

Manick Chand Pal and 35 Others

Vs

Union of India and 3 Others

Mohan De and Others

Vs

Union of India and Others

Harishchandra Vyanaktrao Ravankar and Another

Vs

Union of India and Others

Chiman Lal Luthra and Others

Vs

Union of India and Others

M/s Kewal Krishan and Sons and Others

Vs

Union of India and Others

Gian Chand Kapoor and Others

Vs

Assistant Collector, Central Excise Amritsar

Writ Petitions Nos. 918-953 of 1977 Writ Petitions Nos. 918-953 and 1159-1186 of 1977, 88, 107, 564 and 575 to 618 of 1973 and Special Leave Petition (Civil) No. 538 of 1973

(V. B. Eradi, E. B. Eradi, D. P. Madon JJ)

17.04.1984

JUDGMENT

TULZAPURKAR, J. -

1. 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 Sections 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 1975/76) and the Gold Control (Identification

of Customers) Rules, 1969 as being violative of their fundamental rights under Articles 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 Article 301 as also their fundamental rights

2. 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 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 interest 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 of incidental thereto". In Harakchand Banthia 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 hamp

3. The first provision that has been challenged is Section 16 (7) 1. Harakchand Ratanchand Banthia v. Union of India, (1970) 1 SCR 479 : (1969) 2 SCC 166 : AIR 1970 SC 1453 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-section (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 2000 gms. in the case of an individual and 4000 gms. in the case of a family in the matter of making a declaration under sub-section (5) is not applicable. Counsel for the petitioners challenged this provision on two grounds : (a) it is discriminatory under Article 14 and (b) it imposes unreasonable restriction on licensed dealers and is violative of Article 19 (1) (g). It was pointed out that every licensed dealer is required to furnish, under Section 56, returns in prescribed 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 re

4. In our view neither of the contentions has any force. As regards the attack under Article 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 Section 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 orna

5. 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 housekeeper 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

6. The next provision challenged is Section 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. Licence to a firm to be invalid if there is any change in the partnership of a firm -
Where any firm has been licensed under this Act to carry on business as a 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 insofar 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 guidelines 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.

7. It is true that Section 52 does not contain any guidelines 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 Section 114 read with Section 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 fulfilment of which a licence could be renewed. It is true that these Rules, which deal with licensing of dealers and renewal of their licences, 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 retir 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 August 26, 1983 issued by the Administrator under Section 4 (4) of the Act where under the exercise of the power under Section 52 has been delegated to the Deputy collector of Central Excise with the result that an appeal against his order under Section 52 will lie to the Collector of Central Excise under Section 80 of the Act. In other words, a remedy by way of an appeal to correct any erroneous order that may be passed under Section 52 has been provided for. In this view of the matter it is difficult to accept the contention that Section 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.

8. The next provision that has been challenged is Section 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 Acts 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 Section 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

9. It is true that Section 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 (Section 66), Confiscation (Section 71), Adjudication (Section 78) and Giving of Opportunity (Section 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 had "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 C

10. 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 in-built safeguards will have to be and must be read into the provision. Since every extension involves civil con- sequences 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 *Asset. Collector of Customs v. Charan Das Malhotra* a case under Section 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'

11. The next provision challenged is Section 100 of the Act (as amended) read with Rule 3 (1) of the "Gold Control (Identification of Customers) 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 ruining 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 Articles 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. Precautions to be taken by licensed dealer, refiner or certified goldsmith before acquiring any gold - (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 Section 114 read with Section 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 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) 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 particular of such document.

12. It may be stated at the outset that Section 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 Banthia 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, section 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.

13. A two-fold submission challenging the amended Section 100 read with Rule 3 (1) was made by counsel for the petitioner. 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 issued by the customers may not be encashed. Secondly, it was urged that

14. Lastly, the petitioners as licensed dealers seem to have some grievance against the amended prescribed Forms G. S. 11 and G. S. 12 required to be maintained under Section 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 October 31, 1975. Under Section 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 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 October, 31, 1975 the licensed dealer was required to keep the account of gold in proper 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 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 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 G. S. 11 requires the licensed dealer to indicate in column 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 number and that there

15. Some of the petitioner have challenged Government of India's Letter of Instructions issued to all the Collectors of Central Excise throughout 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 dated February 15, 1972 and Trade Notice dated March, 17, 1972 are enclosed as Annexures A and B to Writ Petition No. 88 of 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 guarantee under Article 301 of the Constitution as also their fundamental rights under Article 14 and 19 (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 mal

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 Section 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.

16. 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.

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