

(2012) 04 GUJ CK 0041

In the Gujarat High Court

Case No : Special Civil Application No. 8309 of 2011

Gujarat State Weights and Measures

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 19(g), 226
Legal Metrology Act, 2009 — Section 16, 17, 23, 24, 48

Citation : AIR 2012 Guj 159

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Prabhav A. Mehta, for the Appellant; Sangit Vishen, AGP., Notice Served, Notice Served by DS. Msarchanauamin, for the Respondent

Judgement

S.R. Brahmbhatt, J.—The petitioner, a registered Association having registration No. G-2301 established since 03.02.1977, has approached this Court under Article 226 of the Constitution of India for following reliefs: (A) Your Lordships may be pleased to issue a writ of prohibition and/or writ in the nature of prohibition and/or writ of mandamus and/or writ in the nature of mandamus and/or any other writ, order or direction to quash and set aside Schedule VI-A(1), (2), (3), (4) and 5(d) - Table D of Rules 11(11) of the Gujarat Legal Metrology (Enforcement) Rules, 2011, so framed under purported exercise of powers conferred by subsection (1) of Section 53 of the Legal Metrology Act, 2009;

(B) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to stay operation and implementation of the Schedule VIA(1), (2), (3), (4) and 5(d) - Table D of Rules 11(11) of the Gujarat Legal Metrology (Enforcement) Rules, 2011, so framed under purported exercise of powers conferred by sub-section (1) of Section 53 of the Legal Metrology Act, 2009;

(C) An ex parte ad interim relief in terms of prayer (B) above may kindly be granted.

(D) Such other and further relief/s as may be deemed just and necessary may kindly be granted.

Facts in brief leading to filing this petition required to be set out as under: 2. The petitioner Association is a registered Association having its members, who are working as "repairer" as defined under the provisions of The Legal Metrology Act, 2009 (hereinafter referred to as "the Act" for short). The petitioners have stated and averred in the memo of petition that their members are in the vocation of repairing weight and measures and they are operating in their respective area of functioning. Prior to the year 2009 i.e. before the Act came into existence, there was an Act called "the Standard of Weight and Measures Act, 1976" and "the Standard of Weight and Measures (Enforcement) Act, 1985. On the advent of the Act of 2009, the aforesaid two Acts were repealed as could be seen from Section 67 of the Act. The petitioners were in fact working as the repairers even before the Act of 2009 came into force. Their working was regulated by the Standard of Weight and Measures (Enforcement) Act, 1985. The members of the petitioners Association were issued appropriate licence for carrying out repairing work under the provisions of the Act prevailing then. In the year 2009 new Act came into existence, whereunder, as per provisions of Section 53 of the Act, State Government, after consultation with the Central Government is empowered to make rules for the subject mentioned thereunder. Pursuant to the power conferred upon the State u/s 53 of the Act, the State of Gujarat - respondent hereinabove, promulgated rules called "the Gujarat Legal Metrology (Enforcement) Rules, 2011 and in those rules, the provisions of Rule 11 (11) and Schedule VI-A came to be made, which, if enforced in its letter and spirit, would render the members of the petitioner Association ineligible for carrying out their vocation as a repairer, which they have been carrying out since years. Therefore, those provisions have been specifically challenged on the ground that they do not answer the touchstone of reasonableness and as they are violative of provisions of fair play and equality as envisaged under Article 14 of the Constitution of India and in violation of members of petitioner Association's fundamental rights under Article 19(1)(g), same should be quashed and set aside.

3. Learned advocate appearing for the petitioners has contended that the provisions of Rule 11(11) and Schedule go to show that there exists no justification for insisting upon all repairers to comply therewith. In case, if the repairers like members of the petitioner Association is incapable of acquiring and fulfilling those conditions by 31st March, 2012, then, their licenses are not to be renewed. In other words, if the repairers is not complying with this provision and not fulfilling those conditions, then they would have to cease to be repairer and give up their vocation, which they are carrying out since years. Therefore, those conditions which have been prescribed by the State in form of Rule 11(11) read with Schedule VI-A do not answer the test of reasonableness nor does it answer as to what happen to those persons like petitioners, who have been directly affected on account of non-fulfillment of the conditions mentioned thereunder.

