

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 16221 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 16370 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 16539 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 16545 of 2019
With
R/WRIT PETITION (PIL) NO. 170 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 20297 of 2019

FOR APPROVAL AND SIGNATURE:**HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH****and****HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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MANISH JITENDRAKUMAR SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR BM MANGUKIYA(437) for the Petitioner(s) No. 1,2,3,4 in SCA Nos.16221 of 2019 and 16370 of 2019

MS BELA A PRAJAPATI(1946) for the Petitioner(s) No. 1,2,3,4 in SCA Nos.16221 of 2019 and 16370 of 2019

MR DHAVAL D VYAS for the Petitioners in SCA Nos.20297 of 2019 and

16545 of 2019

MR ARPIT A KAPADIA for the petitioners in SCA No.16539 of 2019

MR VISHWAS K SHAH for the petitioners in WP(PIL) No. 170 of 2019

for the Respondent(s) No. 2,3

MS MANISHA LAVKUMAR SHAH, GP WITH MS. AISHVARYA GUPTA, AGP
and MR CHINTAN DAVE, AGP for the Respondent-State in all the petitions.

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CORAM: HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 24/07/2020

COMMON CAV JUDGMENT

(PER : HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH)

1 Two caveats before we commence to discuss the issues raised and their adjudication.

2 The present issue that has been raised before us has given us the opportunity of scanning the anatomy of a provision with the lens of pragmatism and has further enabled us to examine how law responds to the needs of the society and how law has been proactive in embracing advancement in technology. The nature of law is dynamic, responding to the ripples of societal change and law cannot under any circumstances, be anachronistic. At this juncture, we would like to quote the famous words of the Greek Philosopher, "Heraclitus", who had said that "The only constant in life is Change". And the same applies to law, as well, upon which rests the burden of maintaining order in society and it is this ever changing and vibrant

nature of law that preserves the basic fabric of the society. There are many instances in the legal arena, where due to certain societal changes, law has had to respond by evolving effectively.

3 The law relating to stamp duty for the state of Gujarat has undergone changes at periodical intervals, with the introduction of franking machines in the year 1999, receipted challans or certificate issued under the e-stamping system in the year 2007 and now with the elimination of the use of non-judicial physical stamp paper, a new era in this field of law has been ushered and this is a classic example of how law and evolution go hand in hand.

4 The approach of the Court in examining the constitutional validity of a provision of law is well-settled. While being confronted with an issue such as the one that has been raised in the present litigation, the Court must use the “raison d’etre”, i.e. object and purpose of enacting the legislation as its guiding force in order to determine the vires of a provision. We must strive to give such an interpretation as will explore in its entirety, the nexus of the provision with the object of the Act. If the provision under scrutiny is in sync with the “raison d’etre” of the main enactment, then as alleged by the petitioners a minor transgression by the Executive sans any material implication, will not stand in our way of upholding the constitutional validity of such provision.

5 This group of six petitions has been filed primarily for the relief to declare Rule 8A of the Gujarat Stamps Supply and Sales Rules, 1987 (hereinafter referred to as “the 1987 Rules) as ultra vires to the provisions of Indian Stamp Act, 1899 (hereinafter referred to as “the 1899 Act”) and the Gujarat Stamp Act, 1958 (hereinafter referred to as “the 1958 Act”). The reliefs claimed in the six petitions are incorporated hereunder:

**SPECIAL CIVIL APPLICATION NO. 16221 OF
2019:**

“(A) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction and hold and declare that rule 8A of the Sales Rules is ultra vires to the provision of the IS Act.

(B) Pending admission and final disposal of the present petition, be pleased to stay the implementation, execution and operation of the impugned rule 8A of the Sales Rules.

(C) Be pleased to pass such other and further orders as may be deemed fit and proper.”

SPECIAL CIVIL APPLICATION NO. 16370 OF 2019:

“(A) Be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction and hold and declare that rule 8A of the Sales Rules is ultra vires to the provision of the Stamp Act.

(B) Pending admission and final disposal of the present petition, be pleased to stay the implementation, execution and operation of the impugned rule 8A of the Sales Rules.

(C) *Be pleased to pass such other and further orders as may be deemed fit and proper.”*

SPECIAL CIVIL APPLICATION NO. 16539 OF 2019:

“(A) Your Lordship may be pleased to admit and allow this petition;

(B) Your Lordship may be pleased to issue a writ of mandamus or any other appropriate writ order or direction to quash and set aside the notification dated 23.08.2019 bearing no GHM/2019/75/M/STP/122019/ 1035/H.1- which bring into force the Gujarat Stamp (Payment of Duty by means of E Stamping) (Amendment) Rules, 2019 as being unconstitutional and ultra vires; (Annexure A)

(C) Your Lordship may be pleased to issue an appropriate writ order or direction to quash and set aside the circular dated 09.09.2019 issued by the Respondent No.2(Annexure B);

(D) Your Lordship may be pleased to issue an appropriate writ order or direction to quash and set aside the circular 16.09.2019 bearing no STP/LAW/ 51/2019/14967-15002 issued by the Respondent no.2;

(E) Pending the admission, hearing and till the final disposal of the present petition, Your Lordship may be pleased to stay the implementation, execution and operation of the notification dated 23.08.2019 bearing no. GHM/2019/75/M/STP/122019/1035/H.1 issued by the Respondent No.1; (Annexure A) AND also the circular dated 09.09.2019 and 16.09.2019 issued by the Respondent No.2 (Annexure 'B' & 'C' respectively)

(F) Your Lordship may be pleased to pass such other and further reliefs as may be deemed just and proper in the interest of justice.”

SPECIAL CIVIL APPLICATION NO. 20297 OF 2019:

- “A. The Hon’ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction and hold and declare that rule 8A of the Sales Rules is ultra vires to the provision of the Act;*
- B. Your Lordship may be pleased to issue an appropriate writ order or direction to quash and set aside the circular dated 09.09.2019 and circular dated 16.09.2019 bearing no STP/LAW/51/2019/14967-15002 issued by the Respondent no.2;*
- C. Pending admission and final disposal of the present petition, be pleased to stay the implementation, execution and operation of the impugned rule 8A of the Sales Rules;*
- D. Pending the admission, hearing and till the final disposal of the present petition, Your Lordship may be pleased to say the implementation, execution and operation of the notification dated 23.08.2019 bearing no GHM/2019/75/M/STP/122019/1035/H.1 issued by the Respondent No.1; AND also the circular dated 09.09.2019 and 16.09.2019 issued by the Respondent No.2;*
- E. Pending the admission, hearing and till the final disposal of the present petition, Your Lordships be pleased to restrain the respondent authorities from discontinuing the supply of stamp paper to the stamp vendors in accordance with the provision of the Act and Rules framed thereunder and further be pleased to direct the respondent authority not to prohibit the petitioner from supplying stamps as per Act and Rules framed thereunder:*
- F. To pass such other and further order/s necessary in the interest of justice.”*

SPECIAL CIVIL APPLICATION NO. 16545 OF 2019:

- “A. The Hon’ble Court may be pleased to issue a*

writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction and hold and declare that rule 8A of the Sales Rules is ultra vires to the provision of the Act;

B. Your Lordship may be pleased to issue an appropriate writ order or direction to quash and set aside the circular dated 09.09.2019 and circular dated 16.09.2019 bearing no STP/LAW/51/2019/14967-15002 issued by the Respondent no.2;

C. Pending admission and final disposal of the present petition, be pleased to stay the implementation, execution and operation of the impugned rule 8A of the Sales Rules;

D. Pending the admission, hearing and till the final disposal of the present petition, Your Lordship may be pleased to stay the implementation, execution and operation of the notification dated 23.08.2019 bearing no GHM/2019/75/M/STP/122019/1035/H.1 issued by the Respondent No.1; AND also the circular dated 09.09.2019 and 16.09.2019 issued by the Respondent No.2;

E. Pending the admission, hearing and till the final disposal of the present petition, Your Lordships be pleased to restrain the respondent authorities from discontinuing the supply of stamp paper to the stamp vendors in accordance with the provision of the Act and Rules framed thereunder and further be pleased to direct the respondent authority not to prohibit the petitioner from supplying stamps as per Act and Rules framed thereunder:

F. To pass such other and further order/s necessary in the interest of justice.”

WRIT PETITION (PIL) NO. 170 OF 2019:

“A) Be pleased to declare Rule 8A of Gujarat Stamps Supply and Sales Rules 1987 as ultra vires to Constitution of India, 1950 and Gujarat Stamp

Act, 1958.(Act No.LX of 1958) and Indian Stamp Act, 1899 (ACT II of 1899).

B) Be pleased to direct Respondents to permit selling of Non Judicial Stamp Paper through licensed vendors in State of Gujarat for duration/time which this Hon'ble Court may think fit.

C) Pending hearing and admission of this Petition, be pleased to stay the operation, effect and implementation of Rule 8A of Gujarat Stamps Supply and Sales Rules 1987.

D) Pending hearing and admission of this Petition, be pleased to permit licensed vendors to sell Non-Judicial Stamp papers (Physical) and direct Respondent No.1 to accept it as valid.”

6 We have heard Mr. B.M.Mangukiya, learned counsel for the petitioners in Special Civil Application Nos.16221 of 2019 and 16370 of 2019, Shri Dhaval D. Vyas, learned counsel for the petitioners in Special Civil Application Nos.20297 of 2019 and 16545 of 2019, Shri Arpit A. Kapadiya, learned counsel for the petitioners in Special Civil Application No.16539 of 2019, Shri Vishwas K. Shah, learned counsel for the petitioners in Writ Petition (PIL) No.170 of 2019 and Ms. Manisha L. Shah, learned Government Pleader with Ms. Aishvarya Gupta and Mr. Chintan Dave, learned Assistant Government Pleaders for the respondent State authorities.

