

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.V.BHATTI

&

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 17th DAY OF MAY 2021 / 27th Vaisakha, 1943

WA.No.78 OF 2021

AGAINST THE JUDGMENT IN WP(C) 34025/2019(P) OF HIGH COURT
OF KERALA

APPELLANTS/Respondents 1,2 & 6 in the WPC :

1. THE STATE OF KERALA,
REP.BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
KERALA,
GOVT.SECRETARIAT, TRIVANDRUM 695 001.
2. THE PRINCIPAL SECRETARY TO THE GOVT. OF KERALA,
TAXES (H) DEPARTMENT,
GOVERNMENT SECRETARIAT, TRIVANDRUM 695 001.
3. DIRECTOR OF STATE LOTTERIES,
DIRECTORATE OF STATE LOTTERIES,
THIRUVANTHAPURAM 695 033.

BY ADV. SRI.PALLAV SHISHODIA
ADV.C.E.UNNIKRISHNAN, SPL.GOVT. PLEADER

RESPONDENTS/PETITIONER & RESPONDENTS, 3 4 AND 5 IN WPC :

1. FUTURE GAMING & HOTEL SERVICES (P)LTD.,
(FORMERLY FUTURE GAMING SOLUTIONS INDIA (P) LTD.)
HAVING ITS REEGISTERED 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, SRI.G.NATARAJAN.

2. THE STATE OF NAGALAND,
REP.BY THE CHIEF SECRETARY TO THE
GOVERNMENT OF NAGALAND, KOHIMA 797 001.
3. THE ADDITIONAL CHIEF SECRETARY &
FINANCE COMMISSIONER,
GOVERNMENT OF NAGALAND, KOHIMA 797 001.
4. THE DIRECTOR, NAGALAND STATE LOTTERIES,
KOHIMA 797 001.

R1 BY ADV.NEERAJ KISHEN KAUL (SR.)
ADV.HARISH SALVE (SR.)
ADV.A.KUMAR
ADV.G.MINI

R2 & R3 BY ADV.KAPIL SIBAL (SR.)
ADV. MUGUL ROHATGI (SR)
ADV.P.S.SREEPRASAD

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
10.03.2021, THE COURT ON 17.05.2021 DELIVERED THE
FOLLOWING:

‘CR’

JUDGMENT

Dated this the 17th day of May, 2021

Lotteries are gambling in nature and its business is res extra commercium. To legitimize the pernicious character of lotteries, the State Governments are given the power to organise, conduct or promote lottery. Conferment of authority on the State Governments alone, to conduct lottery was made with the fervent belief that the pestilent nature of lottery could be diluted to some extent while nourishing the State exchequer at the same time.

2. The Lotteries (Regulation) Act, 1998 (for brevity 'the Act') was enacted by the Parliament. The source of legislative power for the Act is traced to Entry 40 of List 1 of the VII Schedule to the Constitution of India. The Government of Kerala enacted the Kerala

Paper Lotteries (Regulation) Rules, 2005 (for short 'Kerala Rules'), in exercise of the powers under section 12 of the Act. The Kerala Rules as originally enacted applied only to lotteries organised by the Government of Kerala. Thereafter, the Central Government enacted the Lotteries (Regulation) Rules, 2010 (for short 'Central Rules'). The subject matter of this dispute centers on an amendment brought in by the Kerala Government in 2018, known as the Kerala Paper Lotteries (Regulation) Amendment Rules, 2018 (for short 'Amended Rules'). By the said amendment, the Kerala Rules have been amended to incorporate allegedly restrictions/regulations for the conduct of outside State lotteries in Kerala.

3. Future Gaming & Hotel Services (P) Ltd. - a company with its registered office at Coimbatore, Tamil Nadu, claiming to be the authorised agent of the State of Nagaland challenged the Amended Rules through W.P.(C) No.34025 of 2019. It was pleaded that the Amended Rules were unconstitutional and beyond the legislative competence of the State, apart from being ultra vires the Act. Specific challenges were raised against the validity of Rules 2(3A), 2(6A), 4(4), 4(5), and Rule 9A of the Amended Rules. Communications issued by the Government of Kerala, produced as

Ext.P12 and Ext.P17, were also challenged in the writ petition.

4. By the impugned judgment, the learned Single Judge declared that the Amended Rules were ultra vires and unenforceable. The learned Single Judge also set aside Ext.P12 and Ext.P17 and restrained the appellants from interfering with the marketing and sale of lottery tickets of the State of Nagaland. The State of Kerala and its officers have preferred this appeal.

5. For easier assimilation, We employ the following terminologies also in this Judgment. 'Organizing State' means the State that conducts lotteries as defined in rule 2(f) of the Central Rules and the 'Host State' to mean the State where the lottery conducted by another State is sold. The Organizing State in the present dispute is the State of Nagaland while the Host State is the State of Kerala.

6. We heard Sri.Pallav Shishodia, learned Senior Advocate, instructed by learned Special Government Pleader, Adv.C.E.Unnikrishnan, for the appellants. We also heard Senior Advocates Sri.Harish Salve, Sri.Kapil Sibal, and Sri.Neeraj Kishen Kaul, duly instructed by Adv. A.Kumar and Adv. P.S.Sreeprasad on

behalf of the respondents.

