such entry is necessary for the public interest or protection of the</p>                  |

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|    | <p>(b) Examine or inspect anything, machine, document or data captured in any form <b>excluding proprietary</b>, software, found on or in the premises or facility and make copies of or make extracts from that thing machine, documents or date.</p> <p>(c) To take copies of any document including any information kept by the agent or sub-agent or retailer relating to the On-line Lottery or all other ancillary activity within the State;</p> <p>(d) Assist to inspect and take copies of the information in a visible and legible form from the Computer or to inspect and check the operation of any computer, and any associated apparatus or materials, that is or has been in use in connection with the keeping of the information.</p> | <p>integrity and interest of the <b>lottery</b>;</p> <p>(b) Examine or inspect anything, document or data captured in any form found on or in the premises or facility and make copies of or make extracts from that thing, machine, document or data;</p>                                                                                                                                                                                                                                                                      |
| 12 | <p><b>Rule 24(10) :</b> Where the Government either suo motu or on a complaint in their behalf are satisfied after verifying the necessary information that the sale of tickets in the State of a lottery organised, conducted or promoted by any other State, is in contravention of the provisions of the Act or the Rules made thereunder, it may temporarily suspend the sale of such tickets within the State, and report the matter to the Government of India seeking its final order in the matter u/S.6 of the Act.</p>                                                                                                                                                                                                                        | <p><b>Rule 9A(10):</b> Where the Government either suo motu or on a complaint in their behalf are satisfied after verifying the necessary information that the sale of tickets in the State of a lottery organised, conducted or promoted by any other State, is in contravention of the provisions of the Act or the Rules made thereunder, it may temporarily suspend the sale of such tickets within the State, and report the matter to the Government of India seeking its final order in the matter u/S.6 of the Act.</p> |
| 13 | <p><b>Not seen in Rule, 2003</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p><b>Rule 9A(11):</b> Details of tickets printed meant for sale within the State of Kerala and he details of unsold tickets after sales shall be submitted to Goods &amp; Services Tax authorities as prescribed in the Kerala Goods &amp; Services Tax Rules, 2017</p>                                                                                                                                                                                                                                                        |

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| 14 | <u>Not seen in Rule, 2003</u> | <b>Rule 9A(12):</b> The registered agents of Kerala State Lottery shall not sell other State lottery tickets. If any agent is found selling other State lotteries, his/her agency shall be liable to be cancelled by the Director of State Lotteries. |
| 15 | <u>Not seen in Rule, 2003</u> | <b>Rule 9 A(13):</b> The registered agents shall ensure that the sub-agents/sellers/retailers under them strictly comply with the above said conditions or else severe action will be taken against under whom the violation is reported.             |

24. The Division Bench upheld the validity of the rules which are similar to the rules impugned in this writ petition. This Court is bound to follow the judgment in **Tashi Delek Gaming Solutions (P) Ltd.** case if the same remained as a valid precedent. The binding effect of the decision is an authority for what it decides and not for what logically follows from it. [See **Union of India and Anr. v. M/s.Meghmani Organics Ltd. And Ors.** (AIR 2016 SC 4733)]. The Division Bench has stated

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reasons at para.24 of the judgment. It is appropriate to quote the relevant portion of para. 24 of Tashi Delek Gaming Solutions (P) Ltd. case which reads as follows:

*24. In view of such pernicious nature of even a State lottery, it is very essential in public interest to provide for authorities and procedure to monitor its conduct in the State and to ensure that even a State lottery is conducted strictly in accordance with the provisions of Ss.3 and 4 of the Act. Therefore, no State Government can claim any right to market its lottery and to start the sale of tickets within the State of Kerala even before convincing the Secretary to Government, Taxes Department that the scheme satisfies all the provisions of the Act. If such a right is conceded to any State it will defeat the very object of the Act. The Parliament would not have envisaged a situation in which the State Government have to helplessly watch the continued violation of the provisions of the Act within its territory and indefinitely wait for the action of the Central Government under S.6 of the Act. The Central Government have not even made the rules in exercise of its power under S.11 of the Act. Merely because another State Government is required to satisfy the Secretary to Government, Taxes Department, Government of Kerala that the Scheme satisfies all the provisions of the Act, no violation of the principles of federalism is involved. Federalism does not mean that one State can organize or conduct activities in another State in violation of the provisions of the Act and that its activities cannot be subjected to scrutiny or monitoring by the other State to ensure that the provisions of the Act are complied with. The provision contained in sub-r.(3) of R.24 directing that no lottery shall be marketed until appropriate order under sub-r.(2) are issued by the Secretary to Government, Taxes Department, does not affect the right of*