RELEVANT PROVISIONS OF LAW

7 Before dealing with the respective arguments, we may give a brief background of the constitutional provisions as also the statutory provisions relating to stamp duty in India and Gujarat in particular. In 1899, the Indian Stamp Act was promulgated with an object to consolidate and amend the law relating to stamps.

PROVISIONS OF THE CONSTITUTION OF INDIA

8 Part-XI of the Constitution of India has two chapters comprising of Articles 245 to 263. It deals with the relations between the Union and the States. Chapter-I thereof deals with the legislative relations namely, distribution of legislative powers whereas Chapter-II deals with administrative relations.

9 Article 245 provides for the extent of laws made by the Parliament and by the Legislatures of States conferring the Parliament with the power to make laws for the whole or any part of the territory of India and the Legislature of a State to make laws for the whole or any part of the State.

10 Article 246 provides for the subject matter of laws made by the Parliament and by the Legislatures of the States. Clause (1) thereof provides that

notwithstanding anything in clauses (2) and (3), Parliament would have exclusive power to make laws with respect to any of the matters enumerated in List-I in the Seventh Schedule referred to as the “Union List”. Clause (2) provides that notwithstanding anything in clause (3), the Parliament and subject to clause (1), the Legislature of any State would have power to make laws with respect to any of the matters enumerated in List-III in the Seventh Schedule referred to as the “Concurrent List”. Clause (3) provides that subject to clauses (1) and (2), the Legislature of any State would have exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List-II in the Seventh Schedule referred to as the “State List”. Clause (4) gives the Parliament the power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is enumerated in the State List.

11 Article 254 of the Constitution gives supremacy and primacy to the Parliament in the event of inconsistency between laws made by the Parliament and the laws made by the Legislature of States in the given circumstances.

12 Articles 245, 246 and 254 are reproduced below:-

“245. Extent of laws made by Parliament and by the Legislatures of States.—(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

246. Subject-matter of laws made by Parliament and by the Legislatures of States.—(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”).

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List”).

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included [in a State] notwithstanding that such matter is a matter enumerated in the State List.”

“254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.—(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by

Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.”

13 Entry-91 of List-I of the Seventh Schedule i.e. Union List refers to rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

14 Entry-63 of List-II of Seventh Schedule i.e. State List refers to rates of stamp duty in respect of documents other than those specified in the provisions

of List-I with regard to rates of stamp duty. It may be clarified here that under List-I of the Seventh Schedule, the only Entry relating to rates of stamp duty is Entry-91.

15 Entry-44 of List-III of Seventh Schedule i.e. Concurrent List refers to stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

16 The above three Entries are being reproduced below:-

LIST-I

“91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.”

LIST-II

“63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.”

LIST-III

E-MAIL COPY

“44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.”

PROVISIONS OF INDIAN STAMP ACT, 1899

17 We now refer to the relevant provisions of the Indian Stamp Act, 1899 which came into force on 1st day of

July, 1899 with an object to consolidate and amend the law relating to stamps.

18 The term “duly stamped” is defined in Section 2(11). As applied to an instrument, the term “duly stamped” means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force.

19 The term “impressed stamp” is defined in Section 2(13) which includes labels affixed and impressed by the proper officer and stamps embossed or engraved on stamped paper.

20 Section 2(26) defines “stamp” to mean any mark, seal or endorsement by any agency or person duly authorised by the State Government and includes an adhesive or impressed stamp, for the purposes of duty chargeable under this Act.

E-MAIL COPY

21 Chapter-II of the 1899 Act deals with stamp duties, Part-A thereof incorporates the provisions of the liability of instruments to duty and Part-B thereof deals with stamps and the mode of using them.

22 Section 10 of the 1899 Act provides as to how the duties are to be paid. It reads as under:

“10. Duties how to be paid.—(1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

(a) according to the provisions herein contained; or

(b) when no such provision is applicable thereto-as the [State Government] may be rule direct.

(2) The rules made under sub-section (1) may, among other matters, regulate,—

(a) in the case of each kind of instrument-the description of stamps which may be used;

(b) in the case of instruments stamped with impressed stamps-the number of stamps which may be used;

(c) in the case of bills of exchange or promissory notes the size of the paper on which they are written.”

23 Further in the 1899 Act, Section 11 refers to the use of the adhesive stamps; Section 12 deals with cancellation of adhesive stamps; Section 13 deals with instruments stamped with impressed stamps how to be written; Section 14 provides for only one instrument to be on same stamp and Section 15 provides that instrument written contrary to section 13 or section 14 deemed to be unstamped.

24 Chapter-VIII of the 1899 Act deals with supplemental provisions. Section 74 of the 1899 Act provides for the power to make rules relating to sale of

stamps. Under the said provision, the State Government is conferred with the power to make rules for regulating the supply and sale of stamps and stamped papers, the persons by whom alone such sale is to be conducted and the duties and remuneration of such persons. It, however, adds a proviso which mentions that such rules would not restrict the sale of ten naya paise or five naya paise adhesive stamps. Section 75 of the 1899 Act gives the power to make rules generally to carry out the 1899 Act wherein the State Government is authorized to make rules to carry out generally the purposes of this 1899 Act and the State may further by such rules prescribe the fines in case of breach of the rules which would not exceed Rs.500/- (Rupees Five Hundred). Section 76 of 1899 Act mandates that all rules made under the 1899 Act to be published in the Official Gazette and upon publication, the rules would have the effect as if enacted by the 1899 Act and further that, every rule made under this 1899 Act by the State Government to be laid before the State Legislature as early as possible.

25 Section 76-A of the 1899 Act provides for delegation of certain powers and according to it, the State Government may, by notification in the Official Gazette, delegate all or any of the powers conferred on it by sections 2(9), 33(3)(b), 70(1), 74 and 78 of the 1899 Act to the Chief Controlling Revenue Authority; and further, the powers conferred to the Chief Controlling Revenue Authority as may be specified in the notification.

26 Sections 74 to 76A of the 1899 Act are reproduced hereunder:

“74. Powers to make rules relating to sale of stamps.--The [State Government] may make rules for regulating—

- (a) the supply and sale of stamps and stamped papers,
- (b) the persons by whom alone such sale is to be conducted, and
- (c) the duties and remuneration of such persons: Provided that such rules shall not restrict the sale of 3 [ten naye paise or five naya paise] adhesive stamps.

75. Power to make rules generally to carry out Act.—The [State Government] may make rules to carry out generally the purposes of this Act, and may by such rules prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred on breach thereof.

76. Publication of rules.—[(1) All rules made under this Act shall be published in the Official Gazette.]

(2) All rules published as required by this section shall, upon such publication, have effect as if enacted by this Act.

[(3) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.]

[76A. Delegation of certain powers.—[The State Government may, by notification in the Official Gazette], delegate—

- (a) all or any of the powers conferred on it by sections 2(9), 33(3), (b), 70(1), 74 and 78 to the Chief Controlling Revenue-authority; and

(b) all or any of the powers conferred on the Chief Controlling Revenue-authority by sections 45(1),(2), 56 (1) and 70 (2) to such subordinate Revenue-authority as may be specified in the notification.]”

PROVISIONS OF GUJARAT STAMP ACT, 1958

27 We now come to the relevant provisions under the Gujarat Stamp Act, 1958. The definitions of the terms "duly stamped" and "impressed stamp" are incorporated in Sections 2(h) and 2(k) respectively of the 1958 Act. Chapter-VIII of the 1958 Act deals with the supplemental provisions. Section 69 deals with the power to make rules relating to sale of stamps. Section 70 gives the power to the State to make rules generally to carry out purpose of the 1958 Act. Section 71 provides that all rules to be published in Official Gazette and Section 72 gives the power to the State Government to delegate certain powers mentioned therein. These provisions are similar and akin to the provisions contained in Sections 74 to 76A under the 1899 Act. The said provisions of the 1958 Act i.e. Sections 69 to 72 are reproduced below:-

E-MAIL COPY

“69. Power to make rules relating to sale of stamps. - The State Government may make rules for regulating,-

- (a) the supply and sale of stamps and stamped papers,*
- (b) the persons by whom alone such sale is to be conducted, and*

(c) the duties and remuneration of such persons:

[Provided that such rules shall not restrict the sale of ten naye paise or five naye paise adhesive stamps.]

70. Power to make rule generally to carry out purpose of Act. - The State Government may make rules to carry out generally the purposes of this Act, and may by such rules prescribe the fines, which shall in no case exceed five hundred rupees, to be incurred on breach thereof.

71. Publication of rules. - (1) All rules made under this Act shall be published in the Official Gazette.

(2) All rules published as required by this section shall, upon such publication, have effect as if enacted by this Act.

72. Delegation of certain powers. - The State Government may by notification in the Official Gazette delegate-

(a) all or any of the powers conferred on it by section 2 (f), 33 (3) (b), 64, 69 and 75 to the Chief Controlling Revenue Authority; and

(b) all or any of the powers conferred the Chief Controlling Revenue Authority by sections 44, 53 (1) and 64 (2) to such subordinate Revenue authority as may be specified in the notification.”

RULES FRAMED BY THE STATE OF GUJARAT

28 The Government of Gujarat exercising powers conferred on it under sections 10, 18, 37, 49, 55 and 75 of

the 1899 Act and Sections 10, 18, 36, 47 and 70 of the 1958 Act enacted the Gujarat Stamp Rules, 1978.

