

**(1965) 10 MAD CK 0014**

**In the Madras High Court**

**Case No : Writ Petition No. 1825 of 1964**

C.R. Padmanabha Chetty

APPELLANT

Vs

Assistant Collector, Central Excise, Salem and Another

RESPONDENT

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**Date of Decision : 19-10-1965**

**Acts Referred:**

Defence of India (Amendment) Rules, 1963 — Rule 126  
Defence of India Act, 1962 — Section 3, 3(1), 3(2), 3(2)(33)  
Gold (Control) Rules, 1963 — Rule 126

**Citation : AIR 1966 Mad 450**

**Hon'ble Judges : Srinivasan, J**

**Bench : Single Bench**

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## **Judgement**

(1) The petitioner is a dealer in gold and a licenced pawnbroker. The Gold Control Rules framed under the authority of the Defence of India Act,

1962, prohibit by Rule 126-D(2) a person, who is a dealer, whether licensed or not, from carrying on business as money-lender or banker in the

same premises in which he carries on business as a dealer. This rule is attacked by the petitioner as devoid of any legal basis. It is claimed that the

equitable construction of the rules could permit the carrying on of money-lending business and banking business along with dealing in gold by

dealers and that the Department, represented by the Central Excise Authorities, have taken an erroneous view of the relevant provisions. This

equitable construction is based upon the other part of the Rule 136-D, to which reference will be made shortly. It is said that on the erroneous

interpretation of the rules, the Excise authorities are threatening to prosecute the petitioner and other dealers and also to cancel their licence as

dealers in gold. It is claimed by the petitioner that the rule does not prohibit pawn broking in the same premises but only prohibits a money lending

or banking business. It is accordingly prayed that a writ of mandamus may issue to the respondents to restrain them from preventing the petitioner

from carrying on the business of pawn broking in the same premises in which he deals in gold.

(2) The contention of the respondents seeks only to support the view of the interpretation of the relevant rule. This view has been expressed in a

communication sent by the Central Excise Authorities to the Shroff Merchants' Association, thus:--

It is once again emphasised that licenced gold dealers are not permitted to carry on the business of pawn broking in their licensed premises. If the

pawn broking business is carried on in the licensed premises, it will amount to contravention of Rule 126-D(2) of the Defence of India Amendment

Rules 1963".

It may be stated that the petitioner only attacks the vires of Rule 126-D(2)(a), the substance of which has been extracted earlier. The contention of

Mr. Lenin is that this rule travels beyond the scope of S. 3(2)(33) of the Defence of India Act, 1962. The question is whether this contention is

correct.

(3) The Defence of India Act, 1962 came into force on 12-12-1962. It replaced Ordinances 4 and 6 of 1962. The rules in question have been

made in the exercise of the powers conferred by S. 3 of the Act. S. 3(1) confers a general power of making rules such as may appear to the

Central Government to be necessary or expedient for securing the defence of India and civil defence, public safety, the maintenance of public order

or the efficient conduct of military operations, or for maintaining supplies and services essential for the life of the community. In addition to this

general power, S. 3(2) provides for making rules in respect of as many as 57 items. Clause 33 of S. 3(2) enables rules to be made for

controlling the possession, use or disposal, of or dealing in coin, bullion, bank notes, currency notes, securities or foreign exchange.

The contention of Mr. Lenin, learned counsel for the petitioner, is that while S. 3(1) may be accorded a generous interpretation, Section 3(2),

which is specific must be limited to what is stated in the relevant clause. Among the several items which may be controlled by rules is bullion.

According to the learned counsel, "bullion" means "uncoined gold or silver in

the mass", or it may also include any coin which is not current and legal tender. It is distinguishable from coin or ornaments. If that should be the proper meaning of the expression "bullion", it is claimed that Clause 33 of S. 3(2) does not authorise the control of the possession, use or disposal of gold ornaments. It is said accordingly that to the extent to which the petitioner as pawn broker obtains possession of gold ornaments, he cannot be regarded as being in possession of or dealing in bullion. It is also said that the general rule making power contained S. 3(1) cannot take in a power to formulate the Gold Control Rules. The only source of this power S. 3(2)(33). It is urged that the power conferred hereunder is not guided and the rules display an entirely arbitrary exercise of that power.

