

Station, Ganaur, respondent No. 7 and Kamal Singh, Head Constable, respondent No. 4, are held liable personally for payment of the amount of compensation. Personal liability is being fixed on these two respondents as we have found that these two respondents were primarily responsible for the illegal detention of the petitioner as they had failed to discharge their duties diligently and carefully. Each one of them is directed to deposit a sum of Rs. 25,000 within two months, with the Registrar of this Court, who would, thereafter, remit the amount by a payee's demand draft drawn in favour of the petitioner, to the petitioner after deducting the necessary charges for preparation of the demand draft. State Government is injuncted from reimbursing Man Singh, respondent No. 7 and Kamal Singh, respondent No. 4, the amount of compensation which these two officials have been directed to pay personally. If the amount is not paid within two months as directed above, then the same shall become interest bearing at the rate of 15 per cent per annum with effect from the illegal detention of the petitioner till its realisation.

(18) Second prayer made in this writ petition has become infructuous as departmental proceedings have already been instituted against the delinquent officials.

(19) The writ petition stand allowed in the aforesaid terms.

R.N.R.

Before Ashok Bhan & P. K. Jain, JJ.

THE GOVERNMENT OF MANIPUR.—Petitioner.

versus

THE STATE OF PUNJAB AND ANOTHER.—Respondents.

C.W.P. No. 10155 of 1995

10th July, 1996

Constitution of India, 1950—Arts. 226/227—Entry 40, List 1 of VII Schedule—Entry 34 of List II of the VII Schedule—Punjab Government by executive order/public notice dated 1st July, 1995 withdrawing permission granted to the States of Manipur, Assam and Nagaland for selling their lottery tickets in the State of Punjab on

the ground that such lotteries are not State 'authorised' lotteries—Action challenged on the ground that State is not competent to stop sale of lottery tickets 'organised' by the Government of a State since such falls under Entry 40, List I of VIIth Schedule for which only Parliament is competent to legislate—Distinction between State 'organised' and State 'authorised' lotteries delineated by the Apex Court in an interim order in State of Haryana v. M/s Suman Enterprises and others—A fresh agreement drawn between the State of Manipur and the sole distributor to give it state 'organised' look—Court drawing inference that in actual practice the Manipur State Government hands over all the tickets to the Sole distributor and the sole distributor gives the State a fixed percentage of total proceeds, without any involvement of the Government and all the unclaimed/undisbursed prizes not found to be reverting to the State exchequer—Law laid down in Suman Enterprises's case not applicable—Hence there is no legal infirmity in the order of the Punjab Government withdrawing permission to the State of Manipur for the sale of lottery tickets in the State of Punjab.

Held, that reading of the agreement, Annexure P-2, as a whole leaves an impression that the petitioner has created an agency and all functions of running the lotteries have been left with the sole selling agents. A cloak has been put to give them the colour of State 'Organised' lotteries whereas, infact, the same are State 'authorised' lotteries run by the sole selling agents, in whom an agency has been created.

(Para 19)

Further held, that clause 13 provides that in the event of cancellation of any draw by the Sole distributor after the tickets have already been printed, the sole distributor shall be responsible for payment of the paper and printing charges from his own account and if the draw is cancelled after the tickets have been printed and delivered to the sole distributor, the sole distributor shall be liable for payment of any prize claim arising out of the particular draw, again leaving an impression that they are not the State 'organised' lotteries but the same are State 'authorised' lotteries. Under what circumstances, a sole distributor can ask for cancellation of a draw especially when the tickets have been sold on all sold basis, has not been spelt out. Discretion to cancel any draw which is to be ratified by the Government has been left with the Sole distributor.

(Para 22)

Further held, that it cannot be held that the sale proceeds of the tickets either sold in retail or wholesale are being credited to the funds of the Government. Tickets are sold to the Sole Distributor on all sold basis. The whole amount is not paid at the time of the sale. After deducting all expenses and the prize money of denomination not exceeding Rs. 5,000 each or such prize money which is not taxable under the income tax laws, which is more than 90 per cent of the total sale proceeds, the balance amount is given to the State Government which may be a negligible percentage of the total sale

proceeds. All vital functions of running the lotteries are, under the circumstances, being discharged by the sole distributor.

(Para 24)

Further held, that the burden to publish the results of the draws and for promotional campaigns on the sole distributor again shows that the lotteries run by the petitioner are State 'authorised' lotteries and not State 'organised' lotteries.

(Para 25)

Further held, that the Director, Punjab State Lotteries, Punjab has correctly recorded the findings that the unclaimed/undisbursed prizes are not reverting back to the Government. Finding recorded in the order, Annexure P-26, that there is an element of royalty being paid by the sole distributor to the State Government of Manipur is also correct. All sale proceeds of the lottery tickets are not being deposited in the State funds and all the unclaimed/undisbursed prizes are not reverting to the State Government. It seems that in actual practice the Manipur State Government hands over all the tickets to the Sole Distributor on all sold basis and the Sole Distributor gives it a fixed percentage of total proceeds, without any involvement of the Government in the actual running of the lotteries. State Government, it seems, has done some paper work to give it a cloak of a State 'Organised' lottery and to bring it within the parameters of the law laid down by their Lordships of the Supreme Court in *M/s Suman Enterprises and others*' case, but in actual practice, it is the sole distributor who is running the show without the involvement of the Government. It seems that the Government is getting a fixed percentage of commission of the total business, which can be termed as royalty, as has been put by the Director, Punjab State Lotteries and, consequently, there is no relationship of Principal and Agent between the petitioner and its Sole Distributor.

(Para 26)

A. K. Chopra and Gural Singh, Advocates, for the Petitioner.

S. S. Saron, Addl. A.G(P), for the Respondent.

JUDGMENT

Ashok Bhan, J.