4. Learned advocate for the petitioners invited this court's attention to definition of "repairer" and the provisions of granting of licence and submitted that, the then existing Act and Rules do not contain any such drastic and/or stringent condition, which have been incorporated by the State in form of Schedule VI-A without justifying the same and therefore, non-compliance of that condition would render the petitioner members jobless and thus, will do serious blow to Article 19(1)(g) of the Constitution of India.

5. Learned advocate for the petitioner thereafter contended that challenge to the Rules are based upon essentially two aspects namely (i) State has not followed the provisions of Section 53 of the Act in its letter and spirit, inasmuch as, there appears to be no effective consultation which would justify the State's action of promulgating the rules especially Rule 11(11) read with Schedule VI-A and (ii) Even assuming for the sake of arguments, without conceding that the consultation was meaningful and proper, then also, the State is not absolved from its liability to justify in insertion of those conditions which were not there either in the Act or Rules prevalent either prior to 2009. The insertion of those conditions so far State of Gujarat is concerned in taking licence or renewing the licence have not been justified in any manner and therefore, those insertion of conditions could be said to be absolutely discriminatory and arbitrary. Those provisions would not pass the scrutiny provided under Article 14 of the Constitution of India. Article 14 of the Constitution of India proves that treating unequal as equal and provides for similar conditions to treat unequal in the same fashion is also obnoxious to the provisions of Article 14, as that would amount to so unreasonable as to seeking quashment of the rules on the face of it being arbitrary and not reasonable or warranted under the provisions of law.

6. In order to make these two challenges good, learned advocate for the petitioners contended that the provisions of the Act is unequivocally clear with regard to laying down the rules only after consultation with Union of India. In the instant case, it is required to be noted that the Union of India sent its draft i.e model rules to be framed by the State (to all the States) under the provisions of Section 53 of the Act and therefore, when the model rules were made available and State is under an obligation to frame the rules only after consulting the Union of India and when those model rules do not contain the provisions and conditions which have been challenged in this petition, it was serious obligation cast upon the State to have complete and meaningful consultation with the Union of India before promulgating the rules in question.

7. Learned advocate appearing for the petitioners thereafter contended that communication between the State and Union of India in form of three letters namely-- (i) letter under which the model rules were sent by the Union of India, (ii) letter under which the draft rules were sent by the State to Union of India and (iii) Union of India responded; and hence, it is said to be a complete consultation, which cannot pass the test of reasonableness and completeness and hence, rules are not to be promulgated especially which have been found

obnoxious or not in consonance with requirement of Section 53 of the Act.

8. Learned advocate appearing for the petitioners further contended that the draft sent by the State was sent back by the Union of India, wherein, it is unequivocally mentioned in the communication dated 06.01.2011 that Rule 11 (12) and Schedule VI-A be deleted as it is not specified in the Act. An attempt on the part of State to explain the letter dated 06.01.2011 in the affidavit-in-reply is of no avail, as had there been any ambiguity on this aspect, it is open to the State Government to seek appropriate guidance from Union of India. The Union of India is party before this court and Union of India has not come out in unequivocal terms in affidavit-in-reply.

9. Learned advocate appearing for the petitioners further contended that consultation as envisaged u/s 53 of the Act cannot be said to be meaningful consultation in view of the aforesaid facts and circumstances of the case and he relied upon the following decisions :

(i) R. Pushpam and Another Vs. The State of Madras and Another, , which is approved by Constitutional Bench in the judgment reported in Supreme Court Advocates-on-Record Association and another Vs. Union of India, .

(ii) Narayanan Sankaran Mooss Vs. The State of Kerala and Another, .

(iii) Justice K.P. Mohapatra Vs. Sri Ram Chandra Nayak and Others, .

(iv) Saghir Ahmad Vs. The State of U.P. and Others, .

Thus, consultation as envisaged is not followed and when the consultation in which State had to lead something into communication, then, it cannot be said to be a complete consultation as State was not prevented from obtaining appropriate opinion or guidance from the Union of India and therefore, on this count also, Schedule VI-A, which is in terms, opined to be not required could not have been inserted and therefore, the same is required to be quashed and at least so far as provisions, which are found to be unjustified and obnoxious and arbitrary.

