



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Over-Regulation: A Burden on Small and Medium Enterprises

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*Received* 13 November 2022; *Accepted* 24 November 2022; *Published* 06 December 2022

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*Through this case commentary, the author has outlined the state's imposition of excessive regulation on small and medium enterprises. The article involves the judgement of the Kerala High Court which has been acting as a beacon of guiding light to many small businessmen and motivating them to handily manage their businesses. The author has highlighted the struggles faced by Reeja, a small retail shop owner, due to the unjust over-regulation by the state authorities. Reeja runs a retail outlet of M/s Playwin, which is the sole selling online lottery ticket agent of various lottery conductors in different states. The shop Reeja owned was also being used for the sale of packaged drinking water Bisleri and Valvoline Lubricants, Oils Filters, etc. In the year 2003, the state of Kerala tried to regulate the lotteries organised inside the state and came up with "The Kerala State Lotteries and Online Lotteries (Regulation) Rules, 2003". The aforementioned concerned lottery conductors, unsatisfied with this legislation, challenged the same in the Hon'ble Kerala High Court. The Division Bench of the Kerala High Court took consideration of this petition and stayed every ongoing operation regarding this issue. After deciding upon the writ petition for a reasonable time, the Division Bench dismissed the said appeal. Thereafter, the state authorities unjustifiably came to Ms. Reeja's shop and forcefully sealed off the entire retail outlet. Following this, Reeja filed a Special Leave Petition in the Hon'ble Supreme Court which asked the Kerala High Court to take cognizance of this issue. The Court ruled that until and unless concrete evidence is found against Ms. Reeja for conducting of illegal lottery, the State should rightfully hand her the retail store. The Kerala High Court Bench led by K. Balakrishnan Nair, J. passed the thoroughgoing judgement in stating that the unauthorized and forceful closing of the shop-room of the petitioner was illegal and ordered the respondents, i.e., the State to hand over the same back to the petitioner. The*

*Judiciary, once again, played the rescuer for people who find themselves helpless and submit to the daunting unjust behaviour of the State, and duly guided them to justice and equity.*

**Keywords:** *over-regulation, lottery, gambling, wagering.*

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## INTRODUCTION

The concept of a Lottery has always been a controversial topic and a matter of discussion. The lottery has often been compared to “Gambling” and has been regarded as an unfair means to take the advantage of the poor sections of society. The temptations that the concept of Lottery offers, drives these people belonging to the weaker sections of society to buy lottery tickets and participate in the so-called “scam” process. The mere thought of becoming a millionaire in one night out of sheer luck, their stern belief of the godly fortunes taking them as their worthy owners, leads these poor and helpless people to resort to the process of Lottery. The concept of the Lottery is not solely devised by this modern world. A lottery is a form of gambling. Indulging in gambling was always considered to be a vice and pernicious conduct in this country. We can find ancient Indian texts which look upon “Gambling” as a social evil. These texts ask people to shun gambling as it has this evil drive that makes a responsible and hard-working citizen lose all his life’s income. On the other hand, some ancient texts do not side with discontinuing the acts of gambling.

Manu, in Chapter IX of Manusmriti, commands the prohibition of gambling and betting. Manusmriti commands the King to punish the people involved in the activities of gambling and betting. It guides the King to impose heavy penalties on the people resorting to gambling and betting. Whereas, later law-givers like the Katyayana Smriti and Yajnavalkya Smriti propagated the regulation of gambling by the King if the same cannot be stopped. Both these ancient texts believe in conducting the acts of gambling and betting in open halls, i.e. the Gambling Halls, provided that the same should be registered under the King’s authority. Chanakya, too, also took this practical view of providing for regulation of gambling and collecting a fee from the gamblers.

Even the ancient epic of Mahabharata involves acts of gambling and betting and highlights gambling as a major threat to society as a whole. The conflict in the ideologies of whether Gambling should be prohibited or not is reflected by these aforementioned popular texts. These texts provide ample evidence of the existence of gambling since ancient times. These varied views about gambling still exist in our society and the modern Indian Courts do not rely on these above-mentioned texts to completely shun the act of Lottery as a form of gambling. Instead, the Courts invite arguments from both the petitioner and respondent to arrive at a righteous decision. The main bone of contention left with this modern Indian society is whether our Constitution makers ever intended that gambling should be a fundamental right within the meaning of *Article 19(1)(g)*<sup>1</sup> or the protected freedom declared by *Article 301*<sup>2</sup>. Courts hear both sides of the case to conclude this contention. To govern the acts of gambling, the Indian Law System follows the directions framed by “*The Lotteries (Regulation) Act, 1998*”<sup>3</sup>. Violation of the said guidelines invites punishment upon the wrongdoer and the case of *Reeja v State of Kerala, 2004*<sup>4</sup> involves a similar dispute.

