MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 15th December, 2011

G.S.R. 883(E).— In exercise of the powers conferred by Section 6 of the Lotteries (Regulation) Act, 1998 read with Rule 5 of the Lotteries (Regulation) Rules, 2010, the Central Government hereby issue the following Order on 15th December, 2011, as the date on which the provisions of the said Act and Rules shall come into force.

ORDER

Brief facts of the Case

1. Whereas, the Government of Kerala vide its letter No.17612/H1/10/TD dated 18.09.2010 alleged that the lotteries being conducted by the State of Sikkim through their distributors/sole selling agents are violative of the various provisions of the Lotteries (Regulation) Act, 1998 (hereinafter referred to as the Act) and the Lotteries (Regulation) Rules, 2010 (hereinafter referred to as the Rules) in as much as:

i) As per Rule 3(14) of the Rules, an Organising State shall not offer a prize on a lottery ticket on the basis of a single, double or triple digit in any form or combination but some of the lottery schemes run by the State Government of Sikkim violate this provision.

ii) As per Section-4(b) of the Act, the State Government shall print the lottery tickets bearing the imprint and logo of the State in such a manner that the authenticity of the lottery tickets is ensured. Furthermore, Rule-3(5) of the Rules state that the Paper lottery tickets and the stationery on which the Online lottery tickets are issued shall be printed by the organising State at a Government press or any other High Security press included in the panel of the Reserve Bank of India or the Indian Banks' Association, Mumbai. But, the lottery tickets being printed by the State Government of Sikkim violate the said provisions as the tickets are being printed in general presses.

69

2. Whereas the Principal Secretary (Taxes), Govt. of Kerala vide his letter No.9995/H1/10/TD dated 14.05.2010, informed the Director of Sikkim State Lotteries that they were violating the provisions of Rule 3(14) of the Rules by offering prizes for combinations of three digits and two digits. It was also alleged that the lotteries run by Sikkim were circumventing the provisions by prefixing 0 to 9/00 to 99 in their draw procedure, which was apparent from the results published in the newspapers.

3. Whereas, the Government of Kerala further stated that the draws of Sikkim lotteries were being conducted in violation of Rule-3(14) of the Rules, in as much as the publication of the results in newspapers revealed fixation of numbers from Monday to Sunday every week. The draws of Sikkim Lotteries have been basically in three digits and four digits (1 to 7) i.e., one digit for every day of the week is fixed to make this result as four digit result. The perusal of the results would show that the fourth number was being prefixed to show the result as four digit result.

4 Whereas, the Government of Kerala vide letter No.17612/H1/10/TD dated 18.09.2010 also alleged that the tickets published by the State Government of Sikkim have been violative of Section-4(b) of the Act and Rule-3(5) of the Rules, in as much as, the inquiry conducted by the Commercial Taxes Department of Kerala, established beyond doubt that the tickets were printed from M/s Mahalaxmi Offset Printers, Sivakasi which was neither a Government press nor High Security press included in the panel of the Reserve Bank of India or the Indian Banks' Association, Mumbai.

5. Whereas, it also appears that the lotteries run by the State Government of Sikkim contravene the provisions of Rule 3(14) of the Rules as the results being drawn have been of two digits/three digits only and the other number(s) are being pre-fixed to the same to make it appear as a four digit number. Rule 2(d) of the Rules clearly defines Draw as "a method by which the prize winning numbers are drawn for each lottery or lottery scheme by operating the draw machine or any other mechanical method based on random technology, which is also visibly transparent to the viewers". Therefore, while announcing any four digit prize number, all the four digits shall be drawn following the procedure in

Rule 2(d) and no number(s) can be pre-fixed or suffixed to make the prize number appear in four digits. The results of the lottery schemes of GOLD DEAR (Draw no. 283 on 28.4.2010), Sikkim Super Gold (Draw no. 214 on 28.4.2010), Sikkim Super CLASSIC (Draw no. 215 on 4.5.2010) and PEARL DEAR (Draw no. 284 on 4.5.2010) clearly reflected that only last two digits have been drawn and the rest of the two digits for all the ranks of prizes have been merely pre-fixed.