Mr. Lenin claims that in understanding the scope of the rule making power, one has to be guided by the content of the enactment and what the enactment itself seeks to provide for, and that the preamble to the Act, which states that the Act is intended to provide for special measures to ensure public safety and interest, the defence of India and civil defence, cannot possible include a power to control the possession and use of gold.

It is said accordingly that these rules do not subserve the purpose of the Act.

(4) Turning to Rule 126-D, which occurs in part XII-A of the Defence of India Rules, dealing with Gold Control, sub-rule (1) prohibits any person from making an advance or granting any loan.

to any other person on the hypothecation, pledge, mortgage or charge of any gold other than ornament, unless such gold has been included in a declaration or a further declaration made under Rule 126-I".

This sub-rule as it stands does not prohibit transactions of the kind referred to in respect of ornaments. The prohibition applies not only to pawn brokers functioning as such, but to all persons. The prohibition is clearly against such transactions in respect of gold other than ornaments. The expression "gold" itself has been defined for the purpose of these rules and it means gold including its alloy, whether virgin, melted, remelted, wrought or unwrought, in any shape or form, or a purity of not less than nine carats and includes any gold coin, whether legal tender or not, any ornament and any other article of gold".

It will be seen therefore that transaction by way of hypothecation, pledge,

mortgage or charge is prohibited by Rule 126-D(1) in respect of the various forms of gold except ornaments. Sub-rule (2) has particular reference to restraint upon a dealer; and a dealer, whether licenced or not, is

prohibited from carrying on business as money-lender or banker in the same premises in which he carries on business as a dealer. A "dealer" is

again defined assessee

a person who carries on directly or indirectly the business of making, manufacturing.. ..melting, processing or converting ornaments, or buying,

selling, melting, processing or converting gold for the purpose of making or manufacturing ornaments.

The effect of sub-rule (2) is accordingly that such a person shall not carry on business as money lender or banker in the same premises.

I am unable to agree with Mr. Lenin that sub-rule (1) has any relevance to the interpretation of the sub-rule (2). The underlying object of the rules

is to make a distinction between gold ornaments and gold in any other form. A pawn broker is not prohibited from advancing moneys on the

pledge, or charge of gold ornaments. He is also not prohibited from advancing money on the pledge or charge of gold in any other form so long as

that gold has been included by the owner in a declaration made under rule 126-I. What are sought to be prevented are transactions in undeclared

gold. If the control of gold other than ornaments is necessary, then, the reason underlying the prohibition against carrying on money lending itself in

the same premises as a dealer in gold is easy to appreciate. When a dealer is a person who makes, manufactures or converts gold into ornaments,

any undeclared gold that might come into his hands might easily assume the shape of ornaments and defeat the very purpose of the control. That

seems to be the reason why such a person is prevented from carrying on a money lending business in the same premises, for the identity of the gold

would be obliterated almost immediately and the control over gold other than ornaments cannot be effectuated. It is therefore difficult to agree that

Rule 126-D(2)(a) goes beyond the requirements of control.

(5) Nor am I able to agree that controlling the possession, use or disposal of or dealing in bullion cannot include any form of gold other than gold in

the mass. The rules have defined gold in a particular way and I am not convinced that the definition can be treated as ultra vires.

(6) Mr. Lenin argues that even for the proper exercise of the control the prohibition against the use of the same premises is not required. Reference

has been made to Rex v. Basudev, 1949 FCR 657: AIR 1950 FC 67 . In that case the question arose whether the U. P. Prevention of

Blackmarketing (Temporary Powers) Act 1947 which enacted by S. 3(1)(i) that if the Provincial Government was satisfied that any person

habitually indulged in blackmarketing the Provincial Government may make an order that such a person should be detained in custody for a period

not exceeding six months, was a valid piece of legislation. It was contended on behalf of the State that blackmarketing was bound to cause a

dislocation of the machinery of controlled distribution which in turn might lead to the breaches of the peace and that therefore detention would be

covered by Entry I of List II, which entry among other things covers preventive detention for reasons connected with the maintenance of public

order. Their Lordships observe thus:

It is true that blackmarketing in essential commodities may at times lead to a disturbance of public order, but so may, for example, the rash driving

of an automobile or the sale of adulterated food-stuffs. Activities such as these are so remote in the chain of relation to the maintenance of public

order, that preventive detention on account of them cannot in our opinion fall within the purview of that entry..... The action contemplated must

in our view be real and proximate, not far-fetched or problematical.

