

A M/S. TASHI DELEK GAMING SOLUTIONS LTD. AND ANR.

v.

STATE OF KARNATAKA AND ORS.

DECEMBER 8, 2005

B [S.B. SINHA AND P.P. NAOLEKAR, JJ.]

C *Constitution of India, 1950—Article 226—Appellants, lottery agents of the State of Sikkim, had invested in online lottery networks in Karnataka—State of Karnataka banned online lotteries by a notification—Writ petition filed by appellants together with State of Sikkim challenging validity of the said notification—Maintainability of—Locus standi of appellants—Held: Appellants would suffer huge losses if the notification is implemented and face prosecution for violation thereof—They are agents coupled with interest whose right to carry on business was affected—Hence, had an independent right to question validity of the notification by filing writ petition—Lotteries (Regulation) Act, 1988—Section 5—Contract Act, 1872—Sections 202 & 230.*

E *Constitution of India, 1950—Article 131—Inapplicability of—To suits where citizens or private bodies are parties, either jointly or in the alternative with a State or the Union Government—Enlarged definition of “State” under Art.12 does not extend to Art.131—Even a statutory corporation is not a State within meaning of the said provision.*

F *Contract Act, 1872—Sections 202 and 230—Right of agent to sue or be sued—Held: An agent coupled with interest has a right to sue—He may in certain situations be sued as regards his own liabilities independent of his principal.*

G **The States of Sikkim and Meghalaya commenced online lotteries in the State of Karnataka. Appellants- lottery agents of the State of Sikkim, invested huge amounts for setting up online lottery networks in the State of Karnataka. But, subsequently by a notification issued under Section 5 of the Lotteries Act, online lottery came to be prohibited in the State of Karnataka. The said Act postulated that in the event an agent violated any notification issued by the State, it would face penal consequences. States of Sikkim and Meghalaya together with the Appellant-agents filed writ petitions challenging validity of**

H 670

the said notification in High Court. High Court held that as the dispute involved in the writ petitions related to two State Governments, the writ petitions were not maintainable in view of the constitutional bar under Article 131 of the Constitution, and also that the appellant agents had no *locus standi* to maintain the writ petitions since they did not have any independent right in that behalf. Hence the present appeals.

Allowing the appeals, the Court

HELD: 1.1. The Appellants were appointed as agents of the State, which were governed by contract, in terms whereof, they had invested a huge amount. In the event the impugned notification is implemented, the Appellants would not only lose a huge amount of money which they have invested but also would be liable to pay compensation to a large number of work force appointed by them in view of the fact that they would have to close their business. The Appellants are the agents coupled with interest. Such agencies are contemplated under the laws of contract. [678-F, G]

1.2. An agent coupled with interest has a right to sue. He may in certain situations be sued as regard his own liabilities independent of his principal. Section 202 of the Contract Act, 1872 provides that where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. The right of an agent to sue or be sued in its own name, is governed by Section 230 of the Contract Act but the second part of the said provision does not envisage a situation where the right of an agent is protected in terms of Section 202 of the Contract Act.

[679-D-E; 680-B]

1.3. If by a statutory provision the right of an agent to carry on his business is affected, he may, in his own right maintain an action. Once it is held, that the Appellants had legal rights to challenge the validity or otherwise of the said notification issued by the State of Karnataka, there cannot be any doubt whatsoever that they would have independent rights to maintain the writ application. [680-B; 683-C]

Subrahmania Pattar v. Narayanan Nayar, ILR 24 Mad 130; *Mallhu v. Megh Raj*, AIR (1920) Lah. 196; *Coorla Spinning & Weaving Mills v. Vallabhdas*, AIR (1925) Bom. 547; *R.P. Kharas v. Bawanji Narsi* AIR (1926) Sind 6; *Durga Prasad Manna Lal v. Cawnpore Flour Mills*, AIR (1929) Oudh 417; *Firm Hardayal Mal Mohri Lal v. Kishan Gopal Jhanji* AIR (1938) Lah 673 and *Subodh Gopal Bose v. Province of Bihar*, AIR (1950) Patna 222,

A approved.

Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal and Ors., AIR (1962) SC 1044 = [1962] Supp. 3 SCR 1, relied on.

B 2.1. Further, if the agent was to be prosecuted for violation of the term of the notification, he could challenge the validity thereof. A fortiori, a quia timet application would also be maintainable. A person must be held to have access to justice if his right in any manner whether to carry on business or threat to his liberty is infringed. Access to justice is a human right.