## FACTS

The petitioner, Ms. Reeja, is running a retail outlet of M/s. Playwin, which is the sole selling agent of M/s. Tashi Dalek Gaming Solutions Pvt. Ltd., M/s. Ultra Entertainment Solutions Pvt. Ltd. and M/s. Kent Gaming Solutions Pvt. Ltd., is the marketing agent of online lottery tickets in the States of Sikkim, Karnataka, and Arunachal Pradesh. The petitioner, Ms. Reeja, was running the said retail outlet from 30.8.2002. The room, housing the retail outlet, was also being used for the sale of packaged drinking water Bisleri and Valvoline Lubricants, Oils Filters, etc.

The state of Kerala in the year 2003 framed “*The Kerala State Lotteries and On-line Lotteries (Regulation) Rules, 2003*”<sup>5</sup> and tried to regulate the selling of lotteries of other States inside the state of Kerala. The said Rules were challenged before the Kerala High Court, by the above-

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<sup>1</sup> Constitution of India, art. 19(1)(g)

<sup>2</sup> Constitution of India, art. 301

<sup>3</sup> Lotteries (Regulation) Act 1998

<sup>4</sup> *Reeja v State of Kerala* [2004] KLT 599

<sup>5</sup> Kerala State Lotteries and On-line Lotteries (Regulation) Rules 2003

stated marketing agents, by filing a writ petition. The Division Bench of the Kerala High Court took consideration of this petition and stayed the operation of *Sub-rules (3) and (10) of Rule 24*<sup>6</sup> of the above-mentioned Rules. Sub-rule (3) provides that the sale of tickets for a lottery of another State without the permission of the State Government is prohibited. Sub-rule (10) enables the State Government to temporarily suspend the sale of tickets to lotteries run by other States. After deciding upon the writ petition for a reasonable time, the Division Bench dismissed the said appeal by judgment dated 28.4.2004.

Based on the Division Bench's Judgment, the petitioner, Ms. Reeja stopped the sale of tickets on 29.4.2004. While so, respondents 2 and 3 came to the shop of the petitioner and forcibly sealed the retail outlet. Acting upon her right, the petitioner requested those respondents to show the authority under which the respondents acted, to which they did not respond. By sealing Ms. Reeja's entire shop room, she was prevented from continuing her business of sale of Bisleri drinking water, Valvoline Lubricants, Oil Filters, etc. Against the judgment of the Division Bench of this Court, a Special Leave Petition was filed by the petitioner filed before the Honourable Supreme Court. The Apex Court granted leave to this appeal and ordered the Kerala High Court to operate on the issues. Given the order passed by the Honourable Supreme Court, the petitioner, Ms. Reeja, prays for a direction to open her shop-room so that she can continue her business of selling online lottery tickets without interference from any quarters. The petitioner argues that she has suffered substantial loss, as a result of the closure of her shop room. The petitioner submitted this *Special Leave Petition (SPL)*, praying that the shop room may be opened and she may be permitted to run her business.

To this *Special Leave Petition (SPL)*, respondents 1 and 2 have filed a counter affidavit. It is stated in the counter affidavit that this online lottery retail is contrary to the rules formulated by the "*Lotteries (Regulation) Act, 1998*"<sup>7</sup>. Therefore, if any lottery is conducted, contrary to the provisions of *Section 4*<sup>8</sup> of this Act, it is a cognizable and non-bailable offence, which is

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<sup>6</sup> Kerala State Lotteries and On-line Lotteries (Regulation) Rules 2003, rule 24(3) & 24(10)

<sup>7</sup> Lotteries (Regulation) Act 1998

<sup>8</sup> Lotteries (Regulation) Act 1998, s 4

punishable under *Section 7*<sup>9</sup> of the same Act. The petition is under consideration by the Kerala High Court.