7. The learned Senior Counsel for the appellants justified the Amended Rules as being neither offensive to the Constitution nor ultra vires the parent statute since the same was in exercise of the powers under section 12 of the Act and placed reliance upon the decisions in **B.R. Enterprises v. State of U.P. and Others** [(1999) 9 SCC 700], **All Kerala Online Lottery Dealers Association v. State of Kerala and Others** [(2016) 2 SCC 161], **Tashi Delek Gaming Solutions Pvt. Ltd., Mumbai and Others v. State of Kerala and Others** [AIR 2004 Kerala 248], and **St.Johns Teachers Training Institute v. Regional Director, National Council for Teacher Education and Another** [(2003) 3 SCC 321] to justify his contentions. It was inter alia argued that the subordinate legislation also, always, starts with the presumption of being intra vires and that if two constructions are possible, attempt must be made to make the rule valid and if found offensive, recourse can be made by reading down the provisions so as to make it in consonance with the parent statute. In the reply arguments, Sri. Shishodia decried the concept of the Host State being relegated to a position of a helpless observer while naked violation of the Act and the Rules are going on and

submitted that such a situation is not contemplated by the Act. He further submitted that when the subjects of Kerala State are exploited and are suffering, an elected State cannot remain as mute spectators.

8. On the other hand, the three learned Senior Counsel for the respondents referred to the doctrine of occupied field and argued that the State has no authority to enact the Amended Rules. Relying upon the decision in **B.R Enterprises case** (supra) it was argued that no State can prohibit the conduct of lottery by another State if the Host State was not a lottery free zone. Sri. Harish Salve bolstered his submissions by referring to the Central Rules as a complete package available to the Host State to complain and urged that nothing was spared for the Host State to enact as rules. He also invited the attention of the Court to the grammatical and semantic distinction in the choice of words employed to express the term 'State' in section 12 as well as in section 4 and section 5 of the Act and asserted that the said distinction indicated the intention of the Parliament that the rule-making power under section 12 of the Act must be confined only to the Organising State.

9. Sri. Kapil Sibal, in the five points of arguments raised by

him, submitted that the authoritative pronouncement of the Supreme Court binds the Host State from enacting any rules and further argued that if the Host State believed the conduct of lottery by an outside State is an infringement of the Act, the only recourse available was as set out in rule 5 of the Central Rules and not by framing another set of rules to interdict the conduct of other lotteries in the State. Terming the Amended Rules as a piece of colourable legislation, Sri. Neeraj Kishen Kaul argued that the Amended Rules were beyond the authority of State of Kerala. After referring to the definition of the term 'Organising State' in the Central Rules, Sri. Neeraj Kishen Kaul submitted that the State of Kerala had clearly transgressed into the authority of the State of Nagaland, in contravention of the Act. Reference was also made to the decision in W.A. No.1470 of 2010, to contend that, this Court had already held that the power under section 12 of the Act could be utilised only by the Organising State to make rules and not the Host State.

10. We have considered the contentions raised by all the Senior Counsel. The answer to the dispute raised in this appeal revolves around the primal question as to whether a Host State is entitled to enact rules for monitoring the conduct of lotteries by other

Organising States within the territory of the Host State? If the answer to the above question is in the affirmative, the next query that arises is whether any of the provisions of the Amended Rules are ultra vires the Act? The above referred two questions are dealt with hereunder as issues 1 and 2 respectively. We will also deal with the concept of federalism under the Constitution to the extent required, as the third issue.

Issue No.1

11. Under the federal structure of our Constitution, this Court is entitled to patrol the frontiers of the rights of the Union and of the States to legislate. More often than not, the Constitutional Courts will, through a process of interpretation, limit the State from exercising its statutory powers, in a manner that will undermine the federal authority of the Union as well as curtail the Union from undermining the States power to legislate on entries they are entitled to legislate. The case on hand deals with the alleged transgression by the State of Kerala into Entry 40 of List I, as well as exceeding the power conferred by section 12 of the Act. While patrolling the respective borders, this court, in the instant appeal, will have to decide whether the Amended Rules have forayed into Entry 40 of List I, and also

whether the Amended Rules are beyond the letter of section 12 of the Act or contrary to the Central Rules of 2010.

12. While patrolling the above-referred frontiers, We remind ourselves that there shall be judicial restraint when judging the validity of even a delegated legislation. It was held in **Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat and Others** [(2008) 5 SCC 33], that *"the court should exercise judicial restraint while judging the constitutional validity of statutes. In our opinion, the same principle also applies when judging the constitutional validity of delegated legislation and here also there should be judicial restraint. There is a presumption in favour of the constitutionality of statutes as well as delegated legislation, and it is only when there is a clear violation of a constitutional provision (or of the parent statute, in the case of delegated legislation) beyond reasonable doubt that the court should declare it to be unconstitutional."*

13. The source of power for legislation, for the Union as well as the States in our country, is the Constitution of India. Entry 40 of List I of the VII schedule deals with lotteries. Once the source of legislation falls in the union list, the State has no legislative power to enact any law relating to that field. The Act is undoubtedly a piece of

legislation that can trace itself to Entry 40 of List I. Thus, States in India have no legislative power to enact a law relating to lotteries.

14. In exercise of the power under Entry 40 of List I, Parliament enacted the Act in 1998. The Act conferred power upon the State to prohibit the conduct of other State lotteries within its territorial jurisdiction. However, in the decision in **B.R.Enterprises v. State of U.P. and Others** [(1999) 9 SCC 700], the Supreme Court read down section 5 of the Act to mean that power of the State Government to prohibit the conduct of a lottery of another State within its territorial jurisdiction is available only when the State is a lottery free zone.

