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**AFR**
**Reserved on 24.3.2021**
**Delivered on 08.4.2021**

**Court No. - 34**

**Case :-** WRIT - C No. - 11738 of 2020

**Petitioner :-** All U.P Stamp Vendors Association
**Respondent :-** Union Of India And 3 Others
**Counsel for Petitioner :-** Vishesh Rajvanshi,Rajkishore Singh
**Counsel for Respondent :-** C.S.C.,Kshitij Shailendra,Sumit Kakkar

**Hon'ble Yashwant Varma,J.**

The Court has heard Sri N.C. Rajvanshi, learned senior counsel ably assisted by Sri Vishesh Rajvanshi for the petitioner and Sri Kshitij Shailendra alongwith Sri Sumeet Kakkar learned counsels who have appeared for the fourth respondent. Although the State was duly served and on notice, none has appeared or addressed submissions on its behalf.

The papers of this writ petition have come to be placed before this Court in light of the difference of opinion expressed by the Hon'ble members constituting the Division Bench of the Court in accordance with the provisions made in Chapter VIII Rule 3 of the Rules of the Court. While Kesarwani J. upon an examination of the contentions addressed held that the writ petition would merit dismissal, Bhanot J. has held that in light of the issues which arise, the respondents must be required to file their counter affidavits in the matter to enable the Court to deal with the questions raised in greater detail.

The petitioner is an association of stamp vendors engaged in the occupation of distribution and sale of judicial and non-judicial stamp paper in its physical form. They question the terms of a proposed agreement drawn by the **Stock Holding Corporation of India,**[1] the **Central Record Keeping Agency**[2] appointed as such under the **Uttar Pradesh E-Stamping Rules, 2013**[3]. The constituents of the

1 SHCIL
2 CRA
3 2013 Rules

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petitioner association are licensed vendors appointed in terms of Rule 151 of the **Uttar Pradesh Stamp Rules, 1942**[4] framed in exercise of the powers conferred on the State Government by Sections 74 and 75 of the **Indian Stamp Act, 1899**[5].

In order to delineate the nature of the challenge which was raised in the writ petition, it would be appropriate to reproduce the reliefs sought therein: -

> "1. Issue a Writ order or direction in the nature of certiorari quashing the agreement issued by the Respondent No. 4 for the appointment of Authorised collection centres which has been marked as **Annexure No. 4** to this Writ Petition.
>
> 2. Issue a Writ, order or direction in the nature of Mandamus directing the Respondent No. 4 to reconsider the agreement under challenge and to disclose the commission earned by the Respondent No. 4 by the State Government.
>
> 3. Issue a Writ, order or direction in the nature of Certiorari quashing the impugned Circular Dated 17.01.2020 marked as **Annexure No. 5** to this Writ Petition.
>
> 4. Issue a Writ, order or direction in the nature of Mandamus directing the Respondents Nos. 2 and 3 not to discontinue the printing of physical judicial and non judicial stamps.
>
> 5. Issue a Writ, order or direction in the nature of Certiorari quashing the impugned letter/order Dated 25.02.2020 issued by the Respondent No. 3, which has been marked as **Annexure No. 7** to this Writ Petition.
>
> 6. Issue a Writ, order or direction in the nature of Mandamus directing the Respondents Nos. 2 and 3 to reconsider the claim of the Petitioner as per **Annexure No. 6** to this Writ Petition.
>
> 7. Issue a Writ, order or direction in the nature of Mandamus whereby directing the Respondents Nos. 2 and 3 to fix the commission of the Petitioner's members as per Rule 161 of the Rules, 1942."

Since the provisions of the Act, the 1942 and the 2013 Rules have been exhaustively noticed and set forth in the two opinions rendered, this Court deems it unnecessary to extract the contents of those provisions except to briefly notice them in order to appreciate the challenge that is raised.

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4 1942 Rules
5 Act

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## A. THE STATUTORY REGIME UNDER THE 1942 RULES

Under the 1942 Rules, Rule 151 envisages two classes of vendors who are authorised to deal in the distribution and sale of stamps. While the first category comprises of those who are recognised as licensed vendors ex officio, the members of the petitioner have been appointed by the Collector as licensed stamp vendors in terms of the power granted by clause (x) of Rule 151. Rule 151-B provides for the tenure of a license that may be granted to licensed vendors. Rule 152 provides that no licensed vendor would be entitled to sell court fee or non-judicial stamp paper exceeding the aggregate value of Rs. 15,000 for one instrument to any individual member of the public. In terms of Rule 157, licensed vendors are empowered to purchase stamps from ex officio vendors on payment of "ready money" less the discount that may be prescribed. Rule 161 provides that a licensed vendor would be entitled to receive a discount of Rs. 1 per cent of the face value of the stamp that may be purchased.

## B. E- STAMPING AND THE 2013 RULES

E stamping was a system that evolved and was created post the *"Telgi Stamp Scam"* which the country witnessed and led to the Union Government formulating a "Computerised Stamp Duty Administration System" [C-SDAS] which essentially envisaged the stamp duty payment system progressing and transforming into one which would essentially run on an electronic and computerised software platform thus minimizing the chances of forgery and fabrication of physical stamp paper. For the purposes of designing and implementing C-SDAS, SHCIL was chosen as the CRA. The events surrounding the advent and introduction of the e stamping system is duly noticed in the communication of the Union Government dated 28 December 2005 which is reproduced hereinbelow: -

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New Delhi, the 28th December, 2005

"To,

The Finance/Revenue Secretaries,

All State/UTs Government.

Subject:- Authorisation of Stock Holding Corporation of India Ltd. to act CRA for the proposed computerization of Stamps Duty Administration System ð regarding.

Sir,

In pursuance to the announcement made in the Parliament in the wake of Stamp paper scam, the Government of India Ministry of Finance, Department of Economic Affairs appointed Industrial Finance Corporation of India Ltd. (IFCI) as Consultant to suggest alternative methods of collection of Stamp Duty. The purpose was to devise mechanism of electronic method of Stamp duty collection in order to-

i. Prevent the paper and process related fraudulent practices;

ii. Setting up a Secured and Reliable Stamp Duty Collection mechanism;

iii. Storage of information in secured electronic form and building up of a Central Data Repository to facilitate easy verification and generation of MIS reports.

2. The IFCI invited technical and commercial bids to identify the suitable agency to function as Central Record Keeping Agency (CRA) for computerization of Stamp Duty Administration System (hereinafter called the 'C-SDAS') in select cities on pilot basis on Build ð Operate ð Transfer (BOT) structure, initially for a period of five years. After due bidding process, M/s Stock Holding Corporation of India Ltd. (SHCIL) has been selected and are being authorized to act as Central Record Keeping Agency (CRA) for the above mentioned purposes with immediate effect.

3. SHCIL will broadly provide the following services to the respective State Governments, desirous to participate in the process in view of the fact that Stamp Duty is a State subject:

i. Creating need based infrastructure, hardware and software in the designated places in consultation with the State Governments and its connectivity with its main server;

ii. Creating need based hardware and software in the offices of sub-Registrar(s) and at authorized collection centers (the point of contact for payment of Stamp Duty) within the identified cities/places;

iii. Training the identified manpower/personnel in the sub-Registrar offices;

iv. Role of facilitation in selection of authorized collection centres for Stamp Duty;

v. Role of coordinator between the Central Server of

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> authorized collection centre (banks, etc.) and the sub-Registrar offices.
>
> 4. For the above services, the State Governments would be required to make payment to CRA 0.65% of the value of Stamp Duty collected through this mechanism, as per its financial quote in the competitive bid. After a period of 5 years, SHCIL will hand over the operations to the respective State Governments or the State Governments may retain their services for a further period based on a mutual agreement.
>
> The issues with the approval of competent authority.**"**

In order to give effect to the aforesaid policy initiative, the State Government framed the 2013 Rules. The State Government which is defined to be the appointing authority under these Rules is empowered to select and appoint a CRA which meets the qualifying criteria prescribed in Rule 3. The 2013 Rules define "approved intermediaries" to mean the CRA and the **Authorised Collection Centers**[6]. An ACC is defined to mean an agent appointed by the CRA with the prior approval of the Government, to act as an intermediary between the CRA and the person who pays stamp duty for the purposes of collection of tax under the Act. Rule 10 prescribes that the CRA would be entitled to an agreed percentage of commission on the amount of stamp duty collected by ACC's. The rate of commission is required to be published in the Gazette. Rule 12 provides that the CRA would be liable to pay such service charges or commission to ACC's as may be mutually agreed between them at its own level. In essence the liability toward commission payable to ACC's is to be borne by SHCIL and no part of that liability is to be passed onto the Government.