## ISSUES BEFORE THE COURT

The key issues identified by the Kerala High Court were:

- Whether or not, the online lottery retail shop, which was run by the petitioner, Ms. Reeja, violates *Section 4 of “The Lotteries (Regulation) Act, 1998”*<sup>10</sup>?
- Whether or not, the online lottery retail shop, which was run by the petitioner, Ms. Reeja, violated the *Sub-rules (3) and (10) of Rule 24 of the “Kerala State Lotteries and On-line Lotteries (Regulation) Rules, 2003”*<sup>11</sup>?
- Whether or not, the act done by respondents 2 and 3, in continuance of the judgement delivered by the Division Bench of the Kerala High Court, is illegal and unauthorized?
- Whether or not, the petitioner, Ms. Reeja, should be allowed to continue with the business of selling packaged drinking water of Bisleri, Valvoline Lubricants, Oils Filters, etc., which was sealed off together in the process of temporarily stopping the online lottery retail business?
- Whether or not, Gambling activities such as Lottery be taken as one of the professions convincing and satisfying that the real purpose of the fundamental right as guaranteed by *Article 19(1)(g)*<sup>12</sup> and also falls within the ambit of *Article 301*<sup>13</sup> of The Constitution of India, 1949 and whether or not it could guarantee or declare the freedom of gambling?

## ARGUMENTS

Arguments were kept in front of the Kerala High Court by Mr. M.K. Damodaran, learned Counsel, and the learned Additional Advocate General Mr. Rajan Joseph. Wherein, Mr. M.K.

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<sup>9</sup> Lotteries (Regulation) Act 1998, s 7

<sup>10</sup> Lotteries (Regulation) Act 1998

<sup>11</sup> Kerala State Lotteries and On-line Lotteries (Regulation) Rules 2003, rule 24(3) & 24(10)

<sup>12</sup> Constitution of India, art. 19(1)(g)

<sup>13</sup> Constitution of India, art. 301

Damodaran argued before the court from the petitioner's side and Mr. Rajan Joseph, from the respondents' side. They reiterated their respective contentions.

Mr. M.K. Damodaran, the learned Counsel for the petitioner Ms. Reeja, submitted that no crime has been registered against the petitioner. The said submission is disputed by the learned Additional Advocate General. The learned counsel for the petitioner further submitted that given the resurrection of Exhibit Petition 1 order with the passing of Exhibit Petition 2 order by the Apex Court, the respondents are restrained from proceeding against the petitioner under *Section 7 of "The Lotteries (Regulation) Act, 1998"*<sup>14</sup>. The learned Counsel from the petitioner's side, by necessary implication, submits that action for alleged violation of any of the provisions of *"The Lotteries (Regulation) Act, 1998"*<sup>15</sup>, is prohibited. The learned Counsel from the petitioner's side argued before the Court that the State Government can prosecute the petitioner under *Section 7*<sup>16</sup> of the Act, for violation of *Section 4*<sup>17</sup> of the Act, if only the lottery run operated by Ms. Reeja, is prohibited by the Central Government under *Section 6 of the "The Lotteries (Regulation) Act, 1998"*<sup>18</sup>. Therefore, it is contended that prosecution, if any, taken against the petitioner, is unauthorized.

To this argument put forward by the learned Counsel Mr. M.K. Damodaran, the learned Additional Advocate General Mr. Rajan Joseph, arguing from the respondents' side, made a counter-argument that what is stayed is only the operation of *Sub-rules (3) and (10) of Rule 24* of the *"Kerala State Lotteries and On-line Lotteries (Regulation) Rules, 2003"*<sup>19</sup>. He also stated that if any lottery is conducted in violation of *Section 4 of "The Lotteries (Regulation) Act, 1998"*<sup>20</sup>, the Police are competent to proceed against the petitioner and others, for the offence punishable under *Section 7*<sup>21</sup> of the same Act. The learned Additional Advocate General states before the Court the law, governing lotteries, in force in the country, before and after the passing of *"The*

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<sup>14</sup> Lotteries (Regulation) Act 1998, s 7

<sup>15</sup> Lotteries (Regulation) Act 1998

<sup>16</sup> Lotteries (Regulation) Act 1998, s 7

<sup>17</sup> Lotteries (Regulation) Act 1998, s 4

<sup>18</sup> Lotteries (Regulation) Act 1998

<sup>19</sup> Kerala State Lotteries and On-line Lotteries (Regulation) Rules 2003, rule 24(3) & 24(10)

