



GAHC010002882020

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/80/2020

FUTURE GAMING AND HOTEL SERVICES PVT. LTD.
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING
ITS REGISTERED OFFICE AT NO.54, G.N. MILLS POST, METTUTALAYAM
ROAD, COIMBOTORE - 641029, REPRESENTED BY ITS AUTHORISED
SIGNATORY SRI M. SAKTHIVEL

VERSUS

THE STATE OF ARUNACHAL PRADESH AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT OF
ARUNACHAL PRADESH, ITANAGAR.

2:THE COMMISSIONER AND SECRETARY
DEPARTMENT OF STATE LOTTERIES
GOVERNMENT OF ARUNACHAL PRADESH
ITANAGAR

3:DEPUTY SECRETARY
DEPARTMENT OF STATE LOTTERIES
GOVERNMENT OF ARUNACHAL PRADESH
ITANAGAR

4:M/S SUMMIT ONLINE TRADE SOLUTIONS PVT. LTD.
A COMPANY REGISTERED AND INCORPORATED UNDER THE COMPANIES
ACT
1956 (AS AMENDED THROUGH THE COMPANIES ACT
2013) AND HAVING ITS OFFICE AT 7
RAYALA TOWERS
GR. FLOOR
781785 (NEW NO.158)
ANNA SALAI
CHENNAI - 600002 AND LOCAL OFFICE AT B S HOUSE



MLA COTTAGE
ESS SECTOR
ITANAGAR - 79111

Advocate for the Petitioner : K N CHOWDHURY, SR.ADV.

Advocate for the Respondent : GA, AP

Linked Case : WP(C)/95/2020

FUTURE GAMING AND HOTEL SERVICES PVT. LTD.
A COMPANY INCORPORATED UNDER THE COMPANIES ACT
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REPRESENTED BY ITS AUTHORISED SIGNATORY SRI M. SAKTHIVEL. MOB
9774022758

VERSUS

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ITANAGAR.

2:THE COMMISSIONER AND SECRETARY
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Advocate for : K N CHOUDHURY



SR. ADV.
Advocate for : GA
AP appearing for THE STATE OF ARUNACHAL PRADESH AND 2 ORS

BEFORE
THE HON'BLE MR JUSTICE PRASANTA KUMAR DEKA

For the Petitioner : Mr. K N Choudhury, Sr. Advocate
Mr. RM Deka, Advocate.

For the respondents : Mr. S Dutta, Advocate
Mr. BD Goswami, Additional Advocate General, AP
Mr. Chandran, GA, AP.

Date of hearing : 06.08.2020
Date of Judgment/ Order : 17.02.2021

JUDGMENT & ORDER (CAV)

Heard Mr. K N Choudhury, learned senior counsel assisted by Mr. R M Deka, the learned counsel for the petitioner. Also heard Mr. S Dutta, the learned counsel for the respondent No. 3/4 and Mr. B D Goswami, the learned Additional Advocate General, Arunachal Pradesh assisted by Mr. Chandran, the learned Government counsel, Arunachal Pradesh. The respondent No. 3 in WP(C) 95/2020 [WP(C) 446(AP)/2018] is impleaded as respondent No. 4 in WP(C) 80/2018 [WP(C) 469(AP)/2018] who is represented by Mr. S Dutta, the learned counsel in both the writ petitions.

2. The Government of Arunachal Pradesh issued Request for Proposal (RFP) on 01.11.2013 from parties interested to be selected as Distributor or Selling Agents for Arunachal Pradesh State Lottery tickets through conventional paper and online system. The RFP was for three sets of weekly lottery schemes and Bumper lottery (each set comprising of 56 weekly lottery schemes i.e. 8 draws daily and 2 Bumper draws in a year. The writ petitioner submitted proposal for 1 (one) set of conventional paper lottery and the respondent No. 3 submitted proposal for 2 (two) sets of online lottery.

3. Petitioner was appointed on 23.06.2014 as the Distributor to market Arunachal

Pradesh Paper Lottery i.e. 1 (one) set of weekly lottery scheme consisting of 56 weekly lottery draws i.e. 8 draws daily and 2 Bumper draws in a year.

4. The respondent No. 3/4 was appointed on 23.06.2014 as the Distributor for 2 (two) sets of weekly lottery schemes consisting 16 online draws per day. Each set consisting of 56 weekly lottery draws i.e. 8 draws daily and 2 Bumper draws a year.

5. On 27.07.2015 in terms of the offer and acceptance, an Agreement was executed between the Secretary, Department of State Lottery and the writ petitioner. Similar Agreements were also executed with the respondent No. 3/4. For each set of lottery schemes separate Agreements were executed. The petitioner executed one agreement in respect of the distributorship of conventional paper lottery. The respondent No. 3/4 executed two separate agreements each indicating the distributorship of online lottery for 1 (one) set of the said scheme. For each set of lottery be it conventional paper lottery or online lottery the distributorship was indicated as sole distributorship.

6. The Government of Arunachal Pradesh on 27.08.2018 constituted a committee to examine various complains it received in respect of lottery operation of the distributors.

7. The respondent No. 3 submitted a representation to the respondent authorities requesting to allow it to sell/ market paper lottery alongwith online lotteries including in the State of West Bengal and Kerala. The said representation was made on 29.08.2018 by the respondent No. 3/4 addressed to the Hon'ble Chief Minister, Arunachal Pradesh. It was stated in the representation that owing to imposition of GST on sale of lottery tickets on MRP the sale had gone down. Further the Government of West Bengal and Kerala banned sale of online lottery tickets in the respective States. This resulted in a difficult situation to the respondent No. 3/4 in marketing and selling online lotteries. The petitioner who is marketing only 1 or 2 draws of paper lotteries rest of the draws remain idle. Accordingly, respondent No. 3/4 made the request as aforesaid.

8. The Deputy Secretary, Department of State Lotteries, Arunachal Pradesh vide letter No. Lot-338/2018/259 dated 12.09.2018 approved the proposal of respondent No. 3/4 to market the paper lottery scheme within the total 16 (sixteen) number of draws as per the agreements dated 27.07.2015 for the remaining period i.e. up to 26.07.2020.

9. The petitioner on 13.09.2018 filed WP(C) 446 (AP)/2018 [renumbered as WP(C) 95/2020] alleging that the petitioner came to learn that the respondent authorities were proceeding with undue haste for accepting the prayer made by the respondent No. 3/ 4 for conversion of its distributorship from online lottery scheme to conventional paper lottery scheme. Terming the said conversion as illegal and arbitrary at the behest of the Hon'ble Chief Minister the petitioner sought for interference by this court against the action of the respondent authorities. This court vide order dated 14.09.2018 was pleased to issue notice granting order of status quo to be maintained by the respondents. At the time of filing the said WP(C) 446 (AP)/2018 the petitioner was unaware of the approval letter dated 12.09.2018 of the Deputy Secretary, Department of Lottery, Govt. of AP.

