

Supreme Court of India

Badri Prasad And Ors. Etc vs Collector Of Central Excise & Ors. ... on 30 March, 1971

Equivalent citations: 1971 AIR 1170, 1971 SCR 254

Author: G Mitter

Bench: Sikri, S.M. (Cj), Mitter, G.K., Hegde, K.S., Grover, A.N., Reddy, P. Jaganmohan

PETITIONER:

BADRI PRASAD AND ORS. ETC.

Vs.

RESPONDENT:

COLLECTOR OF CENTRAL EXCISE & ORS. ETC.

DATE OF JUDGMENT 30/03/1971

BENCH:

MITTER, G.K.

BENCH:

MITTER, G.K.

SIKRI, S.M. (CJ)

HEGDE, K.S.

GROVER, A.N.

REDDY, P. JAGANMOHAN

CITATION:

1971 AIR 1170 1971 SCR 254

1971 SCC (1) 1

CITATOR INFO :

E 1987 SC2167 (15,22)

ACT:

Gold Control Act, 1969, ss. 4, 6, 8(1) and 16, 58, 71-Vires of-Provisions of ss. 4, 6, 8 and 16 of Act do not constitute unreasonable restrictions on right to carry on business and are not violative of Arts. 19 (f) and (g)Section 71 is ultra vires-Sections 6 and 16(1) do not encroach on field covered by Andhra Pradesh (Andhra Area) Pawn Brokers Act 23 of 1948 and Andhra Pradesh (Telangana Area) Money Lenders Act 5 of 1349F.

HEADNOTE:

The petitioners and appellants carried on the business of Pawn broking and money lending inter alia on the security of gold articles and ornaments. They challenged the validity of different provisions of the Gold Control Act, 1969. The contentions that fell for consideration were: (i) whether there was anything in the Act or the rules which constituted an unreasonable restriction on the part of a pawn broker to hold, acquire or dispose of property or carry on his

business of money lending within the meaning of Art. 19(1) (f) and (g) of the Constitution not saved by sub-cls.(5) and (6) thereof; (ii) whether in the absence of a provision for notice to be given to him in case of any proceeding for confiscation the pawnee may be prejudicially affected without a hearing being given to him; (iii) whether s. 71 of the Act was ultra vires; (iv) whether the failure to make a distinction between 'article' and 'ornament' in the definition section was prejudicial to a dealer; (v) whether compliance with all the conditions laid down in form GS III under r. 4 of the Act may be impossible in a number of cases; (vi) whether it was difficult to comply with s. 16 of the Act as regards acquisition or transfer of gold as and when made, (vii) whether a pawn-broker or money lender was entitled to hold primary gold; (viii) whether certain government circulars had the effect of extending time for filing of declaration under s. 16(1) beyond 28th February 1969 ; (ix) whether s. 58(1) of the Act was violative of the Constitution and liable to be struck down; (x) whether s. 16 (1) of the Act being a general provision could not apply to pawn-brokers and money lenders who were governed by ss. 6, 10, 28; (xi) whether s. 16(1) was unreasonable as regards pawn brokers; (xii) whether the impugned Act encroached upon the field exclusively occupied by Andhra Pradesh Act XXIII of 1943 and Andhra Pradesh Act V of 1349F.

HELD: (i) If smuggling of gold into the country is to be checked by the prevention of the conversion of smuggled gold into gold articles or ornaments, there is no unreasonableness in the State calling upon all pawn brokers and persons who take pledges or hypothecation of ornaments to furnish declarations so that the Administrator and the Gold Control Officer may keep an eye on the activities of such persons and if necessary at any point of time, ask for a return in terms of s. 6 and satisfy himself about the legality of his acts by inspecting his accounts. It would not be difficult for anybody carrying on or wanting to carry on business lawfully to insist on the pawnor producing the copy of the declaration in his possession given to him after authentication by the Gold Control Officer in terms of

255

sub-s. (8) of s. 16 in order to satisfy himself that there was no contravention of the Act. The requirement of making a -declaration as often as a pwan broker acquires ownership possession, custody or control- of gold under sub-s. (4) is to be read with sub-s. (10) and it is enough for a pawn broker 'to approach the Gold Control Officer' with the full and detailed statements of his holding once, a month. [269D-E, G]

As such it cannot be said that there is any unreasonable restriction in .the said provisions on holding property or pursuing one's business in terms of Art. 19(1) (f) or (g) of the Constitution. [269H]

(ii) The contention that there being no provision for notice

to be given to him in case of any proceeding for confiscation the pawnee may be prejudicially affected without a hearing being given to him had no substance inasmuch as he will be the person presumed to be the owner in terms of s. 99 and the gold can only be seized from his possession or custody. He can appear before the authorities and make his submissions so that no penal action should be taken against him. [270A-B]

(iii) There is no justification for an order of confiscation of gold under s. 71 of the Act merely because of a failure to comply with s. 16 relating to declaration. It is no doubt true that the owner is to be given a hearing in terms of s. 79 and he has a right of appeal under s. 80 but the provision of s. 73 which allows the levy of a fine in lieu of confiscation not exceeding twice the value of the thing in respect of which confiscation is authorised appears to be unduly harsh and unconscionable. Under the Wealth tax Act the penalty for failure to file a return is much lighter. Section 71 therefore appears to place an unreasonable restriction on the right of a person to acquire hold and dispose of gold, articles or gold ornaments. It may be applied indiscriminately and cannot therefore be upheld as saved by cls. (5) and (6) of Art. 19 of Constitution. [270C-F]

(iv) It cannot be said that the definition section does not make a clear distinction between an 'article' and an 'ornament'. The explanation to S. 2(p) shows that nothing made of gold which resembles an ornament will be deemed to be an ornament unless the thing (having regard to its purity, size, weight, description or workmanship) is such as is commonly used as ornament in any State. Clearly it is a question of proof as to whether the thing passes as an article or an ornament in a particular state. [270G]

