A **HARAKCHAND RATANCHAND BANTHIA AND ORS. ETC.**

v.

UNION OF INDIA AND ORS.

April 30, 1969

B [M. HIDAYATULLAH, C.J., J. C. SHAH, V. RAMASWAMI, G. K. MITTER AND A. N. GROVER, JJ.]

Gold (Control) Act (45 *of* 1968), *ss.* 4(4), 4(5), 5(1), (2), 27, 32, 39, 46, 88 *and* 100—*If violative of Arts.* 14 *and* 19 *of the Constitution —Delegation by Administrator under ss.* 4 *and* 5(1), *not excessive—The phrase 'so far as it appears to him necessary or expedient', if subjective.*

C

Constitution of India, 1950, *VII Schedule, List I, Entry* 52, *List* II, *Entry* 27 *and List III, Entry* 33—*Scope of—Manufacture of gold ornaments if industry—Whether control declared to be expedient in public interest—Industries (Development and Regulation) Act* (65 *of* 1951) *ss.* 2(*a*) *and* 2(*d*)—*Scheduled industry and 'industrial undertaking', if synonymous—'Manufacturers and semi-manufacturer's meaning of.*

D *Severability—Some sections declared* ultra vires—*Tests for determining validity of Act.*

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. The Customs Department was not in a position to effectively combat the smuggling over the long E borders and coast lines. Therefore, anti-smuggling measures had to be supplemented by a detailed system of control over internal transactions and the Gold (Control) Act, 1968, was passed for this purpose. The petitioners, who were goldsmiths, contended that; (1) the Act was not within the legislative competence of Parliament, because, (a) Manufacture of gold ornaments by goldsmiths is not 'industry' within the meaning of Entry 52, List I or Entry 33, List III of the VII Schedule to the Constitution; (b) Even if it was an 'industry' within the meaning of the Legis- F lative Entries, the Control of the Industry was not declared by Parliament to be expedient in the public interest as required by the Entries; (c) The provisions of the Industries (Development and Regulation) Act, 1951, indicate that what Parliament intended to control under Entry 52 was not the manufacture of gold ornaments by individual goldsmiths but 'industrial undertakings' as contemplated by s. 2(d) of that Act, because, the expression 'scheduled industry' in s. 2(a) and 'industrial undertaking' in s. 2(d) of that Act are synonymous; and (2) that the restrictions imposed G by ss. 4(4), 4(5), 5(1), 5(2), 27(2)(d), 27(6), 32, 46, 88 and 100 of the Gold (Control) Act were unreasonable and not in public interest and so are violative of Art. 19(1)(f) and (g) of the Constitution, and that s. 27 and s. 39 are discriminatory and violative of Art. 14.

HELD : (1) (a) The manufacture of gold ornaments by goldsmiths in India is a process of systematic production for trade or manufacture and so falls within the connotation of the word 'industry' in the appropriate H legislative Entries. Therefore, in enacting the impugned Act, Parliament was validly exercising its legislative power in respect of matters covered by Entry 52 of List I and Entry 33 of List III. Entry 27 of List II dealing with 'Production, supply and distribution of goods, subject to the provisions

of Entry 33 of List III', is a general Entry and the general power should not be interpreted so as to nullify the particular power conferred by Entry 52 of List I and Entry 33 of List III. There is no reason for imposing on the word 'industry' a restriction that to constitute industry, a process of machinery or mechanical contrivance is essential. The mere use of skill or art by the goldsmith is not a decisive factor and will not take the manufacture of gold ornaments out of the ambit of the relevant legislative Entries. The decisions in *Banerji* v. *Mukherjee*, [1953] S.C.R. 302 and *National Union of Commercial Employees* v. *M. R. Meher*, [1962] Supp. 3 S. C. R. 157 that the word industry in s. 2(j) of the Industrial Disputes Act, 1947 involved cooperation of employer and employees, did not mean that the activity carried on by self-employed goldsmiths individually without any participation by labour and capital in the activity would not fall within the word 'industry' in the Lists of the Constitution. The interpretation of the word in the Industrial Disputes Act was adopted by this Court with reference to the subject-matter of that Act as that Act was passed to ameliorate the service conditions of *workers*. [491 B-C, E-F, H; 492 A, F-H] A B C

