

(2020) 08 J&K CK 0034

In the Jammu And Kashmir High Court

Case No : Other Writ Petition No. 2035 Of 2015, Civil Miscellaneous No. 01 Of 2015, 2501 Of 2020

Srinagar Stamp Vendors Association

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 24-08-2020

Acts Referred:

Jammu And Kashmir Stamp Act, 1977 — Section 1, 2, 2(24A), 27, 33, 35, 42, 47(A), 48, 61, 64(A), 72, 74, 74(2), 194(H)
Stamp Act, 1899 — Section 9
Jammu And Kashmir Reorganisation Act, 2019 — Section 32, 95(2), 96
Jammu & Kashmir After Issuance Of The Jammu & Kashmir Stamps (Payment Of Duty By Means Of E-Stamping) Rules, 2020 — Rule 1, 2, 2(A)(i), 2(A)(ii), 2(A)(iii), 2(A)(iv), 2(A)(v), 2(A)(vi), 2(A)(vii), 2(A)(viii), 2(d), 2(h), 13, 21, 25, 30, 74
Constitution Of India, 1950 — Article 6, 12, 14, 19, 19(1)(g), 19(5), 19(6), 21, 22, 30, 40, 41, 43, 46, 54, 246(1), 246(2), 246(3)

Citation : (2020) 08 J&K CK 0034

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Z. A. Qureshi, Rehana, M. Tufail, D. C. Raina

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. For switching over to e-stamping in erstwhile State of Jammu and Kashmir (now Union Territory of Jammu and Kashmir and Union Territory of Ladakh), a Government Order no.77-F of 2013 dated 25th March 2013 came to be issued by the Government of Jammu and Kashmir, which reads as under:

"Government of Jammu and Kashmir, Finance Department.

Subject: Switch over to e-Stamping in Jammu and Kashmir.

Reference: Cabinet Decision No.42/7/2013, dated 15.03.2013.

Government order No. 77 - F of 2013

D a t e d : 25 - 03 - 2013.

Sanctioned is accorded to:

- a. initiating the process to switching over to e-stamping system in the State of Jammu and Kashmir;
- b. appointment of the stock Holding Corporation of India Limited (SHCIL) to function as the Central Record keeping Agency (CRA) on the terms and conditions, fixed by the Industrial Finance Corporation of India (IFCI) Limited of the Union Ministry of Finance;
- c. issuing of formal mandate to the Stock Holding Corporation of India Limited (SHCIL) for the aforesaid purpose, and
- d. Commissioner Stamps (Commissioner, Commercial Taxes Department) acting as the Nodal Officer of the e-stamping project and to Co-ordinate between various stakeholders i.e. Department of Law and Parliamentary Affairs, Revenue Department, Finance Department and Stock Holding Corporation of India Limited (SHCIL) for the switching over to e-stamping system in the State of Jammu and Kashmir

By order of the Government of Jammu and Kashmir"

2. In terms of above quoted Order no.77-F of 2013 dated 25th March 2013, the Government of Jammu and Kashmir has accorded sanction to: initiating the process to switching over to stamping system in the erstwhile State of Jammu and Kashmir (now Union Territory of Jammu and Kashmir); appointment of Stock Holding Corporation of India Limited (for short "SHCIL") to function as Central Record Keeping Agency (for succinctness "CRA") on the terms and conditions fixed by Industrial Finance Corporation of India Limited (for brevity "IFCI") for aforesaid purpose; and Commissioner Stamps (Commissioner, Commercial Tax Department) acting as Nodal Officer of e-stamping project and to coordinate between various stakeholders for switching over to e-stamping in Jammu and Kashmir.

3. On 16th September 2013, Government of Jammu and Kashmir through Finance Department, in pursuance of Subsection 24-A of Section 2 of the Stamps Act, 1977 (1920 AD) (Act no.XL of 1977) (hereinafter be called as "Act of 1977"), issued a Notification, bearing SRO no.402, which provides:

"GOVERNMENT OF JAMMU AND KASHMIR, FINANCE DEPARTMENT Civil Secretariat, Srinagar Notification Srinagar, the 16th September, 2013

SRO 402:- In pursuance of clause (24-a) of Section 2 of the Stamps Act Samvat 1977 (1920 AD) (Act no.XL of 1977), the Government hereby implements

e-stamping system in the State of Jammu and Kashmir initially in the Districts of Srinagar and Jammu (two Sub Registrar offices of District Srinagar and two Sub-Registrar offices of District Jammu), on pilot basis. The Stock Holding Corporation

of India Limited (SHCIL), authorized Central Record Keeping Agency (CRA) of Government of India, shall act as Central Record Keeping Agency (CRA) for the implementation of the project on commission basis @ 0.65% (i.e. sixty five paisa) for every rupees hundred of the value of stamp duty collected through this mechanism;

All the branches of Jammu and Kashmir Bank Limited in Jammu and Kashmir are appointed as Authorized Collection Centers (ACC) for the collection of stamp duty.

This notification shall come into force from the date of its publication in Government Gazette.

By order of the Government of Jammu and Kashmir"

4. The above Government Order no.77-F of 2013 dated 25th March 2013 and Notification bearing SRO no.402 dated 16th September 2014, do not find favour with the petitioner-association, and as a corollary thereof, instant writ petition has landed in this Court for warding off repercussions thereof.

5. Petitioner maintains that 'Srinagar Stamp Vendors Association' is a registered Trade Union. He contends that in terms of Section 74 of the Act of 1977, the erstwhile State Government of Jammu & Kashmir by notification in the Government gazette, was competent to make Rules to carry out generally the purpose of the Act. Such Rules might regulate to provide for, all, or any of the matters specified in section 74(2) of Act of 1977. Petitioner asserts that Rules were framed regarding sale of stamps and in terms of the said Rules licensed vendors of stamps are those who sell stamps to the public after they obtain a regular licence and it is Deputy Commissioner of a District, who grants licence for vending of non-judicial stamps. As per Rules, the stamp vendor is to maintain record about the purchasers of stamps in a register. Rule 21 provides that Licensed Vendors shall obtain stamps from the nearest treasury or sub-treasury on payment of ready money less the discount allowed by the rules. Rule 25 provides that every licensed vendor who purchases stamps from Government by payment of ready money shall receive the same at a discount specified in the rule. Rule 30 provides that stamp vendors are strictly prohibited from altering endorsements made by them on stamped papers.

