

(1991) 03 KAR CK 0038

In the Karnataka High Court

Case No : Writ Petition No's. 8912 to 8914 of 1985 etc

Manakchand Motilal

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 07-03-1991

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (g)
Karnataka Money Lenders Act, 1961 — Section 44, 7 A, 7 B
Karnataka Pawn Brokers Act, 1961 — Section 4 A, 4 B

Citation : (1991) ILR (Kar) 1928 : (1992) 1 KarLJ 1

Hon'ble Judges : Rama Jois, J;Mirdhe, J

Bench : Division Bench

Advocate : K. Srinivasan, C.S. Vaidyanathan, J. Jeshtmal, Paras Jain, C.H. Jadav, Indrajeet Shah, O. Mahesh, S.R. Ramanathan, N.B. Bhat, S.C. Thilokchand, Mahabaleswar Goud, S.K. Kulkarni, C.N. Kamath, E.R. Indra Kumar, M. Shivappa, T.S. Ramachandra, R.V. Jayaprakash, G.S. Visveswara, V.K. Varadachari, Umesh R. Malimath, K.V. Sachidananda Murthy, V.T. Rayaraddi, B.M. Krishna Bhat, C.B. Minajigi, S.V. Srinivasan, K.L. Manjunath, Tukaram S. Pai, K. Sridhar, K.S. Ramesh, K.S. Desai, A.V. Gangadharappa, Shrishaila, T.V. Umesh, R. Vijayakumar, C.V. Kumar, H.L. Krishnamurthy, G. Balakrishna Sastry, B.V. Katageri and S.S. Angadi and Vasan Associates, for the Appellant; C. Shivappa, General and N. Devadas, Government Advocate, for the Respondent

Judgement

Rama Jois, J.—In this batch of Writ Petition"s, the petitioners, who are carrying on their business as Pawn Brokers after having secured licences under the Karnataka Pawn Brokers Act. 1961 and persons who are doing business as Money Lenders having taken licences under the Karnataka Money Lenders Act, 1961 have questioned the constitutional validity of the Karnataka Pawn Brokers (Amendment) Act, 1985 and the Karnataka Money Lenders (Amendment) Act, 1985 on the ground that the provisions of the said Acts are violative of Articles 14 and 19 of the Constitution of India and they have also questioned the Constitutional validity of Section 4(2)(c) and Section 23(2) of the Karnataka Pawn Brokers Act, 1961 as volatile of Articles 14 and 19 of the Constitution.

2. The material facts necessary for the disposal of these cases are these:- With the object of making better provisions for the regulation and control of transactions of money lending in the State, the Legislature enacted the Karnataka Money Lenders Act, 1961 ("Money Lenders Act" for short). Section 2(10) of the Act defines the expression "Money Lender". It reads:-

"2(10) "Money Lender" means

- (i) an individual; or
- (ii) an undivided Hindu family; or
- (iii) a company or
- (iv) an unincorporated body of individuals; who or which,
 - (a) carries on business of money lending in the State: or
 - (b) has his or its principle place of such business in the State, but shall not include a bank."

Section 5 of the Money Lenders Act makes it obligatory for every person carrying on the business of money lending in the State to secure a licence under the provisions of the Act and to carry on business in accordance with the terms and conditions of licence. Similarly, the Legislature enacted the Karnataka Pawn Brokers Act, 1961 ("Pawn Brokers Act" for short) to make provision for the regulation and control of the pawn brokers in the State. Section 2(7), (8) and (9) define "Pawn Broker", "Pawner" and "Pledge". They read:-

"2(7) "Pawn Broker" means a person who carries on the business of taking goods and chattels in pawn, for a loan.

Explanation:- Every person who keeps a shop for the purchase or sale of goods or chattels and who purchase goods or chattels and pays or advances thereon any sum of money, with or under an agreement understanding expressed or implied that the goods or chattels may be afterwards are purchased on any terms, is a pawn broker within the meaning of this clause.

(8) "Pawner" means a person delivering an article for pawn to a pawn broker.

(9) "Pledge" means an article pawned with a pawn broker."

Section 3 of the Pawn Brokers Act makes it obligatory for every person desirous of carrying on business as a pawn broker to do his business only after securing a licence in accordance with the provisions of the Act and to carry on the business in accordance with the conditions of licence granted under the Act. Among the petitioners some of them have taken licence only under the Money Lenders Act and have been carrying on business as money lenders. The rest of the petitioners have taken licence both under the Pawn Brokers Act and the Money Lenders Act as in view of Section 4(c) and Section 23 of the Pawn Brokers Act, possessing a licence under the Money Lenders Act is a condition of eligibility for securing a

licence under the Pawn Brokers Act. The main business of both the money lenders and pawn brokers consists in lending money to individuals, who approach them for loan. The only difference between a money lender and a pawn broker is, the latter is authorised to accept valuable articles like Gold and or ornaments or any chattel as pledge or security for repayment. After having taken the licences, the petitioners have been carrying on the business for the last nearly two decades.

3. In the year 1985 the State Legislature made Amendments to the two enactments, by which Section 7A and 7B were introduced into the Money Lenders Act and Section 4A and Section 4B were introduced into the Pawn Brokers Act. The two provisions are similar. Therefore, it is sufficient to set out the provisions of Section 7A and 7B of the Money Lenders Act. They read:-

7A. CONDITION OF LICENCE - (1) Every applicant who has been granted a licence u/s 7, whether before or after the commencement of the Karnataka Money Lenders (Amendment) Act, 1985 shall within thirty days from the date of such commencement, and thereafter before the last day of October of every year pay security deposit as provided in Sub-section (2).

(2) Every licensee specified in column (2) of the table below shall in the prescribed manner deposit in the Government treasury the amount specified in the corresponding entry in column (3) of the said table by way of security for the due observance of the conditions of the licence.

TABLE

1

2

3

(1)

A licensee who lends less than one lakh rupees in a year

Five Thousand Rupees.

(2)

A licensee who lends one lakh rupees and above and less than five lakh rupees in a year

Ten thousand rupees.

(3)

A licensee who lends five lakh rupees and above but less than ten lakh rupees in a year

Twenty five thousand rupees.

(4)

A licensee who (ends ten lakhs or above in a year.

Fifty thousand rupees.

(3) For the purposes of Sub-section (2), the amount of the security payable in a year by a licensee shall be determined on the basis of the aggregate amount lent by him during the previous year.