(b) There is no scientific or logical scheme in the classification under the headings of the first schedule to the Industries (Development and Regulation) Act as shown by the fact that many items were included under headings which are inappropriate and others are excluded which should have been included. Therefore, the first Schedule to that Act is a mere enumeration and grouping of various items and the headings do not control the scope and meaning of the entries under them. Hence, the heading 'Metallurgical Industries' does not control the entry B(2) under it, dealing with 'semi-manufactures and manufactures'. The expression 'semi-manufactures' could not mean gold in the form of ingots, wire, strips and sheets, nor would the expression 'manufactures' mean gold bricks or standard gold bars and gold castings, because, then items 1-B(1) and (2) would convey the same meaning, and 1-B(2) would be superfluous. The two expressions should be construed in the light of the Brussels Tariff Nomenclature, and so construed, the manufacture of gold ornaments falls within the expression 'semi-manufactures or manufactures'. Since under s. 2 of that Act it is declared that it is expedient in the public interest that the Union should take under its control the industries specified in the first schedule, Parliament is competent to legislate in regard to the subject-matter of the impugned Act. [494 F-G; 495 B-C, D-F; 496 B-C] D E

(c) There is a distinction made between 'scheduled industries' and 'industrial undertakings', because, separate provisions are made throughout the Industries (Development and Regulation) Act, for their regulation. Therefore, the two expressions are not synonymous. [496 F—H] F

(2)(a) Sections 5(2)(b), 27(2)(d), 27(6), 32, 46, 88 and 100 are invalid.

(a) Sections 4(4) and 4(5) contemplate that the Administrator appointed under the Act may authorise such person as he thinks fit, to also exercise all or any of the powers exercisable by him under the Act, except certain specified powers, and such person may exercise the powers as if they were conferred by the Act. Such delegation by the Administrator is necessary, because, the volume of work entrusted to him is great and it must be assumed that he would delegate his authority only to competent and responsible persons. Therefore, the delegation does not go beyond permissible constitutional limits. [A—D] G H

(b) Section 5(1) requires that in making orders for carrying out the provisions of the Act, the Administrator should have regard to the policy

A of the Act. The orders should be made within the frame-work of the Act and should not be inconsistent with its provisions. As regards s. 5(2)(a), the section provided the safeguard that regulation of the price at which any gold may be bought or sold should be made after consultation with the Reserve Bank of India. The phrase 'so far as it appears to him to be necessary or expedient for carrying out the provisions of the Act,' in the sub-section, is not subjective and does not constitute the Administrator the sole judge as to what is in fact necessary or expedient for the purposes of the Act. In the context of the scheme and object of the legislation the opinion of the Administrator as to the necessity or expediency of making the order must be reached objectively after having regard to the relevant consideration and must be reasonably tenable in a court of law. It must be assumed that the Administrator will not try to promote purposes alien to the object of the Act. [499 D—H]

C (c) As regards s. 5(2)(b), on a review of ss. 8(6), 11(1) 34(2) and (3) the power conferred upon the Administrator under s. 5(2)(b) is legislative in character and extremely wide. But whereas the parallel power of subordinate legislation of rule-making conferred on the Central Government under s. 114(1) and (2) is subject to parliamentary scrutiny, the power of regulation granted to the Administrator under s. 5(2)(b) suffers from excessive delegation of legislative power and must be held to be constitutionally invalid. [501 A—D]

D (d) Section 27(2)(d) states that the licence issued by the Administrator may contain such conditions, limitations as the administrator may think fit to impose and different conditions, limitations and restrictions may be imposed for different classes of dealers. On the face of it, the sub-section confers such wide and vague power upon the Administrator that it is difficult to limit its scope and therefore, the section must be struck down as an unreasonable restriction on the fundamental right of the petitioners to carry on business.

E Section 27(6)(a) states that in the matter of issue or renewal of licences the Administrator shall have regard to the number of dealers existing in the *region* in which the applicant intends to carry on business as a dealer. But the word 'region' is nowhere defined in the Act. Similarly s. 27(6)(b) requires the Administrator to have due regard to *the anticipated demand*, as estimated by him for ornaments in that region, but the expression 'anticipated demand' is vague and incapable of objective assessF ment, and is bound to lead to a great deal of uncertainty. In the same way the expression 'suitability of the applicant' in s. 27(6)(e) and 'public interest' in s. 27(6)(g) do not provide any objective standard or norm. Further, the requirement in the section imposing the same conditions for the renewal of the licence as for the initial grant is unreasonable, as it renders the entire future of the business of the dealer uncertain and subject to the caprice and arbitrary will of the administrative authorities. Therefore, clauses (a), (b), (e) and (g) of s. 27(6) are constitutionally invalid. G Since these clauses are inextricably woven up with other clauses of s. 27(6) the entire s. 27(6) must be held to be invalid. [501 D—H; 502 A—B]

