

PATNA HIGH COURT

Bihar State Bullion Merchants

Vs

Union of India

(Civil Writ Jur. Case No. 857 of 1968)

(S.N.P. Singh and Kanhaiyaji, JJ.)

21.10.1970

JUDGMENT

S.N.P. Singh, J.

1. This application under Article 226 of the Constitution of India has been filed by "The Bihar State Bullion Merchants' Association" and twenty-one members of the said Association, who are licensed dealers in gold. The only question raised in the application is the constitutional validity of certain provisions of the Gold (Control) Act, 1968 (Act No. 45 of 1968).

2. The Gold (Control) Act, hereinafter called "the Act", was published in the Extraordinary issue dated the 1st of September, 1968, of the Gazette of India. Before the Act had come into force the Gold (Control) Ordinance, 1968 (No. 6 of 1968) had been promulgated by the President of the Republic of India on the 29th of June, 1968. Prior to the promulgation of the Ordinance the business in gold was controlled by the Gold Control Rules contained in Part XII-A of the Defence of India Rules, 1962. The provisions of Part XIIA of the Defence of India Rules were repealed by the Ordinance from the date of its commencement subject to Section 6 of the General Clauses Act, 1897.

3. Subsequent to the filing of the present application under Article 226 of the Constitution of India, the Supreme Court in the case of *Harakchand Ratanchand Banthia v. Union of India*¹, considered the question whether the Act is constitutionally valid and held that the provisions contained in Sections 5(2) (b), 27(2) (d), 27(6), 32, 46, 88 and 100 are invalid. It further held that the above provisions in the Act, which are invalid, are not inextricably bound up with the remaining provisions of the Act. Therefore, the provisions of the Act which were declared invalid could not affect the validity of the Act as a whole.

4. Although in the application the provisions as contained in various sections of the Act have been impugned, Mr. Lal Narayan Sinha, learned counsel appearing for the petitioners, restricted his argument only with regard to the question of constitutional validity of sub-section (7) of Section 16 and Sections 28, 30 and 31 of the Act and clause (3) of the Gold Control (Identification of Customers) Rules, 1969, hereinafter to be called

"the Rules", made by the Central Government in exercise of powers conferred by Section 114 read with sub-section (1) of Section 100 of the Act. It was urged that the restrictions imposed by the abovementioned Sections of the Act and clause (3) of the Rules are unreasonable and not in public interest and as such they are violative of Article 19(1) (f) and (g) of the Constitution of India.

5. As the preamble of the Act reads, it was enacted by Parliament "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". The circumstances and the social and economic background in which the Act was passed were considered by the Supreme Court in Harakchand's case, AIR 1970 SC 1453 and the following observations were made :

"It is stated in the counter-affidavit that the impugned Act was passed in order 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 contraband gold find their way into this country through illegal channels. The Customs Department is in itself not in a position to effectively combat smuggling over the long borders and the coast lines and, therefore, the anti-smuggling measures have to be supplemented by a detailed system of control over internal transactions 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 smuggled gold within the country. The submission of Mr. Setalvad was that the reasonableness of the impugned provisions of the Act had to be judged in the light of the widespread smuggling of gold which if not checked, was calculated to destroy the national economy and hamper the country's economic stability and progress. Reference was made in this connection to the report of the Taxation Enquiry Commission which pointed out the factual position in regard to the existence of widespread smuggling :

'Smuggling now 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, we understand, 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 generous scale. It is, therefore, necessary, in our opinion, that stringent measures both legal and administrative should be adopted with a view to minimizing the scope of this evil'. (p. 320)

It is in this context that the test for ascertaining the reasonableness of the restriction of the rights

in Article 19 is of great importance."
It was further observed as follows :

"It is necessary to emphasise that the principle which underlies the structure of the rights guaranteed under Article 19 of the Constitution is the principle of balancing of the need for individual liberty with the need for social control in order that the freedoms guaranteed to the individual subserve the larger public interests. It would follow that the reasonableness of the restrictions imposed under the impugned Act would have to be judged by the magnitude of the evil which it is the purpose of the restraints to curb or eliminate."

