

(2014) 01 GUJ CK 0111

In the Gujarat High Court

Case No : Special Civil Application No. 12479 of 2013

Global Excess

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

Bureau of Indian Standards Act, 1986 — Section 10(1)(p)
Constitution of India, 1950 — Article 14 19 19(1) 19(1)(g) 19(6)
Patents Act, 1970 — Section 107A(b)

Citation : (2014) 309 ELT 643

Hon'ble Judges : Bhaskar Bhattacharya, C.J;J.B. Pardiwala, J

Bench : Division Bench

Advocate : Premal S. Rachh, for the Petitioners No. 1, for the Appellant; Hardik P. Mehta, Advocate for the Respondent(s) No. 2 and Mr. I.H. Syed, Advocate for the Respondent(s) No. 1, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—By this writ application under Article 226 of the Constitution of India, the petitioner engaged in the business of computers, printers, laptop, notebook, tablets etc. seeks to challenge the Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order 2012 dated 7th September 2012 and the notifications issued pursuant thereto by the Central Government in exercise of powers conferred u/s 10(1)(p) of the Bureau of Indian Standards Act, 1986 read with Rule 13, Clause (fa) of the Bureau of Indian Standards Rules, 1987 as being ultra vires, unconstitutional and violative of Article 19(1)(g) of the Constitution of India. The case made out by the petitioner in this petition may be summarized as under:

1.1 The petitioner is engaged in the business of importing computers, printers and other accessories including laptop, notebook, tablets, printers, plotters, scanner, wireless key boards etc. from different countries for their sale in India. For the purpose of import of the aforesaid goods, the petitioner is holding a

requisite license and permission from the concerned governmental agencies as required under the law. The petitioner is also a registered dealer according to the provisions of the Central Sales Tax Act. The petitioner is paying the requisite import, custom and other allied duties. The petitioner claims to be a legitimate and bona fide trader carrying on his business in conformity with the relevant laws, rules and regulations framed from time to time.

1.2 According to the petitioner, there are numerous other persons in the country carrying on similar business activities and engaged in the import and sale of the imported electronics and information technology goods in India.

1.3 The petitioner and such other importers were carrying on their lawful business activities of selling the aforesaid branded products in Indian market at a competitive price by purchasing the same in bulk from other countries where they are available at a very cheap price.

1.4 According to the petitioner, even the consumers are being benefited as they get the products at a lesser price than that offered by the manufacturers. The petitioner is aggrieved by issue of the Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order, 2012 and the notifications issued by the respondent authorities in purported exercise of powers conferred u/s 10(1)(p) of the Bureau of Indian Standards Act, 1986 (for short, "the Act 1986") read with Rule 13(fa) of the Bureau of Indian Standards Rules, 1987 (for short, "the Rules 1987") which has an effect of destroying the parallel imports and hampering the business of such importers including the petitioner as the same mandates compulsory registration of the aforesaid products by getting them tested in BIS (Bureau of Indian Standard) recognized laboratory through a manufacturer or by a person duly authorized by such manufacturer by providing such technical specifications which only the manufacturer possesses.

1.5 According to the petitioner, a situation has been created whereby the manufacturers, who are multinational companies (MNCs), will have a monopoly in the field of import and sale of electronic and information technology products.

1.6 According to the petitioner, the Order 2012 and the notifications have resulted into a total indirect ban on the importation of the parallel import of the electronic and information technology goods from 3rd July 2013, which is otherwise permissible u/s 107A(b) of the Patents Act, 1970 as amended by the Patent (Amendment) Act, 2005.

1.7 It is the case of the petitioner that the parallel import is a mechanism which is helpful for providing commodities to the consumers at an international competitive price. The net result of the impugned order is that the parallel imports into India of the electronics and information technology goods will be totally closed and the business activities of the petitioner and other similarly placed persons will be ruined.

1.8 In such circumstances, referred to above, the petitioner has prayed that the

order dated 7th September 2012 and the notifications issued pursuant thereto be quashed and set aside as being ultra vires Article 19(1)(g) of the Constitution of India or in the alternative the respondents be directed to modify the impugned order to the extent that the importer of electronics and information technology goods be permitted to apply and get the registration from BIS without the requirement of authorization of the manufacturer and without the requirement of supply of such technical specifications which are available only with the manufacturer.