Prior to the First Amendment to the 2013 Rules, licensed vendors such as the constituents of the petitioner association were ineligible to be appointed as ACC's. However, post promulgation of the 2019 amendments, undisputedly they are now entitled to be considered for appointment as ACC's in terms of Rule 13 as it stands now. All that is required is that they be licensed vendors under the 1942 Rules and hold the qualifications that may be prescribed by the Stamp Commissioner.

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6 ACC

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## C. CONTENTIONS ON BEHALF OF THE PETITIONER

The petitioner before the Division Bench assailed the proposed agreement principally on the ground of the State action violating the constitutional protections guaranteed by Articles 19(1)(g), 21 and 38 of the Constitution. It was contended that the terms of the agreement as structured were bound to place licensed stamp vendors in a disadvantageous position and necessarily result in them suffering a loss. It was submitted that the commission which was guaranteed to them under the 1942 Rules should also govern the trade and distribution of e stamps. The petitioners invoked Articles 21 and 38 of the Constitution and the right to livelihood as flowing from the aforesaid Articles to seek a direction for the continuance of the system of physical stamping. They further sought to assail the agreement proposed by SHCIL by seeking a direction for the State respondents disclosing the actual commission earned by the CRA from the sale of e stamps in the State.

## D. SUBMISSIONS OF THE STATE

Controverting the aforesaid submissions, it was urged on behalf of the State that licensed vendors have no fundamental right to trade or carry on the business of physical stamps since the conditions of their engagement is circumscribed by the terms of the license that is granted to them. It was contended that a stock of physical stamp paper valued at Rs. 17,000 crores still existed in the State and therefore the apprehension that licensed vendors would be deprived of a right of livelihood was clearly misplaced. The State also urged that post the amendments to the 2013 Rules, licensed vendors had also became eligible to be appointed as ACC's and therefore it could not be said that their rights as conferred by Article 19 of the Constitution had been violated. Insofar as the issue of commission is concerned, it was urged that no cogent material had been brought on record which may have even prima facie established that the

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business of an ACC would necessarily be loss making. It was further submitted that the provisions made under the 1942 Rules for payment of commission could have no application to the sale of e stamps since that subject would be governed exclusively by the provisions made in the 2013 Rules.

## E. OPINION RENDERED BY KESARWANI J.

Dealing with the right of licensed vendors to deal in e stamps Kesarwani J. in his opinion held: -

> "20. There is no averment in the writ petition that members of the petitioner's Association have applied for appointment as "Authorise Collection Centre" under the E - Stamp Rules, 2013. The allegation of bank charges and expenses are also not supported by any evidence. It has been well settled by Hon'ble Supreme Court in Bharat Singh Vs. State of Haryana (1988) 4 SCC 534 (Para 13) that "If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point." The petitioners are still not Authorised Collection Centre. They have no right to dictate the terms of contract. It is wholly within their choice to apply for appointment as "Authorised Collection Centre" and enter into contract under Rule 12 to act as an intermediary between the Central Record Keeping Agency and the Stamp duty payer for collection of stamp duty, if they find it beneficial to them. They have no fundamental or legal right to trade in E-Stamp or to act an intermediary for collection of stamp duty which is a tax and is within the exclusive domain of the Government."

His Lordship went on to observe: -

> "Besides above, as per clause (vii) of the proposed agreement, the "Authorised Collection Centre" shall be entitled to 23% of the commission earned by the respondent No.4 from the State of U.P. for such e-stamps generated by the ACC in Uttar Pradesh which is neither unreasonable looking into the duties of the respondent No.4 specified under the aforequoted Rule 9 nor it could be demonstrated by the petitioners to be unreasonable."

Dealing with the challenge to the communication of 17 January 2020, his Lordship held:-

> "22. So far as the relief No.3 is concerned, we find that it is a correspondence between the Additional Chief Secretary, Board of Revenue, Uttar Pradesh, Prayagraj and Chief Treasury Officer, Kanpur Nagar, regarding stamps printing. There is no factual foundation in the writ petition that any licenced stamp vendor under the U.P. Rules 1942 has been denied sale of physical stamp

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> under their licence. Learned counsel for the petitioners has also not disputed the submissions of learned Additional Chief Standing Counsel that the State Government has very huge stock of stamps in physical form. Under the circumstances, the challenge to the impugned letter of the Additional Chief Secretary, dated 17.01.2020 is wholly misconceived. Therefore, the relief No.3 sought for its quashing has no merit and is, rejected."

Dealing with the prayer of the petitioners for a direction being issued commanding the respondents not to discontinue physical stamps, Kesarwani J. held: -

> "24. The relief so sought by the petitioners is wholly misconceived in as much as, *firstly*, no material has been placed or pleaded in the writ petition which may indicate that despite demand the physical stamp has not been issued to any licenced vendor under the U.P. Rules 1942 and, *secondly*, the aforementioned notification of the Central Government dated 28.12.2005 indicates that E-Stamp sale is a policy decision of the Government for collection of stamp duty which has been taken pursuant to the announcement made in the Parliament in the wake of stamp paper scam. Now e-stamp is governed by the E-Stamp Rules 2013. The petitioners being licenced stamp vendors under the U.P. Rules 1942 have the right for enforcement of conditions of their licence. They can not dictate the Government for collection of stamp duty under Section 10 of the Act, in the manner as per their (petitioners) desire."

His Lordship went on to hold: -

> ".....Thus, stamp duty being a tax and sale of physical stamp or E-stamp for collection of revenue being policy decision of the Government in fiscal matter, no mandamus under Article 226 of the Constitution of India can be issued to the Government at the instance of the petitioner to print physical stamp when the Government has taken a policy decision backed by statutory provision for E-stamp and to permit "ACC" to issue e-stamp of any amount to a person under the E-Stamp Rules.
>
> 27. **The petitioners have not disputed that the E-Stamp Rules 2013 has been validly framed.** The decision of the Government for sale of E-Stamp and the legislation made in this regard relates to economic matter/activities which should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. While dealing with economic limitation, Hon'ble Supreme Court in the case of **R.K. Garg Vs. Union of Inida 1981 (4) SCC 675 (para 8)** observed that the court must always remember that legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, every legislation particularly in economic matters is essentially empiric and it is based on experimentation. There, may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid."

