

(1984) 02 KAR CK 0024

In the Karnataka High Court

Case No : Writ Petition No's. 8400, 16941 and 16942 of 1980

K. Rama Murthy and etc.

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 03-02-1984

Acts Referred:

Constitution of India, 1950 — Article 133, 19 (1) (g), 226, 246 (3)
Mysore Betting Tax Act, 1932 — Section 12

Citation : AIR 1984 Kar 182 : (1984) 2 KarLJ 236

Hon'ble Judges : Narayana Rai Kudoor, J;K.S. Puttaswamy, J

Bench : Division Bench

Advocate : Tukaram S. Pai, R.D. Kolekar and S.N. Hatti, for the Appellant; S. Rajendra Babu, Government Advocate and S.G. Sundara Swamy, for the Respondent

Judgement

1. On a reference made by one of us (Puttaswamy, J.), these cases were posted before us for disposal.
2. As the petitioners in these cases have challenged the validity of one and the same Act, we propose to dispose of them by a common order.
3. As early as on 31-12-1932, the then Maharaja of Mysore. who was the sovereign Ruler of the then Princely State of Mysore, a model Princely State, aided by a representative assembly and a legislative council, gave his assent to a fairly simple enactment called the Mysore Betting Tax Act, 1932 (Mysore Act 9 of 1932) (hereinafter referred to as the 1932 Act) providing for the imposition of taxes on certain forms of betting in that State. Even after the merger of that Princely State in the Indian Union. the promulgation of the Indian Constitution, the formation of the new State of Mysore, now called as Karnataka, under the States Reorganisation Act, 1956, the 1932 Act has continued on the statute book of the new State with its operation in the area referred to in S. 1(2) of that Act.
4. In 1952 the then Part-B State of Mysore enacted the Mysore Race Course,

Licensing Act, 1952 (Mysore Act 8 of 1952) (hereinafter referred to as the 1952 Act) providing for licensing, regulation, control and management of horse racing in licensed race courses and matters connected therewith in that State. As in the case of 1932 Act, this Act also has continued on the Statute Book of the new State of Karnataka.

5. Under the 1952 Act a public limited company called Bangalore Turf Club Limited, Bangalore (hereinafter referred to as the BTCL incorporated under the Companies Act of 19-56 holds a licence issued and renewed from time to time for running horse races in the race course area of Bangalore City. With the said licence in its favour, the BTCL organises horse races in the City and also of course betting in the race course area. The BTCL operates what are called as talisators and directly pays the taxes due to Government under the 1932 Act on its talisators collections. The BTCL also licenses "book makers, in the area allotted to them on payment of certain license fee by them to it. The book makers accept bets in cash or credit basis from their customers who are called as punters and directly pays the taxes due to Government under the 1932 Act.

6. Prior to 30-5-1980 the term "turf commission agent" (hereinafter referred to as the agent) though included in the definition of the term "licensed book maker, of the 1932 Act, was not expressly defined in either of the two Acts and their activities in the State or any part thereof was not expressly prohibited. Evidently taking advantage of that lacuna in the two Acts, the petitioners were carrying on their activity or business as they describe as "agents" in different parts of the City under different trade names

7. We will briefly notice the modus operandi or the activities or the business operations of the petitioners.

8. All the petitioners have their regular shops or offices or activity centres in the City with phone connection and a regular establishment to help the punters that are otherwise busy and cannot and do not attend the race course or purchase tickets inside the race course or outside window counters of the race course operated by the BTCL. The punters visit their shops, pay the required amounts to purchase tickets or lay bets in the race course or at the counters of the race course in accordance with their instructions. To render such service to their punters, the petitioners charge commission or service charges. After such collection the petitioners purchase tickets from inside and outside the race course, collect the winning amounts, if any, on the winning tickets of the punters and pay those amounts to them after collecting a further commission at the agreed rate. When a punter visits the shop and pays the amount, the punter and the agent enter into a written agreement or contract in a printed form setting out the terms and conditions of the contract which is almost uniform in all these cases. One such form in which a contract is entered into between a punter and the agent setting forth the terms of the contract, which will also help us in understanding the nature of the activity, is worth reproducing in its entirety and the same reads thus :

"CUSTOMER'S INSTRUCTION FORM

Revathi Enterprises Ticket amount Rs No. 42, Russel Market Service
Charges Rs. Square, Bangalore-51. Total Rs. F. No. 4500
Tickets to be purchased at Bangalore Date.....

Jackpot Mini jackpot Triple

1st Leg 2 nd Leg 3 rd Leg 4 th Leg 5 th Leg
Race No. Horse No. Race No. Horse No.

For Revathi Enterprises Mr. Customer's name

FOR OOTY

TERMS AND CONDITIONS

1. Revathi Enterprises act as an Agent of the punter to purchase tickets on his behalf.
2. Revathi Enterprises will not entertain bucket shops, illegal local bettings unauthorised bookie system, individual race tips and other offences coming under the purview of S. 78(1)(a) of Mysore City Police Act, 1963.
3. Prize winners and refund receivers should produce this order form within three days from the date of this instruction form
4. 5% commission will be collected on the winning ticket paying dividend above Rs. 500/- and 10% commission will be charged on dividend above Rs. 5,000/-.
5. Service charges will not be refunded under any circumstances.
6. Unsuccessful tickets will be given delivery in our office or sent to their residential address subject to the condition No. 7 below.
7. Unsuccessful tickets delivery memo available at our office should be duly filled at the time of signing our original customer's instruction form so as to reserve the tickets safely at our office file without missing to deliver at your request at any time; Otherwise unsuccessful tickets will be destroyed.
8. Our agency will not be liable if they fail to get the tickets due to unavoidable circumstances beyond our control such as breakdown of transport vehicle; non-materialisation of trunk call and the Agency shall refund the entire amount of the tickets booked for the event of the race in such cases.
9. Unsealed, unpaid, unsigned customer's instruction form will not be valid.
10. In the event of the horses being not run which has been kept in any one of the legs of permutation tickets, we will not undertake to purchase the remaining tickets in the permutation and the entire ticket amount less our service charges will be refunded.

11. In the event of horses being withdrawn, and the same has been transferred on favourite by the concerned race course, only the successful ticket holder who receives the benefit of transfer on favourite will receive the dividend as declared by the race course less our commission and the ticket amount will not be refunded.

