**ANDHRA PRADESH HIGH COURT**

Ratanchand

Vs.

Askar

C.C.C.A. No. 106 of 1969 and C.M.P. Nos. 4740, 4824 of 1974

(Chinnappa Reddy and Punnayya, JJ.)

18.03.1975

**JUDGMENT**

**Chinnappa Reddy, J.**

1. Nawab Salar Jung III, a nobleman of erstwhile Hyderabad State died on 2-3-1949 leaving behind him a vast estate but no issue. Not unnaturally several persons came forward claiming to be heirs of the late Nawab. Sajjid Yar Jung and Turab Yar Jung first cousins of the late Nawab were two such claimants. By a notification published in the Jarida dated 9-5-1949 the Nizam made the Salar Jung Estate Administration Regulation, 1358 F. and appointed a Committee known as the Salar Jung Estate Committee to administer the estate of late Nawab Salar Jung. The regulation provided that no person including heirs, if any, of the late Salar Jung shall be entitled to the possession of the estate of the deceased so long as it was under the administration of the Committee. It was further provided that the Committee should function until the Government dissolved it by notification. This Committee was continued by the Nawab Salar Jung Bahadur (Administration of Assets) Ordinance 1949 made by the Governor General of India on 12-11-1949. The Ordinance was replaced by the Nawab Salar Jung Bahadur (Administration of Assets) Act, 1950 (a Central Act). The Nawab Salar Jung Committee was continued by this Act and it was provided that no suit or other legal proceeding for the enforcement of any right or remedy in respect of any asset shall be instituted in any Court by any person other than the Committee save with the previous consent of the Central Government.

2. On 31-5-1949 the Nizam of Hyderabad appointed a Commission to enquire into the question of succession to the estate of the late Nawab and one of the questions referred to the Commission was whether the Jagir of the late Nawab escheated to the Government. Another question was who were the heirs of late Salar Jung. The Commission was unable to proceed with the enquiry as some of the claimants filed a Writ Petition in the High Court challenging the jurisdiction of the Commission to enquire into the question of succession. The writ petition was ultimately allowed by the High Court of Hyderabad by its judgment dated 23-9-1952. The High Court held that the Commission was not the proper forum for determining the question of succession to the estate of the Nawab. The High Court, however, directed that the management of the estate might remain with the Committee until the question of succession was settled by the Civil Court in an

appropriate action. The question of succession was ultimately settled as a result of a compromise between the various claimants, including the Govern. The compromise was embodied in the decree passed in O.S. 13/58 a it filed by some of the claimants.

3. We stated that Sajjid Yar Jung and Turab Yar Jung were two of the persons claiming to succeed to the estate of Nawab Salar Jung. According to the plaintiff (a businessman of Bombay), Sajjid Yar Jung did not have the where- withal to establish his claim to a share in the estate of Solar Jung. He, therefore, approached the plaintiff for financial help to enable him to pursue and establish his claim. The plaintiff agreed to do so. Sajjid Yar Jung agreed to return all amounts advanced by the plaintiff from time to time. In addition he also agreed to give the plaintiff a one anna share in the amount received from the estate of Solar Jung. Sajjid Yar Jung executed an agreement to that effect on 27-6-1952. Pursuant to the agreement Sajjid Yar Jung and his agents were drawing large amounts from the plaintiff from time to time. The total of the amounts so drawn came to about Rs. 75,000. Sajjid Yar Jung was enabled to pursue and establish his claim. He however, passed away before the plaintiff could be paid his share of the amount received from the estate of Solar Jung. The plaintiff estimated the amount due to Sajjid Yar Jung from the estate of Salar Jung at about Rs. 60 lakhs. He claimed that he would be entitled to about Rs. 3 lakhs in addition to the return of the sums advanced by him. The plaintiff, therefore, filed a suit against the heirs of Nawab Sajjid Yar Jung for accounts and for administration of the estate of the late Nawab. He impleaded as parties to the suit the sons, daughters and widow of Nawab Sajjid Yar Jung as defendants 1 to 8. The 'receiver of the estate of Nawab Salar Jung Bahadur was impleaded as the 19th defendant.

4. The heirs of the late Nawab who contested the suit denied that the plaintiff had advanced any amounts to the late Nawab and generally denied all that was said in the plaint. They also pleaded that the suit was barred by limitation. They further pleaded that the agreement dated 27-6-1952 was unenforceable in law as it was "in the nature of a champerty deal" which was "opposed to public policy and forbidden by law."

