

COMPETITION APPELLATE TRIBUNAL

C.A. No. 93/2003

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

Ashok Malik ...Applicant

Versus

Ghaziabad Development Authority ...Respondent

Appearances: Mr. R. D. Makheeja, Advocate for the Applicant
Mr. Devesh Kumar, proxy for Ms. Reena Singh,
Advocate for the respondent

ORAL ORDER
23-09-2010

Heard. Order is reserved.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

C.A. No. 62/2008

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

Sushil Tebewal ...Applicant

Versus

ICICI Bank ...Respondent

Appearances: Applicant in person
Ms. Sweta Mishra, Advocate for R-1
Mr. Rishab Raj Jain, Advocate with Tapas Ranjan,
Advocate for R-2

ORAL ORDER
23-09-2010

The matter is adjourned at the request of the applicant. List the matter on 15th November, 2010.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

RTPE No. 160/1997

C.A.No. 562/2000

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

Drive-In-Diagnostic Pvt. Ltd.Complainant

Versus

Philips Medical System India Pvt. Ltd. ...Respondent

Appearances: Mr. R. D. Makheeja, Advocate for the Complainant
Mr. R. K. Virmani, Sr. Advocate with Ms. Rashmi
Virmani & Ms. Srilekha Sridhar, Advocates for the
respondent

ORAL ORDER
23-09-2010

List the matter on 24th November, 2010.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

RTPE No. 43/2000

RTPE No. 02/2000

RTPE No. 37/2000

UTPE No. 165/2000

Dr. Balbir Singh

Tronica Metals & Polymers (P) Ltd.

Microbase Software Systems Pvt. Ltd.

Artek Electronics (P) Ltd.

...Complainant

Versus

U.P.S.I.D.C.

...Respondent

Appearances: Mr. K.K. Rai with Bankey Behari, Advocates for the
Complainant
Mr. Rajesh Raina, Advocate for the respondent

ORAL ORDER

23-09-2010

At the request of the respondent, list the matter on 16th
November, 2010.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL

C.A. No. 53/2006

CORAM

**Hon'ble Dr. Justice Arijit Pasayat
Chairman**

**Hon'ble Mr. Rahul Sarin,
Member**

**Hon'ble Ms. Pravin Tripathi
Member**

IN THE MATTER OF

M.P. Singh ...Applicant

Versus

Ghaziabad Development Authority ...Respondent

Appearances: Applicant in person
Mr. Devesh Kumar, proxy counsel for Ms. Reena
Singh, Advocate for the respondent

ORAL ORDER
23-09-2010

Heard. Order is reserved.

**[Dr. Arijit Pasayat]
Chairman**

**[Rahul Sarin]
Member**

**[Pravin Tripathi]
Member**

COMPETITION APPELLATE TRIBUNAL
NEW DELHI

Compensation Application No.190 of 2008

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Mr. Rahul Sarin
Member

Hon'ble Mrs. Pravin Tripathi
Member

IN THE MATTER OF :-

Mr. Lingappa,
R/o Narasimharajpura Village,
Lakshmipur Post,
Dasanapura Hobli,
Bangalore North Taluk, Karnataka

....Applicant

Versus

1. Government of Sikkim
Through the Principal Secretary,
Revenue Expenditure and Finance
Department, Gangtok – 737101, Sikkim.
2. The Director of State Lotteries,
Office of the Directorate of Lotteries,
Government of Sikkim,
Baluwakhani, Gangtok-737101, Sikkim.
3. M/s. Pan India Network Infravest Pvt. Ltd.,
No.135, Continental Building,
Dr. Annie Besant Road, Worli,
Mumbai – 400 018, Maharashtra.
4. M/s. Tashi Delek Gaming Solutions (P) India,
No.135, Continental Building,
Dr. Annie Besant Road, Worli,
Mumbai – 400 018, Maharashtra.
....Respondents

Appearances : Shri Amandeep Bawa, Advocate for the
Applicant.

Shri A. Mariamputtam along with Shri A. Mathur
and Shri Amarjeet S. Girsra, Advocates for
Respondent Nos.1 and 2.

Shri Dayan Krishnan along with Shri Gautam Narayan and Shri Nikhil A. Menon, Advocates for Respondent Nos.3 and 4.

ORDER

DR. JUSTICE ARIJIT PASAYAT, CHAIRMAN

This Compensation Application has been filed under Section 12-B of the Monopolies and Restrictive Trade Practices Act, 1969 (in short the "Act").