6. Therefore, a notice in terms of rule 5(4) of the Lotteries (Regulation) Rules, 2010 was issued to the Government of Sikkim by the Central Government on 7.12.2010 wherein they were called upon to show cause as to why an order under Section-6 of the Act read with Rule-5(4) of the Rules be not issued for the aforesaid violations of the provisions of the Act and the Rules. The Government of Sikkim was requested to submit a written reply as also to indicate whether or not they would like to be heard in person before a final decision is taken by the Central Government.

IndiaCode

Reply of the Government of Sikkim

7. The Government of Sikkim in reply to the said notice vide their letter dated 21.1.2011 stated that the Rules became operational in Sikkim from 23rd April 2010 onwards and not from 1st April 2010. Although the Rules were notified by MHA on 1st April 2010, the official letter issued by MHA on 1.04.2010 forwarding the said Notification was received by the State Government only on 6.04.2010. The Gazette copy of the Notification was sent by MHA on 8.04.2010 and this was received by the State Government only on 13.04.2010. In the interim period, the Sikkim High Court vide its Orders passed on 8.04.2010 stayed certain portions of the Rules. This stay was subsequently lifted by an Order of the Hon'ble Supreme Court passed on 21.04.2010, communication of which was received by the State Government on 22.04.2010. The State took immediate steps to comply with the Rules with effect from 23rd April 2010 onwards. Any technical or unintentional noncompliance of the 2010 Rules ought not to be taken cognizance of, as presently all their lotteries are being conducted in conformity with the Rules.

8. In their reply, Sikkim further submitted that In respect of paper lotteries, it is not offering any prize on single, double or triple digit or in combination thereof. The results declared by the State of Sikkim in the newspapers and forwarded with the notice clearly show that the prizes are

declared on at least four digits in respect of all their lotteries. The newly laid Rules do not prescribe the methodology for draws which resulted in many of the schemes of the State Government being misinterpreted and misunderstood. Certain schemes of the State were objected to and these were promptly revised. Therefore, in the initial months after the notification of the Rules, all States took time to adjust and to adapt their schemes to conform to the Rules. Since last week of August 2010 onwards the State does not have schemes under 00-99 format and the results are declared on random basis on 4 digits and above. They also submitted that the other States such as Maharashtra and Goa continued to market schemes in 00-99 format and continue to do so in similar formats till date. Furthermore, the State of Kerala itself continued to declare results on 2 and 3 digits right up to 28th April 2010. The State further submitted that it does not offer any prizes on the basis of single, double, triple digit.

9. The State of Sikkim also submitted that it has always insisted on having its tickets printed in high security press, although the Lottery (Regulation) Act, 1998 did not specify such a requirement. Unfortunately, there has been a lapse in respect of printing of tickets for some of the paper lottery draws held during the period 23rd April till August 2010. The State used only security presses for its printing jobs long before the Rules were notified. Mahalaxmi Printing Press in Sivakasi was one such press empanelled with Indian Banks' Association (IBA), as a high security press in the year 2003 and the said empanelment was renewed from time to time till March 2006. In view of the requirements imposed vide 2010 Rules, the said printing press had already applied for empanelment with IBA, but the said Association communicated its decision to decline empanelment in July 2010. When the State Government of Sikkim came to know about this aspect, it stopped getting its tickets printed from this printing press. The State submitted and admitted that there has been a lapse on its part in the printing of tickets for some of its lottery schemes. It stated that the extent of the lapse is in respect of a total of 65 draws out of a total of 1200 paper lottery draws held by it during the period 23rd April 2010 till 30th August 2010. It may be duly noted that the non conformity is to the extent of 65/1200 i.e. 5 (five) percent of the total draws during the said period. The State submitted that it never had any intention whatsoever, to take any action which was contrary to the Rules. The actions taken by it were not deliberate and were unintentional. In view of the above submissions, the State requested that the above unintentional

lapse may be condoned. The State has already taken remedial action and shall continue to adhere to the provisions of law in the conduct of its lotteries.

