

Supreme Court of India

Manick Chand Paul & Others Etc vs Union Of India And Others on 17 April, 1984

Equivalent citations: 1984 AIR 1249, 1984 SCR (3) 461

Author: V Tulzapurkar

Bench: Tulzapurkar, V.D.

PETITIONER:

MANICK CHAND PAUL & OTHERS ETC.

Vs.

RESPONDENT:

UNION OF INDIA AND OTHERS

DATE OF JUDGMENT 17/04/1984

BENCH:

TULZAPURKAR, V.D.

BENCH:

TULZAPURKAR, V.D.

ERADI, V. BALAKRISHNA (J)

MADON, D.P.

CITATION:

1984 AIR 1249

1984 SCR (3) 461

1984 SCC (3) 65

1984 SCALE (1) 772

ACT:

Gold Control Act 1968, Sections 16(7) 52,79,100 read with rule 3(1) of the Gold Control (Identification of Customers) Rules, 1960, whether violative of the provisions of Articles 14,19(1) (g) 301 and 302 of the Constitution.

Gold Control (Forms, Fees and Miscellaneous Matters) Rules, 1968-Forms GS. 11 and GS 12 as amended are unworkable and require modification Government of India's Letter of Instructions and the Trade Notices withdrawing the facility of sale by licensed traders through their travelling salesmen whether violative Articles 14, 19(1)(g) and 301 of the Constitution.

HEADNOTE:

In Harak Chand Ratan Chand Banthia's case [1970] 1 SCR 479, where the Gold (Control) Act, 1969 and some of its provisions prior to the amendment by Act 26 of 1969 were challenged, the Supreme Court pointed out that even though import of Gold into India had been banned, considerable quantities of contraband gold were finding their way into the country through illegal channels, affecting the national economy and hampering the country's economic stability and progress, that the Customs Department was not in a position

to effectively combat the smuggling over the long borders and coast lines, that, therefore, anti-smuggling measures had to be supplemented by a detailed system of control over internal transactions and that the Gold (Control) Act, 1968 was passed for this purpose. In other words, the several restrictions that have been put on the activities of the traders doing business in gold, gold ornaments and articles of gold, will have to be viewed from the aforesaid perspective. The Court further held the enactment to be within the legislative competence of Parliament and out of the several provisions that were challenged only ss.5(2)(b), 27(2)(d), 27(6), 32, 46, 88 and 100 were invalid. As a result of the aforesaid decisions and the observations made by this Court therein the Act of 1968 was suitably amended by Gold Control (Amendment) Act (26) of 1969. These amended provisions, the Gold Control (Identification of Customers) Rules, 1969, the Gold Control (Forms, Fees and Miscellaneous Matters) Rules 1968 are challenged by the Writ Petitioners as being violative of the provisions of Article 14, 19(1)(g), 301, and 302 of the Constitution. Some of the petitioners including the petitioners in S.L.P. Civil 538 of 1973 have also challenged the Government of India's Letter of instructions and the Trade Notices withdrawing the facility of permitting licensed dealers to send ornaments for sale through their travelling salesmen, on the same grounds.

Dismissing the petitions, the Court

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HELD:1:1, Section 16(7) of the Gold (Control) Act, 1968 as amended is constitutionally valid. [269E, 471B]

1:2. The counter-affidavit of the Union of India not merely furnishes the intelligible classification made between the licensed dealers and non-dealers and non-refiners, but also shows that the classification has a reasonable nexus with the object of the Act and the reasons for denying exemption limits to licensed dealers or refiners are also valid and referable to the object of the Act, namely "to provide, in the economic and financial interests of the community, for the control of 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.," [469F, 470D-E]

While ordinary citizens (non-dealers and non-refiners) are not permitted by law to have any primary gold in their possession a dealer or a refiner is permitted under the law to have unlimited quantity of primary gold in his possession and therefore, it is easy for a dealer or a refiner to acquire smuggled gold and with a view to preventing detection of such gold, to convert the same into ornaments and to claim such ornaments as his personal property. This necessitated a provision for a declaration of all ornaments

and articles, owned, possessed. Held or controlled by them so that they could not claim any clandestinely manufactured ornaments, when detected to be their personal property and that is why it has been provided in s.16(7) that every licensed dealer or refiner should declare all gold articles and ornaments which belong to him or which are in his custody, possession or control, and that is why it has been further provided that the exemption. limits permissible for general public in relation to the requirement of declaration of articles and ornaments should not be available to the dealers and refiners. [469G-H, 470B-D]

1:3. the provision in section 16(7) could not be regarded as unnecessary or one which casts an unreasonable burden on the licensed dealer or refiner. The reasons for introducing the provision justify its enactments, if the objects of the Act are to be achieved. On the aspect of casting unreasonable burden on the dealer refiner, firstly, the burden on the dealer or refiner is the same as that which has been cast on a non-dealer (individual or family) whenever the latter comes to own, possess, hold or have under his control articles or ornaments of gold in excess of the exempted limit; secondly visits of guests and relations (including married daughters and sisters) on festive occasions and requests proceeding from them to the house-keeper to keep their ornaments in safe custody during their stays with him, which are ordinary incidents in life, are common to licensed dealers or refiners and non-dealers and therefore the requirement of making a declaration under section 16(7) does not cast any additional burden on him; and thirdly under section 16(7) it is provided that the licensed dealer or refiner shall make a declaration "in accordance with the provisions of this section" which means he has to do so within 30 days of his acquiring the ownership, possession, custody or control of such gold. With such time limit being provided the burden cast cannot be said to be unreasonable, especially when the provision is found to be necessary to carry out the objectives of the Act,