29 Further, the Government of Gujarat exercising powers conferred by Section 34 of the Court Fees Act, 1870, Section 45 of the Bombay Court Fees Act, 1959, Section 74 of the 1899 Act and Sections 69 and 70 of the 1958 Act made the Gujarat Stamps Supply and Sales Rules, 1987 for regulating the supply and sale of stamps and also for determining the persons by whom such sale was to be conducted and also for prescribing the duties and remunerations of such persons.

30 Further in 2014, the Government of Gujarat, in exercise of powers conferred by Section 2(k)(iv)(x) read with Section 10 of the 1958 Act made rules providing for payment of stamp duty by means of E-stamping by issuing E-stamps certificates known as the Gujarat Stamp (Payment of Duty by Means of E-Stamping) Rules, 2014 (hereinafter referred to as "the 2014 Rules"). These rules were never challenged either by any party or even by means of these petitions also. The only challenge is to doing away of non-judicial stamp papers in physical form.

31 The 2014 Rules laid down a complete mechanism for payment of duty by means of E-stamping, the establishment of Central Record Keeping Agency as also the appointment of Authorized Collection Centres. In brief, the

scheme of 2014 Rules and the mechanism provided thereunder is detailed hereunder.

31.1 Part-I of the 2014 Rules consists of Rules 1 and 2. Rule 1 gives names to the Rules and that they would come into force from the date of their publication; Rule 2 gives the definitions.

31.2 Part-II of the 2014 Rules refers to the Central Record Keeping Agency comprising of Rules 3 to 8. Rule 3 gives the eligibility for appointment as Central Record Keeping Agency; Rule 4 provides for appointment of Central Record Keeping Agency; Rule 5 provides for the term of appointment; Rule 6 provides for Agreement and Undertaking and Indemnity Bond to be executed by the Central Record Keeping Agency Rule 7 provides for the termination of appointment of Central Record Keeping Agency and Rule 8 provides for the renewal of appointment of Central Record Keeping Agency.

31.3 Part-III of the 2014 Rules comprising of Rules 9, 10 and 11 deals with the duties of the Central Record Keeping Agency, the commission and discount allowable to the Central Record Keeping Agency, specification of software to be used by the Central Record Keeping Agencies.

31.4 Similarly Part IV of the 2014 Rules comprising of Rules 12 to 18 deals with the appointment and eligibility of

the Authorized Collection Centres. Rule 14 provides that the Central Record Keeping Agencies would also be entitled to collect the payment of stamp duty; Rule 15 provides for the infrastructure to be maintained by the approved intermediaries i.e. the Authorized Collection Centres; Rule 16 provides that infrastructure cost to be borne by the approved intermediaries; Rule 17 provides that the State would provide necessary hardware and infrastructure for the office of the relevant Government Departments and Rule 18 provides for termination of agency of the Authorized Collection Centres. Part V of the 2014 Rules comprising of Rule 19 requires the Central Record Keeping Agency to remit the stamp duty after adjusting discounts to the Government Account on the next working day. Part VI of the 2014 Rules comprising of Rules 20 to 34 deals with the procedure for issue of E-stamp certificate. Part-VII of the 2014 Rules comprising of Rules 35 and 36 deals with cancellation and refund of E-Stamps. Part-VIII of the 2014 Rules comprising of Rules 37 to 41 provides for inspection, audit and appraisal of the performance of the system by the Government Officers of the branches and office of the Central Record Keeping Agency and the approved intermediaries. Part-IX of the 2014 Rules comprising of Rules 42 to 46 deals with penalty for omissions and violations by the Central Record Keeping Agency and the Authorized Collection Centres. Part-X of the 2014 Rules comprising of Rules 47 and 48 provides for arbitration arrangement. Part-XI comprising of Rules 49 to 53 provides

for public grievance redressal system. Part-XII of the 2014 Rules comprising of Rule 54 deals with the Management Information System and Decision Support System. Part-XIII comprising of Rule 55 provides for the role of the Treasury Department. Part XIV comprising of Rules 56 and 57 provides for delegation of powers and about savings and repeal. 2014 Rules also contain the annexures and formats of the various contracts and other allied information.

32 The Government of Gujarat has also framed Rules in 2017 to provide for payment of stamp duty by means of E-payment titled as The Gujarat State e-Payment of Stamp Duty Rules, 2017 (hereinafter referred to as “the 2017 Rules”).

33 Further, by means of Gazette Notifications dated 23.8.2019, the existing Rule 13 in the 2014 Rules was substituted by exercising powers conferred by Section 2(k) (iv) read with Sections 10, 69 and 70 of the 1958 Act. The substituted Rule 13 reads as follows:

“Rule 13. Eligibility for appointment as ACC-(i) any Scheduled bank, financial institution or undertaking controlled by Central or State Government, Post Office, Licensed stamp vendor, Chartered Accountant, Company Secretary, C & F Agents at Port, Common Service Centre {Operating under e-governance plan (NeGP)}, RBI Registered Non Banking Financial Company (NBFC) and Licensed Notary subject to prior approval of the appointing authority under rule 12.

(ii) Any individual/agency may be eligible for appointment as ACC, subject to prior approval of the appointing authority under rule 12 in prior consultation with the Government.”

34 Further, vide notification dated 7.9.2019, the Government of Gujarat, exercising powers conferred under sections 69 and 70 read with Section 2(k) and 10 of the 1958 Act and Section 74 read with Section 10 of the 1899 Act inserted Rule 8A in the 1987 Rules, which reads as under:

“8A. Notwithstanding anything contained in these rules, the licensed vendor shall not sell Stamps embossed or engraved on Stamp paper (Physical Non-Judicial Stamp papers) to the public with effect on and from the 1st October, 2019.”

35 In addition to the above, the State Government issued two other circulars dated 09.09.2019 and 16.09.2019. These two circulars relate to the above two notifications of 23.08.2019 and 07.09.2019. In brief, what has been done vide circular dated 09.09.2019 is to lay down certain guidelines in continuance of the notification dated 23.08.2019 whereby Rule 13 was inserted. Further, vide circular dated 16.09.2019, which was addressed to the Manager, Stock Holdings Corporation of India Limited providing the procedure to be carried out for avoiding the difficulties which had arisen on account of discontinuation of sale of non-judicial stamp papers in view of the

notification dated 07.09.2019.

36 It is the above notifications dated 23.08.2019, 07.09.2019, 09.09.2019 and 16.09.2019 which are under challenge in these petitions.

37 The State has filed its response not only by way of counter affidavit, but also further affidavits have been filed. The petitioners have filed replies also. We have perused the pleadings on record as also the written briefs submitted by the learned counsel for the parties.

ARGUMENTS ADVANCED ON BEHALF OF PETITIONERS

38 The arguments advanced by Shri B.M.Mangukiya, learned counsel for the petitioners in Writ Petition Nos.16221 of 2019 and 16370 of 2019 as submitted in his written brief run as follows:

38.1 The issue arises for the consideration of this Hon'ble Court is in narrow compass namely, whether the Government in exercise of its power of subordinate legislation is competent and/or empowered to prohibit sale of impressed or embossed stamp paper (physical stamp paper).

38.2 The said amendment has been brought out in purported exercise of powers conferred by section 69 and

section 70 read with section 2k and 10 of the 1958 Act and section 74 read with section 10 of the 1899 Act. The section 2k of the 1958 Act defines impressed stamp which includes label affixed or impressed by the proper officer or stamp embossed or engraved on the stamp paper or impression by franking machines or receipted challan or certificate issued under e-stamping system or any other system. Section 10 confers the powers of regulation of stamp. The section 69 of the 1958 Act provides for rule making power in relation to the sale of the stamp. Section 70 of the 1958 Act provides for residual powers of rule making, so as to enable the government to enforce the provision of the 1958 Act.

38.3 The power conferred on the State which permits the State to frame the rules to regulate sale and supply of the stamp, for the sake of argument without admitting the same that the power to regulate also provide for power to prohibit, such powers can be exercised for the purpose of enforcing the provisions of the 1958 Act therefore, such powers can be exercised for supplementing and not supplanting.

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38.4 To determine the competency of the government to frame the rules, the Hon'ble Court may be called upon to examine as to -

- [i] Whether the positive power is conferred?
- [ii] Whether rule 8A of the 1987 Rules is framed in

purported exercise of general power for the purpose of enforcing statutory provisions as a supplement?

[iii] Whether the impugned notification is beyond the provision of the parent statute and therefore, is in nature of supplant?

[iv] Whether the power of regulate includes the power to prohibit?

38.5 By placing all the statutory provisions, as referred in the impugned notification, in juxta position, it is crystal clear that there is no positive power conferred on the State Government to prohibit the sale of physical stamps.

38.6 It is also crystal clear that the exercise of powers by the State Government by inserting rule 8A in the 1987 Rules, the government has not provided for any supplementary power for enforcement of the provision of the statute and the rules made thereunder. On the contrary, the fact situation are otherwise.

38.7 The rule 8A of the 1987 Rules travels beyond the provisions of the parent statute, though there is no change in the definition and the regulatory power in relation to the payment of the duties by stamp paper. By insertion of rule 8A of the Rules, government has amended the various definitions and the powers contemplated under section 2h, 2k and 10 of the Act and clause 11 and 12 of section 2 of the Indian Stamp Act.

38.8 By inserting rule 8A of the 1987 Rules, section 2h stand amended by deletion of an adhesive, whereas, section 2k stand amended by deletion (1) Label affixed or impressed by proper officer (2) Stamp embossed or engraved on the stamp paper.