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Dealing with the challenge to the rate of commission as prescribed under the proposed contract, Kesarwani J. observed: -

> "31. Rule 12 of the E-Stamp Rules 2013 provides that the Central Record Keeping Agency **may appoint agent(s) called "Authorised Collection Centre" to act as an intermediary** between the Central Record - Keeping Agency and the Stamp duty payer for collection of Stamp duty. Thus, if members of the petitioners apply for and are appointed as "Authorised Collection Centre" by the respondent No.4, then their status shall be of an agent of the respondent No.4. As per the aforesaid Rule 12 the **Service Charges, Commission or fee etc. payable to the "Authorized Collection Centre" shall be paid by the Central Record - Keeping Agency** i.e. the respondent No.4 at their own level as mutually agreed between them. Thus it is wholly within the choice of licenced stamp vendors either to agree to work as agent of respondent No. 4 on the commission/service charge/fee as may be offered to them by the respondent no.4 or not to agree. By no stretch of imagination it infringe Article 19(1) (g) or Article 21 or Article 38 of the Constitution of India. The entire submissions of learned counsel for the petitioners in this regard is totally baseless and without substance. This Court under Article 226 of the Constitution of India cannot direct the respondent no.4 to agree to pay to ACC commission/service charge/fee as may be demanded by the petitioners in contrast to the mutually agreed amount under Rule 12 of the E-stamp Rules and enter into contract on that basis with a licensed stamp vendor for his appointment as agent (A.C.C.)."

The constitutional challenge was negatived with his Lordship holding: -

> 32. Article 19(1)(g) of the Constitution accords fundamental right to carry on any profession, occupation, trade or business which is subject to imposition of reasonable restriction in general public interest by the State under Article 19(6). The petitioners have no fundamental right to sell E-Stamp or for appointment as an agent under Rule 12 of the E-Stamp Rules. Amount of commission/service charge/fee as may be or has been offered by the respondent no.4 to persons for appointment as agent under Rule 12, does not infringe Article 19(1)(g).
>
> 33. Article 21 of the Constitution provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Apprehension of lower income than the desired income as an agent under Rule 12 does not attract Article 21 of the Constitution.
>
> 34. Article 38 is the directive principle of State Policy. Learned counsel for the petitioner has completely failed to demonstrate as to how Article 38 is attracted and is enforceable under the facts and circumstances of the present case. Therefore, his submission with regard to Article 38 is also rejected.

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On recording of the aforesaid conclusions, His Lordship proceeded to hold that the writ petition was liable to be dismissed.

## F. OPINION PRONOUNCED BY BHANOT J.

Dealing with the validity of the terms of the agreement, Bhanot J. on the other hand observed: -

> "15. The commission received by the Central Record-keeping Agency/SHCIL, from the State of Uttar Pradesh is not revealed in the said proforma agreement, nor has it been otherwise disclosed to the petitioner either by the State Government or by the SHCIL. Consequently the amount of commission to which the Authorized Collection Centre is entitled under the proposed contract with SHCIL cannot be determined. This makes the proposed agreement between the Authorized Collection Centre and the Central Record-keeping Agency / SHCIL vague and uncertain."

His Lordship then went on to observe: -

> "16. …..Accordingly, the commission to which the Authorized Collection Centre will be entitled upon the sale of e-stamps worth Rs. 1 lakh is Rs. 115/-. The Authorized Collection Centre is required to predeposit an amount of Rs. 1 lakh in its bank account as advance, for purchase of e-stamps from the SHCIL / Central Record-keeping Agency of equivalent value. Upon deposit of said amount, a sum of Rs. 250/- is charged by the bank as cash handling charge. Hence the Authorized Collection Centre is sure to suffer a certain financial loss on each transaction of purchase and sale of stamps.
>
> 17. The proposed agreement thus creates an assurance of certain losses for the Authorized Collection Centre. Ordinary prudence would have it that no private entity will enter into a contract where loss is certain. (These consequences are being drawn on a plain reading of the writ petition, and without the benefit of pleadings from the respondents by counter affidavits)."

Evaluating the question of whether SHCIL could be recognised to be discharging a public function and that contracts so entered must be in accord with principles recognised by public law, Bhanot J. held:-

> "25. The cumulative effect of the aforesaid facts is that the Central Record-keeping Agency and Authorized Collection Centre, discharge public functions. Consequently their actions including the proposed agreement can be judicially reviewed, and the same are accountable to public law.
>
> 26. It is well settled that the court cannot rewrite the contract between the parties. Moreso, in this case it is not the ken of the court to determine the commission to be paid to either party.

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> However, it is very much concern of the court to enquire whether the proposed agreement between the Central Record-keeping Agency/SHCIL and the Authorized Collection Centre is consistent with the law of the land or not."

His Lordship then proceeded to notice the body of precedent as has evolved with the Supreme Court expanding the applicability of the principles of unconscionable terms of contracts and unequal bargaining powers of parties to a contract infused with a public element. After noticing various precedents rendered on those subjects, his Lordship observed: -

> "28. There are other limitations on the creation of contracts under the public law. Some salient aspects of the proposed agreement between the Central Record-keeping Agency /SHCIL, and the Authorized Collection Centre will now be considered. The proposed agreement is not a simplicitor commercial contract. Public functions will be discharged by the parties in the framework of the said contract. There is a dominant public law element in the aforesaid contract. The parties to the contract also perform statutory functions under the Rules of 2013. The said agreement fulfills a statutory purpose. A contract between the Authorized Collection Centre, and the Central Record-keeping Agency is critical to the existence of the Authorized Collection Centre, and for its efficient functioning to implement the scheme of the Act and the Rules of 2013. The proposed agreement has to be compliant with the requirements of public law.
>
> 37. From the pleadings it transpires that the exact commission payable to the SHCIL/Central Record-keeping Agency from the State Government is not known, and remains shrouded in opacity. Consequently, the exact commission to which the Authorized Collection Centre is entitled, cannot be determined. Business decisions cannot be taken in absence of material facts, which are in the knowledge of one of the parties but not disclosed to the other contracting party.
>
> 38. These features of the proposed agreement run counter to the requirement of fairness and transparency in contracts coming in the ambit of public law. Vague terms and uncertainty in the contract can exist on the pain of invalidation under Section 29 of the Indian Contract Act.
>
> 39. As seen earlier, this is not a business /commercial contract simplicitor. Hence the concept of unequal bargaining power could well apply to the facts of the case. The SHCIL is apparently exerting its superior bargaining power over the Authorized Collection Centre, to induce the latter into an unequal contract. The offending part of the proposed agreement appears to be opposed to public policy, and seems unconscionable. But the issue can be decided with finality only after exchange of pleadings."

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Dealing with the applicability of Article 19(1)(g), his Lordship held: -

> 45. The right to trade in e-stamps comes within the embrace of Article 19(1)(g) of the Constitution of India. This, however, does not mean that any person has a fundamental right to be appointed as an Authorized Collection Centre. The appointment of Authorized Collection Centre is strictly governed and regulated by the Rules of 2013, and has to be made according to the said Rules.
>
> 46. Thus subject to the restrictions imposed by the law, (in this case the Indian Stamp Act, 1899, read with Uttar Pradesh E-Stamping Rules, 2013), the members of the petitioner have a fundamental right to trade in e-stamps. According to the petitioner, the offending condition in the proposed contract and actions of the respondents, curtail the fundamental right of the petitioner in contravention of the permissible restrictions under Article 19(6) of the Constitution of India, and violate Article 19(1)(g) of the Constitution of India.

Bhanot J. ultimately proceeded to frame the following operative directions: -

> "54. The respondents are granted four weeks time to file their respective counter affidavits'. While filing the counter affidavit, the respondent no. 4-SHCIL shall also state its organizational details and structure, constitution of its Board, the extent of control of the Government both administrative and financial, and any other like information.
>
> 55. The SHCIL and the State Government are directed to make the necessary disclosures regarding the actual commission being given to the Stock Holding Corporation of India Limited by the State Government, and reveal the same to the petitioner within two weeks from the date of receipt of a certified copy of this order."

## G. SUBMISSIONS BEFORE THIS COURT

Before this Court Sri Rajvanshi learned senior counsel has advanced submissions on lines identical to that as urged before the Division Bench. Additionally, he contended that after opinion had been rendered by the Division Bench, the position has worsened with physical stamp paper not being available for purchase by licensed vendors at all. As noted in the very beginning, the State went unrepresented before this Court with designated counsel choosing not to appear or advance submissions.