[684-A]

C 2.2. The High Court was not correct in holding that they had no personal right to enforce despite the fact that they would suffer injuries or would otherwise be prejudiced by the notification issued by the State of Karnataka. It would, therefore, not be correct to contend that they could enforce their rights only through their principal and not independently. The Appellants had a legal right to carry on business. Such a right having been impugned by D reason of the impugned notification, a writ petition at their instance was maintainable. [684-E, F]

2.3. If the Appellants had a legal right, they could seek redressal for violation thereof before an appropriate forum. The *locus standi* to maintain a writ application even otherwise has received liberal interpretation. [684-G]

E 2.4. Even if the States of Sikkim and Meghalaya filed suits against the State of Karnataka in this Court, the independent right of the Appellants to maintain independent action before the appropriate forum could not have been taken away. [685-F]

F *Dwarka Prasad Agarwal (D) By LRs. v. B.D. Agarwal and Ors.*, [2003] 6 SCC 230 and *Ghulam Qadir v. Special Tribunal*, [2002] 1 SCC 33, relied on.

G 3.1. The High Court accepted that the Appellants are statutory agents but it evidently failed to take into consideration the status of the Appellants *vis-a-vis* their contractual rights and obligations with their principal coupled with their individual rights to maintain their writ petitions in proper perspective. It is no doubt true that had the State of Sikkim or the State of Meghalaya intended to sue the State of Karnataka independently, in terms of Article 131 of the Constitution of India the only forum where the dispute between them could have been resolved is this Court alone but when such H lis is brought by the State jointly with their agents who had also independent

cause of action and had a legal right to maintain writ application questioning the legality and/or validity of the said notification issued by the State, a suit in terms of Article 131 of the Constitution of India would not have been maintainable. [688-F, G, H]

3.2. Article 131 will not be applicable where citizens or private bodies are parties either jointly or in the alternative with the State or the Government of India. The enlarged definition of 'State' under Article 12 would not extend to Article 131 of the Constitution. Even a statutory corporation is not a State within the meaning of the said provision. [678-E]

3.3. The Appellants were not busy bodies. They had an interest in the subject-matter of the writ petition. They were, thus, not merely strangers having no right whatsoever in the matter. It has not been contended, nor could it be contended that the Appellants are mere smoke screens of the States of Sikkim and Meghalaya. In absence of such a plea and in view of the fact that the Appellants not been held to be mere strangers without having any legal right, the writ petitions were maintainable. [689-A, B]

State of Bihar v. Union of India, [1970] 1 SCC 67; *State of Rajasthan & Ors. etc. v. Union of India & Ors.*, [1977] 3 SCC 592; *State of Karnataka v. Union of India & Anr.*, [1977] 4 SCC 608 and *Union of India v. State of Rajasthan* [1984] 4 SCC 238, relied on.

4. Keeping in view the fact that the Appellants are out of business, the High Court is requested to consider the desirability of disposing of the writ petitions as expeditiously as possible. [689-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7308-7309 of 2005.

From the Judgment and Order dated 16.3.2005 of the Karnataka High Court in W.A. Nos. 5116-5117 of 2004.

WITH

C.A. Nos. 7310-7312 of 2005.

Soli J. Sorabjee, K.K. Venugopal, Sudhir Chandra Agarwala, Dayan Krishnan, Nikhil Nayyar, Gautam Narayan, Shyam Morjani, Ankit Singhal, Rishi Agrawala, Mahesh Agarwal, Ankur Talwar and E.C. Agrawala for the Appellants.

A Sanjay R. Hegde, Anil K. Mishra and A. Rohen Singh for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

B

Introduction :

Scope and ambit of Article 131 of the Constitution of India is in question in these appeals, which arise out of a common judgment and order dated 16.03.2005 passed by a Division Bench of the Karnataka High Court in Writ Appeal Nos.5516-5117 of 2004 and Writ Appeal Nos.29-31 of 2005, whereby and whereunder the appeals preferred by the Appellants herein were dismissed.

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Background facts

It is not in dispute that the States of Sikkim and Meghalaya commenced online lotteries, *inter alia*, in the State of Karnataka. It is, however, otherwise a lottery playing State. In exercise of its power conferred upon it under Section 5 of the Lotteries (Regulation) Act, 1998 (for short, 'the Act') a declaration was made that the State of Karnataka shall be free zone from online and internet lotteries. By reason of the said notification sale of all computerized and online lottery tickets marketed and operated through vending machines, terminals, electronic machines and through internet in the State of Karnataka became prohibited with immediate effect.