10. The petitioner having received the document i.e. the letter of approval dated 12.09.2018 under the provisions of the RTI Act, 2005 filed a fresh writ petition, WP(C) 469(AP)/2018 [renumbered as WP(C) 80/2020] on 24.09.2018 challenging the approval vide letter dated 12.09.2018.

11. Mr. Choudhury, the learned senior counsel assailed the action of the respondent State and its officials who as per him violated Article 14 of the Constitution of India as consideration and acceptance of the representation of the respondent No. 3 /4 dated 29.08.2018 amounted to grant of fresh contract for operating 2 (two) sets of paper lottery. The said consideration deprived other prospective parties including the petitioner from the benefit of marketing the paper lottery scheme.

12. In the Agreement dated 27.07.2015 between the State authority and the respondent No. 3 /4 clauses 5.1 and 5.5 are subjected to the Lotteries (Regulation) Rules, 2010 (hereinafter referred as Rules 2010) and the same cannot be construed to empower the State authority to appoint a Distributor for paper lottery in violation of Article 14 of the Constitution of India. Clause 5.5 is required to be considered in the context of clauses 21.2 and 21.3 of the Agreement dated 27.07.2015 and as clause 5.5. is subject to Rule 3 of the Rules 2010, appointment of fresh Distributor for 2 sets of paper lottery required calling of a fresh tender giving a chance for participation of eligible bidders.

13. Mr. Choudhury submitted that the representation dated 29.08.2018 of the respondent

No. 3 /4 to the Hon'ble Chief Minister, Arunachal Pradesh amounted to a notice within the meaning of clause 21.3 of the Agreement dated 27.07.2015. So the respondent State was bound to invoke clause 21.5 of the Agreement and appoint another Sole Distributor on the same terms and condition without changing the scheme from online lottery to paper lottery and it was bound to issue a fresh RFP for the 16 draws of online lottery in order to maintain transparency in the appointment procedure.

14. Mr. Choudhury also urged that the noting of the Hon'ble Chief Minister on the representation of the respondent No. 3 /4 dated 29.08.2018 to the extent "Please examine and process" was itself sufficient while addressing the representation to the Secretary of the State Department of Lottery to hold that the Secretary was directed to accept the prayer made by the respondent No. 3/4. Mr. Choudhury referring to the Rule 3 (13) of Rules 2010 submitted that the Hon'ble Chief Minister had no role to play in making such decision in organizing the state lottery inasmuch as it is the "Designated Authority" i.e. an officer not below the rank of Secretary to the Government who is authorized to take decision. But in the present case the said Designated Authority had abdicated its power in favour of the Hon'ble Chief Minister. Thus there was violation of the Rule 3 (13) of the Rules 2010 while issuing the impugned order dated 12.09.2018. In support Mr. Choudhury relied on ***Purtabpore Co. Ltd vs Cane Commissioner Of Bihar & Ors reported in (1969) 1 SCC 308***. Further he relied the statement made in the affidavit in opposition of respondent No. 2.

15. It is further submitted by Mr. Choudhury that as per RFP the process for selection of Distributor and selling Agent of paper lottery and online lottery are different and distinct. Respondent No. 3/ 4 was selected specifically for online lottery and he could not be permitted to sell paper lottery. The same would curtail the exclusive right of sale of paper lottery of the petitioner which the respondent State promised to maintain once the stipulation in the Agreement dated 27.07.2015 executed by the Government of Arunachal Pradesh and the petitioner is taken into consideration. The impugned decision was hit by the principles of promissory estoppel and also Section 23 of the Contract Act, 1872. Mr. Choudhury in support of this contention relied on ***All Kerala Online Lottery Dealers Association vs. State of Kerala and Others reported in (2016) 2 SCC 161*** in order to show that online and paper lottery are two different classes of lottery.

16. Mr. S Dutta, learned counsel appearing for the respondent No. 3 /4 submitted that Entry 40 to the Seventh Schedule of the Constitution of India is the source which authorised Union or State Government to organize lottery. Online and paper lottery are basically two forms of lottery, the fundamental difference being in generating the ticket for sale at the point of sale. As per Rule 3 of the Lotteries (Regulation) Rules 2010 Government can organize lottery in either of the forms or both. But only restriction as per Rule 3 (6) of the Rules 2010 the maximum number of draws cannot exceed 24 draws per day. Referring Arunachal Pradesh Lotteries (Regulation) Rules 2013 (hereinafter referred as AP Rules 2013), Mr. Dutta submitted that Rules 2 (VIII) and 2 (XIX) define the term "Lottery" and "Online Lottery". "Lottery" basically meant a scheme of winning prizes by lot or chance. It is the scheme which the State sells. The schemes include both paper and online lottery formats. The State has the authority to choose a particular format. Clauses 5.1, 5.5 and 20 of the Agreement dated 27.07.2015 entered into between the respondent No. 3/ 4 and the Government of Arunachal Pradesh permitted the Government to change the scheme during the subsistence of the agreement. Mr. Dutta submitted that the decision of the Apex Court in ***All Kerala Online Lottery Dealers Association vs. State of Kerala and Others reported in (2016) 2 SCC 161 (supra)*** cannot be applied in the present case as the Apex Court did not consider the aspect of AP Rules 2013.

17. Clause 3 (d) of the Agreement dated 27.07.2015 stipulates that the petitioner was appointed as the Sole Distributor for 8 numbers of draws daily under paper weekly lottery schemes and the petitioner could not claim his exclusive right to sale paper lottery scheme beyond the 8 number of draws. The Agreement dated 27.07.2015 does not disentitle the respondent No. 3 /4 to sell paper lottery schemes within the 16 draws of online lottery allotted to it. As hereinabove stated the Government is authorized to change from one scheme of lottery to another one as stipulated in the Agreements keeping in view the changed market conditions. According to him there was no illegality in the impugned action of the Government.

18. Mr. Dutta referring to the submission of Mr. Choudhury that the Government ought to have invoked the termination Clause 21 of the Agreement, he submitted that the representation dated 19.08.2018 could not be held to be an act of surrender of the

distributorship of online lottery. It merely indicated decline of sale volume of online lottery tickets for reasons like imposition of GST on the MRP of lottery tickets by the Government. The act of termination of distributorship being governed by the stipulations in the Agreement and the petitioner being the third party stranger to the said Agreement could not dictate terms to the parties to the Agreement having privity between the Government and the respondent No. 3/4.