10. The second limb of submission with regard to breach of provisions of Article 19(1)(g) is canvassed by submitting that definition as defined in the Act does not recognize the classes of repairer or category of repairer. The definition of repairer even existing earlier, also do not suggest that there existed any category of repairer. The definition in earlier Act i.e. Act of 1976, and present Act of 2009 are almost pari materia and therefore, when, in rules also, there is no classes or category of repairers and there was no stringent condition with regard to qualification of the repairers, measurement of workshop etc. as stated in Schedule VI-A, and when, if it is introduced for the first time only in State of Gujarat, then, it amount to imposing unreasonable restrictions upon the right to carry on trade and therefore, on that count also, obnoxious provisions are required to be quashed and set aside.

11. Learned advocate appearing for the petitioners has added one more dimension regarding unreasonableness on the part of the State, and submitted that even the provisions which have been challenged in this petition are having no nexus with the object of the Act and therefore, on this count also, the rules and conditions for obtaining licence cannot be said to be in consonance with the Act and therefore, it is required to be quashed and set aside.

12. In order to assail the requirement of fix measurement of workshop, learned advocate for the petitioners contended that there exists appropriate legislation in the field like BPMC Act and other local authority, which takes care of the workshop, place of workshop and measurement of workshop and therefore, the State cannot lay down further requirement as it would amount to overlapping the rules and regulation which are already governing the field and therefore same is contrary to provisions of law and is required to be quashed and set aside.

13. Learned AGP Ms. Vishen, appearing for respondent Nos. 1 and 2 contended that this is an Act well within the power and purview of the State and therefore, plain and simple reading of Section 53 of the Act would indicate that there exists complete power with the State Authority to promulgate the rules governing the field.

14. Learned AGP further submitted that the Court may bear in mind the fact that this Act and Rules are not for the benefits of repairers and class of persons engaged in repairing work of these types of weights and measures and it is meant for the public at large and in the interest of protection of consumers, who have been subjected to irregularities perpetrated in trade. Therefore, the members of petitioner Association has no right to challenge the Rules, which are envisaged for the greater benefits of mass and consumers and therefore, they may not be interfered with in operation and implementation of the rules. It is unfortunate that if the petitioners are unable to comply with the conditions, they may not be given licence and then, this may not amount to rendering the rules obnoxious and unconstitutional in any manner.

15. Learned AGP further submitted that consultation cannot be said to be incomplete as sought to be canvassed by learned advocate for the petitioners. She has invited this court's attention to the fact that when the draft was sent to the Union of India and response received from the Central Government in form of communication dated 06.01.2011, which go to show that what was found to be objectionable by the Union of India was Rule 11(12) and not Rule 11(11). Therefore, if one reads the entire communication very closely, then, it would not difficult for one to understand that the Central Government or Author of letter was absolutely mindful qua purport of mentioning of Schedule VI-A. When he says Schedule VI-A, he meant VI-A part B and therefore, when VI-A part B alone is meant and no other part could be meant as simply Rule 11(11) is not found to be objectionable by the Union of India, then, petitioners are not permitted to advance that indeed there is omission on the part of author of the letter in not mentioning specifically part B. But that in itself would not be permitted to be

read, as otherwise, it would amount to misreading the entire communication, which is not permissible under law.

16. Learned AGP thereafter contended that provisions of rules are absolutely essential and she read relevant paragraphs from the affidavit-in-reply, according to which, there exists justification for promulgation of the Rules and conditions.

17. Learned AGP relying upon the decision of this Court in case of Banaskantha District Co-op. Milk Producers, Union Ltd. v. State of Gujarat through Secretary & Ors. in Special Civil Application No. 1115 of 2001 to Special Civil Application No. 11118 of 2011 dated 30.01.2012 and contended that court should act very slowly in declaring any provisions to be unconstitutional as no mala fide and/or lack of enthusiasm to the rule making authority. The reading of the letters in such a fashion would work as tremendous hardship and court, therefore, endeavour to operate the rules as if they are in accordance with law and therefore, all efforts may be made by the court to uphold the rules.

18. Learned AGP further submitted that the petitioners are not justified in saying that rules are not required to have minimum educational qualification as prescribed, as it would amount to violative of norms fixed by the State and approved by the legislature of the State and in the instance case, the letters cannot be said to be undecided in any manner.