(v) It cannot be said that compliance with all the conditions laid down in form G. S. III under r. 4 of the Act is impossible. No doubt there may be difficulty in some cases where an article contains metals other than gold or precious stones, but a pawn broker who is asked to advance money on the security of such an article can make a fairly accurate estimate of the weight and value of the gold therein so as to be able to judge for himself how much he can safely advance on the security of that article. He is not called upon to give the exact purity of the gold content of the article. He can only give an estimate of its purity. [271A-C]

(vi) There was no difficulty in regard to the primary gold found in possession of the petitioner in writ petition No. 24. Under s. 2(1) no person can own or have in his possession, custody or control, acquire or agree to acquire ownership, buy, accept or otherwise receive any primary gold except as provided in the Act and the pawn broker or money lender is not such a person. [271F]

(vii) The printed circulars to which attention was drawn did not show that there was any extension of time with regard to declarations under s. 16(1) beyond 28th February 1969. Reference to certain circulars addressed only to Gold Control officers to the effect that no steps were to be taken until after 30th April 1969 could not be availed of by the petitioner who was not in a position to assert that the circular had been publicly advertised or that he himself had received any copy of such circular. [272B].

(viii) Section 58(1) of the Act which allows any Gold Control Officer authorised by the Administrator to enter and search any business premises if he has reason to suspect that any provision of the Act was being or was about to be contravened could not be struck down on the ground that the power to search was given without the same safeguards as in the Sea Customs Act, 1882 the Customs Act, 1962 or the Code of Criminal Procedure. There may be cases where it is necessary for the Gold Control Officer to act with expedition in the matter of search so that the information that he is going to search a premises may not leak out and the only safety in this regard is that the Gold Control Officer must be authorised by the Administrator in this behalf and he in his turn if he is empowered by the Central Government may authorise other Government Officers to enter and search the premises. In the present case the counter-affidavit showed that the officer searching had information regarding the contravention of the provisions of the Act and the result of the search showed that huge quantity of gold was lying with the petitioner in respect of which no declaration had been made. The Gold Control Act is not the only Provisions of law where power to search on suspicion has been conferred on an officer. In this connection reference may be made to s. 41 of the Madras General Sales Tax Act 1 of 1959 which came up for consideration before this Court in the Commissioner Commercial Taxes, Board of Revenue, Madras v. Ramkishan Srikishan Iyer etc., C.A. Nos. 150/68 dt. 9-8-1967. [272D-H]

(xi) Section 16 is not excluded in the case of money lenders or pawn brokers. Any person who comes under the purview of s. 16(1) has to make a declaration unless there is any provision to the contrary in that Chapter. The only provision to the contrary is contained in sub-s. (5) which permits of exemptions in respect of persons holding gold articles or ornaments up to a specified limit. The provision in s. 6(1) empowering the Administrator to call upon any pawn broker to furnish a return does not do away with his obligation to file a declaration under s. 16(1). There is no question of duplication of declarations here. Every pawn broker will have to file his declaration under s. 16(1) and he would be obliged to make a return only when he is called upon to do so in terms of s. 6. If a number of pawn brokers carry on business in partnership the declaration can be made by any partner of the firm in terms

of cl. (f) and if a company carries on business of pawn broking any person in charge of the management of the affairs of the company can make the declaration. [274A-F]

(x) There was no substance in the argument that a pawn broker only kept things in his safe custody and it would be very oppressive on him if he had the obligation to make a declaration as often as he got in a gold article under a pledge or parted with it on redemption. A money lender, specially a pawn broker who enters into a number of transactions of pledge every day has to maintain his account books and he has to record faithfully therein the articles he receives by way of pledge including their weight and general description when he takes them in and making a declaration for the purpose of the Act cannot entail any hardship on such a person. [274G-275C]

257

Mohd. Hanif Quareshi v. State of Bihar, [1959] S.C.R.. 629, 671, distinguished.

(xi) By the Gold Control Act Parliament only sought to control and regulate the production, manufacture etc. use and possession of and the business in gold, gold ornaments etc. It did not seek to disturb or annul the provisions of the Andhra Pradesh Acts dealing with pawn brokers and money lenders. The provisions of the State Acts are to have full play and effect so long as the Gold Control Act is not violated. [275E]

Accordingly, save that s. 71 of the Act is unconstitutional, the writ petition and appeals must be dismissed. [275G]:,

#### JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition Nos. 24 and 587 of 1970.

Petitions under Art 32 of the Constitution of India for the enforcement fundamental rights and Civil' Appeal No; 1613 of 1970.

Appeal by, special leave from the judgment and order dated December 26, 1969, of the Andhra Pradesh High Court in Writ Petition No. 3047 of 1969 and Civil, Appeal No. 1659 of 1970.

Appeal by special leave from the judgment and order dated the December 26 1969 of the Andhra Pradesh High Court in Writ Petition No. 3008 of 1969.

Writ Petition No. 24/70.

C. K. Daphtary, J. B. Bajpai, P. C. Bhartari, T. B. Dada- chanji, O. C. Mathur and Ravinder Narain, for the petitioner.

Jagdish Swarup Solicitor General, M. C. Setalvad and B. D. Sharma, for the respondents.

Writ Petition No. 587 of 1970.

C. K. Daphtary, P.: C. Bhartari, Ravinder Narain and J. B. Dadachanji, for the petitioners.

M. C.'. Setalvad, and R. N. Sachthey for the respondents. Civil Appeal No. 1613 of 1970.

B. A. L. Iyengar and P. Parameshwara Rao, for the appellants.

Jagdish Swarup, Solicitor General, J. M. Mukhi and B. D. Sharma, for the respondents.

Civil Appeal No. 1659 of 1970.

S. V. Gupte, P. Parameswara Rao and K. C. Dua, for the appellants.

17-1 S.C. India/71 Jagdish Swarup, Solicitor-General, and B. D. Sharma, for the respondents.

M. Natesan and R. Gopalakrishnan, for the interveners. The Judgment of this Court was delivered by Mitter, J.--The petitioner in Writ Petition No. 24 of 1970, a citizen of India who has been carrying on business inter alia of money lending against pledge of gold ornaments, challenges the vires of the Gold Control Act, 1969 read with the rules made thereunder and in particular sections 6, 8 and 16(1) of the Act.