12. The concerned Race Club Rules are binding on all customers."

(Annexure-B in W. P. 8400 of 1980)

Under this contract, the punter pays five per cent as Commission or service charges to the agents and the same is not refundable to him whatever be the result of hi& bet. Another clause of the contract provides for payment of five per cent commission on the amounts of the winning tickets, if the amount exceeds Rs. 500/- but does not exceed Rupees 5,000/- and ten per cent commission if the amount exceeds Rs. 5,000/-. This commission on winning tickets is over and above the initial commission paid by the punter and is dependent on his ticket or bet winning the race. In either event, the petitioners stand to gain and never lose in their bargain with their punters.

9. On 23-5-1980 the Governor of Karnataka in exercise of the powers conferred on him by clause (1) of Art. 213 of the Constitution promulgated the Mysore Betting Tax (Karnataka) ordinance of 1080 (Karnataka ordinance No, 2 of 1980) (hereinafter referred to as the Ordinance) effecting certain amendments to the 1032 Act. In exercise of the powers conferred by Section 1 (2) of the Ordinance, Government. by its notification No. RD 21 CRC 80 dt. 23-5-1980 brought the same into force from that very day. The Ordinance, inter alia, defines the term "turf commission agent" and totally prohibited their activity, business or vocation in or outside the race courses.

10. On 10-6-1980 a bill called the Mysore Betting Tax (Karnataka Amendment) Bill, 1980 (L. A. 1311 No. 24 of 1930) was introduced in the Legislative Assembly of the State proposing to replace the Ordinance which as published in the Karnataka Gazette dated 11-6-1980. The Statement, of Objects and Reasons and the explanatory statement accompanying the bill that sets out the reasons-for the promulgation of the Odinance and replacing the same by a permanent Act reads thus:-

"Statements of Objects and Reasons

1. It has come to the notice of Government that some persons not being licensed book makers, are purchasing as Turf Commission Agents either by receiving bets from the public or by purchasing tickets on behalf of public in respect of horses running in horse races or in respect of riders of such horses outside the premises of the licensed race courses at Bangalore and Mysore, and are thereby depriving Government of huge amounts of betting tax.

2. The Bangalore Turf Club and the Commissioner of Police, Bangalore have brought to the notice of Government that it is necessary to prohibit the

functioning of Private Turf Commission Agents by suitably amending the Betting Tax Act, 1932. Since the Bangalore Summer meeting commenced from 16th May, 1980 and the Summer meet no are expected to give more revenue by way of Betting tax receipts, an Ordinance was promulgated on 23 rd May, 1910 to check the mal-practices and fraudulent acts by private Turf Agencies. A Notification has also been issued under sub-section (2) of Section I of the Mysore Betting Tax (Karnataka Amendment) Ordinance, 1980 (Karnataka Ordinance No. 2 of 1980) appointing 23rd day of May, 1980 as the date on which the said Ordinance shall come into force. It is necessary to replace the Ordinance by introducing a bill in this regard, so as to amend the Mysore Betting Tax Act 1932 (Mysore Act IX of 1932).

3. Hence, the Bill.

Explanatory Statement under R. 70 (1) of the Rules of Procedure and Conduct of Business in the Karnataka Legislative Assembly.

The Bangalore Turf Club by their letter dated 17th April, 1900 brought to tile notice of Government, certain malpractices and fraudulent acts by private Turf Agencies by receiving bets or accepting to purchase tickets on behalf of Public. Outside the premises of the Race Courses in the State. The Bangalore Turf club

Has also brought to the notice of Government in Tamil Nadu such fraudulent mulgating the Ordinance. The existing provisions of the law were found to be insufficient to check these malpractices. The Commissioner of Police, Bangalore who was consulted in this regard has furnished his opinion that there are too many private firms in the City who are buying tickets for alleged punters without licence therefore and that if the Ordinance is issued creases in the revenue by way of betting tax receipts.

10. Since the Summer Meetings at the Bangalore Race Club commenced from 10th May, the Government considered it necessary to promulgate an Ordinance to immediately check the malpractices and fraudulent acts and also to augment the revenue of the State, Therefore the Mysore Betting Tax (Karnataka Amendment) Ordinance, 1980 was promulgated."

The said bill duly passed by the bicameral legislature of the State, received the assent of the Governor on 19-7-1980 and has been has published on 21-7-1980 as the Mysore Betting Tax (Karnataka Amendment) Act, 1980 (Karnataka Act 22 of 1980) (hereinafter referred to as the Amendment Act.) The Amending Act that replaces the Ordinance has been given retrospective effect from the day the ordinance came into force (vide S. 2 of the said Act). In these petitions under Article 226 of the Constitution, the petitioners have challenged the constitutional validity of the Amending Act.

11. The petitioners have asserted that their activity was a lawful trade or bussiness which was not opposed to pub health, decency and morals of the public was beneficial to them, is a guaranteed right under Article 19(1)(g) of the

Constitution. on this premise, the petitioners have urged that the total prohibition or abolition of their trade or business was an unreasonable restriction and is not saved by Article 19(6) of the Constitution.

12. The State which is respondent-I in writ Petitions Nos. 8400 and 16941 of 1980 and the sole respondent in Writ Petition No. prohibiting such acts there will be in 16942 of 1980 has filed a common return justifying, the Amending Act. The return virtually reproduces the Statement of Objects and Reasons in the revenue bill and is merely repetitive. In its return, this respondent has tax receipts. asserted that the Amending Act has been enacted to prevent evasion of taxes under the 1932 Act and was a reasonable restriction. Since the Summer Meetings at the saved by Article 19(6) of the Constitution.

13. In the first two writ petitions, the BTC which has got itself impleaded as respondent-2, has supported respondent-1 through its learned Advocate Sri S. G. Sundaraswamy.

14. Sri Tukaram S. Pai, learned counsel for the petitioner in Writ Petition No. 8400 of 1980, addressed the leading arguments in Ordinance in the cases. Sriyuths R. D. Kolekar and S. N. Hatti, learned counsel for the petitioners in the other cases adopted the arguments of Sri Pai and supplemented them.

15. Sri Pai has urged that the activity of the petitioners as turf commission agents was a lawful trade or business, as recognised in the Act and the Amending Act, and the total prohibition of that business for the reasons stated in the bill and the return filed before this Court, which was factually wrong; was an unreasonable restriction and is not saved by Article 19(6) of the Constitution.

16. Sri S. Rajendra Babu, learned Government Advocate appearing for the State in all the cases and Sri Sundaraswamy have urged that the activity carried on by the petitioners was nothing but betting or gambling and was not a lawful trade or business guaranteed by Article 19(1)(g) of the Constitution.

17. Both sides have relied on a large number of rulings in support of their respective cases and we will notice those that are relevant at the appropriate stages.