Keeping in view the principle which has been enunciated in the above observations of the Supreme Court, I proceed to consider the contention raised by Lal Narayan Sinha. In order to appreciate the argument it is necessary to reproduce the impugned sections of the Act and clause 3 of the Rules and certain other provisions of the Act which have been referred to in course of the argument.

6. Clause (b) of Section 2 of the Act defines "article" as follows :

"'article' means anything (other than ornament). in a finished form, made of, manufactured from or containing gold, and includes -

(i) any old coin;

(ii) broken pieces of an article; but does not include primary gold."

Clause (c) of Section 2 defines "artisan" in these words :

" 'artisan' means a person (other than a certified goldsmith) who is employed by a licensed dealer, whether on cash or deferred payment or on commission, remuneration or other valuable consideration, to make, manufacture, prepare, repair, polish or process any article or ornament or to melt, process or convert gold for the purpose of making, manufacturing, preparing, or processing any article or ornament."

"Certified goldsmith" is defined in clause (d) of Section 2 and it runs thus :

" 'Certified goldsmith' means a self-employed goldsmith who holds a valid certificate, referred to in Section 39."

"Dealer" has been comprehensively defined in clause (h) of Section 2 which reads as follows :

" 'dealer' means any person who carries on, directly or otherwise, the business of making, manufacturing, preparing, repairing, polishing, buying, selling, supplying, distributing, melting, processing or converting, gold whether for cash or for deferred payment or for commission, remuneration or other valuable consideration, and includes -

(i) a Hindu undivided family which carries on such business,

(ii) a local authority, company, society registered under the Societies Registration Act, 1860 (21 of 1860), co-operative society incorporated under any law with respect to co-operative societies, club, firm or other association of persons which carries on such

business; or -

- (a) buys or accepts gold (for the purpose of making ornaments) from,
- (b) makes, manufactures, prepares, repairs or polishes ornaments for,
- (c) processes, melts or converts gold (for the purpose of making ornaments) for,
- (d) sells, supplies or distributes ornaments or other gold (for purpose of making ornaments) to, its members;
- (iii) a commission agent, broker, del credere agent, auctioneer of other mercantile agent, by whatever name called, who carries on such business on behalf of any principal but does not include the Reserve Bank, the State Bank of India, any subsidiary bank as defined in clause (k) of Section 2 of the State Bank of India (Subsidiary Bank) Act, 1959 (38 of 1959), or any banking company as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949), in so far as such bank sells or transfers of exhibits for sale or transfer, any gold,

Explanation - For the purpose of this Act -

- (a) Every person who acts, as an agent of a dealer residing outside India and carries on the business of such dealer in India or acts, on behalf of such dealer as -
 - (i) a mercantile agent as defined in the Sale of Goods Act, 1930 (3 of 1930), or

Notes

The definition of a 'Mercantile Agent' as given in the Sale of Goods Act means mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale or to buy goods, or to raise money on the security of goods.

- (ii) an agent for handling gold or documents or title relating to gold or
- (iii) an agent for the collection or payment of sale price of gold or as a guarantor for such collection or payment, and
- (b) every branch in India of a firm or company having its registered office outside India, if such firm or company is a dealer,

shall be deemed to be a dealer." "Gold" as defined in clause (i) of Section 2 means :

"Gold, including its alloy (whether virgin, melted or remelted, wrought or unwrought) in the shape or form, of a purity of not less than nine carats and includes primary gold, article and ornament."

"Ornament" has been defined in clause (p) of Section 2 which reads thus :

" 'ornament' means a thing, in a finished form, meant for personal adornment or for the adornment of any idol, deity or any other object of religious worship, made of or manufactured from, gold, whether or not set with stones or gems (real or artificial), or with pearls (real, cultured or imitation) or with all or any of them and includes parts, pendants or broken pieces of ornament.

Explanation - For the purposes of this Act nothing made of gold, which resembles an ornament, shall be deemed to be an ornament unless the thing (having regard to its purity, size, weight, description or workmanship) is such as is commonly used as ornament in any State or Union Territory."

