

(2021) 05 BOM CK 0017
In the Bombay High Court
Case No : Writ Petition No.801 Of 2021

Pune Saraf Association & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 27-05-2021

Acts Referred:

Bureau Of Indian Standards (Hallmarking) Regulations, 2018 — Regulation 5
Bureau Of Indian Standards Act, 2016 — Section 14(3), 15(2), 15(3), 16(1), 16(2),
25(3), 25(17), 29(2)

Citation : (2021) 05 BOM CK 0017

Hon'ble Judges : S.J. Kathawalla, J; Surendra P. Tavade, J

Bench : Division Bench

Advocate : Anil Anturkar, Shubham H. Misar, Aditya Thakkar, Anil D. Yadav, Arsh Mishra, M.V.Kini

Judgement

Serial, Goods and articles, Indian Standard, Title of Indian Standard
number (1), (2), (3), (4)
rejected.,,,

7. Mr. Anturkar, Senior Advocate, appearing for the Petitioners submitted that as per the Impugned Order, gold jewellery and artefacts can only be",,,
made with purity of 14, 18 and 22 carats and of no other. As per the Respondents' Affidavit in Reply, Hallmark Centres have been provided in 236",,,
districts out of 741 districts across India. In respect of Maharashtra, he submitted that out of a total of 36 districts, there is no Hallmark Centre in 14",,,
districts. In respect of 11 districts, there is only 1 Hallmark Centre and in respect of 2 districts, there are only 3 Hallmark Centres. That even if it is",,,
assumed for the sake of argument that the Impugned Order is constitutionally valid, it ought to be stayed owing to the complete lack of infrastructure.",,,

In support of this submission, reliance was placed on the Apex Court's decision in Jamshed Guzdar vs. State Of Maharashtra 2005 (2)SCC 591. He",,,

further argued that the system of hallmarking is completely faulty. The random sampling method proposed is completely unscientific. He further relied,,,

upon the Apex Court's decision in Internet and Mobile Association of India vs. RBI 2020 SCC Online SC 275and the decision of this Court in the case,,,

of Purnartha Investment Advisers Pvt. Ltd. vs. SEBI Writ Petition (I) No.638 of 2021, wherein the five tests to examine the validity of a legislative",,,

action, be it a statute or a delegated legislation, have been laid down. Mr. Anturkar therefore concluded that the Impugned Order be stayed until final",,,

disposal of this Writ Petition.,,,

8. Appearing for Respondent No.3 viz. the Bureau of Indian Standards, Mr. Arsh Mishra submitted that the Impugned Order has a presumption of",,,

constitutional validity and the same being an economic reform, should not be stayed at the ad- interim stage. Mr. Mishra further submitted that the",,,

Nagpur Bench of this Court has already passed an Order dated May 7, 2021 in Writ Petition No.1815 of 2021 arising out of the very same Impugned",,,

Order directing that no coercive action shall be taken against the jewellers under Section 29(2) of the Act. Relying thereon, it was submitted that",,,

whilst being protected under the said Order, the Petitioners cannot seek a stay on the entire subordinate legislation especially when there are already",,,

Hallmark Centres in 234 locations across the country. It was further submitted that notwithstanding the fact that 14 districts out of 36 in Maharashtra,,,

do not have Hallmark Centres, that has not prevented jewellers in these districts from procuring and selling Hallmarked jewellery. That setting up of",,,

Hallmark Centres is a market driven activity. That once the pandemic situation normalises, with an increase in demand, new Hallmark Centres would",,,

come up. The inclusion of 24k gold is essential as the same would prevent confusion amongst consumers, and would prevent such consumers from",,,

being duped by jewellers. That a detailed and well laid-out procedure has been provided for hallmarking by adopting XRF-X Ray Fluorescence. Mr.,,,

Mishra therefore concluded that the Petition is devoid of any merit and thus no ad-interim relief deserves to be granted.,,,

9. The Learned Advocate appearing for Respondent Nos.1 and 2 has adopted the submissions advanced on behalf of Respondent No.3.,,,

10. We have heard the arguments canvassed by the Ld. Advocates in the matter. We have also perused a copy of the Order dated May 7, 2021,",,

passed by the Nagpur Bench of this Court in respect of the Impugned Order.,,,

11. It is an admitted and undisputed position that currently, there are insufficient Hallmark Centres in the country. This, according to us, is a decisive",,,

factor to be taken into consideration at the interlocutory hearing of this Writ Petition. Whilst we appreciate that hallmarking is essential for consumer,,,

protection and to prevent unfair trade practices, adequate and necessary infrastructure needs to first be put in place prior to imposing such strict",,,

consequences on the Petitioners. In response to the Petitioners' representation, the Respondents, in their response thereto have themselves stated that",,,

in the absence of a Hallmarking Centre within a particular district, the Petitioners are to approach any other Hallmarking Centre across the country.",,,

The Petitioners have been at pains to point out the consequent inequality arising from the Impugned Order which is burdensome. Illustratively, in the",,,

districts of Beed, Bhandara and Buldhana over 3000 jewellers are located and there is no Hallmark Centre in these districts.",,,

12. We cannot lose sight of the on-going Pandemic across the country, as a result of which several logistical hurdles are now prevalent. In our opinion,",,

at such SSP 7/9 24_wp_801_of_2021 25.05 B.doc short notice, it would be inequitable for certain jewellers to travel outside their district merely",,,

because no Hallmarking Centre is as yet established in their district.,,,

13. We are conscious of the Apex Court's directions in Bhavesh D. Parish vs. Union of India⁴, wherein the Apex Court has held that when",,,

considering an application for staying the operation of a legislation, and that too pertaining to economic reform or change, the courts must bear in mind",,,

that unless the provision is manifestly unjust or glaringly unconstitutional, the courts must show judicial restraint in staying the applicability of the same.",,,

Merely because a statute comes up for examination and some arguable point is raised, which persuades the courts to consider the controversy, the",,,

legislative will should not normally be put under suspension pending such consideration.,,,

14. Owing to the foregoing decision, considering the purpose for which the Impugned Order has been issued, we are not inclined to stay its effect and",,,

operation. However, owing to the on-going Pandemic, coupled with the admitted

lack of infrastructure of Hallmark Centres, we deem it fit to restrain",,,
the Respondents from taking coercive action against the Petitioners under Paragraph No.4 of the Impugned Order viz. ""Penalty for Contravention"".",,,
Having said so, we would expect the Petitioners to try their level best to achieve maximum hallmarking as is permissible in the on-going circumstances",,,
from the Hallmarking Centres currently operational in 4 (2000) 5 SCC 471 SSP 8/9 24_wp_801_of_2021 25.05 B.doc their respective districts.,,,
15. In the interim, the Respondents are directed to place on record a detailed Afdavit setting-out the step-by-step procedure it seeks to lay down, so as",,,
to efectively implement the Impugned Order. This would include detailed particulars and projections of the number of Hallmarking Centres being,,,
implemented across various districts in Maharashtra, which currently do not have Hallmarking Centre. Prior to granting the Respondents complete",,,
liberty to enforce Paragraph No.4 of the Impugned Order, we would be required to ascertain what steps will be taken by the Respondents to develop",,,
sufcient infrastructure so that there is no resultant inequality arising from the Impugned Order.,,,
16. Lastly, at the final hearing of this Writ Petition, this Court will also consider the implication of excluding certain caratage of gold from the purview",,,
of the Impugned Order and accordingly test the constitutional validity or otherwise of the Impugned Order.,,,
17. List the Writ Petition for further hearing and directions on 29th June, 2021.",,,