GUJARAT HIGH COURT

Ramanlal Purshottamdas Chokshi

Vs.

Union Of India

Spl. A. No. 963 of 1970 (with Spl. C.A. No. 1569/70 with C.A. No. 516 of 1972

(J.B. Mehta and S.H. Sheth, JJ.)

1/ 2.5.1972

JUDGMENT

J.B. Mehta, J.

1. The first petition is filed by some of the licensed dealers to challenge the provisions of the Gold (Control) Act, 1968, hereinafter referred to as 'the Act along with the rules enacted there under; while the second petition is by the money lenders who have challenged the provisions in Section 16(1) read with Section 16(5) of the Act. In the first petition, a circular had been issued by the authorities on July 12, 1968, informing the President of the Chokshi Mahajan Association that after the Gold (Control) Ordinance, 1968 which came into effect from June 29, 1968, all licensed dealers and refiners were required to declare all articles, ornaments owned by them or their families or in their possession, custody or control, i.e. capacity other than that of a dealer or refiner. The result of that would be that licensed dealers and refiners who had already filed declarations of their personal holdings of articles-ornaments would not have to file fresh declaration in respect thereof, but those who had not filed such declarations for reasons of their personal holding being within the exempted limit would now have to make a declaration irrespective of the quantity of their holdings. They would have 30 days' time from the date of the promulgation of the Ordinance for making the declaration and the declaration of their personal holdings and ornaments should be made before July 29, 1968. The licensed dealers were also required, according to Section 31, to stamp the purity of gold on the ornaments or articles manufactured by them after the ordinance and the association was, therefore, asked to give top priority to this matter and inform all the licensed dealers and refiners accordingly. That is why in the first petition the petitioners have challenged the various provisions as under:

> (1) Section 16(7) according to the petitioners, on its proper construction, does not require a licensed dealer to declare gold articles or ornaments which are owned or possessed by the wife or minor children unless the custody or control, or owner ship or possession is of

the licensed dealer. Any other construction would make the section violate Articles 14 and 19(1)(g) of the Constitution.

(2) The licensing scheme laid down in Section 27(6)(a) is challenged as violative of Articles 14 and 19 on the ground of arbitrary, unguided and uncanalised power especially as the rules made in that connection in Rules 2(b) (c) and (f) impose certain conditions which are wholly unreasonable.

(3) Section 28 which prevents the licensed dealer from carrying on business as money lender or banker unless authorised by the administrator is challenged as violative of Articles 14 and 19(1)(g)

(4) Similarly Section 30 requiring stamping of articles or ornaments, certifying purity of gold is also challenged as violating the said Article as there is no method or instrument scientifically devised to arrive at the purity of gold contents.

(5) Section 52 which makes the continuance of business of the licensed firm invalid on the change of its constitution without the approval of the administrator is also challenged under the said provisions.

(6) Section 67 is challenged, as it creates the rule of evidence which is applicable in a criminal proceeding, on the same ground.

(7) Under Section 100 as regards the precautions to be taken by the licensed dealer is challenged particularly in the context of identification of customers' rules as it insists on compliance with them, in case of customers coming from far of villages who could never possess any identity card envisaged by Rule 3.

(8) Rule 13(1)(f) of the forms and fees rules is challenged in so far as it requires a licensed dealer to comply with that requirement on pain of penalties,

In the other petition, as earlier stated, Sections 16(1) and 16(5) have been challenged so far as the money lenders are concerned on the score of Articles 14 and 19(1)(g)

2. In *Harakchand v. Union of India*[1], their Lordships had except for Sections 5(2)(b), 27(2)(d), (27(6), 32, 46, 88 and 100, which were held to be constitutionally invalid, upheld the vires or the other provisions of that Act. The Parliament was held to be validly exercising its legislative power in respect of matters covered by Entry 52 of List I and Entry 33 of List III. In the Industries (Development and Regulation) Act (1951), the expression "semi-manufactures or manufactures" of item (1)(B) (2) of the first schedule was construed in the context to cover the subject of manufacture of gold ornaments and Parliament was held to be competent to legislate in regard to the subject-matter of the Gold Control Act, because manufacture of gold ornaments by the goldsmiths in India was a process of systematic production for trade or manufacture and so it fell within the connotation of the word 'industry' in the appropriate legislative entries. It followed therefore that in enacting the Gold (Control) Order, 1968, Parliament was validly exercising its legislative power in respect of matters covered by Entry 52 of List I and Entry 33 of List If I. Their Lordships referred to the preamble that the Act was to provide, in the economic and financial interests of the community, for the control of 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. At page 1463 their Lordships considered the circumstances and the social background in which this Gold Control Act was enacted. Their Lordships considered the fact that the Act was passed to bring about reduction in the quantity of smuggled gold by rendering smuggling more dangerous and the disposal of smuggled gold in the domestic market more difficult. Even though import of gold had been banned considerable quantities of contra-banned gold found their way into this country through illegal channels. The Customs Department was in itself not in a position to effectively combat

[1] AIR 1970 S.C. 1453

smuggling over the long borders, and the coast lines and, therefore, the anti smuggling measures had to be supplemented by a detailed system of control over internal transaction so as to make the circulation of smuggled gold more difficult, if not impossible. The loss of foreign exchange caused by smuggling of gold was estimated at nearly Rs. 100 crores per year in the post-devaluation period, and Government felt that it was very necessary to reduce the internal demand for gold and erect barriers to the circulation of the smuggled gold within the country. In the Taxation Enquiry Commission report the factual position as to the existence of widespread smuggling was mentioned as under :-