5. The learned Chief Judge of the City Civil Court found that the agreement was true, that it was admissible in evidence, that amounts were advanced by the plaintiff to late Sajjid Yar Jung as claimed by the plaintiff and that the suit was not barred by limitation. However, he found that the agreement was opposed to public policy as the object of the agreement was that the plaintiff should wield his influence with Central and State Ministers to have Sajjid Yar Jung recognised as the heir of Salar Jung in return for his being given a one anna share in the amount to be received by Sajjid Yar Jung from the estate of Salar Jung. On that ground the learned Chief Judge held that the agreement could not be enforced. He also held that it was unconscionable. He further held that even the amounts actually received by Sajjid Yar Jung could not be recovered by the plaintiff. The suit was dismissed with costs. The plaintiff has preferred this appeal.

6. The appeal was filed against all the legal representative of Sajjid Yar Jung. During the pendency of the appeal, Askar Nawaz Jung, 1st defendant in the appeal, died, C. M .P. No. 1990/1972 was filed to bring on record the legal representatives of Askar Nawaz Jung as parties in the appeal. Twelve persons were mentioned in C. M. P. No. 1990/72 as the legal representatives of Askar Newaz Jung. Respondent No. 8 was 'Dorothy Baker alias Zaibunnissa Begum alias Munavari Jahan Begum, wife of Nawab Askar Nawaz Jung. Respondents Nos. 11 and 12 were Amirunissa alias Nazim and Hamidunnissa alias Baby, both being minors were

proposed to be represented by their mother Dorothy Baker alias Zaibunnissa Begum alias Munavari Jahan Begum, respondent No. 8. It was mentioned in the petition that respondents 8 to 12 were residing opposite Dr. Kirloskar's Nursing Home in Bashir Bagh, Hyderabad. C. M. P. 1992/72 was filed to appoint the 8th respondent as guardian of respondents 11 and 12. On the ground that the notices sent to respondents 8, 11 and 12 were returned unserved for the reason that they had vacated the house and the advocate for the appellant had not filed fresh batta with correct address though informed about it, the matter was posted first before the Deputy Registrar and later before the Court for orders. On 30-1-1974 Gopal Rao Ekbote C. J, and Chennakesav Reddy J. passed the following order:

> "Even in regard to the 1st respondent C. M. P. 1990 and 1992 of 1972 were filed to bring on record the legal representatives and to appoint R-8 as guardian for minor respondents 11 and 12, all the respondents except respondents 11 and 12, were served with notices. The notices which were sent to R-8 for self and as guardian for minor respondents 11 and 12 were returned unserved with the endorsement 'house vacated'. Intimation of that fact was given to the counsel in the first week of December 1973 and he was asked to file fresh batta with correct address and other costs. The order, however, was not complied with till today. The matter was posted before the Deputy Registrar thrice. No one was present and nothing was done in that behalf. Even today no one appeared. We are therefore constrained to dismiss the appeal even as against the 1st respondent on the same ground. Although some of the L. Rs. are served, but others are not served, particularly minors. Therefore the appeal will abate against Rules 1 as a whole.
> Post the appeal for final hearing next week."

On 10-6-1974 when the appeal came up for hearing before one of us and Krishna Rao J. the learned counsel for the respondents raised a preliminary objection that the abatement of the appeal against the first respondent had, in law, resulted in an abatement of the entire appeal. At that stage while going through the records, the learned counsel for the appellant claimed to have discovered that respondents 8, 11 and 12 in C. M. P. 1990/72 had in fact been served with notices and that the matter had been wrongly posted before the Court on 30-1-1974. At his request we adjourned the case to enable him to file applications to set aside the order dated 30-1-1974. Therefore the appellant filed C. M. P. Nos. 4740 and 4824 of 1974 to condone the delay in seeking to set aside the orders dated 30-1-1974 passed in C. M. P. Nos. 1990/72 and 1992/72 Notice was ordered to the respondents. The appeal and the C. M. P. are now before us.

7. We have looked into the original notices issued to respondents 8 to 12 in C. M. P. Nos. 1990 and 1992 of 1972. We find that some persons received the notices on 26-12-1972 on behalf of respondents 8, 11 and 12. Whoever was the person that received the notices to was certainly not the 8th respondent. The signature of the person who has signed on the notices bears no resemblance whatever to the other hand, we find that notices appear to have been taken out once again to respondents 8, 11 and 12 and on 1-11-1973 the Process server made an endorsement on the notices to the effect that the respondents had vacated the house and gone to live elsewhere. It is clear that respondents 8, 11 and 12 were never served with notices. The order dated 30-1-74 cannot therefore be set aside on the ground of mistake of fact. The learned counsel for the appellant also argued that the Court was wrong in holding that the appeal had abated against

respondent No. 1 as a whole. He argued that when notices had been served on nine out of the twelve legal representatives, the court acted without jurisdiction in declaring that the appeal had abated against the 1st respondent 'as a whole'. We will consider this question along with the preliminary objection raised by the learned counsel for the respondents that the appeal having abated against the first respondent it must be considered to have abated as a whole against all the respondents.