7. As provided under Chapter III of the Act certain restrictions relating to the manufacture, acquisition, possession, sale, transfer or delivery of gold have been imposed. Section 8, as amended by Act 26 of 1969, reads as follows :

"8. Restrictions regarding acquisition, possession and disposal of gold. - (1) Save as otherwise provided in this Act, no person shall -

(i) own or have in his possession, custody or control, or
(ii) acquire or agree to acquire the ownership, possession, custody or control of, or
(iii) buy, accept or otherwise receive or agree to buy, accept or otherwise receive, any primary gold.

(2) Save as otherwise provided in this Act, a person may -

(a) (i) acquire or agree to acquire the ownership, possession, custody or control of, or
(ii) buy, accept or otherwise receive, or agree to buy, accept or otherwise receive, any ornament, unless he knows or has reason to believe that such ornament, being required to be included in a declaration, has not been so included,

(b) sell, deliver, transfer or otherwise dispose of, or agree to sell, deliver, transfer or otherwise dispose of, any ornament, but shall not do so if the ornament, being required to be included in a declaration has not been so included.

(3) Save as otherwise provided in this Act, no person shall -

(a) acquire, or agree to acquire, the ownership, possession, custody, or control of, or
(b) buy, accept or otherwise, receive, or agree to buy, accept or otherwise receive, any article, except by succession, intestate or testamentary.

(4) Save as otherwise provided in this Act, no person shall sell, deliver, transfer or otherwise dispose of, or agree to sell, deliver, transfer or otherwise dispose of, any article to a person who is not a licensed dealer or refiner :

Provided that a person may deliver an article to a certified goldsmith for the purpose of repairing or polishing or for the purpose of getting one or more ornaments made, manufactured or prepared therefrom :

Provided further that no such sale, delivery, transfer or disposal of any article shall be made -

(i) where such article is required to be included in a declaration unless such article has been included in a declaration which has been duly made by the person who intends to sell, deliver, transfer or otherwise dispose of the same, or

(ii) where such article is not required to be included in a declaration unless the sale, delivery, transfer or disposal thereof has been authorised by the Administrator.

(5) Notwithstanding anything contained in sub-sections (3) and (4), a person may accept or transfer, by way of gift or exchange gold coins, not exceeding five in number. If

together with the gold coins received by way of gift or exchange, the total holding of gold coins of the donee or transferee, as the case may be does not exceed fifty grammes.

(6) Notwithstanding anything contained in this section, the Administrator may, if he is of opinion that the special circumstances of any case or class of cases so require, authorise any person or class of persons to buy or otherwise acquire, accept or otherwise receive or sell, deliver, transfer or otherwise dispose of, any primary gold or article."

Section 9 imposes restrictions on the disposal of gold acquired under any authorisation made by the Administrator. Section 10 prohibits loans on hypothecation of primary gold or undeclared gold and it reads thus :

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

(a) any primary gold, or

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

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

As provided under Section 16 of the Act, a declaration as to articles or ornaments has to be made. The section reads as follows :-

"(1) Save as otherwise provided in this Chapter, every person who owns, or is in possession, custody or control of any article or ornament at the commencement of this Act, or acquires the ownership, possession, custody or control of any article or ornament thereafter, shall make, within thirty days from such commencement or from such acquisition, as the case may be, or within such further period as the Administrator may, on sufficient cause being shown, allow a declaration in the prescribed form as to the quantity, description and other prescribed particulars of any article, or ornament, or both, owned, possessed, held or controlled by him :

Provided that no such declaration shall be required to be made where a person who, having owned, possessed, held or controlled any article or ornament before the commencement of this Act, has already made a declaration in relation to that article, or ornament, or both :

Provided further that nothing in this sub-section shall be construed as enabling any declaration to be made in respect of any gold for which the period prescribed or allowed under the law for the time being in force before the commencement of this Act had expired, before such commencement.