(1) This judgment dispose of Civil Writ Petitions 10155 of 1995 (*The Government of Manipur v. The State of Punjab and another*), 10255 of 1995 (*The Government of Assam v. The State of Punjab and another*), 10254 of 1995 (*The Government of Nagaland v. The State of Punjab and another*) and 10923 of 1995 (*Government of Mizoram v. State of Punjab and another*), as common questions of law and fact are

involved in all these petitions. In whichever writ petition, any additional point has been raised, the same shall be dealt with separately. Facts are taken from C.W.P. 10155 of 1995.

(2) Government of Manipur (hereinafter referred to as 'the petitioner') seeks to challenge the action of the respondents,—*vide* which sale/distribution of tickets of various lotteries 'organised' by it in the State of Punjab has been stopped. The only question which is involved is "As to whether the lotteries organised by the petitioner are State 'organised' lotteries, falling under Entry 40, List-1 of VIIIth Schedule of the Constitution of India with regard to which only Parliament can legislate, or whether the same are State 'authorised' lotteries for which the State of Punjab had the legislative competence to make law/control the same falling under Entry 34 of List-II ?"

(3) Scheme of division of legislative powers between the Union and the States is given under Part XI of the Constitution of India, under the heading 'Relations Between the Union and the States'. There is a three part distribution of legislative powers, between the Union and the States under the Constitution of India, made up of three legislative lists in the VIIth Schedule of the Constitution. Union List or List-I includes subjects over which the Union shall have exclusive powers of legislation. For the entries in List-II or the State List, the State Legislature has exclusive powers of legislation. List-III gives concurrent powers to the Union and the State Legislatures and the residual powers belong to the Union. In the case of overlapping of a matter as between the three lists, predominance has been given to the Union Legislature.

(4) Entry 40 in List-I in the VIIth Schedule is 'Lotteries organised by the Government of India or the Government of a State', Entry 34 of List II of the VIIth Schedule is 'Betting and gambling'.

(5) Supreme Court of India in *H. Anraj and others v. State of Maharashtra* (1), held that the 'lotteries organised by the Government of India or the Government of a State' has been made a subject within the exclusive legislative competence of the Parliament and, therefore, no Legislature of a State can make a law touching 'lotteries organised by the Government of India or the Government

(1) A.I.R. 1984 S.C. 781.

of a State'. Relevant portion where this proposition has been laid down in the aforesaid case reads thus :—

“Entry 40 of List I of the VIIth Schedule to the Constitution is “Lotteries organised by the Government of India or the Government of a State”. Entry 34 of List II of VIIth Schedule is “Betting and gambling”. There is no dispute before us that the expression “Betting and gambling” included and has always been understood to have included the conduct of lotteries. Quite obviously, the subject ‘Lotteries organised by the Government of India or the Government of a State’ has been out from the legislative field comprised by the expression “Betting and gambling” and is reserved to be dealt with by Parliament. Since the subject ‘Lotteries organised by the Government of India or the Government of a State’ has been made a subject within the exclusive competence of Parliament, it must follow, in view of Art. 246(1) and (3), that no Legislature of a State can made a law touching lotteries organised by the Government of India or the Government of a State.”

(6) It was further held that Article 298 of the Constitution left the Government of a State free to carry on any trade or business in respect of which it may not have the power to make laws but the power to carry on such trade or business shall be subject to the legislation by the Parliament. In the absence of Parliamentary Legislation, the Government of every State had the unrestricted right to organise lotteries and this right was not subject to the executive power of the Government of India or the executive and legislative powers of the States. It was held that the Government of Maharashtra did not have the right to impose a ban on the sale or distribution of the tickets of the lotteries organised by other States in the State of Maharashtra. Relevant observations are :—

“It is then said that the permission granted to each State to conduct its lotteries is expressly subject to the condition that the tickets of the lottery shall not be sold in another State without the permission of the Government of that State. We have already pointed out that Article 298 of the Constitution extends the executive power of every State to the carrying on of any trade or business even if such trade or business is one with respect of which Parliament alone has the executive power to make laws subject

to the stipulation that such executive power of the State shall be subject to Parliamentary legislation. It is true that in view of Entry 40 of List 1 of the VIIth Schedule to the Constitution. Parliament has exclusive power to make laws with respect to "Lotteries organised by the Government of India or the Government of a State", that Article 73 of the Constitution extends the executive power of the Union to the matters with respect to which Parliament has power to make laws and, therefore, the executive power of the Union must extend to the subject "Lotteries organised by the Government of India or the Government of a State". But the executive power of the Union, by the very opening words of Article 73 is "subject to the provisions of this Constitution. It follows that the executive power of the Union with respect to lotteries organised by the Government of a State has necessarily to be exercised subject to the provisions of the Constitution, including Article 298, which expressly extends the executive power of the State to the carrying on of any trade or business subject only to legislation by Parliament if the trade or business is not one with respect to which the State legislature may make laws. It is to be noted that Article 298 does not open with the words 'subject to the provisions of the Constitution', as does Article 73. Reading and considering Articles 73 and 298 together, as they should indeed be read and considered, it is clear that the executive power of a State in the matter of carrying on any trade or business with respect to which the State legislature may not make laws is subject to legislation by Parliament but is not subject to the executive power of the Union. That is why we mentioned earlier that the Government of a State is not required to obtain the permission of the Union Government in order to organise its lotteries, in the absence of Parliamentary legislation. Even assuming that such permission is necessary, we do not see how a condition imposed by such permission that lottery tickets of one State may not be sold in another State may be enforced by the other State. The other State has no power to make laws in regard to the lotteries organised by the first State. Its executive power, by virtue of Article 298, extends to lotteries organised by itself but not to lotteries organised by the other State. If a State acts in breach of the condition imposed by the President while entrusting power under Article 258, it is open to the President to revoke the permission or to take

such further or other action as may be constitutionally permissible but it cannot possibly enable the Government of the other State to do a thing about it except to complain, perhaps, to the Union Government. The Government of India is quite obviously alive to the position that there is no way of enforcing the stipulation that lottery tickets of one State should not be sold in another except by Parliament making a law in that behalf. The awareness is revealed by the last sentence in the letter dated July 1, 1968 which says, "I am to add that in order to achieve this object an amendment of Section 294-A I.P.C. is being undertaken to make sale of tickets, without the consent of the State Government concerned, a penal offence."