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Writ Proceedings:

The States of Sikkim and Meghalaya together with its agents filed writ petitions before the Karnataka High Court, challenging the legality and/or validity of the said notification, *inter alia*, on the ground that the State of Karnataka, having itself been organizing lotteries, could not have imposed the said ban having regard to the decision of this Court in *M/s B.R. Enterprises etc. v. State of U.P. & Ors. etc.*, [1999] 9 SCC 700.

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The contention of the State of Karnataka, on the other hand, was that online lotteries had nothing to do with the conventional lotteries and as the State of Karnataka has put an embargo on online lotteries without any discrimination, *B.R. Enterprises*, (supra) cannot be said to have any application.

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A preliminary objection was taken on behalf of the State that as the

dispute involved in the writ petitions related to two State Governments, the writ petitions were not maintainable, in view of the constitutional bar under Article 131 of the Constitution of India. The said contention was upheld by a learned Single Judge of the High Court holding, *inter alia*, that the agents of the State of Sikkim and State of Meghalaya had no *locus standi* to maintain the writ petitions in view of the fact that they did not have any independent right in that behalf. The agents of the State of Sikkim preferred an intra-court appeal thereagainst The State of Meghalaya and its agents thereafter also preferred writ appeals.

Contentions of the writ petitioners :

The contention of the Appellants herein being agents and distributors of the State of Sikkim is as under :

Section 4(c) of the Act permits the State Governments to sell tickets either itself or through distributors or selling agents and in terms thereof the First Appellant M/s Tashi Delek Gaming Solutions Ltd, was appointed by the State of Sikkim as an agent for sale of online lotteries. The Second Appellant, Pan India Network Infravest Pvt. Ltd., is a distributor of the First Appellant.

It was contended that the Appellants herein have invested a huge amount of 300 crores for setting up the online lotteries network infrastructure and 861 retail outlets therefor. They have been paying sales tax and other taxes running into crores of rupees to the Respondent-State and have entered into diverse third party arrangements with distributors and retailers. It was contended that by reason of the impugned notification, their investments made in this behalf would go totally waste and they would be seriously prejudiced as they have borrowed funds from banks and financial institutions on which interest is mounting manifold.

The State of Meghalaya and its agent, M/s Best & Co. in their writ petition, *inter alia*, contended :

“The petitioner State for the purposes of sale of the online and internet lotteries appointed Petitioner No. 2 & 3 as its agent/sub agent to sell the said internet and online lotteries in various States. Accordingly, the agent appointed other persons, retailers etc. for the purposes of establishing computerized retail outlets in the State of Karnataka. At present there are 1000 number of retail outlets of the Petitioner State in the State of Karnataka and more than 30000 number

A of persons are dependent on the said business. The Petitioner No.2 and its agents have spent more than Rs.100 crores for the establishment of the network of retail computer lottery outlet. The sale from computerized online and internet lotteries in the State of Karnataka was presently approximately Rs.90 lacs per day.”

B *Submissions :*

Mr. Soli J. Sorabjee, the learned Senior Counsel appearing on behalf of the Appellants, relying *inter alia* upon the decisions of this Court in *State of Bihar v. Union of India*, [1970] 1 SCC 67, *State of Rajasthan & Ors. etc. v. Union of India & Ors.*, [1977] 3 SCC 592, *State of Karnataka v. Union of India & Anr.*, [1977] 4 SCC 608 and *Union of India v. State of Rajasthan*, [1984] 4 SCC 238, at the outset submitted that the principles laid down therein clearly demonstrate inapplicability of Article 131 of the Constitution of India where along with the State Governments private parties are also added as Petitioners or Respondents. The Appellants, it was urged, being statutory agents of the States were persons aggrieved by the impugned action of the State of Karnataka in their own right and, thus, the writ petition filed by them with the State Governments were maintainable and, in that view of the matter, the findings of the Division Bench to the effect that the Appellants could not enforce or vindicate their rights under the contract of agency with the State of Sikkim is erroneous.

E Our attention, in this behalf, was drawn to Section 7(3) of the Act to show that the Act contains a penal provision. In terms of the notification issued by the State of Karnataka, if the Appellants herein continue to sell online lottery tickets, the same would attract the penal provision contained in Section 7(3) of the Act and in that view of the matter, it cannot be said that the Appellants have no legal right to enforce and/or they are otherwise not aggrieved by the notification issued by the State of Karnataka enabling them to maintain a writ application.