[470E-H, 471A-B]

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2:1. Section 52 of the Gold (Control) Act, 1968 as amended does not suffer from the vice of excessive delegation of the power and therefore the said provision is constitutional. [472G-H]

2:2. It is true that section 52 does not contain any guide-lines or principles which would regulate the exercise of the power of the Administrator in the matter of grant or refusal of approval to change in the partnership of a firm but in the exercise of the powers conferred by s.114 read with s.27(6) of the Act the Central Government has framed the 'Gold Control (Licensing of Dealers) Rules 1969' and Rule 2 enlists matters to which regard is to be had before issuing a licence and Rule 3 indicates the conditions on the

fulfillment of which a licence could be renewed. It is true that these Rules, which deal with licensing of dealers and renewal of their licences, in terms do not cover a case of a change in the partnership of a firm and the approval to be accorded thereto by the Administrator but in a sense a case of a change occurring in the partnership of the firm and the occasion to apply for grant of approval thereto by the Administrator would be a case of seeking renewal of the licence by the firm in which a change has occurred either by death or retirement of a partner or as a result of reconstitution of the firm and therefore to such a case these Licensing Rules, particularly Rule 3, must and will apply and these rules, in so far as they are applicable to the situation, afford the necessary guide-lines on the basis of which approval to the change could be given or refused. Obviously, if the change in the firm involves introduction of a new partner into the firm these guide-lines under Rules 2 and 3 will play an important part in the matter of according or refusing to accord the approval but if the change nearly involves alteration in the share-capital or profit sharing basis amongst the self-same partners who continue the firm the approval would be a matter of formality, in view of the Licensing Rules, 1969 which must apply, it cannot be said that any unfettered or unregulated discretion has been conferred upon the Administrator in the matter of grant or refusal of approval to a change in the partnership of a firm. [471H, 472A-E]

2:3. On the aspect of absence of a provision from appeal, a remedy by way of an appeal to correct any erroneous order that may be passed under section 52 has been provided for by Notification dated 26 August, 1983 issued by the Administrator under sec. 4(4) of the Act whereunder the exercise of the power under sec. 52 has been delegated to the Deputy Collector of the Centre Excise with the result that an appeal against his order under s 52 will lie to the Collector of Centre Excise under s.80 of the Act. [472E-G]

3. The power to grant extension under section 79 of the gold (Control) Act as amended is not arbitrary and does not suffer from lack of guidelines. Of course two in built safeguards will have to be and must be read into the provision. Since every extension involves civil consequence in that the owner's or the concerned person's right to have the seized gold returned to him is adversely affected by being postponed, before granting any extension he must be given a notice and an opportunity to make representation against the proposed extension. 474H,475A-B]

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It is true that s.79 does not expressly mention the guidelines on the basis of which the power to grant extension of the initial period of six months is to be exercised but if regard is had to the provisions dealing with Seizure (s.66), Confiscation (s.71), Adjudication (s.78) and Giving of Opportunity (s.79) the Policy of the

Legislature becomes quite clear that whereas the power to seize can be exercised by any Gold Control Officer if he has reason to believe" that in respect of any gold any provision of the Act has been or is being or is attempted to be contravened the confiscation of gold can take place only if actual contravention has taken place or is apprehended or is attempted and such confiscation can be adjudged or ordered without limit by a Gold Control Officer not below the rank of a Collector of Central Excise or of Customs and subject to such limits as may be specified in that behalf by such other Gold Control officer not below the rank of a Superintendent of Central Excise as the Central Governments may authorise in that behalf; but the power to grant extension of the initial period of six months has been conferred under the second proviso to s.79 only upon a superior officer, namely the Collector of Central Excise or of customs, Further under the second proviso to s.79 the owner or the person concerned has been given the right to have the seized gold returned to him where no notice proposing confiscation is served upon him within a period of six months from the date of the seizure of the gold which shows that the Legislature clearly intended that ordinarily the investigation in connection with the seized gold is expected to be over within six months; but only in cases where such investigation may not be completed owing to some genuine or bonafide difficulties the Legislature gave under the proviso power to the Collector to extend that time. In other words Collector is expected to pass extension orders neither mechanically nor as a matter of routine but only on being satisfied that facts or circumstances exist which indicate that the investigation could not be completed for bona fide reasons within the initial period of six months. Such guidelines would be implicit if the extra-ordinary power to effect seizure and adjudge confiscation conferred by the Act is considered in just apposition with the right conferred upon the owner or the person concerned to have the seized gold returned to him normally at the expiry of the initial period of six months. Presumably, the ramifications of any gold smuggling activity which are usually extensive and complicated must have led the Legislature not to impose a limit or ceiling on the power to grant extension but if the above guidelines are to govern every extension that may be granted then mere absence of a limit or ceiling will not be of any consequence. [473H,474A-G]

Assistant Collector of Customs v. Charan Das Malhotra,[1971] 3 S.C.R. 802; applied.