The proposed amendment is yet to see the light of day."

Question 'about the competence of the Legislature of Maharashtra to legislate in respect of sale or distribution, in the State of Maharashtra, of tickets of lotteries organised by any agency whatsoever other than the Government of India or the Government of a State' was examined by the Apex Court in *J. K. Bharati, etc. v. State of Maharashtra and others* (2). The judgment given in this case was described by their Lordships as a post script to their judgment in *H. Anraj's case*. (supra). After analysing what was held in *H. Anraj's case* (supra), their Lordships went on to hold that the Legislature of Maharashtra was competent to regulate and control the sale and distribution of the "State authorised lotteries" as against the 'State organised lotteries'. It was concluded as under :—

"...While lotteries organised by the Government of India or the Government of a State have been taken out of Entry 34 of List II of Schedule VII by Entry 40 of List I, there is no question about the competence of the Legislature of Maharashtra to legislate in respect of the sale or distribution, in the State of Maharashtra, of tickets of all lotteries organised by any agency whatsoever other than the Government of India or the Government of a State."

(7) It had already been held in *H. Anraj's case* (supra) that the State of Maharashtra could not legislate or exercise executive powers

in relation to the lotteries 'organised' by the Government of India or the Government of a State. In *J. K. Bharati's case* (supra), it was held that the State of Maharashtra had the authority to regulate and control the State 'authorised' lotteries. Submission of the counsel for the petitioners in *J. K. Bharati's case* (supra) was that exemption from the applicability of the Bombay Lotteries (Control and Tax) and Prize Competition (Tax) Act, 1958 to the lotteries specially authorised by the State of Maharashtra was discriminatory and that the exemption should be extended to all lotteries authorised by the Government of any State whatsoever. Article 14 of the Constitution was invoked in aid of this submission. This contention was negated by holding as under :—

- “2. The Bombay Lotteries (Control and Tax) and Prize Competition (Tax) Act, 1958 is an Act to control and tax lotteries and prize competition in the State of Maharashtra. Section 3 of the Act declares : “Save as provided by the Act, all lotteries are unlawful”. The Act contains detailed provisions for the licencing, regulation and control of lotteries within State of Maharashtra. By Section 32(C), it is provided that nothing in the Act shall apply to “a lottery specially authorised by the State Government”. The submission of Dr. Chitale, learned counsel for the petitioners, was that the exemption from the applicability of the Act granted to lotteries “specially authorised by the State Government”, that is, by the Government of Maharashtra, was discriminatory, the exemption should be extended to all lotteries authorised by the Government of any State whatsoever. Article 14 of the Constitution is invoked in aid of the submission. The reason for exempting lotteries authorised by the Government of Maharashtra from the applicability of the Act and not lotteries authorised by the Government of other States is patent. In the case of lotteries authorised by the Government of Maharashtra, the Government of Maharashtra may retain to itself all necessary powers for the regulation and control and the prevention of misuse of funds and exploitation of guideless members of the public. In the case of lotteries authorised by the Governments of other states it may be difficult and even impossible for the Government of Maharashtra to take adequate regulatory steps to prevent abuse of the authority given by Governments of other State to non-Governmental agencies to organise lotteries. It may be equally difficult for the Governments of other States to take

adequate measures for prevention of abuse of such authority within the State of Maharashtra. We are, therefore, satisfied that no hostile discrimination whatever is involved in not extending the exemption from the applicability of the Act to lotteries authorised but not organised by the Governments of other States. The writ petitions are accordingly, dismissed with costs."

(8) The distinction between a lottery 'organised' by the Government of India or the Government of a State was, thus, held to be distinct from a lottery 'authorised' by a State Government. The State Legislature could not exercise powers with regard to the State 'organised' lotteries, whereas it could exercise its powers for the regulation and control of the State 'authorised' lotteries within the State of Maharashtra.

(9) Thereafter, arose the controversy as to which are the State 'organised' lotteries and which are the State 'authorised' lotteries. Writ petitions were filed in different High Courts of the country and different views were expressed by different High Courts. Special Leave Petitions were filed. Leave was granted. As an interim measure, their Lordships of the Supreme Court of India passed an interim order in the aforesaid Special Leave Petitions, which is reported in *State of Haryana v. M/s Suman Enterprises and others* (3), wherein their Lordships spelt out the attributes of a lottery 'organised' by a Government of a State as against the lottery 'authorised' by the Government of a State. Relevant portion of the judgment dealing with this aspect reads as under :—

"3. In the present case we have examined, *prima facie*, whether the lottery claimed to have been 'organised' by the State of Sikkim can be said to be a lottery 'organised' by the State of Sikkim and not merely authorised by it authorising the so-called 'Agents' themselves to organise the lottery. We have examined this in the context of the question whether the earlier interim order granted by this Court should continue or not till the final disposal of the main cases. *Prima facie*, it appears to us that the concept of a lottery 'organised' by a State would require certain basic and essential concomitants to be satisfied as, indeed, members of the public when investing their money in such

a lottery proceed on a trust and on certain assumptions as to the genuineness, *bona fides*, safety, security, the rectitude of administration etc. associated with governmental functioning. If some of the basic functions characterising a State-organised lottery are delegated or abdicated by the State this public trust is impaired. The first of those requirements is that the tickets which bear the imprint and logo of the State must be printed by or directly at the instance of the State Government so as to ensure their authenticity and genuineness and further to ensure that any possibility of duplication of the tickets and sale of fake tickets is provided against and rendered impossible. Secondly, the State itself must sell the tickets though, if it thinks necessary or proper so to do, through a sole distributor or selling agent or several agents or distributors under terms and conditions regulated by the agreement reached between the parties. The sale proceeds of the tickets either sold in retail or wholesale shall be credited to the funds of the Government. Thirdly, the draws for selecting the prize-winning tickets must be conducted by the State itself, irrespective of the size of the prize money. Fourthly, if any prize money is unclaimed or is otherwise not distributed by way of prize, it must revert to and become the property of the State Government. These, *prima facie*, appear to us to be the minimal characteristics of a lottery which can claim to be 'organised' by the State.