19. Learned AGP for respondents further submitted that before issuing notification, the objections were invited and there was a personal meeting between the members of petitioner Association and they have recorded that they have been heard and their issues have been resolved amicably. When such a recording is there, which has not been disputed by the petitioners at all, now it is not open for the petitioners to come forward and challenge the same by way of this petition under Article 226 of the Constitution of India.

20. Ms. Amin, learned Central Government Standing counsel contended that as it was not focused upon the communication, no specific instructions have been received from the Union of India qua this aspect and she relied upon Section 53 of the Act.

21. This court has heard learned counsels appearing for the parties at length and perused the documents on record. The following few indisputable aspects emerging from the record as well as submissions deserve to be set out as under in order to appreciate the rival contentions of learned advocate for the parties.

(i) The petitioners are members of the Association and they are carrying on economic activities for eking out their livelihood as "repairer".

(ii) Earlier i.e. before 2009, the field in respect of controversy was governed by "the Standard of Weight and Measures Act, 1976" and "the Standard of Weight and Measures (Enforcement) Act, 1985, and the persons who were carrying out activities as "repairer" whereunder those provisions also required to obtain licence and in fact they have obtained licences and they were functioning as such

under the respective licences. After the advent of "The Legal Metrology Act, 2009" and the rules, subject-matter of this petition, this scenario is changed and the petitioners are saddled with obligations to obtain and acquire the eligibility and qualifications for continuing their economic activities as "repairer".

(iii) The earlier rules and regulations and provisions did not have those obligations, qualifications and requirements for licensee to be entitled for license to carry out work as "repairer".

(iv) Those act in question is a piece of Central legislation and under the provision of Section 53 of the Act, it is State subject so far as to frame rules thereunder. The Section 53 needs to be set out as under:

53. Power of State Government to make rules.--

(1) The State Government may, by notification, and after consultation with the Central Government, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the time within which the weight or measure may be got verified under proviso to sub-section (1) of section 16;

(b) registers and records to be maintained by persons referred to under sub-section (1) of section 17;

(c) the form, manner, conditions, period, area of jurisdiction and fees for issuance of licence under sub-section (2) of section 23;

(d) fee for verification and stamping of any weight or measure under sub-section (1) of section 24;

(e) manner of notifying Government Approved Test Centre, terms and conditions and fee to be paid under sub-section (3) of section 24;

(f) fee for compounding of offences under sub-section (1) of section 48;

(3) In making any rule under this section, the State Government may provide that a breach thereof shall be punishable with fine which may extend to five thousand rupees.

(4) The power to make rules u/s shall be subjected to the condition of the rules being made after previous publication in Official Gazette.

(5) Every rule made under this section shall, as soon as may be after it is made, be laid before each House of State Legislature, where there are two Houses and where there is one House of State Legislature, before that House.

Thus, undoubtedly the State has power to frame rules in consultation and after consultation with the Union of India, this requirement needs to be fully complied with.

(v) It is also matter of fact that the Union of India did send model rules to be framed by the State under exercise of power conferred upon the State u/s 53 of the Act.

(vi) The fact remains to be noted at this stage that the model rules sent by Union of India to be taken into consideration while exercising power u/s 53 of the Act, also do not contain the provisions which have been subject-matter of challenge in this petition.

(vii) The draft rules with insertion of two sub-rules and Schedule namely Rule 11(11) and Rule 11(12) with Schedule VI-A came to be incorporated by the State and thereafter the draft rules was sent to Union of India to its fulfilling the requirement of complying with the provision of consultation. The draft was sent to Union of India vide communication dated 04.01.2011. The Union of India sent it back with its comment to the State dated 06.01.2011. In this communication and rules the Union of India has stated as under;

To Dated: 5th January, 2011

Shri Y.B.Patel

Additional Secretary to Government of Gujarat Food, Civil Supplies and Consumer Affairs Department

Block No. 14, 6th Floor, New Sachivalaya Gandhinagar, Gujarat.

Subject: Draft Gujarat Legal Metrology (Enforcement) Rules, 2011.