> "It is now clear that smuggling constitutes not only a loophole for escaping duties but also a threat to the effective fulfillment of the objectives of foreign trade control. The existence of foreign pockets in the country accentuates the danger. The extent of the leakage of revenue that takes place through this process cannot be estimated even roughly, but it is not unlikely that it is substantial. Apart from its deleterious effect on legitimate trade, it also entails the outlay of an appreciable amount of public funds on patrol vessels along the sea-coasts and permanent works along the land border, and watch and ward staff on a genenous scale." It was therefore, necessary in the Commission's view that stringent measures both legal and administrative should be adopted with a view to minimizing the scope of that evil. In the light of this social background their Lordships considered the reasonableness of the restrictions imposed by the impugned Act, in the light of the magnitude of the evil which was sought to be eliminated. Their Lordships, therefore, justly balanced the individual liberty as against the requirements of social control in order that it may subserve public interest, while striking down the aforesaid provisions which did not fulfill the test of reasonableness. The provisions in Section 5(2)(b) was held to be legislative in character because it gave power to the administrator, which was a parallel power of subordinate legislation which was conferred on the Central Government under Section 114(2) and (2) of the Act by enacting rules which were at least to be laid down before each House of Parliament. Therefore, this regulative power conferred under Section (5)(2)(b) was held to suffer from the vice of excessive delegation. The licensing scheme under Section 27(2)(d) and 27 (6) was struck down on the ground that Section (27)(6)(a) required the Administrator in the matter of issuing or renewal of license to have regard to the number of dealers existing in the applicant intended to carry on business as a

dealer. Similarly Section 27(6)(b) required the Administrator to have regard to the anticipated demand, as anticipated by him, for ornaments in that region. The expression "anticipated demand" was a vague expression which was not capable of objective assessment and was bound to lead to a great deal of uncertainty. Similarly, the expression 'suitability of the applicant' in Section 27(6)(e) and 'public interest' in Section 27(6)(g) did not provide any objective standard or norm or guidance. Therefore, Clauses (a), (b) and (c) of Section 27(6) were held to impose unreasonable restrictions on the fundamental right of the petitioner to carry on business and were constitutionally invalid, especially as the same requirement or strict condition was kept even for renewal of the license. These clauses being not severable and the entire Section 27(6) was struck down especially as Section 27(2)(d) enabled the Administrator to issue a license containing such conditions, limitations and restrictions as he would think fit to impose and on the face of it conferred such wide and vague power upon the Administrator that it was difficult to limit its scope. Their Lordships however pointed out at page 1466 that as the licensing scheme was invalid, Section 27 could not be worked in practice and, therefore, it was necessary for the Parliament to enact fresh legislation imposing appropriate conditions and restrictions for the grant or renewal of license to the dealer. In the alternative the Central Government might make appropriate rules for the same purpose in exercise of its rule making power under Section 114 of the Act. Thereafter it was pointed; out by their Lordships that so far as Section 100 was concerned, it imposed statutory obligation upon the dealer to take all reasonable steps to satisfy himself as to the identity of persons from whom any gold was bought. The section did not specify the nature of steps which a dealer should take for satisfying himself as to the identity of the person from whom any gold was bought. The statutory obligation imposed by the section was uncertain and incapable of proper compliance and was, therefore, held to impose an impossible burden upon the dealers and constituted an unreasonable restriction. Their Lordships, however, observed at the end that the provisions which were held to be constitutionally invalid were severable, and the Act still remained substantially the Act as it was passed that is, an Act to provide for the control, production, manufacture, supply, distribution, use and possession of gold and gold ornaments and articles of gold, and therefore, only the aforesaid provisions were struck down. In *Badri Prasad v. Collector, Central Excise*[2], a person carrying on money lending business against the pledge of gold ornaments challenged the vires of this Act read with the rules particularly Sections 6, 8 and 16(1).

After referring to the earlier decision, their Lordships observed at page 1774 that the impugned Act was as shown by its preamble to provide for the economic and financial interests of the community, for the control of 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 was well-known, the object of the Act was to make it difficult, if not impossible, for gold which was 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 was no definition of pawn broker in Section 2, their Lordships at page 1175, pointed out that, there could be no doubt that some of the provisions of the Act were designed to restrict the use of gold by way of pledge or hypothecation for securing loan. Their Lordships referred to Section 6(1) which empowered the Administrator to require any person who lent money on pledge, hypothecation etc. or 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-section (2) authorised the examination of accounts of persons lending money on the security of gold articles or ornaments and provided that any gold which was not declared in the accounts or found to be in excess of the quantity shown in the accounts and which was not otherwise accounted for to the satisfaction of the examining officer was to be deemed to be in possession of such person in contravention of the provisions of the Act. Chapter III of the Act was referred to which contained Sections 8 to 11 dealing with restrictions relating to the manufacture, acquisition, possession, sale, transfer or delivery of gold. Section 10 provided that no person shall obtain from any other person any loan or advance on the

[2] AIR 1971 SC 1170

hypothecation, pledge, mortgage or charge of (a) any primary gold, or (b) any article or ornament which was required to be included in a declaration unless such article or ornament had been so included. After referring to the entire scheme, their Lordships held at page 1178 that no exception could be taken to these provisions on the ground that they were unreasonable restrictions on the part of the pawn broker to hold, acquire or dispose of property or carrying on his business of money lending within the meaning of Articles 19(1)(f) and (g) of the Constitution not saved by Sub-clauses (5) and (6) thereof. If smuggling of gold into the country was to be checked by the prevention of the conversion of smuggled gold into gold articles or ornaments, there was no unreasonableness in the State calling upon all pawn brokers and the persons who took pledges or hypothecation of ornaments to furnish declarations so that the Administrator and the Gold Control Officer might keep an eye on the activities of such persons, and if necessary, at any point of time ask for a return in terms of Section 6 and satisfy himself about the legality of their acts by inspecting their 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 Section 16(8) in order to satisfy himself that there was no contravention of the Act. Section 16 was all embracing and made it obligatory on every person, unless he was exempted under Sub-section (5) thereof, to make a declaration of all the gold articles and ornaments in his possession, custody or control. In order that there might not be any uncertainty in the matter of making declarations in certain cases, the Legislature had indicated the persons on whom the burden lay. The requirement of making a declaration as often as a pawn broker acquired ownership, possession, custody or control of gold under Sub-section (4) was to be read with Sub-section (10) and it was 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 could not be said that there was any unreasonable restriction on his holding property or pursuing his business in terms of Article 19(1)(f) or (g) of the Constitution. Further proceeding at page 1179 their