2. STANCE OF THE RESPONDENT NO. 1-UNION OF INDIA:-

2.1 On behalf of the Union of India, an affidavit-in-reply has been filed duly sworn by the Director, Department of Information Technology, Ministry of Communications and Information Technology, New Delhi, inter alia, stating as under:

As a part of National Policy on Electronics (NPE), the activity of developing and mandating standards has been adopted by the Government of India with a view to

- ? Provide Indian consumers with the right to enjoy world class goods
- ? Upgrade the quality of domestic products for bringing Global competitiveness
- ? Develop strategy to stop dumping of non-compliant goods
- ? For projecting a positive image internationally as a country with quality production of the Electronic & IT goods.

Department of Electronics & Information Technology (DeitY) has on 03 Oct. 2012 notified "Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order, 2012" mandating fifteen categories of electronics items under the Compulsory Registration Scheme of Department of Consumer Affairs based on their compliance to Indian safety standards.

3.4 The order under consideration, "Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order, 2012", was not sudden and due notice was given to all concerned. The order was notified on 07 Sept. 2012, published in Gazette of India on 03-10-2012 and came into effect on 03 July 2013. The order neither has any effect of prohibiting parallel imports nor does it encourage the monopoly of MNCs. The order is equally applicable to imported as well as domestically manufactured electronic goods.

The petitioner has alleged that the said Order has an effect of destroying the parallel imports and shutting down of the business of such importers. The petitioner's allegation is baseless as the notified order's aim is to bring safe electronics products into country for domestic consumers and increase the competitiveness of Indian manufacturers. This order is neither to stop parallel imports nor to increase monopoly of MNCs in the Indian market and thus does not effect the importation of parallel imports. Goods once registered can be

imported by anyone in the country. Reference may be made to the attached letter to JS (Customs).

3.5 It is again submitted that monopoly of MNCs is not being encouraged by this Gazette notification and nor the parallel imports are restricted. Example of Dell India is quoted by the petitioner which seems irrelevant as Dell India in its representation dated 12 Aug., 2013 has requested to allow third party imports of such products as listed in the said order and is trying to encourage parallel imports on the other hand.

3.6 While it is correct that this notification restricts the sale from 3rd July 2013 onwards to the products which are not registered with BIS and that the authorization is required from the overseas manufacturers in the name of Indian representative to get the initial registration from BIS.

It is brought out that for the goods supplied by foreign manufacturers if anything goes wrong with the product, holding them accountable under Indian laws would be cumbersome and sometimes impossible, hence the need for local representative in India. The local representative is responsible on behalf of overseas manufacturers towards Indian laws and liability issues arising out of goods placed in Indian markets. But, once registration is done, and goods are certified to be safe and conforming to notified standards any person/entity can import provided the product bears the self ? declaration mark with IS No., as required by the order. This notification applies to manufacturers only and does not affect the right of petitioner for parallel imports.

3.8

Addressing regulations on Safety/Health/Environmental issues are one of the responsibilities of the Govt. to ensure safety of its citizens and are in place in most of the countries of the world. Department of Electronics and Information Technology (DeitY) had initiated the process for creating a suitable framework in the country for ensuring compliance of Electronics & IT goods to Standards of Safety and this initiative has been put in place after due consultations with stakeholders which include industry associations, Department of Consumer Affairs (DoCA), Ministry of Commerce, Bureau of Indian Standards (BIS), Representatives of Conformity Assessment Bodies, Consumer Organizations etc. Rather, this order has come into effect as a strategic initiative of National Policy on Electronics (NPE), 2012 of the Govt. of India which has led to this order that has been approved by the Union Cabinet.

4.

A. The order is neither ultra vires, nor unjust, nor unreasonable, nor in violation of provisions of law, nor arbitrary, nor discriminatory, nor contrary to settled legal position, nor in breach of principles of natural justice and nor in gross violation of Art. 14 & 19(1)(g) of the Constitution of India since it has been issued after due consultations with the stakeholders in the electronics sector including industry

associations, Department of Consumer Affairs (DoCA), Ministry of Commerce, Bureau of Indian Standards (BIS), Representatives of Conformity Assessment Bodies, Consumer Organizations etc.

B.

C. The BIS Act has been in place since 1986. Many Govt. Ministries/Departments have been using BIS Licensing scheme of BIS to control quality of goods. The present order, in fact, is only a simplified version of licensing scheme which has been notified keeping dynamics of electronic industry in mind. Further, as stated above, the order does not violate any of the fundamental rights of the petitioner or any other citizen of the country.