The undersigned is directed to refer to your letter No. 4th January, 2011 on the above subject, addressed to the Additional Secretary to Government of India, Department of Consumer Affairs and to state that the Gujarat Legal Metrology (Enforcement) Rules, 2011 have been examined. The following amendments are suggested:--

I. The word "2010" may be replaced by word "2011" in rule 3 and rules 6 to 8 of the said rules.

II. The word "sub-section" may be replaced by word "sub-rule (1) of rule 12.

III. The sub-rule (12) of rule 11 may be deleted along with Schedule VIA, as it is not specified in the Act.

IV. The draft of rule 14 may be replaced by word "Periodical interval for the verification of weights or measures as has been specified in the Legal Metrology (General) Rules, 2011".

V. In sub-rule 6 of rule 15 the word "sub-rule (2) of" may be deleted.

VI. The State Government is not having power to fix penalty/fine more than Rs. 5000.00 as per Section 53(3) of the Act, therefore compounding sum of amount in Sr.No. 13 of Schedule XI may be fixed. It may not be in terms of maximum.

2. It is requested that after publication of the said rules, a copy may be provided to this Deptt. For needful.

Thus, it is very clear from the draft sent by Union of India that the Union of India has mentioned deletion of Rule 11 (12) as well as Schedule VI-A, though at this stage, Court need to be mindful of the fact that a contention raised by learned advocate for the respondent State that the non-mentioning of, in detail, qua part of the Schedule VI-A shall not be attempted to be used, as non-approval by the Union of India. Thus, this controversy needs to be adverted to appropriately hereafter.

(viii) The State thereafter invited objections which consisted representative of the present petitioner also and at the end of the meeting it was recorded that there appears to be oral satisfaction with regard to the questions raised by the members of the Association. This fact is emphatically relied upon by the learned advocate for the respondent State to contend that now in light of this, petitioners have no right to challenge the rules or the conditions thereunder for issuance of licences for working as "repairer".

(ix) The State promulgated rules vide notification dated 06.01.2011 and in that rule it is stipulated that existing licencees working under the old provision shall acquire the eligibility criteria and equip themselves so that they may be eligible for seeking renewal of the licences of the repairer by 31.03.2012.

(x) The petitioners were aggrieved on account of the insertion of following conditions namely; Scheduled VI-A, Basic Minimum Requirements For Licence Holders, which read as under;

1. The workshop of the repairer shall not be in a residential premises.
2. The workshop should be having minimum 50 sqm areas and shall be preferably located on the ground floor or the basement. However, workshop will be permitted above ground floor if lift is provided in working condition in the building. The present licensee repairers shall comply with this provision within a time frame of 12 months from the date of notification of this Rules.
3. Minimum experience required:

The owner/partner in the repairer licence for repairing electronic balance class-III and class-IV (load cell based technology) may be diploma holder in Electronic/ Electrical/Instrumentation Engineering in a government recognized institute. The skilled workers employed by him shall be holding Government recognized ITI electronic/electrical/instrumentation trade certificate.

The owner/partner in the repairer licence for repairing electronic balance class-I and class-II (magnet based technology) may be a diploma holder in Electronic / Electrical / Instrumentation Engineering in the government recognized institute. The skilled workers employed by him shall be holding Government recognized ITI electronic / electrical / instrumentation trade certificate. Also skilled workers

having experience of more than 1 year as Service Engineer / Service Technician in the manufacturing company of such magnet based electronic balances will be preferable. However, in case the owner / partner does not have the prescribed qualifications, an employee having such qualifications may be employed.

4. All skilled workers of the licence holder will be issued a photo ID by the licence holder and photographs will also be affixed in the licence itself. Only such authorized skilled workers can present the weights and measures to the concerned Legal Metrology Officer for verification and stamping.

5. (d) All licensee repairers shall be required to keep loan sets as per Table-D for repairing of electronic weighing instruments.

5. (f) All licensee manufactures shall be required to keep tools and accessories as per Table-F in their production workshop.

(xi) Those requirements have been urged to be objectionable as it amounts to imposing unreasonable restrictions unwarranted so as to assail the right of carrying on business and trade as envisaged under Article 19(1)(g) of the Constitution of India. The State's attempt to save it by bringing it within the exception clause if proper justification should be of no avail.

22. The affidavit-in-reply and rejoinders have been exchanged and they are forming part of the record.

23. Against the aforesaid backdrop, learned advocate for the petitioners contended that there exists no justification for incorporating these conditions for issuing licences as hitherto those conditions were not there and yet it is no one's case that the Act and Rules did not function appropriately.