Provided that in the case of a new licensee or a person who has a licence only for a portion of the preceding year the amount of security shall be determined on the basis of a declaration in the prescribed form as to the amount which he is likely to lend during the year, filed before the Registrar in the prescribed manner.

7B. FORFEITURE OF SECURITY - (1) The Registrar may, at any time by order in writing forfeit to the Government the whole or any portion of the security furnished under Sub-section (2) of Section 7A, if the licensee -

(a) carries on the business of money lending in contravention of any provisions of this Act or the Rules made thereunder or the conditions of the licensee, or

(b) is convicted of an offence u/s 27 or Section 38 or Section 39 or Section 40 or

(c) maintains false accounts.

(2) Bolero forfeiting to the Government the whole or any portion of the security deposit made under Sub-section (1), the Registrar shall give the licensee a notice in writing stating the grounds on which it is proposed to take action and requiring him to show cause against it within such time as may be specified in the notice.

(3) Every order of the Registrar under this Section shall be communicated to the licensee in such manner as may be prescribed.

(4) Any person aggrieved by an order under Sub-section (1), may within a period of one month from the date on which the order was communicated to him, prefer an appeal to the Registrar General whose decision shall be final.

(5) The Registrar may, out of the amount forfeited, direct payment of such, amounts and at such rates as may be prescribed to the borrower, affected by the acts of the licensee."

By the above previsions for the first time, the requirement to make a deposit to the extent indicated in the table in Section 7A of the Money Lenders Act and Section 4A of the Pawn Brokers Act was prescribed as a condition for securing licence. In view of the incorporation of Section 7A and 7B into the Money Lenders Act by the Karnataka Money Lenders (Amendment) Act, 1985 and the incorporation of Sections 4A and 4B into the Karnataka Pawn Brokers (Amendment) Act, 1985, the petitioners are challenging the Constitutional validity of the said provisions on the ground they are violative of Articles 14 and 19(1)(g) of the Constitution. Petitioners, who are pawn brokers have also

challenged Section 4(2)(c) and Section 23(2) of the Pawn Brokers Act on the ground that by these provisions a pawn broker is also required to take licence under the Money Lenders Act and there was no justification for compelling a pawn broker to take two licences, one under the Pawn Brokers Act and another under the Money Lenders Act and such insistence was violative of Articles 14 and 19 of the Constitution.

4. Sarvasri K. Srinivasan, C.S. Vaidyanathan, J. Jestmal, Paras Jain, C.H. Jadhav, Indrajeet Shah, learned Counsel addressed arguments on behalf of the petitioners. Sri N. Devadas, learned Government Advocate addressed arguments on behalf of the respondents.

5. The main contention urged on behalf of the petitioners was that Section 7A and 7B of the Money Lenders Act and Section 4A and 4B of the Pawn Brokers Act incorporated into the Acts by 1985 were violative of Articles 14 and 19(1)(g) of the Constitution. Elaborating the said contention, the learned Counsel for the petitioners submitted as follows:-

I) Petitioners being citizens of India have the Fundamental Right to carry on business under Article 19(1)(g) of the Constitution. Similarly, in view of Article 14 of the Constitution, petitioners are entitled to equality before law and equal protection at the hands of the State. The impugned provisions discriminate against the petitioners, who are carrying on the business as money lenders or pawn brokers by compelling them to make a deposit of an amount at the rate prescribed u/s 7A of the Money Lenders Act and u/s 4A of the Pawn Brokers Act. No such deposit is insisted in respect of any other business. Hence, the provisions are discriminatory and arbitrary and therefore violative of Article 14 of the Constitution. The provision which compel the petitioners to make deposit of the amount prescribed in the relevant Section also amounts to unreasonable restriction on the right, under Article 19(1)(g), of the petitioners to carry on business as money lenders or pawn brokers. The provisions which subject the money lenders and pawn brokers to such treatment is neither based on a reasonable classification nor it has any nexus to the object sought to be achieved. Further the provisions cannot also be regarded as reasonable restriction in public interest on the Fundamental Right to carry on business which alone is saved under Clause (6) of Article 19.

II) The provision is a colourable piece of legislation as the sole object of the provision was to collect financial resources for the State on the ground that it was short of finances and therefore had no nexus to the object sought to be achieved by the Act, nor is intended to impose any reasonable restriction in public interest, on persons doing business as pawn brokers or money lenders. The irrelevant consideration, namely, the collection of resources alone is the object of the Act is reflected in the Budget Speech of the Chief Minister. The relevant portion of the Speech reads:-

"119. Measures for raising additional resources to reduce this deficit have already

been indicated and are listed in Annex VII. I expect that with the full benefit of Rs. 87 crores from those measures, the overall deficit at the end of 1984-85 would be Rs. 182,61 Crores."

"ANNEX VII

Net Additional Resource Mobilisation Measures.

(Rs. in Crores)

1. Rural Development Cess on

(a) Sales Tax

42.00

(b) Motor Vehicles-Tax

8.00

2. Rationalisation of Sales Tax

3.00

3. Security deposits from pawn brokers and money lenders

9.00

4. Tax on Mineral Rights

15.00

5. Levy of conversion fine

9.00

6. Urban water supply cess

1.00

Rs. 87.00 Crores."

The above speech makes it clear that the impugned provisions requiring pawn brokers and money lenders to make deposits had nothing to do with the object and purpose of the Act, but was based on irrelevant consideration, namely, that the State was short of finances and therefore the State wanted to collect money to the tune of about Rs. 9 crores by way of compelling the money lenders and pawn brokers to make deposits. Therefore, the provisions are not only violative of Articles 14 and 19 but it is also beyond legislative competence, as it is not a legislation falling under the topic "Money Lending" and money lenders falling under Entry 30 of List II of the Seventh Schedule to the Constitution.

III) Even on the basis that insisting of deposit is for the purpose of the Act, the insistence could have boon on the basis of percentage of the money invested in the business, but the slab basis as has been specified in the table u/s 7A of the

Money Lenders Act and Section 4A of the Pawn Brokers Act is unreasonable and arbitrary. The slab system results in considerable hardship to persons whose business exceeds only by a small margin of a specified slab, in that, the amount of deposit prescribed for the next higher slab is required to be made.