4:1 Section 100 of the Gold Control Act read with Rule 3(1) of the Gold Control (Identification of Customers) Rules, 1968 is constitutionally valid and does not restrict the licensed dealers to carry on their business including their inter-state trade.[478F-G]

4:2. Section 100 of the Act as it originally stood prior to its amendment in 1969 imposed a statutory

obligation upon a dealer to take all reasonable steps to satisfy himself about the identity of the person from whom gold was bought but it did not specify the nature of steps which a dealer was supposed to take

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for such satisfaction and therefore this Court in Harakchand Ratanchand Bantia's case took the view that the obligation cast thereunder was uncertain and incapable of proper compliance and therefore the section was unconstitutional on the ground that it imposed an impossible and unreasonable burden. In the light of this decision, s.100 was appropriately amended and the 'Gold Control (Identification of Customers) Rules, 1969 were framed and particularly Rule 3(1) now prescribed the several steps one or more of which have to be taken by the licensed dealer to satisfy himself as to the identity of the Customer from whom he proposes to accept, buy or otherwise receive any gold, 477E-G]

4:3. From the mere fact that most of the customers who come from villages as also from outside their own State prefer to receive payments in cash in lieu of gold sold and are not prepared to receive payments by crossed cheques for the reason that they do not have any bank account or their apprehension that the said cheques may not be encashed, it cannot be said compliance is either incapable or impossible even from a practical or commercial point of view. Moreover, the provisions contained in sub-rule (2)(a) of Rule 3 is applicable in all cases where gold is accepted bought or otherwise received by the dealer irrespective of whether the customer is personally known to the dealer or not known to him. The purpose served by sub-rule (2)(a) of Rule 3 is entirely different from the purpose served by one or more of the steps that are required to be taken by a dealer under sub-rule (1) of Rule 3 and therefore, it cannot be said that because of the provisions contained in sub-rule 2(a) the steps contemplated under sub-rule (1) are unreasonable. [478A-B,EF]

Bihar State Bullion Merchants, Assn. & others v. Union of India and others, A.I.R. 1971 Pat. 240; approved.

5. The amended prescribed forms Nos.G.S.11 and G.S.12 required to be maintained under section 55 of the Gold Control Act read with Rule 11 of the Gold control (Forms Fees, and Miscellaneous Matters) Rules, 1968 brought into force with effect from 31st October, 1975 do not provide, as conceded by the Government, for all the situations under which gold would be received by him in his possession or custody and keeping the account of their gold in accordance with the said Forms would give rise to anomalies and the dealer would not be able to discharge his statutory duty of disclosing a true and complete account of the gold in his possession or custody.[478H, 479G-H]

Therefore, the Court directed the Administrator to look into these grievances and remedy the same by taking appropriate action and hope that in the meanwhile no action

penal or otherwise would be taken against licensed dealers for failure to maintain accounts in the amended Forms G,S.11 and G.S. 12. [480C-D]

6. Section 27(7)(b) of the Gold Control Act, which confines a licensed dealer to carry on business as such dealer to the premises specified in his licence, being regulatory in character does not violate any of his rights under the constitution. The Letter of Instructions or the trade Notices does not prevent or stop inter State trade but were issued with a view to prevent the several malpractices that were indulged in while availing of the facility of hawking ornaments through travelling salesmen. [481C-F]  
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JUDGMENT:

ORIGINAL JURISDICTION: Writ Petitions Nos. 918-953, 1159-1186 of 1977, 88 of 1973, 107, 664 & 575 to 618 of 1973.

(Under Article 32 of the Constitution of India) WITH Special Leave Petition (Civil No. 538 of 1973 (From the Judgment and Order dated 24th July. 1972 of the Punjab and Haryana High Court in C.W.No. 1221 of 1972) A.K.Sen and G.S. Chatterjee for the Petitioners in WP. 918 and 953/77.

Gobindas, G.S. Chatterjee and D.P. Mukherjee for the Petitioners in W.Ps. Nos. 1159-86 of 1977.

Dr. Y.S. Chitale, Mrs. A.K. Verma, R.N. Banerjee and D.N. Mishra for the Petitioners in WP. No. 88 of 1973 & WP. No.107/73.

D.N. Mishra for the Petitioners in WPs. 564, 575-618/73 and (Civil) No. 538/73.

Ms. A. Subhashini for the Respondents in WPs. 918- 953/77, SLP 1159-86 of 1977.

Abdul Khadder, D. Goburdhan for the Respondents in WP D. Goburdhan for the Respondents.

The Judgment of the Court was delivered by TULZAPURKAR. J. By these writ petitions, the petitioners who are licensed dealers, are challenging the constitutional validity of the Gold (Control) Act, 1968 and in particular the provisions contained in ss. 2(p), 16, 27 (as amended), 44, 48, 52, 79 and 100 (as amended) and the Gold Control (Forms, Fees and Miscellaneous Matters) Rules, 1968 (as amended in 1975/1976) and the Gold Control (Identification of Customers) Rules, 1969 as being violative of their fundamental rights under Arts. 14 and 19(1)(g) and are seeking suitable directions restraining the respondents from giving effect to any of those provisions, Some of the petitioners (including the petitioner in S.L.P. (Civil) No. 538 of 1973) are challenging the Government of India's Letter of Instructions and the Trade Notices withdrawing the facility of permitting licensed dealers to send ornaments for sale through their travelling salesmen as being violative of the constitutional guarantee under Art. 301 as also their fundamental rights under Arts. 14 and 19(1)(g) of the

