

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
ANNAM RAMALINGAM ETC. ETC.

DATE OF JUDGMENT 21/02/1985

BENCH:
TULZAPURKAR, V.D.
BENCH:
TULZAPURKAR, V.D.
MISRA RANGNATH
KHALID, V. (J)

CITATION:
1985 AIR 1013 1985 SCR (2) 951
1985 SCC (2) 443

ACT:

Gold Control Act, 1968, section 28, constitutional validity-whether section 28 suffers from the vice of excessive delegation of legislative power-Doctrine of Parity of Reasoning.

HEADNOTE:

Section 28 of the Gold Control Act, 1968 bars money lending business to be carried on in licensed premises, either by the licensed dealer or by any other person unless authorised by the Administrator to do so.

Drawing analogy from the reasoning adopted by the Supreme Court in its decision reported in Harakchand Ratanchand Banthia v. Assistant Collector or Central Excise, Poona, II Division, [1970] 1 SCR 479=AIR 1971 SC 1170, the High Court of Andhra Pradesh struck down the said provision on the ground that it suffers from the vice of excessive delegation of legislative power in as much, as no criteria or guidelines have been provided by reference to which the power conferred on the Administrator to refuse permission or grant permission should be exercised and that the section confers an arbitrary, uncanalised and unfettered power upon the Administrator with the result that the licensed dealer is at his mercy while seeking permission to carry on money-lending or banking business on the security of any article, ornament or both in the same premises in which he carried on business as such dealer. Hence the appeal by special leave.

Allowing the appeal, the Court

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HELD: 1.1 Section 28 of the Gold Control Act, 1968 cannot be struck down on the ground of excessive delegation of legislative power and its validity must be upheld. [957C]

1.3 It is true that no express rule prescribing the conditions or circumstances under which the permission can be granted or refused has been framed nor any particular guide-line has been expressly indicated in section 28 by reference to which the power conferred upon him thereunder could be exercised by the Administrator, but that is not decisive of the matter. [954H; 955A]

952

1.3 Section 28 of the Gold Control Act, 1968 is part

and parcel of the entire scheme of the Gold Control Act the objective, the policy and the scheme of the Act together with the necessity to ensure prevention of circumvention of the other provisions of the Act afford more than sufficient guidance to the Administrator in the matter of exercising the power or discretion conferred on him under section 28. The several restrictions that have been put on the activities of the traders doing business in gold will have to be viewed, in the light of the purpose or which the Gold Control Act was passed viz., that even though import of gold into India had been banned considerable quantities of contraband gold were finding their way into the country through illegal channels affecting the national economy and hampering the country's economic stability and progress, that the Customs Department was not in a position to effectively combat the smuggling over the long borders and coast-line that therefore anti-smuggling measures had to be supplemented by a detailed system of control over internal transactions. In fact section 5 (1) of the Act requires that the Administrator should have regard to the policy and purposes of the Act in making his orders. Moreover against his order under that section a revision lies to Central Government which implies that he will have to make judicious use of his power or discretion and any improper exercise is liable to be corrected by a higher authority. Therefore, it cannot be! said that unfettered or uncanalised or arbitrary power has been conferred upon the Administrator under section 28. 1955B; E-G]

1.4 further section 28 does not impose any blanket or absolute prohibition upon a dealer from carrying on money-lending, banking or any other business in the same premises in which he carries on business as a dealer but he is prevented only from carrying in business as money-lender or banker on the security of any article, ornament or both unless authorised by the Administrator. Even the restriction in the case of a third person in carrying on business as a money-lender, banker or any other business in the same premises is not absolute in as much as the Administrator can authorise the third person to carry of the business in the licensed premises of the dealer and while implementing such limited restrictions or granting relief against the same he will be guided by the policy and purposes of the Act and by the prime consideration that circumvention of the other provisions of the Act shall not be permitted. [956A-C]

Bihar State Bullion Merchants Association. Union of India, AIR 1971 Patna 240; Ramanlal Purshottamdas Chokshi v. Union of India & Others 14 Guj. L.R. 1112, approved. ,

Annam Ramalingam, etc. etc. v. Union of India, Writ Petitions Nos. 3956 3873/68 etc. dated 26.12.69. Andhra Pradesh, reversed.