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*another State to organise, conduct or promote lottery and to sell its tickets outside the territory of Kerala. The regulation or restriction in sub-r.(3) of R.24 applies only within the State of Kerala and, that too, to enforce the provisions contained in the Act made by Parliament and to ensure that the conduct of any lottery and the sale of its tickets within the State of Kerala are in compliance with ss.3 and 4 of the Act. Under the guise of federalism, another State cannot claim the right to violate the provisions of the Act within the State of Kerala and contend that such violations of the provisions of the Act may be reported to the Central Government for action under S.6 of the Act. When violation of the provisions of the Act is committed or apprehended, the Government of Kerala cannot be made to throw up its hands in helplessness and to wait for the Central Government to prohibit the lottery under S.6, after much damage has been done. The principle of federalism cannot prevent the Government of Kerala from taking appropriate and necessary action to prevent the violation of the provisions of the Act within its territory.*

25. It is seen from the above discussions that one of the reasons for holding validity of the rule was that the Central Government had not made rules in exercise of the power under Section 11 of the Central Act 17 of 1998 to effectively deal with violations. Perhaps in this case, the Court has to consider the binding effect of the judgment in the light of the subsequent rules made by the Central Government in the year 2010. The judgment

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would be binding as a precedent based on what it constitutes material facts and principles based on the facts. The Hon'ble Supreme Court, after placing reliance on the decision of House of Lords in **F.A. & A.B. Ltd. v. Lupton (Inspector of Taxes)** [1971 (3) All E.R. 948] in **Punjab Land Development and Reclamation Corporation Ltd. Chandigarh v. Presiding Officer, Labour Court, Chandigarh and others** [(1990) 3 SCC 682] made observation as to the manner how *ratio decidendi* of an earlier decision is ascertained. The opinion of the *Lord Simon of Glaisdale of House of Lords* in the afore noted case on the rule of precedent is as follows:

This was understandable; because what constitutes binding precedent is the ratio decidendi of a case, and this is almost always to be ascertained by an analysis of the material facts of the case – that is, generally, those facts which the tribunal whose decision is in question itself holds. expressly or implicitly, to be material. A judicial decision will often be reached by a process of reasoning which can be reduced into a sort of complex syllogism, with the major premise consisting of a pre-existing rule of law (either statutory or judge-made) and

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with the minor premise consisting of the material facts of the case under immediate consideration. The conclusion is the decision of the case, which may or may not establish new law – in the vast majority of cases it will be merely the application of existing law to the facts judicially ascertained. Where the decision does constitute new law, this may or may not be expressly stated as a proposition of law: frequently the new law will appear only from subsequent comparison of, on the one hand, the material facts inherent in the major premise with, on the other, the material facts which constitute the minor premise. As a result of this comparison it will often be apparent that a rule has been extended by an analogy expressed or implied.

26. Every judgment consist of major premise, minor premise and decision. *Ratio decidendi* is the reason formulated from such decision. Material facts constitute major premise and minor premise of a case. The material facts in **Tashi Delek Gaming Solutions (P) Ltd.** case were the rules framed by the State Government. The material facts in this case are not the same as in **Tashi Delek Gaming Solutions (P) Ltd.** The material facts in this case constitute rules framed by the State Government and the Central Government. The Court cannot ignore the rules framed by the

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Central Government and simply follow the dictum laid down in **Tashi Delek Gaming Solutions (P) Ltd.** case as a binding precedent. This Court had already found that the Rules framed by the Central Government occupy the field in regard to regulations, violations etc. The Apex Court in **Union Of India & Anr vs Major Bahadur Singh [(2006) 1 SCC 368]** held that the Court should not place reliance on a decision without referring as to how the factual situation fits in with the fact situation of the decision on hand.