5.1. It is also averred in writ petition that members of petitioner-association have been granted licences by their respective Deputy Commissioners, which are in force. The licensed stamp vendors are not the agents of the Government, as has been held by the Supreme Court in Civil Appeal No.10270 of 2003 titled CIT v. Ahmadabad Stamp Vendors Association. The Supreme Court, while upholding judgement of the Gujarat High Court, has held that: (a) title in the stamps passed to vendors and that they were not agents of the State Government but were transacting on principal to principal basis; and (b) the discount available to the stamp vendors was not commission or brokerage so as to fall within section 194(H). The Supreme Court also held that discount given to the stamp vendors is for purchasing the stamps in bulk quantity and the said discount is in the

nature of cash discount. While concurring with the judgement of the Gujarat High Court, the Supreme Court also held that the transaction is sale, as such section 194(H) has no application.

5.2. It is also stated in writ petition that Section 74 of the Act of 1977 authorizes the Government to make Rules to carry out the purpose of the Act. These rules regulate and provide for the supply, sale and use of stamps and stamped papers. The rules also provide the persons by whom alone such sale is to be conducted and the duties and remunerations of such persons. Strictly in accordance with Rule 74, the Government having made rules regarding sale of stamps and in terms of these rules, it being clear that sale of stamps by any person who is not duly authorized in the manner as indicated in the rules, is prohibited, therefore only two classes of vendors viz. ex-officio vendors and (b) licensed vendors can sell the stamps in the manner provided by the rules.

5.3. It is asserted that in violation of Section 74 of the Act of 1977 and the Rules framed thereunder, the J&K Governor of erstwhile State of J&K promulgated an ordinance making certain amendments in the Act of 1977 to pave way for implementation of e-stamping system in erstwhile State, by promulgating "The Stamp (Amendment) Ordinance, 2010". Shortly thereafter the Government order no.77-F of 2013 dated 25th March 2013 came to be issued.

5.4. Petitioner also states that by virtue of SRO 402 dated 16-09-2013, the Government implemented e-stamping system in the erstwhile State of Jammu and Kashmir initially in the Districts of Srinagar and Jammu (two Sub-Registrar Offices of District Srinagar and two Sub-Registrar offices of District Jammu), on pilot basis. SHCIL, authorized Central Record Keeping Agency (CRA) of Government of India, to act as Central Record keeping Agency (CRA) for implementation of the project on commission basis @ 0.65% (i.e. sixty-five paise) for every Rupee hundred of the value of stamp duty collected through said mechanism. All branches of Jammu and Kashmir Bank Limited in the erstwhile State were appointed as Authorized Collection Centers (ACC) for the collection of stamp duty.

5.5. Petitioner submits that on 8th January 2014, the Government of J&K through Commissioner of Stamps, entered into an Agreement with SHCIL, thereby selecting SHCIL as Central Record Keeping Agency (CRA) by Government of India for the Computerized Stamp Duty Administration System (C-SDAS) and to devise a mechanism of electronic method of collection of stamp duty. It also shows that the Government of India, Ministry of Finance, Department of Economic Affairs also authorized CRA to undertake various services in States against a payment of 0.65% of the value of stamp duty collected through e-Stamping mechanism. The agreement also indicates that Government of J&K having approved switching over to e-stamping and it having also appointed SHCIL to function as CRA and the Government having approved and authorized SHCIL to be their CRA, the said agency has developed a system permitting payment of stamp only by client/ ultimate-user either on its own through

Internet or through Approved Intermediaries i.e. Authorized Collection Centres (ACCs), on the terms and conditions stipulated in the agreement. The agreement also indicates that for the above services to be provided by SHCIL, it shall be entitled to a fee of 0.65% of the value of the stamp duty collected through e-Stamping mechanism. The agreement also indicates that it shall be initially for a period of five years from the effective date and there-after it shall be renewed by mutual consultation between the parties.

5.6. It is as well stated by petitioner in writ petition that the Government entered into a Service Level Agreement with SHCIL, which shows that the said agreement shall be concurrent with the main agreement and as one of the conditions of the said agreement is that the Service Level Agreement would be executed between the parties, therefore the said service level agreement is executed , on the terms and conditions stated therein.

5.7. It is contended that on 9th January 2014, Deputy Commissioner, Commercial Taxes, issued an order wherein it was mentioned that for smooth and effective implementation of e-Stamping in the State, a training programme for officers/officials of Stamp Wings and Stamps Vendors of District Jammu and District Srinagar being organized by the Department in collaboration with SHCL as per schedule indicated in the order, as such Deputy Commissioner Stamps, Jammu and Kashmir would frame a list of top Stamp Vendors for training purposes. The petitioner does not know as to whether any training was given to any stamp vendor or not.

5.8. According to petitioner on coming to know about aforesaid developments, it submitted a representation to the then Chief Minister, with copies to Finance Minister, Minister of Law, Justice and Parliamentary Affairs; Chief Secretary; Commissioner, Commercial Taxes; Director General, Accounts and Treasuries, Deputy Commissioner Stamps and Additional Secretary to Government, Finance Department, stating therein that by switching over to e-Stamping and appointing SHCIL to act as stamp duty collection authority for the implementation of e-stamping and to devise mechanism and method of collection of stamp duty in the erstwhile State of Jammu and Kashmir, would put an axe on the livelihood of the members of the petitioner-association, because stamp vendors are exclusively performing job of stamp vending and could hardly extract their livelihood out of it and by switching over to e-Stamping, all stamp vendors would be deprived of their livelihood, as such, it should not be given effect to. It was also stated that the stamp vendors have been performing the job of selling stamps from the time of Maharaja Gulab Singh and at present 20,000 families are dependent on them and that involvement of banks in this field will definitely deprive them of their earnings, as such, petitioner association made a request to resolve the issue in such a way so that stamp vendors are able to sustain themselves and their families. However, no action was taken by respondents on the representations of petitioner-association. A request was made by one of the members of Association to respondents on 20th February 2014 for providing certain information to him.