IV) u/s 7A of the Money Lenders Act and Section 4A of the Pawn Brokers Act, though a person has invested only a small amount and had advanced the amount as short term loans and advanced the same amount more than once in a year and the aggregate amount falls under the next slab the respondents are requiring him to pay the higher amount of deposit prescribed for such category which will operate as a very heavy burden even though the money invested to small. The learned Counsel submitted, for instance, if a person has invested only a sum of Rs. 25,000/- for running money lending business and if it so happened that he lent the same amount to individuals for short period, say for a period of 2 months and immediately on repayment of the amount he gave the same amount as loan for another 2 months and similarly he advanced Rs. 25,000/- five times immediately after each repayment he would be required to pay a deposit of Rs. 10,000/- instead of Rs. 5,000/- on the ground the aggregate of the amount advanced by him as loan had exceeded Rs. 1 lakh. Similar would be the position in respect of each of the categories and this would constitute a very heavy burden as by this a person who has invested only a sum of Rs. 25,000/- to make a deposit of Rs. 10,000/- in order to do the business and so on. The learned Counsel submitted that even pawn brokers and money lenders themselves take money on loan on payment of interest and if they are required to deposit such substantial amount with the Government, their business would be crippled and thereby they will be completely prevented from doing their business.

V) When the Legislature had made provision for taking deposits from pawn brokers and money lenders, there should have been a provision for making payment of interest on the amount deposited and failure to make a provision for payment of interest on the substantial amount taken as deposit is not only arbitrary but also unreasonable restriction on the fundamental right of the petitioners to carry on business guaranteed under Article 19(1)(g) of the Constitution.

VI) The provisions of Section 7B of the Money Lenders Act and Section 4B of the Pawn Brokers Act, which provide for forfeiture of the security deposit was arbitrary and violative of Articles 14 and 19 of the Constitution.

6. In support of the contention that the provisions are violative of Articles 14 and 19 of the Constitution, the learned Counsel for the petitioners relied on the Judgment of the Supreme Court Bachan Singh, Sher Singh and Another and Ujagar Singh and Another Vs. State of Punjab and Others, . The relevant portion of the Judgment reads:-

"It is clear on first principle that Sub-clauses (a) to (g) of Clause (1) of Article 19 enact certain fundamental freedoms and if Sub-clauses (2) to (G) were not

there, any law contravening one or more of these fundamental freedoms would have been unconstitutional. But Clauses (2) to (6) of Article 19 save laws restricting these fundamental freedoms, provided the restrictions imposed by them fall within certain permissible categories. Obviously, therefore, when a law is challenged on the ground that it imposes restrictions on the freedom guaranteed by one or the other sub-clause of Clause (1) of Article 19 and the restrictions are shown to exist by the petitioner, the burden of establishing that the restrictions fall within any of the permissive Clauses (2) to (6) which may be applicable, must rest upon the State. The State would have to produce material for satisfying the Court that the restrictions imposed by the impugned law fall within the appropriate permissive clause from out of Clauses (2) to (6) of Article 19. Of course there may be cases where the nature of the legislation and the restrictions imposed by it may be such that the Court may, without more, even in the absence of any positive material produced by the State, conclude that the restrictions fall within the permissible category, as for example, where a law is enacted by the legislature for giving effect to one of the Directive Principles of State Policy and *prima facie*, the restrictions imposed by it do not appear to be arbitrary or excessive. Where such is the position the burden would again shift and it would be for the petitioner to show that the restrictions are arbitrary or excessive and go beyond what is required in public interest. But, once it is shown by the petitioner that the impugned law imposes restrictions which infringe one or the other sub-clause of Clause (1) of Article 19, the burden of showing that such restrictions are reasonable and fall within the permissible category must be on the State and this burden the State may discharge either by producing socio-economic data before the Court or on consideration of the provisions in the impugned law read in the light of the constitutional goals set out in the Directive Principles of State Policy. The test to be applied for the purpose of determining whether the restrictions imposed by the impugned law are reasonable or not cannot be cast in a rigid formula of universal application, for, as pointed out by Patanjali Shastri, J. in *State of Madras Vs. V.G. Row*, no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases". The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied, the value of human life the disproportion of the imposition, the social philosophy of the Constitution and the prevailing conditions at the time would all enter into the judicial verdict. And we would do well to bear in mind that in evaluating such elusive factors and forming his own conception of what is reasonable in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judge participating in the decision would play a very important part."

The learned Counsel also submitted that there was no material collected by the State regarding the activities of money lenders and pawn brokers which are found to be injurious to the interest of the general public which constituted the basis for imposing restrictions such as those imposed by Section 7A of the Money

Lenders Act and Section 4A of the Pawn Brokers Act. In support of the submission, the learned Counsel also relied on Paragraph-16 of the Judgment of the Supreme Court in Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others, It reads:-

"16. 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 sub-servo 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 of curb or eliminate."

The learned Counsel also relied on Paragraphs 46 and 46A of the Judgment of the Supreme Court in Rustom Cavasjee Cooper Vs. Union of India (UOI), .They read:-

"46. Under the Constitution, protection against impairment of the guarantee of fundamental rights is determined by the nature of the right, the interest of the aggrieved party and the degree of harm resulting from the State action. Impairment of the right of the individual and not the object of the State in taking the impugned action, is the measure of protection. To concentrate merely on power of the State and the object of the State action in exercising that power is therefore to ignore the true intent of the Constitution. In this Court, there is, however, a body of authority that the nature and extent of the protection of the fundamental rights is measured not by the operation of the State action upon the rights of the individual, but by its object. Thereby the constitutional scheme which makes the guaranteed rights subject to the permissible restrictions within their allotted fields fundamental got blurred and gave impetus to a theory that certain Articles of the Constitution enact a code dealing exclusively with matters dealt with therein, and the protection which an aggrieved person may claim is circumscribed by the object of the State action.

46A. Protection of the right to property or personal freedom is most needed when there is an actual threat. To argue that State action which deprives a person permanently or temporarily of his right to property or personal freedom, operates to extinguish the right or the remedy is to reduce the guarantee to an empty platitude. Again to hold that the extent of, and the circumstances in which, the guarantee of protection is available depends upon the object of the State action, is to seriously erode its effectiveness. Examining the problem not merely in semantics but in the broader and more appropriate context of the constitutional scheme which aims at affording the individual the fullest protection of his basic rights and on that foundation to erect a structure of a truly democratic polity, the conclusion, in our Judgment, is inevitable that the validity of the State action must be adjudged in the light of its operation upon the rights of the individual and groups of individuals in all their dimensions."