27. In the light of the Central Rules, the very foundation of the judgment in **Tashi Delek Gaming Solutions (P) Ltd.** case is different from the facts involved in this case. If this Court has to follow the judgment in **Tashi Delek Gaming Solutions (P) Ltd.** Case, this Court will have to ignore the rules framed by the Central Government. A precedent cannot be followed like

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a statute to overlook the subsequent changes effected through the process of law. In the light of Central Government Rule 2010 and the directions issued in the year 2011, I am of the view that the State of Kerala is not authorised to make rules to regulate or control lotteries of other State. In view of the fact that the Central Rules were framed subsequent to **Tashi Delek Gaming Solutions (P) Ltd.** case, this Court is of the view that the judgment in the above case will not have a binding effect in this case. The impugned rules, therefore, are to be declared as *ultra vires* and unenforceable. Consequently, Exts.P12 and P17 are also liable to be set aside.

28. The petitioner also sought a direction against interference with the marketing and sale of lotteries organised, conducted and promoted by the State of Nagaland. The Central Government has given clear direction invoking

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its power under Section 10 of the Central Act 17 of 1998 vide Ext.P7. These directions clearly laid down the procedure for marketing other State lotteries. The State of Nagaland vide Ext.P6 had given intimation in accordance with the directions of the Central Government in Ext.P7 to the State of Kerala. The State of Kerala had no case that the State of Nagaland had not followed the directions of the Central Government vide Ext.P7. In such circumstances, the petitioner has every right to sell and market the lotteries organised by the State of Nagaland in the State of Kerala. Therefore, the State of Kerala has to be restrained with the right of the petitioner to market and sell the lotteries organised by the State of Nagaland in accordance with the directions issued under Section 10 of Central Act 17 of 1998. If State of Kerala is of the view that any marketing and sale of lottery tickets is

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contrary to the directions of the Central Government, the State Government is free to move the Central Government for taking appropriate action.

In the result, the writ petition is allowed and the following directions are issued:

i. The amended rules impugned in the writ petition are declared as *ultra vires* and unenforceable.

ii. Consequent to the declaration of the impugned amended rules as *ultra vires* and unenforceable, Exts. P12 and P17 are set aside.

iii. The State of Kerala and its officials are restrained from interfering with the marketing and sale of lottery tickets of the State of Nagaland by the petitioner. No Costs

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

## APPENDIX

### PETITIONER'S/S EXHIBITS:

|             |                                                                                                                         |
|-------------|-------------------------------------------------------------------------------------------------------------------------|
| EXHIBIT P1  | TRUE COPY OF THE AGREEMENT DATED<br>10.11.2017.                                                                         |
| EXHIBIT P2  | TRUE COPY OF THE LOTTERIES (REGULATION)<br>ACT, 1998.                                                                   |
| EXHIBIT P3  | TRUE COPY OF THE LOTTERIES (REGULATION)<br>RULES, 2010.                                                                 |
| EXHIBIT P4  | TRUE COPY OF THE ORDER DATED 2.9.2019.                                                                                  |
| EXHIBIT P5  | TRUE COPY OF THE NOTIFICATION OF THE<br>LOTTERY SCHEMES DATED 2.9.2019.                                                 |
| EXHIBIT P6  | TRUE COPY OF THE COMMUNICATION DATED<br>2.9.2019.                                                                       |
| EXHIBIT P7  | TRUE COPY OF THE DIRECTIVE DATED 2.8.2011<br>ISSUED BY THE GOVERNMENT OF INDIA, MINISTRY<br>OF HOME AFFAIRS, NEW DELHI. |
| EXHIBIT P8  | TRUE COPY OF THE REGISTRATION CERTIFICATE<br>OF THE DISTRIBUTOR.                                                        |
| EXHIBIT P9  | TRUE COPY OF THE LEASE AGREEMENT DATED<br>1.8.2019.                                                                     |
| EXHIBIT P10 | TRUE COPY OF THE CONFIRMATION OF                                                                                        |

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APPOINTMENT OF DISTRIBUTORS DATED 5.8.2019.