F It was submitted that in view of a decision of this Court in *Ghulam Qadir v. Special Tribunal & Ors.*, [2002] 1 SCC 33, the Appellants herein being not merely strangers had a right to maintain the writ application.

G Mr. K.K. Venugopal, the learned Senior Counsel, supplemented the submissions of Mr. Sorabjee contending that as the Appellants are agents coupled with interest, they could sue or be sued in their own names.

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Mr. Sanjay R. Hegde, the learned counsel appearing on behalf of the State of Karnataka, on the other hand, submitted that for the purpose of determining the maintainability of the writ petition, it was necessary to determine the nature of rights of the agents of the State. It was argued that the State Governments having exercised their executive power to carry on business in lotteries, the activities prohibited by the State of Karnataka being a matter between two States could be adjudicated upon by this Court alone as the dispute related to the legal character involving two different States.

Mr. Hegde urged that Article 131 of the Constitution, in view of the doctrine of federalism should receive wide and expansive definition and in this case as one State asserts that it had the right to carry on business in another State, which had been denied, the essential nature of dispute must be held to have occurred between two States.

Issue :

The short question which arises for consideration is as to whether the writ petitions filed by the Appellants herein were maintainable.

The Act :

The Parliament of India in terms of Entry 40 List 1 of the Seventh Schedule of the Constitution of India enacted Lotteries (Regulation) Act, 1998. 'Lottery' has been defined in Section 2(b) of the Act to mean :

"2(b) "lottery" means a scheme, in whatever form and by whatever name called, for distribution of prizes by lot or chance to those persons participating in the chances of a prize by purchasing tickets."

Sections 3 and 4 of the said Act lay down the conditions subject to which the State Governments could organize, conduct or promote lotteries. By reason of Section 4 of the Act, distributors and selling agents are said to have been given statutory status. Section 6 thereof confers power of prohibition expressly on the Central Government.

Section 5 of the Act reads as follows :

"5. Prohibition of sale of tickets in a State.-A State Government may, within the State, prohibit the sale of tickets of a lottery organized, conducted or promoted by every other State."

A Sub-sections (3) of Section 7 of the Act provides for penal provision in the following terms:

B “(3) If any person acts as an agent or promoter or trader in any lottery organized, conducted or promoted in contravention of the provisions of this Act, or sells, distributes or purchases the ticket of such lottery, he shall be punishable with rigorous imprisonment for a term which may extend to two years or with fine or with both.”

Article 131 Scope and Ambit :

C Article 131 of the Constitution of India postulates that this Court to the exclusion of any other court shall have original jurisdiction in any dispute between the Government of India and one or more States; or between the Government of India and any State or States on one side and one or more other States on the other; or between two or more States. We in this case are not concerned with the proviso to the said Article. The said Article would be attracted where adjudication is necessary in relation to a legal right of one State or the Union of India *vis-a-vis* other States, as the case may be. D Indisputably, the expression ‘legal right’ has received liberal interpretation by this Court from time to time. However, it is now well-settled by various decisions of this Court that this Article will not be applicable where citizens or private bodies are parties either jointly or in the alternative with the State or the Government of India. E The enlarged definition of ‘State’ under Article 12 would not extend to Article 131 of the Constitution. It is also not in dispute that even a statutory corporation is not a state within the meaning of the said provision.

Locus of the Appellants :

F The Appellants herein were appointed as agents of the State, which were governed by contract, in terms whereof, they had invested a huge amount. If the statements made in the writ petitions to which we have adverted to hereinbefore are correct, in the event the impugned notification is implemented, the Appellants would not only loose a huge amount of money G which they have invested but also would be liable to pay compensation to a large number of work force appointed by them in view of the fact that they would have to close their business. The Appellants are the agents coupled with interest. Such agencies are contemplated under the laws of contract. The Act also postulates that in the event an agent violates the notification issued H by the State, he would face the penal consequences laid down therein. The

notification has the force of law. In the aforementioned backdrop, the question which arises for consideration is as to whether the Appellants herein had any independent right to question the validity of the said notification.

The learned Single Judge, as noticed hereinbefore, held that they did not have any such right. On the other hand, the Division Bench was of the opinion :

“...May be, the appellants also got adversely affected with the prohibition imposed by the State of Karnataka but it is only incidental because they are the agents of the State of Sikkim and can have their rights only through their principal.....”

We cannot subscribe to the said view.