15. In **B.R.Enterprises case** (supra) it has been held in paragraph 71 that State lotteries are gambling and that it would not be a trade to qualify itself to be 'a trade and commerce' as used in Article 301 and neither the individual, far less the State, can seek enforcement of such right for it to be declared free, throughout the territory of India. It further held that the right of sale of lottery tickets whether by the State or others could neither be a fundamental right nor a right under Article 301 and that none could seek it as free trade, like other trades, even though it may have the authority of law. The

Court went on to hold that the authorization under the Act to States to conduct lottery is solely for the purpose of earning revenue.

16. It may be pertinent in this context to extract paragraphs 87 and 88 of the decision in **B.R. Enterprises case** (supra), in its entirety.

"87. We find on plain reading of Section 5, it empowers the State Government within its State to prohibit the sale of tickets of the lotteries organised by every other State. There is also nothing in the language reading by itself so as to say, whether such power can be exercised by the State while running its own lottery or can be exercised only where such State does not run its own lottery. This leads to two possible interpretations, as referred to above. In view of settled principle of interpretations, the interpretation given by the Union to read down the provision has substance. This would mean that the State could only exercise such discretion if it decides not to have any lottery within its territory including its own lottery. In this situation, the delegatee is tied down by this limitation which itself is a clear guide to a State hence cannot be said to be unbridled delegation. So even to the first part it cannot be said to be arbitrary or unbridled. So, we have no hesitation to approve the interpretation given by the Union to uphold the validity of Section 5.

88. It is true, as submitted on behalf of some of the North-Eastern States Nagaland etc. or the State of Sikkim that in the exigencies they are placed with the lack of harnessing their revenue, if this right is curtailed it would badly affect their revenue. It may be true to some extent so far as these States are concerned. However, we find that the impugned provision does not prohibit such State not to run its own lotteries. Such State can continue to have their own lotteries. Only where any State decides not to have any lottery the territorial area of such State is only curtailment. What would be the shortfall of the revenue, if any, the figure of which has not been effectively placed before us, whether there is going to be any substantial loss, but if at all there is, it is for that State to find an

alternative or for the Union to lend support if that is essential within its permissible limits. These again are matters in the realm of policy which this Court has no jurisdiction to enter into. But this cannot mean to permit any such State to have right to its lotteries (gambling) in other territory in spite of other State prohibiting such activity in its territory. That right could have been if State lotteries were trade as understood under Chapter XIII of our Constitution.”

17. From the authoritative pronouncement of the Supreme Court referred to above, it needs no reiteration that the only purpose of permitting lotteries to be organised by the State is garnering revenue for the Organising State and the right to prohibit another State from selling its lottery within the area of the Host State can be exercised only if the Host State is a lottery free state.

18. The statement of objects and reasons to the Act serves as an eye-opener to the scheme, purport, and the background in which the Act was enacted. It is stated therein that *"The conduct of certain types of lottery trade in the country, the malpractices thereof and their impact on the poorer sections of the society have been under scrutiny of the Government for quite some time. The continued prevalence of the popularly known single digit and instant lotteries and the temptation offered by them proved to be the undoing of many families, especially poor daily wagers and low income groups. In spite of the guidelines issued by the Central Government over a*

period of time as also the guidelines issued in the recent past by the Honourable Supreme Court in the matter, the evil has not been totally eliminated and it is felt that a Central legislation to regulate the conduct of lotteries is necessary to protect the interest of the gullible poor."

19. When the Act is viewed in the light of the above-extracted statement of objects and reasons, it is apparent that the underlying purpose of the Act is to balance the revenue generating interests of the State with the pernicious nature of lottery, without it being exploitative of those who are gullible to such practices. Sufficient safeguards are provided under the Act to initiate prosecution proceedings and to impose punishment which may extend to 2 years or with a fine or with both as per section 7 of the Act. The Central Government has the power under section 10 of the Act to give directions for carrying into execution any of the provisions of the Act or the Rules made thereunder. The Act also vests the Central Government with the power to make rules to carry out the provisions of the Act. Apart from the above-referred provisions, the Parliament has also bestowed the State with a power to legislate the contours of which are called upon in question in this case.

20. Instances are numerous where Central legislation delegates to the States, a few functions or duties under an enactment to create an area for the State to exercise either its legislative power or its executive power. Delegated legislation has become a normal feature of law making in our country and its principles are well established. Need for flexibility in the statute is one of the principles that underlie the concept of conferring powers for delegated legislation. Adaptability of the statute to changing situations is yet another. In this modern era, circumstances are changing rapidly and unless the law is capable of adapting and adjusting with the same promptness, it may be found wanting. Conferment of powers of legislation on the State through a Central enactment is resorted to by the Parliament for myriad purposes, including cases where the State machinery is required to be utilized in the enforcement or monitoring compliance of the Statute.

21. As mentioned above, the statute vests the State Government with the power to make rules which is as per section 12 of the Act. For the purpose of better comprehension, section 12 of the Act is extracted as below:

“12. Power of State Government to make rules.

- (1) *The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.*
- (2) *In particular, and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:*
 - (a) *time to be fixed for claiming prize money under clause (f) of section 4;*
 - (b) *period to be fixed for draws of all lotteries under clause (i) of section 4; and*
 - (c) *any other matter which is required to be, or may be prescribed.*
- (3) *Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House."*

22. While the State of Kerala claims to derive its power to enact the Amended Rules to section 12 of the Act, the respondents contend that as a Host State, Kerala is denuded of the power to make rules under section 12 of the Act. Much argument revolved around the semantics of the term 'The State' used in section 12 of the Act as compared to the word 'A State' deployed in Section 4 of the Act apart from the observations of a co-ordinate Bench of this Court in W.A. No.1464 of 2010 stating that "The State Government means the Government which organises, conducts or promotes any lottery".