4. The concept of 'royalty' being paid by the 'agent' would perhaps not be consistent with the idea of relationship between the principal and agent. This Court in *Akadasi Paahan v. State of Orissa* (4), though in a different context indicated what kind of transaction detracts from the idea of an 'agency'. It was observed :

Clause 6 provides that subject to other terms and conditions, all charges and outgoing shall be paid by the agent and he shall be paid by the agent and he shall not be entitled to any compensation whatsoever for any loss that may be sustained by reasons of fire, tempest, disease, pest, flood, drought or other natural calamity, or by any wrongful act committed by any third party or for any loss sustained by him through any operation undertaken in the interest of fire conservancy. This

(4) S.C.R. pp. 721, 722.

clause shows that the agents become personally liable to bear the loss which, under the normal rules of agency, the principal would have to bear. We have not thought it necessary to refer to all the clauses in detail because we are satisfied that even if the agreement is broadly considered, it leaves no room for doubt that the person appointed under the agreement to work the monopoly of the State is not an agent in the strict and narrow sense of the terms contemplated by Article 19(6) (ii). The agent appointed under this agreement seems to carry on the trade substantially on his own account, subject of course, to the payment of the amount specified in the contract. If he makes any profit after complying with the said terms, the profit is his; if he incurs any loss owing to circumstances specified in clause 6, the loss is his. In terms, he is not made accountable to the State Government; and in terms, the State Government is not responsible for his actions. In such a case, it is impossible to hold that the agreement in question is consistent with the terms of Section 3 of the Act."

It would, therefore, *prima facie*, seem that the idea of a fixed sum of 'royalty' paid by the 'agent' would be more consistent with the idea of enfranchisement or farming out of a right to organise a lottery than with the idea of an "Agency".

5. If the basic and essential features indicated above are ensured, it might be possible to raise a presumption that the lottery is one that could be said to have been 'organised' by the State itself and not one merely authorised by the State under which the so-called 'agent' himself organises the lottery. In the present case, *prima facie*—we abstain from any final pronouncement of this question which required to be decided at final hearing—some of these essential characteristics seem to be missing. It will not be possible at the interlocutory stage to hold that the Sikkim scheme is outside the State power of regulation of "Betting and Gambling" and does not attract the ban contemplated by the Tamil Nadu Government's Notification GOMs No. 1101 dated 6th October, 1989."

Appropriate interim orders with regard to the various applications relating to different States were, thereafter, passed by their Lordships.

(10) Petitioner has averred and argued that it organises, regulates, distributes and sells various lotteries under different names, though broadly all these lotteries are referred to as 'Manipur State Lotteries'. The lotteries organised by the State of Manipur fall within the items listed at Entry 40 of List I of the VIIth Schedule of the Constitution of India and, accordingly, exclusive domain for legislating and controlling the said lotteries would be that of Parliament and none else. Article 246 of the Constitution provides exclusive power to the Parliament to make law with regard to any of the matters enumerated in List I in the VIIth Schedule. Similarly, the Legislature of any State has been vested with exclusive powers to make laws for such State or any part thereof with respect to any of the matters enumerated in List-II in the VIIth Schedule of the Constitution. It is not open to a State Government to enact any law or to pass or issue any order or direction restricting or prohibit any lottery organised by any State until and unless there is any legislation enacted by the Parliament and touching this subject. There being no such law enacted by the Parliament in this regard, a State Government cannot impose any restriction on the lotteries 'organised' by the State Governments. That the lotteries are being run by the petitioner itself and through its Sole Distributors/Stockists, who are selling the tickets of various lotteries since 1972. The entire procedure of organising the lotteries viz. printing of tickets holding of draws, distribution of prize money etc., is properly streamlined by the State, taking into consideration the interests of the Government as well as the interest of the general public. Various State Governments have been organising numerous lotteries for the past number of years. For the purpose of running the lotteries effectively and to bring home maximum revenue, the States have been appointing Sole-selling agents/stockists, who are professionally well equipped in marketing/selling lotteries. Organising of lotteries by the State Governments is an old and accepted norm of trade and commerce and accepted within the meaning of such terms as envisaged under Article 298 of the Constitution of India.

(11) That in the light of orders passed by the Apex Court in *State of Haryana v. M/s Suman Enterprises and others* (4), petitioner

made necessary amendments in its schemes for running various lotteries so as to bring them in conformity with the parameters laid down by the Supreme Court of India. Petitioner has appointed five sole Distributors through whom the lotteries are being sold. Separate identical agreements have been entered into by the petitioner with the said Sole Distributors. A copy of one such agreement has been attached as Annexure P-2. Sole Distributors gave separate but identical guarantee bonds. A copy of one such guarantee bond has been annexed as Annexure P-3. For getting the tickets printed, petitioner approved certain printers and executed agreements with those printers. A copy of one such agreement with the printers is Annexure P-4. As per agreement with the printers, petitioner places orders for printing of tickets for various lotteries. Petitioner places orders for printing of tickets for various lotteries. Petitioner appoints a panel of Judges for the conduct of draws of 'Manipur State Lotteries', which is held at Manipur Bhawan, New Delhi. The Judges who are appointed to the said panel are generally I.A.S. officers and/or Government officers of high rank. The result of the draws is published in the official Gazette of the Manipur State. At present, 49 daily lotteries and 12 instant lotteries are being organised by the petitioner. Identical print orders and schemes are prepared and issued in respect of the lotteries 'organised' by the petitioner. A prize scheme/structure as also the other relevant terms of the scheme are printed at the back of each lottery ticket being sold by the petitioner with regard to the lotteries 'organised' by it. The prize winning tickets which are below Rs. 5,000 are honoured on behalf of the Government of Manipur by the Sole Distributors/Stockists/Agents and the prize money so paid is deducted from the sale proceeds and is ultimately accounted for by the Sole Distributors in the accounts submitted by them to the petitioner. Tickets in respect of all the schemes are sold to the Sole Distributors and invoice/challan in respect of tickets so sold is issued. Details of the prize money are submitted by the Sole Distributors along with the account statements from time to time in respect of the lotteries. Sole Distributors submit the prize winning tickets. The money account of unclaimed prizes is sent by the Sole Distributors through cheque or otherwise with a forwarding letter. The said amount is credited to the Government account. The amount relating to the lotteries is incorporated under the head '2075-Misc. General Services'. In all, petitioner has placed on record 16 documents Annexure P-1 to P-14-B. Annexure P-1 is the judgment of the Supreme Court in *M/s Suman Enterprises and other's case* (supra). Annexure P-2 is the agreement entered into by the petitioner with the Sole Distribu-