In reply, he was informed by Deputy Commissioner, Commercial Taxes, that the Government was empowered to implement e-stamping system in the J&K through any authorized authority or person as per Subsection 24(a) of Section 02 of the Act of 1977 and SHCIL was authorized to act as a CRA and was entitled to a commission of 0.65% for every Rs.100/- of the value of the stamp duty collection.

5.9. Petitioner further says that after providing aforesaid information to one of the members of the petitioner/Association, respondents did not do anything in the matter until a meeting was held under the chairmanship of Commissioner of Stamps, J&K, on 18th November 2014 regarding e-Stamping in the State of J&K, wherein decisions were taken for accelerating the pace of e-Stamping in the State. It was on 2nd November 2015 that respondent no.2 launched first ever e-Stamping facility in Srinagar. The facility was launched at J&K Bank Branch Unit Solina in presence of Commissioner Commercial Taxes.

6. The grounds of challenge in writ petition are that:

6.1. Orders dated 25th March 2013 and 16th September 2013, sanctioning initiation of process of switching over to e-stamping system in Jammu and Kashmir and appointing SHCIL to function as CRA on the terms and conditions fixed by the IFCI and also issuing formal mandate to the SHCL for aforesaid purpose, are contrary to Section 74 of the Act of 1977 and the Rules framed thereunder for purchase, sale and supply and use of stamps.

6.2. Rules, framed under the Act of 1977, provided that sale of stamps by any person, who is not duly authorized in the manner provided therein is prohibited. These Rules also provide that there shall be only two classes of vendors namely: (a) Ex-officio vendors and (b) Licensed Vendors who can sell the stamps. According to the Rules, licensed vendors of stamps are those who sell stamps to the public after having obtained regular licence under the Rules. The licences can be granted by the Deputy Commissioners for vending of non-judicial stamp papers in their respective jurisdiction. There is no provision in the Rules, whereunder stamps can be sold through e-Stamping by issuing a formal mandate to the SHCIL an outside.

6.3. Members of petitioner-Association are duly licensed stamp vendors and they have been selling stamps to the public strictly in accordance with terms and conditions of their licences. Some vendors are hardly extracting their livelihood from this work. By involvement of an outside agency, it is bound to deprive all stamp vendors of their livelihood and will render them jobless. Stamp vendors are doing the job of selling stamps manually from the time of Maharaja Gulab Singh and if e-stamping is launched, they would be rendered jobless.

6.4. In terms of law laid down by the Supreme Court, stamp vendors are not agents of the Government. They purchase stamps from respondents on payment of money and receive stamps at the discount specified in the Rules. By engaging outside agency for implementing e-stamping system in Jammu and Kashmir,

stamp vendors will be deprived of discount as also of their right to purchase stamps on payment of ready money to respondents.

6.5. Members of petitioner-Association, are in the job of selling stamps from the time of Maharaja Gulab Singh. They have been earning revenue for the Government even when life in the Valley had come to a standstill during the period of turmoil. The Government is now throwing them on roads. Members of petitioner-association having spent best part of their life in stamp vending, they cannot, therefore, seek employment anywhere. They are also all overaged. Impugned order and notification have issued by respondents at the cost and peril of the stamp vendors.

6.6. Impugned order and the notification issued by respondents and agreement executed by them with an outside agency are also unconstitutional as they offend the concept of equality and equal protection of law and the right to conduct any business or trade and to earn their livelihood, as guaranteed to them by Article 14, 19 and 21 of the Constitution of India as applicable to the State of J&K. The respondents before switching-over to the e-stamping system should have heard members of petitioner-association and obtained their views as well because e-stamping is going to affect them. They have not done so; impugned order and notification is violative of principles of natural justice.

6.7. By introducing e-stamping system, respondents have virtually allowed an outside agency to have monopoly on sale of stamps in J&K which is not permissible under law. Impugned order and notification giving power of purchase and sale of stamps to an agency is hit by other laws which are prevalent in J&K and forbid such a procedure

6.8. On the edifice of case set up and grounds taken in writ petition, following relief has been solicited for by petitioner in writ petition on hand:

a) Writ of Certiorari, quashing impugned Govt. order no.77-F of 2013 dated 25th March 2013 and Notification/SRO no.402 dated 16th September 2013 and the agreements entered by respondent no. 01 through respondent no. 05 with respondent no. 06 on 08-01-2014;

b) Writ of Mandamus, directing respondents not to switch over to e-Stamping System or authorize any agency to operate the said system in the State of J&K but to allow the licensed stamp vendors of the petitioner/Association to perform the said job of stamp vending in the State, in accordance with section 74 of the Act of 1977 and the Rules framed thereunder and not to stop the sale of stamps to them, in manner, whatsoever.

7. Reply has been filed by respondents to vehemently oppose writ petition. They insist that the country faced colossal losses in revenue due to super-scams, like Karim Telgi, counterfeiting of stamp papers. Scams of counterfeiting and related crimes also surfaced in J&K. It became, thus, important to identify reasons as to why these scams could not be detected in time and how they reached to such

gigantic proportions. Besides there was also need for simplification of procedure to be adopted that could be user-friendly, transparent, convenient and involve minimum interference from Government. It was necessary to involve modern web-based computer technology to ensure fool-proof/ tamper proof mechanism to deal with the matter and as such the Stamps Act was, accordingly, amended to incorporate necessary technical terminology so as to accommodate technology related issues. With this came E-Stamping process of stamp duty collection, which facilitates prevention of paper and process related fraudulent practices, ensures simplicity, transparency, high security and reliability and compilation of information in a secured electronic form which could be verified and used for Management information purposes. The payment of stamp duty is done through a web-based system to the Government for which a highly secured and tamper-proof stamp certificate is issued, which has a unique identification number and the same can be verified as the data is compiled electronically by a central record keeping agency. E-stamping process, therefore, is a need of hour and is in consonance with technological advancement and provides a secure and tamper proof mechanism which can prevent scams and leakages and stop revenue losses. According to respondents, petitioner has concealed material facts in writ petition. The Stamps Act has been amended in the year 2011 and words "impressed Stamp" has been substituted by the words "impressed Electronic Stamp" and petitioner has advertently skipped mention of the same and furthermore the definition of the term Stamp as defined under clause 24-A of the Act of 1977, has been amended. Respondents strictly in terms of the amended Stamps Act in harmony with clause 24-A inserted by Act No. XXVI of 2010 and amended by Act no.XII of 2011 read with SRO 402 dated 16th September 2013 authorised respondent no.6, vide Government Order no.77-F of 2013 Dated 25th March 2013 to function as Central Record Keeping Agency for said project for computerization/dematerialization of stamp duty system for a period of five years. As such, respondents issued orders strictly in accordance with the Act governing the field and petitioner has no right to challenge the action of the respondents. By way of amendment in the Stamps Act, process of switching over to e-stamps in J&K has been carried out and, therefore, petitioner-association cannot compel respondents to rely on old rules which have no relevance after the Act came to be amended in the year 2011.

