(1974) 05 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Appeal No. 766 of 1968

The Bullion Merchants APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 17-05-1974

Acts Referred:

Citation : (1975) 11 DLT 136

Hon'ble Judges : Rajinder Sachar, J

Bench : Single Bench

Advocate : G.N. Aggarwal, R.L. Tandon and Anil Bhatnagar, for the Appellant;

Judgement

R. Sachar, J.

(1) This petition under Articles 226 and 227 of the Constitution of India challenges provisions of the Gold (Control) Act, 1968, being Parliament Act 45 of 1968 (hereinafter called the Act).

(2) Petitioner No. 1is a registered Association and its members are dealers in bullions. The Petitioner No. 2 claims to be the President of the Association. Subsequently, other members of the Association have also been imp leaded as petitioners to the present petition.

(3) The petitioners are traders who deal in gold and silver bullion. Though in the writ petition challenge was made on a number of grounds and to many provisions of the Act. Mr. Aggarwal, appearing for the petitioners has confined his challenge to the following sections, namely. Section 10, Section 16(7), Section 27(7)(a);(8)(b). Section 28, Section 30, Section 35, Section 89. This was done advisedly, because subsequent to the filing of this writ petition, the Supreme Court had occasion to consider the validity of the Act in case Harakchand Ratanchand Bauthia etc. v. Union of Indict. The court held that the Act was within the legislative competence of the Parliament. The Act was held to be valid excepting sections 5(2)(b), 27(2)(d), 2 (6), 32, 45, 88 and 100 which were declared invalid. In pursuance of that judgment of the Supreme Court amendment was

carried out in the Act. Again another challenge was made to the Act in case Badri Prasad v. Collector of Central Excise, Sarvoda nanagar., Kanpur especially to section 6, 18,16,58,7l Excepting Section 7l, which was held unconstitutional, the Court upheld the validity of other provisions. I shall deal with the challenge to the validity of various provisions in the order in which they were argued. Section 16(1) requires every person who owns or possesses gold ornaments to make a declaration within the time specified in the prescribed form. Sub section (5) of Section 16 exempts any person from filing a declaration unless the total weight of articles possessed or held. controlled exceeds the quantity mentioned therein. Section 16(7), however, provides that every licensed dealer or refiner shall make a declaration or further declaration, as . the case may be, in accordance with the provisions of this section in relation to any gold owned, possessed, held or controlled by him in any capacity other than the capacity of a licensed dealer or refiner and the provisions of sub section (5) shall not apply to such gold. the grievance above is that while subsection (5) of Section 16 exempts a person who does not own control the minimum quantity mentioned therein, from filing a declaration, no such exemption is provided to the licensed dealer, resulting in discrimination between a licensed dealer and non licensed dealer in the matter of giving a declaration, and that it costs onerous burden on the former. I was referred to Section 27(7)(b) which provides that a licensed dealer shall not carry on business as such dealer in any premises other than specified in his license and Section 33 was also referred to which provides that ''no licensed dealer shall keep in the premises where he carries on business as such dealer any primary gold, article or ornament which is not a pan of his stock-in-trade or held by him in capacity as a dealer and ever primary gold, ornament or article found in such premises shall be deemed to be a part of the stock-in trade of such dealer or held by him in his capacity as a dealer. The argument was that if the purpose of Section 16(7) was to prevent the dealer from keeping undeclared gold in the premises. Section 33 sufficiently safeguarded such as eventuality, because if any undeclared gold was found in the premises it shall be deemed to be stock-in-trade of dealer, I am afraid I do not appreciate the argument. Section 33 is covering a different eventuality. The gold that is found in the premises will be deemed to be a stock in trade, even if dealer was also given the advantage of exemption u/s 16(5). Even in such a case, if gold were found on the premises, the same will be treated as stock-in trade. The relevance of Section 27(b) and Section 33 to challenge the purposes of it from the constitutionality of Section 16(7) must fail, and is not tenable. There is every good and justifiable reason as to why requirements have been made for a licensed dealer to give a declaration of all the gold that he possesses even though even if it happens to be less than minimum provided in Section 16(5). The declaration required u/s 16(7) serves useful public purpose in as much as by requiring the dealers to declare all gold and ornaments owned or possessed or controlled by them would enable the authorities under the Act to plug any loophole by which a dealer may be able to keep any gold or ornaments clandestinely, and thus to have an effect control over them and prevent any smuggling. All these requirements of Section 16 for giving a declaration and of Section 33 to treat all gold found in the licensed premises as stock in trade are in public interest and to subserve the purposes of the Act. As said in

"IF smuggling of gold into the country is to be checked by the prevention of the conversion of smuggled gold into gold articles or ornaments, there is no unreasonableness in the State calling upon all pawn brokers and persons ornaments to furnish declaration so that the Administrators and the Gold Control Officer may keep an eye on the activities of such persons and...