tors. Annexure P-3 is guarantee bond. Annexure P-4 is the agreement with the printers. Annexure P-6 is a copy of one of the orders placed by the petitioner for printing of the tickets of the lotteries 'organised' by it. Annexure P-7 is a copy of the Gazette Notification publishing result of one of the draws held by the petitioner. Annexure P-8 is a copy of the lottery ticket. Annexure P-9 is an invoice/challan in respect of the tickets sold to the Sole Distributors. Annexure P-10 and P-11 are the details of the prize money as submitted by the Sole Distributors along with the account statement. Annexure P-12 is a forwarding letter of the Sole Distributors which is sent along with the prize winning tickets. Annexure P-13 and P-14 are the statement of account of unclaimed prizes sent by the Sole Distributors through cheques or otherwise with a forwarding letter. Annexure P-14-A is a treasury challan and Annexure P-14-B is the extract of the budget. The case of the petitioner is that perusal of Annexure P-1 to P-14-B would show that the lotteries 'organised' by the petitioner are State organised and fulfil all the requirements as laid down in *M/s Suman Enterprises and other's case* (supra). The tickets bear the imprint and Logo of the State and are printed directly at the instance of the State Government. The tickets in respect of the lotteries are sold by the petitioner itself through the sole Distributors appointed by it, under the terms and conditions regulated by the agreement reached between the petitioner and the Sole Distributors. The sale proceeds of the tickets are credited to the funds of the Government. The draws for selecting the prize winning tickets are conducted by the petitioner itself irrespective of the size of the prize money and the prize money, if remains unclaimed or otherwise is not distributed by way of prize money, reverts and becomes the property of the State Government. Rules called the Manipur State Government Lottery Rules, 1994, framed by the Government of Manipur, after the judgment of their Lordships of the Supreme Court in *M/s Suman Enterprises and other's case* (supra) have been attached as Annexure P-15 and the subsequently amended Rules have been attached as Annexure R-16. Rules provide for and relate to the various averments regarding the lotteries being organised by the State and their running by the State, reference to which has already been made. Further averment made is that the State of Punjab granted permission for marketing/selling of various lotteries 'organised' by the petitioner.—*vide* letter dated 23rd May, 1994 (Annexure P-18), after considering various lotteries organised by the petitioner in the light of the order passed by the Supreme Court in *M/s Suman Enterprises and other's case* (supra), to be State 'organised'. Petitioner through its stockists/agents is marketing selling lottery tickets in respect of the lotteries 'organised' by it,

which have been found and held to be State 'organised' lotteries by the respondents themselves in the normal course of their business. All of a sudden, the Director, Punjab State Lotteries, Chandigarh, respondent No. 2, issued an executive order/public notice (Annexure P-19) in the Daily Tribune dated 1st July, 1995, for the information of the general public including the petitioner and others who are in the lottery trade that the Punjab Government has withdrawn the permission granted to the States of Manipur, Nagaland and Assam for selling their lottery tickets in the State of Punjab with immediate effect and that the sale of lottery tickets of these States in the State of Punjab shall be unauthorised and punishable under the law of the land. Sale of the lottery tickets issued by these States was prohibited.

(12) Petitioner filed CWP 9052 of 1995 challenging the executive order, Annexure P-19, issued by respondent No. 2, *inter alia*, on the ground that the executive order, Annexure P-19, was passed without issuing any show cause notice and without providing any opportunity to the petitioner. Notice of motion was issued, in response to which respondents filed their written statement pleading therein that an order dated 29th January, 1995 had been passed by respondent No. 2 and permission to run the 'Manipur State Lotteries' in the State of Punjab was withdrawn for the reasons recorded in the said order. CWP 9052 of 1995 was withdrawn with liberty to file a fresh writ petition on the same cause of action and the present writ petition was filed, challenging the order Annexure P-20.

(13) This Court on 25th July, 1995 passed the following ad-interim order; in pursuance to which, the Director, Punjab State Lotteries passed order Annexure P-26, after hearing the petitioner :—

"In the impugned order, Annexure P-20, it has been mentioned by the Director Punjab State Lotteries, Chandigarh, respondent No. 2, that the petitioner did not respond to the two letters referred to in the impugned order, written by the Department of Lotteries, to the petitioner seeking certain clarifications. On the basis of *ex parte* investigation held, the Director, Punjab State Lotteries, found that the lotteries run by the petitioner are not State Organised Lotteries.

In order to do justice between the parties and to adjudicate the matter judicially, we grant one more opportunity to the petitioner to appear before the Director, Punjab State

Lotteries, Punjab, and render his explanation *qua* the queries raised in the two letters written by the Director, Punjab State Lotteries to him. Petitioner, through his representative, shall be at liberty to submit his explanation in writing as well as appear in person and make oral submissions.

Accordingly, petitioner is directed to appear before the Director, Punjab State Lotteries, Chandigarh, on 27th July, 1995 at 10.00 AM in his office in Sector 17, Chandigarh. On the basis of the written reply or the oral submissions made by the petitioner, Director, Punjab State Lotteries, shall decide the matter afresh within two days thereafter. Adjourned to 31st July, 1995. Copy of the order to be passed by the Director, Punjab State Lotteries, Chandigarh. be produced on the next date of hearing.”