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Sri Kshitij Shailendra and Sri Sumeet Kacker appeared on behalf of SHCIL. Adopting the objections taken on behalf of the State respondents before the Division Bench, the attention of the Court was additionally drawn to the decision rendered by the Division Bench of the Gujarat High Court in **Manish Jitendrakumar Shah Vs. State of Gujarat**[7] to contend that the ban imposed on the sale and distribution of physical non judicial stamp paper by the Government of Gujarat was upheld for reasons recorded therein. Learned counsels further urged that in the absence of any challenge to the policy of e stamping or the 2013 Rules, no relief could be accorded to the petitioner. It was contended that the policy initiative of e stamping as adopted by numerous States across the country did not merit any interference. Stress was also laid on Rule 12 of the 2013 Rules on the basis whereof it was contended that the proposed agreement was in accord with the provisions made therein. It was further stated that the rate of commission is to be mutually agreed upon by parties after entering into the contract and that the proposed contract also puts in place a dispute resolution mechanism which could always be invoked. The attention of the Court was also invited to Clause VII of the proposed agreement which stipulates an ACC being paid 23% of the commission earned by SHCIL from the State and that any change thereto could be made with mutual consent. It was in that backdrop submitted that the remuneration payable to an ACC would never remain static and it was also not sacrosanct. It would be a subject which would always remain open for resolution between parties.

## H.THE PRINCIPAL ISSUE

Having noticed the two opinions rendered by the learned members comprising the Division Bench and the submissions advanced, the principal issue which essentially arises for consideration is whether the petitioners have been able to establish a prima facie case against the action taken by the respondents which warranted them being required to

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7 Special Civil Application No. 16221 of 2019 decided on 24 July 2020

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file a return in these proceedings. Before proceeding to deal with the aforesaid issue, it would be apposite to enunciate two fundamental pedestals in the backdrop of which the challenge would be liable to be evaluated.

Firstly, while approaching the issue as formulated above, the Court must necessarily bear in mind that the proceedings instituted by the petitioners are for a certification of claims which are personal to the Association and its members. It is pertinent to underline and highlight here at the outset that the petition has not been brought in public interest. This is evident from the fact that the petitioners assert that the action of the State violates the guarantees held forth by Articles 19(1)(g), 21 and 38 of the Constitution. This aspect would assume significance when the Court proceeds to deal with the question whether the respondents are obliged to disclose the terms of the arrangement between SHCIL and the State Government.

It thus becomes necessary and essential to articulate the clear distinction which must be recognised to exist when the Court under Article 226 of the Constitution exercises its powers of judicial review in respect of an action which is personal as opposed and distinct from a petition preferred in larger public interest and not really for individual relief being accorded. The principal distinction is while an individual action is adversarial, a petition preferred in public interest is not. While it may be permissible for the Court while dealing with a public interest litigation to assume an *"inquisitorial"* role in order to hold the State liable and obliged to give effect to the Constitution and the laws, as opposed to the above, an individual petition must necessarily rest and proceed on material gathered by the petitioner and the validity of the objection and challenge as raised therein. On such a petition it is neither open for the Court to undertake a roving enquiry in order to satisfy itself with regard to the validity of the impugned action nor can the respondents therein be required to produce material on the basis of interrogatories and directives

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in order to sustain or grant a relief that may have otherwise been sought. Equally important it would be to bear in mind that the scope of the writ petition also cannot be expanded beyond the grounds of challenge which are raised and the reliefs sought in order to subserve some larger public interest, a course which would otherwise be permissible in the case of a public interest litigation.

The second aspect which needs to be clearly and unambiguously spelt out arises from the following narration of facts. Undisputedly, the system of e stamping, the appointment of a CRA, the appointment of an ACC are subjects which are governed and controlled by the **Uttar Pradesh E- Stamping Rules, 2013**. The proposed contract as published by SHCIL and assailed by the petitioners is also traceable to the provisions made in the 2013 Rules. However, no challenge was either raised or laid to the statutory rules as framed nor was it contended that the proposed agreement is in violation of or ultra vires any provision made in the 2013 Rules. The policy initiative of e stamping was also not questioned.

Having enumerated the broad contours in the backdrop of which the instant challenge would have to be examined and an opinion formed on the question of whether the writ petition raises triable issues which would warrant the respondents being required to respond, the Court now proceeds to deal with the rival submissions which were addressed.

## I. COMMISSION FIXED UNDER THE 1942 RULES TO APPLY TO E STAMPS

It would be convenient to firstly deal with and dispose of a minor submission which was addressed in challenge to the commission which is proposed to be paid to the petitioners. Sri Rajvanshi, learned senior counsel, submitted that in terms of the provisions made in the 1942 Rules, the members of the petitioner Association are entitled to a commission of Rupee 1 per cent of the face value of the stamp which is being purchased.

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He would contend that the same rate of commission would be liable to be extended to the petitioners on the sale of e stamps also. While Bhanot J. has not dealt with this issue, Kesarwani J. has rejected this contention by opining that the discount as fixed under the 1942 Rules cannot be held to apply to the sale of e stamps which is governed by the 2013 Rules and puts in place *"a different scheme exclusively governing sale of E stamps"*.

While not much would depend or turn upon the difference between a "commission" and a "discount", it may nonetheless be clarified that Rule 161 of the 1942 Rules in fact speaks of a "discount" being extended to licensed vendors as opposed to what was described to be a commission. The Rule enables licensed vendors to purchase stamp essentially at a price lower that its face value and is thus really not a commission as commonly understood, but clearly a discount and which represents the margin that they can retain upon the sale of such stamps.

Reverting then to the merits of the argument aforenoted, in the considered opinion of this Court, the view as expressed by Kesarwani J. is clearly unexceptionable. Undisputedly the 1942 Rules principally govern the sale of physical stamps. Rule 161 prescribes a discount when a licensed vendor purchases stamp from the Government treasury. The aforesaid Rule cannot be read as either expressly or impliedly governing or controlling the sale of e stamps. As rightly found by Kesarwani J., sale of e stamps is governed exclusively by the 2013 Rules which in one sense is a complete and comprehensive code governing the sale, distribution and use of e stamps. This Court thus finds itself unable to accept the submission addressed contrary to the above.

## J. THE ARTICLE 19(1)(g), 21 and 38 CHALLENGE

The challenge on the anvil of Article 19(1)(g) proceeds on the following lines. According to the petitioners, the proposed contract and the statutory obligations which are otherwise cast upon an ACC including the creation of infrastructure for such a center, imposes an onerous

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financial burden upon them. Sri Rajvanshi learned senior counsel has referred the Court to the averments made in paragraphs 17 to 20 of the writ petition in order to demonstrate and establish that if the members of the petitioner association were forced to enter into the proposed contract, they would inevitably suffer losses and the trade and business of e stamps itself would be rendered unprofitable. Article 19 (1)(g) is thus essentially invoked on the ground of an apprehension of the trade becoming unprofitable and losses bound to be caused if the petitioners were forced to engage in the sale and distribution of e stamps in accordance with the terms set forth in the proposed agreement. Additionally, it was contended that if the system of physical stamps were to be done away altogether, it would result not just in an infraction of Article 19(1)(g) but also Article 21 and 38 of the Constitution since it would result in a loss of livelihood.