Lordships referred to the conditions in form GS III under Rule 4 where estimated weight and value of gold contained and purity had to be mentioned. It was contended that where the ornament was made up not only of gold but of other metals and stones, precious or otherwise, it would be impossible either to give a true estimate of the weight and value of the gold contained or the purity of the gold. Their Lordships observed that there might be some difficulty in some cases but it must be realized that a pawn broker who was asked to advance money on the security of such an article would make a fairly accurate estimate of the weight and value of the gold therein so as to be able to judge for himself the security of that article. He was not called upon to give the exact purity of the gold content in the article. He could only give an estimate of disparity. Therefore, the supposed difficulty in the matter of compliance with Section 16 of the Act as regards acquisition or transfer of gold as and when made really did not exist. Further proceeding, at page 1181 their Lordships pointed out that Section 16 was not excluded in the case of money lenders or pawn brokers. Any person who came under the purview of Section 16(1) has to make a declaration unless there was any provision to the contrary in that Chapter, The only provision to the contrary was contained in Sub-section (5) which permitted of exemptions in respect of persons holding gold articles or ornaments upto a Specified limit. The provision in Section 6(1) empowering the Administrator to Call upon any pawn broker to furnish a return did not do away with his obligation to file a declaration under Section 16(1). There would not be any duplication or difficulty because of Section 6 and every pawn broker would have to file his declaration under Section 16(1) and he would be obliged to make a return only when he was called upon to do so in terms of Section 6. Even in case of partnership business declaration may be made by any partners of the firm in terms of Section 16(2)(f) and if a company carried on business of down brooking, any person in charge of the management of the affairs of the company could make the declaration. Their Lordships also observed at page 1182 that a money lender, specially a pawn broker who entered into a number of transactions of pledge every day had to maintain his account, and he had to record faithfully therein the articles he received by way of pledge, including their weight and general description, when he took them in and making a declaration for the purpose of the Act could not entail any hardship on such a person. The Parliament only sought to control and regulate the production, manufacture etc., it did not seek to disturb or annul the provisions of the State Acts as regard money lending, as long as the Gold Control Act was not violated. Therefore, their Lordships found no force in the contention that these money lenders or pawn brokers would be required to give multiple declarations or that pawn brokers were not covered by Section 16. It was only Section 71 which provided extreme penalty of confiscation of gold articles or ornaments that was held to impose unreasonable restrictions as it was liable to indiscriminate application and was struck down as being an unreasonable restraint.

3. It is in the light of this settled law that we have now to consider the challenge to the relevant provisions of the Act keeping in mind the aforesaid social background. We need not emphasize the importance of purposive approach in the context of such social control legislation introduced in a welfare State, where the entire approach to the problem of the construction of the Act would have to be a purposive approach considering the social end which was kept in mind and the

machinery which was enacted for implementing the measures to carry out that end. Once the vires of the Act is upheld on the ground that it is such a social control measure where individual interests have got to be sublimated so as to sub-serve the common good we would have to consider the challenge on the score of unreasonableness of these restrictions by weighing the same against the magnitude the evil which was sought to be remedied by the Act. Restrictions would have to be commensurate with that object. After the classic decision in *A.K. Kraipak v. Union of India*[3], as pointed out by their Lordships, with the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new despotism', courts are gradually evolving the principles to be observed while exercising such powers. In matters like these public good is not advanced by a rigid adherence to precedents. New problems call for new solutions. That is why at page 156 their Lordships pointed out that whenever an administrative body has to exercise a power under a statute affecting civil rights of the subject, the very width of the power would carry with it a duty to act judicially or in any event to act fairly or justly by adopting a judicial approach according to the norms or guidelines laid down for the exercise of that power. When just decision has to be arrived at even by administrative authority, their Lordships pointed out that the principles of natural justice in so far as they would be necessary to arrive at a just decision could always be read into the statute. The principles of natural justice when so read do not supplant the law of the land but they merely supplement it. Therefore, under such social control legislation when we are adopting a purposive approach, the meticulous linguistic analysis of the statute has to be sub-ordinated. Even if the particular provision in express terms contained no guidelines or

[3] A.I.R. 1970 S.C. 155

when a duty to hear a party affected so many terms was not expressly laid down in the enactment, such guidelines could be gathered from the whole scheme or even the preamble and such duty could be implied to act justly from the width of the power itself. In the context of the Minimum Wages Act, a social welfare labour legislation, in *Chandra Bhavan Boarding and Lodging v. State of Mysore*[4], their Lordships in terms pointed out that it was not the law that the guidance for the exercise of a power should be gathered from one of the provisions in the Act. It could be gathered from the circumstances that led to the enactment of the law in question i.e. the mischief that was intended to be remedied, the preamble to the Act or even from the scheme of the Act. Keeping in mind these settled principles, we will now consider the various points which Mr. Nanavati has raised in these two petitions.

4. As regards the first question the vires of Section 16 is now no longer open to challenge. Section 16(1) requires every person who owns or is in possession, custody or control of any articles or ornament at the commencement of the Act, or acquires the ownership, possession, custody of control of any article or ornament thereafter, has to make within thirty days from such commencement or from such acquisition ...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 controlled by him. Section 16(5) provides as under:

(5) No declaration referred to in Sub-section (1) or Sub-section (3) shall be required to be made-'

(a) in relation to articles, unless the total weight of articles owned, possessed, held or controlled by:

(i) a minor, who is not a member of a family, exceeds twenty grammes;

(ii) an individual (other than a minor), who is not a member of a family, exceeds fifty grammes,

(iii) a family, exceeds fifty grammes, (iv) any person referred to in Clauses (b) to (f) and (h) to (m) of Sub-section (2), exceeds fifty grammes:

(b) in relation to any ornaments, or both articles and ornaments, where both articles and ornaments are owned possessed, gold or controlled, unless the total weight of such ornaments or both articles and ornaments as the case may be, owned, possessed, held or controlled by:

(i) an individual who is not a member of a family, exceeds two thousand gramms,

(ii) a family exceeds four thousand grammes;

(c) in relation to any ornaments, or both articles and ornaments, owned, possessed, held or controlled by any person referred to in Clauses (b) to (f) and (h) to (m) of Sub-section (2), unless the total weight of such ornaments or both articles and ornaments, exceeds two thousand grammes.

Section 16(6) provides that for the purposes of this section, 'family' shall be deemed to consist of the husband, wife and one or more children, or any two or more of them but shall not be deemed to include any other person. Section 16(7) which is material for our purpose runs as under:

(7) "Every licensed dealer or refiner shall make a declaration or further declaration, as the case may be, in accordance with the provisions of this section in relation to any gold owned, possessed, held or controlled by him in any capacity

[4] AIR 1970 S.C. SC 2042

other than the capacity of a licensed dealer or refiner and the provisions of Sub-section (5) shall not apply to such gold. Explanation :-Where the licensed dealer or refiner is a company or other body corporate or a firm the declaration referred to in this sub-section shall also be made by every director of such company or body corporate or, as the case may be, every partner of such firm, in respect of the gold owned possessed, held or controlled by him in any capacity.