18. Before we deal with the merits, we consider it proper to deal with three aspects.

19. At the hearing Sri Babu virtually gave up the stand urged by the State in its return and the statement of objects and reasons and justified the Amending Act on the plea that the same only prohibited an activity that was "betting and gambling" which is not protected by Article 19(1)(g) of the Constitution. Not unnaturally Sri Pai raised serious objection to this volte face of Sri Babu and urged before us for not, permitting the respondent.9 to take that stand.

20. We are called upon to decide the validity of an Act enacted by a Legislature

created by the Constitution which is competent to make laws. The validity of an enactment with all the presumptions available in its favour cannot be decided on what is stated in the Statement of Objects and Reasons, the explanatory statement accompanying the bill or the wholly irrelevant and misconceived return filed by Government in support of that enactment. The validity of an enactment must be examined and decided by the Court only on the touchstone of the Constitution. The pleadings of the parties, though necessary and useful, are not decisive and cannot restrict the Court's power to decide the validity of the Act on the touch stone of the Constitution. Every one of the defences urged either orally or in writing to sustain the validity of an Act, must be examined by the Court without unduly circumscribed by the pleadings of the parties.

21. In *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, the validity of Section 13 of the Coal Bearing areas (Acquisition and Development) Act, 1957 was sought to be sustained before the Supreme Court on a different ground than the one that had been pleaded in the return filed" by the Union of India, to which objection was taken by the petitioner in that case also, as in the present cases. In rejecting that objection urged for the petitioner, the Supreme Court expressed thus (at p. 963)--

"Where the validity of a law made by a competent legislature is challenged in a Court of law that Court is bound to presume in favour of its validity. Further, while considering the validity of the law the Court will not consider itself restricted to the pleadings of the State and would be free to satisfy itself whether under any provision of the Constitution the law can be sustained."

We are of the opinion that this statement of law is a complete answer to the objection raised by Sri Pai.

22. On the above view, we permitted Sri Babu to sustain the validity of the Amending Act on a different ground than the one urged in the return filed by the State, however, giving full opportunity to Sri Pai to reply to the same, which he has availed and addressed his arguments on that plea also.

23. In their objections or at the hearing. the petitioners have not challenged the competence of the legislature to enact the Amending Act. Even otherwise, under Article 246(3) of the Constitution read with Entries 34 and 62 of List-H (State List) of the Seventh Schedule to the Constitution, the State Legislature was competent to enact the Amending Act.

24. Sri Sundaraswamy has urged that the activity of the agents was prohibited even earlier.

25. Sri Pai, in our opinion, has rightly urged that the contention urged by Sri Sundaraswamy should not be examined and decided by us-

26. We are only called upon to decide the validity of the Amending Act. In deciding that question, it is neither proper nor necessary to examine and decide that even without the amendment, the law then in force also prohibited the

activities of the agents. We, therefore, decline to examine this contention of Sri Sundaraswamy and express no opinion on the same.

27. With the disposal of the preliminary questions, we now proceed to examine the merits briefly noticing the provisions of the 1932 Act, the material provisions of the Amending Act and their effect also.

28. Section I deals with the title extent and commencement of the Act. Section 2 defines certain terms found in the Act Section 3 is the charging section that provides for levy of tax on totalisator, Sections 4 and 5 are the machinery provisions to Section 3 of the Act. Section 6 is the charging section that provides for levy of betting tax. The rest of the provisions are machinery provisions that carry out the purposes of the Act.

29. Section 2 of the Amending Act introduces a sub-section viz., sub-section (7) to Section 2 of the 1932 Act, by defining the "turf commission agent, thus :

"(7)" "turf Commission agent" means any person other than a licensed bookmaker, who---

(i) receives bets from the public in general; or

(ii) purchases others; or

(iii) makes bets on behalf of others; for commission or remuneration in respect of any horse, mare or gelding run in a horse race or in respect of a rider of any such horse, mare or gelding."

This definition is extensive and exhaustive and the petitioners do not dispute that they fall within the meaning of that term.

30. Section 4 of the Amending Act adds, three more sections to the 1932 Act. Section 12 added to the 1932 Act by Section 4 of the Amending Act, which alone is material for these cases reads thus:-

" (1) Functioning as turf commission agents prohibited. (1) After the appointed day no person shall carry on the business or vocation of or act or function as, a turf commission agent.

(2) Any person who contravenes or attempts to contravene or abets the contravention of the provisions of sub-section (1) or any rule made to carry out the purposes of the said sub-section shall, on conviction, be punishable with rigorous imprisonment for a term which may extend to three years and shall also be liable to fine which may extend to five thousand rupees.

Explanation:- In this section "appointed day" means the date of commencement of the Mysore Betting Tax (Karnataka Amendment) Act, 1980."

The other provisions of the Amending Act are not material and, therefore, they are not noticed.

31. We have seen earlier that Section 12 came into force from 23-5-1980 by an Ordinance promulgated by the Governor and has been given retrospective effect also. Section 12 added by the Amending Act expressly prohibits any person which means a living or a juristic person to carry on the business or vocation of an agent and makes it penal also. On and from 23-5-1980 no one can carry on the business of turf commission agency in the area in which the 1932 Act, is in force. On this construction of Section 12 also there is no dispute between the parties.

32. The words "betting" and "gambling" are defined in the following dictionaries as hereunder:-

"Betting

The making of bets, wagering" (shorter oxford English Dictionary On Historical Principles-Third Edition p.174)

"Betting Act of placing a bet or wager. (Black's Law Dictionary- Fifth Edition, page 146)

GAMBLING

"Gamble: To play games of chance for money, to stake money on some chances. b. To speculate recklessly. 2. To stake; with away; to lose by gambling "

"(Shorter Oxford English Dictionary on Historical Principles - Third Edition -page 772).

"Gamble: 1a: to play a game of chance for money or other stakes. b: to wager money or other stakes on an uncertain outcome (as of a horse race or an athletic game)." 2: to stake something of value on an uncertain event or contingency-, take a chance; speculate exp. recklessly. 1: to risk or lose by gambling: Wager Bet. 2. to expose (something of value) to risk or hazard in the hope of advantage or gain.

Gamble: 1. an act of playing a game of chance for money or other stakes. 2a: an act or transaction having an element of risk or uncertainty- Chance. Risk

b. something that is the object of a gamble.

(Webster's third New International Dictionary - unabridged-p. 932)

"Gambling. The dealing, operating carrying on, conducting, maintaining or exposing for pay of any game. Making a bet to plan, or game, for money or other stake; hence to stake money or other thing of value on an uncertain event. It involves, not only chance, but a hope of gaining something beyond the amount played. Gambling consists of a consideration, an element of chance, and a reward. The elements of gambling are payment of a price for a chance to win a prize".