In order to assess the validity of the aforesaid submissions, it would firstly be apposite to bear in mind that the Indian Stamp Act, 1899, in essence, empowers the Union and the States to impose a tax on instruments that come to be executed. The tax is so imposed by virtue of the legislative field as enumerated in Entry 91 of List I and Entry 63 of List II as set out in the Seventh Schedule to the Constitution. The tax imposed on instruments is traceable to the sovereign power of the State. Neither the Act nor the U.P. Stamp Rules 1942 recognise or confer a right on any individual to trade in or carry on the business of sale of stamps. The petitioners cannot possibly assert or claim a right to engage in the business or trade of stamps outside the contours of the Act and the Rules of 1942 and 2013 as framed thereunder. The right to distribute and sell stamps is granted by the Rules to a certain class of vendors and authorities, ex officio and licensed, as specified in Rule 161 alone. Undisputedly, the members of the petitioner Association are licensed vendors appointed in terms of the provisions made in Rule 151(a)(x). Their right to deal in stamps is founded exclusively on this license.

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It becomes pertinent to state that stamps, as envisaged, essentially denote, evidence and exhibit the payment of tax as imposed by the appropriate Government upon a party to an instrument. A right to engage in the trade, business or occupation of collecting tax for and on behalf of the Government was not one which was recognised even in common law. It therefore needs to be understood that the petitioners do not and cannot in law be recognised in law to possess an inalienable right to carry on the trade or business of stamps except in accordance with the grant as conferred under the Act and the Rules framed thereunder.

In **Ram Krishnan Kakkanth Vs. Government of Kerala**[8], the Supreme Court dealing with a challenge raised by pump set distributors to a Government stipulation that farmers who had been extended financial assistance would purchase pumps only from accredited dealers, aptly observed: -

> "**28.** Under clause (1)(*g*) of Article 19, every citizen has a freedom and right to choose his own employment or take up any trade or calling subject only to the limits as may be imposed by the State in the interests of public welfare and the other grounds mentioned in clause (6) of Article 19. But it may be emphasised that the Constitution does not recognise franchise or rights to business which are dependent on grants by the State or business affected by public interest (*Saghir Ahmad* v. *State of U.P.* [(1955) 1 SCR 707 : AIR 1954 SC 728] ).
>
> **32.** It may be indicated that although a citizen has a fundamental right to carry on a trade or business, he has no fundamental right to insist upon the Government or any other individual for doing business with him. Any Government or an individual has got a right to enter into contract with a particular person or to determine a person or persons with whom he or it will deal."

In the considered opinion of the Court the dictum laid down in **Krishnan Kakkanth** succinctly enunciates the nature and the extent of the right that the petitioners can possibly assert with reference to Articles 19, 21 and 38 of the Constitution. As held in that decision, the petitioners cannot claim an indefeasible right to the grant of a franchise in their favour nor can they claim a license of exclusivity to deal in stamps. It is within the limits of the licensing provisions alone that they can claim a

8(1997) 9 SCC 495

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right to an equal opportunity to apply, not to be treated unfairly or be discriminated in the issuance of the grant and the freedom to pursue that occupation and trade subject to valid statutory restrictions that may be imposed and those which may otherwise be applied by law in larger public interest. While it is true that **Krishnan Kakkanth** speaks of the 'freedom' of the Government to enter into a contract", all that may be observed in light of the law as it has developed on that issue, is that as and when the Government does decide to enter into a contract or invite persons to engage with it, its actions must be in accord with the principles of fairness as flowing from Article 14 of the Constitution.

In fact, while dealing with the extent of the right that the petitioners can claim by virtue of Article 19 of the Constitution, Bhanot J. also notices and acknowledges the inherent limitations which would apply when his Lordship observes: -

> **"46.** Thus subject to the restrictions imposed by the law, (in this case the Indian Stamp Act, 1899, read with Uttar Pradesh E-Stamping Rules, 2013), the members of the petitioner have a fundamental right to trade in e-stamps."

Dealing with the validity of a restriction imposed by the State which provided that stamp paper not exceeding the face value of Rs. 2000, would be made available to licensed stamp vendors, a Division Bench of the Court in **Stamp Vendors Association Vs. State of U.P.**[9] succinctly highlighted the aforesaid position in the following terms:-

> **14.** If one understands correctly the ratio laid down in *Fedco* v. *S.N. Bilgramai*, AIR 1960 SC 415, prevention of fraud stands comprised within the phraseology experssed in Article 19(6) of the Constitution.
>
> **15.** Further as per *Deputy Asst. Iron & Steel Controller* v. *Manik Chand*, (1972) 3 SCC 324 : AIR 1972 SC 935; *Farnandez* v. *Deputy Chief Controller*, (1975) 1 SCC 716 : AIR 1975 SC 1208 and *Nagendra* v. *Commissioner*, AIR 1958 SC 398 it is clear that the right to sell the stamps is created by grant of a licence under the Indian Stamp Act and the Rules framed by our State under that Act and thus the exercise of the right to sell the

9 AIR 2001 ALL. 49

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> stamps is subject to the terms and conditions imposed by the Statute and no fundamental right is infringed by imposition of terms and condition. In *State of Orissa* v. *Radhey Shyam*(1995) 1 SCC 652 : (AIR 1995 SC 855) it was laid down that business interest of an individual can be overridden by the Government policy in the public interest.
>
> **16.** In sale of the stamps public interest is apparently invovled. From the facts pleaded by the Petitioner it is clear that the limit of Rs. 5,000/- was enhanced to Rs. 8,000/- but now it has been lowered. The amendment made is clearly permissible under Article 19(6) of the Constitution being in the interest of 'general public' imposing a reasonable restriction while permitting sale of Stamps worth to the extent of Rs. 2,000/- only to the Stamp Vendors under the provisions of the Stamp Laws. The business secured under Article 19(1)(g). Only a restriction has been imposed which is not arbitrary. We hold that the amendment was made in order to avoid fraudulent use and avoid misuse of stamp papers in the interest of general public as the income of the revenue of the State is public revenue which is being spent for the interest of the general public. We find the grounds devoid of any substance."

In fact, if the submission addressed on behalf of the petitioners be accepted in literal terms, it would essentially mean recognizing a right vesting in them to compel the Government to necessarily engage in business or enter into a contract with the petitioners for the sale of physical stamps in posterity to the exclusion of all other modes. As a necessary corollary, the Court would also have to recognise a right inhering in the petitioners to compel parties to instruments to purchase physical stamps. Neither of the above can be countenanced as a right which can be legitimately traced to Articles 19(1)(g), 21 or 38.

While it was vehemently contended that the petitioners were bound to suffer losses if they were compelled to enter into the proposed contract, it becomes pertinent to note that the assertions made in paragraphs 17 to 21 of the writ petition are based entirely on assumptions and presumptions. No material or evidence has been brought forth to establish conclusively that the petitioners would in fact suffer losses. The commission that is supposedly granted to SHCIL by the Government is based on an assumption. It is similarly urged in paragraph 18 that the petitioner *"has been informed by the officials of the Respondent No. 4 that the commission earned by the Respondent No. 4 by the State*

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*Government is fixed 0.5% on the sale of E stamps worth Rs. 1,00,000.*" The writ petition carries no other material in support of the aforesaid statement. The calculations of revenue that the petitioners would earn on the sale of e stamps is based solely on the aforesaid unsubstantiated averment. The petitioners have also not disclosed the total revenue that is generated from the sale of e stamps in the State so as to compel the Court to prima facie conclude that the proposed contract places onerous conditions upon them. In paragraph 20 of the writ petition, the petitioners raise the issue of a "cash handling charge" that is allegedly levied and collected by Banks. Even in respect of this charge no authoritative material has been brought on the record.

The more fundamental question which arises in the aforesaid backdrop is whether Articles 19, 21 or 38 of the Constitution confer a right as claimed by the petitioners to engage in a business, trade or occupation which would necessarily guarantee or sustain a profit or a reasonable rate of return. It is apposite to note here that what the Constitution essentially guarantees is the right to engage in a profession, occupation, trade or business. It neither proffers nor holds forth a guarantee of a profit in that trade or business.