23. The use of the indefinite article 'A' in section 4 of the Act

and the definite article 'The' in section 12 before the word 'State' may indicate a different meaning when viewed in a grammatical perspective. However, a strict application of grammatical constructions while interpreting statutory enactments can occur to be delusive at times. If the strict grammatical application of words and sentence construction leads to results that are anomalous or even to results not contemplated by the Act, adherence to strict rules of grammar can be departed from.

24. In the decision in **N.T.Veluswami Thevar v. G.Raja Nainar and Others** (AIR 1959 SC 422) and **K.Prabhakaran v. P.Jayarajan** [(2005) 1 SCC 754), it was held that, if the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from, to avoid that absurdity and inconsistency. In **Tirath Singh v. Bachittar Singh and Others** (AIR 1955 SC 830), it was held that *"where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even*

the structure of the sentence".

25. It can be deduced from the above decisions and as per the rules of statutory interpretation, that Constitutional Courts are not bound by strict rules of grammatical construction while ascertaining the intention of the Parliament.

26. The Act as originally enacted provided powers to the States under section 5 of the Act, to prohibit the conduct of lottery within its State. By the decision in **B.R.Enterprises case** (supra), section 5 was read down to mean that, the prohibition of sale of other state lottery tickets can be imposed in the Host State only if the Host State is a lottery free zone and not otherwise. The specific word used in section 5 of the Act is prohibition. The Act is silent as to monitoring or ensuring the conduct of other state lotteries in another State. However, there is no restriction as such, in monitoring the conduct of another State lottery in the Host State.

27. When the Act intends to curb the practice of exploiting innocent and gullible persons and their families from being destroyed, there must be a threshold check and balance and a ground-level monitoring, to understand whether the conduct of lottery is contrary to the Act or not. In the irrefutable ruinous nature of

lottery, an incongruous situation may befall, if the Host State is entirely powerless to even assess whether the lottery is proposed to be carried on in accordance with the Act. Is the outside State lottery a State organized lottery or a State authorised lottery or is the agent the real beneficiary instead of the State or whether the name of the State, is only a facade for the agent behind it? Is the State, in reality, proposing to conduct only one draw a week (maximum of 52 draws in a year) as mandated by the Act? Has the organising State in reality, printed the tickets, and whether the logo of the State is imprinted in the ticket? Are the proceeds of the lottery for real being credited into the accounts of the State? These are some of the questions, the answers to which are required to be known even to the Host State to ensure compliance with the Act or to form an opinion about the nature of the lottery.

28. Ensuring compliance with the provisions of the Act is different from prohibiting the conduct of lottery. If the power under section 12 of the Act, is interpreted to mean as only the Organising State that can make rules to carry out the provisions of the Act, it may lead to an absurd situation. When the subjects of a Host State are being exploited and when a person is conducting the lottery

wholly in violation of the Act, should the Host State be deprived of even a mechanism to at least assess or identify the nature of the conduct of such lotteries? It would lead to absurdity if the Host State is entirely powerless in such a scenario. It would also effectuate an inconsistency where an offence committed under the Act is punishable, but the Host State is incapable of identifying the nature of offences committed. Such an anomalous and incongruous situation could never have been intended by the Parliament. To prevent blatant violations of the Act or to ensure compliance with the Act, it is only appropriate to have a threshold check and balance. Such a threshold check will not amount to prohibition.

29. In this context, it may be apposite to refer to the decision in **All Kerala Online Lottery Dealers Association v. State of Kerala and Others** [(2016) 2 SCC 161] where dealing with the Kerala Rules, the Supreme Court observed as follows:

“40.....It is absolutely clear that even though the power to legislate on lotteries vests exclusively with Parliament, the respective States have been delegated this power, but it has to be subject to conditions enumerated in Section 4. By virtue of the provisions contained in Section 12 of the Act, the Government may, by notification in the Official Gazette, make rules to carry out the provisions of the Act. Exercising the powers vested in it by the provisions contained in Section 12, the State of Kerala has framed the “Kerala Paper Lotteries (Regulation) Rules, 2005”.

41. The provisions of the Act, in particular, Section 12 of the Act clearly manifest that even though the power to legislate on the

subject "lotteries" is in the exclusive domain of Parliament, the power to legislate as well has been delegated by Parliament to the respective States in the country and as mentioned above, it is in exercise of that power the State of Kerala has indeed framed the 2005 Rules.....". (emphasis supplied)

30. The decision in W.A. No.1470 of 2010 contains a sentence that *"The State Government means the Government which organises conducts or promotes any lottery."* We are not inclined to accept the argument of the Senior Counsel for the respondents that the said observation binds this Court from taking a different interpretation. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. According to us, the observation in the aforesaid decision extracted above cannot be interpreted as if those are parts of the statute. In the said decision this Court was not confronted with the question about whether a Host State also could make rules in exercise of the powers under section 12 of the Act.

31. As held in **Oriental Insurance Co. Ltd. v. Raj Kumari** [(2007) 12 SCC 768] that *"reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while*

giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates: (i) finding of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. (See State of Orissa v. Sudhansu Sekhar Misra and Union of India v. Dhanwanti Devi). A case is a precedent and binding for what it explicitly decides and no more".