‘Agent’ has been defined in Section 182 of the Indian Contract Act, 1872, to mean a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the ‘principal’. Section 185 of the Contract Act postulates that no consideration is necessary to create an agency. The authority of an agent may be express or implied in terms of Section 186 thereof. Section 202 of the Contract Act provides that where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest. The right of an agent to sue or be sued in its own name, is governed by Section 230 of the Contract Act, which reads as under :

“230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principle.- In the absence of any contract to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.”

The second part of the said provision does not envisage a situation where the right of an agent is protected in terms of Section 202 of the Contract Act. We have noticed hereinbefore that Section 4(c) of the Act envisages appointment of agents, which empowers the State Government to sell the tickets either itself or through distributors or selling agents. Such distributors or selling agents may also be companies or body corporates. Section 7(3) of the Act, as noticed hereinbefore, provides for a penal consequence. If any person acts as an agent or promoter or trader in any lottery, he may be

A subjected to punishment if he sells, distributes or purchases tickets of such lottery in contravention of the provisions of the said Act, which may include any notification issued under Section 5 of the Act.

Right to Sue :

B An agent coupled with interest has a right to sue. He may in certain situations be sued as regard his own liabilities independent of his principal.

The right of an agent having interest to sue or be sued in its own name came up for consideration before the Madras High Court in *Subrahmania Pattar v. Narayanan Nayar* [ILR 24 Mad 130] wherein it was held:

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“It was argued before us that by the document in question the plaintiff became an agent with interest, and that he, therefore, had a right to sue in his own name and *Williams v. Millington; Robinson v. Rutter; Gray v. Pearson*; and other cases and text-books were cited in support of this proposition, and *Pestaji Mancharji Wadia v. Matchett*; was also cited as a further authority for the same proposition. The proposition as stated is in our judgment too wide. In *Williams v. Millington*; and *Robinson v. Rutter*; the agents who were held entitled to sue were agents who had made the contract with the defendant as auctioneers, and it was held that, though they had contracted as agents having an interest, they were entitled to sue in their own names. In *Gray v. Pearso* the plaintiff’s suit was dismissed. There, there was no contract entered into between the plaintiff and the defendant. The plaintiff was merely the manager for others and the words used by Willes, J., in his judgment, to which our attention was called, do not assist the plaintiff’s contention. He says the proper person to bring the action is the person whose right has been violated. Though there are certain exceptions to the general rule, for instance, in the case of agents, auctioneers or factors, these exceptions are in truth more apparent than real, &c. The real proposition of law, which these and other cases establish, is that where an agent enters into a contract as such, if he has interest in the contract, he may sue in his own name.”

Yet again in *Mallhu v. Megh Raj*, AIR (1920) Lah. 196], it was held :

H “The only point calling for consideration in this application for revision is whether the plaintiff is debarred under S. 230, Contract Act from

maintaining the suit. It is true that part of the wheat belonged to one Khem Lal and was sold by the plaintiff as Khem Lal's agent, but the other part was the plaintiff's own wheat, so that he had an interest in the contract, and the law is that when an agent enters into a contract, he may sue thereon in his own name if he has an interest in the contract." A

The question again came up for consideration before the Bombay High Court in *Coorla Spinning & Weaving Mills v. Vallabhdas*, AIR (1925) Bom. 547, wherein it was opined : B

"It was next argued on behalf of the defendants that the suit was defective and must have been dismissed unless and until the Mill Company was added. In other words, that the Mill Company were necessary and not merely proper parties. The plaintiffs, on the other hand, contended that the selling agents had here a beneficial interest in the completion of the contract, and could accordingly sue in respect of it. This rule extends in England to auctioneers and factors, and is thus expressed in *Bowstead on Agency*, 7th Edn., p. 431:- C

"An agent may sue in his own name on contracts made by him on behalf of his principal in the following case, namely....(b) where, as in the case of factors and auctioneers, he has a special property in or lien upon, the subject-matter of the contract, or has a beneficial interest in the completion thereof," D E

The Sind Court had also an occasion to consider the said question in *R.P. Kharas v. Bawanji Narsi* AIR (1926) Sind 6, wherein the law was stated in the following terms :

"The case of an agent who has an interest in the contract made by him as such is not within the rule. He is the person to sue, and he is liable to be sued on the contract. An auctioneer or factor being in possession of his employer's goods having a lien on them for his charges and advances is in this position. An auctioneer may be sued for non-delivery of the goods sold and he may sue the buyer for the price." F G

In *Durga Prasad Manna Lal v. Cawnpore Flour Mills*, AIR (1929) Oudh 417, upon referring to the provisions of the Indian Contract Act, it was held: H

A “The three cases mentioned in this section in which a contract to that effect may be presumed are by no means exhaustive. Thus there can be no difficulty in presuming such a contract in a case in which the agent has an interest in the transaction. Apart from this the position of an agent in such a case is virtually that of a principal to the extent of the interest, which he has in the contract. This rule is based upon general principles and not on any technicalities peculiar to the English Law. It has been followed in the Indian Courts as well.”