Way back in **Malwa Bus Services (P) Ltd. Vs. State of Punjab**[10], the Supreme Court while dealing with the validity of a cap imposed on returns that could be earned by bus operators on passenger tickets, held: -

> **"22.** It was lastly urged that the levy is almost confiscatory in character and the petitioners would have to close down their business as stage carriage operators. It is stated that the passenger fares were permitted to be raised by about 43 per cent just before the levy was increased in this case and it is even now open to the operators to move the State Government to increase the rates if they feel that there is a case for doing so. But on the facts and in the circumstances of the case, we feel that it is not possible to hold that the impugned levy imposes an unreasonable restriction on the freedom of the petitioners to carry on business. The considerations similar to those which weighed with this Court in upholding the

10 (1983) 3 SCC 237

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> Mustard Oil Price Control Order, 1977 in *Prag Ice & Oil Mills* v. *Union of India* [(1978) 3 SCC 459 : AIR 1978 SC 1296 : (1978) 3 SCR 293 :1978 Cri LJ 1281] ought to be applied in this case also. Though patent injustice to the operators of stage carriages in fixing lower returns on the tickets issued to passengers should not be encouraged, a reasonable return on investment or a reasonable rate of profit cannot be the sine qua non of the validity of the order of the Government fixing the maximum fares which the operators may collect from their passengers. It cannot also be said that merely because a business becomes uneconomical as a consequence of a new levy, the new levy would amount to an unreasonable restriction on the fundamental right to carry on the said business. It is, however, open to the State Government to make any modifications in the fares if it feels that there is a need to do so. But the impugned levy cannot be struck down on the ground that the operation of stage carriages has become uneconomical after the introduction of the impugned levy. Moreover the material placed by the petitioners is not also sufficient to decide whether the business has really become uneconomical or not. We do not, therefore, find any merit in this ground also.**"**

A business or a trade may become unprofitable or unviable on account of various factors such as the advent of technology, change in consumer preferences, entrance of new competitors, a policy shift of the Government aimed at subserving larger public interest or security of revenue. But in the end, these are mere vagaries of trade which cannot be recognised as constituting the infringement of a fundamental right to carry on that trade or business. While hearing submissions advanced on behalf of the petitioners, it was more than evident that what the petitioners essentially seek to achieve is a perpetuation of the system of physical stamping and the continuation of a business model which is perceived to be threatened by the advent of e stamping. Articles 19, 21 or 38 of the Constitution cannot possibly be invoked for the aforesaid purpose.

The Court lastly deems it apposite to advert to the following data which is available on the official website of the Stamp and Registration Department of the Government of U.P.[11] According to the data uploaded on the website, 3097 ACC's have already been appointed and are functioning in the State. This should conclusively lay at rest the

11 https://igrsup.gov.in/prernadoc/vender_list.pdf

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contention of the petitioner that the trade of e stamps is uneconomical or unfeasible.

In a slightly different factual backdrop but not insignificant for our purpose, the Supreme Court while dealing with the issue of entrance of new competitors and their impact on existing businesses in **Mithilesh Garg Vs. Union of India**[12] observed: -

> **9.** Article 19(1)(*g*) of the Constitution of India guarantees to all citizens the right to practice any profession, or to carry on any occupation, trade or business subject to reasonable restrictions imposed by the State under Article 19(6) of the Constitution of India. A Constitution Bench of this Court in *Saghir Ahmad* v. *State of U.P.* [(1955) 1 SCR 707 : AIR 1954 SC 728] held that the fundamental right under Article 19(1)(*g*) entitles any member of the public to carry on the business of transporting passengers with the aid of vehicles. Mukherjea, J. speaking for the Court observed as under: (SCR p. 708)
>
> "Within the limits imposed by State regulations any member of the public can ply motor vehicles on a public road. To that extent he can also carry on the business of transporting passengers with the aid of vehicles. It is to this carrying on of the trade or business that the guarantee in Article 19(1)(*g*) is attracted and a citizen can legitimately complain if any legislation takes away or curtails that right any more than is permissible under clause (6) of that article."
>
> It is thus a guaranteed right of every citizen whether rich or poor to take up and carry on, if he so wishes, the motor transport business. It is only the State which can impose reasonable restrictions within the ambit of Article 19(6) of the Constitution of India. Sections 47(3) and 57 of the old Act were some of the restrictions which were imposed by the State on the enjoyment of the right under Article 19(1)(*g*) so far as the motor transport business was concerned. The said restrictions have been taken away and the provisions of Sections 47(3) and 57 of the old Act have been repealed from the statute book. The Act provides liberal policy for the grant of permits to those who intend to enter the motor transport business. The provisions of the Act are in conformity with Article 19(1)(*g*) of the Constitution of India. The petitioners are asking this Court to do what the Parliament has undone. When the State has chosen not to impose any restriction under Article 19(6) of the Constitution of India in respect of motor transport business and has left the citizens to enjoy their right under Article 19(1)(*g*) there can be no cause for complaint by the petitioners.
>
> **10.** On an earlier occasion this Court dealt with somewhat similar situation. The Uttar Pradesh Government amended the old Act by the Motor Vehicle (U.P. Amendment) Act, 1972 and inserted Section 43-A. The new Section 43-A apart from making certain changes in Section 47 of the old Act also omitted sub-section (3) of

12 (1992) 1 SCC 168

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> Section 47 of the old Act. Section 43-A provided that in the case of non-nationalised routes, if the State Government was of the opinion that it was in the public interest to grant permits to all eligible applicants it might, by notification in the official gazette issue a direction accordingly. The necessary notification was issued with the result that the transport authorities were to proceed to grant permits as if sub-section (3) of Section 47 was omitted and there was no limit for the grant of permits on any specified route within the region. Section 43-A and the consequent notification was challenged by the existing operators before the Allahabad High Court. The High Court dismissed the writ petitions. On appeal this Court in *Hans Raj Kehar* v. *State of U.P.* [(1975) 1 SCC 40 : (1975) 2 SCR 916 : AIR 1975 SC 389] dismissed the appeal. Khanna, J. speaking for the Court held as under: (SCC pp. 44-45, paras 6 and 8)
>
> "The contention that the impugned notification is violative of the rights of the appellants under Article 19(1)(*f*) or (*g*) of the Constitution is equally devoid of force. There is nothing in the notification which prevents the appellants from acquiring, holding and disposing of their property or prevents them from practising any profession or from carrying on any occupation, trade or business. The fact that some others have also been enabled to obtain permits for running buses cannot constitute a violation of the appellants' rights under the above two clauses of Article 19 of the Constitution. The above provisions are not intended to grant a kind of monopoly to a few bus operators to the exclusion of other eligible persons. No right is guaranteed to any private party by Article 19 of the Constitution of carrying on trade and business without competition from other eligible persons. Clause (*g*) of Article 19(1) gives a right to all citizens subject to Article 19(6) to practise any profession or to carry on any occupation, trade or business. It is an enabling provision and does not confer a right on those already practising a profession or carrying on any occupation, trade or business to exclude and debar fresh eligible entrants from practising that profession or from carrying on that occupation, trade or business. The said provision is not intended to make any profession, business or trade the exclusive preserve of a few persons. We, therefore, find no valid basis for holding that the impugned provisions are violative of Article 19."
>
> The identical situation has been created by Sections 71, 72 and 80 of the Act by omitting the provisions of Section 47(3) of the old Act. It has been made easier for any person to obtain a stage carriage permit under the Act. The attack of the petitioner on Section 80 on the ground of Article 19 has squarely been answered by this Court in *Hans Raj Kehar case* [(1975) 1 SCC 40 : (1975) 2 SCR 916 : AIR 1975 SC 389] ."