7.1. Respondents maintain that given the amended Act, the old Rules cannot prevail and petitioner-association has not challenged the Act in its present form. The Rules were in the process of being updated to cater amendments in the Act but interim directions issued in writ petition have stalled process for time being and as soon interim directions are vacated the Rules would be brought in tandem with amended Act.

7.2. Respondents insist that the Government is empowered to implement e-stamping system in Jammu and Kashmir through an authorized agency as per subsection 24-A of Section 2 of the Stamps Act and SHCIL has been authorized by the Government to act as CRA and e-stamping, besides simplification and

transparency of the procedure, checks leakage of Government revenue and ensures that entire process is free from any mischief or fraud. The traditional method is full of loopholes and in case the same is not improved technologically there is every apprehension that scams may recur and the revenues get affected. The web-based computerization technology reduces the level of Government intervention and online procedure facilitates a trader to do the same work quickly and securely without having to visit Govt offices frequently. There is a provision for appointment of members of petitioner-association as approved intermediaries/ authorized collection Centres and in this direction training camps are being organized and vide order no.07/stamps of 2013 dated 9th January 2014, a training programme for officers/ officials of Stamp Wings and Stamp Vendors of Jammu and Srinagar Districts was organized on 20th January 2014 and 3rd February 2014 at Excise and Taxation Complex, Srinagar and Jammu respectively. The Agreement signed by the Government with CRA takes care of apprehensions of petitioner-association. E-stamping project works under coordination of Commissioner, Commercial Taxes Department, who acts as Nodal Officer and there is every effort to safeguard livelihood of members of petitioner-association. E-stamping project has been implemented in the Jammu and Kashmir initially for Srinagar and Jammu Districts on pilot basis. For collection of the Stamp Duty, all branches of J&K Bank in J&K have been authorized to collect Stamp Duty. The orthodox stamping system has to remain for some time till the Sub-Registrars and their staff gets trained in the use of new method and the masses get accustomed with the new mode. Once the Stamp vendors get familiar with the project they may be appointed as ACC. As such there is no deprivation of livelihood or violation of Articles 14, 16, 19 and 21 of the Constitution of India.

8. I have heard learned counsel for parties and considered the matter. Learned counsel for parties, in support of their arguments advanced by them, have also submitted written-submissions.

9. Instant writ petition has been filed way back in the year 2015. Threshold order dated 19th November 2015, passed by a Bench of this Court, has put a halt to impugned Government Order no.77-F of 2013 dated 25th March 2013 as also Notification/SRO 402 dated 16th September 2013.

10. During pendency of present writ petition, a lot of significant developments took place that include creation of State of Jammu and Kashmir in Union Territory of J&K and Union Territory Ladakh vide Jammu and Kashmir Reorganisation Act, 2019 (for brief "Act of 2019"). A number of State Laws including Governor's Act were repealed by the Act of 2019. The J&K Stamp Act, Samvat 1977, however, continues to be in force.

11. The Government of J&K through Finance Department, in the interregnum, has also issued a Notification on 24th June 2020, bearing S.O. 201, in exercise of powers conferred by Section 74 of Act of 1977, making "The Jammu and Kashmir Stamps (Payment of Duty by Means of e-Stamping) Rules, 2020" (concisely

hereinafter "Rules of 2020") Sub-rule (d) of Rule 2 of Rules of 2020 defines "Approved Intermediary"/"Authorized Collection Centre" / "Authorized Stamping Centre", shall mean and include an agent appointed by the Central Record Keeping Agency, with approval of the Commissioner of Stamps or Licensed Stamp Vendor holding a valid License to act as an intermediary between the Central Record Keeping Agency, and the Stamp duty payer for collection of Stamp duty and for issuing "e" stamp certificate. Rule 2 (h) says that "e-stamps" mean an electronically generated impression on paper to denote the payment of stamp duty by Central Record Keeping Agency.

11.1. Rule 13 of Rules of 2020 is pertinent and relevant to present controversy. It somehow takes care of and attends the gravamen groused by petitioner-association in writ petition on hand, particularly their livelihood. Thus, it would be profitable to reproduce Rule 13 herein below:

"13. Eligibility for appointment of Authorized Collection Center: Any Scheduled Bank, Financial Institution or undertaking controlled by Central or Union Territory Government, Post Offices or such other agencies, Stamp Vendors as approved by the Appointing Authority shall be eligible for appointment as Authorized Collection Centre/ Approved Intermediary / Authorized Stamping Centre."

11.2. Thus, Rule 13 of Rules of 2020 provides that any scheduled Bank, Financial Institution or undertaking controlled by Central or Union Territory Government, Post Offices or such agencies, Stamp Vendors as approved by Appointing Authority, shall be eligible for appointment as Authorised Collection Centre, Approved Intermediary/Authorised Stamping Centre. The grievance of petitioner-association that their livelihood has been done away with seems somewhat taken care of in terms of Rules of 2020.

11.3. Rules of 2020 have been placed on record by respondents vide application (CM no.2501/2020), to submit that this Court on 26th October 2017, after hearing learned counsel for parties, observed and raised a query as to why matter could not be disposed of with a direction that unless and until Rules were updated/amended, the existing arrangement for sale of stamps would stay in existence as the said stand regarding updation of Rules had been taken by respondents in their Reply. Accordingly, as said by respondents, Government of J&K promulgated the Rules of 2020. Respondents aver that since Rules of 2020 have been framed and updated aiming at to put in place new system. However, they are unable to put in operation e-stamping facility in Union Territory of J&K because of interim order passed by this Court and in order to implement e-stamping facility in Union Territory of J&K at par with other States/UTs, respondents seek kind indulgence of this Court.