8. In support of his preliminary objection Sri Jaleel Ahmed relied on a catena of decisions to which we shall make a brief reference. In *State of Punjab v. Nathu Ram*[1], land belonging to two brothers was acquired. The Arbitrator to whom the question of compensation was referred made an award against which the Government preferred an appeal. During the pendency of the appeal one of the brother died, His legal representatives were not brought on record. So the appeal abated against him. The Supreme Court held that the appeal could not proceed against the other brother either. Raghubir Dayal J. observed that the Court would not proceed with an appeal (a) when the success of the appeal might lead to the court's coming to a decision which would be in conflict with the decision between the appellant and the deceased respondent and which would, therefore, lead to the court's passing contradictory decrees with respect to the same subject-matter: (b) when the appellant could not have brought the action for the necessary relief against those respondents alone who were still before the court; and (c) when the decree against the surviving respondents would be ineffective.

9. In *Ramswarup v. Munshi*[2], a pre-emption decree had been granted. The vendees preferred an appeal to the Supreme Court. Of the five appellants first and second appellants constituted one group and appellants 3, 4 and 5 constituted another group. While the appeal was pending the first appellant died, but his legal representatives were not brought on record. The sale in the case was not a sale of any individual item of property but one of the entire set of properties. The Supreme Court held that the decree was a joint one and as part of the decree had become final by reason of abatement, the entire appeal must be held to be abated.

10. In *Rameswar Prasad v. Shambehari Lal*[3], it was held that if in respect of one appellant the appeal had abated and the decree in favour of the respondents had become final to that extant. It would be against the scheme of the Civil Procedure Code to hear the appeal if the decree of the lower court proceeded on a ground common to all the plaintiffs or defendants.

11. In *Raghunath v. Ganesh*[4], Shamdass and Jaigopal had purchased a property described as Lot No. 8 under a signal sale deed. Jaigopal died and his legal representatives were not brought on record. The appeal in the Supreme Court was concerned with several items of property, besides lot No. 8 which were in the possession of other defendants. An argument was advanced that the failure to bring the legal representatives of Jaigopal on record resulted in the abatement of the entire appeal. The Supreme Court repelled the contention and said that the interests of the other defendants who were in possession of

[1] AIR 1962 SC 89 [3] AIR 1963 SC 1901
[2] AIR 1963 SC 553 [4] AIR 1964 SC 234

various other properties were independent and, therefore the whole of the appeal could not abate because the heirs of certain deceased defendant who was in possession of one property had not been brought on record. But so for as lot No. 8 was concerned it was held that since there was only a single sale deed the appeal abated and could not proceed against Shamdas also. This case

is an instructive case since it show how the death of a respondent may not allow further proceedings in an appeal against some respondents while it may allow further proceedings in an appeal against other respondents depending upon whether the interest of the other respondents were the same as the interest of the deceased respondent.

12. In *Gupta v. Murali Prasad*[5], the three tests laid down by the Supreme Court in *State of Punjab v. Nathu Ram*[6], were reiterated and it was further pointed out that the tests were not cumulative and that even if one of them was satisfied the court would have to dismiss the appeal.

13. In *Md. Suleman v. Md. Ismail*[7], the plaintiff instituted a suit against person who were not the only heirs of a deceased person against whose estate the plaintiff had a claim. The plaintiff had made diligent and *bona fide* enquiry and had instituted the suit in the genuine belief that the defendants were the only persons interested in the estate. It turned out that there were others also who were interested in the estate. The Supreme Court was of the view that the question whether a decree obtained by a creditor against the heirs of a deceased person was binding upon the entire estate or only upon those who were impleaded eo nomine as parties was part of the law of procedure which regulated all matters going to the remedy. The Supreme Court held that in the absence of fraud or collusion and in the absence of other circumstances which would indicate that there had not been fair or real trial or that the absent heir had a special defence which was not and could not be tried in the earlier proceeding, the decree would bind the absent heirs also.