2. The grievance of the applicant is that the respondents did not pay him the full amount of the advertised lottery money, which he was entitled to under the Scheme of Lottery conducted by the respondents. The lottery was conducted by respondent No.1, Government of Sikkim on-line inasmuch as the person subscribing to the lottery have to purchase the lottery tickets from the authorised dealer/ marketing agents at the outlets run by such authorised dealers/ marketing agents. According to the applicant the material data was suppressed for determining the prize money by the respondents and therefore the applicant is deprived of a substantial amount of the prize money. The applicant undisputedly was the holder of the prize winning ticket being 'Super Lotto Lottery' and the respondents recognised the applicant as the winner of the concerned prize. However, they did not pay the applicant full amount and therefore, the applicant was deprived of a sum of Rs.7,40,27,669/- and interest thereon. It is stated that the respondent No.1, Government of Sikkim runs a lottery scheme under the name and style of Sikkim Super Lotto

Lottery. The said lottery was being conducted on a weekly basis inasmuch as every week a draw was held in respect of the lottery tickets sold and prizes were given to various winning ticket holders under different categories. Respondent No.2, Director of State Lotteries is in-charge of running the said lottery scheme. Respondent No.3 and No.4 are the authorised dealer/ marketing agents of respondent Nos.1 and 2. The applicant purchased a lottery ticket at one of the authorised vendors for 18th draw which was to be held on 25.07.2002. The applicant was declared winner of the jackpot prize in the said draw held on 25.07.2002 in as much as applicant's ticket matched all the six digits of the winning number combinations. The respondents acknowledged that the applicant was the winner of the jackpot prize and by covering letter dated 04.09.2002 sent a sum of Rs.2,50,20,912/- after deduction of income tax. It was paid to the applicant by way of prize money. By a separate certificate dated 04.09.2002 respondent No.2 certified deduction of income tax from the prize money. Rules governing the lottery stipulated that a sum of Rs.2,00,00,000/- was to be paid as the minimum amount of prize money to the winner of the jackpot prize namely Super Loto Lottery. It is further stipulated that if there is no winner of the jackpot prize in a particular draw, the prize money of that particular draw would be carried over to the next draw and added to the prize money of the next draw. The rolled over money would be carried forward to a subsequent draw till a clear winner emerged. The clear winner would be entitled to money so carried forward from the earlier draws. Therefore, the winner of a

particular draw would be entitled to get not merely the money won in that particular draw but also the amount which remained unpaid for lack of winners in the preceding draws as additional benefit. It was also stipulated that apart from the minimum amounts stipulated for the prize money, an additional amount being a proportion of the total sale proceeds would also be paid to the prize winner. The total prize pool was 45% of the total revenue realized by the respondents by the sale of tickets. The prize pool in turn was divided as under :-

“50.25% of the 45% amount was the prize money for the jackpot winner (Super Lotto Lottery Prize wherein all the six numbers match).

10.25% was the prize money to match 4 prize winner.

19.75% was the prize money to match 3 prize winners (depending on the number of persons winning match 3).

As stated hereinabove the minimum guaranteed amount for the jackpot was Rs.2,00,00,000/- (Rupees two crores). The additional amount of the prize money would depend on the money realized from the sale of lottery tickets for the concerned draws.”

3. One R. Satish Kumar conducted research on the functioning of the lotteries and more particularly the facts and figures in respect of the Super Lotto Lottery conducted by the respondent. The said Satish Kumar also applied for information from respondent No.1 and No.2 under the provisions of Right to Information Act, 2005 and received facts and figures in respect of the amounts realised by the respondents for the various draws. From the information furnished by respondents No.1 and No.2, it is

clear that that for the 18th draw held on 25.07.2002 a total sum of Rs.7,26,77,600/= was realised by the sale of lottery tickets by respondents No.1 and No.2 under the Super Lotto Lottery Scheme. The applicant was entitled to proportion of said total revenue realised under the Scheme. There was no winner for the three draws preceding the draw in which the applicant won the prize money. Therefore, as per the information furnished by the respondents themselves, the sale figures of the relevant draws as follows :-

<u>Date of draw</u>	<u>Total Sales</u>
4.7.2002 (15 th draw)	Rs.7,50,90,970=00
11.7.2002 (16 th draw)	Rs.9,98,48,180=00
18.7.2002 (17 th draw)	Rs.7,97,58,240=00
25.7.2002 (18 th draw)	Rs.7,26,77,600=00

4. The total sales for the said four draws was Rs.32,73,74,990/= and 45% of the total sales was to be distributed as prize money among the winners and applicant being the jackpot winner was entitled to 50.25%. Accordingly the applicant is entitled to Rs.7,40,27,669/- more which has not been paid to him. Therefore, the Compensation Application has been filed with the following prayers :-

- (a) award compensation of Rs.7,40,27,669/- (Rupees seven crores forty lakhs twenty seven thousand six hundred and sixty nine) with interest at 18% p.a. from 25.7.2002 to till the date of payment to the applicant and against the respondents jointly and severally;

- (b) award a sum of Rs.50,000/- (Rupees fifty thousand) as damages and litigation expenses;
- (c) pass such other or further orders as may be deemed fit and proper.