The facts on which the petition is based are as follows. The petitioner has a fairly extensive business of money lending in Etawah in U.P. In pursuit of his business he advances moneys to a large number of persons who pledge ornaments made of gold or containing gold and other precious stones, or silver. It includes a seasonal business of agriculturists taking loans from him in the sowing season and repaying the same with interest by redeeming the pledged ornaments. According to the petition such loans are not always redeemed quickly and there are instances of ornaments lying with him under pledge for 10 to 15 years. He also owns along with other members of his family substantial quantities of gold ornaments. As he has a strong room for keeping these valuables his friends and relations also are in the habit of keeping their gold ornaments and articles with him for safe custody. The purity of the gold content of the ornaments varies from 10-12 carats to 22-24 carats. The content of the gold is difficult to estimate in some cases where they are pieces containing more than one metal and set with stones. In all such cases a rough and ready estimate of their value is made whenever possible by the indigenous method of determining the purity on a touch stone and loans are advanced to the extent of 50 to 75 per cent of the value of the pledged goods. Over the last 8 to 10 years the petitioner claims to have come into possession of such pledged ornaments and articles which have not been redeemed since their first pledge weighing approximately 42,989 grams. On an average he 'entertains about 25 transactions of pledge or redemption in a day and the total number of ornaments and articles pledged with him over a year varies from 15,000 to 20,000 pieces. His entire belongings of gold including those of the members of his family are kept in a strong room along with the pledged goods.

The petitioner's grievance is based on a raid which took place at his place of business on March 26, 1969 by the Inspectors of Excise under the authority of the Collector of Central Excise. The raid was completed on 9th April, 1969 and a large number of ornaments and articles of gold were seized from his premises. According to the petition the condition precedent to the exercise of such power i.e. that the officer concerned should have a reasonable belief that the provisions of the, Act have been violated was non-existent and in any event the Act did not permit Inspectors of Customs or Central Excise to carry out the search or seizure. The validity of the search and seizure is also challenged on the ground that inasmuch as the time to furnish declaration under S. 16 of the Act had been extended Since the Commencement of the Act from time to time up to the 30th April 1969 the search which took place on March 26, 1969 was unjustified.

The different provisions of the Act and the grounds of attack on them may be, summarised as follows :-

(a) Sections 4, 6, 8(1), 16- read with 71, 74 and 86 are bad in law as outside the competence of Parliament and/or in violation of the Constitution. 'Section 6 and 16(1) are impugned on the ground that Parliament had no competence to encroach on the field of lending and. money lenders which is covered by a State item of legislation in the Seventh Schedule.

(b) Sections 4 and 16 read with the power of search and seizure, impositions of fine and penalty and power of prosecution etc. confer arbitrary powers upon the respondents capable of indiscriminate use and as such are violative of Art. 14.

(c) The expression "possession", custody and control in s. 16 is vague and uncertain incapable of any objective assessment.

(d) The provisions of s. 8 (1) of the Act are violative of the petitioner's fundamental right to acquire, hold or dispose of property in the form of primary gold as it is not in the interest of general public. The section is also impugned as affecting the possession by the petitioner of primary gold found which he has been holding for many years past. It is also attacked on the ground that the Gold Control Officer can always treat a particular piece of ornament as primary gold, the acquisition and disposal of which was prohibited under the Act.

(e) It is impossible for anyone to comply strictly with the form GS III prescribed under the rules. In order to comply with the strict statutory obligations the petitioner would have to incur huge expenses for maintaining the necessary staff and undertaking scientific assessment to ascertain the purity, weight and value of gold content in each and every ornament.

(f) The obligation to furnish declarations in respect of every pledge and/or redemption of the ornament would be incapable of compliance as on an average he enters into about 100 transactions of this character in a day. It was also quite impracticable to comply with the provisions of s. 16(4) and (10) to furnish repeated declarations for every acquisition and/or redemption of the pledge of the ornaments.

The petition was affirmed on January 13, 1970 and on the 19th January this Court granted interim stay of further proceedings in pursuance of search and seizure. In the counter affidavit of the Assistant Collector of Central Excise reliance is placed on, the following facts

1. The total quantity of gold seized in the course of the search of the petitioner's premises which started on the 26th March, 1969 and ended on 9th April 1969 was 95,793.995 gms. of the approximate value of Rs. 14,47,300/-. This included gold with foreign marking, weighing 3,539,842 gins. other, primary gold without marks 212.865 gms gold coins weighing 85.53 gms. and ornaments weighing 91,955,753 gms. Two show cause notices were issued one for contravention of the provisions of the Act and the other for contravention of the provisions of the Foreign Exchange Regulations Act read with the provisions of the Customs Act and the Imports and Exports Control Act.
2. The petitioner took an 'inordinately long time to seek legal redress : he waited from April 1969 to January 1970 before complaining of the search and seizure. The petitioner never attempted to avail himself of the opportunity of having a personal hearing before the competent authority i.e. the Collector of Central Excise, Kanpur.
3. On or about March 25, 1969 on receipt of information and being satisfied that the provisions of the Act as also those of the Customs Act and the provisions Exchange Regulations Act and Imports and Exports Control Act were being contravened, the Superintendent, Central Exercise, Manipuri authorised the Inspectors of Central Excise Department to enter and search the premises of the petitioner and., to seize any offending gold, gold articles or gold ornaments. The authorisation of the Inspectors was under powers conferred by s. 58(2) of the Act and s. 105 of the Customs Act, 1962.
4. The Income-tax Officer Etawah issued an order under s. 132(3) of the Income-tax Act, 1961 restraining the Superintendent, Central Excise, from removing, parting with or otherwise dealing with the gold and gold ornaments seized by the Inspectors of Central Excise.
5. Among the things seized were 30 biscuits of gold including one of foreign marking which was primary gold the possession of which by itself was a : contravention of s. 8 (1) of the Act Neither at the time. of the seizure of the gold nor during the course of the investigation the petitioner indicated as to how many and which of the ornaments were his own and how many of them belonged to the various members of his family : no such details have been given in the petition.
6. All the allegation regarding the vires of the Act or the Rules were disputed. The difficulty if complying with the provisions of the Act was also denied and the justification for the retention of the seized articles was based on the powers conferred under the different Acts. In the counter affidavit affirmed by the Secretary to the Government in the Ministry of Finance, Department of Revenue and Insurance. a claim is made that the subject matter of the Act does not encroach on the power of the State Legislature to legislate with respect to money lending or money lenders. It however contains provisions prohibiting persons from obtaining loan on the hypothecation, pledge or mortgage of primary gold which is a reasonable restriction on the fundamental right of a citizen. It is also asserted that no provision of the Act is vague or uncertain or difficult of compliance. S. 8(1) of