If s. 27(2)(d) and s. 27(6) of the Act are invalid the licensing scheme contemplated by the Act becomes unworkable and it is therefore necessary for Parliament to enact fresh legislation imposing appropriate conditions and restrictions for the grant and renewal of licences to dealers or in the H alternative, the Central Government may make appropriate rules for the same purpose under s. 114. [502 B—E]

(e) Sections 32 and 46 of the Act authorise a licensed dealer to keep any quantity of standard gold bars and provides *a limit upon the holding of*

primary gold depending on the number of artisans he employs. But a standard gold bar cannot, in many cases be handed over to a certified goldsmith, without cutting it. If a dealer gives a cut piece of standard gold bar to a goldsmith, the remaining portion is treated as primary gold in his hands. Therefore, the limits prescribed under the sections are rendered meaningless and constitute an unreasonable restriction on the right of the petitioners to carry on trade or business and are invalid. [503 C—E]

(f) Section 88 extends the scope of the vicarious liability of the dealer and makes him responsible for the contravention of any provision of the Act or rule by any person employed by him in the course of such employment. The section makes the dealer liable even for any past contravention perpetrated by an employee and extends vicarious liability beyond reasonable limits. It therefore imposes an unreasonable restriction and is unconstitutional. [503 H; 504 A—D]

(g) Section 100 imposes a statutory obligation upon a dealer to take all reasonable steps to satisfy himself about the identity of persons from whom gold is bought. It does not specify the nature of steps which a dealer should take for such satisfaction and the obligation is uncertain and incapable of proper compliance. Hence it must also be held to be unconstitutional on the ground that it imposes an impossible and unreasonable burden. [504 D—F]

(h) Licensed dealers and certified goldsmiths form separate classes and the classification is a reasonable classification, because, a licensed dealer is essentially a trader who does the business of buying and selling ornaments while a certified goldsmith is a craftsman who does the actual manufacture of ornaments and does not trade in ornaments. Considering the policy underlying the statute and the object intended to be achieved, the classification is reasonable and has a rational nexus with the avowed policy and object of the Act, and hence does not violate Art. 14. [504 G—H; 505 C—E]

(3) The provisions which are declared invalid do not affect the validity of the Act as a whole. The test is whether what remains of the statute is so inextricably bound up with the invalid part that what remains cannot independently survive, or whether on a fair review of the whole matter it can be assumed that the legislature would have enacted at all that which survives without enacting the *ultra vires* part. In the present case, the Act still remains substantially the Act as it was passed, that is, an Act for the control of the production, manufacture, supply, distribution, use and possession of gold and gold ornaments and articles of gold even without including the sections which are found to be *ultra vires*. The provisions held to be invalid are not inextricably bound up with the remaining portions and it is difficult to hold that Parliament would not have enacted the Act excluding the part found to be *ultra vires*. [506 C—E]

ORIGINAL JURISDICTION : Writ Petitions Nos. 282, 407 and 408 of 1968.

Petition Under Art. 32 of the Constitution of India for enforcement of the fundamental rights.

C. K. Daphtary, B. R. L. Iyengar, R. N. Banerjee, Ravinder Narain, J. B. Dadachanji and *O. C. Mathur,* for the petitioners (In W.P. No. 407 of 1968).

A *N. A. Palkhivala, R. N. Banerjee, Ravinder Narain* and *J. B. Dadachanji* and *O. C. Mathur,* for the petitioners (in W.P. No. 408 of 1968).

A. K. Sen, J. C. Bhatt, R. N. Banerjee, Ravinder Narain, J. B. Dadachanji and *O. C. Mathur,* for the petitioners (in W.P.
B No. 282 of 1968).

M. C. Setalvad, J. M. Mukhi, A. Sreedharan Nambiar and *R. N. Sachthey,* for the respondents (in all the petitions).

The Judgment of the Court was delivered by

Ramaswami, J. In these petitions which have been filed
C under art. 32 of the Constitution a common question is presented for determination, namely, whether the Gold (Control) Act, 1968 (Act No. 45 of 1968) is constitutionally valid.