(Black's Law Dictionary - Fifth Edition page 611).

"Gambling is the betting or staking of something of value, with consciousness of risk and hope of gain, on the outcome of a game, a contest, or an uncertain event, whose result may be determined by chance or accident or which may have an unexpected result by reason of the better's miscalculation".

514 Gamble

"Nouns 1. gamble, chance, risk, hazard, die; speculation, venture, flutter flier or flyer (both slang); plunge (slang) calculated risk, uncertainty fortune, luck-

2. Matter of chance, gambling chance, chance at odds, hazard of the die, cast or throw of the dice, turn or roll of the wheel, turn, of the table, turn of the cards, fall of the cards, flip of the coin, toss up, toss, heads or tails, touch and go; blind bargain, pig in a poke leap in the dark, shot in the dark (slang); potshot, random shot; potluck.

3. Wager, bet, stake hazard, play, shot (slang) ante, blind (poker): coppered bet (cant, U. S.), heeled bet (cant), open bet, sleeper (faro); parlay (U. S.), paroli pyramid, flat play (cant); sweepstakes, sweeps, pari mutuel; book handbook (record of bets)

4. Pot, jack Pot, Pool, stakes, kitty, (chiefly slang), cave (F.); bank, tiger (faro).

5. odds, price; equivalent odds-, even or square odds , even brea (chiefly coll.), six-two-and-even (cant); short odds, ten-to-one shot (slang); long odds, long shot (slang), hundred-to-one shot (slang) overlay (cant): even chance, good chance, Die- small chance, no chance.

6. Gambling, gaming, sporting, speculation, play, playing, betting, wagering, staking, drawing or casting lots, sorption; cardsharpping.

7. (games of chance) chuck-a-luck or chuckluck, chuck farthing, crack-loo or crackaloo (slang, U. S.), cup tossing fantan, hazard, horse racing, kene, lotto, pin ball, pitch or chuck and toss, roulette, sweepstake or sweepstakes; poker, faro. etc., (card games).

8. Dice, cubes, bones (coll.), ivories, devil's bones or teeth (all slang); craps, crap shooting, elbow shaking (slang), crap game; indoor golf. African Dominoes animated dominoes or ivories (all joc.); poker dice, loaded dice, false or crooked dice, flats, goads, tats (all slang); dice box, devil's box (slang) bird cage.

9. (throw of dice) throw, cast, roll, shot, hazard of the die,; dice throws (snake eyes, etc.) crap, craps, crabs (losing throw); natural, nick.

10. Lottery, draw (slang U. S.) Turkey draw (Slang, U. S.); raffle; lotto, geomoeese or number lottery, tombola, interest lottery, Cutch or class lottery, sweepstakes; numbers pool; grab bag-barrel or box (Coll., U. S.);

11. (Gambling device) gambling wheel, wheel, wheel of fortune, fortune's wheel, roulette wheel, raffle wheel pinball machine, slot machine, one armed bandit (Slang, U. S.); gambling tables, crap table.

12. Pari-mutuel, mutuel machine, totalizator, totalizer.

13. Counter, check, chip fish (slang), bone.

14. Gambling house, gaming house, betting house, gambling den, gambling hell, hell, Domdaniel, tripet (F., slang)

joint flat, crib (all slang); casino; pool room, bucket shop.

15. Bookmaker, bookie (coll).

16. Gambler, gamester, gamestress (fem), player sportsman, sporting man, sport (coll.), Hazarder, venturer, adventurer, better, bettor, wagerer, punter; speculator speculatists, plunger (slang) petty gambler, picker (slang, U. S.); tinhorn, tinhorn sambler (both slang); sharpshooter (Slang), Sharper, shar13 (Slang); cardsharp, cardsharper; crap shooter

(coil), dicer, eblow shaker (slang), knight of the elbow (joc); oraler (Chiefly turnslang); betting ring.

VERBS 17 gamble, game sport, play try one's luck or fortune, speculate; draw lots, lot, cut lots, cast lots, set on a cast; cut the cards or deck match coing; toss up, flip the coin call heads or tails shoot craps, play at dice; play the ponies (slang) raffle off.

18. Chance, risk hazard, set at hazard, venture, adventure, venture upon; gamble on, take a gamble on; take a chance take one's chance, take the chances of, try the chance chance it, chance one's luck or hand (coll) stand the hazard of the die" (Shakespeare). take or run the risk, run a chance, take chances, tempt fortune; leave or trust to chance or luck, rely on fortune, trust to the chapter of accidents go it blind (slang) take a leap in the dark: buy a pig in a poke, acheter chat enpoche (F); take potluck

19. Bet, wager, gamble haxard, stake post (slang) punt lay, law down, make a bet, lay a wager; take a flyer (slang); plung (slang); pike (slang, U. S.). bet on

or upon back; bet or play against, copper (cant. U. S.) buck or fight the tiger (faro); partly (U.S.), Paroli, "ante, ante up. double the blind, straddle (both poker); meet a bet, see, call, cover, fade (dice), see one's blind (poker); pass, stand pat.

ADJS 20. Speculative, less uncertain hazardous risky.

PROVERB 21. nothing ventured nothing gained; nothing venture, nothing win; naught venture,

naught have; nothing stake,

nothing draw; nought lay down, naught take up; nought won by the one, nought won by the other."

(Roget's international Thesaurus-Third Edition-pages 334 and 335)

what emerges from the above meaning is that whenever there is betting, there is gambling and that whenever there is gambling there is betting. Betting and gambling are intertwined and are inseparable and are the two sides of one and the same coin and one cannot be separated from the other.

33. In *Madras Race Club V. State of Tamil Nadu* AIR 1976 Mad 238 a Division Bench of the High Court of Madras, upholding the validity of the Tamil Nadu Horse Races (Abolition of Wagering or Betting) Act (44 of 1974), hereinafter referred to as the Tamil Nadu Act on this aspect has expressed thus:

"Every betting by itself is a gamble and involves an element of uncertainty. Where there is betting there is gambling, Where there is gambling by hazarding money on an uncertain event, of winning on a horse, there is betting. Betting is gambling and gambling includes a betting. It follows, therefore, that where the Entry is "betting or gambling" or "betting and gambling", the effect and scope of the power will be the same." With respect, we are in complete agreement with this view expressed by their Lordships in this case.

34. Horse racing is described as a sport of Kings or King of sports. But, in the democratic India, the tribe of Kings had completely disappeared, though the "king of sports" has not disappeared, We do not also rule out the possibility of genuine lovers of horse racing as a sport. But, we will not be far wrong when we say that their number is very limited and for the large number of persons that frequently visit a race course or otherwise horse racing is nothing but gambling which of course is permitted gambling at that place. What is true in the race course is also true outside the race course. We are of the opinion that this fact of life in our society hardly admits of any controversy.