38.9 Therefore, by exercise of a subordinate legislative power by the State Government, factually the State Government has exercise the power of plenary legislative power by amending section 2h and 2k of the 1958 Act. The similar effect is also given in the Indian Stamp Act since, the provisions of both the Acts are *in para materia*. Therefore, by virtue of rule 8A of the 1987 Rules, the State Government has not only amended the State Act but has also amended the Central Act. State is neither empowered to legislate in the subject enlisted in the List 1 and/or List 2 of the Schedule 7 of the Constitution of India. Therefore, rule 8A of the Rules is ultra vires since, it amends the statute. The State has created *casus omissus* while reading section 2h of the 1958 Act.

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38.10 It is submitted that the State has not exercised powers to supplement the provisions of the 1958 Act. It is a sheer act of supplant resulting into the amendment of the statute.

39 Shri Dhaval Vyas, learned counsel for the

petitioners of Writ Petition No.16545 of 2019 and 20297 of 2019 has made submissions on four aspects, which are as under:

[A] The prohibition would create impasse for payment of stamp duty under the Indian Stamp Act, 1899

[B] The State Legislature has over-stepped the authority and acted beyond the rule making power under the Indian Stamp Act, 1899 and the Gujarat Stamp Act, 1958

[C] The Gujarat Stamp Supply and Sales (Amendment) Rules 2019 are ultra vires and contrary to the provisions of the Indian Stamp Act, 1899 and the Gujarat Stamp Act, 1958

[D] The statutory scheme of statutory licensed vendors is replaced by a contract

[E] Statutory discount gets replaced by Contractual Commission.

40. While elaborating his submissions on [A], Shri Vyas submitted as follows:

40.1 Article 246 of the Constitution of India *inter alia*, confers the Parliament exclusive power to make laws *with respect to* any of the matters enumerated in List I in the Seventh Schedule (referred to as the Union List). Schedule VII, List I Entry 91 reads as under :

“91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.”

40.2 Article 246 of the Constitution *inter alia* provides the power of parliament to frame laws *with respect to any matters*, referred to in the List I of Schedule VII. The word *with respect to* is a word of expansion and is used in expansive sense, and has a wide meaning. The Schedule VII refers to the fields which the legislature can legislate and such fields must be given a wide and comprehensive interpretation so as to include ancillary, incidental and subsidiary matters.

40.3 The primary duty of making law has been discharged by the parliament itself but the delegation has been resorted to determine the circumstances in which the stamp duty shall be collected. Sections 74 & 75 of the Indian Stamp Act,

1899, inter alia, delegates power to the state legislature to make rules relating to supply and sale of stamps on stamped papers.

40.4 Section 76 of The Gujarat Stamp Act, 1958 repeals enactments specified in Column 3 of Schedule II to the Act. The relevant repeal reads as under:

**Schedule-II
Enactments Repealed
(See Section 76)**

Year	No.	Enactments	Extent of Repeal
1	2	3	4
1899	II	The Indian Stamp Act, 1899, in its application to the Pre-Reorganisation State of Bombay, excluding the Transferred territories and to the Vidarbha Region and the kutch Area of the State of Bombay.	The whole except in so far as it relates to documents specified in entry 91 of List I in the Seventh to the Constitution of India.
1899	II	The Indian Stamp Act, 1899 as applied to the Saurashtra Area of the State of Bombay	The whole except in so far as it relates to documents specified entry 91 of List I in the Seventh Schedules to the Constitution of India.

40.5 Two enactments i.e. a central enactment and a state enactment, govern the laws *with respect*

to stamp duty payable for different set of instruments and there is no overlap.

40.6 In exercise of powers under Section 75 of the Act, 1899 the State legislature has enacted The Gujarat Stamp Rules, 1978 and has exercised delegated powers under Section 74 of the Act, 1899 by framing The Gujarat Stamps Supply & Sales Rules, 1987. Admittedly, neither of the aforesaid two Rules authorize payment of duty by means of e-stamping, which is provided by a separate set of rules framed under The Gujarat Stamp Act, 1958 as The Gujarat Stamp (Payment of duty by means of e-stamping) Rules, 2014.

40.7 Neither the Indian Stamp Act, 1899 nor the Gujarat Stamp Rules, 1978 or The Gujarat Stamps Supply & Sales Rules, 1987 provide for the payment of stamp duty by means of e-stamping or any other mode except (i) Physical Stamps, (ii) Adhesive Stamps or Judicial Stamps, whilst the e-stamping Rules, 2014 does not authorize the payment of duty by means of e-stamping for the documents governed under The Indian Stamp Act, 1899.

40.8 By effect of amended Rule 8A the State legislature has completely prohibited the payment

of stamp duties by means of physical stamp. In absence of the e-stamping rules framed under the delegated powers from the Indian Stamp Act, 1899; and the Rules, 1978 and 1987 not governing the payment of stamp duties by means of e-stamping, therefore, the legislature has rendered an impasse for payment of stamp duties on the instruments liable to duties under the Indian Stamp Act, 1899.

41 The second submission [B] of Mr. Vyas is more or the less the same as has been submitted by Mr. Mangukiya as such the same is not being separately recorded.

42 Coming to the third submission [C] Mr. Vyas in addition to the submissions made by Mr. Mangukiya, submitted as follows:

42.1 Additionally, Rule 3 & 6 of the Rules 1987 provide as under :

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Rule 3 : For the purposes of these rules stamps are divided into.-

Impresses stamps, including -

(a) Labels affixed and impressed by the Proper Officer

(b) Stamps embossed and engraved on stamped paper

Adhesive stamps-

Stamps of class (1) (a) can be obtained at

the office of Superintendent of Stamps, Ahmedabad and all District Treasury Officers and Sub-Treasury Officers in the State and such labels shall be affixed and impressed as laid down in rules 9 to 12 of the Gujarat Stamps Rules, 1978

Stamps of class (1) (b) and class (2) shall be sold to the public by vendors in the manner hereafter prescribed.

Rule 6 (1) The Collector or any other officer, empowered by the State Government in this behalf, may appoint certain persons to be licenced stamps vendors for the period of one year who fulfils the following requirements :-

Not be less than 21 years and not more than 40 years of age

Have passed the Secondary School Certificate Examination:

Provided that the upper age limit may be relaxed upto five years in favour of candidate belonging to Scheduled Caste, Scheduled Tribe, Socially and Educationally Backward Class, widow or deserted woman and handicapped person.

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A person who is appointed as Licenced Stamp Vendor shall on his obtaining a job shall have to surrender his licence to the concerned authorities

He shall have to invest at least the minimum sum of Rs.8,000/- for the said purpose.

Provided that where in appointing authority is satisfied, the ceiling of investment may be

relaxed upto Rs.5,000/- in cases of widow or deserted woman, handicapped and unemployed educated person :

*[***]*

Provided also that in the City of Ahmedabad a Committee comprising of Superintendent of Stamps, Additional Superintendent of Stamps and Deputy Superintendent of Stamps on the basis of the average figure of sale and the population of the area in question shall decide every two certain persons to be licenced stamp vendors for the period of one year :

Provided that in other cities and Districts of the State the Collector of a District shall form committee comprising other officers as decided by him on the basis of the average figure of sale and the population of the area in question 1 and shall divide every two years the number of Licenced Stamps Vendors for each place locality and shall appoint thereto certain persons to be Licenced Stamp Vendors for the period of one year

(1-A) The collector of any other officer empowered by the State Government in this behalf shall issue to such person as Licenced Stamp Vendor as identity card duly signed and sealed Pass-port size Photograph affixing thereon. The Licenced Stamp Vendor shall always have to keep with him the said Identity Card at the place of Vending.]

(2) Every licence granted under sub-clause (1) may be renewed in appendix II for a further period of one year at the end of financial year :

Provided that when licensed vendor has

committed breach of any of these rules or has failed to maintain adequate stocks of stamps or has refused to sell particular kind or denomination of stamps in spite of its stocks lying with him or has failed to deposit the stock register as provided in sub-rule (3) of rule 14, the authority competent to renew the license may refuse to renew the license.

42.2 The Rules provides a statutory scheme for appointment of persons as licensed vendors for selling the stamps of class 1 (b) of Rule 3 to public. By effect of Rule 8A the complete scheme becomes redundant.

43 The fourth submission [D] of Mr. Vyas runs as under:

43.1 There is no rational provided in replacing the statutory scheme by a contractual mode for selling stamps. The Act & Rules thereunder provide a statutory scheme for appointment of licensed vendors authorized to sell the stamps and statutorily regulated under the Act & Rules, which without an amendment to the parent provisions is given a go by by such amendment. By prohibiting sale of physical stamps and replacing it by means of e-stamping under the Rules, 2014 would unsettle the established provisions by a two tier contractual relationship between the State and CRA and

thereafter between CRA and ACC. The widening of definition of ACC is contrary to Rule 6 of the Rules, 1987 as the eligibility and other statutory regulatory provisions are made redundant. This replacement is not recognized under the Act and therefore, the same is arbitrary and ultra vires the provisions of the Act and beyond the Rule making power delegated under the Act. The amended definition in background of the total prohibition is an effort to favour the corporates, who shall be the beneficiaries at the loss of the licensed vendors.

43.2 The non-statutory communications from GOI cannot be referred to validate or be basis to enact statutory Rules.

44 The fifth submission [E] of Mr. Vyas runs as follows:

44.1 Rule 12 of the Rules, 1987 provides entitlement of the licensed vendor the discount at the rates specified in Appendix III. The statutory entitlement of discount to the licensed stamp vendor has been replaced by a contractual payment by the CRA to the ACC, which according to the resolution of the CRA is reduced to 14.95 paise on the instruments. Except for referring to the resolution of the directors of the said company, no

rational is provided in support thereof, pertinently as each of the ACC's are now required to have an establishment and infrastructure for generating prints unlike for the physical stamps which required no investment by the vendors.