32. The question relating to the competence of the Host State to make rules never arose for consideration in W.A. No.1470 of 2010.

In fact, the issue involved in the said case related to the imposition of tax under the Kerala Tax on Paper Lotteries Act, 2005 and the number of draws that could be held in a year. Thus the above referred observation is at the most, only an obiter dictum of the coordinate Bench and is not binding upon this Court. The decision in **All Kerala Online Lottery Dealers Association case** (supra) on the other hand, observed that the respective States have the delegated powers of legislation under the Act. The said observation is, in fact, binding upon us.

33. Further, a reading of section 12 of the Act will reveal that a general power is conferred upon the State Government to make rules to carry out the provisions of the Act. There is no indication either in the Act or in section 12, that the power conferred on the States to make rules, is confined only to the Organising State. Such a narrow interpretation is not warranted under the terms employed. If such an interpretation is adopted, the same will lead to an anomalous situation, as explained earlier. We reject the interpretation suggested by the Senior Counsel based on the grammatical construction and semantics of the definite article "The" and hold that such a restrictive interpretation is not warranted in the nature of the scheme of the

statute. We are of the view that the words "The State" employed in section 12 of the Act refers to both the Organising State as well as the Host State.

34. Under section 12 of the Act, apart from the general rule making power, specific power is also conferred upon the State Government to make rules in respect of time to be fixed for claiming prize money and the period to be fixed for draws of all lotteries. That power, no doubt, relates to Organising States. In exercise of the general power conferred upon the State Government to make rules, the State Government cannot transgress areas that are already covered by the Act or the Central Rules. However, if in respect of areas where the Act and the Central Rules are silent, it cannot be said that the Host State is powerless to make rules.

Doctrine of occupied field

35. The doctrine of occupied field can have no application in the instant case since the State has not entered into a field occupied by the Central legislation. Though the Act covers the entire field of lottery, States have been given the power to make rules. When the Parliament has enacted a law on the basis of an entry in List I and when the said Central legislation confers power upon the State to

make rules, it cannot be countenanced that, when such rules are made, the same ought to be branded as beyond the rule making power of the States. The doctrine of occupied field cannot be invoked to test the validity of a State rule enacted in exercise of the power conferred by the Central legislation. If a Central legislation confers general rule-making power upon the State, in areas where the Central Government has not framed rules, the State Government will be entitled to frame rules. The doctrine of occupied field will not in such instances be applicable, unless there is an intrusion. In simple terms, the principle of the doctrine of occupied field is that if the Parliament legislates on a particular subject, and thereby occupies the field, the State legislature is completely debarred from legislating on the same subject. When the very legislation enacted by the Parliament confers power upon the State Government to make rules to carry out the provisions of the Act, the doctrine of occupied field has no application, unless the State entrenches upon the field already occupied.

36. In this context, it is relevant to consider whether the State Government has in exercise of its rule-making power transgressed into areas that were beyond its rule-making power or has entered

into the field that is already occupied by the Central legislation or the rules made thereunder. This leads us to consider the concept of doctrine of ultra vires.

Doctrine of ultra vires

37. Doctrine of ultra vires refers to an act done without any authority to act on that subject. The term has a broad application and includes not only acts prohibited, but acts which are in excess of the powers conferred. In simple terms it means 'beyond the powers' or 'without authority'. Thus if the State of Kerala has, in enacting the Amended Rules, transgressed into areas beyond the conferment under section 12 of the Act, then the rules would become ultra vires the parent Act, of course, to the extent of its transgression.

38. In the decision in **Union of India and Others v. S.Srinivasan** [(2012) 7 SCC 683] referring to the rule-making powers of a delegatee, it has been held that "*..... If a rule goes beyond the rule-making power conferred by the statute, the same has to be declared ultra vires. If a rule supplants any provision for which power has not been conferred, it becomes ultra vires. The basic test is to determine and consider the source of power which is relatable to the rule. Similarly, a rule must be in accord with the*

parent statute as it cannot travel beyond it.In this context, we may refer with profit to the decision in General Officer Commanding-in-Chief v. Dr Subhash Chandra Yadav (AIR 1988 SC 876) wherein it has been held as follows: ".....before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely, (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule-making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void".

39. To identify the extent of transgression by the State, it is necessary to look into the Central Rules, 2010. It is not in dispute that under the Act, the power to prohibit a lottery is vested only with the Central Government. However, rule 3(22) of the Central Rules confers an obligation upon the Host States to ensure proper conduct of lottery within its jurisdiction. Rule 5 of the Central Rules provides the procedure in which the Central Government can prohibit the sale of lottery tickets. For a better comprehension, it is necessary to extract rule 3(22) and rule 5(1) of the Central Rules, which are as follows:

"Rule 3(22). Every State Government shall ensure that no lottery, in any form, is organised by any authority other than the Organising State or its appointed distributors or selling agents within its jurisdiction"

Rule 5(1) If a State Government is of the opinion that the Organising State or the distributors or selling agents are organising lotteries in violation of the provisions of the Act and these rules, it shall immediately bring the violations to the notice of the Organising State concerned along with the details of such violations or irregularities noticed and the Central Government shall also be apprised of such violations or irregularities simultaneously."