<sup>20</sup> Lotteries (Regulation) Act 1998, s 4

<sup>21</sup> Lotteries (Regulation) Act 1998, s 7

*Lotteries (Regulation) Act, 1998*".<sup>22</sup> He refers to the verses of Manusmriti wherein "Lottery" is mentioned as a form of gambling and indulging in gambling was always considered to be a vice and pernicious conduct in this country. He also refers to various other ancient Indian textbooks which convey a similar message.

On the learned Counsel Mr. M.K. Damodaran's argument for the petitioner regarding her suffering of major losses due to the forceful closure of her entire shop and prohibiting her to continue with her profession, the learned Additional Advocate General Mr. Rajan Joseph contended by citing the judgement passed by the Constitution Bench of the Honourable Supreme Court, in *State of Bombay v R.M.D. Chamarbaugwala* <sup>23</sup> (AIR 1957 SC 699). This cited judgement considered the entire gamut of laws on gambling in India, including those that prevailed in ancient India while considering the constitutional validity of the "*Bombay Lotteries and Prizes Competitions Control and Tax Act*" <sup>24</sup> and held that the right to run a lottery is NOT a fundamental right under *Article 19(1)(g)* <sup>25</sup> of the Constitution of India.

Mr. M.K. Damodaran, learned Counsel from the petitioner Ms. Reeja's side, concludes his argument on the note that unless and until the case is under investigation, her client, Ms. Reeja should not be convicted for alleged violations of *Section 4 of "The Lotteries (Regulation) Act, 1998"* <sup>26</sup> and *Sub-rules (3) and (10) of Rule 24 of the "Kerala State Lotteries and On-line Lotteries (Regulation) Rules, 2003"* <sup>27</sup>, and therefore, should be allowed access to her shop and should be allowed to conduct unrestricted business. Whereas, Mr. Rajan Joseph, the learned Additional Advocate General from the respondents' side, concludes his argument by stating that it was abundantly clear from the ancient Indian textbooks' observations that the activities which have been condemned in this country from ancient times appear to have been equally discouraged and looked upon with disfavour in England, Scotland, the United States of America and in Australia.

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<sup>22</sup> Lotteries (Regulation) Act 1998

<sup>23</sup> *State of Bombay v RMD Chamarbaugwala* AIR [1957] SC 699

<sup>24</sup> Bombay Lotteries and Prizes Competitions Control and Tax Act 1958

<sup>25</sup> Constitution of India, 19(1)(g)

<sup>26</sup> Lotteries (Regulation) Act 1998, s 4

<sup>27</sup> Kerala State Lotteries and On-line Lotteries (Regulation) Rules 2003

The learned Additional Advocate General argues that he finds it difficult to accept the contention that activities like the Lottery, a form of Gambling, encourage a spirit of a reckless propensity for making easy gain by lot or chance, which leads to the loss of the hard-earned money of the undiscerning and improvident common man and thereby, lower his standard of living and drive him into a chronic state of indebtedness and eventually disrupt the peace and happiness of his humble home could have been intended by our Constitution makers to be raised to the status of trade, commerce or intercourse and to be made the subject-matter of a fundamental right guaranteed by *Article 19(1)(g)*<sup>28</sup>. He also states that it is difficult to persuade oneself that gambling was ever intended to form any part of this ancient country's trade, commerce or intercourse to be declared as free under *Article 301*<sup>29</sup> -of the Constitution of India, 1949.

## RATIO DECIDENDI

Ratio Decidendi of the Division Bench of the Kerala High Court is the rule of law it followed to arrive at a judicial decision. The Bench believes that by regulating the lottery, the State is not violating any of the Constitutional provisions, as alleged by the petitioner. According to the Division Bench of K. Balakrishnan Nair, J., the running of a lottery can only be done while strictly observing the provisions of "*The Lotteries (Regulation) Act, 1998*"<sup>30</sup>. The Bench said that the Police have the power to prosecute the officers of the State Government concerned and also the persons selling those concerning lottery tickets here. The said power is a power coupled with a duty, which has to be exercised promptly and effectively.