In support of the contention that the forfeiture clause contained in Section 7A of the Money Lenders Act and Section 4A of the Pawn Brokers Act are violative of Articles 14 and 19 of the Constitution, the learned Counsel relied on the Division Bench Judgment of the Kerala High Court in *Monarch Investments St. Thomas Road, Trichur and Others Vs. State of Kerala and Others*, in which the provisions of Section 16A of the Kerala Money Lenders Act providing for forfeiture of the security deposit was held to be violative of Articles 14 and 19(1)(g) of the Constitution. The relevant portion of the Judgment on which the learned Counsel relied reads:-

"While Section 11A enables the security to be locked in trust till the payment of the liabilities of the money lender, Section 16A, on the other hand, empowers the licensing authority to forfeit the security. The statutory trust created under the Act for the security thus vanishes when the security, after forfeiture becomes the property of the Government to be dealt with in any way it likes."

xxx xxx xxx "Following the same reasoning, it seems to us to be clear that the forfeiture of security as a penalty is unconscionably high and is an unreasonable restriction on the right of the persons to carry on the business of money lending. We, therefore, hold that Section 16A is arbitrary and violative of Article 14 of the Constitution and unreasonable, offending Article 19(1)(g) of the Constitution. The security demanded from the money-lender has to continue as security till the business is wound up and the liabilities of the money-lender are settled."

The learned Counsel submitted that the ratio of the above Judgment applies on all fours to the impugned provisions relating to forfeiture and therefore the provisions are liable to be struck down.

7. Sri N. Devadas, learned Government Advocate, per contra, submitted as follows:- Though it was true that in the Budget Speech made by the Chief Minister he had stated that there was a proposal to amend the Pawn Brokers Act and Money Lenders Act to impose security deposit on the pawn brokers and money lenders for the purposes of collecting additional financial resources for the State that was not the actual basis on which the amendments were made. He invited our attention to the Statement of Objects and Reasons annexed to the Bill. They read:-

"STATEMENT OF OBJECTS AND REASONS

The persons who borrow money from the licensed money lenders pledge costly gold ornaments and other articles with them.

To safeguard the interests of these borrowers it is proposed to insist on a security deposit in a Government Treasury from such licensed money lenders, and to make a security deposit a condition precedent for granting licence in future.

In view of the Voluminous work in the Administration of the Act, it is also proposed to increase the license fee.

As the matter was very urgent, the Karnataka Money Lenders (Amendment) Ordinance, 1985 (Karnataka Ordinance No. 11 of 1985) was issued. This Bill seeks to replace the said ordinance."

He also referred to paragraphs-8 and 10 of the Statement of Objections. They read:-

"8. The Respondents-State has been pleased to impose the security deposit as a measure to impose discipline in the business of Money Lending and Pawn Brokerage by promulgating ordinances. The business of Money Lending/Pawn Brokerage, is being regulated with the sole object of regulating the business for the maximum benefit of the general public. The total aggregate amount lent during the year is taken as criteria to determine the quantum of security deposit. The prescription of security deposit regulates the business of money lending and pawn brokerage in accordance with the provisions of the Act and Rules and enables the State to protect the interest of common people. It is needless to mention, that more than 60% of the articles pledged belong to poor and weaker sections of the society. The petitioners are not permitted to take advantage of the helplessness of the poor people and exploit the situation. Hence, it is necessary in the interest of public to have some check and control over the activities of the Pawn Broker/Money Lenders. It is under these circumstances, the State imposes restriction and demands security deposit from the petitioners in order to safeguard the interest of the public. The interest rate fixed by the State Government at 21% for unsecured loans and 18% for secured loans quiet reasonable. It does not take away the freedom of trade of the petitioners and is well within the competence of the Government."

xxx xxx xxx "10. The Government thought it is best in the general interest of the public to demand security deposit for due performance of the business of Money Lending/Pawn Broker in accordance with provisions of the Act and Rules. It is submitted with utmost respect, that it is necessary to safeguard the interest of the borrowers in case of their default and as such, the security deposit required to be made under the Act cannot be termed as unreasonable or arbitrary. It is a requirement to safeguard the interest of the poor. Regarding the quantum of security deposit, the criteria prescribed namely the aggregate amount lent during the year is proper and the only method to fix the quantum of security deposit, since it secures and ensures the borrowers safety to the maximum extent, The Governor of the State has acted in conformity with Article 213(1) of the Constitution of India. The contentions of the petitioners to the contrary are untenable."

The learned Counsel submitted that the Legislature considered that it was necessary to safeguard the interest of borrowers against the activities of exploitation by money lenders and pawn brokers and to make a provision for compensating the borrowers who were adversely affected by the activities of the money lenders/pawn brokers, as the case may be. In support of his submission he also produced a copy of Administrative Report relating to the implementation

of the two enactments for the year 1989. Relevant portion on which he relied reads: -

"During the year under report the money lending squad has inspected 818 Money Lending, Pawn Brokers and Finance Corporations in the State. And the Registrar of Money Lenders in the State have inspected 1420 Money Lenders, Pawn Brokers and Finance Corporations. Apart from this, they have detected 25 cases of un-authorized Money Lending and contraventions of law. In these cases the concerned Registrar of Money Lenders in the State have initiated, Prosecution proceedings in these 25 cases. During the year under report 7 cases have been decided by the Court and the accused in these 7 cases have been convicted. At the end of the year 52 cases have been pending in the various Courts for trial."

He submitted that though this was a report for the period subsequent to the impugned Amendments, it indicates the mal-practices in the business which required to be checked.

8. As regards the submission made by the learned Counsel for the petitioners that even assuming that there was justification for compelling the pawn brokers to make the deposit as they were receiving valuable articles including Gold articles as pledges, there was no justification for insisting on the deposit to be made by the money lenders, the learned Counsel submitted that there was no substance in the contention, for the reason that the money lenders were authorised to lend money on the security of immovable property such as agricultural lands and therefore there was greater necessity for insisting on the deposit by the money lenders in order to afford protection to poor agriculturists, who approach the money lenders for borrowing money. As regards the submission made by the learned Counsel that the slab system was arbitrary and causes hardship to persons doing business whose business crosses one slab only by a small amount and thereby fall into the higher slab category, the learned Counsel submitted that the slab system has got a rational basis. In this behalf, he referred to the slab system under the income tax law. He said that when such a classification which is reasonable is made, any hardship caused to one or two individuals cannot be taken as the basis to hold that the introducing of the slab system was violative of Articles 14 and 19 of the Constitution.