19. Mr. Dutta in response to the contention of Mr. Choudhury that the noting on the representation of the respondent No. 3/4 was sufficient to hold that the Secretary of the State Department of Lottery was directed to accept the prayer of respondent No. 3/4, argued that such an endorsement cannot be understood to be a direction. In fact as per his contention it was endorsed with an intent to bring the representation to a logical end. Rule 3(13) of the Rules 2010 comes at the stage of organizing lottery and the said Rule makes the Designated Officer who is not below the rank of Secretary responsible for organizing lottery. A direction even if assumed to be as claimed by Mr. Choudhury, the same would not violate Rule 3 (13) as the Chief Minister who holds the Finance portfolio is a person not below the rank of Secretary. The representation of respondent No. 3/4, as asserted by Mr. Dutta was endorsed to the Departmental Secretary for his decision and the Chief Minister no way interfered in the decision making process. Accordingly, the projection of the petitioner was liable to be rejected.

20. The case of Cane Commissioner reported in **(1969) 1 SCC 308 (supra)** arose out of the UP Sugarcane (Regulation of Supply and Purchase) Act, 1953 wherein the Cane Commissioner enjoys a quasi judicial authority and bound to discharge quasi judicial function as a member of the Sugarcane Board. Unlike the Cane Commissioner, the Designated Authority under Rule 3 (13) of Rules 2010 does not enjoy any quasi judicial power and the ratio of the said decision is not applicable in the present factual matrix. There was no abdication of power or authority of the Secretary also in the present case.

21. The respondent No. 3/4 did not surrender the online lottery draws. The representation of respondent No. 3/4 merely sought for conversion of the schemes to paper lotteries as the sale of tickets in the States of West Bengal and Kerala of online lotteries were banned. Petitioner had no business in those two States. The submission of Mr. Choudhury that the

respondent State in its affidavit at para 15 admitted that the letter dated 29.08.2018 was processed by the State lottery department as requested by higher authorities cannot be understood to conclude that the word 'process' would mean granting the prayer of respondent No. 3/4.

22. Mr. Dutta objected to the submission of Mr. Choudhury that the respondent State is estopped by the promise made to the petitioner that it would remain the sole distributor of paper lottery. The impugned order in no manner disturbed the operation of 8 draws allotted to the petitioner. Further, the order was not allowed to operate and the question of consequential loss to the petitioner does not arise. Similarly, the learned counsel of respondent No. 3/4 refuted the plea of Section 23 of the Contract Act, 1872 that the consideration of the Agreement allowing the respondent No. 3/4 to permit conversion is itself forbidden by law and if permitted would invoke injury to the property of the petitioner.

23. Mr. Dutta urged that both the writ petitions are not maintainable. In support of his contention the learned counsel referred Rules 10 and 12 of the AP Rules 2013 and leaving aside the said two provisions it is also urged that the Agreement dated 27.07.2015 itself contains an arbitration clause 22. There being an alternative remedy agreed to by the parties the writ petitions are not maintainable.

24. Mr. Dutta further urged that this court as the writ court can at best carry out a judicial review in the decision making process. But if the petitioner wanted to enforce any terms of the contract executed on 27.07.2015 then the remedy lies in the civil court but not under the public law. The changes in the scheme of the lottery by the respondent State is very much within the scope of the Agreement. Even if it is assumed that the State could either cancel the Distributorship or simply change the scheme of the lottery within the scope of the Agreement and the State had invoked its authority in anyone of the options then also the changes were done without affecting the petitioner so far its allotted 8 draws of paper lottery are concerned and the writ court has no power to interfere in such action. In support of such contention Mr. Dutta relied in ***Joshi Technologies International INC vs. Union of India and Others reported in (2015) 7 SCC 728, Sri Ram Builders vs. State of Madhya Pradesh reported in (2014) 14 SCC 102 and Kisan Sahkari Chini Mills Limited and Others vs. Vardan Linkers and Others reported in (2008) 12 SCC 500***. Accordingly as

per Mr. Dutta the writ petitions are liable to be dismissed.

25. Mr. Goswami, the learned Additional Advocate General, Arunachal Pradesh fully supported the act of consideration of the representation of respondent No. 3/4 converting the scheme for some draws from online to paper lottery and that too within the allotted 16 draws. The Agreements dated 27.07.2015 authorises the Government to frame different lottery schemes under clauses 5.1, 5.5, and 20 time to time and on request made by the appointed distributor considering the changed market condition. The representation of respondent No. 3/4 indicated the changed market condition and as such the Government after consideration issued the impugned order.

26. The petitioner was appointed as the sole distributor of 8 number of daily draws of paper lottery. Clause 3 of the Agreement dated 27.07.2015 specifically stipulated that the petitioner is the sole distributor to the extent of 8 draws of paper lottery and as such the petitioner cannot object the conversion of 16 online lottery scheme to paper lottery inasmuch as the agreed 8 draws of paper lottery is intact. Another consideration for such conversion as per Mr. Goswami was that the petitioner was conducting only 2 draws per day out of 8 draws allotted to it and also selling tickets marginally in the State of Maharashtra and Punjab. The petitioner was not making any effort to market paper lottery of Arunachal Pradesh in the State of West Bengal but promoting lotteries of other States like Sikkim, Nagaland etc in West Bengal.

27. The representation of respondent No. 3/4 indicated decline in sales of online lottery tickets because of various facts as such it requested the Government to change the lottery scheme from online to paper one. That does not mean surrender of the distributorship requiring the Government to invoke Clause 21 of the Agreements. Moreover, the petitioner is a stranger to such Agreement dated 27.07.2015 and cannot claim any privy therein. The question of rescission of the contract by the Government does not arise nor issuance of fresh RFP for the 16 number of draws inasmuch as the representation dated 29.08.2018 of respondent No. 3/4 cannot be termed to be a notice under Clause 21.3 of the Agreement dated 27.07.2015. Accordingly, as per Mr. Goswami the claim of the petitioner is neither consistent with the scheme of the Lotteries (Regulation) Act, 1998 nor Article 14 of the Constitution of India.