11.4. Objections to the application (CM no.2501/2020) have been filed by petitioner-association, in which they insist that this Court by order dated 26th October 2017, observed that matter could be disposed of with a direction that unless and until the Rules were updated/ amended, present arrangement for sale

of stamps would continue, and that taking cue from this observation, application (CM no.2501/2020) has been filed placing on record Notification/S.O. no.201 dated 24th June 2017, framing Rules of 2020. Petitioner-association submits that the above view was expressed by this Court keeping in view necessity of rehabilitation of petitioner-association, viz. stamp vendors of J&K, who were going to lose their livelihood because of introduction of process of e-stamping. This Court, as said by petitioner in his objections, is yet to decide illegalities or otherwise of modalities the Government would adopt for rehabilitation of petitioner-association, therefore, order dated 26th October 2017 cannot be considered to be the sole factor for disposing of writ petition. It is also asserted that Act of 2019, received assent of the President of India on 19th August 2019. Section 96 thereof makes it very clear that any law made before appointment day as detailed in Fifth Schedule, the Central Government may, before expiration of one year from the day, by order, make such adaptation and modification of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to adaptations and modification so made until altered, repealed or amended by the Legislature or other competent authority and taking into account the powers conferred by Section 95 and 96, the Schedules were adopted. Table-1 shows that Central laws made applicable to the Union Territory of J&K Union Territory of Ladakh and at serial no.49, the Indian Stamp Act 1899 (for shortness "Act of 1899") has been made applicable to Union Territories, which came into being on 5th August 2019. Table 4 of 5th Schedule gives the names of Statutes including Governor's Act, which shall remain in force in Union Territories and at serial no.151 of Table-4, Act of 1977, would be in force. Situation given that, is if Act of 1899 was made applicable to Union Territories of J&K and Ladakh, after reorganisation and by invoking powers under Section 95 and 96, then J&K Act will have no application and shall be construed to have been repealed and therefore S.O. 201 of 2020 dated 24th June 2020 is non-est in the eyes of law because the same has been promulgated by invoking powers under Section 74 of Act of 1977 and had no application at all.

11.5. Respondents preferred to file Response to the Objections of petitioner that were filed by petitioner in opposition to application (CM no.2501/2020) for placing on record S.O. 201 of 2020 (Rules of 2020). It is contended that merely because extension of the Act of 1899, figuring at serial no.49 in Table-1 of Fifth Schedule appended to Act of 2019, does not deprive or deny competent authority to exercise the power in view of the fact that the Act of 1977 continues to remain in force and Section 74 thereof empowers the Government to make rules. Even otherwise, the Act of 1977 assumes status of special law and continues to have its application in Union Territory as well. They also aver that the Act of 1977 is at par with Act of 1899 as objective remains the same and, in any case, petitioner has no locus to call in question legality of Rules of 2020.

11.6. Respondents in their Response vehemently submit that Rules of 2020 fully safeguard interests of members of petitioner-association. In terms of

proclamation, issued vide Notification/SRO 3937 (E) of 2019 dated 31st October 2019, all functions of Government of Union Territory of J&K and all powers vested in or exercisable by Lieutenant Governor of Union Territory of J&K, under Act of 2019 or under any law in force, which have been assumed by the President, by virtue of clause (a) of superintendence, direction and control of the President, would be exercisable by Lieutenant Governor of Union Territory of J&K. It is also stated by respondents that stamp duties are taxes on transactions in the shape of stamps on instruments and under the Constitution of India, entire process of stamp duties are assigned to the State in which they are levied though for the sake of ensuring uniformity of rates of duty with respect to instruments of a commercial character, the power to prescribe the rate of duties on them is vested with the Parliament in terms of Entry 91 of the Union List and the power to reduce or remit such duties with the Central Government as per Section 9 of Act of 1899 and the power to prescribe rates of duties on instruments other than specified in Entry 91 of the Union List, is vested in the State Legislature under Entry 62 of the State List. All matters relating to mechanism of collection and management of stamp duties in respect of both the classes of instruments are subject of Entry 44 of the Concurrent List. As per Article 246 (1) of the Constitution of India, Parliament has exclusive power to make laws with respect to any of the matters enumerated in List-I "Union List" in the Seventh Schedule in the Constitution of India, and as per Article 246 (2), the Legislature of any State have power to make laws with respect to any of the matters enumerated in List III "Concurrent List" in the Seventh Schedule in the Constitution of India. As per Article 246 (3), subject to clauses (1) and (2) of Article 246, 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-III "State List" in the Seventh Schedule of Constitution of India. The erstwhile State of J&K has its own Stamp Act, which pursuant to Act of 2019, shall remain in force in Union Territory of J&K and Union Territory of Ladakh.

11.7. It is also mentioned in the Response by respondents that as per J&K Reorganisation (Adaptation of State Laws) Order, 2020, issued vide S.O. no.1229(E) of 2020 dated 31st March 2020, by the Ministry of Home Affairs, New Delhi, Sections 1, 2, 27, 33, 35, 42, 47-A, 48, 61, 64-A and 72 and Articles 6, 12, 22, 30, 40, 41, 43, 45, 46 and 54 of Schedule-I of the Act of 1977, have been suitably amended. Section 32 of Act of 2019 empowers Legislative Assembly of Union Territory of J&K, to make laws for whole or any part of Union Territory with respect to any of the matters enumerated in the State List except the subjects mentioned at Entries 1 and 2, namely, "public Order" and "police" respectively or the Concurrent List of Seventh Schedule. Respondents maintain that States of Maharashtra, Gujarat, Karnataka, Kerala and Rajasthan have their respective Stamps Act. The rates of stamp duties on instruments other than specified in Entry 91 of Union List have formed the subject of State Legislation. The Indian Stamp Act, 1899, has taken the shape of adding separate schedules to the main Act applicable to the State concerned, except in Tamil Nadu, Assam