10. The State Govt. of Sikkim also submitted that after the enactment of the Lottery (Regulations) Rules, 2010 on 1.4.2010, the State of Kerala kept on announcing prizes on 2 digits in breach of Rule 3(14) of the said Rules of the Central Government. However, the State of Kerala with a malafide intent of seeking to keep the other State lotteries out of the State of Kerala filed the present complaint with the Central Government only to somehow make allegations against Sikkim lotteries and create a defence before the Courts that they have made complaints against Sikkim lotteries with the Central Government and therefore their lotteries ought not to be allowed to be sold in the State of Kerala. State of Sikkim also stated that their lotteries are being sold in all other States where lotteries sale is permitted without any issues or complaints but only the State of Kerala is seeking to make malafide complaints with a view to monopolize the State of Kerala market in exclusion to all other State lotteries. They further added that State of Kerala, in order to promote its own lotteries in the State of Kerala and to prevent the other States from selling their lottery tickets in that State, has been harassing and coercing Sikkim's lotteries, dealer/distributor network by lodging a series of FIRs on the basis of false complaints and is threatening to arrest Sikkim's dealer/distributor network. The ultimate aim of State of Kerala is to terrorize their distributor/ dealer network with criminal action in case they continue to associate with Sikkim lotteries in the State of Kerala. They further added that this is despite the instructions from the Hon'ble Supreme Court of India to the effect that the State Government of Kerala shall not take any action on the basis of FIRs registered by it.

11. The State Government of Sikkim submitted that it has and will continue to ensure compliance and adherence to the Lottery (Regulation) Act, 1998 and the Lottery (Regulation) Rules, 2010 and that any technical or unintentional non-compliance of the 2010 Rules ought not to be taken cognizance of and condoned as presently all its lotteries are being conducted in conformity to the 2010 Rules.

Personal hearing and Responses of the Govt. of Kerala

12. In order to meet the principles of natural justice, the reply sent by Govt. Sikkim was communicated to the Govt. of Kerala vide Ministry of Home Affairs letter C.No. V-17014/4/2010-CSR.I dated 7.2.2011 and their comments/response was sought. An opportunity was also offered to the State Govt. of Kerala to attend a meeting before the Additional Secretary (CS), MHA on 23.2.2011 to present their case.

13. During the meeting held on 23.2.2011, State of Kerala was represented by Shri V.P. Joy, Secretary(Taxes), Shri Suman Billa, Commissioner (Commercial Taxes), Shri K.P. Abdul Ajeez, Consultant(L), Commercial Taxes Deptt and Shri S. Vijayan, Asstt. Inspector General, Police Hqrs., Trivandrum. During the meeting:

i) They submitted the letter No. 21392/H1/11/TD dated 22.02.2011 as the State Government of Kerala's comments in response to the reply submitted by the State of Sikkim. They further submitted that the Central Government has no powers under the Lotteries (Regulation) Rules, 2010 to condone the irregularities committed by any State in relation to lotteries. They further stated that the State of Sikkim had been running double/triple digit lotteries in violation of the rules. They stated that since Ist September, 2010 Sikkim lotteries are not permitted in the State of Kerala in view of the orders of the Hon'ble High Court of Kerala.

ii) The representatives of the Kerala Government further submitted that Sikkim has delegated more rights and responsibilities to their marketing agents than what is permissible under the Act. They also submitted that these distributors/marketing agents even conduct draws which is statutorily to be done by the State Government of Sikkim. They also stated that the Sikkim Government gets the lottery tickets printed at non-Government presses or such presses which are not included in the panel of Reserve Bank of India. This violation has been admitted to by Government of Sikkim and therefore the ban is justified.

iii) They also submitted that because of continuous violations by the State of Sikkim, there are a number of cases pending in the various courts. They also stated that in view of the interim

the Government of Kerala to the said reply. The Government of Kerala has alleged contravention of the provisions of Rule-3(5) and 3(14) of the Lotteries (Regulation) Rules, 2010. It has also emerged that since 1st September, 2010 no lotteries of Sikkim are permitted in the State of Kerala, and therefore, all the allegations pertain to the period 1.04.2010 to 31.08.2010.

19. The Government of Sikkim has accepted such violations for a part of the period but has also stated that they have since rectified such violations and are now running their lotteries totally in line with the Rules. They argued that the Rules came into force only in April, 2010 and it took some time for them to understand and implement the said Rules and hence violations, if any, were inadvertent and corrected as soon as these were detected. They have requested for condonation of the lapses as also of unintentional non-compliance of Act and the Rules.

20. As regards violation of Rule-3(14), which reads as "*An Organising State shall not offer a prize on a lottery ticket or on an online lottery on the basis of single, double and triple digit, in any form or combination*", Government of Sikkim has stated that since 20.04.2010 when the stay of the Hon'ble High Court of Sikkim was vacated, they have been scrupulously following the Rules. They also had discussions with the Ministry of Home Affairs in June 2010 regarding the spirit behind this Rule and since then they are not offering any prize on single, double or triple digit or any combination thereof.