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C The Lahore High Court had also the occasion to deal with the said question in *Firm Hardayal Mal Mohri Lal v. Kishan Gopal Jhanji*, AIR (1938) Lah 673, wherein Tek Chand, J. opined :

D “These documents therefore do not affect the matter. This is clearly a case of an “agency coupled with interest” and therefore the ordinary rule laid down in S.230 is inapplicable. It is settled law in England and as observed by Pollock and Mulla in their Commentary on the Indian Contract Act (Edn.6) page 638 :

E The like rule is laid down by Indian Courts that where an agent enters into a contract as such if he has an interest in the contract he may sue in his own name. This is not a real exception to the rule laid down at the beginning of the Section, the agent being in such a case virtually a principal to the extent of his interest in the contract.”

In *Subodh Gopal Bose v. Province of Bihar*, AIR (1950) Patna 222 a Division Bench of the Patna High Court considered the question, and upon noticing a large number of decisions, laid down law in the following terms :

F “There is another aspect of the case which has a more direct bearing on this question. In the suit the main relief which the appellant has claimed (as disclosed by the plaint) is a declaration that the appellant is entitled to quarry lime stone and manufacture lime from the Murli hill As a mere local agent of the lessee company, the appellant has no such right of suit. An agent who has some interest in the property may be a qualified interest-can maintain an action to protect that interest (see *Whittingham v. Bloxham*, (1831) 172 E.R. 841: (4 Car. & P. 597). In Smith’s Leading Cases, Vol. II, p. 395 (12th Edn.) the following statement of the law is made:

H “But it is not merely in cases where the agent has contracted in his own name for an unnamed principal that he has a right, at law, to

sue upon the contract, when he has made a contract in the subject-matter of which he has a special property, he may, even though he contracted for an avowed principal, sue in his own name.” A

Legal Right :

If by a statutory provision the right of an agent to carry on his business is affected, he may, in our considered opinion, in his own right maintain an action. The question came up for consideration before this Court in *Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal and Ors.*, AIR (1962) SC 1044 = [1962] Supp. 3 SCR 1. Therein a question arose as to whether the petitioner therein who had a right to manage the Oriental Gas Company for a period of 20 years and to receive remuneration for the same could question the vires of the law whereby the said Oriental Gas Company was taken over as a result whereof, his right to continue in the business was affected. It was held that the Petitioner Company had such a right, stating : B C

“...It is not necessary in this case to decide whether under the said agreement the appellant was constituted as agent or managing agent or a servant of Oriental Gas Company. Whatever may be its character, by reason of Section 4 of the impugned Act, it was deprived of certain legal rights it possessed under the agreement. Under the agreement, the appellant had the right to manage Oriental Gas Company for a period of 20 years and to receive remuneration for the same. But under Section 4 of the impugned Act, it was deprived of that right for a period of five years. There was certainly a legal right accruing to the appellant under the agreement and that was abridged, if not destroyed, by the impugned Act. It is, therefore, impossible to say that the legal right of the appellant was not infringed by the provisions of the impugned Act. In the circumstances, as the appellant’s personal right to manage the Company and to receive remuneration therefor had been infringed by the provisions of the statute, it had *locus standi* to file the petition under Article 226 of the Constitution.” D E F

Once it is held, in view of the aforementioned pronouncement that the Appellants had legal rights to challenge the validity or otherwise of the said notification issued by the State of Karnataka, there cannot be any doubt whatsoever that they would have independent rights to maintain the writ application. G

We may consider the question from another angle. H

A If the agent was to be prosecuted for violation of the term of the notification, he could challenge the validity thereof. A fortiori, *a quia timet* application would also be maintainable. A person must be held to have access to justice if his right in any manner whether to carry on business or threat to his liberty is infringed. Access to justice is a human right.