the Act is sought to be justified on the ground that this provision had been inserted in the statute with a view to eliminating the chances of false defenses being raised on the detection of smuggled gold and a period of six months from 1st March 1967 had been allowed under the Defence of India Rules to enable persons who might have gold in their possession to dispose of it either by sale or delivery for conversion into ornaments to licensed dealer or by certified goldsmiths. Stress was also laid on the legislation on the subject by which control of gold was first made law as Part XII(A) (of the Defence. of India, Rules) promulgated under the Defence of India Act followed by the Gold Control Act, 1967, the Gold Control Ordinance, 1968 and the Gold Control Act of 1969. It was submitted that the object of this series of legislation was with a view to prevent smuggling of gold into India and of the dissemination thereof which results in the loss of Rs 100 crores of foreign exchange per annum. This object could not be achieved unless there was restriction on the manufacture and sale of new ornaments, declaration of holdings of gold other than ornaments, regulation of the business of gold including the activities of gold refiners and goldsmiths. The impracticability of estimating the purity of gold ornaments was also disputed on the assertion that any experienced goldsmith can easily assess the purity of gold in an ornament by rubbing it on a touch stone. A time limit of 30 days had been given from the commencement of the Defence of India (4th Amendment) Rules 1966 to persons owing ornaments in excess of the specified limits for making declarations. The petitioner should therefore have made a declaration of ornaments in his possession, custody, or control. In writ petition filed before the present series of petition, an undertaking had been given to this Court in those petitions that no action would be taken under S. 16(7) and 16(1) and 100 of the Act and the time for making declarations under S. 16 was extended till 28th February 1969 and suitable instructions had been issued to the field staff to comply with the above. The time limit for filing the declaration under S. 16(7) had been extended up to 30th June but it was denied that the period of making a declaration under S. 16(1) had been extended up to 30th April, 1969.

Before examining in detail the relevant provisions of the Act and the contentions founded thereon, it may be noted that this Act had been challenged by several writ petitions to this Court immediately after it was put on the statute book in September 1968. The questions which fell for consideration in that series of petitions included :

- (a) Whether the Act was within the legislative competence of Parliament under Entry 52 of List I and Entry 33 of List III of the Seventh Schedule, or
- (b) Whether it fell within the exclusive competence of the State Legislatures under Entry 27 of List II. A large variety of propositions was there advanced to declare the Act as beyond the competence of Parliament. It had been argued inter alia that section 4(4), 4(5), 5(1), 5(2) 27(2) (d), 27(6), 16(7), 32 read with 46, 88 and 100 were unreasonable and not in public interest and so were violative of Art. 19(1)(f) and (g) of the constitution violation art 14 was also urged .

Being of the view that the attack on some of the provisions was justified but the provisions which were found to be invalid not being so inextricably bound up with other parts as to render the whole Act unconstitutional, this Court held that several provisions, namely, sections 5(2)(b), 27(2)(d) 27(6), 32, 46, 88 and 100 were invalid. It is worthy of note that although challenge was directly

made to the validity of S. 16(7) the Court did not express any opinion thereon. The said provision cannot therefore be assumed to have been Struck down.

The matters with which we are not concerned not only include (1) Writ Petition No. 24/1970 of which details have been given above, but (2) Writ Petition No. 587/1970 the petitioners in this petition having come before this Court on an earlier occasion and (3) two Appeals 1613/70 and 1659/70. The petitioners in the two petitions mentioned as well as the appellants in the appeals are all persons who carry on the business of pawn broking and money lending inter alia, on the security of gold articles and ornaments and the common grievance of all these persons is against some of the provisions of the Act, the appeals involving a further question as to the impact of the Act on several State Acts dealing with money lending and money lenders and pawn broking and pawn brokers.

The impugned Act, as is shown by its preamble, is to provide for the economic and financial interests of the community, for the production, manufacture, supply, distribution, use and possession, of and business in, gold, ornaments and articles of gold and for matters connected therewith or incidental thereto. As is well known the object of the Act is to make it difficult, if not impossible, for gold which is smuggled into the country from being circulated evidently with the object of checking smuggling of gold or rendering the same unprofitable and so avoiding a loss of foreign exchange to the country.

Although there is no definition of pawn broker in s. 2 of the Act there can be no doubt that some of the provisions of the Act are designed to restrict the use of gold by way of pledge or hypothecation for securing loan. S. 2(b) of the Act defines an " article" as anything (other than ornament) in a finished form, made of, manufactured from or containing, gold and includes any gold coin and broken pieces of an article, but does not include primary gold. Under s. 2(j) 'gold' means gold including its alloy (whether virgin, melted or remelted, wrought or unwrought) in any shape or form, of purity of not less than nine carats and includes primary gold, article and ornament. 'Ornament' is defined as a thing in a finished form meant for personal adornment or for the adornment of any idol, deity or any other object of religious worship, made of, or manufactured from gold, whether or not get with stones or gems etc. The definition contains an Explanation whereby a thing made of gold though resembling an ornament is not to be deemed to be an ornament unless it is used as such in any part of the country. Primary gold is defined in s. 2(4) as meaning gold in any unfinished or semi-finished form including ingots, bars, billets etc. S. 2(i) defines a 'declaration' as one which is required by the Act or was required by rule 126-1 of the Defence of India Rules, 1962 or the Gold (Control) Ordinance, 1968 to be made with regard to the ownership, possession, custody or control of gold. Under s. 4(1) the Central Government has to appoint an Administrator for carrying out the purposes of the Act. Sub-s. (2) gives the Central Government power to appoint Gold Control Officers for enforcing the provisions of the Act.