44.2 In the humble submission, alleged laudable cause for bringing in the amendment would not validate the Rules in absence of proper authority under the parent Act, the amendment in Rules, 1987 and under Rules, 2014 (sic) are result of overstepping the delegation, and ultra vires & contrary to the parent Acts, and are arbitrary, and therefore may be set aside.

45 Shri Vishwas Shah, learned counsel appearing for the petitioners in Writ Petition (PIL) No.170 of 2019, Shri Aript Kapadia, learned counsel appearing in Special Civil Application No.16539 of 2019 have mainly adopted the arguments of Shri Mangukiya and Shri Vyas, however, they have placed reliance on certain judgments, which we shall deal with in the later part of the judgment.

ARGUMENTS ADVANCED ON BEHALF OF STATE

46 In response to the submissions made by learned counsel for the petitioners, Ms. Manisha

Lavkumar Shah, learned Government Pleader assisted by Ms. Aishvarya Gupta, learned Assistant Government Pleader, submitted as follows:

46.1 The State had acted well within its powers in bringing about the amendment in the 1987 Rules by inserting Rule 8A.

46.2 The entire premise of the petitioners' submission is mis-founded to the extent that Rule 8A of the 1987 Rules does not eliminate any of the four categories of the stamps referred in section 2(k) of the 1958 Act.

46.3 There is no prohibition as alleged by the petitioners inasmuch as stamps embossed / engraved continue to be in use as judicial stamp papers.

46.4 In addition to the category of impressed stamps as they stood in the original enactment of 1958 Act in Section 2(k), the two additional categories of franking and receipted challan or certificate under e-stamping are in existence for more than a decade without any challenge. Even today, the same are not under challenge.

46.5 Rule making power conferred on the State

under section 69 of the 1958 Act and Section 74 of the 1899 Act clearly provide for regulating the supply and sale of stamp and stamp papers. The State has rightly and within its domain exercised the powers and inserted Rule 8A in the 1987 Rules.

46.6 The object of insertion of electronic stamping saw its genesis after the Telgi Scam when the Government of India vide communication dated 28.12.2005 informed all the States and Union Territories its objectives to devise some mechanism of electronic method of stamp duty collection. The objectives were to prevent fraudulent practices, set up a secured and reliable stamp duty collection mechanism and storage of information in electronic form and built up a Central Data Repository.

46.7 Various security features of e-stamping were also highlighted by learned Government Pleader during the course of arguments.

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46.8 The Central Government has time and again been requesting the States to give priority and consider taking necessary steps for implementation of e-stamping and also to make e-stamping mandatory.

46.9 After the notification dated 07.09.2019 out

of 1559 registered licensed vendors, 1024 have already applied for license as authorized collection centers. Out of these, 715 vendors have been provided user id and passwords and 466 vendors are already functional. As on 14.11.2019, in addition to 474 existing ACCs, 1177 new ACCs had been established, which included the registered licensed vendors.

46.10 E-stamping is operational in 21 states across the country. In the States of Delhi and Karnataka physical judicial stamp papers have been discontinued.

46.11 It is incorrect to say that license vendors are left at the mercy of the private operators because of introduction of e-stamping and e-certification. Stock Holding Corporation of India Limited is a body corporate and is a Government of India undertaking. 54.86% shares are held by the IFCI and the remaining by LIC, United India Insurance Company, GIC, National India Assurance Company.

46.12 The argument regarding reduction of discount is also misplaced. The stamp vendors are still entitled to their 1% discount on purchase of judicial stamp papers and as ACC they are also

entitled to certain amount of commission / discount.

46.13 The petitioners have failed to consider the import of Rule 43 of the 1987 Rules. According to which the commission of the license vendor on court fees stamps continues.

46.14 The argument advanced regarding a scam unearthed in Vadodara after insertion of Rule 8A which is also misplaced as the said incident does not relate to e-stamping, but in fact related to forging of call letters of Bank of Baroda.

46.15 All the petitions being devoid of merits are liable to be dismissed with costs.

47 Learned counsel for the petitioners have relied upon the following judgments in support of their submissions:

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[1] Union of India & Ors. vs. Srinivasan
[2012(7) SCC 683]

[2] Himmatlal K. Shah vs. Commissioner of
Police, Ahmedabad [1973(1) SCC 227]

[3] Narinder S. Chandha & Ors. vs. Municipal

Corporation of Greater Mumbai [2014(15) SCC 689]

[4] Tata Sky Ltd. vs. State of Madhya Pradesh [2012(4) SCC 656]

[5] Union of India & Ors. vs. Intercontinental Consultant and Technocrate Pvt. Ltd. [2018(4) SCC 699].

[6] Bhaskar Shrachi Alloys Ltd. vs. Damodar Valley Corporation [2018(8) SCC 281]

[7] General Officer Commanding-in-Chief & Anr. vs. Dr. Shubhash Chandra Yadav & Arn. [1998(2) SCC 351].

[8] Bar Council of Maharashtra and Goa vs. Manubhai Pragji Vashi & Ors. [2012(1) SCC 314]

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[9] Hindustan Zinc Ltd. vs. Rajasthan Electricity Regulatory Commission [2015(12) SCC 611]

[10] Andhra Pradesh Electricity Regulatory Commission vs. RVK Energy Pvt. Ltd. & Anr. [(2018)17 SCC 769]

[11] Lalit Mohan Pandey & Ors. vs. Pooran Singh & Ors. [2004(6) SCC 626]

[12] Kerala Samsthan Chethu Thozhilali Union vs. State of Kerala & Ors. [(2006)4 SCC 327]

[13] Laghu Udhhyog Bharti & Anr. vs. Union of India & Ors. [(1996)6 SCC 418]

[14] Commissioner of Income Tax vs. Anjum M.H.Ghaswala & Ors. [(2002)1 SCC 633]

[15] V. Sudeer vs. Bar Council of India & Anr. [(1999)3 scc 176]

[16] Addl. District Magistrate (Rev.) Delhi Admn. vs. Siri Ram [(2000)5 SCC 451]

[17] State of Tamil Nadu & Anr. vs. P. Krishnamurthy & Ors. [(2006)4 SCC 517]

[18] Vasu Dev Singh and Ors. vs. Union of India (UOI) and Ors. [(2006(12) SCC 753]

[19] V.V.S.Rama Sharma and Ors. vs. State of U.P. and Ors. [(2009)7 SCC 234]

[20] Global Energy Ltd. and Ors. vs. Central Electricity Regulatory Commission [(2009)15 SCC 570

[21] Kunj Behari Lal Butail and Ors. vs. State of H.P. and Ors. [(2000)3 SCC 40]

48 Learned Government Pleader Ms. Shah has placed reliance upon the following judgments in support of her submissions:

[1] S.K.Gupta & Anr. vs. K.P.Jan & Anr. [(1979)3 SCC 54]

[2] West Bengal State Warehousing Corporation vs. Indrapuri Studio Private Limited & Anr. [(2010)14 SCC 285]

[3] Commissioner of Income Tax, Mysore & Anr. vs. Indo Mercantile Bank Limited & Anr. [AIR 1959 SC 713]

[4] Shah Bhojraj Kuverji Oil Mills and Ginning Factory vs. Shubhash Chandra Yograj Sinha [AIR1961 SC 1596]

[5] S. Sundaram Pillai & Ors. vs. V.R.Pattabiraman & Ors. [(1985)1 SCC 591]

[6] Kush Saigal & Ors. vs. M.C.Mitter & Ors.
[(2000)4 SCC 536]

[7] Maharashtra State Board of Secondary and
Higher Secondary Education & Anr. vs.
Paritosh Bhupesh Kumarsheth [AIR 1984 SC
1543(1)]

[8] Ajay Canu vs. Union of India & Ors.
[(1984)4 SCC 156]

[9] Captain Sube Singh & Ors. vs. Lt.
Governor of Delhi & Ors. [(2004)6 SCC 440]

[10] Rohtak and Hissar Districts Electric
Supply vs. State of U.P. & Ors. [AIR 1966 SC
1471]

[11] State of Gujarat vs. Karimbhai Dadamiya
Pirzada & Ors. [LPA No.911 of 2016]

[12] BSNL vs. Telecom Regulatory Authority of
India & Ors. [(2014)3 SCC 222]

[13] State of Tamil Nadu vs. M/s. Hind Stone &
Ors. [(1981)2 SCC 205]

[14] K. Ramanathan vs. State of Tamil Nadu & Anr. [(1985)2 SCC 675]

[15] R.K.Garg vs. Union of India & Ors. [(1991)4 SCC 675]

[16] Government of Andhra Pradesh & Ors. vs. Smt. P. Laxmi Devi [Appeal (Civil) No.8270 of 2001.

A N A L Y S I S

49 Having noted the submissions as also the case laws relied upon by the learned counsel for the parties, before we proceed to deal with the same we may slightly elaborate on the two caveats mentioned in the opening part of the judgment. The relevancy of these two aspects would be apparent from the discussion and analysis made hereinafter.

49.1 Law is not static. It is dynamic in nature in character and in spirit. It has to keep changing with passage of time. Law has to be evolved in pace with the changing times, advancement of technology, by making it more secure, transparent and user-friendly specially in fiscal matters. The above concept is to be applied even more liberally. The world is now heading towards paperless transactions, using technology to its best by online

transactions. Physical movement has to be avoided as far as possible and so many other reasons which ultimately benefit the public at large. Today is the world of plastic money, online banking, transactions through RTGS or NEFT mode. Similarly, in order to check and control the sale and purchase of stamp papers, initially franking was introduced in 1999 in the State of Gujarat and thereafter e-stamping and e-payment of stamp duty started in 2007 and in 2014 and 2017. The same has continued without any challenge. Even today there is no challenge to the same. Now, once the e-stamping and e-payment of stamp duty is available and is smoothly functioning, the State Government has taken a decision by introducing Rule 8A to stop sale of physical stamp papers of all denominations except those protected under the 1899 Act and 1958 Act.