B In *Dwarka Prasad Agarwal (D) By LRs. v. B.D. Agarwal and Ors.*, [2003] 6 SCC 230, this Court opined:

C “....A party cannot be made to suffer adversely either indirectly or directly by reason of an order passed by any court of law which is not binding on him. The very basis upon which a judicial process can be resorted to is reasonableness and fairness in a trial. Under our Constitution as also the international treaties and conventions, the right to get a fair trial is a basic fundamental/human right. Any procedure which comes in the way of a party in getting a fair trial would be violative of Article 14 of the Constitution of India. Right to a fair trial by an independent and impartial Tribunal is part of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 [See *Clark (Procurator Fiscal, Kirkcaldy) v. Kelly*....”

D The High Court, therefore, was not correct in holding that they had no personal right to enforce despite the fact that they would suffer injuries or would otherwise be prejudiced by the notification issued by the State of Karnataka. It would, therefore, not be correct to contend that they could enforce their rights only through their principal and not independently. The Appellants had a legal right to carry on business. Such a right having been impugned by reason of the impugned notification, a writ petition at their instance was maintainable.

F *Locus standi* :

G If the Appellants herein had a legal right, they could seek redressal for violation thereof before an appropriate forum. The *locus standi* to maintain a writ application even otherwise has received liberal interpretation.

In *Ghulam Qadir v. Special Tribunal*, [2002] 1 SCC 33, this Court observed :

H “38. There is no dispute regarding the legal proposition that the

rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the *locus standi* of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the *locus standi*. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the *locus standi*.”

The Appellants were not mere strangers.

Maintainability of the suit before this Court :

For determining the question as regard maintainability of the suit before this Court, it is necessary to consider as to whether the appellants herein whether independently or together with their principals could maintain a suit. In view of a large number of decisions of this Court, evidently, they could not.

Even the States of Sikkim and Meghalaya filed suits against the State of Karnataka in this Court, the independent right of the Appellants herein to maintain independent action before the appropriate forum could not have been taken away.

In *State of Bihar v. Union of India and Anr.*, [1970] 1 SCC 67, a Constitution Bench of this Court while deciding a case wherein the State of Bihar had not only sued the Union of India but also Hindustan Steel Ltd. in regard to negligence or deliberate action of servants of both the defendants therein the matter of short delivery of iron and steel material ordered by the State in connection with the construction work of Gandak Project, this Court

A held that such a suit shall not be maintainable, opining :

B “Although Article 131 does not define the scope of the disputes which this Court may be called upon to determine in the same way as Section 204 of the Government of India Act, and we do not find it necessary to do so this much is certain that the legal right which is the subject of dispute must arise in the context of the constitution and the Federalism it sets up. However, there can be no doubt that so far as the parties to the dispute are concerned, the framers of the Constitution did intend that they could only be the constituent units of the Union of India and the Government of India itself arrayed on one side or the other either singly or jointly with another unit or the Government of India.”

This Court further observed :

D “Apart from these special provisions a dispute which falls within the ambit of Article 131 can only be determined in the forum mentioned therein, namely, the Supreme Court of India, provided there has not been impleaded in any said ‘dispute any private party, be it a citizen or a firm or a corporation along with a State either jointly or in the alternative. A dispute in which such a private party is involved must be brought before a court, other than this court having jurisdiction over the matter.”

E In *State of Rajasthan and Ors. v. Union of India and Ors.*, [1977] 3 SCC 592], this Court opined : :

F “...The Article provides in so many terms in clauses (a), (b) and (c) that the dispute must be between the Government of India and one or more States, or between the Government of India and any other State or States on one side and one or more other States on the other, or between two or more States. It does not contemplate any private party being arrayed as a disputant on one side or the other. The parties to the dispute must fall within one or the other category specified in clauses (a), (b) and (c).”

G In *State of Karnataka v. Union of India* [1977] 4 SCC 608, this Court observed :

H “It has to be remembered that Article 131 is traceable to Section 204 of the Government of India Act. The jurisdiction conferred by it

thus originated in what was part of the federal structure set up by the Government of India Act, 1935. It is a remnant of the federalism found in that Act. It should, therefore, be widely and generously interpreted for that reason too so as to advance the intended remedy. It can be invoked, in my opinion, whenever a State and other States or the Union differ on a question of interpretation of the Constitution so that a decision of it will affect the scope or exercise of governmental powers which are attributes of a State. It makes no difference to the maintainability of the action if the powers of the State, which are Executive, Legislative, and Judicial, are exercised through particular individuals as they necessarily must be. It is true that a criminal act committed by a Minister is no part of his official duties. But, if any of the organs of the State claim exclusive power to take cognizance of it, the State, as such, becomes interested in the dispute about the legal competence or extent of powers of one of its organs which may emerge.”