14. The principles deducible from these decisions of the Supreme Court are that on the abatement of an appeal against one respondent the Court cannot proceed with the appeal against the other respondents (1) if the success of the appeal would lead to contradictory decisions with respect to the same subject-matter, (2) if the appellant could not have brought the action against the remaining respondents only and (3) if the decree granted against the surviving respondents would be ineffective. The tests are not cumulative and the entire appeal will have to be dismissed even if one of them is satisfied. These principles are founded on the assumption that the appellant has allowed the appeals to abate against one of the respondents by his own default. But where the appellant after diligent and *bona fide* enquiry genuinely believes that some persons alone are the heirs of the deceased respondent and brings them on record, a decree passed against such persons would bind the entire estate of the deceased person, subject of course to the absence of fraud or collusion or other circumstances which would indicate that there had not been a fair or real trial, or that the absent heirs had no special defences which were open to them. If these principle are applied it must be held that the failure of the appellant to bring on record respondents 8, 11 and 12 in C. M.P No. 1990/72 resulted in the abatement of the appeal against Askar Nawaz Jung the 1st respondent in the appeal, as was held in the order passed by Gopal Rao Ekbote C. J. and Chennakesav Reddy J. on 30-1-1974.

[5] AIR 1972 SC 1181

[6] AIR 1962 SC 89

[7] AIR 1966 SC 792

Applying the same principles it must be further held that abatement of the appeal against Aakar Nawaz Jung, the 1st respondent, must also lead to the position that the appeal cannot be heard against the other respondents either. The interests of the other respondents in the appeal are the same as the interests of Askar Nawaz Jung and any success in the appeal against the other respondents would lead to contradictory decisions. On the one hand, the agreement would be void against Askar Nawaz Jung heirs while it would be valid against the other respondents. This is a situation which the appellant has brought upon himself. There was no diligence at all on his

part. It is not a case where he was not aware who the heirs of Askar Nawaz Jung were. He filed a petition to implead all the heirs of Askar Nawaz Jung but defaulted in taking appropriate steps to bring all of them on record. Even after the order of Gopal Rao Ekbote C. J., and Chennakesav Reddy. J. was passed on 30-1-1974 he did not take any steps to have the order reviewed on any of the grounds now mentioned. In the petitions filed by him he does not even state why he delayed in filing the petitions. We have, therefore, no option but to hold that in view of the abatement of the appeal against the 1st respondent, it is not permissible for us to proceed with the appeal against the other respondents.

15. The learned counsel for the appellant argued that in an action for administration it was not necessary that all the heirs of the deceased should be impleaded as parties. He relied on the decision of the *Privy Council Mohammedali v. Safia Bai*[8], That was a case where a Mohammadan heir brought a suit against his co-heirs for administration. On the death of one of the defendants his legal representatives were not brought on record. It was held that the suit for administration did not come to an end. The Privy Council pointed out that the contention that the plaintiff's suit had abated as a whole involved an assumption that the plaintiff was claiming relief against the deceased and that the deceased's heirs were entitled to resist the grant of such relief. No step of that reasoning could be justified, according to their Lordships. The situation here is completely different. The action is not by an heir against his co-heirs. The action is by a creditor against the heirs representing the estate of the deceased. Relief was claimed by the plaintiff against all the defendants and each of the defendants had a right to resist the grant of relief to the plaintiff whether or not the others resisted the action. We do not think that the reasoning in *Mohammedali v. Safia Bai, AIR 1940 PC 215* (supra) can possibly apply to the facts of the present case.

16. Assuming that our conclusion that the appeal has been determined by its abatement against the 1st respondent is not correct, we will proceed to consider the appeal on its merits. It was argued by the learned counsel that the learned Chief Judge of the City Civil Court had invented a new ground of public policy in deciding that the suit agreement was opposed to public policy. This he urged, was impermissible and he relied on the observations of the Supreme Court in *Cherulal Parakh v. Mahadeo Das*[9]. Subba Rao J. (as he then was) after referring to a few earlier cases on the subject of public policy stated the position thus: -

> "The doctrine of public policy may be summarised thus: Public policy or the policy of the law is an illusive concept; it has been described as "untrustworthy guide", "variable equality", 'uncertain one', 'unruly horse' etc. the primary duty of a Court of Law is to enforce a promise which the parties have made and to uphold

[8] AIR 1940 PC 215

[9] AIR 1959 SC 781

> the sanctity of contracts which form the basis of society, but in certain cases, the court may relieve them of their duty on a rule founded on what is called the public policy; for want of better words Lord Atkin describes that something done contrary to public policy is harmful thing but the doctrine is extended not only to harmful cases but also to harmful tendencies; this doctrine of public policy is only a breach of common law, and, just like any other breach of common law, it is governed by precedents: the principles

> have been crystallized under different heads and though it is permissible for Courts to expound and apply them to different situations it should only be invoked in clear and incontestable cases of harm to the public; though the heads are not closed and though theoretically it may be permissible to evolve a new head under exceptional circumstances of a changing world, it is advisable in the interests of stability of society not to make any attempt to discover new heads in these days."