9. In support of his submissions the learned Government Advocate relied on paragraphs-14, 16. 18 to 20 and 23 of the Judgment of the Supreme Court in SHASHIKANT LAXMAN KALE v. UNION OF INDIA, : [1990]185ITR104(SC) . They read:-

14. We must, therefore, look beyond the ostensible classification and to the purpose of the law and apply the test of "palpable arbitrariness" in the context of the felt needs of the times and societal exigencies informed by experience to determine reasonableness of the classification. It is clear that the role of public sector in the sphere of promoting the national economy and the context of felt needs of the times and societal exigencies informed by experience gained from

its functioning till the enactment are of significance. There is no dispute that the impugned provision includes all employees of the public sector and none not in the public sector. The question is whether those left out are similarly situated for the purpose of the enactment to render the classification palpably arbitrary. It is only if this test of palpable arbitrariness applied in this manner is satisfied, that the provision can be faulted as discriminatory but not otherwise. Unless such a defect can be found the further question of construing the provision in such a manner as to include all employees and not merely employees of public sector companies, does not arise.

XXX XXX XXX 16. There is thus a clear distinction between the two. While the purpose or object of the legislation is to provide a remedy for the malady, the legislative intention relates to the meaning or exposition of the remedy as enacted. While dealing with the validity of a classification, the rational nexus of the differentia on which the classification is based has to exist with the purpose or object of the legislation, so determined. The question next is of the manner in which the purpose or object of the enactment has to be determined and the material which can be used for this exercise.

xxx xxx xxx 18. Not only this, to sustain the presumption of constitutionality, consideration may be had even to matters of common knowledge; the history of the times; and every conceivable state of facts existing at the time of legislation which can be assumed. Even though for the purpose of construing the meaning of the enacted provision, it is not permissible to use these aids, yet it is permissible to look into the historical facts and surrounding circumstances for ascertaining the evil sought to be remedied. The distinction between the purpose or object of the legislation and the legislative intention, indicated earlier, is significant in this exercise to emphasise the availability of larger material to the Court for reliance when determining the purpose or object of the legislation as distinguished from the meaning of the enacted provision.

19. We propose to utilise these permissible aids for discerning the purpose or object of the legislative provision in order to examine the validity of the classification made therein.

20. Strong reliance has been placed on behalf of the petitioners on the memorandum explaining the provisions in the Finance Bill, 1987, wherein the explanatory note relating to Clause 4(a) of the Bill proposing insertion of Clause (10-C) in Section 10 of the Income Tax Act, 1961 appears under the heading "Welfare Measures". It may be mentioned that this heading is only in the explanatory memorandum and not in the Notes on Clauses appended to the "Statement of Objects and Reasons" of the Bill. [See: Mrs. M.T.R. Powar Vs. R.K. Gupta, We would presently show that the petitioners cannot draw support from this heading in the explanatory memorandum. Moreover, an explanatory memorandum is usually not an accurate guide of the final Act. (See: Francis Bennion's Statutory Interpretation, 1984 edition at page 529).

xxx xxx 23. A catch phrase possibly used as a populist measure to describe some provisions in the Finance Bill in the explanatory memorandum while introducing the Bill in the Parliament can neither be determinative of, nor can it camouflage the true object of the legislation. It is not unlikely that the phrase "welfare measures" was used to emphasise more on the effect of the provisions thereunder on the tax payer for populism."

Relying on the ratio, the learned Counsel submitted that there was no substance in the contention urged by the learned Counsel for the petitioners,

10. As regards the submission made by the learned Counsel that though the amount invested is less just because it so happened that a particular money lender or a pawn broker had advanced money as short term loans and immediately after repayment he had advanced money again and again, there was no justification for taking the aggregate amount advanced at different times i.e., the total turnover as the basis for insisting the deposit, the learned Government Advocate submitted that the basis prescribed in the Section namely, the total amount advanced, cannot be regarded as discriminatory or unreasonable. The learned Government Advocate also submitted that there was no substance in the contention of the petitioners that want of provision for payment of interest makes the provision violative of Articles 14 and 19 of the Constitution. The learned Government Advocate submitted that the Government was not taking loan of any amount from the money lenders or pawn brokers but it was only a deposit taken as security for carrying on the business as money lenders or as pawn brokers in accordance with the terms and conditions of the licence and therefore there was no substance in the contention of the learned Counsel that the provision should have been made for payment of interest.

11. As regards the forfeiture clause incorporated in Section 7B of the Money Lenders Act and Section 4B of the Pawn Brokers Act, the learned Government Advocate submitted that Clause (5) of Section 7B of the Money Lenders Act indicates the object and purpose namely payment of an amount to the borrower affected by the acts of the licensee by the Registrar. He submitted that there was sufficient safeguards in that Section for effecting forfeiture and there is also a right of appeal against forfeiture and therefore cannot be regarded as violative of Articles 14 and 19(1)(g) of the Constitution. The learned Counsel distinguished the Judgment of the Kerala High Court on the ground that the provision of Section 16A of the Kerala Money Lenders Act was held to be unconstitutional for the reason that there was no provision for utilising the amount forfeited to give relief to the affected borrowers and therefore it was regarded as unconstitutional, but in the present case the money forfeited is required to be distributed among the borrowers who are required to be compensated and therefore the provisions cannot be regarded as violative of Articles 14 and 19 of the Constitution.

12. We now proceed to consider the validity of the rival contentions. It is well settled that in order that a law is not violative of Article 14 of the Constitution, the classification of persons who are selected by the Legislature to be governed

by the law enacted should be reasonable and such classification should have nexus to the object sought to be achieved by the legislation. In the present case, the class of persons selected for the purpose of the two enactments are Money Lenders and Pawn Brokers. Pawn brokers lend money on interest taking valuable articles in pawn. Money lenders also lend money on interest and in several cases they take immovable property such as agricultural lands, dwelling houses etc., as security for repayment of loans. The nature of the business of both is money lending. This business stands apart and distinct from all other kinds of trade or business. This classification is made by the Constitution itself vide Entry 30 of List II of the VII Schedule to the Constitution. The scope of the Entry is very wide. On this aspect, the Supreme Court in the case of *FATEHCHAND v. STATE OF MAHARASHTRA* AIR 1978 SC 1825 in which the Constitutional validity of the Maharashtra Debt Relief Act was upheld said thus:-

"Entry 30 in List II is money lending and money-lenders, relief of agricultural indebtedness". If commonsense and common English are components of constitutional construction, relief against loans by scaling down, discharging, reducing interest and principal, and staying the realisation of debts will, among other things, fall squarely within the topic. And that, in a country of hereditary indebtedness on a colossal scale. It is common place to state that legislative heads must receive large and liberal meanings and the sweep of the sense of the rubrics must embrace the widest range.. Even incidental and cognate matters come within their purview. The whole gamut of money-lending and debt-liquidation is thus within the State's legislative competence."