and North Eastern States, where the changes are made in Articles of the main Schedule-I and except in Gujarat, Maharashtra, Karnataka, Kerala and Rajasthan, where separate Acts have been enacted about them. The Indian Stamps Act is also in force in the whole country as regards matter in the Concurrent List but the State Legislatures have amended various sections and added new sections as applicable to their States. In the above five States, the Act is in force in such matters only as regards instruments specified in Entry 91 of the Union List and therefore Act of 1899 is a composite Act amended by Parliament and State Legislatures in their respective spheres of legislation. Respondents also state that Indian Stamp Act, 1899, applicable to Union Territory of J&K, shall govern such issues, which are not specified in the Act of 1977, and vice-versa and there is no conflict of powers. Issuance of S.O. 201 of 2020 (Rules of 2020), according to respondents, is in exercise of powers vested under Section 74 of the Act of 1977 and exercise of such power by Government in framing Rules of 2020 is not in conflict with Indian Stamps Act. It is maintained by respondents that neither Indian Stamp Act nor J&K Stamp Act infringes any of rights of petitioner-association and members of petitioner-association can apply for appointment to act as intermediary and earn their livelihood. Respondents claim that in rest of the country, e-stamping facility is fully operational except Union Territory of J&K and that stamp vendors have been protected under the Rules of 2020, particularly under Rule 12 and 13 thereof.

12. Given the case set up and submissions made by learned counsel for parties, it would be necessary to have, first of all, glance and discourse of J&K Stamp Act, 1977 (1920 AD). It came into force on 1st day of Baisakh, 1978, which corresponds to 13th April 1920, for consolidation and amendment of the law relating to stamps in erstwhile State of J&K. Section 2 thereof gives definition of various expressions and words, including banker, bill of exchange, bond, cheque, Commissioner of Stamps, conveyance, instrument, etcetera.

13. Pertinently, Section 74 of the Act of 1977 provides making of Rules for carrying out purpose of the Act.

"74. Power to make rules. - (1) The Government may, by notification in the Government Gazette, make rules to carry out generally the purposes of this Act, and such rules may provide that a breach thereof shall, on conviction, be punished with fine not exceeding five thousand rupees.

(2) Without prejudice to the generality of the powers conferred by sub section (1), such rules may regulate, or provide for, all or any of the following matters, namely:

- (a) the supply, sale and use of stamps and stamped papers;
- (b) the persons by whom alone such sale is to be conducted,
- (c) the duties and remuneration of such persons,
- (d) the manner of ascertaining the market value of immovable property and

preparation of market value guidelines of immovable properties,

(e) the procedure for appeal or revision proceedings; and

(f) the procedure for use of franking machine or any other machine or electronic stamping for payment of stamp duty.

(3) All rules made under this Act shall be made subject to the condition of previous publication in the Official Gazette:

Provided that, if the Government is satisfied that circumstances exist which render it necessary to take immediate action, it may for reasons to be recorded in writing, dispense with the condition of previous publication of any rule to be made under this section."

13.1. Subsection (2) of Section 74, as excerpted supra, envisages that rules may, inter alia, regulate: supply, sale and use of stamps and stamped papers; persons by whom alone such sale is to be conducted; duties and remuneration of such persons; manner of ascertaining the market value of guidelines of immovable property; procedure for appeal or revision proceedings; and procedure for use of franking machine or any other machine or electronic stamping for payment of stamp duty. It appears the Government of erstwhile State of J&K, from time to time, issued Rules on different subjects concerning Act of 1977, viz. Rules regarding Remission and Reduction of Stamp Duties; Rules regarding Impressed and Adhesive Stamps; Rules for Sale of Stamps; Rules for Inspection of Stamps; Rules for Renewal and Refund of Stamps; supply, custody and distribution of stamps; so on and so forth.

14. Learned senior counsel for petitioner has invited attention of this Court to "Rules regarding Sale of Stamps" issued vide C.O. no.810-C of 1938 published in Government Gazette dated 7th Assuj, 1995, to contend that stamp vendors are not agents of the Government but are transacting for principle to principle basis and discount available to stamp vendors was not a commission but, in fact, was discount given to the stamp vendors for purchasing stamp in bulk quantity. Abovementioned Rules framed under Section 74 of the Act of 1977, allow only two category of vendors to sell stamps and rest were prohibited as defined under Rule 1 and that Rule 2 defines two classes, who can sell the stamps, that are, (a) ex-officio vendors and (b) licensed vendors. The ex-officio vendors are reflected in Rule 2 (A) of (i to viii of the Rules) whereas licenced vendors are those who sell stamps to the public after they obtain a regular licence under these rules only these two categories were empowered to sale the stamps. According to learned senior counsel impugned order and notification are contrary to Section 74 of the Act of 1977 and there is no provision in the above Rules of 1938 to provide e-stamping inasmuch as introduction of e-stamping would render members of petitioner-association jobless.

14.1. To rebut this, learned Advocate General has vivaciously stated that main purpose and object of switching over to e-stamping, is to thwart scams, like,

Karim Telgi counterfeiting of stamp papers; besides there is a need for simplification of procedure to be adopted, which is user friendly, transparent, convenient, high security and reliability and compilation of information in a secured electronic form, which could be verified. He also avers that Act of 1977 has been amended in the year 2011 and the words "impressed stamp" has been substituted by the words "impressed Electronic Stamp" in terms of Subsection 24-A of Section 2 of Act of 1977. Resultantly, It was necessary for respondents to carry on and implement amendment in letter and spirit. It was in that view matter, that SRO 402 was issued. He also contends that under Section 32 of Act of 2019, Legislative Assembly has power to make laws for the whole or any part of the Union Territory of J&K, with respect to any of the matters enumerated in the State List except subjects mentioned at entries 1 and 2 namely, public order and police or the Concurrent List in the seventh schedule.

14.2. His next submission is that Central Government, bearing in mind the powers conferred by Section 96 of the Act of 2019 and all other powers enabling it in, that behalf, has issued J&K Reorganisation (Adaptation of State Laws) Order 2020, vide S.O. 1229 (E) dated 31st March 2020. According to him, petitioner has not thrown challenge to amendment of 2011 and therefore, writ petition is liable to be dismissed. He says that given the amendment, it was necessary for the Government to come up with latest and up-to-date Rules so as to cater the purpose and objective of amendment.