As of today, majority of the electronic goods submitted for registration with BIS and/or DeitY are imported. BIS Act requires the nomination of authorized representative. Producing safe product is the responsibility of the manufacturer and it is the manufacturer who has the effective control over the production to ensure consistency of product as per approved design and specifications. While importer cannot ensure the continued safety compliance of the product, it is only the manufacturer who could thus be eligible to apply, provide details, be in agreement, and keep design and production control for consistent compliance to the order.

3. STANCE OF THE RESPONDENT NO. 2-BUREAU OF INDIAN STANDARDS:-

3.1 On behalf of the respondent No. 2, an affidavit-in-reply has been filed duly sworn by the Assistant Director (SC-B), inter alia, stating as under:

4. It is submitted that the petitioner has challenged by way of the present petition, the Electronics and Information Technology Goods (requirement for compulsory registration) Order, 2012 dated 07.09.2012 (hereinafter to be referred to as "Order" for convenience) and Notifications issued pursuant thereto by the respondent No. 1, the Central Government of India. The said Order dated 07.09.2012 was issued and published in the Official Gazette by respondent No. 1 by exercising its powers u/s 10(1)(p) of the Bureau of Indian Standards Act, 1986 read with Rule 13(FA) of the Bureau of Indian Standards Rules, 1987 (hereinafter to be referred to as "Act" and "Rules" respectively for convenience).

5.

(a)

(b)

(c) With regard to para No. 3.4 of the petition, the contents thereof are denied, since the same are contrary to the intention of the respondents behind the Order so passed on 07.09.2012. It is further submitted that the said Order has been introduced to safeguard the interest of the consumer. In addition to providing safeguard to the interest of consumer, the same also provides the mechanism through which safe electronics and Information Technology (IT) goods are made

available to the consumers. It is pertinent to note that the said Order is not only applicable to indigenous manufacturers but also to the foreign manufacturers of the covered electronics and IT goods. It is categorically denied that the impugned Order will be having an overriding effect over the Section 107A(b) of the Patent Act, 1970 because the impugned Order does not deal with the import of the electronics and IT goods, however, the same has been issued to provide safeguard to the consumer against the sub-standard or defective goods which do not conform to the specified standards.

(d) With regard to para No. 3.5 of the petition, I state that the contents thereof are distinct and irrelevant so far as the facts and circumstances of the current proceedings are concerned. Even for the sake of repetition, I reiterate that the impugned Order and the adopted mechanism pursuant thereto do not interfere with the export and import of electronics and IT goods but the same provides certain mechanism to maintain certain quality standards in the interest of consumer at large.

(e) With regard to para No. 3.6 of the petition, I state that the alleged discrimination is false, frivolous and baseless and hence, denied. I further submit that the Rules for registration with respondent No. 2 apply to both indigenous and foreign manufacturers irrespective of nationality of the manufacturer. Therefore, it is not proper for the petitioner to state that the Rules for registration with respondent No. 2 are discriminatory in nature.

(f) With regard to para Nos. 3.7 to 3.10 of the petition, contents thereof are misleading, false and frivolous and hence, denied. I submit that the impugned Order and the mechanism for the registration established pursuant thereto do not interfere with import of the electronics and IT goods more specifically, the same provides equal requirement for registration with the respondent No. 2 so that the Indian consumers are provided safeguard against substandard electronic and IT goods. I further submit that the petitioner's import cannot be said to be hampered since, the petitioner can very well carry on the business activity by importing the IT goods from the registered manufacturers under the impugned Order. It is pertinent to note that under the Act, "Manufacturer" means the Manufacturer of any article or process. Therefore, the Rules, Orders issued thereunder are only applicable to the Manufacturer of Article and Process and importers are not at all affected by the same. Hence, it is not proper for the petitioner to allege that the execution of the impugned Order would result into loss of livelihood to the petitioner.

6. I further submit that the impugned Order is applicable only to the manufacturers of electronics and IT goods irrespective of their nationality. The Manufacturer, who is desirous to market and sell its products in India, the same has to get the electronic and IT goods registered with the respondent No. 2, which would after conducting a test in the laboratory recognized by the respondent No. 2 issue the appropriate direction. Therefore, the grievance raised by the petitioner cannot be sustained since, the petitioner is not a manufacturer

but merely an importer of electronic and IT goods.

4. Mr. Shalin Mehta, the learned Senior Advocate appearing on behalf of the petitioner vehemently submitted that the impugned order and notifications issued by the respondent authorities are ultra vires Article 14 and 19(1)(g) of the Constitution of India. Mr. Mehta submitted that the action on the part of the authorities could be termed as violative of the principles of natural justice as no opportunity of hearing was given to the petitioner and other similarly situated persons before introducing such a policy.