Section 6(1) empowers the Administrator to require any person who lends money on pledge, hypothecation etc. of any article or ornament to furnish a return, giving full particulars of the things given by way of security and the Persons who gave the security. Sub-s. (2) of this section authorises the examination of accounts of persons lending money on the security of gold articles or ornaments and declares that any gold which is not entered in the accounts or: found to be in excess of the

quantity shown in the accounts and it is not otherwise accounted for to the satisfaction of the examining officer is to be, deemed to be in possession of such person in contravention of the provisions of the Act. Chapter III of the Act containing sections 8 to 11 deals with restrictions relating to the manufacture, acquisition, possession, sale, transfer or delivery of gold. Sub-s. (1) of S. 8 forbids any person from owning or having in his possession, custody or control or acquiring or agreeing to acquire the ownership, possession, custody or control or buying, accepting or otherwise receiving or agreeing to buy accept or otherwise receive any primary gold save as otherwise provided in this Act. In other words, there is a complete bar to anybody having possession of primary gold.

In this connection it may be noted that there was a notification under the Defence of India Rules requiring the conversion of primary gold either into cash or into ornaments within the time specified therein which had expired long before the Gold Control Act was put on the statute book. Sub-s. (4) of s. 8 is aimed at preventing any person from delivering, selling or disposing of etc. of any article to a person who is not a licensed dealer or refiner except as provided in the Act. Sub-ss. (3) and (4) have a qualification in sub-s. (5) as regards the person accepting or transferring by way of gift or exchange gold coins not exceeding five in number. Sub-s. (6) empowers the Administrator to make exemption from the above provisions in special circumstances. Section 10 provides as follows :

"No person shall obtain from any other person any loan or advance on the hypothecation, pledge, mortgage or charge of-

(a) any primary gold, or

(b) any article or ornament which is required to be included in a declaration unless such article or ornament has been so included :

Provided that, in the case of an article which is not required to be included in a declaration, no transfer or delivery thereof shall be made unless such transfer or delivery has been intimated in writing to the Administrator."

s. 11 contains prohibitions regarding making manufacturing etc. of primary gold articles except under authorisation by the Administrator.

Chapter IV deals with possession of gold by public religious institutions, disposal of gold received by way of offerings, submission of monthly accounts and responsibility of the person in charge of the management of any public religious institution in regard to such gold or gold ornaments. S. 16 which has no less than 13 sub-sections provides for the making of declarations for all practical purposes by every person who owns or possesses or deals with or disposes of gold subject to the exemption created in sub-s. (5). Under sub-s. (1) every person who owns or is in possession, custody or control of any article or ornament at the commencement of the Act, or acquires the ownership possession, etc. thereafter must make within 30 days from such commencement or from the acquisition, as the case may be or within such further time as the Administrator may allow a declaration in the prescribed form as to the quantity, description and other prescribed particulars of any article or

ornament or both, owned, possessed, held or control by him. Such declaration however is not required to be made by any person who has before the commencement of the Act already made a declaration in relation to the article or ornament or both. Sub-s.(2) specifies a number of cases from clauses (a) to (1) of persons who have to make the declarations in such cases and its opening words are as follows "For the removal of doubts, it is hereby declared that the declaration referred to in this section shall be made, in relation to any article, or ornament, or both.

Clause (a) deals with minors and lunatics, the declaration having to be made by the guardian or manager. Cl. (b) deals with owners of idols or deities; cl. (c) deals with properties of a person which are under the management of an administrator or receiver; clause (d) with a person whose properties are under the management of the Court of Wards; cl. (e) relates to articles or things vested in an executor or an administrator of a will or other testamentary disposition; cl. (f) deals with the case of firms; cl.

(g) with the case of a Hindu undivided family; cl. (h) with the case of a private or a public trust; cl. (i) with the case of a company whether incorporated in or outside India-. clause (j) with a temple, church, mosque, gurdwara or any other religious institution; cl. (k) deals with wakf property and cl. (1) deals with societies, clubs or other associations. Cl. (m) deals with other persons owning, possessing or holding of gold as may be prescribed for them. Sub-ss. (1) and (2) of section 16 make it quite clear that every person who owns or is in possession, custody or control of any article or ornament, no matter whether he is or is not the owner thereof, is under a duty to make a declaration with respect to all his holdings of gold articles or ornaments. Clause (5) exempts persons holding or owning gold only within up to certain limits from making such declarations. Under cl. (3) any person who did not own, possess, hold or control any quantity of gold in excess of the quantity specified in sub- s. (5) before the commencement of the Act but acquires after such commencement the ownership thereof whether by succession, intestate or testamentary or otherwise, must make a declaration if as a result of such acquisition the total quantity of gold which comes to be held or possessed or controlled by him exceeds the limits specified. Sub-s. (4) of the section makes it incumbent on all persons who have made declarations either under the Defence of India Rules or the Gold Control Ordinance or under sub-s. (1) to make a further declaration as often as he acquires or parts with the ownership, possession etc. of such gold giving prescribed particulars thereof. Sub-s. (7) makes it obligatory on every licensed dealer or refiner to make a declaration as therein specified. Under sub-s. (8) every declaration required under this Section is to be made in triplicate of which one copy is to be authenticated and signed by the Gold Control Officer and to be returned to the person making the declaration and the copy so returned is to be retained by such person as evidence of the declaration made by him under this section. Under sub-s. (10) a person who acquires or parts with ownership, possession, custody or control of gold after he has made a declaration to endorse within 30 days from the date of such acquisition or parting with of gold in such manner as may be prescribed on the copy of the declaration retained by him and to produce such copy within 7 days from the date of such endorsement before the Gold Control Officer who has to make necessary changes in the register referred to in sub-s. (9) and also in the copy of the declaration kept in his safe custody. Under sub-s. (11) no person shall own or have in his possession, custody or control any quantity of gold which is required to be included in a declaration unless such gold has been included in a declaration or further declaration as the case may be. It is to be noted however that no