21. As regards the other allegation that the lottery tickets being printed by the State Government of Sikkim violated the provisions of Section-4(b) of the Act requiring tickets bearing the imprint and logo of the States and Rule-3(5) that the tickets should be printed at a High Security Press included in the Panel of the Reserve Bank of India or IBA, it is observed that though there has been some lapse during the period 01.04.2010 upto 30.08.2010, Government of Sikkim have now stopped (Since September, 2010) getting their tickets printed at presses which are not empanelled with the IBA and the tickets are now printed at authorized presses in accordance with the provision of the Act/Rules

22. Government of Kerala has taken a stand that since Government of Sikkim has agreed that they have violated the provisions of the Rules,

the Government of Kerala to the said reply. The Government of Kerala has alleged contravention of the provisions of Rule-3(5) and 3(14) of the Lotteries (Regulation) Rules, 2010. It has also emerged that since 1st September, 2010 no lotteries of Sikkim are permitted in the State of Kerala, and therefore, all the allegations pertain to the period 1.04 2010 to 31.08.2010.

19. The Government of Sikkim has accepted such violations for a part of the period but has also stated that they have since rectified such violations and are now running their lotteries totally in line with the Rules. They argued that the Rules came into force only in April, 2010 and it took some time for them to understand and implement the said Rules and hence violations, if any, were inadvertent and corrected as soon as these were detected. They have requested for condonation of the lapses as also of unintentional non-compliance of Act and the Rules.

20. As regards violation of Rule-3(14), which reads as "*An Organising State shall not offer a prize on a lottery ticket or on an online lottery on the basis of single, double and triple digit, in any form or combination*", Government of Sikkim has stated that since 20.04.2010 when the stay of the Hon'ble High Court of Sikkim was vacated, they have been scrupulously following the Rules. They also had discussions with the Ministry of Home Affairs in June 2010 regarding the spirit behind this Rule and since then they are not offering any prize on single, double or triple digit or any combination thereof.

21. As regards the other allegation that the lottery tickets being printed by the State Government of Sikkim violated the provisions of Section-4(b) of the Act requiring tickets bearing the imprint and logo of the States and Rule-3(5) that the tickets should be printed at a High Security Press included in the Panel of the Reserve Bank of India or IBA, it is observed that though there has been some lapse during the period 01.04.2010 upto 30.08.2010, Government of Sikkim have now stopped (Since September, 2010) getting their tickets printed at presses which are not empanelled with the IBA and the tickets are now printed at authorized presses in accordance with the provision of the Act/Rules

22. Government of Kerala has taken a stand that since Government of Sikkim has agreed that they have violated the provisions of the Rules,

(NL)

their lotteries should necessarily be banned and that the Government of India has no powers under the Act/Rules to condone such lapses.

23. It may be noted that this proceeding covers only such allegations of Government of Kerala which they had raised with the Government of Sikkim in terms of Rule 5(1) and 5(2) of the Lotteries (Regulation) Rules, 2010. The Government of Kerala had also raised some other allegations but the same had not been taken up by them first with the Government of Sikkim as per the rules. Accordingly, this Ministry had advised Government of Kerala to first raise the remaining issues with the Government of Sikkim in term of the Rules and then refer the matter to the Ministry of Home Affairs. So far, this Ministry has no information whether the Government of Kerala has raised the remaining issues with the Government of Sikkim.

Decision

24. This Ministry has given full opportunity to both the States to present their case orally as well in writing. This Ministry has also consulted the Ministry of Law and Justice on the issues raised by the Government of Kerala. Thus, having fully satisfied ourselves on the content and process of the allegations, this Ministry hereby orders the following -

25. Lotteries of the Government of Sikkim shall not be sold within the territory of State of Kerala for a period of 2 years from the date of publication of this Order in the Official Gazette.

26. After the above period is over, the Government of Sikkim shall apply with due compliance of the Lotteries (Regulation) Act 1998 and the Lotteries (Regulation) Rules 2010 for permission to start the lotteries business in the State of Kerala again, as per the rules and processes of Government of Kerala upon whose satisfaction the lottery business of Government of Sikkim may restart in the State of Kerala.

[F. No. V/17014/4/2010-CSR. II]

K. K. PATHAK, Jt. Secy.

Printed by the Manager, Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054