1.5 In Harakchand Banthia's case the Supreme Court found, the phrases like 'in the region', the anticipated demand'. 'suitability' and 'public interest' as vague, uncertain and therefore declared the unamended section 21(6) of the Gold Control Act as invalid and the Parliament has carried out suitable amendments thereafter. No such vague or indefinite expressions or concepts are to be found in section 28 by reference to which

953

the Administrator is required to exercise his power. In the absence of A parity of situation or circumstances the doctrine of parity of reasoning cannot be invoked. [957A-C]

Harakchand Ratanchand Banthia v. Assistant Collector of Central Excise Poona 11 Division, [1970] 1 SCR 479-AIR 1971 SC 1170, explained and held in applicable.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 1264-67/71 etc.

From the Judgment and Order dated 26.12.69 of the High Court of Andhra Pradesh at Hyderabad in W.P. Nos. 3956, 3971, 3983, 3899, 4421, 4474, 4537, 4544, 4570, 4825 and 4933/68.

D.K. Sen, Gopal Subramonium and R.N. Poddar for the Appellant.

Ex-parte for the Respondents.

The Judgment of the Court was delivered by

TULZAPURKAR, J. In these 11 appeals only that part of the judgment of the Andhra Pradesh High Court is assailed by the Union of India where the challenge to the validity of section 28 of the Gold Control Act, 1968 has succeeded. The challenge to the other provisions of the Act at the instance of persons engaged in gold trade, i.e, manufacturers, shroffs and dealers in gold was rejected by the High Court.

Section 28 of the Act runs thus:

"28. Money lending business not to be carried on in licensed premises-No licensed dealer shall unless authorised by the Administrator so to do, -

(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 carried on business as such dealer."

The High Court has struck down the aforesaid provision only on the ground that it suffers from the vice of excessive delegation of legislative power inasmuch as no criteria or guide-lines have been

954 provided by reference to which the power conferred on the Administrator to refuse permission or grant permission should be exercised and that the section confers an arbitrary, uncanalised power upon the Administrator with the result that the licensed dealer is at his mercy while seeking permission to carry on money-lending or banking business on the security of any article, ornament or both in the same premises in which he carried on business as such dealer. The High Court's reasoning in this behalf is to be found in its judgment at page 87 of the paper book and it runs thus:

"The Administrator as is evident from this provision, is given unlimited authority or power to refuse permission or to grant permission. No rules have been framed prescribing the conditions or circumstances under which the Administrator could refuse permission or grant permission. A dealer is at the mercy of the Administrator and is help less against the arbitrary exercise of the power by the Administrator when he chooses to negative the request. It is clear that Section 28 confers an arbitrary and uncanalised power without any criteria for guiding the discretion of the Administrator. Further, the section does not provide nor is any rule brought to our notice which enjoins upon the Administrator to give a hearing to dealer who seeks permission under this Section and give reasons in case he decides to refuse the permission."

Incidentally the High Court also proceeded to draw

analogy from the reasoning adopted by this Court in its decision in Harakchand Ratanchand Banthias v. Asst. collector of Central Excise Poona, II Division while declaring sec. 27(6) of the Act, as it stood prior to its amendment by the Amending Act No. 26 of 1969, constitutionally invalid on the ground of conferral of a very wide and vague power upon the Administrator to grant or renew a license to a dealer.

For the reasons which we shall indicate presently it is impossible to the reasoning given by the High Court for striking down sec. 28 in the manner done and in our view the analogy drawn by the High Court from the reasoning adopted by this Court while dealing with unamended sec. 27(6) of the Act is clearly inapplicable.

It is true that no express rule prescribing the conditions or circumstances under which the permission can be granted or refused

(1) [1970] 1 S.C.R. 429=AIR 1971 SC 1170.