The Gold (Control) Act, (hereinafter called the impugned Act) was passed by Parliament and received assent of the President on September 1, 1968. The impugned Act begins with the follow-
D ing preamble, namely, "an Act 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." Section 2 contains a number of definitions. Section 2(b) defines an
E "article" to mean anything (other than ornament), in a finished form, made of, manufactured from or containing, gold, and including (i) any gold coin, (ii) broken pieces of an article, but not including primary gold. Clause (d) defines a "certified goldsmith" to mean a self-employed goldsmith who holds a valid certificate, referred to in s. 30. Clause (h) defines a dealer as
F follows :

> "dealer" means any person who carries on, directly or otherwise, the business of making, manufacturing, preparing, repairing, polishing, buying, selling, supplying, distributing, melting, processing or converting gold, whether for cash or for deferred payment or for
G commission, remuneration or other valuable consideration,....."
>
> . . . . ."

Clause (i) states :

> "declaration" means a declaration which is required
H by this Act or was required by rule 126-I of the Defence of India Rules, 1962, or the Gold (Control) Ordinance, 1968, to be made with regard to the ownership, possession, custody or control of gold;"

Clause (j) defines 'gold' to mean gold, including its alloy (whether virgin, melted or re-melted, wrought or unwrought), in any shape or form, of a purity of not less than nine carats and including primary gold, article and ornament.

Clause (p) reads as follows :

> "ornament" means a thing, in a finished form, meant for personal adornment or for the adornment of any idol, deity or any other object of religious worship, made of, or manufactured from, gold, whether or not set with stones or gems (real or artificial), or with pearls (real, cultured or imitation) or with all or any of them, and includes parts, pendents or broken pieces of ornament.
>
> *Explanation.*—For the purposes of this Act, nothing made of gold, which resembles an ornament, shall be deemed to be an ornament unless the thing (having regard to its purity, size, weight, description or workmanship) is such as is commonly used as ornament in any State or Union territory;"

Clause (r) states :

> "primary gold" means gold in any unfinished or semi-finished form and includes ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires;"

Clause (u) defines a "standard gold bar" as primary gold of such fineness, dimensions, weight and description and containing such particulars as may be prescribed.

Section 4 deals with the appointment and functions of the Administrator and Gold Control Officers and reads as follows :

> "(1) The Central Government shall, by notification, appoint an Administrator for carrying out the purposes of this Act.
>
> (2) The Central Government may, by notification, appoint as many persons as it thinks fit to be Gold Control Officers for the purpose of enforcing the provisions of this Act.
>
> (3) The Administrator shall discharge his functions subject to the general control and directions of the Central Government.
>
> (4) The Administrator may authorise such person as he thinks fit to also exercise all or any of the powers exercisable by him under this Act other than the powers under sub-section (6) of this section or under clause (a) of sub-section (1) of section 80 or under section 81,

A and different persons may be authorised to exercise different powers.

(5) Subject to any general or special direction given or condition imposed by the Administrator, any person authorised by the Administrator to exercise any powers may exercise those powers in the same manner and with B the same effect as if they had been conferred on that person directly by this Act and not by way of authorisation.

(6) The Administrator may also—

(a) perform all or any of the functions of, and C

(b) exercise all or any of the powers conferred by this Act or any rule or order made thereunder on,

any officer lower in rank than himself.

(7) A Gold Control Officer shall, subject to such D limitations, restrictions and conditions as the Central Government may think fit to impose, exercise such powers and discharge such functions as are specified or conferred, as the case may be, by or under this Act."

Section 5 confers power on the Administrator to issue directions and orders. E

"(1) The Administrator may, if he thinks fit, make orders, not inconsistent with the provisions of this Act, for carrying out the provisions of this Act.

(2) The Administrator may, so far as it appears to him to be necessary or expedient for carrying out the F provisions of this Act, by order—

(a) regulate, after consultation with the Reserve Bank of India, the price at which any gold may be bought or sold, and

(b) regulate by licences, permits or otherwise, the manufacture, distribution, transport, acquisi- G tion, possession, transfer, disposal, use or consumption of gold."