14.3. Learned Advocate General has also strenuously stated that the Act of 1977 continues to be operative and its continuance is safeguarded by aforesaid J&K Reorganisation (Adaptation of State Laws) Order, 2020, issued vide S.O. 1229(E). Comparative analysis of relevant provisions of both the Acts would indicate that there is no inconsistency muchless overlapping of each other. The Act of 1977 has been put at same pedestal as the Act of 1899 and it was only after taking into account this aspect of the matter that S.O. 201 of 2020 (Rules of 2020) has been issued.

14.4. From the above, it is clear that there is a meat in the submission of learned Advocate General. Subsection 24A, inserted by Act no.XXVI of 2010 and amended by Act no.XII of 2011, reads:

"(24A) "Stamp". - "stamp" means any mark, seal or endorsement by any agency or person duly authorized by the State Government, and includes an adhesive or [impressed or electronic stamp], for the purpose of duty chargeable under this Act."

14.5. Therefore, Subsection 24A of Section 2 of Act of 1977, envisages that "stamp" means "any mark, seal or endorsement by any agency or person duly authorized by the State Government, and includes an adhesive or impressed or electronic stamp, for the purpose of duty chargeable" under the Stamp Act. To give effect to amendment as carried by way of Subsection 24A of Section 2 of Act of 1977, impugned Order and Notification were issued by respondents.

14.6. Petitioner-association, aggrieved of executive policy regulating sale of stamps in Union Territory of J&K (erstwhile State of J&K), wants to challenge it on the ground of being unfair and unreasonable, besides being arbitrary and having no nexus with the object sought to be achieved. The said plea of petitioner has no relevance, significance or force, for the Supreme Court in plethora of judgments, noticing jurisdictional limitations to analyse and find a fault with a policy, has opined that the Court cannot strike down a Government Order or a Policy, merely, because there is variation or contradiction. Life is sometimes contradiction and even consistency is not always a virtue. What is important is to know whether mala fides vitiate or irrational and extraneous factor fouls.

14.7. The wisdom of a policy underlying a Statute is a matter of the Government. If the Statute is reasonably designed to achieve the purpose of the Act and in the case on hand, where Section 24-A has been inserted in the Act of 1977 way back in the year 2011 and has remained throughout unchallenged, followed by issuance of impugned order and notification, to enable the Government to deal with licence/ authorisation for supply and sale of stamps, the action of the Government in simplifying the sale of stamps cannot be, as such, enunciated as unconstitutional or contrary to the statutory provisions.

14.8. It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, in the present case petitioner-association, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The Courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.

15. Having regard to the case in hand, I may add here that Article 19 of the Constitution of India says that:

"(1) All citizens shall have the right-

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in 1 [sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,-

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

15.1. In terms of Article 19(1)(g) of the Constitution of India, a citizen has a fundamental right to practise any profession or to carry on any occupation, trade or business. However, such right is subject to such reasonable restrictions that may be imposed by the State under Clause (6) of Article 19. Under Clause (6) the State has power either to completely prohibit or to permit with certain reasonable restrictions certain professions, which are not in the interests of the general public. In *Chintamanrao v. State of M.P.* 1951 AIR SC 118, a Constitution Bench of five Judges of the Supreme Court explaining the phrase 'reasonable

restrictions', held

"The phrase 'reasonable restriction' in Article 19 (6) connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19 (1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality."

15.2. Carrying on the business is subject to reasonable restrictions to be imposed by executive authority in the interest of public. The restriction may have the effect of eliminating the use to which the facility has been put hitherto, but restriction cannot be regarded as being unreasonable if authority imposing such restriction had power to do so. Whether restriction was beneficial for public or not, is a matter entirely for concerned authority to judge and it is not open to the Court to substitute its own opinion for the opinion of the authority as the authority is in a position having regard to its knowledge of condition to appraise the situation. While saying so, a Bench of five Judges of the Supreme Court in *T.B. Ibrahim v. Regional Transport*, 1953 AIR SC 79, has held that a right to carry on a business is subject to reasonable restriction imposed by executive authority in the interest of public. Pertinent excerpt of the said judgement is imperative to be reproduced herein after:

"The next contention was that the order is repugnant to Article 19(1)(g) of the Constitution, according to which all citizens must have the right to practise any profession or to carry on any occupation, trade or business. It cannot be denied that the appellant has not been prohibited from carrying on the business of running a bus-stand. What has been prohibited is that the bus-stand existing on the particular site being unsuitable from the point of view of public convenience, it cannot be used for picking up or setting down passengers from that stand for outstations journeys. But there is certainly no prohibition for the bus-stand being used otherwise for carrying passengers from the stand into the town, and vice versa. The restriction placed upon the use of the bus-stand for the purpose of picking up or setting down passengers to outward journeys cannot be considered to be an unreasonable restriction. It may be that the appellant by reason of the shifting of the bus-stand has been deprived of the income he used to enjoy when the bus- stand was used for outward journeys from Tanjore, but that can be no ground for the contention that there has been an infringement of any fundamental right within the meaning of Article 19(1)(g) of the Constitution. There is no fundamental right in a citizen to carry on business wherever he chooses and his right must be subject to any reasonable restriction imposed by the executive authority in the interest of public convenience. The restriction may have the effect of eliminating the use to which the stand has been put hitherto

but the restriction cannot be regarded as being unreasonable if the authority imposing such restriction had the power to do so. Whether the abolition of the stand was conducive to public convenience or not is a matter entirely for the transport authority to judge, and it is not open to the court to substitute its own opinion for the opinion of the authority, which is in the best position, having regard to its knowledge of local conditions to appraise the situation."

15.3. In order to determine the reasonableness of the restriction regard must be had to the nature of the business and the conditions prevailing in the trade. It is obvious that these factors must differ from trade to trade and no hard and fast rules concerning all trades can be laid down. The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed by the Government authority of the country essential to the safety, health, peace, order and morals of the community. [See: Cooverjee B. Bharucha v. The Excise Commissioner and the Chief Commissioner, Ajmeer, 1954 AIR SC 220].