OBJECT AND PURPOSE OF ENACTMENT

49.2 The second aspect which we wish to highlight at the outset is that challenge to any subordinate legislation on the ground that it is *ultra vires* to superior legislation can be maintained if it contradicts or is in conflict of the superior legislation. But at the same time, it will also have to be established that it adversely affects the object and functionality of the superior legislation. If the amendment does not in any manner affect the object and functioning rather it smoothens and creases out the functioning, then such a legislation need not to be struck down. The law is

well settled on the above proposition, reference to the same will be given at appropriate places, later in the judgment.

49.3 In fact it has been consistently laid down by the Supreme Court in most of the judgments dealing with the challenge of a subordinate legislation being ultra vires where this aspect has been considered as an important and a paramount consideration. In the present cases, we do not find that the object or the purpose of the superior legislation is being defeated or adversely affected in any manner rather amendment under challenge is helping in smooth and secure functioning and implementation of the provisions. The amendments under challenge are only for advancement and strengthening of the object and purpose of the 1899 Act and 1958 Act. It would be worthwhile to mention here that none of the petitioners have been able to show or demonstrate as to how the impugned amendments are obstructing the implementation of the object and purpose of the Act.

49.4 The settled view of the Supreme Court on the above proposition is well laid down in the following decisions:

[1] In the case of **Hindustan Zinc Ltd. (supra)** in

paras 30 31 and 32 the Supreme Court held as under:

“30: Reliance was placed by the learned counsel for the respondent on the decision of this Court in the case of *PTC India Ltd. v. Central Electricity Regulatory Commission*⁹, wherein this Court has categorically held that Regulations can be framed by the Commission under the Act of 2003 as long as two conditions are satisfied, namely, that the regulations which are framed must be consistent with the provisions of the Act and are made for carrying out the provisions of the Act. Further, the National Electricity Policy, 2005 and Tariff Policy, 2006 being the policies framed by the Union of India cannot supersede or override the principal Act of 2003. To support their contention, the appellants have placed reliance upon the judgments of this Court in the cases of *ITW Signode India Ltd. v. Collector of Central Excise and Ministry of Chemicals & Fertilizers, Government of India v. Cipla Ltd.*

31: Further, Mr. Ganesh, the learned senior counsel on behalf of some of the appellants has placed reliance on the decision of this Court in the case of *J.K. Industries Ltd. & Anr. v. Union of India & Ors.*¹² and contended that the impugned regulation is a subordinate legislation which may be struck down as arbitrary, contrary to the Statute and Constitution of India on the ground that the subordinate legislation does not conform to the statutory or constitutional requirement as it offends Article 14 or 19 of the Constitution of India. It is further contended by him that such subordinate legislation, as in this case is the impugned Regulation framed by the RERC, does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature, therefore, the impugned regulation can be questioned on any one of the grounds on which plenary legislation is questioned and also on the ground that it does not conform to the Statute under

which it is made, which in this case is Section 86(1)(e) of the Act of 2003. It was contended by him in view of the above that the impugned Regulations under which RE Obligation has been imposed on the appellants herein, the same is not in conformity with the provision made under Section 86(1)(e) of the Act of 2003.

32: *The above contention of the learned senior counsel on behalf of some of the appellants has been rightly rebutted by the learned senior counsel on behalf of the RERC by contending that in the case of J.K. Industries Ltd. & Anr. (supra), it was held that where the validity of subordinate legislation is challenged, question to be asked is whether power given to the rule making authority has been exercised for the purpose for which it was given. The Court has to examine the nature, object and scheme of the legislation as a whole to consider what is the area over which powers are conferred upon the rule making authority. However, the Court has to start with the presumption that the Rule is intra-vires and has to be read down only to save it from being declared ultra-vires in case the Court finds that the above presumptions stand rebutted and the impugned regulations are relatable to the specific provisions contained in section 86(1)(e) of the Act.”*

[2] In the case of **Laghu Udhog Bharti (supra)** in paragraph 13, the Supreme Court held as under:

“13: [Section 94](#) gives the Central Government power to make the rules. These rules are to be made for carrying out the provisions of the chapter. The chapter relates to taxing the services which are provided. The tax is on the value of the services and it is only the person

who is providing the service can be regarded as an assessee. The rules, therefore, cannot be so framed which do not carry out the purpose of the chapter and cannot be in conflict with the same.”

[3] In the case of **V. Sudeer (supra)** in paragraph 20, the Supreme Court held as under:

“20: We may now refer to [Section 49](#) of the Act, which deals with general power of Bar Council of India to make Rules. Sub-section (1) thereof lays down that the Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe on various topics as enumerated therein from clauses (a) to (j). A mere look at the aforesaid provision makes it clear that the rule making power entrusted to the Bar Council of India by the legislature is an ancillary power for fructifying and effectively discharging its statutory functions laid down by the Act. Consequently, Rules to be framed under [Section 49\(1\)](#) must have a statutory peg on which to hang. If there is no such statutory peg the rule which is sought to be enacted de hors such a peg will have no foothold and will become still born. The statutory functions entrusted by the legislature to the Bar Council of India under the Act so far as relevant for our present purpose and which could be relied upon by Shri Rao, learned senior counsel for the respondent Bar Council of India, are [Section 7\(1\)\(h\)](#) and [Section 24\(3\)\(d\)](#). We have seen earlier that neither of these statutory provisions entitles the Bar Council of India to provide for the disqualification or a disability or an additional condition for enrolment of a person who is otherwise eligible to be enrolled as an advocate under [Section 24\(1\)](#).

Once that conclusion is reached, the very foundation for supporting the impugned rules gets knocked off. Consequently, if any such rule is framed, supposedly by exercise of the rule making power as enumerated in [Section 49\(1\)\(af\)](#), (ag) or (ah) on which also reliance was placed by Shri Rao, the said rule having not been made for discharging any of the statutory functions of the Bar Council of India in this connection must necessarily fail as it would be ultra vires the statutory functions of the Bar Council of India. Any rule framed by rule making authority going beyond its statutory functions must necessarily be held to be ultra vires and inoperative at law. Consequently, the valiant attempt made by Shri Rao for sustaining the Rules under [Section 49\(1\)\(af\)](#), (ag) and (ah) would remain abortive only on this short ground.”

[4] In the case of **State of Tamil Nadu & Anr. vs. P. Krishnamurthy & Ors. (supra)** in paragraphs 16 and 17 the Supreme Court held as under:

“16: The court considering the validity of a sub-ordinate Legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate Legislation conforms to the parent Statute. Where a Rule is directly inconsistent with a mandatory provision of the Statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non- conformity of the Rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the Parent Act, the court should proceed with caution before declaring invalidity.

17: [In Indian Express Newspapers \(Bombay\) Pvt. Ltd. v. Union of India](#) [1985 (1) SCC 641], this Court referred to

several grounds on which a subordinate legislation can be challenged as follows:

"A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary."

POSITIVE POWER VESTED IN THE STATE

50 The argument of the petitioners that there was no positive power with the State to introduce Rule 8A in the 1987 Rules has no legs to stand upon. Section 74 of the 1899 Act and section 69 of the 1958 Act confers specific powers on the State Government to make rules for regulating the supply and sale of stamps and stamp papers. It also confers specific power to make rules for regulating the persons by whom alone such sale is to be conducted and also the duties and remuneration of such persons. Viewed in this background, it does not lie in the mouth of the petitioners to argue that

the State had no power to make rules for stopping sale of physical non-judicial stamp papers, further that the State could not make rules laying down the law and procedure for the central record keeping agency / approved intermediary / authorized collection center / authorized stamping center for sale of stamps and lastly for fixing the discounts / commissions being the remuneration of such persons. It is these three aspects which have been introduced by the notifications dated 23.08.2019, 07.09.2019, 09.09.2019 and 16.09.2019.

STATE FRAMED RULES WITHIN ITS DOMAIN -

i) THERE IS NO PROHIBITION

ii) THERE IS NO SUPPLANT

51 The question that would arise next would be whether the State has exercised such powers of rule making within its domain as conferred upon it or has exceeded the rule making power conferred upon it. The argument of the learned counsel for the petitioners that by prohibiting the sale of physical non-judicial stamp papers amounts to prohibition of use of impressed stamps i.e. stamps embossed or engraved on stamp papers resulting into changing the definition of impressed stamps in Section 2(k) of the 1958 Act and section 2(13) of the 1899 Act for which the State had no power. The

State has exercised plenary powers which actually did not vest in it. Any amendment in the 1899 Act or the 1958 Act could have been carried out by the Parliament or the State Legislature. This argument is also misconceived.

52 “Stamp” is defined in Section 2(26) of the 1899 Act, it reads as follows:

“2(26) “Stamp” means any mark, seal or endorsement by any agency or person duly authorised by the State Government and includes an adhesive or impressed stamp, for the purpose of duty chargeable under this Act.”

52.1 Further, “paper” is also defined in Section 2(18) of the 1899 Act and it reads as follows:

“2(18) “paper” includes vellum, parchment or any other material on which an instrument may be written.”