28. Defending the action of forwarding the representation dated 29.08.2018 by the Chief Minister to the Secretary of the Department of Lottery, Mr. Goswami submits that the Chief Minister being the Finance Minister and Minister-in-Charge, State Lottery rightly did so. The subsequent conversion of the lottery schemes by the concerned authority within the Rules 2010 was proper inasmuch as the same was within 16 numbers of draws as per the Agreement. Referring to the dictionary meaning of the word 'Examine', 'Process' as per Marriam Website Dictionary, Mr. Goswami submitted that the noting 'please examine and process' made by the Chief Minister only goes to show thereby asking the Designated Authority for its own examination and apply its discretion accordingly. The final decision on the representation dated 29.08.2018 was taken by Designated Authority and there was no abdication of the power by Designated Authority. For the said reason the ratio of ***Purtabpore Co. Ltd. Vs Cane Commissioner of Bihar reported (1969) 1 SCC 308, Anirudhasinghi Karansinghi Jadeja & Ors Vs State of Gujrat reported in (1995) 5 SCC and Bahadursinh Lakhanbhai Gohil Vs Jagddishbhai M Kamalia reported in (2004) 2 SCC 65*** are not applicable.

29. Mr. Goswami also raised the maintainability issue of the writ petition on similar grounds those raised by Mr. Dutta, the learned counsel for respondent No. 3/4. There was no violation of Section 23 of the Indian Contract Act nor hit by principles of promissory estoppels.

30. I have considered the submissions of the learned counsel. The State of Arunachal Pradesh through the department of State Lottery vide RFP REF F/No. Lot-163/2013 requested for proposal (RFP) for selection of Distributor and / or Selling Agents for marketing of conventional paper and online lottery of the State of Arunachal Pradesh to be governed by relevant provisions of the Arunachal Pradesh Lotteries (Regulation) Rules 2013. As per Clause 1.1 (RFP Notice) Sub Clause (v) the RFP was for three sets of weekly lottery schemes and Bumper lottery each set comprising of 56 weekly lottery schemes i.e. 8 draws daily and 2 Bumper draws in a year. The tenure of the appointment/ agreement was for five years in the initial stage or as determined by the Government of Arunachal Pradesh from time to time.

31. The petitioner was selected as the sole distributor of 1 (one) set of paper lottery and respondent No. 3/4 was selected as sole distributor for two sets of online lottery. The terms and conditions binding the petitioner and respondent No. 3/4 as the respective distributor/

selling agents are stipulated in the respective agreements all dated 27.07.2015 executed by the petitioner, respondent No. 3/4 and the Secretary (State Lottery), State of Arunachal Pradesh. The relevant clauses stipulated in the said agreements having identical terms and conditions are reproduced hereinbelow.

“1. The Agreement will come into force with effect from the date of first draw of lottery scheme for a period of 5(five) years.

5. Framing of schemes:

5.1 Subject to sub-rules (2), (3), (4), (6), (7), (8) and (9) of Rules 3 of the Central Lotteries (Regulation) Rules of 2010 and the relevant provisions of the Arunachal Pradesh Lotteries (Regulation) Rules of 2013, the State Government may frame different lottery schemes which it may like to introduce from time to time. The State Government may consult the Sole Distributor while framing the various lottery schemes. The lottery schemes can be approved/ notified by the Secretary of the Arunachal Pradesh State Lotteries. All the lottery schemes shall be as per the market conditions.

5.5 Subject to the relevant provision as contained in sub-rules (2), (3) and (4) of the Central Lotteries (Regulation) Rules 2010 read with relevant provisions of Lotteries (Regulation) Rules 2013, the Government, on a request made by the Sole Distributor in writing may change the lottery schemes keeping in view the changed market conditions.

21. Termination:

21.2 The Government reserves the right to terminate the Agreement by giving 60 (sixty) days notice in writing to the Sole Distributor for any clear or proven failure of performance or violation or breach of any of the terms and conditions of the Agreement.

21.3 In case the Sole Distributor desires to stop the marketing of tickets on his own will, he shall have to give 60 (sixty) days notice in writing to the Department of State Lottery. In case the Sole Distributor fails to give the prior notice of 60 (sixty) days he shall have to compensate the Government for the loss of revenue which it would have earned during the period of 60 (sixty) days as per rates prevailing at the time of stoppage of sales, and the amount shall be recovered from the Bank Guarantee or any other valuable security as submitted by the company to the State Government.

21.4 Notwithstanding the above clauses, the Government reserves the right to rescind the Agreement with the Sole Distributor, after clear fifteen days notice in the event of anyone of the following:

- (a) Fraudulent conduct in sale of lottery tickets by the Sole Distributor;*
- (b) Any act of misconduct or malfeasance on the part of Sole Distributor;*
- (c) Erratic running of lottery without any sufficient causes;*

21.5 In such cases, the Government shall be at liberty to appoint another Sole Distributor of its choice on same terms and conditions;"

32. The aforesaid terms are stipulated in the respective agreements signed by the petitioner and respondent No. 3/4 with the Government. Thus the petitioner is having his jural relationship as the sole Distributor in respect of conventional paper lottery on the strength of the agreement he executed with the State of Arunachal Pradesh and the respondent No. 3/ 4 on the strength of the other two agreements for online lottery.

33. The petitioner offered the highest offer of Rs. 4,15,54,000/- for one set per annum and the respondent No. 3/4 offered Rs. 3,78,59,200/- per set/ per annum. The offer of the petitioner was accepted by the respondent No. 2, the Secretary, Department of State Lottery. In response to the acceptance letter dated 23.06.2014, the petitioner accepted the offer letter vide letter dated 23.06.2014. Similarly, the respondent No. 3/4 accepted the offer letter of the respondent No. 2 at the rate of Rs. 4,15,54,000/- per set/ per annum. The respondent No. 2 entered into the contract agreements of the distributorship with the petitioner and respondent No. 3/4 on 27.07.2015 wherein the aforesaid stipulations alongwith other stipulations were made as agreed by the parties.

34. The respondent No. 3/4 vide its representation dated 29.08.2018 addressed to the Hon'ble Chief Minister, Govt. of Arunachal Pradesh requested to allow it to market all kinds of lottery tickets of Arunachal Pradesh under the terms of the existing agreements facilitating it to market paper lotteries of Government of Arunachal Pradesh. The Hon'ble Chief Minister forwarded the said letter to the respondent No. 2 with the noting "please examine & process". Vide the impugned order dated 12.09.2018 issued by the respondent No. 2 the said proposal was approved within the total 16 nos. of draws (2 sets of online lotteries) as per the agreement executed on 27.07.2015 for the remaining period.