(2) For the removal of doubts, it is hereby declared that the declaration referred to in this section shall be made, in relation to any article, or ornament or both -

(a) owned by a minor or a lunatic, by the guardian or manager of such minor or lunatic, as the case may be,

- (b) owned by an idol or a deity, by the manager of such idol or deity, whether known as shebait or manager or by any other name,
- (c) owned, possessed, held or controlled by a person whose properties are under the management of any administrator or receiver, by such administrator, or receiver,
- (d) owned, possessed, held or controlled by a person whose properties are under the management of a Court of Wards, by the manager of such Court.
- (e) vested in an executor or an administrator of a will or other testamentary disposition, by such executor or administrator,
- (f) owned, possessed, held or controlled by the members of a firm, by any partner of such firm,
- (g) owned, possessed, held or controlled by a Hindu undivided family, by the head or karta of such family,
- (h) which is the subject-matter of any public or private trust, by the trustee of such trust,
- (i) owned, possessed, held or controlled by a company, whether incorporated in or outside India, by any person in charge of the management of the affairs of such company,
- (j) belonging to a temple, church, mosque, gurdwara or any other religious institution, by the person in charge of the management of such temple, church, mosque, gurdwara or other religious institution,
- (k) which is wakf property, by the mutawalli of such wakf;
- (l) owned, possessed, held or controlled by any society, club or other association, by the Secretary or Manager of such society, club or other association,
- (m) owned, possessed, held or controlled by any other person, by such person as may be prescribed.

(3) If any person who did not own, possess, hold or control, before the commencement of this Act, any quantity of gold in excess of the quantities specified in sub-section (5), acquires after such commencement, the ownership (whether by succession, intestate or testamentary, or otherwise), possession, custody or control of any gold and if, as a result of such acquisition, the total quantity of gold owned, possessed, held or controlled by such person exceeds the quantities specified in sub-section (5) such person shall, within thirty days from the date of such acquisition or within such further period as the Administrator may, on sufficient cause being shown, allow, make a declaration in the prescribed form stating the total quantity, description and other prescribed particulars of -

- (a) the gold owned, possessed, held or controlled by him immediately after such acquisition, and
- (b) the person from whom the ownership, possession, custody or control of such gold was acquired.

(4) If any person who has made a declaration, whether under sub-section (1) or under sub-section (3) or under Part XIIIA of the Defence of India Rules, 1962, or under the Gold (Control) Ordinance, 1968 (6 of 1968), as to gold owned, possessed, held or controlled by him, acquires (whether by succession, intestate or testamentary, or otherwise), or parts with, after such declaration, the ownership, possession, custody or control of any quantity

of gold, he shall, as often as he acquires or parts with the ownership, possession, custody or control of any quantity of gold, make within thirty days from the date of such acquisition or parting with, or within such further period as the administrator may, on sufficient cause being shown, allow a further declaration in the prescribed form stating the quantity, description and other prescribed particulars of the gold in relation to which such ownership, possession, custody or control has been acquired or parted with by him and giving the prescribed particulars of the person from whom the ownership, possession, custody or control of such gold was acquired or in whose favour the ownership, possession, custody or control of such gold was parted with, as the case may be.

(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, held 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 grammes,

(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,

(6) For the purposes of this section, 'family' shall be deemed to consist of -

(i) the husband, wife and one or more minor children, or

(ii) any two or more of them, but shall not be deemed to include any other person.

(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 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.

(8) Every declaration made under this section shall be made in triplicate, of which one copy shall be authenticated and signed by the Gold Control Officer and thereafter shall be returned to the person making the declaration and the copy so returned shall be retained by such person as evidence of the declaration made by him under this section.

(9) Every declaration made under this section shall be kept by the Gold Control Officer in safe custody and the particulars thereof shall be entered in a register to be maintained for this purpose.

(10) A person who has made a declaration shall, as often as he acquires or parts with, after such declaration the ownership, possession, custody, or control of any quantity of gold, endorse within thirty days from the date of such acquisition, or parting with, of gold, in such manner as may be prescribed, on the copy of the declaration retained by him, and shall also produce such copy, within seven days from the date of such endorsement, before the Gold Control Officer, who shall make necessary changes in the register referred to in sub-section (9) and also in the copy of the declaration kept in his safe custody.

(11) No person shall own or have in his possession, custody or control any quantity of gold which is required to be included in a declaration unless such gold has been included in a declaration or further declaration, as the case may be :

Provided that nothing in this sub-section shall apply until the expiry of the period within which a person is entitled to make a declaration or further declaration.

(12) A person upon whom a penalty has been imposed or whose gold has been confiscated under the provisions of Chapter XIII for failure to make a declaration shall, if directed by the authority adjudging the penalty or confiscation, make a declaration within such time as may be specified in the directions.