Therefore it is clear, the classification of Money Lenders and Pawn Brokers for purpose of regulating their money lending activity is reasonable. Further, regarding the impugned Amendments as can be seen from the Statement of Objects and Reasons annexed to the Bill and paragraphs 8 and 10 of the Statement of Objections extracted earlier, the provisions were intended to safeguard the interests of the borrowers, who mostly belong to poorer sections of the society, if and when they are adversely affected by the activities of the money lenders or pawn brokers, as the case may be. The classification therefore has also a rational nexus to the object sought to be achieved. The restriction imposed by the Amendments, subject to the correct interpretation of the two Sections which is indicated later, is neither arbitrary, nor can be regarded as an unreasonable restriction on the Fundamental Right of the petitioners to carry on their business. Therefore, the impugned provisions do not violate Article 14 or 19(1)(9) of the Constitution. It is also not possible to accept the contention of the petitioners that the reasons furnished in the Budget Speech of the Chief Minister really constituted the basis for the amendment, and not the one set out in the Statement of Objections and therefore the Amendment is outside the scope of Entry 30 of List II of the Seventh Schedule to the Constitution. We are also not impressed by the submission that there was no justification for requiring the money lenders to make the deposit on the ground that they are not authorised to take valuable articles as pledge or as security for repayment of the

loan. As rightly pointed out by the learned Government Advocate, that a money lender though not functions as a pawn broker, he takes security of properties including immovable properties including agricultural lands, residential houses etc., as security for repayment of loan and therefore whatever reasons apply to the pawn brokers would equally apply to the money lenders also. Therefore, if Section 4B of the Pawn Brokers Act does not violate Articles 14 and 19(1)(g) of the Constitution, the same would be the position regarding Section 7B of the Money Lenders Act.

13. As regards the slab system also, in our opinion, it cannot be said that it is irrational. Some reasonable classification has to be made, for, all the money lenders and pawn brokers cannot be grouped together and a common deposit cannot be insisted, as that by itself would lead to violation of Article 14 as it amounts to equal treatment of unequals, which is discriminatory. Therefore, the Legislature has thought it fit to classify the pawn brokers and money lenders on the basis of quantum of business during the previous year for the purpose of fixing the amount of deposit to be made by them and the slab basis is formulated for fixing the quantum of deposit to be made. Thus it has a rational basis. It may be, that it was open to the Legislature to fix the amount of deposit on percentage basis. Just because the Legislature could have adopted another basis, that by itself, is no ground to hold that the basis adopted by the Legislature is violative of Articles 14 and 19(1)(g) of the Constitution, so long as the basis adopted is a rational one, and is reasonable.

14. Now, we proceed to ascertain the real meaning of Section 7A of the Money Lenders Act and Section 4A of the Pawn Brokers Act. The learned Counsel for the petitioners submitted that insisting on the deposit on the basis of the aggregate of the loan advanced during a particular year i.e., on the basis of total turnover and not on the basis of the actual amount invested in the business by a money lender or by a pawn broker, as the case may be, would be an unreasonable restriction and also arbitrary. We are of the view that the basis of the challenge is in view of the wrong interpretation of the provision by the State. The stand taken by the State regarding the meaning of the two provisions is set out in paragraph-8 of the Statement of Objections extracted earlier. For the purpose of deciding the amount to be deposited by a licensee, the aggregate amount lent during the previous year is taken as the basis. In our opinion, when Section 7A and Section 4A says that a person who lends an amount less than Rs. 1 lakh in a year has to deposit Rs. 5,000/- it means that if the amount which he has utilised in his lending business is less than Rs. 1 lakh he is required to make a deposit of Rs. 5,000/- only. For instance, if a money lender has invested only a sum of Rs. 25,000/- in the business, the fact that he advanced it as short term loans for one month or two months and immediately on repayment of the loan he advanced it again as short term loan for like periods and thereby he advanced the same amount of Rs. 25,000/- more than five or six times in a year does not mean that he has lent an amount of Rs. 1 lakh or more during a particular year. For instance, if a person advances a sum of Rs. 25,000/-, say at the rate of interest

of 20% per annum for the whole year he would get an Interest of Rs. 5,000/- only. Even if the same amount is advanced for a period of 2 months on each occasion and for five times, the income which he earns would be only Rs. 5,000/-, because he would be getting interest at 20% per annum on the amount advanced only for 2 months on each occasion. Therefore, it cannot be said that he had advanced a loan of Rs. 1,25,000/- when his capital itself is Rs. 25,000/- only. The method adopted by the respondents is similar to the computation of turnover under the Sales Tax Law which is wholly inapposite to the present case. The computation of turnover is made on the basis of total sales effected in a year because on each occasion when a trader sells goods he gets normal percentage of profit on the entire amount, and when he repurchases goods and sells again and again he earns on each occasion normal percentage of profit. But it is not so in money lending business. In this business a money lender gets the prescribed percentage as interest only for the period for which the money has been lent and irrespective of the number of times the same money is advanced the total interest earned would not exceed the prescribed percentage, on the total amount invested in the business. It could only be less as there would be some gap between the receipt of repayment of a short term loan and advancing another short term loan. Therefore the deposit has to be computed on the basis of the money invested and not on the basis of the aggregate of loan advanced. This is how the Kerala High Court in the case of Monarch Investment has interpreted similar provision. The relevant portion of the Judgment is in para-14, which reads:-

"14. The third aspect to be noticed is that the security u/s 4 is on the amount lent in the previous year, the higher the amount, the greater the security subject to the maximum ceiling of two lakhs under the 1987 Amendment. Section 4(2B) however, states that for the purposes of Sub-section (2A), "the amount lent by a licensee for the year for which the security is to be paid shall be deemed to be the aggregate amount lent by him during the previous year." It is based on this provision that the contention is advanced that the recycling of the same amount as loan to different persons in the same year can take the aggregate amount lent by him exceed even the capital utilised for lending. This Sub-section (2B) speaks "of the amount lent by the licensee for the year for which the security is to be paid" and by a statutory fiction "the aggregate amount lent" during the previous year is reckoned as the amount lent in that year. When the amount lent in an year is the basis for the security to be paid, and the total amount lent for that year has to be taken note of, it seems to be clear that it is the total amount utilised for lending in the previous year that furnishes the guide for the security for the current year. Thus if one lakh alone was utilised for the purpose of lending, the fact that the same amount was lent to different persons the same year does not increase the total amount lent; the total amount lent remains at rupees one lakh. "The aggregate amount lent" in Sub-section (2B) has thus to be understood as the aggregate amount utilised for lending. It is not the aggregate amount of the total turnover, nor is it the amount intended to be invested in the

business of lending. It is the actual amount invested and utilised for lending, that constitutes "the aggregate amount lent" contemplated under this sub-section. The authorities under the Act are thus bound to demand security u/s 4(2B) on the above basis on the interpretation given to the expression "the aggregate amount lent" and if in any case, security demanded from any money-lender u/s 4 has been on any other basis, it will be open for the petitioners, and other similarly situate to move the authorities, or the authorities may take action suo motu to revise the amount of security needed u/s 4. The apprehension of the petitioners/appellants that the implementation of Sections 4(2A) and 4(2B) will seriously affect their business is thus not justified and these provisions cannot be characterised as unreasonable restrictions on the right to carry on the business of money lending."