Petitioner has challenged orders Annexures P-19 and P-20 on the ground that the same have been issued/passed without issuing show cause notice or affording any opportunity to the petitioner. These pleas have become infructuous in view of the subsequent order dated 28th July, 1995. Annexure P-26, passed by the Director, Punjab State Lotteries, Chandigarh. in pursuance to the directions issued by this Court on 25th July, 1995.

(14) Petitioner filed an additional affidavit challenging the order dated 28th July, 1995. Annexure P-26, passed by the Director, Punjab State Lotteries. The basic challenge is that the lotteries organised by a State fall in List-I Entry 40 of the VIIIth Schedule of the Constitution and such lotteries are outside the scope of List II Entry 34 of the VIIIth Schedule and, therefore, the respondent-State has no legislative competence or executive power to stop the sale of lottery tickets of the lotteries ‘organised’ by the Government of a State.

(15) Other grounds of challenge are that the Director, Punjab State Lotteries, while passing the impugned order dated 28th July, 1995, Annexure P-26, has acted with a pre-determined mind to declare the lotteries ‘organised’ by the petitioner as not fulfilling the conditions laid down in *M/s Suman Enterprises and other's case* (supra); that the Director, Punjab State Lotteries, could not act as an auditor of the accounts of the petitioner-State nor could he monitor the sale of the petitioner-State and as such, petitioner did not submit the complete accounts/treasury challans etc. before him nor were the same required to be submitted and could possible be

submitted; that the finding recorded by the Director, Punjab State Lotteries, that the sale proceeds were not being deposited in Government funds and the unclaimed/undisbursed prize money is not reverting to the Government is illegal; that the sale proceeds received from the Sole Distributors consist of two parts; first part comprises of payment of prizes upto Rs. 5,000 to the prize winners by the distributor/stockists/agents etc. and the second part comprises of the amount deposited by the sole distributors by way of cash/bank draft/cheque, in the account of the Government/Treasury; that the accounts in respect of every lottery are submitted/settled in accordance with the terms of agreement and the Rules. Sale proceeds in respect of all the lotteries are duly taken into State accounts and are deposited in the treasury. Finding recorded by the Director, Punjab State Lotteries, that only a part of the sale proceeds are deposited is factually incorrect because he has read only Clause-18 of the agreement and has conveniently ignored Clause-19 thereof, which clearly provides that the balance amount of the sale proceeds after adjusting the amounts indicated in Clause-18 shall be deposited by the Sole Distributor with the Government together with the amount of unclaimed/undisbursed prizes within a period of 60 days; that the finding that all the sale proceeds are not deposited in the Government funds is factually incorrect; that the unclaimed/undisbursed prize money reverts back to the Government and becomes the State property; that there is no concept of royalty in respect of any lottery run by the petitioner and that all functions from the beginning till end are performed by the petitioner-State itself. Finding recorded that the petitioner does only paper work and all functions are done by the Sole Distributors is factually incorrect, which is demonstrated by various annexures attached with the petition.

(16) Case of the respondents is that the lotteries 'organised' by the petitioner are, infact, State authorised lotteries and, therefore, the order passed by the State of Punjab prohibiting the sale of lotteries of the petitioner in the State of Punjab is legal and valid on merits as also in consonance with the orders of the Supreme Court in *M/s Suman Enterprises and other's case* (supra) ; that the earlier permission for marketing of 'Manipur State Lotteries' in the State of Punjab was granted primarily after examining a copy of the agreement, the rules and the invoice, but, subsequently, it was noticed that there were serious defects in the practice adopted by the petitioner in running its lotteries and the same were violative of the conditions laid down by the Supreme Court of India in the interlocutory order in *M/s Suman Enterprises and other's case* (supra) and, therefore, the Manipur State was requested to supply information on the points indicated in letter No. PSL:FD:LE:2/95/436, dated 30th January,

1995. As no reply was given by the petitioner, it was again remained in the matter,—*vide* letter No. PSL:FD:LE:II:95/1376, dated 4th May, 1995 but no reply was given by the Manipur State Government. It had also come to the notice of the Punjab State Government that the petitioner had been selling/marketing 26 lotteries in the State of Punjab other than the 48 lotteries for which permission was granted. Therefore, the order of withdrawal of permission already granted in respect of 48 lotteries and also the matter of discontinuing the sale of 26 lotteries in respect of which permission was not obtained by the petitioner was examined. In respect of 48 lotteries, Government of Manipur was requested,—*vide* Memo Nos. PSL:FD:LE:95/436, dated 30th January, 1995 and PSL:FD:LE:II:95/1376, dated 4th May, 1995 to supply the information mentioned in these letters to the Director, Punjab State Lotteries. The information called for related to the number of lotteries run by the Manipur State, rules/regulations/procedure adopted by them to deposit the sale proceeds of lottery tickets in the State funds with a copy of the treasury challan, method of reverting the unclaimed prizes from SSA/Distributors along with proof, etc. The information called for from the petitioner was not supplied. In order to ascertain facts, enquiries from various stockists/organisers about the system of making payment of prize amount to the winners and the system to determine the amount of unclaimed/undisbursed prizes were made. Since, the State of Punjab did not get any satisfactory reply from the stockists/organisers, further investigations were made and it was found that the payment of prize money was being made by the stockists/organisers to the prize winners. It was also found that they neither received reimbursement from the Government by way of adjustment nor prize winning tickets were deposited with the Government either in cash or in credit. Therefore, these lotteries did not fulfil one of the conditions laid down in *M/s Suman Enterprises and other's case* (supra). That the unclaimed/undisbursed prize money was not reverting back to the Government. If the prize winning tickets are not being deposited with the Government for reimbursement of the prize amount so disbursed by the stockists/organisers, the amount of unclaimed/undisbursed prizes cannot be ascertained. Since, neither the prize winning tickets are being deposited of the tickets, therefore, the question of reverting the unclaimed/undisbursed prizes to the Government does not arise: that there was an element of royalty being paid by the Sole Distributors to the petitioner. Only some paper work has been done to show that these lotteries are being run in consonance with the criteria laid down by the Supreme Court in *M/s Suman Enterprises and other's case* (supra) for treating them as state 'organised' lotteries but, in actual practice, it is Sole Distributor

who is running the show without the involvement of the Government in some of the important aspects of the lottery trade ; that the petitioner is in fact getting a fixed percentage of commission of the total business which can easily be termed as royalty and, consequently, there is no relationship of principal and agent between the State Government of Manipur and their Sole Distributors.