4.1 Mr. Mehta submitted that the impugned order has resulted into a total closure of a lawful occupation, trade and business of the petitioner and is in derogation of the Article 19, Clause (6) of the Constitution of India because the restrictions which have been imposed are not covered by Clause (6) of Article 19.

4.2 Mr. Mehta submitted that the policy decision of the respondents has resulted into discrimination amongst the citizens of India engaged in the business activities as preference has been given to the multinational companies over the parallel importers. According to Mr. Mehta, the impugned order and the notifications are not only unconstitutional but the same are also ultra vires the provisions of Section 107A(b) of the Patents Act, 1970 [as amended by the Patents (Amendment) Act, 2005]. It is submitted that Section 107A(b) of the Patents Act ensures the parallel import of the electronics and information technology goods without authorization of the patentee or the manufacturer. Thus, according to Mr. Mehta, the petition merits consideration and the impugned order and the notifications deserves to be set aside.

5. On the other hand, Mr. I.H. Saiyed, the learned Assistant Solicitor General of India appearing for the respondent No. 1 and Mr. Hardik P. Mehta, the learned advocate appearing for the respondent No. 2, opposed this petition by submitting that the policy decision which has been taken is in the interest of the consumers against the substandard or defective goods which may not be in conformity with the specified standards.

5.1 The learned counsel appearing for the respondents submitted that there is no merit in the submission canvassed on behalf of the petitioner that his business has been hampered because the petitioner can continue with the business by importing the information technology goods from the registered manufacturers under the impugned order. It has been submitted that the impugned order has no overriding effect over Section 107A(b) of the Patents Act because the impugned order does not deal with the import of the electronics and information technology goods but the same has been issued to provide the safeguards to the consumers against the substandard or defective good which may not conform to the standards specified.

5.2 It was also submitted that the term "manufacturer" under the Act means the manufacturer of any article or process. Therefore, the rules or the orders issued thereunder are only applicable to the manufacturers of the article and the

importers are not at all affected by the same.

5.3 It was submitted that the order impugned is neither ultra vires nor violative of any of the provisions of the Constitution as the same has been issued after consultation with the stakeholders in the electronic sector.

5.4 Thus, according to the learned counsel appearing for the respondents, there is no merit in this petition and the policy decision may not be interfered with having regard to the limited scope of judicial review in the matters of the present nature.

6. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration in this petition is whether the Electronics and Information Technology Goods (Requirement for Compulsory Registration) Order, 2012 and the notifications issued pursuant thereto are in any manner ultra vires Article 19(1)(g) of the Constitution of India or violative of any other provisions of law.

7. Before advertng to the rival submissions canvassed on either side, it will be profitable to look into the Order 2012 published in the official gazette dated 7th September 2012, which reads as under:

S.O. 2357(E).- In exercise of the powers conferred by section 10(1)(p) of the Bureau of Indian Standards Act, 1986 (63 of 1986) and in pursuance of clause (fa) of rule 13 of the Bureau of Indian Standards Rules, 1987, the Central Government, after consulting the Bureau of Indian Standards, hereby makes the following Order, namely:-

1. Short title and commencement:

- (1) This Order may be called the Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2012.
- (2) It shall come into force on the expiry of six months from the date of its publication in the Official Gazette.

2. Definitions:-

- (1) In this Order, unless the context otherwise requires,
 - (a) "Act" means the Bureau of Indian Standards Act, 1986 (63 of 1986);
 - (b) "Appropriate Authority" means any officer, not below the rank of Director or Scientist "F", of the Department of Electronics and Information Technology or its subordinate or attached offices, authorized by the Secretary, Department of Electronics and Information Technology, Ministry of Communications and Information Technology, Government of India;
 - (c) "Goods" means the Electronics and Information Technology goods specified in the column (2) of the Schedule;

- (d) "Rules" means the Bureau of Indian Standards Rules, 1987;
- (e) "Schedule" means the Schedule annexed to this Order;
- (f) "Series of products" means the products of the same family but varying in sizes or rating or construction;
- (g) "Specified Standard" in relation to Electronics and Information Technology Goods means the Indian Standards as specified in the column (3) of the Schedule;

(2) Words and expressions used herein but not defined in the Order shall have the meanings respectively assigned to them in the Act or the rules made thereunder;

3. Prohibition regarding manufacture, storage, sale and distribution etc of Goods-

(1) No person shall by himself or through any person on his behalf manufacture or store for sale, import, sell or distribute Goods which do not conform to the Specified Standard and do not bear the words "Self declaration ? Conforming to IS" (Relevant Indian Standard mentioned in column (3) of the Schedule) on such Goods after obtaining Registration from the Bureau:

Provided that nothing in this Order shall apply in relation to manufacture of Goods meant for export.