24. Learned counsel for the State contended that the advancement in the invention and various applications and gadget and apparatus of weighment prevalent in the market needs to be borne in mind when casting rule for issuing licence to the repairer and looking to the technical nuances of the gadget and skill required to repair, it leaves no room of doubt that the requirement incorporated by way of new rule are just and proper.

25. This Court is of the considered view that the submission with regard to invention and various applications and/or gadgets cannot be lightly brushed aside and therefore there appears to be justification for prescribing a standard or acquiring of insisting of educational qualifications to repair and handle those gadgets but a question arises as to whether sheer requirement of handling sophisticated gadget itself can be said to be sufficient for introducing the requirement which is found objectionable by the petitioners. The answer would be emphatically "no", as even if one looks at the parent Act the definition of "repairer" is not attached with any further classification and/or differentiation. The repairers are treated as a class and therefore, there could be a simplistic argument canvassed that as the parent Act is not providing for any classification. The rules need not make further classification and, therefore, the rules, as such,

cannot be said to be objectionable but that simplistic argument is required to be rejected outrightly as the rules have introduced an element in which, if it is not justified, then, it would amount to deprive the repairers who have been carrying out the repairing vocation since years will be deprived of their right to carry out the trade with one stroke of pen which cannot be an intention and/or even aim of the legislative exercise of power.

26. The said power is found to be objectionable on the ground that the State has treated all repairers to be following in the same group but prescribed various qualifications without any appropriate guidelines as to which qualification is to be applied or insisted upon for licencing a repairer for repairing which type of gadget, tool or apparatus, as the weighing apparatus and gadget have not been classified and repairers category is also not classified, then question arises as to what extent the same rule could be said to be applicable to all repairers indiscriminately where under a small type of repairer who proclaimed to be repairer of a mechanical device, which is a simple device or instrument or weight is also required to have a workshop of 50 sq. meter to be located on the ground floor and is deprived of his right to carry out his activity within this premises also. Thus, the insistence of workshop and insistence of those fine qualifications without further guidance or guidelines to the issuing authority with those are to be insisted upon in case of a particular class of a particular gadget or instrument would indicate that there appears to be treating differently situated category of citizens with the same set of rules which has no inelible nexus with the purpose to be achieved.

27. The aspect of consultation which is sought to be explained by indicating three communications, in my view also need to be considered in view of the fact that the Union of India while sending model rules did not incorporate those conditions which have been incorporated in Schedule VI-A and when Union of India has in terms stated that Rule VI-A is not to be incorporated, then even if it was logical to read in a different way, in my view it was a duty cast upon the State to revert back to the Union of India for seeking appropriate clarification, as the communication forwarded by the Union of India cannot be read the way State like to read. At the same time Court also will have to accept the submission of learned advocate for the respondent that there appears to be error on the part of the Union of India in omitting a portion but that error cannot be treated as an error giving liberty to the State to straightway promulgate the rules as those provisions were originally not forming part of the model rules which have been sent to all the State and not to the State of Gujarat alone. Therefore, when the legislation and the rules have effecting large section of society it was required to be promulgated with due care and caution and in the instant case the due care and caution could have been evinced and referring the matter back to the Union of India indicating that reading of their communication could be that the Union of India did not entertain to dispense with the entire Schedule VI-A, but insisted only to desire with a part of the Schedule. Unfortunately, there appears to be no attempt on the part of the State to undertake this exercise and therefore, in my

view, even consultation cannot be said to be a meaningful consultation, as it is observed by the Apex Court. Therefore, on this count also the rule especially the conditions cannot be said to be conditions required to be upheld by this Court.

28. The aspect of lack of reasonableness of course, cannot be so grater subject which may occupy larger portion of the judgment but it needs to be borne in mind that when a section of society namely the present petitioners who have been carrying out their vocation as "repairers" of weight and measures since years and who have never been satisfied with this kind of requirement for carrying out their vocation and when those requirements are not found justifiably and imposed either in the parent Act or in the model rules, then a question arises as to whether the power u/s 53 could be said to have been exercised so appropriately, as to shun the scrutiny of this Court under Article 226 of the Constitution of India. The answer is emphatic "no". The Court, at this stage would like to examine the purport of the conditions embedded in the rules.