(13) Where the period prescribed or allowed under the law in force immediately before the commencement of this Act, for any declaration to be made in respect of any gold, had not expired before such commencement, the declaration may be made within the period prescribed or allowed under such law."

Section 28 of the Act provides as follows :

"Money-lending business not to be carried on in licensed premises. - 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."

Section 30 reads thus :

"Ornament, etc., to be stamped. - (1) Every licensed dealer shall stamp every piece of article or ornament made, manufactured or prepared by him certifying the purity of the

gold :

Provided that nothing in this section shall apply to any article or ornament on which, owing to its nature or the smallness of its size, it is not possible to put such a stamp.

(2) Every stamp referred to in sub-section (1) shall also contain such other particulars as may be prescribed."

Section 31 of the Act, as amended by Act 26 of 1969, runs thus :

"Acquisition of gold by a dealer. - Save as otherwise provided in this Act, no licensed dealer shall buy or otherwise acquire or agree to buy or otherwise acquire or accept or otherwise receive or agree to accept or otherwise receive any article, ornament or primary gold from a person who is not a licensed dealer or refiner:

Provided that any such dealer may buy or otherwise acquire or accept or otherwise receive or agree to buy or otherwise acquire or accept or otherwise receive from a person who is not a licensed dealer or refiner -

(i) any ornament, unless he knows or has reason to believe that such ornament, being required to be included in a declaration, has not been so included.

(ii) any article which, being required to be included in a declaration has been so included, or where such article is not required to be included in a declaration, if the sale, delivery, transfer or disposal of such article has been authorised by the Administrator.

(iii) any primary gold, if the person selling, delivering, transferring, or otherwise disposing of the same has been authorised so to do by the Administrator :

Provided further that where any such dealer has delivered any article, ornament or primary gold to his artisan or a certified goldsmith for the purpose of making, manufacturing, preparing, repairing or polishing any ornament, he may, after such ornament has been made, manufactured, prepared, repaired or polished, take back such ornament from the artisan or certified goldsmith, as the case may be."

Clause 3 of the Rules runs thus :

"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 account 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 identity of the customer such as

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(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 Secretariate of Parliament or of any Legislature in a State or Union Territory,

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

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

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

(2) Before accepting, buying or otherwise receiving any gold from a customer, a licensed 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 (1) 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 in the register of accounts maintained by him."

8. As provided under sub-section (7) of Section 16 of the Act, a licensed dealer or refiner has to make a declaration not only in relation to any gold owned, possessed, held or controlled by him in the capacity of a licensed dealer or refiner but also in any other capacity and the exemptions as provided under sub-section (5) of Section 16 are not applicable in his case. A licensed dealer or refiner has thus to make a declaration even if he as an individual possesses less than 2000 grammes of gold ornaments. If the licensed dealer is a member of the family he has to make a declaration even if the family possesses less than 4000 grammes of gold ornaments. Mr. Lal Narayan Sinha contended that having regard to the fact that gold ornaments are mainly possessed by the female members of a family, it is difficult for a dealer or refiner to ascertain as to what is the exact weight of the gold ornaments which are being possessed by the female members of his family. It is, therefore, difficult for a dealer or refiner to include in the declarations the ornaments which are possessed by the female members of his family. Thus sub-section (7) by imposing a vicarious liability on the dealer, which, it may be difficult to fulfill, imposes an unreasonable restriction on the right of a dealer or refiner to carry on trade or business in gold and is thus violative of Article 19(1) (g) of the Constitution of India.