Therefore, Section 16(7) in terms requires a licensed dealer to make a declaration, as the case may be, in accordance with the provisions of the section in relation to any gold owned, possessed, held or controlled by him in any capacity other than the capacity of licensed dealer and the exemption provision of Sub-section (5) shall not apply to such gold. The declaration which is required from the licensed dealer under Section 16(7) is in respect of gold article or ornament, owned, possessed, held or controlled by him, whatever be the nature and the capacity

in which he owns, possesses, holds or controls the same. Even the exemption limits prescribed under Section 16(5) are not applicable in the case of a licensed dealer. Therefore, the gold may be owned even by wife or a minor considered as a 'family' in the definition in Sub-section (6) and it need not be owned by the licensed dealer. The licensed dealer would have to make a declaration if such gold is possessed, held or controlled by him in any capacity other than that of the licensed dealer. When we keep in mind the social end behind this enactment, the mischief which was sought be remedied when pleas were being taken that the gold belonged to the wife or the minor, this provision had to be enacted so that the object of the enactment was not frustrated. Mr. Nanavati is however right in his submission that the declaration is required by the licensed dealer under Section 16(7) for gold which is held, owned, possessed or controlled by the licensed dealer in any capacity whatever other than that of the licensed dealer. Therefore, if the gold is not owned, possessed or held or controlled by him, there is no obligation on him to make a declaration. The obligation would be of some other person who owns, possesses or controls that gold article or ornament. Therefore, if the wife or minor son was such other person, she or he would have to make that declaration. The circular in question was really drawing attention of the association to the fact that as the Ordinance had come into force from June 29, 1968, the licensed dealers had to make declaration of all articles or ornaments owned by them or by their families or in their possession, custody or control, that is to say, in any capacity other than that of a dealer. Therefore, it is implicit in this circular that what is owned, possessed or held by the license dealer in any capacity other than the dealer is alone required to be included in the declaration. That is the affidavit also of the authorities. The petitioners were really raising the wider challenge in the petition that gold which was owned by the wife as Stridden could never form the subject matter of declaration by the licensed dealer who was not the owner thereof. On that ground the challenge could not be offered to the impugned provisions because even though the licensed dealer may not own the same, so long as he possessed or he had the custody or control of that gold he was bound to make that declaration. Such a provision, looking to the context of the aforesaid social background to prevent the wide spread evil of smuggling, was obviously a reasonable restriction as it was creating the machinery for enforcing the remedy created to meet this widely rawpant social evil. Therefore, there is no substance in this contention of Mr. Nanavati that Section 16(7) was wrongly interpreted by the authorities or that it would amount to any unreasonable restriction.

5. Turning to the licensing scheme, Parliament has now amended the relevant Section 27 and has also resorted to its rule making power under Section 114 for enacting what are known as Gold Control (licensing of Dealers) Rules, 1969. Section 27(1) of the Act enacts that save as otherwise provided in this Act, no person shall commence, or carry on business as a dealer unless he holds a valid license issued in this behalf by the Administrator. Section 27(2) provides that a license issued under this Section (a) shall be in such form as may be prescribed, (b) shall be valid for such period as may be specified therein, (c) may be renewed, from time to time, and (d) shall be subject to such conditions and restrictions as may be prescribed. Section 27(6)(a) which is material for our purpose runs as under:

"(6)(a) No application for the issue of a license to commence or carry on business as a dealer shall be granted unless the Administrator, having regard to such matters as may be prescribed in this behalf and after making such inquiry in respect of those matters as he may think fit, is satisfied that the license should be issued.

(b) No application for renewal of a license to carry on business as a dealer shall be rejected unless the holder of such license has been given a reasonable opportunity of presenting his case and unless the Administrator is satisfied that:

(i) the application for such renewal has been made after the expiry of the period specified therefor, or

(ii) any statement made by the applicant at the time of the issue or renewal of the license was incorrect or false in material particulars, or

(iii) the applicant has contravened any terms or condition of the license or any provision of this Act or any rule or order made thereunder or of any other law for the time being in force in so far as such law prohibits or restricts the bringing into or taking out of India of any goods (including coins, currency, whether Indian or foreign, and foreign exchange) or the dealing in such goods by way of acquisition or otherwise, or

(iv) the applicant does not fulfils the prescribed conditions.

(c) Every order granting or rejecting an application for the issue or renewal of a license shall be made in writing.

Sub-clause (6A) provide as under:

(6A) Where the Central Government, having regard to the quantity of gold produced in India and the supply therein of gold through lawful channels, is of opinion that it is necessary or expedient in the interests of the general public so to do, it may notwithstanding anything contained in this section, direct the Administrator to restrict or reduce the number of licensed dealers to such extent and in such manner as may be specified by rules made in this behalf.

Provided that no such rules shall come into force until the expiry of the period referred to in Sub-section (3) of Section 114 and if, before the expiry of the said period, both Houses of Parliament agree in making any modification in the rule or both Houses of Parliament agree that the rule should not be made, the rule shall come into force only in such modified form or be of no effect, as the case may be.

Sub-section 7 provides as under:

(7)(a) The Administrator shall specify, in each license granted to a dealer, the premises in which such dealer shall carry on business and no other person shall carry on business as a dealer in the said premises.

(b) A licensed dealer shall not carry on business as such dealer in any premises other than the premises specified in his license.

Sub-section (8) provides as under:

(8) Every licensed dealer shall ensure that every artisan or other person employed by him complies, in the course of such employment, with the provisions of this Act or any rule or

order made thereunder and of any other law relating to gold or foreign exchange for the time being in force.

We may now turn to the relevant Licensing of Dealers Rules, 1969. Rule 2 runs as under:

"2. On receipt of an application for the issue of a license to commence or carry on business as a dealer, the Administrator shall have regard to the following matters, namely:

(a) whether the application has been made in the prescribed form and the prescribed fees have been duly deposited;

(b) the experience of the applicant with regard to the dealing in, or making, manufacturing, preparing repairing, or polishing of, ornaments,

(c) whether the premises where the applicant intends to carry on business as a licensed dealer is suitable and secure for the carrying on of such business;

(d) whether any license previously held by the applicant had been cancelled under any Jaw for the time being in force:

(e) whether the applicant has been convicted of an offence, or any penalty has been imposed on him under:

(i) the Gold Control Act. 1968, or

(ii) any other law for the time being in force relating to gold; or (iii) any other law for the time being in force in so far as such law prohibits, restricts or regulates the bringing into or taking out of India of any goods (including coins, currency, whether Indian or foreign, and foreign exchange) or the dealing in such goods by way of acquisition or otherwise;

(f) the need to increase the number of licensed dealers in the city or town in which the dealer intends to carry on business or where the applicant intends to carry on business in a village, the need to increase the number of licensed dealers in the district within which such village is situated, having regard to:

(i) the number of licensed dealers existing in such city, town or district, as the case may be, and

(ii) the demand for ornaments which is likely to rise in such city town or district, such demand being estimated on the basis of the turnover of the licensed dealers, existing therein, for a period of three years preceding the year in which such application for the issue of license has been made and such turnover shall be determined on the basis of the accounts and returns submitted under the law for the time being in force in relation to gold.