It will be noticed that the Supreme Court did not altogether ban the evolution of a new head of public policy. In fact, in a modern progressive society with fast changing social values and concepts it becomes more and more imperative to evolve new heads of public policy, whenever necessary, to meet the demands of new situations. Law cannot afford to remain static. It has, of necessity, to keep pace with the progress of society and judges are under an obligation to evolve new techniques or adapt old techniques to meet the new conditions and concepts. As was said by Danckwerts L. J. in *Nagle v. Fielden*[10]*,*

> "The law relating to public policy cannot remain immutable. It must change with the passage of time. The wind of change blows up to it."

Professor Winfield described public policy as "a principle of judicial legislation or interpretation founded on the current needs of the community." Therefore, he thought that public policy was necessarily variable and that its very variability was its surest foundation. In an essay on 'Public Policy in the English Common Law' (42 Harward Law Review P. 76) he said:

> "Public policy is necessarily variable. It may be variable not only from one century to another, not only from one generation to another, but even in the same generation. Further it may vary not merely with respect to the particular topics which may be included in it, but also with respect to the rules relating to any one particular topic.... This variability of public policy is a stone in the edifice of the doctrine, and not a missile to be flung at it. Public policy would be almost useless without it."

17. The whole concept of limiting the heads of public policy is based on the concept of 'freedom of contract' which was considered so very fundamental in the days when laissez faire ruled the roost. This concept was succinctly stated by Jessel M. R. in 1875 as follows:

> "You have this paramount public policy to consider, that you are not lightly to interfere with the freedom of contract."

[10]1966 (2) QB 633 at p. 650

But, Laissez faire had its day and its corner stone, 'Freedom of contract' has now ceased to have the idealistic attraction it had in the 19th century. We are now more and more concerned with the social and economic interest of the community rather than individual interest. A.C. Guest in his introduction to Anson's Law of Contract (23rd Edition) says:

> "Today the position is seen in a very different light. Freedom of contract is a reasonable

> social ideal only to the extent that equality of bargaining power between contracting parties can be assumed, and no injury is done to the economic interests of the community at large. In the more complicated social and industrial conditions of a collectivist society it has ceased to have much idealistic attraction. It is once realised that economic equality often does not exist in any real sense, and that individual interests have to be made to subserve those of the community. Hence there has been a fundamental change both in our social outlook and in the policy of the legislature towards contract, and the law today interferes at numerous points with the freedom of the parties to make what contract they like."

18. With this fundamental change of outlook on the concept of Freedom of contract Jussel M. R.'s concept of limiting public policy' in the name of 'Freedom of Contract' must be considered to be on its way to becoming archaic. Further, in our view, in a developing democracy like ours dedicated to the establishment of a new social order, we cannot afford to shut the door firmly against new heads of public policy.

19. It is true that public policy should not depend upon "the idiosyncratic inferences of a few judicial minds' (Lord Atkin in *Fender v. St. John Mild May*[11] and moral indignation must not be mistaken for public policy (Starke J. in *Jenkins v. Smith*[12],). These are trite sayings which need not deter morally indignant judicial minds from searching for new heads of public policy which satisfy the test of advancement of the highest public good and the prevention of clear and uncontestable public harm. As far back as 1853 in *Egerton v. Earl Brownlow*[13], Lord Chief Baron Pollock said:

> "My Lords, it may be that Judges are no better able to discern what is for public good than other experienced and enlightened members of the community but that is no reason for their refusing to entertain the question, and declining to deride upon it. Is it, or is it not, a part of our common law that in a new and unprecedented case where the mere caprice of a testator is to be weighed against the public good, the public good should prevail? In my judgment it is."

Lord Chief Baron Pollock's speech was echoed by Viscount Haldane in *Rodriguez v. Speyer Brothers*[14] Viscount Haldane expressed the view that in deciding upon questions of public policy Judges should be guided by the opinions of men of the world as distinguished from opinion based on legal learning. He also pointed out that what the Law recognized as contrary to public policy turned out to vary greatly from time to time and that the dictum of Lord Halsbury in *Janson v. Driefntein Consolidated Mines Ltd*[15]., that courts cannot invent new heads of public policy should not be taken too literally. Of course, as observed by professor Winfield in his essay.

[11](1938) AC 1) [13](1853) 4 HLC 1 at p. 151 [15]1902 AC 484
[12]1969 VR 267 [14]1919 AC 59

> "It is not to be expected that men of the world are to be supposed as expert witnesses in the trial of every action raising a question of public policy. It is the Judges themselves, assisted by the bar who here represented the highest common factor of public sentiment

and intelligence."

Thus the twin touchstones of 'public policy' are advancement of the public good and prevention of public mischief and these questions have to be decided by Judges and not as men of legal learning but as 'experienced and enlightened members of the community' 'representing the highest common factor of public sentiment and intelligence.' Enunciation of public policy is the crystallizing of the opinions of Judges as men of the world.

