

Constitution of India - 'betting and gambling' in Entry 34 of List II

- (i) That the subject 'betting and gambling' in Entry 34 of List II is a State subject.
- (ii) From the judgments of this Court, it is now clear that 'lotteries' is a species of gambling activity and hence lotteries is within the ambit of 'betting and gambling' as appearing in Entry 34 List II.
- (iii) The expression 'betting and gambling' is relatable to an activity which is in the nature of 'betting and gambling'. Thus, all kinds and types of 'betting and gambling' fall within the subject of Entry 34 of List II. The expression 'betting and gambling' is thus a genus it includes several types or species of activities such as horse racing, wheeling and other local variations/forms of 'betting and gambling' activity. The subject 'lotteries organised by the Government of India or the Government of a State' in Entry 40 of List I is a Union subject. It is only lotteries organised by the Government of India or the Government of State in terms of Entry 40 of List I which are excluded from Entry 34 of List II. In other words, if lotteries are conducted by private parties or by instrumentalities or agencies authorized, by Government of India or the Government of State, it would come within the scope and ambit of Entry 34 of List II.
- (iv) Thus, the State legislatures are denuded of their powers under Entry 34 of List II only to the extent of lotteries organised by the Government of India or the Government of a State, in terms of Entry 40 of List I. In other words, except what is excluded in terms of Entry 40 of List I, all other activities which are in the nature of 'betting and gambling' would come within the scope and ambit of Entry 34 of List II. Thus, 'betting and gambling' is a State subject except to the extent of it being denuded of its powers insofar as Entry 40 of List I is concerned.
- (v) Entry 62 of List II is a specific taxation Entry on 'luxuries, including taxes on entertainments, amusements, betting and gambling'. The power to tax is on all activities which are in the nature of 'betting and gambling,' including lotteries. Since, there is no dispute that lotteries, irrespective of whether it is conducted or it is organised by the Government of India or the Government of State or is authorized by the State or is conducted by an agency or instrumentality of State Government or a Central Government or any private player, is 'betting and gambling', the State Legislatures have the power to tax lotteries under Entry 62 of List II. This is because the taxation contemplated under the said Entry is on 'betting and gambling' activities which also includes lotteries, irrespective of the entity conducting the same. Hence, the legislations impugned are valid as the Karnataka and Kerala State Legislatures possessed legislative competence to enact such Acts.
- (vi) Thus, the scope and ambit of lotteries organised by Government of India or Government of State under Entry 40 of List I is only in the realm of regulation of such lotteries. The said Entry does not take within its contours the power to impose taxation on lotteries conducted by the Government of India or the Government of State.
- (vii) We also hold that lottery schemes by the Government of other States are

organised/conducted in the State of Karnataka or Kerala and there are express provisions under the impugned Acts for registration of the agents or promoters of the Governments of respective States for conducting the lottery schemes in the State of Karnataka and the State of Kerala. This itself indicates sufficient territorial nexus between the respondents-States who are organising the lottery and the States of Karnataka and Kerala.

(viii) In view of the aforesaid conclusions, we find that Division Benches of the High Courts of Kerala and Karnataka were not right in holding that the respective State Legislatures had no legislative competence to impose tax on the lotteries conducted by other States in their State (in the State of Karnataka and Kerala respectively).

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