29. The first condition in Schedule VI-A is with regard to the requirement of carrying out vocation outside and in the workshop which cannot be situated within the residential premises. There appears to be no justification at all on the part of the State in imposing these conditions. The model rule, admittedly, whatsoever these conditions, and therefore, duty cast upon the State to come out with cogent reason for incorporating these conditions. Unfortunately, the affidavit-in-reply filed by the State do not indicate any reason for insisting upon the condition of having workshop situated somewhere else and preventing the licensee to work within his residential premises. This, in my view, could be a condition which cannot be saved by exception under Clause (6) of Article 19(g) of the Constitution of India.

30. The second condition is of having workshop of 50 sq. meter area and as far as possible its location on the ground floor or the basement and if it is on the upper floor, then it has to be in a building where there a lift facility is provided and that too it should be in working condition on the fact of it there appears to be no justification and for providing these regulations as in what circumstances and in what way this requirement is useful for the work of repairing in fact here also one could understand in case if it is provided for class of the repairer who are going to be engaged in a class of gadgets and apparatus which are required specific area for working in. Unfortunately, neither the Act nor the rule contains any classification so far as the gadget, apparatus, or repairers are concerned. Therefore, in my view, it is absolutely unfortunate that this provision is insisted for a repairer who carrying out his repairing work purely within the confines of mechanical gadget and the wages which hardly requires any scheme which could be called skill required in a field of electronics and/or electrical. Therefore, those repairers are also governed by these rules and State has not cared to explain even by way of affidavit as to whether these conditions to be insisted upon or not qua this type of repairers. Therefore, there appears to be no guidance whatsoever in the rule to the implementing authority and it is unfortunately left

to the discretion of the authority. Even that discretion is also not read into differently, therefore, if such condition is insisted, then this will be nothing but depriving the person of his vocation which he carry out without any hindrance since all these years.

31. Maximum experience required. The title reads maximum experience required. The simple reading of the condition speaks volumes. Unfortunate haste is shown on the part of the authority in casting rules. The experience is a different than qualification and this bare minimum difference was required to be borne in mind while casting this requirement under the guise of experience. What is sought to be insisted upon is acquiring of qualification.

There is also a condition cast without appreciating the very important fact that the implementing agency is not guided appropriately as to how this can be insisted upon and in what manner implementing, as it could not be said that a repairer has to work along with his staff member which he may choose and he may not choose.

32. Similarly, in my view, condition Nos. 5(d) and 5(f) are the two conditions which casts without appreciating the fact that either they are applicable to a set of repairers or there has to be a proper guidance qua there insistence for a set of repairer. This is absolutely silent and, therefore, in my view, it cannot be said that they are absolutely just and proper so as to not interfered therewith.

33. In light of the aforesaid discussions, this Court is of the considered view that the aforesaid objectionable insertion in VI-A namely; (1), (2), (3) and 5(d) and 5(e) are required to be quashed and set aside, as they are discriminatory and not having any guidance whatsoever in its implementation.

34. With this observation, the petition is, therefore, partly allowed. The aforesaid conditions forming part of VI-A are hereby quashed and set aside and as a result thereof now the petitioners' applications for renewal which have been pending have to be processed, as if those conditions are not existing in the statute books. The applications be processed as expeditiously as possible and in the meantime the petitioners are directed to carry on their vocation as "repairer". At this stage learned AGP Ms. Sangita Vishen requested that the operation and implementation of this order be stayed for a period of 60 days. This request is strongly opposed by the learned advocate for the petitioners, however, as this Court has quashed and set aside the conditions forming part of the regulations, the request is accepted. But at the same time this acceptance may not in any way jeopardize the right of the petitioners i.e. licensee to work under their licences which have been expiring by 31.03.2012. The request for stay made by the learned advocate for the respondent State has not been accepted, then the petitioners would have been entitled to have the licences renewed without being complying those four conditions which have been struck down by the Court. Therefore, while granting stay this Court is of the considered view the State shall permit the licencees to function under their old licenses which would have been

otherwise renewed but for the stay of this judgment granted by this Court so as to enable the State to approach letters patent forum.