(4) One of the difficulties and hardships pointed out in compliance with 6(7) is stated to be that as the gold and ornaments is also owned by the wife which is her stridhan, as she refuses to give information to he petitioner he cannot supply the requisite particulars and thus cannot comply with 16(7). It appears to me that this argument missed the point that sub-section 7 of (6) is required a licensed dealer to make a declaration only in relation to any gole owned, possessed held or controlled by him in any capacity other than capacity fo the licensed dealer, if Therefore the case fo the petitioner is that the gold owned by the wife is her exclusive property over which he has no control, he is under no obligation within the meaning of subsection (7) of section 16 to give such a declaration with regard to that gold, ornaments etc - of course if the quantity is more than the minimum prescribed under sub section (5) of section 16 the wife if under obligation to give a declaration and if she fails to do so consequence provided in the Act will follow. But if it is the case of the petitioner that he has an interest and control over the gold, in the gold held by ornaments etc. in the custody of his wife, then the requirement that the dealer includes in the declaration u/s 16 (7) such gold, etc. doss not cast any unreasonable restriction on the petitioner''s right under Article 19(1)(6)(g) of the Constitution. As a matter of fact, the argument that any Indian wife refuse to disclose to her husband gold, ornaments possessed by her, is not only a figment of imagination but is uncalled slur on the loyalty and fidelity of Indian womanhood. It is strange that such an argument completely at variance with the social condition and reality of Indian life should have been put forward by the petitioner just to avoid their liability to give a full declaration of all gold, ornaments etc., owned by the dealer and his family. It is a pity that in their anxiety to avoid compliance with law, the petitioners should have invented an excuse of material mistrust and lack of confidence between husband and wife, without any compunction. The challenge to Section 16 (7) fails. The next challenge was to Section 27 (7) (a) which provided that '' the Administrator shall specify, in each license granted to a dealer, the premises in which such dealer shall carry on business and no other person shall carry on business as a dealer in the said premises. Objection was taken to the. underlined portion on the ground that there was acute shortage of accommodation in Delhi, and, Therefore, if more than one dealer is prohibited from carrying on his business in the same premises, it will place unreasonable restriction. Now the whole purpose of Section 27 is that an effective control be exercised on the licensed dealers. The prohibition that no other person other

than a dealer shall carry on business as a dealer in the premises specified in each license, has the laudable object of making each dealer responsible for a particular premises turn carrying out the obligation under the Act If-a particular premises was allowed to be shared by more than one dealer authorities may find it difficult to fix responsibility if any violation of any provisions of the Act took place. If it were otherwise the whole object of having a licensed premises will be defeated. Thus the requirement is in accord with the object of the Act and cannot be said to be in any manner unreasonable. This contention fails.

(5) The next objection was to sub section (8) of Section 27 which requires that every licensed dealer shall ensure that every artisan or other person employed by him complies, in the course of such employment, with the provisions of this Act or any rule or order made there under and of any other law relating to gold or foreign exchange for the time being in force The contention was that it was unreasonable to expect and demand that the licensed dealer should be responsible for compliance by the artisan of the provisions of the Act. I do not see what is the difficulty. The artisan is being employed by the dealer and the section only requires that the licensed dealer should see that artisan employed by him complies with the provisions of the Act. This is the usual kind of responsibility which is placed on every employer to see that the obligations of the Act are complied with by their employees, in the course of such employment. In this connection reference may be made to Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others, dealing with unamened Section 88 of the Act which laid down that a dealer or refiner who knows or has reason to believe, that any person employed by him has, in the course of such employment, contravened any provisions of this Act or any rule or order made there under, shall be deemed to have abetted an offence against this Act. The Court observed that though the dealer cannot reasonably be made liable for any past misconduct of his employee, "though the dealer can be made liable for any act done by his employee in the course of the employment, and whom be can reasonably be expected to influence or control". The rational basis in law for the imposition of vicarious liability is that the person made responsible may prevent commission of the crime and may help to bring the actual offender to book. It is apparent that the infirmity in Section 88, with the Supreme Court pointed out was that the section made the dealer responsible for the past misconduct of the employees, and this went beyond permissible limits. No such infirmity is to be found in the present case, because the licensed dealer is only being required to ensure that every artisan employed by him in the course of such employment complies with the provisions of the Act. I can find nothing unreasonable or unfair in this requirement. Reference was made by Mr. Aggarwal to Section 48 of the Act which lays down that ''an artisan shall not work as such at any place other than the premises specified in the license issued to the dealer by whom he is employed.", and it was suggested that an artisan may without the knowledge of the licensed dealer work at some other place and it is Therefore, unreasonable to expect the licensed dealer to ensure that the artisan complies with the provisions

of the Act. In may view the argument is based on misapprehension. If the licensed dealer ensures that every artisan employed by him in the course of his employment works at the premises specified in the license issued to the dealer, his obligation under the Act is discharged, and to this obviously no difficulty can be pleaded by the dealer. The premises are specified in the license and naturally the dealer can conveniently see that artisan employed by him works only at the place specified in the license. I can find nothing Wrong with these provisions.