## Constitution.

At the outset we would like to observe that the several grounds of challenge will have to be considered in the background of two things: (a) the object with which the Act was enacted and (b) this Court's decision and the observations made by it in Harakchand Ratanchand Banthia's(1) case where the Gold (Control) Act and some of its provisions prior to its amendment by Act 26 of 1969 were challenged. The Long Title to the Act shows that it was put on the Statute Book with a view ("to provide, in the economic and financial interests of the community, for the control of 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.") In Harakchand Banthia's case this Court has further pointed out that even though import of Gold into India had been banned, considerable quantities of contraband gold were finding their way into the country through illegal channels, affecting the national economy and hampering the country's economic stability and progress, that the Customs Department was not in a position to effectively combat the smuggling over the long borders and coast lines, that, therefore, anti-smuggling measures had to be supplemented by a detailed system of control over internal transactions and that the Gold (Control) Act, 1968 was passed for this purpose. In other words, the several restrictions that have been put on the activities of the traders doing business in gold, gold ornaments and articles of gold, will have to be viewed from the aforesaid perspective. We might also mention that in Harakchand Banthia's case the enactment (prior to its amendment in 1969) had been challenged not merely on the ground of legislative incompetence on the part of the Parliament but several of its provisions were also challenged on the ground that the same were in violation of the petitioners fundamental rights under Arts. 14 and (1)(f) & (g). This Court held the enactment to be within the legislative competence of Parliament and out of the several provisions that were challenged only ss. 5(2)(b), 27(2) (d) 27(6), 32,46,88 and 100 were held to be invalid. As a result of the aforesaid decision and the observations made by this Court therein the Act of 1968 was suitably amended by Gold Control (Amendment) Act (26) of 1969). It is the provisions of the Act as amended in 1965 that are being challenged by the petitioners before us and we may state that though a large number of provisions have been made the subject of challenge in the writ petitions, at the hearing only some provisions were selected against which the challenge was pressed before us and we propose to deal with only those provisions.

The first provision that has been challenged is s. 16(7) of the Act which provides:

"Every licensed dealer or refiner shall make a declaration in accordance with the provisions of this section in relation to any gold owned, possessed, held or controlled by him, in any capacity other than the capacity of a licensed dealer or refiner and the provisions of sub-s.(5) shall not apply to such gold".

The requirement of making a declaration under this provision is in respect of any gold owned, possessed, held or controlled by a licensed dealer or refiner otherwise than in his capacity as a licensed dealer or refiner and the exemption granted to a non dealer in respect of articles and ornaments of gold, total weight whereof does not exceed 2,000 gms. in the case of an individual and 4,000 gms. in case of a family in the matter of making a declaration under sub-sec (5) is not



applicable. Counsel for the petitioners challenged this provision on two ground: (a) it is discriminatory under Art. 14 and (b) it imposes unreasonable restriction on licensed dealers and is violative of Art. 19(1)(g). It was pointed out that every licensed dealer is required to furnish, under s. 56, returns in I described form as to the quantity, description and other prescribed particulars of gold owned, possessed, held or controlled by him as such dealer and the aforesaid requirement of making a declaration in respect of any other gold owned, possessed, held or controlled by him as non-dealer is an additional requirement and while prescribing such additional requirement the exemption under s. 16(5) which is available to non-dealers (individuals and families) has been denied to him and according to counsel the classification made is not based on any intelligible differentia having any nexus to the object sought to be achieved by the Act; in other words, every licensed dealer in his capacity as a non-dealer is subjected to discriminatory treatment. Secondly, counsel urged that imposing such a requirement on a licensed dealer to make declarations on every occasion in respect of any quantity of gold coming in his possession or custody as an individual or a member of a family amounts to putting an unnecessary and unreasonable burden on him and the requirement may at times become impossible to comply with; counsel elaborated his submission by giving an example that if guests or relations, particularly married daughters and sisters visit the residence of a gold dealer for a short stay on festive occasions and request him, as it frequently happens in normal course of events, to keep their ornaments in safe custody during their stay he has to oblige them, but in terms of the requirement of s. 16(7) the dealer has to make a declaration in respect of such gold which has come in his custody or possession and to require him to do so on every occasion is to cast unreasonable burden on him amounting to unreasonable restriction especially as non-compliance there entails penal consequences and therefore the provision must be regarded as unreasonable and arbitrary.

In our view neither of the contentions has any force. As regards the attack under Art. 14, sufficient material has been placed before us in the counter affidavit of Shri K.S. Venkataramani, Deputy Secretary, Ministry of Finance (filed in W.P. Nos. 918-953 of 1977) showing how the classification made between the two categories in the context of making a declaration under s. 16 in relation to gold owned, possessed, held or controlled by them is based on intelligible differentia having a nexus to the object of the Act. In para 5 of the counter affidavit it has been pointed out that while ordinary citizens (non-dealers and non refiners) are not permitted by law to have any primary gold in their possession, a dealer or a refiner is permitted under the law to have unlimited quantity of primary gold in his possession and therefore, it is easy for a dealer or a refiner to acquire smuggled gold and with a view to preventing detection of such gold, to convert the same into ornaments and to claim such ornaments as his personal property. It is further poin-

ted out that it had been repeatedly observed, that licensed dealers in gold, when found in possession of stocks of ornaments in excess of those entered in the prescribed accounts. Often took the plea that these represented their personal property and it was further noticed that they kept the ornaments manufactured by them clandestinely at their residences and at other places and when such stocks were detected these were claimed as their personal property; it therefore became necessary to provide for a declaration of all ornaments and articles owned, possessed, held or controlled by them so that they could not claim any clandestinely manufactured ornaments, when detected, to be their personal property and that is why it has been provided in s. 16(7) that every licensed dealer or

refiner should declare all gold articles and ornaments which belong to him or which are in his custody, possession or control, and that is why it has been further provided that the exemption limits permissible for general public in relation to the requirement of declaration of articles and ornaments should not be available to the dealers and refiners. The aforesaid materials in the counter-affidavit not merely furnishes the intelligible differentia for the classification made but also shows that the classification has a reasonable nexus with the object of the Act and the reasons for denying the exemption limits to licensed dealers or refiners are also valid and referable to the object of the Act.