Rules 3 is for the renewal of a license. From the aforesaid scheme it is obvious that now the legislation has provided for a proper licensing scheme of the dealers in Section 27. Even the conditions which were originally left to the Administrator, under Section 27(2)(d) in the present form are required to be prescribed and the relevant Licensing of Dealers Rules now have been enacted. Section 27(6A) in terms enacts that no application for issuing of a license to commence or carry on business shall be granted unless the Administrator having regard to the matters prescribed and after making such inquiry in respect of those matters as he deems fit is satisfied that the license shall be issued. Therefore, now the guidelines are laid down by Rule 2 by

prescribing the matters which the Administrator has to consider while exercising his function of subjective satisfaction whether the license should be issued or not. The only attack of Mr. Nanavati is that the guidelines in Rule 2(b)(c) and (f) are vague. As far as Clause (b) is concerned. Mr. G. T. Nanavati relied upon the decision in *Gujarat Beedi Karkhana Owners Association v. Union of India*[5], where speaking for the Division Bench, I had pointed out at page 727 that when the Legislature had laid down guidelines or norms it could never be urged that the section conferred arbitrary powers on the authority to grant or refuse license. When the section provides as to what matter it should pay regard, it lays down the perspective and the considerations which must be made. After the decision of the Supreme Court in *Amritsar Municipality v. State of Punjab*[6], at page 1103, it is well-settled that the rule adopted by American Courts that a vagut statute violates the very essence of the due process clause has no application in our country. It has been definitely ruled in our country that this doctrine of due process of law has no application in our constitutional system. Therefore, the legislation could not be struck down on the assumption that its validity could be attacked on the test of due process of law. Merely because the legislation is vague, on that ground it could not be struck down if the Legislature has the legislative competence. The earlier decision in *Harakhchand v. Union of India*[7] was given in the context where the power of regulation which was granted to the Administrator under Section 5(2)(b)(a) was held to amount to excessive delegation. Even Section 27 has now been recast by the Legislature and the offending Section 5(2)(b) has been deleted from the Act. Therefore, once we find that the Legislature has laid down the guidelines for the Administrator, the conferment of power on the authority could never be challenged as arbitrary and uncanalised, even though it might be that in any particular case the exercise of that power might have to be struck down when it was in excess of the relevant statutory power. That could not be a case of lack of power but only of an ultra vires exercise of power. In the aforesaid decision, I had further pointed out in the context of licensing scheme for premises where Bins were to be manufactured that the first item of suitability of the place or the premises was in the context of the proposal for its use for the manufacture of the Biris or cigars or both and it was not held to be vague. The second item which was challenged as in the present case as imposing an embargo on the new entrants was interpreted in that context as only one of the matters to which regard had to be paid while considering the request for the license as in the sense of "previous experience of the applicant, 'if any'. I had pointed out a well-settled principle of construction that when an expression in a statute was capable of two meanings, it was that meaning which must be given to it which would make the section valid and not the other one which would make it invalid. The other interpretation would put a complete embargo on new entrants and such an unreasonable restriction could never have been intended by the Legislature. Therefore, that expression was given its proper meaning by holding that it could only mean that the previous experience of the applicant had to be taken into account if there was any such previous experience but absence of previous experience would not exclude a new entrant from his application being taken into account. In cases where there was previous experience, the authorities could always look into the fact as to how he had implemented the Act and how he could be in a position to implement the Act. Therefore, that was a relevant consideration where it

was applicable. After the aforesaid

[5] XII G.L.R. 690 [7] A.I.R. 1970 S.C. 1452 at page 1465

[6] A.I.R. 1969 S.C. 1101

decision, in the present

case the challenge to Rule 2(b) and 2(c) would be thoroughly misconceived, Under Rule 2(b) the experience of the applicant with regard to the dealing in, or making, manufacturing, preparing, repairing or polishing of, ornaments would have to be considered wherever it is applicable, that is to say, wherever the applicant had such previous experience. If the applicant was a new entrant, this clause when read as the experience of the applicant, if any, could never apply to such a new entrant. Similarly, clause 2(c) requires the authority to consider this question of suitability of the premises which also has to be judged in the context of the license of these premises as being suitable for carrying on genuine lawful business or manufacturing activity as licensed dealer. When the object of the enactment is to meet the evil of smuggling or any unlawful dealing the question of suitability of premises would be judged from these guide lines which run through the entire Act and for which purpose these restrictions are intended. As far as the last clause 2(f) is concerned, after the present rules there is no question of vague "region" and that guide line is properly defined within the permissible limits. The authority had to consider the need of increase of the license dealers in the city or town or if it is a village such 3 need had to be judged in the context of the district where the village is situated. This is not too wide a region. The number of license dealers is to be considered qua the city, town or district in which the village is situated. Therefore, excluding the city and town area, the other area is not too wide, so as to introduce an irrelevant consideration or to make the guideline a vague guideline by judging the need of the particular village by reference to the entire district need. There is another guideline provided as the authority had to pay regard not only to the number of licensed dealers existing in the city, town or district as the case may be, and the demand for ornaments which is likely to arise in such city, town or district, but such demand is to be estimated on the basis of the turnover of the licensed dealers, existing therein, for a period of three years preceding the year in which such an application for the issue of a license has been made and such turnover shall be determined on the basis of the accounts and returns submitted under the law for the time being in force in relation to gold. Therefore, not only the authority had to pay regard to the number of license dealers in the particular area in question viz. town or city or district but even the anticipated demand for the ornaments which is likely to arise therein is to be estimated on the concrete basis of the turnover for three preceding years as reflected in the accounts and returns submitted under the law in force in relation to the gold. Therefore, now these guidelines are absolutely certain guidelines which are objective guidelines which are demonstrable. Even Section 27(6A) enables the Central Government, having regard to the quantity of gold produced in India and the supply therein of gold through lawful channels, to restrict or reduce the number of licensed dealers to such an extent in such manner as may be specified by rules made in that connection, after laying them before the Houses of Parliament, if it is of opinion that it is necessary or expedient in the interest of general public so to do. These guidelines have to be judged in the light of various safeguards

which are enacted, because under Sub-clause (c) to Section 27(6) every order granting or rejecting the application for license has to be made in writing. Under Chapter XIV, Section 82(1) confers on the Central Government a power of revision from the decision given or order made under the Act from which no appeal lies. In view of these safeguards and these guidelines the present scheme of licensing of dealers, including the provisions in Rule 2(b)(c) and (f) could never be challenged on the ground of arbitrary, unanalyzed power or as imposing any unreasonable restriction. Therefore, that challenge must fail.