9. In the counter-affidavit filed on behalf of the Union of India and other respondents it has been stated that the experience of the actual working of Gold Control Rules had shown that licensed dealers when found in stocks of ornaments or articles in excess of those entered in the prescribed accounts almost invariably took the plea that those ornaments were their personal property or the property of the members of their family. It was also found that ornaments manufactured clandestinely or in contravention of the provisions of law were kept by them at their residence or at other places. It was, therefore, found necessary that a licensed dealer or refiner should declare all gold ornaments and articles belonging to him or his family or in his custody or control. It is thus clear from the counter-affidavit filed on behalf of the respondents that the main object of making a provision in sub-section (7) of Section 16 of the Act that a licensed dealer or refiner shall make a declaration 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 was to stop the unauthorized possession and sale of gold ornaments by a dealer or refiner. The apprehension that a dealer or refiner would not be in a position to ascertain as to what is the exact weight of the gold which is being possessed by the female members of his family and as such he would not be able to make a true declaration in respect thereof is more imaginary than real. Even a family consisting of individuals other than a refiner or dealer has to make a declaration if the gold ornaments possessed by the family exceed the limit of 4000 grammes and in the declaration the ornaments possessed by the female members of the family are to be included. In my opinion, the provisions contained in sub-section (7) of Section 16 of the Act do not impose unreasonable restrictions on the right of a dealer or refiner to possess or to carry on business or trade in gold and are not violative of Article 19(1) (f) and (g) of the Constitution.

10. Regarding the constitutional validity of Section 28 of the Act, Mr. Lal Narayan Sinha raised two contentions. In the first place he submitted that the restrictions contained in Section 28 do not serve any beneficial purpose but seriously impede the business of the dealer and as such they are unreasonable restrictions and are violative of Article 19(1) (g) of the Constitution. Secondly he urged that Section 28 of the Act is violative of Article 14 of the Constitution inasmuch as it confers uncontrolled and arbitrary powers in the Administrator to permit or not to permit a licensed dealer to carry on money-lending or banking business on the security of any article, or ornament, or both or to permit any other person to carry on money-lending, banking or any other business in the premises in which a dealer carries on business in gold. There does not appear to be any substance in either of the contentions raised. As stated in the counter-affidavit filed on behalf of the respondents, the provision in Section 28 was made in order to achieve the main object of the Act. It appears that the restrictions which have been imposed in Section 28 are meant to prevent the circumvention of the other provisions of the Act. Under Section 28 of the Act a dealer is not prevented from carrying on money-lending, banking or any other business in the same premises in which he carries on business as a dealer but he is prevented only from carrying on business as a money-lender or banker on the security of any article, or ornament, or both unless authorised by the Administrator. A dealer can, therefore, carry on any business in the same premises not connected with article or ornament without the permission of the Administrator. Of course there is prohibition in the case of a third person in carrying on money-lending, banking or any other business in the same premises but it is not an absolute prohibition inasmuch as the Administrator can authorise a third person to carry on the business. The contention of Mr. Lal Narayan Sinha that the Administrator has been given uncontrolled and arbitrary powers as no guideline has been provided as to in which cases the Administrator will allow permission and in which cases he will refuse permission is not sound. Although in Section

28 of the Act no guideline has been provided, there is sufficient guideline in the preamble of the Act. As observed by the Supreme Court in Harakchand's case, referred to above. "Section 5(1) requires that the Administrator should have regard to the policy of the Act in making his orders". It cannot, therefore, be said that unfettered and arbitrary powers have been conferred on the Administrator under Section 28 of the Act. As both the contentions raised by Mr. Sinha fail, Section 28 of the Act must be held to be constitutionally valid.

11. Now I proceed to consider the contention of Mr. Lal Narayan Sinha regarding the validity of Section 30 of the Act. Mr. Sinha urged that the provision with regard to stamping of article or ornament made, manufactured or prepared by a dealer is unreasonable inasmuch as the dealer does not himself make, manufacture or prepare an article or ornament of gold but gets it made, manufactured or prepared by an artisan. Therefore, to place an obligation of stamping and certifying the purity of gold on a dealer without placing a similar obligation on an artisan or a certified goldsmith is unreasonable. The above contention of Mr. Sinha does not appear to be sound. An artisan is employed by a licensed dealer on payment of remuneration to make, manufacture, prepare etc., any article or ornament. He is, therefore, under the direct control of a dealer. As the dealer is the person who ultimately sells articles and ornaments, the responsibility in properly stamping the articles and the ornaments to ensure the purity of gold has been rightly made to rest on him and not on the artisan. Mr. Sinha faintly argued that since a dealer also purchases articles and ornaments from a certified goldsmith the obligation to stamp gold articles and ornaments and certifying the purity of gold in respect thereof is unreasonable. In the first place, on a plain reading of Section 30 of the Act, it appears that the ornaments which are purchased by a dealer from a certified goldsmith are not required to be stamped inasmuch as such articles or ornaments cannot be said to have been "made, manufactured or prepared" by a licensed dealer. Secondly even if it be held that a licensed dealer is required to stamp such articles or ornaments which he purchases from a certified goldsmith it cannot be said to be an obligation which it is difficult for a dealer to fulfil. He before purchasing the article or ornament from a certified goldsmith can satisfy himself with regard to the purity of the gold. The contention of Mr. Lal Narayan Sinha that Section 30 of the Act is invalid must, therefore, be rejected.