35. In the *Madras Race Club's* case (AIR 1976 Mad 238), the Madras High Court repelling the contention that horse racing was a game of skill and was not a game of chance, expressed thus (at p.24142):

"The element of chance is not outweighed by any skill of the bettor of the horse. The figures were shown

we would only show that successful betting on horses sometimes, not necessarily every time, goes with substantial skill of the one who stakes. But we are not persuaded that betting on horses is a game of substantial skill. Horse racing is a competition on speed which will depend on a variety of changing and uncertain features which, with the best of knowledge and skill of the bettor, cannot be reduced to a certainty, though of course by such knowledge and skill the probability of success of a particular horse may be approximated. In our opinion, therefore, betting on horses does involve an element of gambling and we are unable to agree that staking on horses with expert knowledge and skill of the bettor is not betting involving an element of gambling".

With respect we are in complete agreement with these views expressed by their Lordships. We have, therefore, no hesitation in holding that horse racing and the

activities connected with the same are betting and gambling.

36. We have earlier analysed the activities of the petitioners in some detail. The activities of the petitioners are only connected with horse racing which we have earlier held as gambling. We will assume that the petitioners undertake their job for commission and do not lose in their bargain with their customers and only act as conduit pipe between their customers and the BTC, as correct. We are of the view that the same hardly makes any difference to hold that their activity as such is connected with betting and gambling only and is not divorced from the same

37. But, u for the activity of the petitioners, many a person who has never been a punter and desists from attending a race course or purchasing a ticket even at the outside counter of the race course will be tempted to indulge in gambling and lose his hard earned money. With the easy facilities provided in their shops, many a person would start as a casual gambler and may end up as a confirmed gambler as it generally happens. At any rate, th6 agents service is only to the gambler and is connected with gambling who helps in say that he is which is not morals and is activity only. An agent such an activity cannot doing a lawful business opposed to public health, not indulging in gambling as such. We have, therefore, no hesitation in holding that the activity of the petitioners was res extra commercium and was connected only with gambling and no other.

a Sri Pai has, however, urged that the two Acts, the bill that became the Amending Act, and the return filed by the State, that the business or open to the contrary or contrary an deal with they another. In support of his contention Sri Pai has strongly relied on an un reported Division Bench ruling of the High Court of Madras in Abdul Majid v. State of Tamil Nadu (Writ Petns. Nos. 4947 of 1979 and connected cases decided on 15-10-1980).

b In the two Acts, the bill, the Amending Act and the return, the activity of the petitioners has been described as a business or vocation is not and cannot also be disputed. But, this Court cannot base its decision on the question, solely on the basis of description made in the Acts, the bill or an erroneous concession made by Government. Even otherwise, those descriptions has to be treated as descriptions for purpose of those Acts only and cannot convert the activity of the petitioners to a lawful trade or business recognised by the Constitution under Art. 19(1)(g) of the Constitution. In this connection, we consider it proper to recall the observations of Patanjali Sastri C. J., in State of Madras Vs. V.G. Row, that has become classical. In - that case, the learned Chief Justice observed thus (at p. 200):

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the

evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and founding their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable."

In deciding the validity of the Amending Act, we must take into consideration all the prevailing circumstances and all other relevant factors. When we so examine, we find it difficult to hold that the activity of the petitioners is a business or vocation which mean one and the same, is lawful trade or business guaranteed under Article 19(1)(g) of the Constitution.

40. Sri Pai has urged that in their transactions with their customers the petitioner always make profit and do not lose and, therefore, their activity was a business and was not gambling.

41. We will assume that the allegation of the petitioner that they always make profit in their transactions with their customers and never lose and that the losing party was always the customer is correct. But, that can hardly be decisive; in judging the nature of the activity. The activity does not transform itself into a lawful trade or business by the fact that one of the parties to the contract always makes a profit. We see no merit in this contention of Sri Pai and reject the same.

42. Sri Pai has urged that the activity of the petitioners never results in evasion of taxes or loss of revenue as stated in the Statement of Objects and Reasons and the return filed by the State 01A really results in augmentation of taxes and revenue to the State.

43. We will also assume that this plea of the petitioners is also factually correct. Even then, we are of the opinion that we cannot examine the correctness of the statements contained in the Statement of object and Reasons or the correctness of the statements made by the petitioners to the contrary as an appeal and reach a different conclusion on either of them. In judging the validity of an enactment as ultimately passed by the competent legislature, the court must attach greater importance to the language of the Act as enacted and judge its validity on the touchstone of the Constitution only, without unduly restricting its examination to the Statement of Objects and Reasons as if it is a criminal charge or pleading or an admission in a civil case. We see no merit in this contention of Sri Pai and reject the same.

44. In Abdul Majid's case the Madras High Court was examining the validity of a similar Act enacted by the Tamil Nadu State abolishing the turf commission

agency business in that State also. The provisions of the Tamil Nadu Act are analogous to the provisions of the Amending Act and the latter is said to be carbon copy of the former. In those cases, the State of Tamil Nadu in resisting the challenge of the agents to the Tamil Nadu Act, inter alia, contended that the activity of the turf commission agents was not a trade or business guaranteed by Art. 19(1)(g) of the Constitution. But the Madras High Court repelled that contention expressing thus;

"It is no doubt true that a Division Bench of this court in Madras Race Club v. State of Tamil Nadu AIR 1976 Mad 238 rejecting the contention that staking on horses with expert knowledge and skill of the bettor is not betting involving an element of gambling, held that betting on horses does not involve an element of gambling. Against the decision of the Division Bench, an appeal to the Supreme Court has been filed and the Supreme Court has granted stay of the operative portion of the judgment of this court. Moreover notwithstanding the abolition of wagering or betting on horse races by the Tamil Nadu Horse Races (Abolition of Wagering or Betting) Act, 1974. the Supreme Court has granted permission for conduct of horse races in the State. When conduct of horse races is, still permitted to be carried on by the order of the Supreme Court, it may not be appropriate or correct to characterise horse racing as gambling on the basis of the judgment of" this Court, As the matter is still sub judice and pending final decision of the Supreme Court, and horse races are in the, meanwhile permitted to be run in the State, it is too premature to condemn horse racing its gambling on the basis of the judgment of his Court. That apart, the turf agent merely acts as the agent on behalf of the punters for purchasing tickets in the race course and this is prohibited in the impugned legislation. The true and genuine turf agents do not enter into betting. In their capacity as turf agents, they never bet or make a bet and they do not have any stake in the result of the race. There is no element of wagering contract, in their contract "for service to punters to purchase tickets on their behalf in the race course, as their contract of service with the punters does not depend on the chance or any future uncertain , event, it is not a wagering contract, the commission agency business being lawful trading activity and "the turf agency business without the alleged malpractices is a well recognised trading activity all over the world, the petitioners are entitled to claim protection of their fundamental right to carry on this business and any restriction or prohibition imposed on this business must satisfy the test of reasonableness and public interest under Art, 19(6) of the Constitution. The contention of the learned Advocate General that the writ petitioners can lay no claim. to fundamental right under Art. 19(1)(9) of the" Constitution is accordingly rejected. The content; on of Mr. Chellaswami, the learned counsel for some of the writ petitioners that they can claim fundamental right under Art. 19(P)(g) of the Constitution in respect of the turf agency business carried on by them is accepted."