5. In the reply filed by the respondents, it has been inter-alia stated that there is no unfair trade practice or restrictive trade practice involved. These sections have been defined in Section 36-A and 2(o) of the Act. The prize money was paid to the applicant on 04.09.2002. The present application having been filed on 05.11.2008 is barred by limitation. The on-line lottery is being conducted by the State of Sikkim in terms of Lotteries Regulation Act, 1998 and even the factual position has not been correctly stated by the applicant. It has been pointed out that from draw ID No.00017/02 dated 18th July, 2002, the minimum guaranteed amount of jackpot was revised and reduced to Rs.1,00,00,000/- only with a prize pool amount of 38.99%. The details of calculations have been given in Annexure R-1, R-2, R-3 and R-4 respectively.

6. Rejoinder affidavit has been filed by the applicant in respect of the replies filed by respondent Nos.1, 2 and 3. It is to be noted that respondents No.3 has filed a separate affidavit. Several inaccuracies in the factual position have been highlighted by respondents No.3. In the reply, it has been further pointed out that the lotteries are neither 'goods' nor 'services'. That being so, the Act has no application. It is also pointed out that the Compensation Application has been filed after three years from

the date on which the alleged cause of action arose. The application is misconceived.

7. “Goods” and “Services” are defined under Section 2(e) and 2(r) of the Act. According to Section 2(e) “goods” have the same meaning as defined in the Sale of Goods Act, 1930 (in short “Sale Act”).

8. “Goods” have been defined under Section 2(7) of the Sale Act. It specifically excludes “actionable claims and money”. In *Sunrise Associates v. Govt. of NCT of Delhi and others*, (2006) 5 SCC 603 the Constitution Bench of the Supreme Court held that a sale of a lottery ticket amounts to the transfer of an actionable claim. In paras 40 to 43 it was held as follows :-

“40. An actionable claim would include a right to recover insurance money or a partner’s right to sue for an account of a dissolved partnership or the right to claim the benefit of a contract not coupled with any liability (see *Union of India v. Sri Sarada Mills Ltd.*, SCC at p.880). A claim for arrears of rent has also been held to be an actionable claim (*State of Bihar v. Maharajadhiraja Sir Kamleshwar Singh*, SCR at P.910). A right to the credit in a provident fund account has also been held to be an actionable claim (*Official Trustee v. L. Chippendale; Bhupati Mohan Das v. Phanindra Chandra Chakravarty*). In our opinion a sale of lottery ticket also amounts to the transfer of an actionable claim.

41. A lottery ticket has no value in itself. It is a mere piece of paper. Its value lies in the fact that it represents a chance or a right to a conditional benefit of winning a prize of a greater value than the consideration paid for the transfer of that chance. It is nothing more than a token or evidence of this right. The Court in *H. Anraj*, as we have seen, held that a lottery ticket is a slip of

paper or memoranda evidencing the transfer of certain rights.
We agree.

42. *Webster's Words and Phrases*, Permanent Edn., Vol. 25-A Supplement defines a "ticket" as "a printed card or a piece of paper that gives a person a specific right, as to attend a theatre, ride on a train, claim or purchase, etc." The Madras High Court in *Sesha Ayyar v. Krishna Ayyar* also held : (AIR p. 227)

"Tickets of course are only the tokens of the chance purchased, and it is the purchase of this chance which is the essence of a lottery."

43. The sale of a ticket does not necessarily involve the sale of goods. For example, the purchase of a railway ticket gives the right to a person to travel by railway. It is nothing other than a contract of carriage. The actual ticket is merely evidence of the right to travel. A contract is not property, but only a promise supported by consideration, upon breach of which either a claim for specific performance or damages would lie (*Said v. Butt*). Like railway tickets, a ticket to see a cinema or a pawnbroker's ticket are memoranda or contracts between the vendors of the ticket and the purchasers. Cases on whether the terms specified on such tickets bind the purchaser are legion. It is sufficient for our purpose to note that tickets are themselves, normally evidence of and in some cases the contract between the buyer of the ticket and its seller. Therefore a lottery ticket can be held to be goods if at all only because it evidences the transfer of a right."

9. The position was reiterated in *Union of India v. Martin Lottery Agencies Ltd.*, (2009) 12 SCC 209 and it was held that lotteries are neither "goods" nor "services".

10. Even on the facts indicated above it has not been established by the claimant that he is entitled to anything more than what has been paid by the respondents. The materials placed by the claimant are absolutely insufficient to substantiate

the claims. On the other hand by placing adequate material the respondents have justified their stand.

11. Additionally, the alleged cause of action arose in the year 2002 and the present application was filed in the year 2008, and is clearly barred by limitation in view of what has been stated by the Supreme Court in Corporation Bank and Anr. v. Navin J. Shah, (2000) 2 SCC 628.

12. Looked at from any angle the Compensation Application is sans merit, deserves dismissal, which we direct.

Pronounced in open Court on 23rd day of September, 2010.

(Dr. Arijit Pasayat)
Chairman

(Rahul Sarin)
Member

(Pravin Tripathi)
Member