6. Coming to Section 28, it runs as under:

> No licensed dealer shall, unless authorized by the Administrator so to do:
> (a) carry on business as a money lender or banker on the security of any article, or ornament, or both,
> (b) permit any other person to carry on money lending, banking or any other business, in the same premises in which he carries on business as such dealer.

This section has to be read in the light of the licensing scheme laid down in Section 27 and in the light of other restrictions which have been imposed in this Act on money lending on the security of any article or ornament of gold. In Section 27(7)(a) it is in terms enacted that the Administrator shall specify, in each license granted to a dealer, the premises in which such dealer shall carry on business and no other person shall carry on business as a dealer in the said premises. Under Section 27(7)(b) a licensed dealer shall not carry on business as such dealer in premises other than the premises specified in the license. Under Sub-section (8) of Section 27, every licensed dealer shall ensure that every artisan or other person employed by him complies in the course of such employment, with the provisions of this Act or any rule or order made there under and of any other law relating to gold or foreign exchange for the time being in force. When a licensed dealer is granted a license for his business as a dealer after considering suitability of these premises in the context of enforcing the provisions of this salutary enactment, it is obvious that no other person can be permitted to carry on money lending, banking or any other business in the same premises in which the licensed dealer carries on business as such dealer. The challenge of Mr. Nanavati is, however, to Section 28(a) where restriction has been imposed on the licensed dealer that he shall not without authorization by the Administrator carry on business as a money lender or banker on the security of any article, or ornament, or both. This restriction on the licensed dealer is not an unreasonable restriction. An authorization is necessary only when the business sought to be carried on by the licensed dealer in the same licensed business premises is of a money lender or banker on the security of any article or ornament or both. The whole object of this enactment and the licensing scheme is to achieve a particular social end of preventing smuggling of gold and such unlawful business of gold. ' This was a widely rampant evil, and under the plea of article or ornament being received as a money lender or banker, the Act was sought to be frustrated. Therefore, this loophole was sought to be plugged in by the Legislature. The restriction is, therefore, completely commensurate with the object of the social

legislation and it does not put any larger restriction than what is necessary to see that the object is not frustrated. This provision is in the same context as of Section 6 which provides for returns being submitted by the money lenders and pawn brokers when they advance money on the hypothecation or pledge of any such article or ornament of gold and gives power to the Administrator to examine accounts relating to the receipt, delivery or sale of any gold, of any person who advances any money on the hypothecation, pledge, mortgage or charge of any article or ornament. It further enacts that if any gold is found in possession of such person which was not entered in the accounts or which was in excess of the quantity shown in such accounts and which was not otherwise accounted for to the satisfaction of such officer, such gold shall be deemed to be in possession of such person in contravention of the provisions of the Act. Even Section 16(1) which required money lenders or pawn brokers who had received such articles or ornaments of gold only by way of security to make a declaration not only when they acquired the said article or ornament but even from time to time has now been held to be a reasonable restriction by their Lordships in the aforesaid Badri Prasad's case. Section 10(b) in terms enacts that loans shall not be obtained on the hypothecation, pledge, mortgage or charge by any person unless such article had been included in the declaration, subject to the proviso enacted therein. Therefore the object of all these provisions is to enact an integrated scheme so that this salutary enactment may not be frustrated by such a plea of taking article or ornament of gold as security as the money lender or banker. In such a context, if this restriction in Section 28 is judged, surely, the restriction is commensurate with this object and is not in any manner excessive. Besides the authority has the discretion to authorize carrying on business as money lender or banker on the security of article or ornament in the same premises. The discretion of the Administrator would always be a judicial discretion. Even though a guideline may not be expressed in so many terms, the guide line is implicit in the entire scheme that this judicial discretion would be exercised so as to carry out the purpose of the Act and not to defeat the same. When such judicial discretion is entrusted to such an Administrator and when the order passed by him under Section 28 is made revisable by the Central Government even if no appeal lies, the matter is clearly one implying judicial approach. When the authority is statutorily empowered to pass such orders which would affect rights of a citizen to carry on lawful business, the very impact of this wide power would carry duty to act justly and fairly to the citizen. Therefore, the function under Section 28 of authorizing, when seen in this context of this social background, is one of judicial discretion which has to be exercised so as to carry out the purposes of the Act. Therefore, such an enactment could never be challenged as an unreasonable restriction.

7. Mr. Nanavati, however, vehemently relied upon the decision of the Division Bench of the Andhra Pradesh High Court in Writ Petition No. 3925 of 1969 and others decided on December 26, 1969, where the Division Bench had struck down Section 28. Two reasons given for striking down Section 28 were that no rules had been framed prescribing conditions or circumstances under which Administrator could refuse or grant permission and so the dealer was at the mercy of the Administrator and was helpless against the arbitrary exercise when he thought to negative the request. Therefore, Section 28 was held to confer arbitrary and unanalyzed power without

any criteria for guiding the discretion of the Administrator. Further, it was held that the section did not provide nor was any rule brought to the notice of the learned Judges which enjoined upon the Administrator duty to give a hearing to a dealer, who sought permission under the section and to give reasons in case he decided to refuse the permission. It should be noted that the Division Bench had not the benefit of the later decision of Badri Prasad's case by their Lordships. Besides, after the classic decision in Kriapak's case we can always read the statutory power consistently with the principles of natural justice, when the statute is one under which individual's interests are sublimated in the wider public interest. In such cases such supplementing of the statute by principles of natural justice is always permissible, more so, in the context of fundamental rights where the Parliament would never intend ordinarily to depart from the principles of natural justice, as otherwise it might amount to unreasonable restriction. It is not necessary that the duty to act judicially must always be expressed in so many terms, as such duty could be implied from the very width of the power conferred on the Administrator. So also the guidelines need not be express in the section but would have to be found out from the social background and the social evil which was sought to be remedied by the machinery created for implementing this Act. Therefore, with great respect we cannot agree with the aforesaid decision and we hold that Section 28 does not impose any unreasonable restriction as contended by Mr. Nanavati