40. A reading of the Central Rules extracted above, evinces that the Host State is in fact, conferred with an obligation under the Central Rules, to ensure that the lotteries organised by other states are also conducted in accordance with the Act. Further, if irregularities or violations in the conduct are noticed, the State has a bounden duty to report the same to the Central Government and also to the Organising State. Though the Host State is conferred with such powers to ensure compliance with the Act and to form an opinion regarding violations and irregularities in the conduct of lottery, the Central Rules are silent as to the manner in which such compliance is to be ensured or the methodology to form an opinion. The formation of an opinion under Rule 5 of the Central Rules has to be an objective opinion and not a subjective one. It must be

dispassionate and not irrational. To ensure that an objective opinion is formed, it is necessary that the State Government is placed with various facts about the lottery proposed to be conducted by the outside State. In such a process, in the absence of any rules to guide the Host State to ensure compliance contemplated under rule 3(22) of the Central Rules and also to form an opinion as contemplated under rule 5(1) of the Central Rules, rules are necessary to guide the Host State.

41. In the scenario aforementioned, if the State Government resorts to section 12 of the Act to make rules to guide itself to ensure that the Organising State or its appointed distributors or selling agents are the ones who are conducting/organising the lottery within its jurisdiction or to form an opinion on the violations or irregularities, the same cannot be said to be ultra vires the parent Act.

42. We are fortified in the above conclusion by the decision of this court in **Tashi Delek Gaming Solutions Pvt. Ltd., Mumbai and Others v. State of Kerala and Others** (AIR 2004 Kerala 248]. In the said decision, similar rules were enacted by the State of Kerala concerning online lotteries, in the exercise of power under section 12 of the Act. Identical contentions as in the present case were raised.

However rejecting the contention regarding the absence of legislative competence, this Court held that *"The first contention of the appellants is that the lotteries marketed by them are lotteries organised by the Governments of other States in India and therefore in view of Article 246 of the Constitution read with Entry 40 in the Union List, only the Parliament has power to make laws with respect to the conduct or marketing of those lotteries and consequently the Government of Kerala is not competent to make a rule like sub-rule (3) of Rule 24, which provides that no lottery shall be marketed until appropriate orders under sub-rule (2) are issued by the Secretary to Government, Taxes Department and that the Enforcement Agency can seize the tickets marketed before passing any order in this regard. According to the appellants sub-rule (3) of rule 24 is therefore unconstitutional. Sub-rule (3) of rule 24 is only part of the Kerala State Lotteries and On-line Lotteries (Regulation) Rules, 2003, made by the Government of Kerala in exercise of the powers conferred by sub-sections (1) and (2) of Section 12 of the Lotteries (Regulation) Act, 1998. The said Act was enacted to regulate the lotteries and to provide for matters connected therewith and incidental thereto. The provisions of the Act govern lotteries*

organised, conducted or promoted by State Governments. Section 12 confers power on the State Government to make rules to carry out the provisions of the Act. Hence the above mentioned Rules including sub-rule (3) of Rule 24 were made by the Government of Kerala with competence and jurisdiction and sub-rule (3) of Rule 24 is not unconstitutional as contended by the appellants."

43. Indubitably, this Court had found in the **Tashi Delek Gaming Solutions case** (supra) that the State Government is entitled to make rules in exercise of the powers under section 12 of the Act.

44. In the impugned judgment it was held that the decision in **Tashi Delek Gaming Solutions case** (supra) is not binding as a precedent, since, subsequent to **Tashi Delek Gaming Solutions case** (supra), the Central Rules were framed in 2010. The binding effect of the aforesaid judgment is erased, according to the learned Single Judge, solely on account of framing of the Central Rules subsequently. We respectfully find ourselves unable to agree with the said conclusion of the learned Single Judge for more reasons than one. The Central Rules are enacted in the exercise of the powers under section 11 of the Act while the Kerala Rules are

enacted under section 12 of the Act. Both govern different aspects of the Act. As long as the two rules do not overlap each other, both can continue to coexist and operate at the same time.

45. We are emboldened in our finding that the Central Rules have not eroded the power of the Host State under section 12 of the Act also on account of rule 3(22) and rule 5(1) of the Central Rules. In fact, according to us, the enactment of Central Rules enhanced the need for the Host State to enact rules. As mentioned earlier, to ensure compliance of the conduct of lottery of the Organizing State, within the territory of the Host State, in accordance with the Act and also for the Host State to form an opinion about any violation or irregularities in organizing or conducting lottery in the Host State, rules are essential. Thus, we are of the firm view that the enactment of Central Rules in 2010 does not derogate the binding effect of the decision in **Tashi Delek Gaming Solutions case** (supra) and on the other hand the Central Rules strengthens the need for the State for appropriate rules. In such circumstances, we are of the view that the State of Kerala has the competence to enact the impugned rules.

46. In view of the above discussion, we answer the first issue in favour of the appellants. We hold that the Host State is entitled to

make rules under section 12 of the Act to monitor the conduct of lotteries of Organising States within the territory of the Host State.

Issue No.2

47. Having held as above, we proceed to consider as to whether the provisions of the amended rules are ultra vires or contrary to the Act or the Central Rules. Challenges were specifically raised against rule 2(3A), rule 2(6A), rule 4(4), rule 4(5) and rule 9A. For easier comprehension the amendments carried out to the Kerala Rules through the Amended Rules are extracted as below:

The Kerala Paper Lotteries (Regulation) Amendment Rules, 2018

Rule 2(3A): *'Authority' means the Secretary to Government, Department or authority or officer specifically appointed by the Government to organize State Lottery and regulate the sale of other State lotteries within the State as provided in the Act.*

Rule 2(6A): *'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.*

Rule 4(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 State.*

Rule 4(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.*

Rule 9A: *Sale of other State paper lottery tickets in Kerala -
(1) Any other State or Union Territory organising, conducting or promoting*

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 narnely :

- (a) details as per S.4 of the Act.*
- (b) copy of the rules, if any, made u/S. 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 price 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 organizing State.*
- (h) details of procedure for publishing the lottery results.*
- (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.*

Rule 9A(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 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 & 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.*

Rule 9A(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.*

Rule 9A(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.