With great respect to their Lordships, we find it difficult to hold that the order of stay granted by the Hon"ble Supreme Court against the earlier Act abolishing

horse racing in that State upheld in Madras Race Club's can be read as converting the activity of the agents into a lawful trade or business guaranteed under Art. 19(1)(g) of the Constitution. Every one of the other reasons that have found favour with their lordship, to hold the activity of an agent as a lawful trade or business, which are contrary to us earlier, are not find it difficult to the reasons set out by sound. We, therefore, persuade ourselves to concur with the reasoning and the conclusions of their Lordships in Abdul Majid's case. We have, therefore, no hesitation in holding that the activity of the petitioners described as business or vocation in the Act and the Amending Act was not a lawful trade or business protected by Art, 19(1)(g) of the Constitution.

45. In *The State of Bombay Vs. R.M.D. Chamarbaugwala*, an unanimous Constitution Bench of the Supreme Court speaking through S. R. Das, C. J., held prize competitions were gambling and that gambling was not a trade or business guaranteed by the Constitution. On that conclusion, the Court rejecting the challenge of the petitioners to the validity of the Bombay Lotteries and Prize Competitions Control and Tax Act (54 of 1948) and its amendments, expressed thus :

"We have no doubt that there are certain activities which can under no circumstance be regarded as trade or business or commerce although the usual forms and instruments are employed therein. To exclude those activities from the meaning of those words is not to cut down their meaning at all but to - say only that they are not within the true meaning of those words. Learned counsel has to concede that there can be no "trade" or "business" in crime but submits that this principle should not be extended. and that in any event there is no reason to hold that gambling does not fall within the words "trade" or "business" or "commerce" as used in the Articles under consideration.

The question arises whether our Constitution makers ever intended that gambling should be a fundamental right within the meaning of Art. 19(1)(g) or within the protected freedom declared by Art. 301. (37) The avowed purpose of our Constitution is to create a Welfare State. The directive principles of State Policy set forth in Part-IV of our Constitution enjoin upon the State the duty to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. It is the duty of the State to secure to every citizen, men and women, the right to an adequate means of livelihood and to see that the health and strength of workers, men and women, and the tender age of children are not abused, to protect children and youths against exploitation and against moral and material abandonment.

It is to be the endeavor of the State to secure a living wage, conditions of work ensuring a decent standard of life, and full enjoyment of leisure and social and cultural opportunities, to protect the weaker sections of the people from social injustice and all forms of exploitation, to raise the standard of living of its people and the improvement of public health. The question canvassed before us is

whether the Constitution makers who set up such an ideal of a Welfare State could possibly have intended to elevate betting and gambling on the level of country's trade or business or commerce and to guarantee to its citizens the right to carry on the same, There can be only one answer to the question.

From ancient times seers and lawgivers of India looked upon gambling as a sinful and pernicious vice and deprecated its practice. Hymn XXXIV of the Regveda proclaims the demerit of gambling. Verses 7, 10 and 13 say:

"7. Dice verily are, armed with goads and driving hooks, deceiving and tormenting, causing grievous woe. They give frail, gifts and then destroy the man who wins, thickly anointed with the player's fairest good.

10. The gambler's wife is left forlorn and ,wrethed : the mother mourns the son who wanders homeless. In constant fear, in debt, and seeking riches, he goes by night unto the home of others.

11. Play not with dice: no, cultivate thy cornland. Enjoy the gain, and deem that wealth sufficient, There are thy cattle, there thy wife, O gambler. so this good Savitar himself hath told me".

The Mahabharata deprecates gambling by depicting the woeful conditions of the Pandavas who had gambled away their kingdom. Manu forbade gambling altogether. Verse 221 advises the king to exclude from his realm gambling and betting, for those two vices cause the destruction of the kingdom of princes. Verse 224 enjoins upon the king the duty to corporally punish all those persons who either gamble or bet or provide an opportunity for it. Verse 225 calls upon the king to instantly banish all gamblers from his town.

In verse 226 the gamblers are described as secret thieves who constantly harass the good subjects by their forbidden practices. Verse 227 calls gambling a vice causing great enmity and advises wise men not to practice it even for amusement. The concluding verse 228 provides that on every man who addicts himself to that vice either secretly or openly the king may inflict punishment according to his discretion.

While Manu condemned gambling outright, Yajnavalkya sought to bring it under State control but he too in verse 202 (2) provided that persons gambling with false dice or other instruments should be branded and punished by the king. Kautilya also advocated State control of gambling and, as a practical person that he was not averse to the State earning some revenue therefrom.

Vrihaspati dealing with gambling in Chap, XXVI, Verse 199, recognises that gambling had been totally prohibited by Manu because it destroyed truth, honesty and wealth, while other law-givers permitted it when conducted under the control of the State so as to allow the king a share of every stake. Such was the notion of Hindu law-givers regarding the vice of gambling. Hamilton in his Hedaya Vol. IV, Book XLIV, includes gambling as a kiraheeat or abomination.

He says: "It is an abomination to play at chess, dice. or any other game: for if anything is staked it is gambling, which , is expressly prohibited in the Koran-, or if on the other hand, nothing be hazarded it is useless and vain". The wagering contracts of the type which formed the subject matter of the case of *Ramloll v. Soojunmull* (1848) 4 Moo Ind App 3319 (PC) (Y). And, was upheld by the Privy Council as not repugnant to the English Common Law" were subsequently prohibited by Act XXI of 194", which was enacted on the suggestion of Lord Cambell made in that case and introduced in India provisions similar to

those of the English Gaming Act (8 and 9 Vict. c. 109).