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8. As far as Section 30 is concerned, again Mr. Nanavati is reading the section in the same old fashion of a pure literal, mechanical reading without keeping the purposive approach in mind. As pointed out in Badri Prasad's case at page 1179, the dealers were not called upon to give the exact purity or exact weight of gold in the article but only to give fair estimate of its purity or weight. Even though there could be some difficulty in some cases it must be realized that a dealer dealing with the article or ornament of gold in question would surely be able to make a fair estimate of the weight and value or purity of the gold therein when he deals with the same as such a licensed dealer. Even the old method of testing purity of gold by the touchstone would enable him to give a fair estimate of the purity and that is what is to be stamped as required by Section 30. Section 89(ii) punishes the dealer only for false stamp on article or ornament with the intention of causing it to be believed that such article or ornament is of such purity as is mentioned in the said stamp. Therefore, when the honest estimate of purity is required to be made and the stamp is to be put on the article of only such estimate, the statute does not require any impossibility to be complied with as contended by Mr. Nanavati. Therefore, there is no substance in the challenge to Section 30 and, if at all, it is concluded by the decision in Badri Prasad's case.

9. Coming to Section 52, it provides that when any firm has been licensed under the Act to carry on business as a dealer or refiner, such license 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. It should be noted that under Section 27(1), save as otherwise provided in the Act, no person shall commence or carry on business as a dealer unless he holds a valid license issued in this behalf by the administrator. It is obvious from Section 52 that a firm is treated as an identity in whose favor a

license could be issued under the Act. Mr. Nanavati argued that when a firm is issued a license, the Administrator approves of the partners and, therefore, it would be very unreasonable and harsh if the license of the firm is treated as invalid when there is any change in the partnership of firm by death or by retirement of a partner and the partnership continues under the partnership Act by reason of contract to the contrary. It is true that the partnership is the result of the contract and net of status. If the contract does not contain any such in continuance clause, the partnership would stand dissolved on the death of a partner, and in such cases the license to the firm must come to an end as it could never be urged that the license to the firm was the license to each partner individually. In such cases the Administrator would have to approve the fresh firm. It is the same policy which is reflected in Section 52 to have approval by the Administrator even though the partnership contract may contain a clause that the partnership was not to come to an end by the death or retirement of one partner. When the license was issued to the firm consisting of X partner as soon as that constitution undergoes a change by becoming X plus Y or X minus Y partners, the reconstituted firm must be approved by the Administrator. Section 52 has enacted a non-obstante clause to resolve any ambiguity being raised because of Section 27(1), that the license is issued to the firm and so long as the firm continues the license of the firm continues irrespective of the change in the partnership. In such a licensing scheme of licensed dealers, every such reconstitution of the firm by change of the partners must have approval of the Administrator so that he can judge the suitability of the reconstituted firm in issuing a license as required by the Act. Therefore, such restriction cannot be said to be an unreasonable restriction but only a permissible restriction. Besides, in the approval function the Administrator could never have despotic power but would be exercising a judicial discretion when the discretion is considered in the context of this wide power to affect the fundamental rights of subjects to carry on their business and the order is also revisable by the Central Government under Section 82(1). Therefore, there is no arbitrary, uncontrolled power so as to amount to any unreasonable restriction so far as Section 52 is concerned.

10. As regards Section 67, it raises a rebuttable presumption where any document is produced by any person under the Act or has been seized there under from the custody or control of any person and such document is tendered by the prosecution in evidence against him, the court shall notwithstanding anything to the contrary contained in any other law for the time being in force,

> (a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
> (b) admit the document in evidence, notwithstanding that it is not duly stamped if such document is otherwise admissible in evidence.

Such a rebuttable presumption or rule of evidence even in the context of a criminal prosecution could never be said to be imposing any unreasonable restriction. If social evil of smuggling which is intended to be remedied or is to be prevented or such unlawful business is to be prevented from being carried on in articles or ornaments of gold, this rule of evidence enacted by Section 67 is a salutary rule. Therefore, the whole challenge is thoroughly misconceived in the context of social background of tills legislation.

11. Coming to Section 100, now the Legislature has amended the same by providing for precautions to be taken by the licensed dealer before acquiring any gold. Section 100 is as under:

> "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.
> (2) If on an inquiry made by a Gold Control Officer the person from whom a licensed dealer or refiner or certified goldsmith is purported to have accepted, bought or otherwise received any gold is not found at the address mentioned by the licensed dealer, refiner or certified goldsmith or any other address ascertained from the first-mentioned address, the Gold Control Officer may call upon any such dealer, refiner or certified goldsmith, as the case may be, to establish that he had taken the steps specified by the rules made under Sub-section (1).
> (3) If such dealer, refiner or certified goldsmith as the case may be, omits or fails, when called upon so to do, to establish that he had taken the steps specified by rules made under Sub-section (1), it shall be presumed until the contrary is proved, that such gold was accepted, bought or otherwise received by such dealer, refiner or certified goldsmith, as the case may be, in contravention of the provisions of this Act."
> (4) Nothing in this section shall apply to a petty transaction.
> *Explanation.* In this section, 'petty transaction' means a transaction in which the total weight of any primary gold, article or ornament which is accepted, bought or otherwise received from the same person in the course of a day, does not exceed twenty five grammes.

In this connection even Rule 3 has been enacted known as Gold Control (Identification or Customers) Rules, 1969, which runs as under:

> 3(1) Except where:
> (a) the customer is personally known to the licensed dealer, or
> (b) the payment for the gold bought or otherwise received from the customer is made by the licensed dealer by a crossed cheque drawn in favour, and payable to the account of the customer, or

(c) payment to the licensed dealer of charges for making, manufacturing, preparing, repairing or polishing of any article or ornament is made by the customer by a crossed cheque drawn on his accounts in a scheduled bank the licensed dealer shall take one or more of the following steps to satisfy himself as to the identity of the customer, namely,

(i) 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;

(ii) the production of any document which establishes the identify 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 body corporate or a Government or a Corporation owned or controlled by Government;

(e) a motor driving license held by the customer as a paid employee.