restriction has been placed on a pawn broker on receiving articles or ornaments of gold by way of pledge and advancing loans thereon. Chapter XII of the Act deals with entries, search, seizure and arrest for the purposes of the Act. S. 58(1) and (2) empower any Gold Control officer authorised by the Administrator to enter and search any premises, refinery etc. if he has reason to suspect that any provision of the Act has been or is being or is about to be contravened. S. 59 empowers any Gold Control Officer authorised in this behalf by the Administrator to detain, and search any person or thing if he has reason to suspect that any person has secreted about his person or in any other thing any gold in respect of which contravention of the Act is suspected or any document which in his opinion will be useful or relevant to any inquiry or proceedings in relation to the contravention of any provision of the Act. S. 60 deals with the conditions under which a search is to be conducted. S. 66 gives any Gold Control Officer if he has reason to believe that in respect of any gold any provision of this Act has been or is being or is attempted to be contravened, the power to seize such gold along with the package, covering or receptacle or any other goods in which any quantity of such gold has been mixed. S. 68 contains the power of arrest in certain circumstances. Under s. 69 the provisions of ss. 102 and 103 of the Code of Criminal Procedure relating to search and seizure are made applicable as far as possible. Chapter XIII deals with confiscation and penalties. S. 71 which is the opening section of the Chapter runs as follows:-

"(1) Any gold in respect of which any provision in this Act or any rule or order made thereunder has been, or is being, or is attempted to be, contravened, shall be liable to confiscation.

(2) Any package, covering or receptacle (including its other contents) in which any gold liable to confiscation under sub-section (1) is found shall also be liable to confiscation.

(3) Where any gold liable to confiscation under subsection (1) is mixed with other goods in such manner that such gold cannot be separated from those other goods, the whole of such goods shall be liable to confiscation. (4) Any gold which is liable to confiscation under sub-section (1), shall be so liable notwithstanding any change in its form."

S. 72 provides for confiscation of conveyances or animals etc. by means of which any provision of the Act is sought to be contravened. Under s. 73 whenever any confiscation is authorised by the Act, the officer adjudging it may, subject to such conditions as may be specified in the order adjudging the confiscation, give to the owner thereof an option to pay in lieu of confiscation such fine, not exceeding twice the value of the thing in respect of which confiscation is authorised as the said officer thinks fit. Under S. 74 any person who in relation to any gold does or omits to do any act which act or omission would render such gold liable to confiscation under the Act or abets the doing or omission of such an act or is in charge of the conveyance or animal which is liable to confiscation shall be liable to a penalty not exceeding five times the value of the gold or one thousand rupees whichever is more, whether or not such gold has been confiscated or is available for confiscation. Under S. 77 no confiscation made or penalty imposed under the Act is to prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act

or under any other law. Chapter XIV deals with adjudication, appeal and revision. S. 78 indicates the limits of authority of different adjudicating officers. Under S. 79 no order of adjudication of confiscation or penalty is to be made unless the owner of the gold, conveyance or animal or other person concerned is given a notice in writing--

- (i) informing him of the, grounds on which it is proposed to confiscate such gold, conveyance or animal or to impose a penalty; and
- (ii) giving him a reasonable opportunity of making a representation in writing within such reasonable' time as may be specified in the notice against the confiscation or imposition of penalty mentioned therein and if he so desires, of being heard in the matter.

Chapter XV deals with offenses and their trial., S. 85 makes the carrying on of the business of a banker or money lender in contravention of the Act or any rule or order made thereunder punishable with imprisonment for a term which is to be not less than six months but not more than three years and also with fine. The court however may, if satisfied, that the special circumstances of the case so require impose a sentence of imprisonment for a term which may be less than six months. Failure to make a declaration under the Act without any reasonable cause or making a declaration which is either false or which the declarant knows or has reason to believe to be incorrect punishable with imprisonment for a term which may extend to two years and. also with fine. Under S. 91 whoever contravenes any provisions of the Act or any rule or order made thereunder for which no punishment is separately provided in this Chapter (Chapter XV) shall be punished with imprisonment for a, term which may extend to three months or with fine or with both. There are some mis- cellaneous provisions in Chapter XVI. Under S. 99 any person who is in possession, custody or control of any primary gold, article or ornament is to be presumed, unless the contrary is proved, to be the owner thereof.

Mr. Daphtary, learned counsel appearing in support of Writ Petitions 24 and 287 of 1970 limited his challenge mainly to sections 6, 8 .and 16 of the Act and attempted to, show that compliance with all the conditions in form GS III prescribed under rule 4 of the Act was almost an impossibility. The first question to be considered is, whether there is anything in the Act or the rules regarding the filling up of. the form GS III which constituted an unreasonable restriction: on the part of a pawn broker to hold' acquire or dispose of property or carrying on his business of money lending unreasonable within the meaning of Art. 19(1)(f) and (g) of the Constitution not-saved by sub- cis. (5) and (6) thereof. In our vie\* no exception can be taken to the provisions of the Act to which our. attention was drawn by learned counsel for the purpose on this score.' If smuggling- of gold into the country is to be checked by the prevention, of the commission of smuggled gold, into gold articles or ornaments,, there is ...no unreason- ableness, in the State calling upon, all pawn brokers and persons who take pledges or hypothecation of ornaments to furnish declarations so,that the Administrator. and the- Gold- Control Officer may keep an eye on the activities of such,-persons and, if necessary, at any,point of time ask for a return in terms of s. 6 and satisfy himself about the legality of his acts: by inspecting his accounts. It would not be difficult for anybody carrying on or wanting to carry on business lawfully to insist on the pawnor producing the, copy of the declaration

in his possession given to him after authentication by the- Gold Control Officer in terms of sub-s. (8) of s. 16 in order to satisfy himself that there is no contravention of the Act.

S. 16 as is seen is all-embracing and makes it obligatory on every person unless he is exempted under sub-s. (5) thereof to make a declaration of all the gold articles and ornaments in his possession, custody or control. In order that there may not be any uncertainty in the matter of making declarations in certain cases, the Legislature has indicated the persons on whom the burden lay. The requirement of making a declaration as often as a pawn broker acquires ownership, possession, custody or control of gold under sub-s. (4) is to be read with sub-s. (10) and it is enough for a pawn broker to approach the Gold Control Officer with the full and detailed statements of his holding at the end of every month. As such it cannot be said that there is any unreasonable restriction on his holding property or pursuing his business in terms of Art. 19(1) (f) or (g) of the Constitution.