As regards the second ground of challenge it is difficult to appreciate how the provision could be regarded as unnecessary or one which casts an unreasonable burden on the licensed dealer or refiner. In fact the reasons for introducing the provision as indicated above justify its enactment if the objects of the Act are to be achieved. On the aspect of casting unreasonable burden on the dealer or refiner it must in the first place be observed that the burden on the dealer or refiner is the same as that which has been cast on a non-dealer (individual or family) whenever the latter comes to own, possess, hold or have under his control articles or ornaments of gold in excess of the exempted limit. Visits of guests and relations (including married daughters and sisters on festive occasions and requests proceeding from them to the house- keeper to keep their ornaments in safe custody during their stays with him. which are ordinary incidents in life, are common to licensed dealers or refiners and non-dealers and there is no reason to suppose that the requirement of making a declaration under s. 16(7) casts any additional burden on him than on a non-dealer when he has in his possession or custody articles and ornaments in excess of the exemption limit. Moreover, under s.16(7) it is provided that the licensed dealer or refiner shall make a declaration "in accordance with the provisions of this section" which means he has to do so within 30 days of his acquiring the ownership, possession, custody or control of such gold. With such time limit being provided the burden cast cannot be said to be unreasonable, especially when the provision is found to be necessary to carry out the objectives of the Act. Having regard to the above discussion, the challenge to the constitutionality of s. 16(7) must fail.

The next provision challenged is sec. 52 of the Act which provides for licence issued to a firm becoming invalid if there is any change in the partnership of the firm. That section runs thus:-

"52. Where any firm has been licensed under this Act to carry on business as dealer or refiner, such licence shall, notwithstanding anything contained in this Act, become invalid on and from the date on which there is a change in the partnership of such firm, unless such change in the partnership has been approved by the Administrator".

Counsel for the petitioners contended that change in partnership is a normal and usual thing that occurs when business is carried on by a firm and such change may arise on account of death or retirement of a partner or reconstitution of the firm but the above provision imposes an unreasonable restriction in so far as it provides that the licence of a firm shall become invalid on and from the date on which there is a change in the partnership of such firm unless the change has been approved by the Administrator. According to counsel the restriction imposed is excessive and what

is more no guide-lines or principles are laid down on the basis of which approval to a change may or may not be given by the Administrator; besides there is no appeal or other corrective machinery provided against an adverse order of the Administrator refusing approval. Counsel therefore, urged that this provision clearly suffers from the vice of excessive delegation of legislative power and is liable to be declared unconstitutional.

It is true that sec. 52 does not contain any guide- lines or principles which would regulate the exercise of the power of the Administrator in the matter of grant or refusal of approval to a change in the partnership of a firm but in the exercise of the powers conferred by sec.114 read with sec. 27 (6) of the Act the Central Government has framed the 'Gold Control (Licensing of Dealers Rules 1969' and Rule 2 enlists matters to which regard is to be had before issuing a licence and Rule 3 indicates the conditions on the fulfillment of which a licence could be renewed. It is true that these Rules, which deal with licensing of dealers and renewal of their licences, in terms do not cover a case of a change in the partnership of a firm and the approval to be accorded thereto by the Administrator but in a sense a case of a change occurring in the partnership of the firm and the occasion to apply for the grant of approval thereto by the Administrator would be a case of seeking renewal of the licence by the firm in which a change has occurred either by death or retirement of a partner or as a result of reconstitution of the firm and therefore to such a case these Licensing Rules, particularly Rule 3, must and will apply and these Rules, in so far as they are applicable to the situation, afford the necessary guide-lines on the basis of which approval to the change could be given or refused. Obviously, if the change in the firm involves introduction of a new partner into the firm these guide-lines under Rules 2 and 3 will play an important part in the matter of according or refusing to accord the approval but if the change nearly involves alteration in the share-capital or profit sharing basis amongst the self-same partners who continue the firm the approval would be a matter of formality. In view of the Licensing Rules, 1969 which must apply it is difficult to accept the contention that any unfettered or unregulated discretion has been conferred upon the Administrator in the matter of grant or refusal of approval to a change in the partnership of a firm. On the aspect of there being no appeal or other corrective machinery provided against an adverse order of refusing approval that may be passed under this section it may be stated that Counsel for the respondents produced before us copy of a (Notification dated 26th August, 1963 issued by the Administrator under sec.4(4) of the Act whereunder the exercise of the power under sec. 52 has been delegated to the Deputy Collector of Central Excise with the result that an appeal against his order under sec. 52 will lie to the Collector of Central Excise under sec.80 of the Act. In other words, a remedy by way of an appeal to correct any erroneous order that may be passed under sec.52 has been provided for. In this view of the matter it is difficult to accept the contention that s. 52 suffers from the vice of excessive delegation of legislative power or for that reason the said provision is unconstitutional. The challenge to that section therefore, has to be rejected.