We are in respectful agreement with the view taken by the Kerala High Court and hold that the quantum of deposit to be made by a money lender or a pawn broker has to be computed on the basis of the actual money invested in the business and not on the basis of aggregate of the amount of loan advanced in cases where amount invested in the business has been utilised to advance loan more than once. If the provision is interpreted in the above manner it would not be violative of Articles 14 and 19 of the Constitution. If on the other hand, if it were to be interpreted as suggested by the learned Government Advocate, the provision would lead to violation of Articles 14 and 19(1)(g) of the Constitution. For instance, as stated earlier, if a person who has invested only Rs. 25,000/- in his business and had advanced the amount five times as short term loans he would be required to pay a deposit of Rs. 10,000/- which on the face of it would be not only arbitrary but also unreasonable restriction on the fundamental right guaranteed to carry on the business. It is also settled position of Rules of Construction that if there are two plausible constructions of a provision, one leading to unconstitutionally and the other not, the latter should be preferred (See: K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, Therefore, we hold that on a correct interpretation of the two provisions, the criteria for deciding the amount to be deposited by a licensee is the amount invested by him in the business and not the aggregate of the loans advanced more than once utilising the same amount invested in the business.

15. Now coming to the submission made by the learned Counsel for the petitioners that not making a provision for the payment of interest is invalid, the learned Counsel for the petitioners relied on paragraph-11 of the Judgment of the Supreme Court in Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others, and on the Division Bench Judgment of this Court rendered following the aforesaid Judgment in B.W.S.S.B. Vs. Ramakrishna Aithal, of the said Judgment reads:-

"17. The next question for consideration is the submission made by the learned Counsel for the petitioners that in the event of the Court accepting the plea of the Board that the deposit required under Regulation 7A is in the nature of

security deposit for ensuring payment in the light of the Judgment of the Supreme Court in the case of Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others, in view of the same Judgment this Court should direct the Board to pay interest on the amount so deposited by the consumers. In support of the submission, learned Counsel relied on paragraph 11 of the Judgment of the Supreme Court in Jagadamba Paper Industries case. It reads:

"11. On the security amount interest at the rate of 4% was initially payable. The same has already been enhanced to 8% per annum. Since the amount is held as security, we indicated to the Counsel for the Board that security amount should bear the same interest as admissible on fixed deposits of Scheduled Banks for a term of years and we suggested keeping the present rate of interest in view that it should be enhanced at 10%. Board's Counsel has now agreed that steps would be taken to enhance the present rate of interest of 8% to 10% with effect from October 1, 1983."

There is force in the submission. Once the amount which is required to be deposited by the consumers with the Board under the impugned regulation is in the nature of security deposit, the Board must pay interest for the amount held in deposit. In fact as can be seen from the bills produced as annexures along with the petitions, there is a provision for collecting interest at 12 per cent per annum from the consumers if there is delay on the part of the consumers in paying the bills after the due date. When the Board requires the consumers to pay interest if they make delay in paying the water charges which is due to the Board, the Board cannot avoid payment of interest to the consumers when it requires the consumers to make a deposit of an amount equal to three months average charges."

Another Division Bench Judgment of this Court on which the petitioners relied is The Chairman, Karnataka Electricity Board and Others Vs. Gadag Mining Co. and Others etc., the ratio of which is similar to the one in Ramakrishna Aithal's case. The learned Counsel submitted that the ratio of the above Decisions applies to these cases also. They pointed out that when the Water Board and the Electricity Board called upon the consumers to make the deposit as security for payment of the bills, this Court relying on the Judgment of the Supreme Court held that it is their duty to pay interest on the amount so deposited.

16. The learned Government Advocate submitted that the ratio of the Judgment which requires that the Electricity Board and the Water Board to pay interest on the amount of security deposited, collected from the consumers has no application to the cases, for the reason, in the said case it was held that when the Water Board and the Electricity Board were charging interest on the amount of bills which were not paid in time, they should also pay interest on the amount of deposit. We are not impressed by the distinction sought to be made out by the learned Government Advocate. In this behalf the relevant observation in the Judgment of the Supreme Court in the case of Jagadamba Paper Industries is of

significance. They are:

"Since the amount is hold as security, we indicated to the Counsel for the Board that security amount should bear the same interest as admissible on fixed deposits of Scheduled Banks for a term of years...."

In the present case also the money lenders and pawn brokers are required to deposit a substantial amount to be held as security for the observance of the conditions of the licence and as that money remains with the Government, it is most unreasonable for the State to say that no interest would be paid on the amount so deposited. In fact as pointed out by the learned Counsel for the petitioners they could have been called upon to make the deposit of the same amount in a nationalised bank, and furnish bank guarantee equal to the amount to be deposited by each of the money lenders or pawn brokers, as the case may be, and if that was done, the learned Counsel submitted that on those deposits made in the nationalised bank they would have earned interest. Instead of doing so, the State has made a provision for depositing the amount with the Government i.e., in the Government treasury in cash. After giving our careful consideration, we are of the view that on principle there can be no difference between requiring the Water Board or Electricity Board to pay interest on the amount held as security deposit and requiring the Government to pay deposit on the amount deposited with them as security under the impugned provisions. Irrespective of the purpose for which it is deposited, the fact remains that the amount has to be deposited as security and as observed by the Supreme Court once an amount is a security deposit, it is necessary for the State to pay interest to the person who had made the deposit. Learned Counsel for the petitioners submitted that as Section 7A of the Money Lenders Act and Section 4A of the Pawn Brokers Act require the money lenders and pawn brokers to make the prescribed deposit and does not provide for payment of interest the Sections are liable to be struck down as violative of Articles 14 and 19(1)(g) of the Constitution. The amount required to be deposited by the two provisions is a substantial amount. The lowest amount to be deposited is Rs. 5,000/- and it goes upto Rs. 50,000/-. But for the deposit these amounts would have been utilised by the petitioners for their business and earning profits and they have been doing so for the last more than two decades, and the petitioners are now compelled to part it in the form of cash security deposit with the Government. It is true that the Sections do not make a provision for giving interest but at the same time the Sections do not prohibit the payment of interest. If the Sections prohibited the payment of interest, such a provision would be arbitrary and therefore there would have been force in the contention of the petitioners that the provisions were violative of Article 14 on the ground that it is arbitrary, for, Article 14 strikes at arbitrariness in State action. (See: E.P. Royappa Vs. State of Tamil Nadu and Another, and Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, Further, there would have been also force in the contention of the petitioners that such a provision which compelled them to deposit considerable amount in cash with the Government without any provision for payment of