The contention that there being no provision for notice to be given to him in case of any proceedings for confiscation the pawnee may be prejudicially affected without a hearing being given to him has no substance inasmuch as he will be the person presumed to be the owner in terms of s. 99 and the gold can only be seized from his possession or custody. He can appear before the authorities and make his submissions as to why no penal action should be taken against him. There does not however seem any justification for an order of confiscation of gold under s. 71 of the Act merely because of a failure to comply with s. 16 relating to declaration. It is no doubt true that the owner is to be given a hearing in terms of s. 79 and he has a right of appeal under s. 80 but the provision of s. 73 which allows the levy of a fine in lieu of confiscation not exceeding twice the value of the thing in respect of which confiscation is authorised appears to be unduly harsh. In this connection, a reference may be made to s. 18 of the Wealth Tax Act and the penal provisions contained therein. Under the Wealth-tax Act the penalty in case of failure to furnish the return without reasonable cause is a sum equal to two per cent of the tax for every month during which the default continues but not exceeding in the aggregate to 50 per cent of the tax. It will be noticed that the fine there is imposed only on failure to pay the tax but in case of gold in of which no declaration has been made under s. 16 or the factum of pawn of which has not been communicated in to the Administrator, the owner ipso facto becomes liable to pay an unconscionably high penalty. S. 71 therefore appears to place an unreasonable restriction on the right of a person to acquire, hold and dispose of gold articles or gold ornaments. It may be applied indiscriminately and cannot therefore be upheld as saved by cls. (5) and (6) of Art. 19 of the Constitution.

A point was also made that the definition section does not make a clear distinction between an 'article' and an 'ornament'. This seems to be without foundation. The explanation to s. (2)(p) shows that nothing made of gold which resembles an ornament will be deemed to be, an ornament unless the thing (having regard to its purity, size, weight, description or workmanship) is such as is commonly used as ornament in any State. Clearly it is a question of proof as to whether the thing passes as an article or an ornament in a particular State and the difference in the treatment of these two substances in certain provisions of the Act do not fall to be considered. It was argued that compliance with all the conditions laid down in form Gs III under rule 4 of the Act may be impossible in a number of cases. The form contains a schedule for ornaments or articles under

different columns, column 5 being meant for estimated weight and value of gold content and column 6 'purity'. It was urged that where the ornament is made up not only of gold but of other metals and stones, precious or otherwise, it will be impossible either to give a true estimate of the weight and value of the gold contained or the purity of the gold. No doubt there may be some difficulty in some cases but it must be realised that a pawn broker who is asked to advance money on the security of such an article will make a fairly accurate estimate of the weight and value of the gold therein so as to be able to judge for himself how much he can safely advance on the security of that article. He is not called upon to give the exact purity of the gold content in the article. He can only give an estimate of its purity.

The supposed difficulty in the matter of compliance with s. 16 of the Act as regards acquisition or transfer of gold as and when made really does not exist. It would certainly have been onerous and an impossible task for any pawn broker to perform if he had to furnish daily declarations in respect of his transactions had during the day and to get the Gold Control Officer to make an endorsement on his declaration every day. He is at liberty to get it done only once a month and surely it would not be difficult for a person who maintains a true and faithful account of his dealings with his borrowers to prepare a schedule of all these transactions up to a certain date and secure the endorsement of the Gold Control Officer to the alterations in the declaration already authenticated by him. There is no difficulty with regard to primary gold found in the possession of the petitioner in the Writ Petition No.

24. Under s. 8(1) no person can own or have in his possession, custody or control, acquire or agree to acquire ownership, buy, accept or otherwise receive any primary gold except as provided in the Act and the pawn broker or money lender is not such a person.

The next question to which we have to address ourselves is, whether the petitioner in W.P. No. 24 of 1970 had any lawful excuse for not making a declaration before the date of the raid on his. According to him he was required to file his declaration by 30th April, 1969 and the seizure of primary gold and ornaments before that date was not lawful. In this connection Mr. Daphtary drew our attention to the averments in paragraphs 12 and 16 of the petition which have been already referred to. This is however denied in the counter affidavit. Reference was made in the counter affidavit to the previous petitions and it was said that the time limit for filing the declaration of all the ornaments held-by a licensed dealer or refiner was extended up to 28th February 1969 and an undertaking for the purpose was given to this Court with regard to declarations under S. 16(1) and it was. only with regard to the time limit for filing of declarations by licensed dealers or refiners under s. 16(7) that there was an extension of time up to 30th June, 1969. The printed circulars to which our attention was drawn do not show that there was any extension of time with regard to declarations under S. 16(1) beyond 28th February, 1969. Reference to a certain circular addressed only. to Gold Control Officers, to the effect that no steps were to be taken until after 30th April 1969 by Mr. Daphtary. cannot be availed of by the petitioner who was not in a position to assert that the circular had been publicly advertised or that he himself had received any copy of such circular.

Mr. Daphtary also argued that the provision for search as: contained in S. 58(1) which allowed any Gold Control Officer authorised by the Administrator to enter and search any business premises



merely if he had any reason to suspect that any provision of 'the Act was being or was about to be contravened, was. contrary to law and should be struck down. He complained that it would be made an engine of oppression in the hands of any unscrupulous officer if he was minded to do so. He argued that there-:Was no provision corresponding to this in the, Sea Customs Act, 1892 under which- an officer could only search a ;person if he had reason 'to believe and where the person about to be searched could require the officer to take him 'to the nearest magistrate or a Customs Collector. He also drew our attention to the Customs Act, 1962 which envisages search only when the proper officer has "reason to believe" and where searches are further subject to the provisions of the 'Code of Criminal Procedure with respect thereto' It is true that the usual safeguards under the Code of Criminal Procedure are not to be found in this Act except those contained in ss. 102 and 103 of the Code. But that by itself would not be enough to strike down the provision in S. 58. There may be cases where it is necessary for the Gold Control Officer to act with expedition in the matter of search so that the information that he is going to search a premises may not leak out and the only safety in this regard is that the Gold Control Officer' must be authorised by the Administrator in this behalf and he in his turn if he is empowered by the Central Government, may authorise other Government officers to enter and search the premises. In this case the counter affidavit shows that the officer searching had information regarding the contravention of the provisions of the Act and the result of the search showed that huge quantity of gold was lying with the petitioner in respect of which no declaration had been made. It would not be out of place to mention that the Gold Control Act is not the only provision of law where power to search on suspicion has been conferred on an officer. In this connection we may refer to S. 41 of the Madras General Sales Tax Act 1 of 1959 which came up for consideration before this Court in The Commissioner of Commercial Taxes, Board of Revenue, Madras v. Ramkishan Srikishan Jhaver etc.(1).