(2) The substandard or defective Goods which do not conform to the Specified Standard mentioned in column (3) of the Schedule shall be deformed beyond use by the manufacturer and disposed off as scrap.

4. Power to call for information, etc.-

(1) The Appropriate Authority or a person authorized by him, may with a view to secure compliance with this Order require any person engaged in the manufacture, store for sale, sale or distribution of any Goods to give such information as he deems necessary relating to the manufacture, storage for sale, import, sale or distribution of any Goods or require any such person to furnish to him samples of Goods.

(2) With the specific order each time of an authority at an appropriate senior level nominated by the Secretary in the Department of Electronics and Information Technology, the Appropriate Authority or person authorized by him, with a view to secure compliance with this Order may also-

(a) inspect or cause to be inspected any books or other document and other Goods or the components or materials of any Goods kept by or belonging to or in the possession or under the control of any person engaged in the manufacture, storage for sale, import, sale or distribution of Goods;

(b) enter and search any premises and seize Goods in respect of which it has reason to believe that a contravention of this Order has been committed or the

said Goods are not complying with the Specified Standards;

(3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall so far as may be, applied to searches and seizures under this clause.

8. It will also be profitable to look into the Electronics and Information Technology Goods (Requirement for Compulsory Registration) Amendment Order 2013, which reads as under:

2. In the Electronics and Information Technology Goods (Requirements for Compulsory Registration) Order, 2012,-

(a) for paragraph 3, the following paragraph shall be substituted, namely:-

3. Prohibition regarding manufacture, storage, sale and distribution etc. of goods.-

(1) No person shall by himself or through any person on his behalf manufacture or store for sale, import, sell or distribute Goods which do not conform to the Specified Standard and do not bear the words "Self declaration ? Conforming to (Relevant Indian Standard mentioned in column (3) of the Schedule) ? (Unique Registration Number)" on such goods after obtaining the Unique Registration Number from the Bureau:

Provided that where such statement has not been affixed on the Imported Goods already having unique registration number from the Bureau, such statement may be affixed by representative of the manufacturing unit having liaison office or branch office located in India, for clearance of goods from customs:

Provided further that nothing in this Order shall apply in relation to manufacture of Goods meant for export.

(2) the substandard or defective Goods which do not conform to the Specified Standard mentioned in column

(3) of the Schedule shall be deformed beyond use and disposed off as scrap by the manufacturer or representative of the overseas manufacturer having liaison office or branch office located in India or by any person or agency as authorized by the Appropriate Authority:

Provided that unclaimed consignments of such goods shall be deformed and disposed of as scrap by such department or agency as may be authorized by the Appropriate Authority;

9. From the above, it appears that the Central Government in its wisdom thought fit to evolve a policy with a view to safeguard the interest of the consumers. It has been clarified that the impugned order is applicable only to the manufacturer of the electronics and information technology goods irrespective of their nationality. The manufacturer who is desirous to market and sell its products in India, is obliged to get the electronics and information technology goods

registered with the respondent No. 2 ? Bureau of Indian Standards, who would conduct the test in the laboratory recognized by the respondent No. 2. In such circumstances, if the goods imported are also subjected to such tests with a view to see that it adheres to the standards prescribed in India then it could not be said that such an action or decision is violative of Article 19(1)(g) of the Constitution, i.e. right to carry on business.

10. It appears from the materials on record that the laboratories authorized by the respondent No. 2-Bureau of Indian Standards demand for the purpose of testing and certifying certain information which would be available only with the manufacturer and such manufacturer, according to the petitioner, would never provide with such details to the parallel importers. Therefore, according to the petitioner the parallel importers are indirectly restrained from carrying on their business which is otherwise permissible under the Indian laws. However, it appears that the requirements of the respondent No. 2-Bureau for testing the sample would include certification of raw materials like HDD, mother boards, PCB lay out, schematic, circuit diagram of mother board, which would be available only with the manufacturer. The system assemblers import these finished products which are raw materials for laptops, namely, HDD, MB, ODD, RAM and are unable to provide certification, schematic, circuit diagram etc. to the BIS lab for testing the sample of their assembled laptop. This, in our opinion, is not a valid ground for challenging the validity of the impugned order and the notifications but is a part of the policy decision taken by the government with the object of protecting the interest of the consumers.