35. The Request for Proposal (RFP) was for selection of distributor or selling agent for marketing of conventional paper and online lottery of the respondent State. The RFP was for three sets of weekly lottery schemes and Bumper lottery. Each set comprising of 56 weekly

lottery scheme i.e. 8 (eight) draws daily and 2 (two) Bumper draws in a year. The petitioner submitted its proposal in respect of 1 (one) set of weekly lottery scheme for conventional paper lottery. The respondent No. 3/4 proposed for the remaining two sets of weekly lottery for marketing online lottery. The petitioner and the respondent No. 3/ 4 made their respective definite proposal in respect of the schemes of the lottery.

36. The said proposals were accepted by the State respondents and communicated to the petitioner and respondent No. 3/4 whereafter the contracts with petitioner and respondent No. 3/4 were completed. The respondent No. 2 executed respective agreements with the petitioner as the sole distributor in respect of 1 (one) set of paper lottery and the respondent No. 3/4 in respect of 2 (two) sets of online lottery wherein various terms and conditions of the contracts were stipulated.

37. Mr. Choudhury, the learned Senior counsel for the petitioner in his reply against the submission of the learned counsel for respondents wanted to project that Clause 5.1 and 5.5 in Agreement dated 27.07.2015 are subjected to sub-rules (2), (3), (4), (6), (7), (8) and (9) of Rule 3 of the Lotteries (Regulation) Rules 2010 under the Lotteries (Regulations) Act, 1998 which was enacted in order to regulate the lotteries with the concept called the State Organised Lottery envisaging a transparent process for appointment of Distributor consistent with the mandate of Article 14 of the Constitution of India. The manner in which the respondent No. 3/4 was allowed to operate conventional paper lottery from the online lottery is not consistent with the scheme of the Act, 1998 which seeks to afford a level playing field to all the prospective bidders. Once the respondent No. 3/4 desired to stop marketing of the online lottery tickets on its own will the State was obliged to terminate the contract giving opportunity to all eligible bidders to bid for two sets of online weekly lotteries scheme.

38. The RFP on its scrutiny by me was in compliance of Rule 9 (6) of the Lotteries (Regulation) Rules, 2010 i.e. from all lottery schemes put together it was 24 draws per day, there being 3 (three) sets of lotteries. The option was given to the proposers so far schemes were concerned i.e. conventional paper lotteries or online lotteries. The proposers were also free to opt for any number of set of lotteries out of 3 (three) sets of lotteries. The petitioner confined its proposal to 1 (one) set of conventional paper lottery scheme and the respondent

No. 3/4 confined itself to 2 (two) sets of online lottery scheme. The respondent State through respondent No. 2, the Secretary of the State Lottery Department accepted the schemes as proposed by the petitioner and the respondent No. 3/4 i.e. 1 (one) set of paper lottery and 2 (two) sets of online lottery respectively. On the basis of the option of the petitioner and the respondent No. 3/4, they were appointed as the sole distributor in respect of the schemes opted as apparent from the Agreement dated 27.07.2015. All the Agreements stipulated identical stipulations including the above referred Clauses 5.1 and 5.5. The petitioner as the sole Distributor of conventional paper lottery accepted the said Clauses 5.1 and 5.5 wherein the petitioner agreed that the Government on a request made by the Sole Distributor in writing may change the lottery schemes keeping in view the changed market condition. The aforesaid submission of Mr. Choudhury cannot be accepted inasmuch as the petitioner opted for only 1 (one) set of paper lottery when liberty was granted to opt for any schemes and number of sets out of the total 3 (three) sets in the RFP and thereafter he agreed for the clause 5.5 in the Agreement referred above. The petitioner is estopped to raise the said plea.

39. The respondent No. 3/4 entered into 2 (two) separate agreements on 27.07.2015 with the respondent State i.e. the respondent No. 2, each Agreement covering one set of online lottery and the respondent No. 3/4 is the sole distributor of each set of online lotteries. Due to changed market condition the respondent No. 3/4 through its representation dated 29.08.2018 sought the permission to allow it to market all kinds of lottery tickets including paper lottery of Arunachal Pradesh Lottery within the terms of the Agreements dated 27.07.2015. The Government as per clause 5.5 of the Agreement is empowered to change the lottery scheme which it accordingly did vide the impugned order dated 12.09.2018.

40. Mr. Choudhury wanted to project that clauses 5.1 and 5.5 of the Agreements permit the change in the scheme of lottery but not the class of lottery. The online lottery as held by the Apex Court in All Kerala Online Lottery Dealers Association Vs. State of Kerala and ors reported in (2016) 2 SCC 161 falls in a separate class of lottery as per the Lotteries (Regulation) Rules 2010 which defines 'online lottery' under Rule 2 (1)(c) of the Rules 2010. In view of the same there is no applicability of the clauses 5.1 and 5.5 of the Agreements as the conversion of the "online" lottery to "paper lottery" does not fall within the meaning of

the term "changes in scheme" and accordingly the conversion is beyond the scope of the Agreements and the respondent No. 2 acted in violation of Article 14 of the Constitution of India.

41. The said submission of Mr. Choudhury was objected by both the learned counsel for the respondents. Mr. Dutta submitted that the said ratio in **All Kerala Online Dealers Association (Supra)** cannot be applied in the present case as the Arunachal Pradesh Lotteries (Regulation) Rules 2013 was not considered inasmuch as online lottery is defined in the AP Rules 2013. Reiterating his argument as hereinabove stated Mr. Dutta asserted that the conversion is well covered by the stipulation in clauses 5.1 and 5.5 of the Agreements.

42. I have considered the submission of the learned counsel. The Apex court in **All Kerala Online Lottery Dealers Association (Supra)** decided the authority of the State of Kerala in prohibiting the sale of computerized and online lottery tickets organized or promoted by other States. Upon consideration of the Rule 2(1)(e) of the Lotteries (Regulation) Rules 2010 it held that 'online lottery' is treated as a separate lottery from the 'paper lottery' and it is a class in itself. Mr. Dutta wanted to project that the said ratio is not applicable owing to the Arunachal Pradesh Lotteries (Regulation) Rules 2013 which defines "online lottery" and "lottery" in Rules 2 (xix) and 2 (viii) respectively. One perusal of the definition of "online lottery" in both the Rules I do not find any difference in the wordings and meaning thereof. The definition of "lottery" in the Arunachal Pradesh Lotteries (Regulation) Rules 2013 means a scheme in whatever form and by whatever name called for distribution of prize by lot or chance those persons participating in the chances of a prize by purchasing tickets. The said definition is similar to the one defining "lottery" in Section 2 (b) of the Lotteries (Regulation) Act, 1998. The Lotteries (Regulation) Rules 2010 and the Arunachal Pradesh Lotteries (Regulation) Rules 2013 are framed by the Central Government and the Arunachal Pradesh Government respectively exercising the powers conferred by the Lotteries (Regulation) Act, 1998. Thus in my considered view the ratio laid down by the Apex Court in All Kerala Online Lottery Dealers Association (Supra) that the "online lottery" is treated as a separate lottery from the paper lottery in Rules 2010 is applicable to the Arunachal Pradesh Lotteries (Regulation) Rules, 2013.