No one is responsible for the conduct of a lottery, which is being conducted in violation of *Section 4 of "The Lotteries (Regulation) Act, 1998"*<sup>31</sup> and no one who sells the tickets of such a lottery shall be spared and should rightly be prosecuted under *Section 7(3)*<sup>32</sup> of the same Act. The Division Bench of K. Balakrishnan Nair, J. also took into consideration the rampant allegations of fraud

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<sup>28</sup> Constitution of India, art 19(1)(g)

<sup>29</sup> Constitution of India, art 301

<sup>30</sup> Lotteries (Regulation) Act 1998

<sup>31</sup> Lotteries (Regulation) Act 1998, s 4

<sup>32</sup> Lotteries (Regulation) Act 1998, s 7(3)



and manipulation in the conduct of the lotteries. The Bench quoted some of them by citing the allegation summarised by Dr. Arun Kumar Barthakur, a learned Advocate of the Bombay High Court in an article published in the Journal Section of (2003) 2 SCC<sup>33</sup>.

The Division Bench highlighted the seriousness of this issue by stating that one has just to visit one of the ubiquitous crowded lottery booths of Mumbai, Chennai, Kochi, and Pune to be instantly convinced of how the temptations offered by these lotteries are proving to be the undoing of many families, especially, the improvident poor daily-wagers and low-income groups. As a marketing ploy, some of the lottery booths are even furnished with cable TVs and adjoining snack bars where the improvident punters hang around the entire leisure time or the whole day on some days repeatedly staking their hard-earned wages on the multiple draws of the daily lotteries persistently hoping for fortune to suddenly smile on them to make them instantly rich. If there could be large-scale racketeering in non-judicial stamp papers even when they are usually subject to scrutiny by informed people like lawyers and revenue officers in the country, as has only recently been detected by the Pune police, there are demonstrably even stronger reasons to suspect a high incidence of sale of fake tickets to the gullible poorer sections of the society, when the activities of the dealers and the retail agents are not subject to any regulation whatsoever.

The Supreme Court has recognised the possibility of such rackets in two of its recent decisions in *J. K. Bharati and Suman Enterprises*, This view is also supported by the universally recognized belief that State-sponsored lotteries inevitably lead to large-scale frauds and crimes and that as the country's dependency on lotteries increases, so does the opportunity for abuse. The aforementioned rationale was followed by the Division Bench of K. Balakrishnan Nair, J. of the Kerala High Court to rightly and justifiably dispose of this writ petition filed by Ms. Reeja, the petitioner.

## DECISION OF THE COURT

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<sup>33</sup> *In Re Dr. Arun Kumar Barthakur* [2003] SCC 2

The Division Bench of K. Balakrishnan Nair, J. of the Kerala High Court mentioned that the above allegations claimed by the respondents on the petitioner, Ms. Reeja, may be or may not be correct, but, they are matters to be enquired into by the law enforcing agencies, including the Police, to ensure that the hard-earned money of credulous people is not syphoned away. Having regard to the facts of the case, the Division Bench ordered that if no crime is registered against the petitioner for selling the tickets of the contented online lottery, which is conducted in violation of the provisions of *Section 4 of "The Lotteries (Regulation) Act, 1998"*<sup>34</sup>, Ms. Reeja's shop-room shall be opened and handed over to her. If there is a crime registered against her, the Police Authority will be competent to seize the computer and other instruments used for committing the offence.

But, the Division Bench ensured that the petitioner will be permitted to run her business of sale of Bisleri drinking water, Valvoline Lubricants, Oil Filters, etc. It declared that notwithstanding Exhibit Petition 1 and Exhibit Petition 2, the Police Authority has the power to register criminal cases and investigate them against the officers of the State Government, for running lotteries, in violation of the provisions of *Section 4 of "The Lotteries (Regulation) Act, 1998"*<sup>35</sup> and also the persons selling and purchasing the tickets of such lotteries. The Police also have the authority to punish the people violating the laws laid by the same act, under *Section 7*<sup>36</sup> of the Act. The Division Bench also allowed the Police to investigate the alleged offence of the petitioner under *Sub-rules (3) and (10) of Rule 24 of the "Kerala State Lotteries and On-line Lotteries (Regulation) Rules, 2003"*<sup>37</sup>. With this, the concerned writ petition, namely W.P.(C) Nos. 15556, 16015, 18547 & 21444 of 2004, are disposed of as above.