Yet again in *Union of India v. State of Rajasthan*, [1984] 4 SCC 238, it was observed :

“On a careful consideration of the whole matter in the light of the decisions of this Court referred to above, we feel that Article 131 of the Constitution is attracted only when a dispute arises between or amongst the States and the Union in the context of the constitutional relationship that exists between them and the powers, rights, duties, immunities, liabilities, disabilities etc. flowing therefrom. Any dispute which may arise between a State in the capacity of an employer in a factory, a manufacturer of goods subject to excise duty, a holder of a permit to run a stage carriage, a trader or businessman carrying on business not incidental to the ordinary functions of Government, a consumer of railway services etc. like any other private party on the one hand and the Union of India on the other cannot be construed as a dispute arising between the State and the Union in discharge of their respective executive powers attracting Article 131 of the Constitution. It could never have been the intention of the framers of the Constitution that any ordinary dispute of this nature would have to be decided exclusively by the Supreme Court. It is well to remember that the constitutional proposals of the Sapru Committee advocated the strengthening of the position of the Federal Court in India and widening its jurisdiction on the original side so that the Federal Court

A could act as an interpreter and guardian of the Constitution and as
 a tribunal for the determination of the disputes between the constituent
 units of the Federation. The Joint Committee on Indian Constitutional
 Reforms was also of opinion that the object of conferring exclusive
 original jurisdiction on the Federal Court was that the disputes of the
 B kind specified between the Federation and the Provinces as the
 constituent units of the Federation should not be left to be decided
 by courts of law of a particular unit but be adjudicated upon only by
 the highest tribunal in the land which would be beyond the influence
 of any one constituent unit. The Special Committee consisting of
 C Sriyuts S. Varadachariar, Alladi Krishnaswami Ayyar, B.L. Mitter, K.M.
 Munshi and B.N. Rau appointed by the Constituent Assembly to
 consider and report on the constitution and powers of the Supreme
 Court suggested "that the Supreme Court, like the Federal Court under
 the 1935 Constitution, would be the best available forum for the
 adjudication of all disputes between the Union and a unit and between
 D one unit and another and proposed that the court should have an
 exclusive original jurisdiction in such disputes". (Vide *The Framing
 of India's Constitution—A Study* by Shri B. Shiva Rao at p. 483).
 Considered in the light of the foregoing the conclusion becomes
 inevitable that disputes of the nature involved in this case could not
 have been in the contemplation of the framers of the Constitution
 E when they adopted Article 131 of the Constitution."

Conclusion :

F The Division Bench of the High Court accepted the position that the
 Appellants herein are statutory agents but it evidently failed to take into
 consideration the status of the Appellants *vis-a-vis* their contractual rights
 and obligations with their principal coupled with their individual rights to
 maintain their writ petitions in proper perspective. It is no doubt true that had
 the State of Sikkim or the State of Meghalaya intended to sue the State of
 G Karnataka independently; in terms of Article 131 of the Constitution of India
 the only forum where the dispute between them could have been resolved is
 this Court alone but when such a lis is brought by the State jointly with their
 agents who had also independent cause of action and had a legal right to
 maintain writ application questioning the legality and/or validity of the said
 notification issued by the State, a suit in terms of Article 131 of the Constitution
 H of India would not have been maintainable.

The Appellants herein were not busy bodies. They had an interest in the subject-matter of the writ petition. They were, thus, not merely strangers having no right whatsoever in the matter. A

It has not been contended, nor could it be contended that the Appellants are mere smoke screens of the States of Sikkim and Meghalaya. In absence of such a plea and in view of the fact that the Appellants here not been held to be mere strangers without having any legal right, we are of the opinion that the writ petitions were maintainable. The impugned judgment, therefore, cannot be sustained, which is set aside accordingly. B

The appeals are allowed. C

Keeping in view the fact that the Appellants are out of business, the High Court is requested to consider the desirability of disposing of the writ petitions as expeditiously as possible and preferably within a period of two months from the date of communication of this order. The Chief Justice of the High Court, having regard to the importance of the question, may also consider the desirability of getting the matter heard out and disposed of by a Division Bench. D

The Appellants are entitled to costs throughout. Counsel fee assessed at Rs.25,000/- in each appeal.

V.S.S.

Appeal allowed. E