12. According to Mr. Lal Narayan Sinha, the provision made in proviso to Section 31 that any dealer may buy or otherwise acquire from a person who is not a licensed dealer or refiner any ornament unless he knows or has reason to believe that such ornament, being required to be included in a declaration, has not been so included is unreasonable inasmuch as it is difficult for a dealer to know whether a person who is selling the ornament has made a declaration or not. In support of his contention he referred to paragraph 22 of the judgment of the Supreme Court in Harakchand's case, AIR 1970 SC 1453 referred to above. While considering the provisions of Section 100 of the Act, as it stood before amendment, their Lordships of the Supreme Court observed in paragraph 22 as follows :

"We shall now proceed to deal with Section 100 of the Act which also has been challenged. This section imposes a statutory obligation upon a dealer to take all reasonable steps to satisfy himself as to the identity of persons from whom any gold is bought. The section does 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 is bought. The

statutory obligation imposed by the section is uncertain and incapable of proper compliance. It must be held that the section imposes an impossible burden upon the dealers and constitutes an unreasonable restriction."

There is difference in the provisions of Section 100, as it stood before amendment and was under challenge before the Supreme Court, and Section 31 of the Act. Section 100, as it stood before amendment, did not specify the nature of the steps which a dealer had to take for satisfying himself as to the identity of the person from whom any gold was to be bought. All that Section 31 provides is that if a dealer knows or has reason to believe that an ornament being required to be included in the declaration has not been so included he will not buy the same. Section 31, therefore, cannot be declared to be invalid.

13. As the Supreme Court declared the provisions of Section 100 of the Act unconstitutional, a new Section 100 was substituted by the Gold (Control) Amendment Act, 1969. In exercise of the powers conferred by Section 114 read with sub-section (1) of amended Section 100 of the Act. Gold Control (Identification of Customers) Rules, 1969, was made on the 3rd of July, 1969. As provided under Rule 3 of the said Rules, a licensed dealer has to take one or more of the steps specified therein to satisfy himself as to the identity of his customers. It was contended by Mr. Lal Narayan Sinha that the provisions contained in Rules 3(1) (i) and 3(1) (ii) are not adequate to establish the identity of all classes of customers to the satisfaction of a dealer. According to learned counsel, if a villager, who is unknown to a licensed dealer, wants to sell some gold ornaments, it will be difficult for a licensed dealer to satisfy himself as to the identity of that villager by taking any of the steps mentioned in Rules 3(1) (i) and 3(1) (ii) of the Rules. It is not possible to accept this contention. No doubt it would have been better if provision would have been made in the Rules for establishing the identity of a villager by the production of a valid identity card issued to him by some responsible officer of the Gram Panchayat within the jurisdiction of which he resides. But, even in absence of such a provision, the rule cannot be held to be invalid as there is a provision for establishing the identity of a customer by the production of a valid identity card issued to him by the postal authorities. A villager can easily produce such an identity card and the licensed dealer may be satisfied regarding his identity on the production of such an identity card. Mr. Sinha did not argue that it is difficult under the rules to establish the identity of any other class of customers. As I am of the view that a villager can establish his identity by producing an identity card issued to him by the postal authorities, the last contention raised by learned counsel regarding the validity of Rule 3 must be rejected.

14. For the foregoing reasons, I hold that Sections 16, 28, 30 and 31 of the Act and Rule 3 of Gold Control (Identification of Customers) Rules, 1969, are constitutionally valid.

15. In the result, the writ application is dismissed but there will be no order with regard to costs.

Kanhaiyaji, J.

16. I agree.

Application dismissed

Cases Referred.

¹ AIR 1970 SC 1453