### **CRITICAL ANALYSIS: REEJA v STATE OF KERALA**

Lotteries have always drawn varied points of view from various people. Some cast it as a means to end a person's hard-earned income, whereas others vouch for regulating the conduct of the

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<sup>34</sup> Lotteries (Regulation) Act 1998, s 4

<sup>35</sup> *Ibid*

<sup>36</sup> Lotteries (Regulation) Act 1998, s 7

<sup>37</sup> Kerala State Lotteries and On-line Lotteries (Regulation) Rules 2003, Rule 24(3) & 24(10)

same to not completely exterminate this means of leisure and enjoyment. This case is a landmark case involving similar views from the petitioner's and respondent's sides.

According to me, completely closing off an activity without an attempt of regulating and understanding the same will be a mockery of a 21<sup>st</sup>-century person's intellect. Moreover, only giving weightage to a particular sect of society's belief and taking an action on the same belief sounds quite unprofessional, especially when happening from intellectuals involved in the legal field.

I think the Division Bench led by K. Balakrishnan Nair, J. of the Kerala High Court, passed the correct judgement in stating the Police Authority to take righteous and justifiable actions while investigating the allegations of running an illegal online lottery retail run by the petitioner, Ms. Reeja. The Court further stated that the unauthorized and forceful closing of the shop-room of the petitioner is illegal and ordered the respondents to hand over the same back to the petitioner. I respect the Court's decision of letting the petitioner continue with her business of selling Bisleri drinking water, Valvoline Lubricants, Oil Filters, etc., and also putting a temporary restriction on her online lottery retail business till the investigation is going on. The Court is just ordering the petitioner to allow reasonable access to her shop room to the Police Authority while carrying on with the said investigation. Allowing the Police to operate every minute of this alleged illegal online lottery retail and giving them the power to confiscate the records and seize the computers is another justifiable decision taken by the Division Bench.

All in all, I believe that to regulate the conduct of Lottery in the state of Kerala, and on a broader note, in India, the Court gave a virtuous decision by regulating the Lottery retail to comply with The Kerala State Lotteries and On-line Lotteries (Regulation) Rules, 2003<sup>38</sup> and The Lotteries (Regulation) Act, 1998<sup>39</sup>. This case of *Reeja v State of Kerala* involves a landmark judgement from a highbrow bench of K. Balakrishnan Nair, J. which, I believe, is capable of being used as a supra in cases related to illegal Lottery conduction.

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<sup>38</sup> Kerala State Lotteries and On-line Lotteries (Regulation) Rules 2003

<sup>39</sup> Lotteries (Regulation) Act 1998



## CONCLUDING REMARKS

After critically analysing all the aspects of the case of *Reeja v State of Kerala*<sup>40</sup>, we derive the conclusion that the lottery has always been a controversial topic. Lottery conduction is not termed illegal but should be duly conducted after obtaining all the reasonable checks and balances of the concerned State Government. Illegal lottery conduction is strictly prohibited as the such vicious mode of gambling deliberately steals off the hard-earned money of the poor sections of society who wish to gain enormous fortunes by participating in them. We also want to highlight the importance of the Judiciary to keep the actions of the State from becoming ruthless and unjust. Similar uncalled-for behaviour was demonstrated by the State authorities in this case wherein the State officials tried to suppress the rights of Ms. Reeja, a small-scale businessman. But the Hon'ble Kerala High Court acted as the steward of the suppressed Ms. Reeja and termed the illegitimate deed of State authorities as illegal and unjustifiable. The judgement of the Hon'ble Court was just and equitable as it termed the forceful and subduing actions of the State officials as illegitimate, on one hand, while on the other hand, it orders Ms. Reeja to provide the Police and the investigating authorities with all the asked for and needed data and instruments requires for inquiry and also allowed the Police Authorities to seize the computers and other systems used for committing the alleged offence.

The decision of the Kerala High Court has a far-reaching moral aspect attached to it and it has appropriately manifested through its decision the importance of the Judiciary in keeping the unchecked power of the State under control. This judgement exemplifies that Judiciary is and has always been the custodian of the suppressed class of people who could not raise their voices against the rampant powers of the State.

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<sup>40</sup> *Ibid*