These observations have been quoted with approval in a later decision of the Supreme Court The Superintendent, Central Prison, Fatehgarh Vs.

Dr. Ram Manohar Lohia, . On the basis of these observations, Mr. Lenin suggests that equally in the present case what is sought to be achieved by

the prohibition of the use of the same premises by a dealer functioning as a pawn broker is an eventuality which is so remote that the prohibition

cannot be sustained as valid. I am unable to agree, I have pointed out that the Legislature has not attempted to control possession etc. of gold

ornaments or declared gold. The possibility of a dealer who engages himself in the manufacture or the conversion of gold into ornaments, so

converting undeclared gold which comes into his hands as a pawn broker is not as remote as Mr. Lenin contends. It is a real and imminent

possibility and if the rule in order to effectuate the control of gold lays an

embargo on the use of the same premises it seems to be reasonably well within the scope of the power conferred.

(7) The learned Additional Government Pleader has referred to Makhan Singh Vs. State of Punjab (and connected appeals), . In paragraph 38,

their Lordships deal with the scope of the rule-making power. They observe:

Right up from the time when this court dealt with special reference in 1951, In re, Delhi Laws Act etc., AIR 1951 SC 332 the au about the limit

within which the Legislature can legitimately confer powers on its delegate has been examined on several occasions and it has been consistently

held that what the Legislature is prevented from doing is to delegate its essentially legislative function and power. If it appears from the relevant

provisions of the impugned statute that powers which have been delegated include powers which can legislative powers, then the legislation is bad

and it introduces a serious infirmity in the Act itself. On the other hand, if the Legislature lays down its legislative policy in clear and unambiguous

terms and leaves it to the delegate to execute that policy, by means of making appropriate rules, then such delegation is not

impermissible..... In the present case, one has merely to read S. 3(1) of the Defence of India Act 1962, and the detailed provisions

contained in the several clauses of S. 3(2) to be satisfied that the attack against the validity of the said section on the ground of excessive delegation

is patently unsustainable. Not only is the legislative policy broadly indicated in the preamble to the Act, but the relevant provisions of the impugned

section itself give such detailed and specific guidance to the rule making authority that it would be idle to contend that the Act has delegated the

essential legislative function to the rule-making authority.....

Though Mr. Lenin at first contended that the numerous clauses of S. 3(2) travel beyond the stated objective of the Act as disclosed by the

preamble thereto, he gave up that line of argument and contented himself, with the argument that though S. 3(2) may lay down a policy, yet it is

transgressed by the particular rule which be attacks. I have already endeavoured to meet this point, for if the power to make rules controlling

possession and use, or of dealing in, bullion is a valid conferment of a power in the public interest, rule 126-D(2)(a) which is impugned is vitally

necessary for the exercise of that control. I am unable to accept that argument

to the contrary in support of which Mr. Lenin relies upon Hamdard

Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another

Vs. The Union of India (UOI) and Others, , where their Lordships struck down an unguided power to specify any disease or condition, which

amounted, in the opinion of the Supreme Court, to a delegation of uncontrolled or uncanalised power. The position in the present case is however

totally different.

(8) It has been brought to my notice during the course of the arguments by the learned Additional Government Pleader that the apparent harshness

of the impugned rule stands mitigated by a modification thereof. Rule 126-T empowers the Administrator appointed for the purposes of gold

control to issue directions for carrying out the purpose of gold control. The Administrator has issued such directions with reference to the impugned

rule in these terms:--

The prohibition that no person who is a dealer, whether licenced or not, shall carry on business as money lender or banker in the same premises in

which he carries on business as a dealer shall apply only to dealers whose business as money lenders or bankers involves hypothecation of gold,

provided that in any city having a population of one lakh and more, the Superintendent of Central Excise concerned may permit such a dealer to

carry on such business of money lending or banking also in the same premises, if that business is carried on on a portion of that premises

structurally separate from the portion in which he carries on his business as dealer without any internal access thereto".

(9) This direction gives clear expression to the underlying intention, viz., that undeclared gold should not be the subject matter of transactions, for

the control might otherwise be ineffective in that regard.

(10) I am accordingly satisfied that the contention of the petitioner that the rule is ultra vires cannot be sustained. The petition fails and is dismissed.

There will be no order as to costs."

(11) Petition dismissed.