Bengal Gambling Act (Ben. Act 2 of 1867) provided for the punishment of public gambling and the keeping of open gambling house in the, territories, subject to the Lieutenant-Governor of Bengal. Lottery has been, since 1970 made an offence under S. 294A of the Indian Penal Code. Gambling agreements have been declared to be void under the Indian Contract Act, 1872 (S. 30). This in short is how gambling is viewed in India.

(39) Before the Legislature intervened, gambling and wagering were not prohibited by the English Common Law- al though the English Courts looked upon it with disfavour and discouraged it)n grounds of public policy by denying procedural facilities which were granted to other litigants. The Scottish Courts, however, have always refused to recognise the validity of wagering contracts and have held that sponsiones ludicroe, as they style such contracts, are void by the Common Law of Scotland.

Gambling and Betting " Act, 1664 (16 Car. II, C. 7) was directed against fraudulent and excessive gambling and bet time at games and sports. This was followed by the Gaming Act of 1710 (19 Anne, c. 19) the Marine insurance Act 1745 ((19 Geo. II, c. 37) for the first time prohibited wagering policies on risks connected with British shipping. Tribes was supplemented by the Marine Insurance Act, 1.738 (28 Geo, III, C. 56).

The Life Insurance Act, 1774 (14 Geo. III, c. 48) though not intended to prohibit wagering in general, prohibited wagyering under the cloak of a mercantile document which purported to be a (-on tract of insurance. Then came the Gamling Act of 1845 (8 and 9 vict., c. 109) which for the first time declared all con tracts made by way of gaming or wagering void irrespective of their form or subject-matter. The provisions of this, Act were adopted by our Act XXI of 1948 as herein before, mentioned The Gaming Act of 1892 (55 ind 56 vict., c. 9) further tightened up the law.

(40) As far back as 1850, the Supreme Court of America in *Phalen v. Commonwealth of Virginia* (1850) 49 US 163 : 12 Law Ed 1030 (Z) observed:

Experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with widespread pestilence of lotteries. The former are confined to a few persons and places, but, the latter infests the whole

community; it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor: it plunders the ignorant and the simple."

(41) The observations were quoted, with approval, in *Douglas v. Commonwealth Kentucky* (1897) 168 US 488 : 42 Law Ed 553 (Z). After quoting the passage, from (1850) 49 US 163 : 12 Law Ed 1030 (Z) the judgment proceeded:

"Is the state forbidden by the Supreme law of the land from protecting its people at all times from practices which it conceives to be attended by such ruinous results? Can the Legislature of a State contract away its power to establish such regulations as are reasonably necessary from time to time to protect the public morals against the evils of lotteries?"

(42) It will be abundantly clear from the foregoing observations that the activities which have been condemned in this country from ancient times appear to have been equally discouraged and looked upon with disfavour in England, Scotland, the United States of America and in Australia in the cases referred to above.

We find it difficult to accept the contention that those activities which encourage a spirit of reckless propensity for making easy gain by lot or chance, which lead to the loss of the hard earned money of the undiscerning and improvident common man and thereby lower his standard of living and drive him into a chronic state of indebtedness and eventually disrupt the peace and happiness of his humble home could possibly have been intended by our Constitution makers to be raised to the status of trade, commerce or intercourse and to be made the subject-matter of a fundamental right guaranteed by Art. 19(1)(g).

We find it difficult to persuade ourselves that gambling was ever intended to form any part of this ancient country's trade, commerce or intercourse to be declared as free under Art. 301. It is not our purpose nor is it necessary for us in deciding this case to attempt an exhaustive definition of the word "trade", "business" or "intercourse".

We are, however, clearly of opinion that whatever else may or may not be regarded as falling within the meaning of these words, gambling cannot certainly be taken as one of them. We are convinced and satisfied that the real purpose of Arts. 19(1)(g) and 301 could not possibly have been to guarantee or declare the freedom of gambling. Gambling activities from their very nature and in essence are extra commercium although the external forms, formalities and instruments of trade may be employed and they are not protected either by Art. 19(1)(g) or Art. 301 of our Constitution.

(43) The Court of Appeal, we have already, said, took the view that it was not open to the State, which had not thought fit to prohibit these prize competitions but had sought to make a profit out of them by levying a tax, to intend at the same time that it was illegal or was not a "trade" at all.

But, as pointed out in (1953) 345 US 22 : 97 Law Ed 754 (U), the fact of issuing

a licence or imposing a tax means nothing except that the licensee shall be subject to no penalties under the law if he pays it. (1955) 348 US 419 : 99 Law Ed 475 (V) also recognises that the Federal Government -may tax what it also forbids and that nobody has a constitutional right to gamble but that if he elects to do so, though it be unlawful, he must pay the tax. In this connection reference may be made to the observation of Rowlatt, J., in Mann v. Nash (102) 1 KB 752 (Z2):

"The revenue authorities, representing the State, are merely looking at an accomplished fact. It, is. not condoning it or taking part in it".

Further down he said:

"It is merely taxing the individual with reference to certain facts. It is not a partner or a sharer in the illegality".

That crime is not a business is also recognise in F. A. Lindsay, A. R. Woodward and W. Hiscox v. commissioners of Inland Revenue (1933) 18 Tax Cas 43 (Z3) (per Lord President Clyde and per Lord Sands) and in Southern (H, M. Inspector of Taxes) v. A. B. 1933 1 KB 713 : 18 Tax Cas 59 (Z4). The fact that regulatory provisions have been enacted to control gambling by issuing licences and by imposing taxes does not in any way alter the nature of gambling which is inherently vicious and pernicious.

(44) We also arrive at, the same result. by applying the doctrine of "pith and substance", As Lord Porter pointed out:

"The phrase raises in a convenient form an appropriate question in cases where the real issue is one of a subject matter and it may also serve a useful purpose in the process of deciding whether a particular enactment is a law with respect to trade, commerce or intercourse as such or whether it is a law with respect to some other subject which Incidentally trenches upon trade, commerce and intercourse."

Reference has already been made to the observations of Dixon J., as he, then was, in (1939) 62 CLR 457 (N). Adapting his language, we may say that when Art. 14(1)(9) guarantees or Art. 301 declares the freedom of trade they describe human activities in a . specific aspect. They single out attributes which the actor transaction may wear and make the freedom, which they confer, depend upon those attributes.

The freedom secured by the two articles, we think, implies that no unreasonable restraint or burden shall be placed upon an act falling under that description because it is trade or commerce or intercourse. We have analysed the provisions of the impugned Act and it is quite clear that the Act does not purport directly to interfere with trade or commerce or intercourse as such, for the criterion of its application is the specific gambling nature of the transaction which it restricts.