The next provision that has been challenged is s.79 read with the second proviso thereto. Section 79 provides that no order of confiscation of any gold, in respect whereof contravention of any provision of the Act or any rule or order made thereunder has occurred or is apprehended or attempted, shall be made unless the owner of such gold has been given a notice in writing informing him of the grounds on which it is proposed to confiscate such gold and is further given a reasonable opportunity of making a representation in writing against the proposed confiscation and if he so

desires, of being heard in the matter; and the second proviso which is material runs thus:

"Provided further that where no such notice is given within a period of six months from the date of the seizure of the gold, or such further period as the Collector of Central Excise or of Customs may allow, such gold shall be returned after the expiry of that period to the person from whose possession it was seized."

Counsel for the petitioners contended that the section does not provide for any guidelines or principles regarding the conditions and circumstances governing the grant of further extension of the initial statutory period of six months on the expiry of which, in the absence of extension, the owner or the person from whose possession the gold has been seized is entitled to have the seized gold returned to him; furthermore, there is no limit or ceiling over the period for which further extension may be granted. In contrast, counsel pointed out that in parallel legislation like the proviso to sec. 110(2) of the Customs Act, 1962 such limit or ceiling is laid down by providing that the initial period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months; moreover the words "on sufficient cause being shown" that occur in the Customs Act are absent here. Counsel, therefore, urged that in the absence of any guidelines and in the absence of any limit over the period of extension that could be granted, the provision (s.79 read with second proviso) will have to be regarded as conferring an arbitrary power and is unreasonable and hence violative of Arts. 14 and 19(1)(g) of the Constitution.

It is true that s. 79 does not expressly mention the guidelines on the basis of which the power to grant extension of the initial period of six months is to be exercised but if regard is had to the provisions dealing with Seizure (sec. 66) Confiscation (sec. 71), Adjudication (sec. 78) and Giving of opportunity (sec. 79) the policy of the Legislature becomes quite clear that whereas the power to seize can be exercised by any Gold Control Officer if he has "reason to believe" that in respect of any gold any provision of the Act has been or is being or is attempted to be contravened the confiscation of gold can take place only if actual contravention has taken place or is apprehended or is attempted and such confiscation can be adjudged or ordered without limit by a Gold Control Officer not below the rank of a Collector of Central Excise or of Customs and subject to such limits as may be specified in that behalf by such other Gold Control Officer not below the rank of a Superintendent of Central Excise as the Central Government may authorise in that behalf; but the power to grant extension of the initial period of six months has been conferred under the second proviso to s.79 only upon a superior officer, namely, the Collector of Central Excise or of Customs. Further under the second proviso to s. 79 the owner or the person concerned has been given the right to have the seized gold returned to him where no notice proposing confiscation is served upon him within a period of six months from the date of the seizure of the gold which shows that the Legislature clearly intended that ordinarily the investigation in connection with the seized gold is expected to be over within six months; but only in case where such investigation may not be completed owing to some genuine or bonafide difficulties the Legislature gave under the proviso power to the Collector to extend that time. In other words the Collector is expected to pass extension orders neither mechanically nor as a matter of routine but only on being satisfied that facts or circumstances exist which indicate that the investigation could not be completed for bona fide reasons within the initial period of six months. Such guidelines would be implicit if the extraordinary power to effect seizure and adjudge

confiscation conferred by the Act is considered in juxtaposition with the right conferred upon the owner or the person concerned to have the seized gold returned to him normally at the expiry of the initial period of six month. Presumably, the ramifications of any gold smuggling activity which are usually extensive and complicated must have led the Legislature not to impose a limit or ceiling on the power to grant extension but if the above guidelines are to govern every extension that may be granted then mere absence of a limit or ceiling will not be of any consequence.

It is, therefore, not possible to accept the contention that the power to grant extension is arbitrary or suffers from lack of guide-

lines. Of course two inbuilt safeguards will have to be and must be read into the provision. Since every extension involves civil consequences in that the owner's or the concerned person's right to have the seized gold returned to him is adversely affected by being postponed, before granting any extension he must be given a notice and an opportunity to make representation against the proposed extension. In *Asstt. Collector of Customs v. Charam Das Malhotra*,<sup>(1)</sup> a case under sec. 110(2) proviso of the Customs Act, 1962 this Court has taken the view that such opportunity is necessary, not merely on the ground that the proviso contains the words "upon sufficient cause being shown" but also on the ground that the civil right of the concerned person to the restoration of the goods on the expiry of the period whether initial or extended is affected. Secondly since the Collector's decision or order granting extension of time is appealable under sec. 81(2) at the instance of the Administrator, who could be moved by the aggrieved person, and in any case could be challenged by the aggrieved person in an appeal against the order of confiscation every order granting extension must record reasons for it as otherwise the appeal will be ineffective. In other words the power to extend the initial period or the extended period must be exercised subject to the observance of the aforesaid two safeguards. In view of the above discussion it is clear that the challenge to s. 79 and the second proviso thereto has to fail.

The next provision challenged is s. 100 of the Act as amended) read with Rule 3(1) of the 'Gold Control (Identification of Customs) Rules 1969' on the ground that the said provision is incapable of compliance in a practical sense and from a commercial point of view and has the effect of running the business of the petitioners and since the said Rule 3(1) unreasonably restricts the right of the petitioners to carry on their business including their inter state trade the same is violative of Art.19(1)(g) 301 and 302 of the Constitution. Section 100 as amended by the Amending Act 26 of 1969 provides for certain precautions to be taken by a licensed dealer before acquiring any Gold. It runs thus:

"100(1) Every licensed dealer or refiner or certified goldsmith, as the case may be, shall, before accepting, buying or otherwise receiving any gold from any person, take such steps as are specified by the Central Government by rules made in this behalf, to satisfy himself as to the identity of the person from whom such gold is proposed to be accepted bought or otherwise received by him."