20. Public policy has often enough been described as 'an unruly horse' and this description appears to have scared away judicial minds from leading the steed into new pastures. To quote professor Winfield again.

> "That animal has proved to be a rather obtrusive not to say blundering, steed in the law reports. It would have been more effective if we had not heard so much of it. It has gone reverberating down the history of our law.... some Judges appear to have thought it more like a tiger and have refused to mount it at all...." In a short note in 59 Law Quarterly Review P. 298 Dr. F. A. Mann observed:"Public policy may be an unruly horse. But this does not mean that on the proper occasion a Judge must not take his courage in his hands and mount the steed."

21. Similarly Lord Denning in *Enderby Town Football Club v. F. A. Limited*[16], said,

> "I know that over three hundred years ago Hobart C. J. said 'the public policy is an unruly horse.' It has often been repeated since. So unruly is the horse, it is said (per Burrough J. in *Richardson v. Mellis*[17], at p. 252), that no Judge should try to mount it lest it run away with him. I disagree. With a good man in the saddle the unruly horse can be kept in control. It can jump over obstacles. It can leap the fences put up by fictions and come down on the side of justice, as was done in *Nagle v. Fielden*[18]."

22. We have said so much about 'public policy' at the risk of being thought presumptuous because it is our firm belief that it is as fascinating a weapon in the judicial armoury as 'ultra vires', 'natural justice', etc. and certainly capable of being put to far greater and effective use than at present it is. We have said so much in the hope that at some not too distant date the Supreme Court will 'unblinker the unruly horse.'

23. The learned Chief Judge said that it was against the public policy to enter into an agreement the object of which was to influence the Central and the State Ministers. If this is a new head of public policy we are ready to sponsor it. But it is by no means a new head of public policy. It comes under the head 'Agreements Tending to Injure the Public Service' mentioned at page 325 of Anson's Law of Contract, 23rd Edition. In *Egerton v. Earl Brownlow, (1853) 4 HL Cas 1* (supra), Lord Chief Baron Pollock stated:

[16](1970) 3 WLR 1021 [18] (1966) 2 WLR 1027

[17](1824) 2 Bing 229

> "the conclusions to which I have arrived, from the decided cases and the principles they involve, are, that all maters relating to the public welfare all acts of the legislature or the

executive must be decided and determined upon their own merits only; and that it is against the public interest (and therefore not lawful) for any one officiously, wantonly and capriciously.... to create any pecuniary interest or other bias of any sort in the decision of a matter of public nature, and which involves the public welfare."

24. In *Montefoire v. Menday Motor Components Ltd*[19]*.,* the defendants entered into an agreement with the plaintiff in the following terms:

"In consideration of your finding me the necessary capital, I am prepared to pay you 10 per cent on the amount introduced either direct or indirect and also to allot you forty shares in the Menday Motor, Components Company Ltd."

According to the plaintiff, a member of the Imperial Air Fleet Committee the arranged with the Treasury to provide the defendant, a manufacturer of Components of aircraft with the sum of z 2000. He claimed that he was, therefore, entitled to be paid z 200 and to have allotted to him forty shares in the defendant Company. In the course of the trial the Judge thought it right to call attention to the question whether there was not a defence open to the defendants that the contract sued upon was void as being contrary to public policy. The Judge found that the plaintiff had talked to the defendant "airly of his acquaintance with a high official of the Air Board" and the defendant thought that the plaintiff had 'put in a goad word for him'. Shearman J. expressed the view that it was well settled that if on the face of a contract it was apparent that it was unlawful, it was the duty of the Judge himself to take the objection, and that, too, whether the parties take or waive the objection. He then proceeded to say:

"A contract may be against public policy either from the nature of the acts to be performed or from the nature of the consideration. In may judgment it is contrary to public policy that a person should be hired for money or valuable consideration when he has access to persons of influence to use his position and interest to procure a benefit from the Government."