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52.2 The words “judicial” and “non-judicial” stamp paper is not defined in either of the Acts. However, its use is defined under the Rules as to where the judicial stamp papers are used and where the non-judicial stamp papers are used. By inserting rule 8A in the 1987 Rules, sale of physical non-judicial stamp papers has been stopped. The

sale of the physical judicial stamp papers is still in force. There is no prohibition or stoppage of sale of judicial stamp papers in physical form. Therefore to say that there is a prohibition created by inserting Rule 8A in the 1987 Rules and thus also impacting on the Central Act and the State Act is totally misconceived. The attempt by the learned counsel for the parties to demonstrate that the definition of impressed stamps stands amended in the Central and the State Act is thus not correct.

52.3 The words “duly stamped” as defined under the 1899 Act and the 1958 Act carries the same meaning. Further, the word “instrument” is defined in Section 2(14) of the 1899 Act as follows:

“2(14) “Instrument” includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or record.”

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52.4 Word “instrument” is also defined in section 2(1) of the 1958 Act as follows:

“2(1) “instrument” includes every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance,

transfer of share, debenture, proxy and receipt.”

52.5 Under both the definitions the “instrument” includes all the documents by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded. Both judicial and non-judicial stamp papers are used for the above purpose.

53 In continuation of the above, the very argument raised by the petitioners that the word “regulate” does not include “prohibit” does not merit any consideration at all. Dealing with the above argument and the voluminous case laws relied upon by the counsel for the parties on the above point would only be a futile exercise.

54 The next submission that by the impugned notification the State has not supplemented, but has supplanted also does not merit consideration. Firstly, in the definition of impressed stamps, the physical stamp paper still remains, further the franking was inserted in 1999 and e-stamping was inserted in 2007 in the 1958 Act and they have remained on the statute book without any challenge till date.

55 In view of the above clear factual position which completely demolishes the argument of the petitioners, the plethora of case laws relied upon by the learned counsels need not be examined as it would be an exercise in futility.

NO IMPASSE

56 The next argument of Mr. Dhaval Vyas is that an impasse has been created with respect to the payment of stamp duties on the instruments liable to duties under the 1899 Act because according to him the e-Stamping Rules having not been framed under the delegated powers from the 1899 Act and secondly the payment of stamp duty by means of physical stamp having been prohibited because of insertion of Rule 8A in the 1987 Rules. The above argument has no legs to stand.

56.1 Entry 91 of List I (Union List) of the Seventh Schedule of the Constitution provides that the Union Government has the power to determine the rates of stamp duty in respect of the instruments mentioned therein. Further Entry 63 of List II (State List) confers the power on the State to make laws relating to rates of stamp duty in respect of documents other than those specified in the

provisions of List I with regard to rates of stamp duty. Entry 44 of List III (Concurrent List) confers the powers on both the Union and the State to make laws relating to stamp duties other than duties or fees collected by means of judicial stamps but not related to rates of duty. The 1899 Act is relatable to Entry 91 of List I. The 1958 Act was enacted to consolidate and amend the law relating to stamps and rates of stamp duties other than those in respect of documents specified in Entry 91 of List I.

56.2 Whilst Entry 91 (List I) and Entry 63 (List II), relate to rates of particular kinds of the instruments, Entry 44 (List III) relates to stamp duties or fees other than duties collected by means of judicial stamps but not including rates of stamp duty. For determination of rates for each of the documents so stipulated, reference must be made to Entry 91 (List I) in so far as the Indian Stamp Act, 1899 is concerned, and Entry 63 (List II) for the Gujarat Stamp Act. The Indian Stamp Act, 1899 is neither the parent Act nor a superior legislation. Both the Indian Stamp Act, 1899 as well the Gujarat Stamp Act, 1958 operate in separate spheres. Section 74 of the Indian Stamp Act, 1899 expressly empowers the State to frame rules on matters stipulated therein.

56.3 Section 74 of the Gujarat Stamp Act, 1958 expressly excludes the rates of those documents to

be stipulated by the Government of India under the Indian Stamp Act, 1899. Thus, the rates of stamps are separate and distinct for various categories of the documents, either stipulated under Entry 91 (List I) or under Entry 63 (List II). The mode and method of collection of the same is left to each of the State Governments, to be determined, by framing rules for the said purpose as has been so done by the State Legislature, in the exercise of the powers statutorily stipulated under Section 74 read with 75 of the Indian Stamp Act, 1899 and Section 69 read with Section 70 of the Gujarat Stamp Act, 1958.

56.4 Section 74 and 75 of the 1899 Act confer the power on the State Government to make rules for the purposes defined thereunder. It does not confer any power on the State Government to make rules relating to rate of stamp duty with respect to any document / instrument whatsoever. By the amendments in the 2014 Rules and the 1987 Rules which are under challenge there is nothing even to suggest that the rate of stamp duty in respect of any document / instrument has been determined. The rules under challenge only relate to the mode and manner of sale or supply of stamps. It may be made clear that even with regard to the documents specified in Entry 91 of List I the sale and supply of

stamps and stamp papers is to be carried out by the State as per the rules framed by it under the powers conferred by the 1899 Act and the 1958 Act. Required amendments in the State Legislation i.e. 1958 Act in the definition clause have already been made more than a decade ago. Insofar as the Central Legislation i.e. the 1899 Act is concerned, the definition itself is open ended and is not exhaustive. The definition given in Section 2(13) of the 1899 Act, opens as “impressed stamp” includes The State having introduced e-stamping in 2007 and the said inclusion having been working smoothly and effectively, would not in any manner offend the definition clause in the central enactment.

INTERPRETATION OF “INCLUDES” IN DEFINITION

56.5 The word includes whenever used and specially in definition clause it leaves it open for additions and in fact enlarges the meaning of the expression defined. Law as settled by the Supreme Court with regard to interpretation of the word includes in definition clauses is laid down in paragraphs 18, 19, 20 and 21 of the judgment in the case of **West Bengal State Warehousing Corporation (supra)** (referring to the previous

judgments) is reproduced herein below:

“18. A comparative study of the two definitions of expression `person interested', one contained in [Section 3\(b\)](#) of the 1894 Act and the other contained in [Section 2\(d\)](#) of the Act shows that while the first definition is inclusive, the second definition is exhaustive. The difference between exhaustive and inclusive definitions has been explained in [P. Kasilingam v. P.S.G. College of Technology](#) (1995) Supp 2 SCC 348 in the following words:

"19 ... A particular expression is often defined by the Legislature by using the word `means' or the word `includes'. Sometimes the words `means and includes' are used. The use of the word `means' indicates that "definition is a hard- and-fast definition, and no other meaning can be assigned to the expression than is put down in definition". (See : [Gough v. Gough](#); [Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court.](#)) The word `includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions". (See: [Dilworth v. Commissioner of Stamps](#) (Lord Watson); [Mahalakshmi Oil Mills v. State of A.P.](#) The use of the words "means and includes" in Rule 2(b) would, therefore, suggest that the definition of `college' is intended to be exhaustive and not

extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time."

19 [In Bharat Cooperative Bank \(Mumbai\) Ltd. v. Employees Union](#) (2007) 4 SCC 685, this Court again considered the difference between the inclusive and exhaustive definitions and observed:

"When in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. When the word "means" is used in the definition it is a "hard-and-fast" definition and no meaning other than that which is put in the definition can be assigned to the same. On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in the definition of "banking company" in [Section 2\(bb\)](#) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those

banking companies which fall within the purview of the definition and no other."

20. [In N.D.P. Namboodripad v. Union of India](#) (2007) 4 SCC 502, the Court observed :

"18. The word "includes" has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word "include". Webster's Dictionary defines the word "include" as synonymous with "comprise" or "contain". Illustrated Oxford Dictionary defines the word "include" as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word "includes" as: (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word "include" is used in a definition clause, it is used as a word of enlargement, that is to make the definition extensive and not restrictive. But the word "includes" is also used to connote a specific meaning, that is, as "means and includes" or "comprises" or "consists of"."

21. [In Hamdard \(Wakf\) Laboratories v. Dy. Labour Commissioner](#) (2007) 5 SCC 281, it was held as under:

"33. When an interpretation clause uses the word "includes", it is prima facie extensive. When it uses the word "means and includes", it will afford an exhaustive explanation to the meaning which for the purposes of the Act must invariably be attached to the word or expression."

IMPACT ON LICENSED VENDORS

57 With respect to the next contention of Mr. Vyas that in place of a statutory set up, the license vendors are left at the mercy of the SHCIL, it may be noted that SHCIL is a body corporate having an independent entity. The SHCIL is a Government of India Company undertaking wherein 54.86% its shares are held by the Industrial Finance Corporation of India Ltd (IFCI). The balance shares are held by the Life Insurance Corporation of India, United India Insurance Company, General Insurance Corporation of India, National India Assurance Company Limited and National Insurance Company Limited etc.

58 The SHCIL has been selected by the IFCI by inviting commercial and technical bids to identify the suitable agency to function as Central Record Keeping Agency (CRA) for computerization of Stamp Duty Administration System. After due bidding process, SHCIL has been selected and being authorized to act as CRA. Thus it would be wrong to say that the license vendors have been left at the mercy of the private players. The services to be provided by SHCIL as spelt out in the affidavits filed by the State are as under:-

[1] Creating need based infrastructure, hardware

and software in the designated places in consultation with the State Governments and its connectivity with its main server;

[2] 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;

[3] Training the identified manpower/personnel in the sub-registrar offices;

[4] Role of facilitation in selection of authorized collection centers for Stamp Duty;

[5] Role of coordinator between the Central Server of authorized collection centers (banks etc.) and the sub-Registrar offices;

58.1 Even otherwise, this argument will have no force as license vendors still have their license to sell judicial stamp papers in physical form. They would be entitled to their discounts / commissions from the State as per the existing rates settled by the State. The SHCIL i.e. the CRA only has to deal with the non-judicial stamp papers and not with the judicial stamp papers.