43. The contract of the distributorship/ selling agent is governed by the stipulations in the

Agreements dated 27.07.2015. Clause 3(e) defines "Rules" which includes the Lotteries (Regulation) Rules 2010 and the Arunachal Pradesh Lotteries (Regulation) Rules 2013. Clause 5.5 of the said Agreement empowers the Government, on a request made by the Sole Distributors in writing to change the lottery "schemes" keeping in view of the changed market conditions. The term "scheme" as defined in Rule 2 (xv) of the Arunachal Pradesh Lotteries (Regulation) Rules 2013 includes within its sweep "both paper and online" lotteries. In view of the said discussion I hold that the act of conversion of the online lottery to paper lottery falls within the act of changing the lottery scheme stipulated under clause 5.5 of the Agreements dated 27.07.2015 which empowers the Government to allow such changes. Accordingly such conversion is an act within the purview of the Agreement dated 27.07.2015 and the same cannot be held to be carried out in violation of Article 14 of the Constitution of India inasmuch as the said change is the part of the contract arising out of the stipulations in the Agreement dated 27.07.2015 executed between the respondent No. 3/4 and the respondent No. 2 who are privy to the said agreement and the petitioner being not a party to it has no right to circumvent such performance by the respondent No. 2.

44. The plea of violation of Article 14 of the Constitution of India ended when the process of selection on the basis of the RFP was over. After the Government entered into the Agreements with the respondent No. 3/4 the Government is bound to act within the terms of the Agreements. It would be appreciate to extract in relevant ratio laid down by the Hon'ble Apex Court in Radhakrishna Agarwal & Ors. Vs State of Bihar reported in AIR 1977 SC 1496:

"10. It is thus clear that the Erusian Equipment & Chemicals Ltd's case (AIR 1975 SC 266) (Supra) involved discrimination at the very threshold or at the time of entry into the field of consideration of persons with whom the Government could contract at all. At this stage, no doubt, the State Act purely in its executive capacity and is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers. But, after the State or its agents have entered in to the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. no question arises of violation of Art. 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or

obligation on the State in the contractual field which is apart from contract.”

45. Clause 21.2 stipulates the right of the Government to terminate the Agreements which are admittedly executed between the Government on one part and the respondent No. 3/4 on the other. The representation dated 29.08.2018 clearly mentioned the market condition due to imposition of GST in sale of lottery tickets. Clause 5.5 of the Agreement dated 27.07.2015 authorises the Government on a request made by the Sole Distributor in writing to change the lottery scheme in view of changed market condition. As apparent from the representation it is due to the change in the market condition the respondent No. 3/4 sought for the change in the schemes of distributorship but nowhere it is stated that due to such changes in the market condition the respondent No. 3/4 wanted to surrender the distributorship. So as per Clause 5.5, the Government has the authority to change the scheme of the already allotted 16 draws of online lottery. The said act of the Government is well within the agreed terms and condition of the Agreement to which the respondent No. 3/4 and Government are privy to each other. The petitioner being not a party to the said Agreements has no authority to dictate terms to the parties who are privy to the said Agreement.

46. The submission of Mr. Choudhury, the learned Senior counsel for the petitioner that the contents of the representation dated 29.08.2018 indicates clear and proven failure of performance and as such it is a case wherein the agreements in favour of respondent No. 3/4 are required to be terminated cannot be accepted. After termination the Government was bound to give equal opportunity to all eligible bidders to bid for 2 (two) sets of online weekly lotteries schemes, this submission also in my considered opinion cannot be accepted for the reasons stated above.

47. The respondent No. 3/4 submitted the representation dated 29.08.2018 to the Hon'ble Chief Minister, Arunachal Pradesh to permit the said respondent No. 3/4 to market all kind of lottery tickets of the State under the Agreements enabling it to market paper lottery tickets whereunder lotteries are allowed to be sold. The Hon'ble Chief Minister forwarded the representation to the Secretary, State Lottery Department (respondent No. 2) with an endorsement, "please examine and process". Mr. Choudhury referring Rule 3 (13) of the Lotteries (Regulation) Rules 2010 submitted that a designated authority not below the rank of

Secretary is named under the statute for the purpose of organizing lottery and the interference by the Chief Minister was uncalled for. Such interference amounted to abdication of the responsibility by the designated authority and passed the impugned order. Mr. Choudhury in support of his contention referred to the observation of the Privy Council in **Nazir Ahmed Vs. Emperor, AIR 1936 P.C. 253** that where a power is given to do a certain thing in a certain way, the thing must be done in that way. Mr. Choudhury relied Purtabpore Co. vs. Cane Commissioner of Bihar reported in 1969 (1) SCC 308 and submitted that the Cane Commissioner, who was entrusted with the statutory power under Clause 6(1) of the Sugar Cane (Control) Order 1966 could be exercised by him only. The power was exercised by the Chief Minister and as he was not an authority under Clause 6(1) the impugned orders were held to be ultra vires by the Apex Court. He also relied State of Punjab Vs. Hari Kishan Sarma, reported in AIR 1966 SC 1081 wherein it was held by the Apex Court that the State Government of Punjab was not justified in assuming jurisdiction which was conferred in the Licensing authority by Section 5 (1) and (2) of the Punjab Cinemas (Regulation) Act, 1952. Mr. Dutta and Mr. Goswami, the learned counsel for the respondents vehemently objected to the submission of Mr. Choudhury on the ground that the impugned order was issued by the respondent No. 2, the designated officer without any influence from the Hon'ble Chief Minister. Further, it is stated that the Chief Minister held the portfolio of the Finance Minister and Minister-in-charge, State Lottery he rightly did so by forwarding the representation to the respondent No. 2.

48. Mr. Goswami, the learned Additional Advocate General, Arunachal Pradesh produced the records of the file maintained while processing the impugned order after the representation dated 29.08.2018 of the respondent No. 3/4 was submitted. It is seen that the representation though dated 29.08.2018 but it was dispatched from the office of the Commissioner (State Lotteries) on 04.07.2018. The date in the body of the representation is hand written though the contents were computer typed. After the endorsement as hereinabove stated, the Hon'ble Chief Minister dispatched the same from the office of the Chief Minister on 04.09.2018. Thereafter, the file No. LOT 338/2018 was opened on 11.09.2018 referring the letter dated 29.08.2018 and on 12.09.2018, the Commissioner (State Lotteries) approved the approval of the representation of the respondent No. 3/4.