(17) Legal position that if the State Lotteries are held to be State 'organised' then the respondent-State has no legislative/executive authority to act with regard to those lotteries is admitted. The case of the petitioner is that the lotteries run by it are State 'organised' lotteries whereas the case of the respondents is that the lotteries run by the petitioner are State 'authorised' lotteries. Question 'as to whether the lotteries run by the petitioner are State 'organised' or 'authorised' by the State is to be examined in the light of entry No. 40 in List-I of VIIth Schedule and entry 34, List II, VIIth schedule as interpreted by their Lordships in *H. Anraj's case* (supra) and *J. K. Bharti's case* (supra) and spelt out by the Apex Court in *M/s Suman Enterprises's case* (supra), in the given facts and circumstances of the case.

(18) After the judgment of the Supreme Court in *M/s Suman Enterprises and other's case* (Supra) petitioner made necessary amendments in its schemes for running various lotteries so as to bring them in conformity with the parameters laid down by the Supreme Court of India. Rules were accordingly amended and fresh agreements entered with the sole Distributors. There is no dispute on the interpretation of either the entry in the Constitution or on any other Statute in view of the clear pronouncement of the Supreme Court in India in *H. Anraj and others' case* (Supra) and *M/s Suman Enterprises and other's case* (Supra). It has authoritatively been held that the Lotteries organised by the Government of India or the Government of a State has been made a subject within the exclusive legislative competence of the Parliament and, therefore, no Legislature of a State can make a law touching 'Lotteries organised by the Government of India or the Government of a State' and that a State Legislature can exercise powers for the regulation and control of the State 'Authorised' lotteries within its state. The controversy is to be determined on facts and on the interpretation put on the agreements entered by the petitioner with its sole selling Agents, copy of which is Annexure P-2. In *M/s Suman Enterprises and other's case* (Supra), the Apex Court held that the state 'authorised' lotteries should have the following minimal requirements :—

(i) The first of those requirements is that the tickets which

bear the imprint and logo of the State must be printed by or directly at the instance of the State Government so as to ensure its authenticity and genuineness and further to ensure that any possibility of duplication of the tickets and sale of fake tickets is provided against and rendered impossible.

- (ii) Secondly, the State itself must sell the tickets though, if it thinks necessary or proper so to do, through a Sole Distributor or Selling Agent or several Agents or Distributors under terms and conditions regulated by the agreement reached between the parties. The sale proceeds of the tickets either sold in retail or whole sale shall be credited to the funds of the Government.
- (iii) Thirdly, the draws for selecting the prize winning tickets must be conducted by the State itself, irrespective of the size of the prize-money.
- (iv) Fourthly, if any prize money is unclaimed or is otherwise not distributed by way of prize it must revert to and become the property of the State Government.
- (v) the concept of 'Royalty' being paid by the 'Agent' would perhaps not be consistent with the idea of relationship between the principal and Agent.

(19) Reading of the agreement, Annexure P-2, as a whole leaves an impression that the petitioner has created an agency and all functions of running the lotteries have been left with the sole selling Agents. A cloak has been put to give them the colour of State 'Organised' lotteries whereas, in fact, the same are State 'authorised' lotteries run by the sole Selling Agents, in whom an agency has been created.

(20) Under clause 12 of the agreement, Annexure P-2, all tickets are sold to the sole Distributor on all sold basis and no ticket is returnable by the sole Distributor to the Government as unsold. Clause 9 of the agreement provides that the tickets of the petitioner shall bear the imprint and logo of the Manipur State Lotteries and are to be printed by or at the instance of the State Government in Government or Private Printing Presses selected by the Government. The cost of printing of the tickets is to be borne by the State Government. A proviso has been put providing that the Sole Distributor,

on the direction from the Government, may pay such printing costs from the sale proceeds of tickets before taking delivery of the printed tickets and the costs so paid shall be reimbursed from the State Government by adjustment with the dues payable by the Sole Distributor towards sale proceeds of tickets to the Government. Clause 11 provides that the State Government shall give delivery of tickets of its lotteries from the source i.e. from the premises of the printing press where the tickets are to be printed by the State Government to the Sole Distributor or to his authorised stockists. Provided that even if the tickets are delivered by the State Government for convenience directly to the stockists duly authorised by the sole Distributor from the printing press. The delivery shall be deemed to have been made to the Sole Distributor.

(21) A reading to these two clauses shows that although the tickets are to be printed with the logo of the State but the payment of the printing costs is to be defrayed by the Sole Distributor from the sale proceeds of the tickets, reimbursable from the State Government by adjustment with the dues payable by the Sole Distributor towards sale proceeds of the tickets. Delivery of the tickets is not to be made by the State Government to the Sole Distributor but the Sole Distributor can take the delivery of the tickets from the printing press directly.

(22) Clause 13 provides that in the event of cancellation of any draw by the Sole Distributor after the tickets have already been printed, the Sole Distributor shall be responsible for payment of the paper and printing charges from his own account and if the draw is cancelled after the tickets have been printed and delivered to the Sole Distributor, the Sole Distributor shall be liable for payment of any prize claim arising out of the particular draw, again leaving an impression that they are not the State 'Organised' lotteries but the same are State 'authorised' lotteries. Under what circumstances, a Sole Distributor can ask for cancellation of a draw especially when the tickets have been sold on all sold basis, has not been spelt out. Discretion to cancel any draw which is to be ratified by the Government has been left with the Sole Distributor.

(23) Sole Distributor is to provide an irrevocable Bank Guarantee of a Schedule bank for a sum of Rs. 50 lacs towards securing of payment of sale proceeds of lottery tickets and any other charges as may be determined by the Government.