(6) The next objection was to Section 28 which states that ''no licensed dealer shall, unless authorised by the Administrator so to 40 :

(A)carry on business as a money-lender or banker on the security of any article, or ornament, or both,

(B)permit any other person to carry on money lending, banking or any other business, in the same premises in which he carries on business as such dealer."

(7) Mr Aggarwal sought to contend that many a time a customer may give part of price and the dealer in the normal course has to act as a banker or money lender for the unpaid price, and restriction in clause (a) is unreasonable. Now it will be seen that what is prohibited is that the licensed dealer may not carry on the business of a money lender on the security of any article. The purpose of this section obviously is to see that a dealer may not in order to justify his possession in excess of declaration take. the plea that these articles do not belong to him. but in fact. belong to somebody else and have only been pledged as a security, for the amount advanced. The object .of the Act is to prevent smuggling and illicit dealing in the gold and this object is sought to be achieved by riot permitting any gold etc. to be kept in the premises other then that with regard to which declaration has been made. This thus makes all the gold accountable to the licensed dealers personally, and obviates the chances of avoiding the provisions dealers personally, and obviates the chances of avoiding the provisions of the Act. It is relevant that there are no restriction on the dealer to carry on the business in the premises as moneylender, what is prohibited in the same is carrying on that he will not carry on any business as a-money-lender or a banker on the security of the gold etc. He can carry on any business in the same premises but not connected with article or ornaments. Moreover, power is given to the Administrator to authorise the dealer to do otherwise in the circumstances of each case ; and consistent with the policy underlying the Act In dealing with the ornaments. The prohibition against any other to carry on money lending or any banking business in the same premises is to prevent the mixing up of the business of the licensed dealer with the non dealer, which will make effective control difficult and frustrate the object of the Act. This contention fails. The next objection is to Section 30 which requires that every licensed dealer shall stamp every piece of ornament, made, manufactured or prepared by him certifying the purity of the gold. Though it is stated that the petitioner association has no objection whatsoever regarding this provision so fas as the ornaments manufactured or prepared by the licensed dealer, are concerned. But objection is

raised that as large number of dealers get their ornament, manufactured from an artisan which is permitted by Section 35 of the Act, the requirement of stamping u/s 30 should not apply to these ornaments manufactured by the artisan. J fail to see any justification for this argument. The requirement of Section 30 is that every licensed dealer should stamp the ornaments. This is done to ensure purity of gold and to place responsibility on the licensed dealer. Artisan does the work on behalf of the dealer. The artisan is employed by the licensed dealer and is directly under him. If the artisan does not use gold of required purity, the responsibility for that is obviously and in fitness of things of the licensed dealer who employed him and got the ornaments prepared. He also cannot pass on his responsibility of certifying the correctness of the purity of the gold by taking the cover under the plea that the same was manufactured by the artisan. I cannot see how and to what manner it is unreasonable to require that the licensed dealer should own responsibility for the purity of gold, manufactured by him. or on his behalf by the artisan. Grievance was also sought to be made that this requirement of stamping is on the licensed dealers and not on the artisans. It is enough to say as the Supreme Court said in Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others, that the licensed dealers and certified goldsmiths form separate classes and the classification made by the impugned Act is a reasonable classification. It may be mentioned that in that very authority Section 27 of the Gold Control Act was held not to violate under Article 14 of the Constitution. Though in the ground it was mentioned that Sections 10 and 89 of the Act are discriminatory, no facts were pleaded in the petition arid challenge on that score is Therefore futile.

(8) As a result I find that Section 16 (7). 27 (a) (b), 28, 30 , and 35 as constitutionally valid and not violatives of Article 14 & 19 of Constitution. I may note that the decision in: The The Bihar State Bullion Merchants'' Association and Others Vs. Union of India (UOI) and Others, upheld section 16 and 23, 30 of the Act. Similarly, M/S. Gem Palace, Mirza Ismail Rode Jaipur and others v. The Union of India, has also upheld the validity of Section 16 (7), 27 (7) (b) , (8), 28. I am in respectful agreement with the reasons mentioned therein.

(9) The result is that I find no merit in the petition and would dismiss the same with no orders as to costs.

(10) At the time of admission on 3 10. 1968, the beach had granted stay of operation of Sections 16, 28, 100 and the said order was made absolute on 4th November, l963. In view of the fact that I am now dismissing petition, the stay order will automatically stand vacated. But as the operation of these sections 16,23, was stayed durings the pendency of the petition, it is apparent that petitioners must be given some time to comply with the requirements of these sections. I would, Therefore, direct the operation of the stay order given by the court will stand vacated after a month from today so as to enable the petitioner to comply with the requirements of the Act in the meanwhile