11. We are not impressed by the submission canvassed on behalf of the petitioner that in a country like India there are large number of customers, who would prefer to purchase the second-hand electronics and information technology goods and products in view of their financial condition as the price of the new product would be high and an average Indian customer would not be able to purchase the same, coupled with the fact that large number of people live in the rural urban areas and may not be able to afford the purchase of new electronic and information technology goods which are highly priced.

12. In our opinion, the notification restricting the sale from 3rd July 2013 onwards of the products which are not registered with the BIS department is in the interest of the people at large because if something goes wrong then nobody would be held responsible for the same and in the process, the innocent consumer will suffer. We are also not impressed by the submission that the second-hand computers are sold only after due testing, upgrading, re-working and refurbishing which amounts to manufacturing activities according to Section 2F of the Excise Act, 1944. The order impugned mandates that such testing should be by laboratories authorized by the respondent No. 2-Bureau of Indian Standards.

13. This is not a case where the parallel imports are completely stopped or banned but are permitted subject to certain restrictions like submitting the

products for testing to the BIS recognized labs to comply with the Order, 2012.

14. A lot many suggestions have been given by the petitioner in this regard but we are afraid it is not for this Court to consider such suggestions and then direct the government to look into the same. This Court is not an expert in the field of electronics and information technology and, therefore, should not ordinarily interfere with such decisions taken by the government.

15. The duty of the Court is to confine itself to the question of legality. Its concern should be (i) whether the decision making authority exceed its powers, (ii) committed an error of law (iii) committed a breach of the Rules of natural justice, (iv) reached a decision which no reasonable person would have reached or (v) abused its powers.

16. Article 19(1)(g) read with Article 19(6) of the Constitution of India spells out fundamental rights given to the citizens to practice any profession or carrying on any occupation, trade or business so long as it is not prevented or is within the frame work of the regulation, if any. There cannot be any dispute that certain professions, occupations, trade or business which are not in the interest of general public may be completely prohibited while other may be permitted with reasonable restrictions. The restrictions permitted to be imposed by sub-clauses (2) to (6) of Article 19 must be read as a whole, each throwing light on the scope of the other and that the common thread running through these several provisions was the ground of public policy understood in a comprehensive sense. The public policy thus enforced might be founded on the principles of the common law; vide for instance *Egerton v. Earl Brownlow*, (1853) 4 HLC 1 at p. 256 (G), where the House of Lords said:-

No subject can lawfully do that which has a tendency to be injurious to the public, or against the public good.

17. Another instance which can be afforded is through a leading case of *Nordenfelt v. Maxim Nordenfelt Guns & Ammunition Co.*, 1894 AC 535 (H), where the House of Lords had to deal with the scope of the common law prohibition against improper restraint of trade. This principle of public policy was not confined to that which the common law recognized or enforced, and it extended equally to the public policy involved in the enforcement of statutes.

18. Every public statute was enacted in the public interest and, therefore, both public policy and public interest demanded its enforcement. The public interest justifying the restrictions might, therefore, arise from the very provisions of the enactment and might be grounded on the necessity to prevent its evasion.

19. Having bestowed our thoughtful consideration to the matter, we have reached to the conclusion that the view pressed upon by the learned counsel appearing for the petitioner, that the public interest to justify restrictions of the rights conferred by Article 19(1)(g) must arise from the inherent nature of the particular trade, involves an unduly narrow interpretation of the words employed

in Article 19, Clause (6) and ought to be rejected.

20. We see considerable force in the argument of the learned counsel appearing for the respondents that the restrictions permitted by sub-clauses (2) to (6) of Article 19 follow a pattern i.e. they are imposed by the legislature for the reasons of public policy. The aspect of public policy involved in the facts of each of the several fundamental rights conferred by the several sub-clauses of Article 19(1) might defer but one underlined principle, requirement of public policy, runs through various clauses of restrictions and pervades the scheme. In the aforesaid premises of the matter, we do not find any justifiable reason to declare the impugned Order, 2012 and the consequent notifications issued thereto as ultra vires the provisions of the Constitution. The petition fails and is hereby rejected. However, in the facts and circumstances of the case, there shall be no order as to costs.