49. The representation, considering the dispatch from the office of the Commissioner (State Lottery), i.e. the designated authority under Rule 3 (13) of the Lottery (Regulation) Rules, 2010 on 04.07.2018 can be held that on receipt of the same by the designated authority send it to the Hon'ble Chief Minister, Arunachal Pradesh on 04.07.2018 and thereafter upon the recommendation of the Hon'ble Chief Minister, Arunachal Pradesh the file was processed and finally the respondent No. 2, the Commissioner of State Lottery, the designated authority took a decision that approval on the request of the respondent No. 3/4 can be granted by the Government. The fact that the said representation was dispatched from the office of the respondent No. 2 on 04.07.2018 gives an impression that only on the recommendation of the Hon'ble Chief Minister the file was opened and approval was granted by the respondent No. 2.

50. In ***Purtabpore Co. Vs. Cane Commissioner of Bihar (supra)*** there was a specific finding that the Chief Minister directed the Cane Commissioner to divide the reserved area into two portion and allot one portion to the 5th respondent. In pursuance of that direction the Cane Commissioner prepared two lists 'Ka' and 'Kha' and under the orders of the Chief Minister the villages contained in list 'Ka' were accorded to the appellant and list 'Kha' to the respondents. The Apex Court concluded that the Chief Minister influenced his opinion on the Cane Commissioner, enjoying the statutory power under clause 6(1) of the Sugar Cane (Order) 1966 which he alone could have exercised that power. While exercising that power the Cane Commissioner could not abdicate his responsibility in favour of anyone, not even in favour of the Chief Minister or the State Government. It was held that the power of the Cane Commissioner was exercised by the Chief Minister. As hereinabove referred both Mr. Dutta and Mr. Goswami supports the action of the Hon'ble Chief Minister stating that he being the Minister-in-charge of the State Lottery department he possessed the authority to direct to the designated authority to bring the representation to its logical conclusion.

51. I am unable to accept the said contention of the learned counsel of the respondents as it is observed that the representation was dispatched from the office of the Commissioner (State Lottery) on 04.07.2018 purportedly to the office of the Chief Minister and only on the endorsement by the Chief Minister the office of the respondent No. 2 proceeded. This goes to show that the impugned order was passed as per the direction of the Hon'ble Chief Minister.

52. In **Purtabpore Co. Vs Cane Commissioner of Bihar (Supra)** it was observed as follows:

“12. The executive officers entrusted with statutory directions may in some cases be obliged to take into account considerations of public policy and in some context the policy of a Minister of the Government as a whole when it is a relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given binding instruction by a superior.”

53. In **State of Punjab and another Vs. Hari Kishan Sharma reported in AIR 1966 SC 1081**, a Constitution Bench of the Apex Court while examining the justification in assuming the jurisdiction by the State of Punjab, the appellant No. 1 therein which was conferred on the licensing authority by Section 5(1) and 5(2) of the Punjab Cinemas (Regulation) Act, 1952 held as follows:

“13.....The legislature contemplates a licensing authority as distinct from the Government. It no doubt recognizes that the licensing authority has to act under the control of the Government but it is the licensing authority which has to act and not the Government itself. The result of the instruction issued by the appellant No. 1 is to change the statutory provision of S. 5(2) and obliterate the licensing authority from the Statute book altogether. That in our opinion, is not justified by the provision as to the control of Government prescribed by S.5(2). ”

54. In **Anirudhsinhji Karansinhji Jadeja v. State of Gujarat reported in (1995) 5 SCC 302** the DSP did not exercise the jurisdiction vested in him under Section 20-A(1) of TADA. He abdicated his jurisdiction and referred the matter to the Additional Chief Secretary, Home Department on 17.03.1995 requesting for permission to invoke the provisions of Section 3 and 5 of TADA. On 18.03.1995, the Additional Chief Secretary, Home Department gave sanction/ consent to apply provision of TADA. The Apex Court held that the case was of exercising power on the basis of external dictation though the dictation came on the prayer of the DSP, he did not exercise the jurisdiction vested in him by the Statute and did not grant approval of recording of information under TADA in exercise of his discretion.

55. In **Bahadursing Lakubhai Gohil Vs. Jagdishbhai M Kamalia reported in (2004) 2 SCC 65** the Apex Court held that if any decision is taken by a statutory authority at the behest or on the suggestion of a person who has no statutory role to play, the same

would be ultra vires.

56. From the aforesaid decisions it can be concluded that the law is settled that a statutory authority must act on its own and if any decision is taken by a statutory authority at the behest or on the suggestion of a person having no role as per the statute the decision would be ultra vires. Here in the case in hand from records more specifically in the affidavit-in-opposition of the respondent Nos. 1 and 2 in WP(C) 446 (AP)/2018/ 95 of 2020 it is specifically stated that letter dated 29.08.2018 was processed by the State Lottery department as requested by the higher authorities after due consideration and granted permission to the respondent No. 3 to sell the Arunachal Pradesh paper lottery scheme.

57. The respondent No. 2 is the statutory designated officer as per Rule 3 (13) of the Lotteries (Regulation) Rules 2010 and there is an admission that the representation was processed by the Lottery department as requested by the higher authorities, so the act of 'process' was initiated on the suggestion of the higher authority. The respondent No. 2 is the designated authority and as per Mr. Goswami the said designated authority independently exercised the discretionary power and as such there was full conformity with the Rule 3 (13) of the Lotteries (Regulation) Rules 2010. Further, he wanted to submit that the endorsement by the Hon'ble Chief Minister is nothing but a normal and routine exercise marking the concerned representation to the respondent No. 2. There is no dispute to the said submission that it is a routine procedure. But the initiation of the "process" was admittedly on the basis of the suggestion of the Hon'ble Chief Minister by the respondent No. 2. Under normal practice the said endorsement on the representation dated 29.08.2018 could have been held to be innocuous but for the admission in the affidavit in opposition I am constrained to hold that the representation was processed as per the suggestion of the higher authority. The volition for initiating the process was not on own accord of the respondent No. 2, who had abdicated his authority while considering the suggestion of the Hon'ble Chief Minister for initiating the "process" for consideration of the representation. The case at hand is squarely covered by the ratio held by the Apex Court in **Anirudhsingji Karansingji Jadeja (supra)** inasmuch as in the present case the discretion of the respondent No. 2 as apparent from the affidavit-in-opposition the initiation of the "process" of the representation was influenced by the suggestion of the higher authority and the same further gives an impression that the said

influence continued till the impugned order was passed. Accordingly I am constrained to hold that the impugned order is ultra vires because of the influence of the Hon'ble Chief Minister while passing the same.