Upon noticing the content and extent of the right that can be claimed under or recognised to flow from Article 19, it is manifest that the petitioner cannot possibly assert or place an obligation upon the appropriate government to frame a business model which may necessarily

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guarantee a return or a profit in a particular trade or business. Ultimately it is for the individual to ascertain and assess whether it would be profitable for him to engage in that business or pursuit. Any existing trade would be susceptible to change or disruption in the business environment. In fact disruption is a specter which always exists as technological advances are made and new and more efficient processes evolve. The Constitution holds forth no guarantees against such fluctuations. Regard must also be had to the fact that the system of e stamping as introduced does not compel the petitioner to engage in the trade of e stamp if it be perceived to be unviable by them. The inevitable reach and adoption of the system of e stamping also cannot be stalled only with a view to perpetuate the sale of physical stamps.

## K. ARTICLE 19 (6) AND THE REASONABLE RESTRICTION

A brief discussion on the concept of a reasonable restriction that may be imposed under Article 19(6) is necessitated in light of the submission that the impugned measures are also violative of Articles 21 and 38 of the Constitution and that they deprive the petitioners of a right to livelihood. That the right to eke out a livelihood is an integral part of the right to life is indisputable. The question here is whether the petitioner and its constituents are in fact being deprived of that right. The second question is whether the right of the petitioners to practice or carry on a trade or business has been arbitrarily restricted. Undisputedly, the rights conferred by Article 19 of the Constitution are neither absolute nor unfettered. They are entitled to be exercised subject to just restrictions that may be imposed by the Government *"in the interest of general public"*. The validity of such a restriction as and when imposed and assailed is liable to be tested on the anvil of reasonableness with the Courts striving to strike a balance between the freedom that is guaranteed and the larger public interest that the restriction seeks to subserve. While adjudging the validity of a restriction so enforced, the Court must

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evaluate its reasonableness not standing in the shoes of the person upon whom that restriction operates but from the viewpoint of the community as a whole. In all such situations the question to be posed would be whether the restriction has come to be imposed to preserve and protect the larger interests of the community, its social and economic welfare, public order or health.

Explaining the interplay between Article 19(1)(g) and the scope of Article 19(6) of the Constitution, the Supreme Court in **Krishnan Kakkanth** had observed as follows:-

> "**26.** After giving our careful consideration to the facts and circumstances of the case and submissions made by the learned counsel for the parties, it appears to us that the fundamental right for trading activities of the dealers in pumpsets in the State of Kerala as guaranteed under Article 19(1)(*g*) of the Constitution has not been infringed by the impugned circular. Fundamental rights guaranteed under Article 19 of the Constitution are not absolute but the same are subject to reasonable restrictions to be imposed against enjoyment of such rights. Such reasonable restriction seeks to strike a balance between the freedom guaranteed by any of the clauses under Article 19(1) and the social control permitted by clauses (2) to (6) under Article 19.
>
> **27.** The reasonableness of restriction is to be determined in an objective manner and from the standpoint of the interests of general public and not from the standpoint of the interests of the persons upon whom the restrictions are imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly and even if the persons affected be petty traders (*Mohd. Hanif* v. *State of Bihar* [AIR 1958 SC 731] ). In determining the infringement of the right guaranteed under Article 19(1), the nature of right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, enter into judicial verdict (*Laxmi Khandsari* v. *State of U.P.* [(1981) 2 SCC 600 : AIR 1981 SC 873] ; *D.K. Trivedi and Sons* v. *State of Gujarat* [1986 Supp SCC 20] and *Harakchand Ratanchand Banthia* v. *Union of India* [(1969) 2 SCC 166 : AIR 1970 SC 1453] )."

More recently in **Karnataka Live Band Restaurants Assn. Vs. State of Karnataka**[13] the Supreme Court held: -

> **46.** As and when the question arises as to whether a particular restriction imposed by law under clause (6) of Article 19 is

13 (2018) 4 SCC 372

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> reasonable or not, such question is left for the court to decide. The test of reasonableness is required to be viewed in the context of the issues, which faced the impugned legislature. In construction of such laws and while judging their validity, the court has to approach the issue from the point of furthering the social interest, moral and material progress of the community as a whole. Likewise, while examining such question, the Court cannot proceed on a general notion of what is reasonable in its abstract form nor can the court proceed to decide such question from the point of view of the person on whom such restriction is imposed. What is, therefore, required to be decided in such case is whether the restrictions imposed are reasonable in the interest of general public or not.
>
> **47.** This Court has laid down the test of reasonableness in *State of Madras* v. *V.G. Row* [*State of Madras* v. *V.G. Row*, AIR 1952 SC 196 : 1952 Cri LJ 966] and very succinctly said that it is important, in this context, to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial mind.
>
> **48.** This Court has further ruled that the expression "in the interest of general public" occurring in clause (6) of Article 19 is an expression of wide import which comprehends in it public order, public health, public security, morals, economic welfare of the community, and lastly, objects mentioned in Part IV of the Constitution. (See *Municipal Corpn., Ahmedabad* v. *Jan Mohammed Usmanbhai* [*Municipal Corpn., Ahmedabad* v. *Jan Mohammed Usmanbhai*, (1986) 3 SCC 20] and *Deepak Theatre* v. *State of Punjab* [*Deepak Theatre* v. *State of Punjab*, 1992 Supp (1) SCC 684]."

At the outset it may be noted that the petitioner and its members have not been deprived of the right to engage in the trade of physical stamp paper. The Court has also not been shown any decision of the State Government expressly barring or discontinuing the sale and distribution of physical stamp paper. The agreement proposed by SHCIL and the 2013 Rules additionally empower the petitioner to engage in the sale and distribution of e stamps. The argument of a system of livelihood being totally effaced is thus without substance. The petitioners have also failed to establish that the business of distribution of e stamp is wholly unviable or unprofitable. The arguments addressed on this score, as was noted

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hereinabove, were wholly conjectural and based on assumptions which were not backed by any reliable material or data. In any case the functioning of more than 3000 ACC's in the State is stark testimony of this contention being bereft of substance. It is equally important to note that the 2013 Rules themselves require the CRA to enter into an agreement with ACC's who would be paid a commission on mutually acceptable terms. The Court also bears in mind the submission of Sri Shailendra that the rate of commission which is fixed is not sacrosanct and that it is open to parties to arrive at a mutually agreeable rate of commission. The agreement also puts in place a dispute redressal mechanism which would clearly take care of situations where a dispute as to the rate of commission arises. In any case the rate of commission which is presently proposed has not been established on the strength of cogent material to be wholly uneconomical or bound to cause a loss. While the petitioner may perceive the arrangement proposed by SHCIL to be unviable, that cannot possibly constitute an infringement of a right to carry on trade or business.

In order to place in the balance the rights of the constituents of the petitioner and the introduction of the system of e stamping and in order to evaluate the soundness of the challenge that is raised, it would be apposite to go back in time and briefly recapitulate the events which led to the Union and the States adopting this methodology. The historical backdrop in which e stamping came to be adopted, the reasons which constrained the Government to adopt this secure system of stamping have been duly noted in the communication of the Department of Economic Affairs, Ministry of Finance of the Union Government dated 28 December 2005 extracted hereinbefore.

The unique security features which inform the system of e stamping were noticed by the Division Bench of the Gujarat High Court in **Manish Jitendrakumar Shah** as under: -

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The security features of e-stamping certificate are as under:

[1] The contents of e-stamp certificate can be verified from the website, www.shcileststamp.com, from anywhere. Also contents can be verified from the Mobile Application: "Estamping" (Android & IOS).

[2] **System Generated Certificate:** E-stamping certificate is generated on live web. The necessary data like name of the parties, stamp duty payer, amount of stamp duty along with date and time of the e-stamping certificate are generated.