- EXHIBIT P11 TRUE COPY OF THE ACCREDITATION GIVEN BY THE INDIAN BANKS ASSOCIATION TO THE PRINTER DATED 12.3.2018.
- EXHIBIT P12 TRUE COPY OF THE COMMUNICATION DATED 23.9.2019 ISSUED BY THE TAXES DEPARTMENT OF THE STATE OF KERALA THROUGH THE 2ND RESPONDENT.
- EXHIBIT P13 TRUE COPY OF THE NOTIFICATION SRO NO.255/2018 DATED 28.4.2018.
- EXHIBIT P14 TRUE COPY OF THE COMMUNICATION DATED 28.10.2019.
- EXHIBIT P15 TRUE COPY OF THE NAGALAND LOTTERY RULES (TOGETHER WITH AMENDMENTS).
- EXHIBIT P16 TRUE COPY OF THE JUDGMENT IN W.P. (C) 27158 OF 2017.
- EXHIBIT P17 TRUE COPY OF THE LETTER DATED 16.11.2019 ISSUED BY THE DIRECTOR OF STATE LOTTERIES.
- EXHIBIT P18 TRUE COPY OF THE COMMUNICATION DATED 15.11.2013 WHERE THE PROPOSED SALE OF STATE OF NAGALAND TO SELL LOTTERY TICKETS IN THE STATE OF KERALA WAS RESISTED.
- EXHIBIT P19 TRUE COPY OF THE WRIT PETITION W.P. (C) NO.7412 OF 2013 (WITHOUT EXHIBITS).
- EXHIBIT P20 TRUE COPY OF THE JUDGMENT DATED 28.5.2014

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PASSED BY THE HON'BLE GAUHATI HIGH COURT IN  
W.P. (C) NO.7412 OF 2013.

- EXHIBIT P21 TRUE COPY OF THE ORDER DATED 3.12.2013  
REFUSING TO GRANT REGISTRATION AS A  
PROMOTER IN W.P. (C) NO.15735/2014 BEFORE  
THIS HON'BLE COURT.
- EXHIBIT P22 TRUE COPY OF THE JUDGMENT IN THE DIVISION  
BENCH IN WA 631/2007.
- EXHIBIT P23 TRUE COPY OF THE JUDGMENT IN THE DIVISION  
BENCH IN WPC 36645/2007.
- EXHIBIT P24 TRUE COPY OF THE JUDGMENT IN THE DIVISION  
BENCH IN WRIT APPEAL NO.1470/2010 DATED  
14.10.2010.

RESPONDENT'S/S EXHIBITS:

- EXHIBIT R2 (a) A TRUE COPY OF THE CHARGE SHEET SUBMITTED  
BY CBI, SPE, COCHIN, BEFORE THE CHIEF  
JUDICIAL MAGISTRATE'S COURT WITH DETAILS OF  
CASES PENDING THERE.
- EXHIBIT R2 (b) A TRUE COPY OF THE LETTER DATED 21.11.2019  
INITIMATING THE DETAILS OF POSITION OF 16  
LOTTERY CASES REGISTERED BY CBI, ACB  
COCHIN.
- EXHIBIT R2 (c) A TRUE COPY OF THE LETTER REVEALING THE  
PRESENT STATUS OF CASES PENDING BEFORE THE  
COURT AT COCHIN.
- EXHIBIT R2 (d) A TRUE COPY OF THE ORDER OF THE CENTRAL  
GOVERNMENT PASSED UNDER S.6 OF THE  
LOTTERIES (REGULATION) ACT R/W. RULE 5 OF  
THE LOTTERIES (REGULATION) RULES SO.1641

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(E) DATED 12.06.2015.

EXHIBIT R2 (e) A TRUE COPY OF THE REPORT OF THE C&A G OF INDIA.

EXHIBIT R2 (f) A TRUE COPY OF THE COMMUNICATION NO. FIN/LOTT/01/2009 (VOLUME IV) DATED 22.01.2020.

EXHIBIT R2 (g) A TRUE COPY OF THE KERALA PAPER LOTTERIES (REGULATION) RULES, 2005 AS AMENDED FROM TIME TO TIME.

EXHIBIT R2 (h) A CHART COMPARING THE PROVISIONS OF THE KERALA STATE LOTTERIES (REGULATION) RULES, 2003 AND THE KERALA PAPER LOTTERIES (REGULATION) AMENDMENT RULES, 2018.

//TRUE COPY//

P.S.TO JUDGE