955

has been framed nor any particular guide-line has been expressly indicated in sec. 28 by reference to which the power conferred upon him thereunder could be exercised by the Administrator, but that is not decisive of the matter. It cannot be disputed that sec. 28 is part and parcel of the entire scheme of Gold Control as envisaged by the Act and the object of the enactment and the scheme affords sufficient guidance to the Administrator in the matter of exercising his discretion under that section. The main object in putting the Act on the Statute-Book as indicated by its long title is "to provide, in the economic and financial interests of the community, for the control of the production, manufacture, supply, distribution, use and possession of, and business in, gold ornaments and articles of gold and for matters connected therewith or incidental thereto." In Harakchand Banthia's case (supra) this Court has further pointed out that even though import of gold into India had been banned considerable quantities of contraband gold were finding their way into the country through illegal channels affecting the national economy and hampering the country's economic stability and progress, that the Customs Department was not in a position to effectively combat the smuggling over the long borders and coast-line, that therefore anti smuggling measures had to be supplemented by a detailed system of control over internal transactions and that the Gold (Control) Act, 1968 was passed for this purpose. In other words, the several restrictions that have been put on the activities of the traders doing business in gold will have to be viewed from the aforesaid perspective. It is also clear that the restrictions which have been imposed in sec. 28 are meant to prevent the circumvention of other provisions of the Act. Therefore, in our view the objective, the policy and the Scheme of the Act together with the necessity to ensure prevention of circumvention of the other provisions of the Act afford more than sufficient guidance to the Administrator in the matter of exercising the power of discretion conferred on him under sec. 28. In fact, sec. 5(1) of the Act requires that the Administrator should have regard to the policy and purposes of the Act in making his orders. Moreover against his order under that section a revision lies to Central Government which implies that he will have to make judicious use of his power or discretion and any improper exercise is liable to be corrected by a higher authority. If that be so it cannot be said that unfettered or uncanalised or arbitrary power has been conferred upon the Administration under sec. 28.

Moreover, regard must be had to be the nature of the restrictions imposed by the Section. It does not impose any blanket or

956

absolute prohibition upon a dealer from carrying on money-lending, banking or any other business in the same premises in which he carries on business as a dealer but he is prevented only from carrying on business as money-lender or banker on the security of any article, ornament or both unless authorised by the administrator. Even the restriction in the case of a third person in carrying on business as a money-lender, banker or any other business in the same premises is not absolute in as much as the Administrator can authorise the third person to carry on the business in the licensed premises of the dealer and while implementing such limited restrictions or granting relief against the same he will be guided by the policy and purposes of the Act and by the prime consideration that circumvention of the other provisions of the Act shall not be premitted. Having regard to this position which obtains in the case sec. 28 cannot be struck down on the ground of excessive delegation of legislative power and its validity has to be upheld.

We may indicate that the same provision (section 28) was

challenged before the Patna High Court in Bihar State Bullion Merchants' Association v. Union of India⁽¹⁾ and the Gujarat High Court in Ramanlal Purshottamadas Chokshi v. Union of India & Others⁽²⁾ and these High Courts have upheld its validity. We approve the view taken in those cases

As regards the analogy drawn by the High Court from the reasoning adopted by this Court in Harakchand Banthia's case (supra) while declaring unamended sec. 27(6) of the Act invalid we would like to point out that while conferring power on the Administrator in the matter of granting or renewing a license to a dealer the unamended sec. 27(6) in several of its clauses referred to certain concepts which Administrator was required to take into account, and these concepts were regarded as indefinite, uncertain and vague. For instance under clause (a) the Administrator was required to have regard to the number of dealers existing 'in the region' in which the applicant was intending to carry on business as dealer but the word 'region' was nowhere defined in the Act; similarly clause (b) required the Administrator to have regard to the anticipated demand', as estimated by him for the ornaments in that region but the expression 'anticipated demand' was really vague and incapable of assessment leading to a great deal of uncertainty; similarly the expression

(1)AIR 1971 Patna, 240.

(2)14 Guj. L.R. 112.

957

'suitability of the applicant' in cl. (e) and 'public interest' in cl. (g) A did not provide any objective standard or norm and because such indefinite, uncertain and vague expressions or concepts had been used in some of the clauses under sec. 27(6) this Court struck down sec. 27(6) on the ground that it conferred a very wide and vague power on the Administrator. It may be mentioned that after this provision was struck down by this Court Parliament has carried out the necessary amendment in the Act. No such vague or indefinite expressions or concepts are to be found in sec. 28 by reference to which the Administrator is required to exercise his power. In the absence of parity of situation or circumstances the doctrine of parity of

reasoning cannot be invoked.

In the result we set aside the impugned judgment of the High Court and declare sec. 28 of the Act valid. The appeal succeeds but since the respondents have not appeared there will be no order as to costs.

S.R.
958

Appeal allowed.

JUDIS