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

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

(a) obtain on 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;

(3) Every certified goldsmith shall before accepting or otherwise receiving any gold comply with the provisions of Sub-rule (I) and Sub-rule (2) subject to the modification that instead of obtaining the required signature or making the required note on the voucher, he shall obtain such signature and make such note on the register of accounts maintained by him.

Therefore sufficient precautions are specified for identification of the customers. There is hardly any substance in the challenge of Mr. Nanavati. Mr. Nanavati ignores the entire background of this legislation. If the Act was not to be frustrated but was to be implemented, the identity of the customers must always be established and the dealer must take sufficient steps for that purpose. Either the customer is known personally to the dealer or identified by some person known personally to the satisfaction of the dealer. Insistence on a bank 'cheque is a salutary safeguard. Even when banks are not available in the far off villages, post office facilities have reached in

every nook and corner of the country and this identity card of the postal authority is held to be sufficient. After such an elaborate scheme which is now devised, Mr. Nanavati could hardly challenge this provision in Section 100 as an unreasonable restriction, especially when petty transactions are excluded.

12. Taking up now the last question as to Rule 13(2)(f) of Gold Control (Forms, Fees, and Miscellaneous Matters) Rules, 1968, Section 13(1) provides that every licensed dealer or refiner acquiring, accepting, selling, delivering transferring or disposing of gold shall, at the time of each such transaction, issue a voucher in relation to such gold : Sub-section (2) provides that each voucher shall contain the following particulars:

> (f) Whether gold was required to be declared under Section 16 and if so, it has been included in a declaration (to be filed by the seller or transferee) of gold where the gold is brought or otherwise acquired by a dealer or refiner.
> (g) signature of the dealer/refiner issuing the voucher.

Mr. Nanavati could hardly contend that Clause (f) of Rule 13(2) requires what is impossible to be complied with. When the signature of the person to whom the voucher is issued is insisted upon in Clause (h) and name and address has to be filed up, the dealer could as well get the statement as to whether such gold was required to be declared under Section 16 and if so, it was included in any such declaration, to be filed by the seller or transferee of gold bought or otherwise acquired by the dealer. In Badri Prasad's case as we have already pointed out at page 1178 their Lordships had considered this question and had observed that it would not be difficult for any body carrying on or wanting to carry on business lawfully to insist on pawned producing the copy of the declaration in his possession given to him after authentication by the Gold Control Officer in terms of Sub-section (8) of Section 16 in order to satisfy himself that there was no contravention of the Act. Mr. Nanavati, however, vehemently relied upon Section 86 under which whoever fails or omits to make a declaration, including a declaration referred to in Sub-section (12) of Section (6), without any reasonable cause or makes a declaration which is either false or which he knows or has reason to believe to be incorrect, shall, without prejudice to any other action that may be taken under the Act, be punished with imprisonment for a term which may extend to two years and also with fine. When the dealer relies on the statement of such identifiable customer who is properly identified for entering into a genuine business deal, he could never be convicted under Section 86 when he makes a statement on this reliable information supplied by the customer. He would not be making a declaration which is false or which he knows or has reason to believe to be incorrect. Therefore, there is no substance even in this last contention of Mr. Nanavati that Rule 13(2)(f) imposes any unreasonable restriction. That disposes of all the points raised by Mr. Nanavati in the first petition and he had not raised any other point before us.

13. As regards second petition the challenge to Section 16 is completely concluded by the decision in Badri Prasad's case . Mr. Nanavati, however sought to make a distinction on the

ground that the Legislature has provided a limit in Section 16(5) and, therefore, persons whose holding was below the prescribed limit were not bound to make any such declaration. That is why Mr. Nanavati argued that creates an irrational classification between two sets of money lenders. The argument is based on a complete misconception between what is rational discretion and the discrimination. The discretion is never discrimination. The Legislature in any social control measure has to set up some limit so that the petty traders were exempted as otherwise it was bound to lead to lot of administrative difficulties, besides hardship to the petty-traders. Therefore, the Legislature had exercised its rational discretion in setting up the limit in Section 16(5). The limit is equally applicable to all persons who are liable to make a declaration except that in case of licensed dealers the said limit is not applicable because they form a special class as pointed out by their Lordships in the first decision in Harakhchand's case. Therefore, there is no attempt at any invidious classification or discrimination between two sets of money lenders as contended by Mr. Nanavati and, therefore, Section 16 could never be challenged by the money lenders even on the score of Article 14, after it is held to be a reasonable restriction in Badri Prasad's case. Challenge on the score of Article 14 must therefore necessarily fail. In fact in both the petitions, the petitioners are under a complete misconception as they are contending discretion to be discrimination. In such measures of social control, the whole approach of the business community should be that these are only regulatory measures, even though they impose some restrictions on the individual's interest, which is sublimated for sub serving common good of the community. Therefore, ultimately the business community itself will be reaping the benefits of this measure. The challenge of the widely rampant social evil of smuggling had to be effectively controlled along with its incidental illicit business dealings. Therefore, those who are indulging in lawful business activities would not find these restrictive measures in any manner irksome or harsh. In fact, the identification of the customers and other salutary provisions which we have mentioned are by way of regulatory control and would chanalise this business in a lawful manner and, therefore, those who carry on or want to carry on business lawfully would not find it any more difficult under these absolutely necessary reasonable restrictions by way of just regulations. Therefore, the entire challenge to the impugned provisions in Sections 16, 27, 28, 30, 52, 67 and 100 along with the relevant rules completely fails. Both the petitions are, therefore, dismissed and the rule is discharged in each case with no order as to costs. In the circumstances, no order is necessary on the C. A.

14. Mr. Nanavati had asked for a certificate under Articles 132 and 133(1)(c). As far as Article 132 is concerned, there is no such question involved as the question about the legislative competence under the provisions of the Constitution of the impugned statute has been already concluded. As regards the particular sections, we find that there is some conflict so far as Section 28 is concerned. We also find that the question regarding the vires of Section 52 raises a question of wide public importance. As regards the other impugned provisions, the challenge is of no substance and we do not find that regarding those provisions we would certify the question to be fit to go to the Supreme Court.

15. Therefore, the certificate under Article 133(1)(c). shall issue only in the first petition i.e. Sp.C.A. No. 963 of 1970 only in so far as the vires of Sections 28 and 52 has been challenged. The certificate is refused in respect of other provisions and in so far as the second petition i.e. Sp.C.A. 1569 of 1970 is concerned?]

Petition dismissed.