[3] **Unique Certificate number: -** Unique e-stamp certificate number is generated for each e-stamp. This is system generated and not in serial order wise.

[4] **2D Bar Code:** - All the data in the e-stamping certificate, is encrypted in 2D Barcode, which is on all e-stamp certificates. The data is in encrypted form and can be read by e-stamping mobile application or 2D Barcode reader.

[5] **Micro Printing:** - e-stamping certificate has micro printing text at 1400 dpi, which bears e- stamping certificate number and anti copy text images. This can be verified through 16X and above magnifying glass.

[6] **Optical Water Mark:** - E-stamping Security paper has optical water mark image with Asoka image. While taking zerox/copy of the certificate, the pattern of the water mark will change.

[7] **The e-Stamping Security Certificate** contains security features like coloured background with Lacey Geometric Flexible patterns and Subtle Logo images, Complex Ornamental design borders, Anti ð Copy text, micro printing artificial watermarks and Overt and Covert features. Some of the features are visible under UV lights and when put against UV light, the image of "Mahatma Gandhi", with some fiber threads and some images can be seen.

[8] A photocopy of the certificate of stamp duty was also placed on record to demonstrate that if the e-stamping certificate is photocopied, irrespective of the level of sophistication of the photocopying machine, an Anti-copy Text will emerge at the relevant place, where the word "VOID" will be reflected.

As is manifest from the above, it was the imperatives of the need to evolve a secure system for collection of tax in the shape of stamp duty and the loopholes that were discovered in the light of the Stamp Scam that led to the evolution of this system of payment of stamp duty. The benefits attendant to a system of secure collection of tax subserves public interest from the point of view of both the depositor of the tax as well as the general public as a whole with tax being collected through a safe and

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secure system. The adoption of technology in this respect will undisputedly extend innumerable benefits to the larger public interest. The policy initiative so taken by the Government cannot possibly be viewed as placing an unreasonable restriction upon the petitioner to engage in the trade of stamps, physical or in e form.

## L. IMPUGNED COMMUNICATION OF 17 JANUARY 2020

It becomes pertinent to note that the communication of 17 January 2020 which is impugned does not impose a bar on the sale or distribution of physical stamps. It also does not embody a decision of the Government to do away with the system of physical stamps being used in respect of instruments that may come to be executed for all times to come. All that it states is that till further orders, no fresh indents or demands for procurement of physical stamps be forwarded. Kesarwani J. in his opinion has noted the statement made on behalf of the State that physical stamps of more than Rs. 17,000 crores were in stock with the Government and as per prevailing rate of consumption shall take more than two years to exhaust. This statement would also explain the decision as embodied in the communication of 17 January 2020. The Court further notes that there is no allegation in the writ petition nor was any oral submission advanced that the petitioner or its constituents have been denied physical stamps or that their demands for supply of physical stamps have not been honoured. While Sri Rajvanshi in the course of his oral submissions did contend that physical stamps are no longer available in the State, in the absence of any material on the record in support of the aforesaid, the Court finds no justification to take note of the same.

## M. UNCONSCIONABLE CONTRACT AND BARGAINING POWER OF PARTIES

The basic legal principles infusing the concept of public functions, of contracts offered by the State and its instrumentalities being judged on

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the plinth of public law and the applicability of Sections 23 and 29 of the Indian Contract Act to such contracts as eloquently expounded by Bhanot J. is clearly unexceptionable. However, with due respect to the view so taken by the learned Judge, this Court is of the considered view that the aforesaid questions did not arise or fall for consideration at all. The petitioner nowhere assailed the proposed contract or the action of the State on the aforesaid lines. A detailed examination of the writ petition and the various averments made therein would clearly bear this out. In the absence of even a rudimentary platform having been laid in the writ petition in this regard, no occasion arises for the Court to suo moto examine or adjudge the action of the respondents from that perspective.

## N. DIRECTIONS FOR DISCLOSURE

The petitioner has abjectly failed to make out a case for the respondents being commanded to make disclosures regarding the actual commission being earned by SHCIL. It becomes pertinent to note that in terms of Rule 10 of the 2013 Rules, the commission which the Government would pay to the CRA is to be duly published in the Gazette. It was always open to the petitioner if it assumed SHCIL to be a public authority to seek such information in accordance with law. It is in this respect that this Court in the introductory part of this opinion had spelt out when and which situations could the constitutional court exercising powers under Article 226 of the Constitution assume an inquisitorial role. In any case the relief as couched in this respect itself establishes that the case of the petitioner of the trade and business of physical stamp being rendered unviable or loss-making rests solely on surmise and conjecture. This since evidently, they themselves are not in possession of requisite facts or convincing data which may even prima facie sustain their assertion of their trade being rendered unprofitable.

## O. TO PRESERVE THE SYSTEM OF PHYSICAL STAMPING

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The Court has in the preceding parts of this opinion already noticed the factual backdrop surrounding the advent and evolution of the e stamping regime. The introduction of this system rests on sound, germane and weighty reasons such as avoidance of fraud and forgery of stamp paper, securing collection of State revenue and a host of other factors which were taken into consideration. E stamping in essence represents a policy initiative formulated by the State. The aforesaid policy decision has neither been assailed nor has it been established to be arbitrary. Ultimately it is for the State to take a principled decision and formulate its policy with respect to the quantity and value of physical stamp paper that may be permitted to circulate and to determine how much of the total demand of stamp paper is to be in the physical or e stamp form. This Court would be treading down perhaps an impermissible or at least uncertain path if it were to either arrogate to itself this power or decide this issue by way of a judicial fiat and that too in respect of an issue which clearly falls in the realm of policy. This Court concurs with the views expressed by Kesarwani J. on this score.

## P. SUMMATION

Upon an overall consideration of the aforesaid discussion this Court is of the considered view that the petitioner has abjectly failed to lay even a rudimentary platform for the writ petition being retained on the board of the Court and the respondents being called upon to file a return in the proceedings. The petitioner has failed to establish the existence of an unfettered or indefeasible right to trade in stamp paper. That right rests solely upon the grant of a license under the provisions of the 1942 Rules. The right to engage in that trade would thus stand governed by the provisions contained in the license. The right to trade in stamp paper has also not been found to be a one which existed in common law and thus one entitled to be pursued without any fetter or restraint.

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The right to trade in e stamps is evidently governed by the 2013 Rules. Neither the validity of these Rules nor the policy initiative of the Government in this regard was either questioned or assailed. The proposed contract was also not established to be ultra vires the aforesaid Rules. The submission of the proposed contract being unprofitable was wholly conjectural with the petitioner failing to establish even prima facie that the business would be unviable. In any case if the petitioner does perceive that business to be unprofitable, it is open to its members not to pursue the same. Article 19 of the Constitution cannot be invoked to require the Court to rework the terms of the contract which is proposed or compel a party to guarantee a particular rate of profit or return.

The submission with regard to Articles 21 and 38 is found to be bereft of substance since the Court has not been shown any decision of the State to discontinue the use of physical stamp altogether. The petitioner has also not brought forth any convincing material which may establish a shortage of physical stamp in the State or that any particular indent so placed by a licensed vendor was not honored.

It would be wholly inappropriate for the Court to frame any direction commanding the State to continue the system of physical stamping in perpetuity. That would clearly amount to treading in the field of policy, a province reserved for the Executive. It is ultimately for the appropriate Government to consider what quantity of physical stamps should be permitted to be in circulation. These are clearly not issues which this Court can either rule on or dictate while exercising its powers of judicial review.

## Q. CONCLUSION

In light of the aforesaid discussion and the conclusions recorded, I would **dismiss** the writ petition.

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The papers may now be placed before the appropriate Division Bench for disposal of the writ petition in accordance with the Rules of the Court.

**Order Date :-** 08.4.2021
Vivek Kr.

**(Yashwant Varma, J.)**