interest was an unreasonable restriction on their fundamental right to carry on business guaranteed under Article 19(1)(g) of the Constitution, It is indisputable that by such deposit not only the petitioners lose the opportunity of earning profit on the said amount but the value of the money also goes down as years pass and thereby the petitioners would be forced to incur losses instead of earning profit out of the money, which they would have invested in their business, but for the compulsion to deposit a portion of it in the Government. Therefore, it appears to us that in the absence of any prohibition in the provisions of the Act regarding payment of interest, in view of Article 14, the Government while making Rules for the purposes of the Act u/s 44 of the Money Lenders Act and Section 22 of the Pawn Brokers Act has not only the power but also a duty to provide for payment of interest. As far as the rate of interest is concerned, in our opinion, as the deposit prescribed u/s 7A of the Money Lenders Act and Section 4A of the Pawn Brokers Act is for a period of one year, as the duration of the licence on, each occasion being one year, the Government should pay interest on the amount of security deposit made by a licensee at the rate at which the interest is paid by any Scheduled Bank on a fixed deposit for one year.

17. The next contention for consideration is the requirement that a pawn broker is required to take a licence under the Money Lenders Act also in view of Section 4(2)(c) which provides that one of the conditions of eligibility for securing a pawn broker's licence is the taking of a licence under the Money Lenders Act and Sub-section (2) of Section 23 which provides that the provisions of the Money Lenders Act apply in addition to the provisions of the Pawn Brokers Act, are violative of Articles 14 and 19(1)(g) of the Constitution. The learned Counsel for the petitioners contended that as the terms and conditions of the licence under the Pawn Brokers Act are similar to those imposed under the Money Lenders Act there is no rational basis for insisting the taking of the two licences. It is true there is some amount of overlapping between the provisions of the two enactments. It was possible to make one enactment regulating the business of both the money lenders and pawn broker and to prescribe one licence. Whatever that may be the Legislature has enacted two separate enactments one for regulating the money lenders and another for regulating pawn brokers. It is true that every money lender is not a pawn broker, but it is not disputed that every pawn broker is a money lender. It is obviously for this reason every pawn broker is also required to take licence under the Money Lenders Act. The learned Government Advocate pointed out that while the licence fee fixed for money lenders is Rs. 100/- the licence fee fixed for pawn broker is only Rs. 50/-. He submitted that one single licence combining both the money lenders licence and the pawn brokers licence levying a licence fee of Rs. 150/- could have been provided for. However, in view of the existence of two enactments, two separate licences are insisted and as the taking of money lenders' licence is made a condition for securing eligibility to the pawn brokers licence, having fixed the licence fee of Rs. 100/- for money lenders' licence and only Rs. 50/- is fixed as licence fee for pawn brokers. In our opinion, the mere fact that the pawn broker

is also required to take money lenders licence, in the circumstances, cannot be regarded as violative of either Article 14 or Article 19(1)(g) of the Constitution.

18. The learned Counsel for the petitioners next contended that there are no clear provisions for adjustment of the deposits already made either u/s 7A of the Money Lenders Act or u/s 4A of the Pawn Brokers Act or for refund. In our opinion, even in the absence of any such provision, if a person has already made deposit as prescribed u/s 7A of the Money Lenders Act or u/s 4A of the Pawn Brokers Act and if in the next year on account of higher investment of money in the business an individual pawn broker or money lender comes within the next higher slab or any other higher slab and he is required to make a higher deposit he can only be called upon to deposit the balance of the amount over and above the amount already deposited, that is how the provisions of the Act have to be implemented. Similarly, if a person closes down his business or he does not get his licence renewed, it follows that any money deposited by him in terms of Section 7A of the Money Lenders Act or Section 4A of the Pawn Brokers Act has to be refunded. Therefore, on making such a demand the Authorities are in duty bound to refund the amount even in the absence of specific provision for refund.

19. In the result, we make the following order:

ORDER

(1) The Writ Petitions, in so far they relate to the challenge to the Constitutional validity of Sections 7A and 7B of the Karnataka Money Lenders Act, 1961, inserted by Karnataka Money Lenders (Amendment) Act, 1985, and Sections 4A and 4B of the Karnataka Pawn Brokers Act, 1961, inserted by Karnataka Pawn Brokers (Amendment) 1985; and Sections 4(2)(c) and 23(2) of the Karnataka Pawn Brokers Act, 1961, they are dismissed.

(2) As regards the quantum of deposit required to be made u/s 7A of the Karnataka Money Lenders Act, 1961 and Section 4A of the Karnataka Pawn Brokers Act, 1961, respondents are directed to collect the amount of deposit only on the basis of the amount invested by the concerned person in the business during the preceding year and not on the basis of the aggregate of the amount of loan advanced as held in Para 14 of this Order.

(3) Respondents are also directed to pay Interest at the prevailing rate of interest payable by a Scheduled Bank on the fixed deposits for a period of one year on the amount deposited as security. The State Government shall be at liberty to make appropriate Rules in this behalf and such Rule may also provide for payment of accrued interest only at the time of refunding or adjusting the deposits for subsequent years and for forfeiting the interest together with deposit, in cases where the deposit is forfeited.

(4) Respondents are also directed to adjust the amount of deposit made during any particular year towards the amount of deposit required to be made for the succeeding year by any of the money lenders or pawn brokers.

(5) Respondents are also directed to refund the amount of deposit either in the event of any person discontinuing the business or in the event of licence being refused.

(6) There will be no order as to costs.