After referring to *Norman v. Cole*[20]*,* and Statute 5 and 6 Edward 6, C. 16, Shearman J. further stated:

"While I do not go to the length of holding that the defendants were bargaining with the plaintiff that they should receive an office under the Crown, I agree with the remarks of Coltman J. in the case of *Hopkins v. Prescottl*[21]*,* that where a person undertakes for money to use his influence with the Commissioners of Taxes to procure for another party the right to sell stamps andc., if the contract were not void by statute, it would be void at common law as contrary to public policy. 'It is well settled that in judging this question one has to look at the tendency of the acts contemplated by the contract to see whether they tend to be injurious to the public interest. In my judgment a contract of the kind has a most

[19](1918) 2 KB 241
[20](1800) 3 Esp 253
[21](1847) 4 CB 578 at p. 596

pernicious tendency. At a time when public money is being advanced to private firms for objects of national safety it would tend to corrupt the public service and to bring into existence a class of persons somewhat like those who in ancient times of corrupt politics were described as 'carryers', men who undertook for money to get titles and honours for those who agreed to pay them for their influence; see the remarks of Lord St. Leonards in *Egerton v. Earl Brownlow*[22],

It has been urged upon me in the course of the argument that a Judge must act with great caution in declaring a contract void as against public policy. Burrough J. in *Richardson v. Mellish*[23], said that public policy 'is a very unruly horse, and when once you get astride it you never know where it will carry you' and Lord Bramwell in *Mogul Steamship Co. v. Mcgregor Gow and Co*[24]. and Lord Halsbury in *Janson v. Driefontein Consolidated Mines Ltd*[25], repeat the warning. But, applying the words of Pollock C. B. in *Egerton v. Earlbrownlow*[26] I think I am bound to look for the principles of former decisions, and not to shrink from applying them with firmness and caution to any new and extraordinary case that may arise."

In my judgment it is both in accordance with precedent and with public interest that I should declare this contract void as against public policy, with the result that both the action and the counter-claim are dismissed with costs."

25. In our view, an agreement, the object of which is to use the influence of a person with Ministers of the Government to obtain favourable decision, is destructive of all sound and good administration. It discloses a tendency to corrupt or to influence public servants to decide and determine matters otherwise than upon their own merits, a tendency most injurious to the public interest. We do not have the slightest doubt that such an agreement is contrary to public policy. We also wish to emphasize that it is irrelevant that the persons proposed to be influenced are incorruptible and are persons 'whose ability honesty and patriotism are beyond all question' as in the case of *Montefoire v. Menday Motor Components Co. Ltd. (1918) 2 KB 241* (supra). It is the very tendency of the agreement that makes it contrary to public policy.

26. The learned counsel for the appellant urged that this ground was not expressly raised in the written statement. As pointed out by Shearman, J. in *Monterfoire v. Menday Motor Components Co. Ltd*[27]., it is the duty of the Judge to take the objection whether parties take or waive the objection if it comes to his notice that the agreement is contrary to public policy. The learned counsel then argued that the evidence in this case did not justify the finding of the learned Judge that the object of the agreement was to influence Ministers of the Government.

27. Ex. A-27 is the agreement executed by the late Nawab Sajjid Yar Jung. It is as follows:

"I, Nawab Sahud Yar Jung Bahadur, of Hyderbad Deccan wish that you should help me and my family in promoting our cause, i.e. in our being recognized as heirs to the late Nawab Salarjung Bahadur's property.

[22](1853) 4 HLC 1 at p. 234 [24](1892) AC 25 at p. 45 [26](1853) 4 HLC 1 at p. 49
[23](1824) 2 Bing 229 at p. 252 [25](1902) AC 484 at p. 491 [27] (1918) 2 KB 241

For the regard and love and affection that I held for you and for the time help that you have rendered me and will render me in future, I, by my free will and consent, promise to pay out of my proportionate share, a share of one anna in a rupee, within three months only after getting the possession of the property.

The letter dated..... is not in addition to this offer and on getting your full share that letter shall stand cancelled. Executed this document in favour of Seth Ratan Chand Hira Chand of 26, Napean Sea Road, Bombay and sign in confirmation whereof this 27th day of June, 1952 at 1, B. Passa Road, New Delhi.

Sd. Sajjid Yar Jung.

Witnesses:

1. Sarfaraz Hussain.

2 G.N. Hardas."

It is interesting to notice that the plaintiff was required to help the Nawab and his family "in promoting our cause, i.e. in our being recognised as heirs of the late Nawab Salar Jung Bahadur's property". The use of the expression 'promoting' is significant and it appears to us to contemplate much more than mere financing. We do not, however, wish to stress too much upon the use of this expression. The evidence of the plaintiff himself, as P.W 10, gives more than a clue as to the true object of the agreement and what was expected of the plaintiff. He stated that he was an industrialist, a justice of the peace and the Chairman and Director of more than a dozen companies. He was approached by Sajjid Yar Jung and his brother to help them "to represent their ease before the Union Ministers." He stated, "the representation to be made was regarding the estate of late Salar Jung, and Sajjid Yar Jung and his brother wanted recognition for themselves and his sisters as the heirs of Salar Jung." He further stated that it was requested that he should accompany them to the Union Ministers concerned for representing their case to the Union Government. It appears to be fairly clear from these statements that the help which Sajjid Yar Jung wanted from the plaintiff was to represent their case before the Union Ministers i.e. to bring to bear his influence with the Union Ministers. It is nobody's case that the plaintiff is an adept at advocacy. The plaintiff added "they also made a request that I should advance monies to meet their expenses....." This statement indicates that the request for financial help was secondary to the request to represent their cause i.e. to use his influence. The plaintiff stated that he took Sajjid Yar Jung to the concerned Ministers on two or three occasions at New Delhi and that after they learnt that the case was being considered favourably by the Union Government they came down to Hyderabad. Sajjid Yar Jung requested him to meet the then Chief Minister Sri B. Ramakrishna Rao. Accordingly he met him. He further stated that he arranged for Sajjid Yar Jung's meetings with the Union Ministers who were seized with the subject-matter of Salar Jung's estate. He himself met three Ministers in connection with the representation of Sajjid Yar Jung. They were late N. Gopalaswamy lyyengar, Late Sardar Vallabhbhai Patel and Late Lal Bahadur Sastry. He had met Lal Bahadur Sastry earlier at Hyderabad along with Sajjid Yar Jung at the time of Congress Sessions. His meeting with the Ministers according to him, created a very favourable impression. At the time when he took up the assignment on behalf of Sajjid Yar Jung he expected an early disposal of the matter by the Government of India. It would have been so disposed of but for the stay orders of the High Court. He pursued the matter with the authorities at Delhi and the Union Government entered into correspondence with the local Government on

the representation of Sajjid Yar Jung. With a show of modesty he added "I am not supposed to know which influence weighed with the Union Government or the local Government. I am only concerned with the result". The evidence of the plaintiff can lead but to one conclusion namely, that Sajjid Yar Jung promised to give him a one anna share in the amount to be realized from the estate of Salar Jung in return for the influence which the plaintiff was to bear upon the Union and State Ministers. One of the attestors of the agreement, a friend and consultant of Sajjid Yar Jung, was examined as P. W. 11. He also stated, "Sajjid Yar Jung wanted a representation of his case to be made to the Government of India and to the then Hyderabad Government. Sajjid Yar Jung wanted me to find a financier who can help him financially and also represent his case to the concerned Government". Later, he stated, "the plaintiff met two or three Union Ministers along with Sajjid Yar Jung and represented the case of the Nawab. I was present at the meeting with Mr. Lal Bahadur Sastry, who was then a Minister." Again, he stated, "the help rendered by the plaintiff was the financial help as also the representations he made to the persons concerned in the Union and the State Governments". The evidence of the plaintiff and P.W. 11 leave no doubt in our minds that the object of the agreement was to influence the Union and State Ministers and to advance and expend all amounts necessary in that connection. We agree with the finding of the learned Chief Judge on this question.

28. The learned counsel argued that late Gopalaswamy Iyengar, late Sardar Vallabhbhai Patel, late Lal Bahadur Sastry and late B. Ramakrishna Rao were incorruptible public servants and that there could be no question of influencing them. As already pointed out by us earlier, the question is not about the integrity of the persons proposed to be influenced but about the tendency of the agreement.

29. Even so, the learned counsel for the appellant argued that the plaintiff was entitled to a return of all the amounts advanced by him with interest. He relied upon the decisions in *Hussain Baksh v. Rahmat Hussain*[28], and *Venkataswamy v. Nagi Reddy*[29], Both were cases of champerty. Both were cases where the agreements were held to be extortionate and unconscionable. In both cases the amounts actually advanced were directed to be refunded. The law is well settled in India that Champertous agreements are not as such opposed to public policy. They will not be enforced if they are extortionate and unconscionable in which event the persons advancing the monies will be entitled to get a return of the same. In the present case, we are not concerned with a plain and simple champertous agreement. The object of the agreement was to influence Ministers and to incur necessary expenditure in connection therewith. There were no two independent agreements one for influencing the Ministers and the other for advancing monies. The agreement was one whole agreement and if it could not be enforced in part it could not be enforced as a whole. The whole of the agreement was tainted by the vice of being opposed to public policy.

30. In passing the learned Chief Judge appeared to hold that the agreement was also unconscionable. The learned counsel for the appellant invited our attention to several cases where agreements to give 1/4th share, 3/32nd share, 3/16th share had been upheld by Courts. In the present case, what Sajjid Yar Jung agreed to give was only 1/16th share. It could not, therefore, be said to be unconscionable. That, however, makes no difference to our final conclusion.

[28] ILR (1889) 11 All 128

[29] AIR 1962 And Pra 457

31. In the result, we uphold the judgment and decree of the lower court and dismiss the appeal

with costs. C. M. P. Nos. 4740, 4824/1974 are dismissed.
Appeal dismissed.