Rule 9A(5): *The other States or Union Territories who organize 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. The particulars of prize winners shall be furnished within three months from the date of draw to the authority.

Rule 9A(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) The 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.

Rule 9A(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 authorized 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.

(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.

Rule 9A(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.*

Rule 9A(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.*

Rule 9A(10): *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 under section 6 of the Act.*

Rule 9A(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 & Services Tax authorities as prescribed in the Kerala Goods & Services Tax Rules, 2017.*

Rule 9A(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.

Rule 9A(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."*

48. In respect of the above provisions, apart from the objections regarding the competence of the State, respondents also contended that, the right to conduct the lotteries of other States have been, by the Amended Rules, bestowed upon the authorities created under the Amended Rules. In other words, the learned counsel for the respondents in unison, argued that the right of the Organizing State to conduct lotteries conferred under the Act, have been taken away by the Amended Rules, which is a direct infringement upon the Act. Specific reference was made to rule 4(4) of the Amended Rules.

49. Rule 2(3A) only names an authority for regulating the sale of other lotteries in the State, while Rule 2(6A) creates an enforcement agency. These two rules cannot under any circumstances be regarded as infringing any right of the Organising State. It does not amount to taking away the right of the Organising State to conduct lotteries in the Host State. Rule 4(5) speaks about power to monitor the sale of outside lottery. This power is necessary for ensuring compliance with the Act and for identifying violations or

irregularities in the sale of tickets. This power has nothing to do with prohibition of lottery and is hence valid. We also do not find any infringement of the Act or the Central Rules due to Rule 9A of the Kerala Rules.

50. Rule 4(4) of the Amended Rules, as extracted earlier, shows that the Secretary of the Kerala Government, Taxes Department shall be the authority for conduct of lotteries organized by other States. The right to conduct a lottery is vested with the State Government under section 4 of the Act. The right to conduct a lottery is vested with the Organizing State under section 4 of the Act. When the right to conduct the lottery is vested with the Organizing State, rule 4(4) of the Amended Rules, to the extent it specifies that the Secretary to the Government Department of Taxes, Kerala, shall be the authority for the conduct of lotteries run/organized/promoted by other States, infringes upon the right of the Organising State to conduct lotteries as per the provisions of the Act. Though the learned Senior Counsel Sri.Shishodia submitted that the word "conduct" in rule 4(4) only intended to mean monitoring the conduct and if required the rule could even be read down to mean as such, we are not inclined to accept the said argument. By no stretch of

imagination can such a meaning be held to be envisaged under the Rule. The meaning sought to be ascribed to the word 'conduct' by the State of Kerala is not discernible from any material. On the contrary, the plain meaning of the word 'conduct' in rule 4(4) of the Amended Rules gives a meaning that conduct of lottery of the Organizing State shall be by an officer of the Host State. This is a clear intrusion into the authority of the Organising State and is contrary to the provisions of the parent Act. The said Rule is a clear infraction of the Act.

51. It is a settled principle that when a provision of law is found to infract the Constitution or the parent statute, the entire statute or even the entire provision need not be struck down, if the offending portion could be severed from the non-offending portion of the provision or statute. Cooley on Constitutional Limitations (8th Edition at page 360) has observed that “.....*Where, therefore, a part of a Statute is unconstitutional, that fact does not authorise the courts to declare the remainder void also, unless all the provisions are connected in subject-matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning, that it cannot be presumed the legislature would have*

passed the one without the other. The constitutional and unconstitutional provisions may even be contained in the same section, and yet be perfectly distinct and separable, so that the first may stand though the last fall. The point is not whether they are contained in the same section for the distribution into sections is purely artificial; but whether they are essentially and inseparably connected in substance. If, when the unconstitutional portion is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained."

The above observations were relied upon by the Constitution Bench of the Supreme Court in **Harakchand Ratanchand Banthia and Others v. Union of India and Others** [(1969) 2 SCC 166].

52. Applying the said principle to rule 4(4) of the Amended Rules, it can be seen that the offending portion of the said rule are the words "including lotteries run/organized/promoted by other States" and if the said offending portion is deleted or severed, the rule will still continue to have meaning and life. Applying the doctrine of severability, we sever the aforesaid words from rule 4(4) and hold the severed portion of the said rule as ultra vires the Lotteries

(Regulation) Act, 1998.

53. Rule 9A(3) was also contended to be in confrontation with the Act and the Central Rules, apart from it being an infraction upon the authority of the Organizing State. Rule 9A(3) of the Amended Rules as extracted earlier, shows that until appropriate orders are passed by the Secretary to Government, no lottery shall be marketed in the State. This power of passing appropriate orders cannot be construed as restricting or prohibiting the conduct of other State lotteries in the State of Kerala. On the other hand, rule 9A(3) is only a measure of monitoring and ensuring compliance of conduct of outside State lotteries in accordance with the Act and the Central Rules. If the authority referred to in rule 9A(3) arbitrarily or unreasonably refuses to pass orders, the same becomes justiciable in a constitutional court. Further, merely because a provision may have the possibility of being misused, the same is not a ground to find such provision as ultra vires the parent Act.