EFFECT ON DISCOUNTS

59 Another argument raised by Mr. Vyas pertains to reduction in discount that was being offered to the stamp vendors. According to the petitioners, the respondent State has relied on the resolution of the Directors of SHCIL for justifying the said reduction of discount. In this regard, it is submitted that only the discount that was offered to the stamp vendors on purchase of non-judicial stamp papers has been regulated and the stamp vendors shall continue to be offered discount @ 1% on purchase of judicial stamp papers. The argument of the petitioners with regard to resolution of the Directors of SHCIL is without any basis as the standard of offering discount @ 14.95 paisa is adopted across the country. Moreover, the SHCIL is a Government of India undertaking wherein major shareholding is of IFCI. However, it is pertinent to bring to the attention of the Hon'ble Court that the SHCIL is going to use a sizeable amount in developing the infrastructure of the new mechanism and therefore, even the said Government of India undertaking is not going to derive any profits, per se.

60 The right to claim "discount" on sale of non-judicial physical stamp papers is not a fundamental right and it is not even a common law right. It is a discount offered under rules enacted in the exercise of valid delegation of powers. This is relevant especially in light of

the fact that the State Government, has the right to provide for qualification and remuneration (including discounts) under Section 69 and 70 of the Gujarat Stamp Act, 1958 and Section 74 and 75 of the Indian Stamp Act, 1899 for sale and supply of various kinds of adhesive or impressed stamps.

61 The next argument of the petitioners is that whilst earlier for every sale of non-judicial stamp papers exceeding Rs.300/- they were offered a discount of 1%, now on being appointed as Authorized Collection Centers (ACCs), the discount being offered is restricted to 15 basis points. As referred to earlier, various modes of stamping are provided under the Gujarat Stamp Act, 1958 including adhesive stamps, labels affixed and impressed by the proper officer, stamps embossed or engraved on stamped paper, impression by franking machine and receipted challan or the certificate issued under e-stamping system or any other system as may be prescribed by rules. For each of the modes, different rules have been prescribed:

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[1] for adhesive stamps labels affixed and impressed by the proper officer and stamps embossed or engraved, the Gujarat Stamp Rules, 1978, and the Gujarat Stamps Supply and Sales Rules, 1987 have been framed;

[2] for impression by franking machine, separate

Procedure Regarding Use of Franking Machine by Authorized Vendor, has been prescribed.

[3] for receipted challan or the certificate issued under e-stamping system, the Gujarat Stamp (Payment of Duty by Means of E-Stamping) Rules, 2014, have been framed.

62 Rule 10 of the Gujarat Stamp (Payment of Duty by Means of E-Stamping) Rules, 2014 stipulates that the CRA will be entitled to such agreed percentage of discount on the amount of stamp duty collected by the approved intermediaries as may be directed by the terms of the agreement but not exceeding 0.65% of the value of stamp duty collected. The SHCIL across the country as matter of policy has taken a decision to pay 15 basis points received by the SHCIL, to the Authorized Collection Centers.

63 It is submitted that in so far as the discount being paid to Authorized Collection Centers, is concerned, the entire responsibility for infrastructure, supply of papers, undertaking necessary security measures, regular security audits and every other requirement to ensure a tamper-proof e-certification system across the country vests in the SHCIL and therefore, the SHCIL has determined 0.15% as discount to be offered to Authorized Collection Centers.

64 Shri Vyas has further contended that whilst

Schedule-III to the 1987 Rules, prescribes the discount receivable for non-judicial impressed stamps, there is no such analogous prescription for impressed judicial stamps. In this respect, it may be noted that the petitioner has missed examining Rule 43 of the 1987 Rules, which reads as under:-

“43. The licensed vendor of Court fee stamps shall entitle the discount at the rate of three percent on stamps upto value of [rupees 300 and 1.00 percent on stamps exceeding the value of Rupees 300 the licensed vendor for purchase of stamp exceeding the value of Rs.1000 or; the public”.

65 In view of the same, the discount available for non-judicial stamps is prescribed in Appendix-III whereas the discount receivable for judicial stamps is prescribed in Rule 43 of 1987 Rules, both of which constitute embossed or engraved stamps as prescribed under Section 2(k)(ii). Noticeably the discount permissible for judicial and non-judicial stamp paper is para-materia.

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66 Section 75 of the 1899 Act read with Section 70 of the , 1958 Act confer powers on the State Government to make rules to carry out generally the purpose of this Act. When specific power is conferred, without prejudice to the generality of the powers, the particular powers are illustrative and in no way distinct from the general powers.

TECHNOLOGY VIS-A-VIS LAW AND ITS APPLICATION

67 We have referred to in the opening part of the judgment regarding the technological advancements and how the law should benefit from it. This has been elaborately detailed in the submissions filed by the State, which are reproduced hereunder:

67.1 Vide amendment of Gujarat Act No. 11 of 2007 Entry (iv) in Section 2(k) came to be introduced prescribing, receipted challan or the certificate issued under e-stamping system or any other system as may be prescribed by rules. Since 2007, computerization of stamp duty administration system has been in existence.

67.2 Notably, Section 2(k)(iv) has never been challenged and neither have the Rules of 2014 ever been subjected to challenge before this Hon'ble Court. In the year 2014, e-stamping rules came to be notified whereunder stamp duty has been defined to mean non-judicial stamp duty payable under the scheduled to the Act. E-stamp is read to mean an electronically generated impression on paper to denote the payment of stamp duty. Thus, from 2007 Computerization of Stamp Duty Administration System (C-SDAS) was brought into existence. Notably, section 2(k) (iv) has never been challenged and neither have the rules of 2014 ever been subjected to challenge before

this Hon'ble Court.

67.3 As referred to, in the affidavit-in-reply dated 16.11.2019 filed by the Respondent State, vide communication dated 28th December, 2005 (produced at page no. 63 of the affidavit dated 16.11.2019), the Government of India, informed all the States and Union Territory Governments that, in pursuance to the announcement made in the Parliament in the wake of the TELGI stamp paper scam, the Government of India, Ministry of Finance, Department of Economic Affairs, has appointed the Industrial Finance Corporation of India Ltd (IFCI) as Consultant to suggest alternative methods of collection of Stamp Duty. The object was to devise some mechanism of electronic method of stamp duty collection in order to-

[1] Prevent the paper and process related fraudulent practices;

[2] Setting up a secured and Reliable Stamp Duty Collection mechanism;

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

67.4 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 Built-Operate-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 is authorized to act as Central Record Keeping Agency (CRA). The services to be provided by SHCIL have already been stated earlier.

67.5 The Government of India further stated vide the said communication addressed by the Ministry of Finance, Department of Economic Affairs, that the State Governments would be required to make a payment to CRA at 0.65% of the value of stamp collected through this mechanism. After a period of five years, SHCIL will hand over the operations to the respective State Governments or the State Governments may retain the services of SHCIL for a further period based on a mutual agreement.

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67.6 It is submitted that whilst demonstrating the object sought to be achieved by shifting to the computerization of stamp duty administration system, various stamps were placed before the Hon'ble Court. "The Certificate of Stamp Duty" as generated under the E-stamping system as stipulated under the Gujarat Stamp (Payment of Duty by Means of E-Stamping) Rules, 2014 was

also placed on record. 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 – 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.

67.7 It is pertinent to note that vide communication dated 12th December, 2012, the Government of India, requested the Chief Secretary, Government of Gujarat, to give priority and consider taking necessary steps for the

implementation of e-stamping and also to make e-stamping mandatory (produced at page no. 98 of the affidavit dated 16.11.2019).

67.8 It is also stated in the affidavit dated 16.11.2019 filed by the Respondent State that since the publication of the notification dated 07.09.2019 published in the Government Gazette, out of 1559 registered licensed vendors, 1024 have applied for licenses as Authorized Collection Centers. Out of these 1024 vendors who have applied for licenses as Authorized Collection Centers, 715 Stamp vendors have been issued User ID and passwords after making agreement with SCHIL, of which 466 vendors are already functional. As on 14.11.2019, there are 474 existing Authorized Collection Centers and 1177 New Authorized Collection Centers for issuance of e-stamping certifications, which includes the licensed stamp vendors. It is contended by the some of the petitioners that in the interior villages internet facilities may not be available. It is noteworthy that the Stamp vendors operate only at Taluka Level. Internet facilities are made available at every Taluka across the State.

67.9 E-stamping is operational in 21 states across the country under the aegis of the Stock Holding Corporation of India Ltd (SHCIL). In 2 states, i.e. Karnataka and the National Territory of New Delhi, physical judicial stamp papers have

been discontinued.

68 Having considered the relevant provisions of law and the arguments of the respective parties in detail, in our considered opinion, it is well within the power of the Respondent State to pass the notifications dated 23.08.2019, 07.09.2019 and the circulars dated 09.09.2019 and 16.09.2019. This is more particularly in light of the fact that the Indian Stamp Act, 1899 and Gujarat Stamp Act, 1958 are independent of each other and Rule 8A of the Gujarat Stamps Supply and Sales Rules, 1987 does not amend either the Indian Stamp Act, 1899 or the Gujarat Stamp Act, 1958 but seeks to implement the sale and supply of stamps in exercise of the powers conferred under Section 74 of the Indian Stamp Act, 1899 read with Sections 69 and 70 of the Gujarat Stamp Act, 1958.

69 The challenge raised in the present group of petitions fails and the petitions are, therefore, accordingly dismissed with no order as to costs.

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(VIKRAM NATH, CJ)

(ASHUTOSH J. SHASTRI, J)

Vahid