58. The learned counsel for the respondents submitted that the writ petitions are not maintainable on the count that Rules 10 & 12 of the Arunachal Pradesh Lotteries (Regulation) Rules 2013 stipulates that in case of any difference or disputes between the Government and the sole distributor/ selling agents in respect of the state lottery, the same shall be referred to an arbitrator appointed by the Government whose decision shall be final and binding on both the parties. The Agreement dated 27.07.2015 contains an arbitration clause stipulated in clause 22. As there is an alternative remedy so the writ petitions are not maintainable. Mr. Choudhury on the other hand submitted that the bar of alternative remedy would not come in the way of entertaining the writ petitions inasmuch there are specific instances of violation of fundamental rights and natural justice. Moreover the impugned action was without jurisdiction. The pleadings in the writ petitions forming the cause of action clearly satisfies the conditions for maintainability of the writ petition. In support of the said contention Mr. Choudhury relies ***Whirpool Corporation versus Registrar of Trade Marks, Mumbai reported in (1998) 8 SCC 1.***

59. I have considered the submissions of the learned counsel. On perusal of the pleadings in the writ petitions the petitioner sought the relief for a writ of certiorari for setting aside/ quashing of the impugned action of allowing the respondent No. 3/4 to market and sell paper lotteries by converting some of the draws out of the 16 number of draws of online lotteries and a writ of mandamus to the respondents to cancel/ recall/ rescind and from acting upon the impugned action of allowing the respondent No. 3/4 to market and sell paper lotteries. The said reliefs are prayed for on the ground amongst others for violation of Article 14 of the Constitution of India, violation of principles of natural justice and the doctrine of promissory estoppel.

60. The Apex Court in ***First Income Tax Officer, Salem Vs Short Brothers (P) Ltd. Reported in AIR 1967 SC 81*** against a submission that the High Court in entertaining the petition in its extraordinary jurisdiction under Article 226 of Constitution of India by-passed the machinery of assessment and verification of order of assessment which is adequate and

efficacious, it was held as follows:

“(3).....The High Court has under Article 226 of the Constitution jurisdiction to issue to any person or authority within the territory in relation to which it exercises jurisdiction direction, orders, or writ in the nature amongst others, of mandamus, prohibition and certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose. It is true that normally the High Court will not entertain a petition in exercise of its jurisdiction under Article 226 of the Constitution when the party claiming relief has an alternative remedy which is adequate and efficacious. The question however, is one of discretion of the High Court and not of its jurisdiction, and if the High Court in exercise of their discretion thought that the case was one in which their jurisdiction may be permitted to be invoked, this court would normally not interfere with the exercise of that discretion.”

61. In ***Whirlpool Corporation Vs Registrar of Trade Marks reported in (1998) 8 SCC 1***, the Apex court held that the High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by the Supreme Court not to operate as a bar in at least three contingencies- (i) where the writ petition has been filed for the enforcement of any of the Fundamental Rights or (ii) where there has been a violation of the principle of natural justice or (iii) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

62. The writ petitions are filed mainly alleging violation of Article 14 of the Constitution of India and principle of natural justice. In order to examine the allegations under Article 226 of the Constitution, this court has the discretion to invoke the jurisdiction though it is the contention of the learned counsel for the respondents that the dispute if at all exists, the same is within the purview of the stipulations of the Agreements dated 27.07.2015 and as such covered by the arbitration clause. But as per my view the allegations in the writ petitions can very well be examined applying the discretion under Article 226 of the Constitution of India and to give a finding to that effect. Further, there are no factual controversies inasmuch as it is an admitted fact that the impugned order challenged in the writ petitions was admittedly issued by the respondent No. 2. It is the allegation that the impugned order dated

12.09.2018 was void ab initio as the designated authority abdicated its power in favour of the respondent State and the same was issued in violation of the Article 14 of the Constitution of India. In view of the aforesaid decisions of the Apex Court and the pleadings in the writ petition I applied the discretion for exercising the jurisdiction under Article 226 of the Constitution of India in order to examine the allegations in the writ petitions and though I have considered the arbitration clauses stipulated in the Arunachal Pradesh Lottery (Regulation) Rules 2013 and in the Agreements dated 27.07.2015 but I hold that the writ petitions are maintainable as the same fulfill the requirements stipulated by the Apex court referred above.

63. Mr. Choudhury, the learned Senior counsel for the petitioner submitted that the impugned order if allowed to remain in force would violate the doctrine of principle of promissory estoppel. The said submission is countered by the learned counsel for the respondents. Let me examine the submission of the learned counsel. Here the petitioner opted for one set of paper lottery scheme out of 3 (three) sets of lottery schemes in the RFP. The respondent No. 2 having found the petitioner eligible appointed it as the sole distributor/selling agent for marketing of lottery tickets of 1 (one) set of paper lottery scheme consisting of 8 draws daily and two bumper draws in a year. The impugned order dated 12.09.2018 gave approval of the Government of Arunachal Pradesh against the proposal to market the paper lottery schemes and the same would be confined within the 16 number of draws as per the existing agreement dated 27.07.2015 for remaining period of the contract.

64. The Apex court in ***Union of India Vs. Godfrey Philips India Ltd. reported in AIR 1986 SC 806*** held that the true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise intending to create a legal relations or affect a legal relationship to arise in future knowing that it would be acted upon by the other party to whom the promise is made, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it. It represents a principle invoked by equity to avoid injustice and though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of the doctrine is the interposition of equity in order to mitigate the rigour of strict law.

65. From the factual matrix the impugned order clearly mentioned that the approval was to



be confined within the 16 draws already allotted to the respondent No. 3/4. On the other the Government of Arunachal Pradesh made its promise that the petitioner was appointed the sole distributor in respect of 8 (eight) draws daily and 2 (two) Bumper draws yearly of paper lottery. The said promise remained unsettled and as such the principle of promissory estoppel is not applicable.

66. Thus it is held that the impugned order is ultra vires and void-ab-initio owing to abdication of the authority of the designated officer, respondent No. 2 in favour of the Government and accordingly the consideration of the supplementary agreement proposed in the impugned order is void ab initio and hit by Section 23 of the Contract Act, 1872.

67. In view of the aforesaid findings the impugned order dated 12.09.2018 passed by the respondent No. 2 is interfered and accordingly set aside and quashed. The writ petitions are allowed. Interim order passed stands vacated. No costs. Records be sent back.

JUDGE

Comparing Assistant