The purpose, of the Act is not to restrict anything which brings the transactions

under the description of trade, commerce or intercourse. In other words, the Act is in pith and substance an act with respect to betting and gambling. To control and restrict betting and gambling is not to interfere with trade, commerce or intercourse as such but to keep the flow of trade, commerce and intercourse free and unpolluted and to save it from antisocial activities.

In our opinion, therefore, the impugned Act deals with gambling which is not trade, commerce or business and, therefore, the validity of the Act has not to be decided by the yardstick of reasonableness and public interest laid down in Arts. 19(6) and 304. The appeal against the stringency and harshness, if any, of the law does not lie to a Court of law."

On this very reasoning the same Bench in *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*, also uphold the uniform Act enacted by the Parliament. We are of the view that these principles apply in all fours to the activity of the petitioners, which we have earlier held as gambling. In *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, an unanimous Constitution Bench of the Supreme Court has restated these principles.

46. In America also, gambling is viewed by Courts with disfavour and laws prohibiting gambling have been upheld as not violative of the guaranteed rights of the citizens under the American Constitution. American Jurisprudence (2d) (Vol. 38) at pages 116 and 117 under the heading "Gambling" referring to a number of cases decided by the American Supreme Court neatly sums up the same in these words:

"II. REGULATION AND CONTROL, GENERALLY A IN GENERAL

10. Generally.

It has been said that there is constitutional right to gamble, and it has frequently been held that gambling, in the various modes in which it is practiced, is demoralizing in its tendencies, and therefore an evil which the law may rightfully suppress without interfering with any of those inherent rights of citizenship which it is the object of government to protect "and secure. Gambling is injurious to the morals and welfare "Welfare of the people, and it is within the scope of the State"s police power to suppress gambling in all its forms. In enacting legislation for this purpose, there is no invasion of constitutional rights unless the restraints imposed are unreasonable. The courts are not concerned with the necessity for, or the wisdom of, a legislative enactment forbidding gaming transactions and wages, provided it is a valid exercise of the police power.

Since State constitutions are limitations of power, where a Constitution prohibits lotteries, the legislature, while it cannot legalize any gambling device which a effect amounts to a lottery, has inherent power to regulate or to prohibit any and all other forms of gambling".

We need hardly say that these -principles also support our conclusion.

47. On the above discussion, we hold that the activities of the petitioners, being in the nature of gambling was not a lawful trade or business protected by Art. 19(1)(g) of the Constitution and, therefore the Amending Act passing the test of reasonable restrictions under Art. 19(6) of the Constitution does not arise. In this view, their challenge to the Amending Act requires to be rejected without examining the other questions.

48. We will also assume that the nature of the activity carried on by the petitioners was a trade or business guaranteed to them under Art. 19(1)(g) of the Constitution and examine whether the total prohibition imposed by the Amending Act was justified or not.

49. We have earlier set out the provisions of the Amending Act and their effect also on which there is no controversy.

50. The term reasonable restriction occurring in Art. 19(6) of the Constitution can mean regulation or total restriction or abolition -depending on the nature of trade and business like excise, noxious trades of trafficking in women or gambling is concluded by the several rulings of the Supreme Court. We have earlier held that the activity of the petitioners was connected with gambling. Whether that activity should be regulated or restricted or completely abolished was a matter essentially for the Legislature to decide. If the legislature in its wisdom, with due regard to the nature of the trade absolutely prohibits the same, the Court cannot take exception to that on what it considers to be a better view. On this short ground, the challenge of the petitioners to the impugned Act is liable to be rejected. -

51. In Abdul Majid's case, while holding that turf commission agency was a trade or business, with which view we have dissented, the Madras High Court has upheld the Tamil Nadu Act prohibiting the same as saved by Art. 19(6) of the Constitution. With respect, we are in agreement with the views expressed by their Lordships of the Madras High Court on this aspect.

52. On the above discussion, we hold that even if the activity of the petitioners was a trade or business the total prohibition of the same by the Amending Act is not violative of Art. 19(6) of the Constitution.

53. In the light of our above discussion, we hold that these writ petitions are liable to be dismissed. We, therefore, dismiss these writ petitions and discharge the rule issued in these cases. But, having regard to the fact that the respondents succeed on a ground that had not been urged by them in their return, we consider it proper to direct the parties to bear their own costs. We, therefore, direct the parties to bear their own costs.

ORDER ON THE ORAL APPLICATIONS MADE BY THE PETITIONERS UNDER ART. 133 OF THE CONSTITUTION FOR CERTIFICATE OF FITNESS TO APPEAL TO THE SUPREME COURT AND FOR STAY

54. After we pronounced our order dismissing these writ petitions, Sriyuths

Tukaram S. Pai, R. D. Kolekar and S. N. Hatti. learned counsel for the petitioners make an oral application for grant of a certificate of fitness to appeal to the Supreme Court under Art. 133 of the Constitution. Learned counsel for the petitioners contend that the cases involve substantial question of law of general importance and the same is required to be decided by the Supreme Court.

55. Sri S. Rajendra Babu learned Government Advocate, opposes the grant of certificate sought by the petitioners. He contends that the cases decided by us following the principles already enunciated by the Supreme Court do not involve a substantial question of law that needs to be decided by the Supreme Court.

56. We have upheld the validity of the Amending Act in the light, of the principles settled by the Supreme Court in various cases to which we have drawn detailed reference in our order. We are, of the opinion that the cases do not involve a substantial question of law of general importance that required to be decided by the Supreme Court. We, therefore, refuse the prayer sought by Sriyuths Pai, Kolekar and Hatti for a certificate of fitness to appeal to the Supreme Court under Art. 133 of the Constitution.

57. Sriyuths Pai, Kolekar and Hatti seek for stay of the operation of our order for a period of eight weeks from this day to enable the petitioners to obtain certified copies of our order, move the Supreme Court in Special Leave to appeal and for stay.

58. Sri Babu while opposing the grant of stay, contends that with the rejection of the prayer of the petitioner for certificate, this Court has become functus officio and cannot grant an order of stay.

59. We are of the opinion that by dismissing the writ petitions this Court does not become functus officio to deal with the prayer of the petitioners for stay. We, therefore, overrule the preliminary objection of Sri Babu.

60. While issuing rule nisi, this Court had stayed the operation of the Amending Act as against the petitioners, which has continued to be in force during the pendency of the writ petitions before this Court. If this Court does not grant an order of stay, the petitioners will be compelled to close down their business which they have been carrying on by virtue of the earlier order of stay granted by this Court. In this view, it is proper to stay our order for a period of eight weeks from this day. We, therefore, stay the operation of our order for a period of- eight weeks from this day.

61. Order accordingly.