The Gold Control (Identification of Customers) Rules framed by the Central Government in exercise of the powers conferred under sec. 114 read with sec. 100(1) of the Act provide for the several steps,

one or more of which have to be taken by the licensed dealer to satisfy himself as to the identity of the customer from whom he proposes to accept, buy or otherwise receive any gold. Under Rule 3(1) it has been provided that except in cases where the customer is personally known to the licensed dealer or cases where transactions are put through by means of crossed cheques the licensed dealer shall take one or more of the following steps to satisfy himself as to the identity of the customer, namely:-

(1) Introduction or identification of the customer by a person who is either personally known to the licensed dealer or whose identity has been established to the satisfaction of the licensed dealer, (2) The production of any document which establishes the identity of the customer, such as-

(a) a valid passport held by the customer,

(b) a valid identity card issued to the customer by the postal authorities,

(c) a valid identity card issued by the Secretariat of Parliament or of any Legislature in a State or Union Territory;

(d) a valid identity card issued to the customer by his employer if such employer is a local authority or a body corporate or Government or a corporation owned or controlled by Government,

(e) a motor driving licence held by the customer as a paid employee;

(f) an identity card issued by the Gold Control Officer.

Sub-rule (2) of Rule 3 which is also material runs thus:-

(2) Before accepting, buying or otherwise receiving any gold from a customer, a licensed dealer shall, in every case:-

(a) obtain on the voucher, the signature and full postal address of the customer,

(b) where the licensed dealer's satisfaction as to the identity of the customer is based on the identification made by another person, obtain on the voucher the signature and full postal address of such identifier, and where such identifier is not personally known to him, he shall also note, on the voucher, the particulars of the documents on the strength of which he has been satisfied as to the identity of such identifier,

(c) where the licensed dealer's satisfaction as to the identity of the customer is based on any other document, note on the voucher, the date and other particulars of such document.

It may be stated at the outset that sec. 100 as it originally stood prior to its amendment in 1969 imposed a statutory obligation upon a dealer to take all reasonable steps to satisfy himself about the identity of the person from whom gold was bought but it did not specify the nature of steps which a dealer was supposed to take for such satisfaction and therefore this Court in Harakchand Ratanchand Bantia's case took the view that the obligation cast thereunder was uncertain and incapable of proper compliance and therefore the section was unconstitutional on the ground that it imposed an impossible and unreasonable burden. In light of this decision, s. 100 was appropriately amended and the 'Gold Control (Identification of Customers) Rules, 1969, were framed and particularly Rule 3(1) now prescribes the several steps one or more of which have to be taken by the licensed dealer to satisfy himself as to the identity of the customer from whom he proposes to accept, buy or otherwise receive any gold.

A two-fold submission challenging the amended s. 100 read with Rule 3(1) was made by counsel for the petitioners. In the first place it was submitted that the steps indicated in Rule 3(1) one or more of which are required to be taken by the licensed dealer to satisfy himself about the identity of the customer are incapable or impossible of compliance in a practical sense and from a commercial point of view. The precise argument was that most of the customers of the petitioners come from villages as also from outside their own State and it becomes extremely difficult for the dealer to demand from them production of either a passport or identity card specified in the Rules and further that most of the customers prefer to receive payments in cash in lieu of gold sold and are not prepared to receive payments by crossed cheques since many of them do not have bank accounts and even the dealers equally have the apprehension that the cheques issued by the customers may not be encashed. Secondly, it was urged that since sub-rule (2)(a) of Rule 3 provides for sufficient safeguards regarding the identity of the customers when the dealer is required to obtain their signatures on the vouchers and the full address of the customer and or of the identifier, the insistence upon a dealer to take steps as contemplated under sub-rule (1) of Rule 3 would be unreasonable. We are not impressed by either of the submissions. The grievances articulated under the first submission do not at all indicate that compliance of one or more of steps indicated in Rule 3(1) is either incapable or impossible even from a practical or commercial point of view. Moreover, the provision contained in sub-rule (2)(a) of Rule 3 is applicable in all cases where gold is accepted bought or otherwise received by the dealer irrespective of whether the customer is personally known to the dealer or not known to him. The purpose served by sub-rule (2)(a) of rule 3 is entirely different from the purpose served by or more of the steps that are required to be taken by a dealer under sub-rule (1) of Rule 3 and therefore, it cannot be said that because of the provision contained in sub-rule (2)(a) the steps contemplated under sub-rule (1) are unreasonable. The validity of the amended sec. 100 read with Rule 3(1) must therefore be upheld. We were informed that a similar contention challenging the said provision (amended sec. 100 read with sub-rule (1) of Rule 3) was raised before the Patna High Court in the case of Bihar State Bullion Merchants' Asstt. & Ors. v. Union of India & Ors.(1) and the same was rejected. We approve of that decision. Lastly the petitioners as licensed dealers seem to have some grievance against the amended prescribed Forms Nos. G.S. 11 and G.S. 12 required to be maintained under s. 55 of the Act read with Rule 11 of the Gold Control (Forms, Fees and Miscellaneous Matters) Rules, 1968, Forms which have been brought into force with effect from 31st October, 1975. Under s. 55 of the Act every licensed dealer is required to keep, in such form and in such manner as may be prescribed, a true and complete