In Writ Petition No. 587/1970 filed on 4th November 1970 the challenge is made only to s. 16 of the Act which though questioned in Writ Petitions Nos. 282, 407 and 408 of 1969 had not been adjudicated upon by this Court. In the result the contentions raised on behalf of Writ Petitioners except with regard to section 71 cannot be accepted and the provisions of the Act impugned before us except the said section cannot be struck down. Mr. Ayyangar appearing for the appellant in Civil Appeal No. 1613/1970 formulated his objections to the Act in the three, following propositions :-

1. Section 16(1) of the Act was a general provision which did not apply to pawn brokers and money lenders as they were governed by Sections 6, 10 and 28.
2. In any view of the matter Section 16(1) was unreasonable regarding pawn brokers.
3. By reason of the Andhra Pradesh (Andhra Area) Pawn Brokers Act XXIII of 1943 and the Andhra Pradesh (Telangana Area) Money Lenders Act (V of 1949 F.) the field of legislation regarding money lending and pawn brokers so far as the State of Andhra Pradesh was concerned was completely and exclusively occupied by those Acts and inasmuch as the Gold Control Act purported to trench upon those State Acts it was beyond the legislative competence of Parliament.

On the first point learned counsel drew our attention to Section 6 (1) of the Act which has been already referred to and contended that inasmuch as Section 16(1) was a general provision while

Section 6(1) was specially directed towards pawn brokers, the former provision i.e. Section 16(1) was inapplicable to pawn brokers. Our attention was also drawn to Section 28 of the Act under which no licensed dealer could unless authorised by the Administrator so to do carry on business as a money lender or banker on the security of any article or ornament or both in the (1) Civil Appeals 150 to 154/1967 decided on 9th August, 1967.

18-1 S.C. India 71 same premises in which he carried on business as a dealer. in our view Section 16 is not excluded in the case of money lenders or pawn brokers. Any person who comes under the purview of Section 16(1) has to make a declaration unless there is any provision to the contrary in that Chapter. The only provision to the contrary is contained in Sub-Section (5) which permits of exemptions in respect of persons holding gold articles or ornaments up to a specified limit. The provision in Section 6(1) empowering the Administrator to call upon any pawn broker to furnish a return does not do away with his obligation to file a declaration under Section 16(1). Section 6(1) empowers the Administrator to take action in special cases where he thinks it necessary to call upon a money lender to make a return and under Section 6(2) he is empowered to authorise any Gold Control Officer to examine the accounts of such pawn broker. This cannot obviate the requirements of Section 16(1). Counsel argued that there would, be duplication of declaration in respect of pawn brokers if both are complied. No such duplication or difficulty will arise. Every pawn broker will have to file his declaration under Section 16(1) and he would be obliged to make a return only when he is called upon to do so in terms of Section 6. It was argued further that although under Section 16(2) the Legislature had expressly provided for returns being submitted with regard to various kinds of persons, pawn brokers were not included therein and so long as no order prescribing for declarations being filed by them under cl. (m) was made they were under no obligation to file declarations. There is no substance in this contention because sub-section (2) is directed only towards removal of doubts which might be left in the cases of persons specified in Clauses (a) to (1). In the case of pawn brokers no such difficulty or doubt arises. If a number of pawn brokers carry on business in partnership the declaration can be made by any partner of the firm in terms of Clause (f) and if a company carries on business of pawn broking any person in charge of the management of the affairs of the company can make the declaration. There is no substance in the second point either. It was argued that a pawn broker only kept things in his safe custody and it would be very oppressive on him if he had the obligation to make a declaration as often as he got in a gold article under a pledge or parted with it on redemption. Our attention was drawn to a passage in *Mohd Hanif Quareshi v. The State of Bihar*(1) where dealing with the case of ban on the slaughter of cows of all ages and her progeny which included bulls, bullocks, heifers, buffaloes, male, female or calves imposing a great hardship on butchers this Court remarked that the enactment if (1) [1959] S.C.R. 629 at 671.

valid would compel the butchers to make fresh arrangements for the supply of animals which were permitted to be slaughtered for food and said :

"Theoretically it may not be impossible for them to do so, but in practice it is more than likely to cause considerable inconvenience to them and may even involve extra expenses for them....."

The immediate effect of the operation of these Acts is to cause a serious dislocation to the petitioners' business without any compensatory benefit."

We do not think that these observations can apply to the facts of this case. A money lender, specially a pawn broker who enters into a number of transactions of pledge every day has to maintain his account books and he has to record faithfully therein the articles he receives by way of pledge including their weight and general description when he takes them in and making a declaration for the purpose of the Act cannot entail any hardship on such a person. With regard to the last point urged by Mr. Ayyangar it is enough to say that by the Gold Control Act Parliament only sought to control and regulate the production, manufacture etc. use and possession of and the business in gold, gold ornaments etc. It did not seek to disturb or annul the provisions of the State Acts mentioned. The provisions of the State Acts are to have full play and effect so long as the Gold Control Act is not violated.

Mr. Natesan appearing for some interveners raised contentions similar to Mr. Ayyangar's and urged that the Act did not contemplate multiple declarations and it purported to affect only owners of gold articles or ornaments and not pawn brokers. We see no force in this contention. Save that section 71 of the Act is unconstitutional the petitioners in Writ Petitions 24 and 587 of 1970 are not entitled to the reliefs asked for and they will stand dismissed. Civil Appeals Nos. 1613/70 and 1659/70 challenging the vires of the Gold Control Act are also dismissed. The parties will pay and bear their own costs. G. C.