(24) Clause 18 makes a very interesting reading and leaves no manner of doubt that infact the lotteries are being run by the Sole

Distributor. Sole Distributor is required to deposit a part of the sale proceeds of the tickets as intimated by the State Government in respect of each draw in advance by bank drafts to be drawn in favour of the Director, Manipur State Lotteries. Such amount to be deposited by the Sole Distributor in advance shall be called part consideration and shall be determined having regard to the sale proceeds to be utilised by the Sole Distributor on behalf of the State Government towards (i) expenses incurred in the conduct of draws at a rate and on such terms mutually agreed upon between the parties, (ii) cost of printing tickets, (iii) amount of prizes of lower denomination not exceeding Rs. 5,000 each or such prize amount which is not taxable under the income tax laws disbursed by the Sole Distributor on behalf of the Government, (iv) Agents' commission deducted from prize-moneys having no income tax liability and (v) any other expenditure incurred by the Sole Distributor on behalf of and under the direction of the State Government. Under Clause 19, the balance amount of sale proceeds of the tickets after adjusting the amounts indicated above, shall be adjusted by the Sole Distributor with the Government together with the amount of unclaimed prizes of prizes not distributed otherwise in respect of the particular draw in full within a period not exceeding 60 days from the date of the draw in any case. Sole Distributor after taking delivery of the printed tickets from the printing press defrays all expenses and discharges all functions which is the responsibility of the State Government. It prays from the printing of the tickets to the printing press, meets the expenses of draw of lots, agents' commission deducted from prize money having no income tax liability and any other expenses incurred by the Sole Distributor on behalf of or under the direction of the State Government. If this be so, then how can it be held that the sale proceeds of the tickets either sold in retail or wholesale are being credited to the funds of the Government. Tickets are sold to the Sole Distributor on all sold basis. The whole amount is not paid at the time of the sale. After deducting all expenses and the prize money of denomination not exceeding Rs. 5,000 each or such prize money which is not taxable under the income tax laws, which is more than 90 per cent of the total sale proceeds, the balance amount is given to the State Government which may be a negligible percentage of the total sale proceeds. All vital functions of running the lotteries are under the circumstances, being discharged by the Sole Distributor.

(25) Other requirement as spelt out by the Supreme Court is for selecting the prize money tickets by the Government itself irrespective of the size of the prize money. Clauses 22 to 25 of the agreement

deal with the conduct of draws. The number, frequency and timing of the draws of lotteries is to be decided by the Government after considering the suggestions of the Sole Distributor as per market situation and the draws for selecting the prize winning numbers shall be conducted directly by the Government at a public place in Imphal or any place in or outside the State under the panel of Judges appointed by the Government from time to time for each draw or group of draws and in public view. The result of each draw is to be published in the official Gazette of the State Government and the same is to be published in the leading newspapers by the State Government. Proviso has been added providing therein the Government may, from time to time, authorise the Sole Distributor to publish the results in the leading newspapers and also to undertake promotional advertisements in which case, the Sole Distributor shall make available to the Government a copy of each publication regularly and the charges for publication of the results in the newspapers and for promotional campaigns, irrespective of whether committed by the Government or by the Sole Distributor, shall be borne by the Sole Distributor from out of the discount/trade margin allowed to him on the sale of tickets. If the State Government is organising the lotteries then it is for it to publish the results of the draws and make all promotional advertisements. The burden to publish the results of the draws and for promotional campaigns on the Sole Distributor again shows that the lotteries run by the petitioner are State 'authorised' lotteries and not State 'organised' lotteries.

(26) Director, Punjab State Lotteries, Punjab has correctly recorded the findings that the unclaimed/undisbursed prizes are not reverting back to the Government. Finding recorded in the order, Annexure P-26, that there is an element of royalty being paid by the Sole Distributor to the State Government of Manipur is also correct. All sale proceeds of the lottery tickets are not being deposited in the state funds and all the unclaimed/undisbursed prizes are not reverting to the State Government. It seems that in actual practice the Manipur State Government hands over all the tickets to the Sole Distributor on all sold basis and the Sole Distributor gives it a fixed percentage of total proceeds, without any involvement of the Government in the actual running of the Lotteries. State Government, it seems, has done some paper work to give it a cloak of a State 'Organised' lottery and to bring it within the parameters of the law laid down by their Lordships of the Supreme Court in *M/s Suman Enterprises and other's case* (supra), but in actual

practice, it is the Sole Distributor who is running the show without the involvement of the Government. It seems that the Government is getting a fixed percentage of commission of the total business, which can be termed as royalty, as has been put by the Director, Punjab State Lotteries and, consequently, there is no relationship of principal and agent between the petitioner and its Sole Distributor.

(27) For the reasons recorded above, we find no merit in this petition and the same is dismissed with no order as to costs.

R.N.R.

Before P. K. Jain, J.

INCOME TAX OFFICER,—*Petitioner,*

versus

INDERJIT CHOPRA,—*Respondent.*

CrI. M. No. 17700-M of 1994.

10th September, 1996.

Income Tax Act, 1961—Ss. 276-C & 277—Complaint against assessee for concealment of income while framing assessment—Explanation of assessee rejected,—Penalty imposed—Penalty quashed holding assessee had established source of his creditors—Maintainability of complaint in such a situation.

Held, that the grievances of the charge in the complaint filed against the respondent is the concealment of income and/or furnishing of inaccurate particulars by the respondent for the assessment year 1980-81 and on the same facts penalty orders were passed. Admittedly, penalty orders have been quashed by the Income Tax Appellate Tribunal with a finding that there is no such concealment of income by the respondent. Once the basis of the complaint had disappeared, there was no justification to proceed with the prosecution of the respondent on the same ground.

(Para 12)

R. P. Sawhney, Sr. Advocate with Sanjay Goyal, Advocate, for the petitioner.

Hemant Kumar, Advocate, for the respondent.

JUDGMENT

P. K. Jain, J.

(1) Income Tax Officer, ward-2, Faridabad has filed this petition under Section 482 of the Code of Criminal Procedure (hereinafter