account of the gold owned, possessed, held, controlled, bought or otherwise acquired or accepted or otherwise received or sold, delivered, transferred or otherwise disposed of by him in his capacity as such licensed dealer and Rule 11 provides that the account of gold shall be kept in Forms G.S. 11 and G.S. 12. It appears that prior to the amendment of the Rules on 31st October, 1975 the licensed dealer was required to keep the account of gold in prescribed Forms No. G.S. 10 and G.S. 11 and G.S. 12 but after the amendment Form No. G.S.10 was completely deleted while new amended Form G.S. 11 and G.S. 12 were prescribed and according to the petitioners the deletion of old Form No. G.S.10 and insertion of the new Forms G.S. 11 and G.S. 12 has resulted in the licensed dealer being prevented from maintaining a true and correct account of the gold owned, possessed, held, controlled, etc. by him. The precise grievance is that the new prescribed Forms G.S. 11 and G.S. 12 do not provide for all situations under which gold would be received by him in his possession or custody and keeping the account of their gold in accordance with the said Forms would give rise to anomalies and the dealer would not be able to discharge his statutory duty of disclosing a true and complete account of the gold in his possession or custody. For instance, it was pointed out that old Form G.S. 10 contained a comprehensive column No. 2 which required the dealer to indicate "name and address of the person from whom (gold was) received or to whom (gold was) sold", which Form under the amended Rules has been deleted, while the new amended Form No. G.S. 11 requires the licensed dealer to indicate in column No. 3 only two categories of persons from whom gold is received, namely, (a) Seller's name and full address or (b) Dealer's name and Licence No. and that there is no provision in the Form to account for the receipts of gold by the licensed dealer from artisans or certified gold- smiths; further. Form No. G.S. 11 does not provide for accounting the receipts of samples and old ornaments intended to be converted into new ornaments from the customers. Counsel further pointed out that in the amended Form No. G.S. 11 column 11 requires a dealer to record the weight in terms of pure gold which requirement cannot be satisfied by any dealer unless and until the gold ornaments received from the customers are broken and refined. It was further pointed out that in the old Form No. G.S.11 column No.12 was provided to record the loss of weight ('ghat') which would necessarily follow an account of remaking, melting, refining and polishing of new ornaments from old ornaments received by the dealer from his customers but in the amended new Form G.S. 11 there is no such column where this 'ghat' (loss of weight) could be recorded. Similarly other deficiencies in the amended Form G.S.12 were pointed out by counsel for the petitioners. In brief the contention has been that the old Forms were better but the new Forms lack in providing adequate or proper columns with the result that by filing these a true and complete account of gold owned or possessed or held or controlled, etc. by the dealer could not be reflected. We find some substance in the aforesaid grievance made by the petitioners and when these aspect of the amended Forms were put to the counsel for the Respondents, he fairly conceded that either the new Forms will have to be suitably revised or the old Forms could again be revived. We, therefore, direct the Administrator to look into these grievances and remedy the same by taking appropriate action and hope that in the mean while no action penal or otherwise would be taken against licensed dealers for failure to maintain accounts in the amended Forms G.S.11 and G.S.12 Some of the petitioners have challenged Government of India's Letter of Instructions issued to all the Collectors of Central Excise through out the country directing them to withdraw the facility till then afforded to the licensed dealers to send ornaments for sale through travelling salesman and the Trade Notice issued by the Collectors of Central Excise pursuant thereto actually withdrawing the said facility with immediate effect (specimen Letter of Instructions dt. 15th February, 1972 and Trade Notice dt.



17th March 1972 are enclosed as Annexures A & B to Writ Petition No. 88/1973) on the ground that it has the effect of preventing the licensed dealers from undertaking inter- State trade and commerce which is in violation of the constitutional guaranteed under Art. 301 of the Constitution as also their fundamental rights under Arts. 14 and 10(1)(g) of the Constitution. It appears that the said Letter of Instructions and the Trade Notice have been issued with a view to prevent the several malpractice that were being indulged in while availing of the said facility (of hawking ornaments through travelling salesman) and in the counter- affidavit of Shri Kulwant Ram Mehta, Deputy Secretary, Ministry of Finance (filed in W.P. No. 88 of 1983) these malpractices have been enlisted. But apart from this aspect of the matter it has been clarified in the said counter-affidavit that there is no intention to prohibit or stop inter-State trade or commerce in gold ornaments but that merely the facility of permitting the licensed dealers to send ornaments for sale outside their licensed premises through their salesman has been withdrawn; in paragraph 12 the relevant averment in that behalf runs thus:

"I reiterate that the dealers can send ornaments, on such orders having been placed with them, through post parcels, air freight or through any other means of commercial transportation of goods, besides delivering the ornaments to the customers in their own premises. I emphatically say that no direction or notice is issued which may result in any stoppage of inter-State trade."

In view of this statement the contention that the Letter of Instructions or the Trade Notice has the effect of preventing or stopping inter-State trade has no substance. Realising this position and in view of the aforesaid statement contained in paragraph 12 of the aforesaid counter-affidavit counsel for the petitioners did not press the challenge to the impugned Letter of Instructions and the Trade Notice. The challenge to s.27(7) (b) of the Act, in furtherance whereof the facility of effecting peripatetic sales of gold ornaments through travelling salesman in various parts of the country was withdrawn, must also fail. Section 27(7) (b), which confines a licensed dealer to carry on business as such dealer to the premises specified in his licence, being regulatory in character does not violate any of his rights under the Constitution.

In view of the foregoing discussion all the writ petitions as also S.L.P. No.538 of 1973 are dismissed. In all the circumstances of the case there will be no order as to costs.

S.R.

Petitions dismissed.