54. The provision under rule 9A(3) can also be viewed in another perspective. If the Host State forms an opinion that the conduct of lottery by an Organizing State within the territorial jurisdiction of the Host State is in contravention of the Act or the

Rules, then it need not continue to let its subjects be exploited by the Organizing State or its promoter, until the Central Government takes a decision. From the time it forms an opinion, till a decision is taken by the Central Government, if such lotteries continue unabashedly to exploit the subject of the Host State, a remedy must be available to the Host State. Rule 9A(3) comes into play in such instances. Such a provision cannot be regarded as intruding into the powers of an Organizing State. In the event of the Host State acting arbitrarily, remedy is available to the Organising State to seek redress in a court of law. In the above circumstances, we are of the view that except for rule 4(4) of the Amended Rules and to the extent indicated above, all the other rules enacted in 2018 by the State of Kerala are valid and do not contravene any provision of either the Constitution or the parent Act. Thus we answer issue No.2 in the above manner.

(iii) Issue No.3

Federalism.

55. It was also contended that the Amended Rules interfere with the principles of federalism as envisioned in our country. According to us the said argument is based upon a misconception. It may be of significance to mention at this juncture that the federalism

contemplated under our Constitution is a co-operative federalism and a pragmatic approach ought to be adopted for creating a harmonious existence. As held by the Constitution Bench in the decision in **Government of NCT of Delhi v. Union of India and Another** [(2018) 8 SCC 501), that “Our Constitution contemplates a meaningful orchestration of federalism and democracy to put in place an egalitarian social order, a classical unity in a contemporaneous diversity and a pluralistic milieu in eventual cohesiveness without losing identity.” It further held that “the constitutional vision beckons both the central and state governments alike with the aim to have a holistic edifice and also that the Union and the State Governments must embrace a collaborative federal architecture by displaying harmonious co-existence and interdependence so as to avoid any possible constitutional discord. Acceptance of pragmatic federalism and achieving federal balance has become a necessity requiring discipline wisdom on the part of the Union and State Governments by demonstrating a pragmatic orientation.”

56. Dealing with the contention of infraction of principles of federalism this Court had held in **Tashi Delek Gaming Solutions Pvt. Ltd, Mumbai and Others v. State of Kerala** (AIR 2004 Kerala

248) that *“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.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 Section 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 Section 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.”*

57. The sweep of a legislation is to be ascertained upon a

proper interpretation of the legislative entry together with the substantive provisions of the statute in question and not based on any a priori considerations of pre-eminence of the Centre or sovereignty of the State. When the statute in question, itself confers power upon the State to enact rules, and when rules are so enacted, principles of federalism cannot be assumed to have been infringed. In the architectural gamut of the statute under consideration, we are of the firm view that the Amended Rules do not in any way, erode into the concept of federalism envisioned in the Constitution.

58. Before we conclude, it is necessary to refer to the repeated assertions of the learned Senior Counsel for the appellants, who invited our attention to Ext.R2(e), which is the report of the Comptroller and Auditor General of India (CAG) for the year ended 31.3.2016 in respect of the Government of Nagaland. The CAG pointed out in Ext.R2(e) after an audit, that the selection of distributors for conducting lottery for the State of Nagaland was not transparent and that instead of sale proceeds being paid to the State Government, what was paid by the distributor to the State was only a minimum guaranteed revenue. It was startling to note that the minimum guaranteed revenue received by the State of Nagaland was

only Rs.56.93 Crores as against total sale proceeds of Rs.17653.76 Crores for the period 2010-11 to 2015-16. In the aforesaid figure, the distributor's share alone was Rs.4522.24 Crores. The CAG of India further observed that when the State Government's revenue was only 1.24% of the total sale proceeds, the distributor's share was 98.76%. The report of the Comptroller and Auditor General of India also indicated that collusion was writ large in the bidding process and formation of a cartel was evident which undermined the transparency and fairness required in the selection of the distributor. After examining the profile of the four companies that participated in the bidding process, the CAG concluded that the four companies were connected directly or indirectly with each other, thereby revealing the collusive bidding process.

59. Though the report of the CAG cannot have any effect on the question of competence of the State legislature in enacting a rule, the Host State, which faces the brunt of the alleged exploitation by the distributor of the Organizing State, cannot remain a mute spectator or completely helpless. An elected State, answerable to its subjects, certainly owes a duty to its citizens to take such measures as authorized by law and within the limits prescribed by law, to

prevent such exploitation, even at the threshold stages. Law being dynamic and capable of adapting to different circumstances, the Rules impugned are only measures for adapting law to varying challenges.

60. In view of the above, except to the limited extent pointed out by us relating to rule 4(4), we hold that the Kerala Paper Lotteries (Regulation) Amendment Rules, 2018 are valid and within the legislative competence of the State of Kerala and made validly in exercise of the powers under section 12 of the Act. The words “including lotteries run/organized/promoted by other States” in Rule 4(4) shall stand severed from the remaining provision of the Amended Rules and the severed portion is hereby held as ultra vires the Act.

61. The judgment of the learned Single Judge is therefore set aside and this appeal is allowed to the above extent.

Sd/-

S.V.BHATTI, JUDGE

Sd/-

BECHU KURIAN THOMAS, JUDGE

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