15.4. In *Narendra Kumar and others v. Union of India and others* 1960 AIR SC 430, which is also a decision of the Constitution Bench of five Judges of the Supreme Court, it was held that the word 'restriction' in Article 19 (5) and (6) of the Constitution includes cases of prohibition also. It was, however, held that where the restriction reaches the stage of total restraint of rights, special care has to be taken by the Courts to see that the test of reasonableness is satisfied by considering the question in the background of facts and circumstances under which the order was made, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the harm caused to individual citizens by proposed remedy, the beneficial effect reasonably expected to result to general public, and whether the restraint caused by the law was more than what was necessary in the interests of the general public.

15.5. From an analysis of various authorities of the Supreme Court, including discoursed above, it emerges that the right under Article 19(1)(g) is not an absolute right but only qualified and is subject to restrictions that may be imposed under Clause (6) of Article 19 in general public interest; the right of every citizen to pursue lawful trade or business is subject to such reasonable restrictions that may be imposed by the Governing authority, which is essential to the safety, health, peace, order and morals of the community; reasonableness of restriction, however, differs from trade to trade and no hard and fast rule concerning all trades can be laid down; to determine reasonableness of restriction regard must be had to the nature of business or trade, the conditions prevailing in the said trade or business, the nature of infringement alleged, the manner and extent of regulation rest in the discretion of the governing authority; restriction includes prohibition also and in such cases special care has to be taken by the Courts to see that the test of reasonableness is satisfied by considering the question in the background of the facts and circumstances of the case, the nature of the evil sought to be remedied by law, the ratio of the harm

caused to individual citizens by the proposed remedy, the beneficial effect reasonably expected to result to the general public, and whether the restraint caused by the law was more than what was necessary in the interests of the general public.

16. Insofar as S.O. 201 of 2020 (Rules of 2020) is concerned, learned senior counsel appearing for petitioner-association has exhorted that Rules of 2020 were enacted by exercising the powers under Section 74 of Act of 1977 and not under Section 74 of Central Act of 1899 and as such, have no force in law owing to the fact that all Central laws in Table-1 of the Fifth Schedule to the Act of 2019, have been made applicable to the Union Territory of J&K, and all other laws in Fifth Schedule, as provided under Section 95 (2) of Act of 2019 which were applicable to the erstwhile State of J&K, immediately before appointed day, shall apply in the manner as provided therein, to Union Territory of J&K. He has also stated that Section 96 of the Act of 2019 empowers Central Government to make adaptations and modifications of the law, before the expiration of one year, by order, whether by repeal or amendment and thereupon every such law shall have effect subject to adaptations and modification so made until altered, repealed or amended by a competent Legislature or other competent authority.

16.1. It is also contended by learned senior counsel for petitioner-association that now the situation is that Act of 1899 and State Stamp Act of 1977 are applicable in Union Territory of J&K, and S.O. 201 (Rules of 2020) has been issued under Section 74 of Act of 1977 and not under Act of 1899. He argues that once Section 95 of the Act of 2019 has made Central Laws applicable to Union Territory of J&K, the State Act of 1977 becomes redundant inasmuch as Sections 95 and 96 of Act of 2019 leave no scope for State Law to be in force when Act of 2019 makes Act of 1899 applicable to Union Territory of J&K. And S.O. 201 (Rules of 2020) has no application at all and the stand of respondents that interests of members of petitioner-association have been safeguarded in terms thereof, has no footing because once S.O. 201 has no application, there is no order of the Jammu and Kashmir Government, by which the members of petitioner-association can be rehabilitated or their livelihood is protected. In such circumstances, their rights under Article 14, 19 and 21 of the Constitution stand infringed.

16.2. While submission of learned senior counsel for petitioner, at first blush, appears to be convincing, but it pales into significance. The reason being that though amendment by way of Section 24A of Section 2 of Act of 1977, has been carried prior to coming into being of the Act of 2019, yet J&K Reorganisation (Adaptation of State Laws) Order, 2020, issued vide S.O.1229 (E) dated 31st March 2020, envisages that the Acts, mentioned in the schedule to the said Order, shall, until repealed or amended by a competent Legislature or other competent authority, have effect, subject to adaptations and modifications directed by the said schedule, or if it is so directed, shall stand repealed. S.O.1229 (E) also envisions that where it requires that, in any specified section

or other portion of an Act, certain words shall be substituted for certain other words, or certain words shall be omitted, such substitution or omission, as the case may be, shall, except where it is otherwise expressly provided, be made wherever the words referred to occur in that section or portion. Hence, in terms of J&K Reorganisation (Adaptation of State Laws) Order, 2020, Sections 1, 2, 27, 33, 35, 42, 47-A, 48, 61, 64-A and 72 as also Articles 6, 12, 22, 30, 40, 41, 43, 45, 46 and 54 of Schedule I of Act of 1977, have been suitably amended. In such circumstances there is an impetus in the submission of learned Advocate General that the Act of 1977 still continues to be in force and governs the field. And as a consequence thereof, Rule(s), including Rules of 2020, issued by respondents are in consonance with amendment as carried out in terms of Subsection 24A of the Act of 1977 and cannot be faulted on any of the grounds made mention of either in writ petition or urged by learned senior counsel for petitioner-association during course of argumentation of the case. In such circumstances and otherwise also, writ petition on hand has become infructuous consequent upon issuance of J&K Stamps (Payment of Duty by Means of e-Stamping) Rules, 2020, vide Notification/S.O. 201 dated 24th June 2020, that includes stamp vendors in the fray of transacting and selling the stamps.

17. As a sequel of above discussion, writ petition is dismissed with connected CM. Interim direction(s), if any, shall stand vacated. CM no.2501/2010 shall stand disposed of.

18. Nevertheless, respondent-authority is required to take into account the plight of members of petitioner-association qua their livelihood, which is the sole ground that is to be looked into and considered by respondent-authority, and for that matter all that is required to be done by respondent-authority, should be undertaken, including imparting training to members of petitioner-association to come up at par with the niceties of e-stamping procedures as contemplated under Rules of 2020, and subsequently grant them permission/licences for sale of stamps, so as to enable them to earn their livelihood and sustain their respective families.