Chapter III contains a number of restrictions relating to the manufacture, acquisition, possession, or delivery of gold. Section 16 provides for declarations as to articles and ornaments. Chapter VII relates to dealers. Section 27 of this chapter as regards H licensing of dealers may be quoted :

"(1) Save as otherwise provided in this Act, no person shall commence, or carry on, business as a dealer

unless he holds a valid licence issued in this behalf by the Administrator. A

(2) A licence issued under this section,—

(a) shall be in such form as may be prescribed,

(b) shall be valid for such period as may be specified therein, B

(c) may be renewed, from time to time, and

(d) may contain such conditions, limitations and restrictions as the Administrator may think fit to impose and different conditions, limitations and restrictions may be imposed for different classes of dealers. C

. . . . . .

(5) A person who intends to commence, after the commencement of this Act, business as a dealer, shall make an application (in such form and on payment of such fees, not exceeding one hundred rupees, as may be prescribed) for the issue of a licence. D

(6) On receipt of an application for the issue or renewal of a licence under this section, the Administrator may, after making such inquiry, if any, as he may consider necessary, by order in writing, either issue or renew the licence, or reject the application for the same; E

Provided that no licence shall be issued or renewed under this section unless the Administrator, having regard to the following matters, is satisfied that the licence should be issued or renewed, namely :— F

(a) the number of dealers existing in the region in which the applicant intends to carry on business as a dealer,

(b) the anticipated demand, as estimated by him, for ornaments in that region, G

(c) the turnover of the applicant, if he had been carrying on business as a dealer prior to the commencement of Part XIIA of the Defence of India Rules, 1962, during the two years immediately preceding such commencement, or in the case of an application for the renewal of a licence, the date of the application for such renewal, H

A (d) the previous experience, if any, of the applicant with regard to the making, manufacturing, preparing, repairing or polishing of, or dealing in, ornaments,

(e) the suitability of the applicant,

B (f) the suitability of the premises where the applicant intends to carry on business as a dealer,

(g) the public interests, and

(h) such other matters as may be prescribed.

. . . . . .

C Chapter VIII deals with certified goldsmiths. Section 39 of this Chapter provides :

(1) Save as otherwise provided in this Act, no person shall commence, or carry on, business as a goldsmith after the commencement of this Act, unless he

D holds a valid certificate recognising him as a goldsmith.

(2) The certificate referred to in sub-section (1)—

(a) shall be in such form as may be prescribed,

(b) shall be valid until the death of the holder, or the cancellation thereof, whichever is earlier, and

E (c) may contain such conditions, limitations and restrictions, as the Administrator may think fit to impose and different conditions, limitations and restrictions may be imposed for different classes of certified goldsmiths.

(3) Every certificate granted to a person under Part

F XIIA of the Defence of India Rules, 1962, or under the Gold (Control) Ordinance, 1968, recognizing him as a goldsmith, shall, if in force immediately before the commencement of this Act, continue to be in force until the death of the holder, or the cancellation, thereof whichever is earlier.

G

. . . . . .

(5) Every application for the grant of a certificate referred to in sub-section (1) shall be made in such form, in such manner and on payment of such fee, not exceeding ten rupees, as may be prescribed.

H

. . . . . .

(8) A certified goldsmith may engage not more than one hired labourer to assist him in his work as a gold-

smith but such hired labourer shall not make, manufacture, prepare, repair or process any article or ornament."

Chapter X deals with cancellation and suspension of licences and certificates. Chapter XII contains provisions relating to entry, search, seizure and arrest. The other material chapters are Chapter XIII dealing with confiscation and penalties, Chapter XIV providing for adjudication, appeal and revision and Chapter XV relating to offences and their trial. Chapter XVI contains certain miscellaneous provisions. Section 100 of this chapter enacts :

"Every licensed dealer or refiner or certified goldsmith shall, before accepting, buying or otherwise receiving any gold from any person, take all reasonable steps to satisfy himself as to the identity of such person and if, after an inquiry made by an officer authorised in this behalf by the Administrator, it is found that such person is not either readily traceable or is a fictitious person, it shall be presumed, unless such dealer or refiner or certified goldsmith, as the case may be, establishes that he had taken all reasonable steps to satisfy himself as to the identity of such person, that such gold was bought, acquired, accepted or received by such licensed dealer or refiner or certified goldsmith, as the case may be, in contravention of the provisions of this Act."

The first question to be considered is whether the impugned Act is within the legislative competence of Parliament under Entry 52 of List I, and Entry 33 of List III of the Seventh Schedule. It was argued on behalf of the petitioners that the legislation fell within the exclusive competence of the State Legislatures under Entry 27 of List II. It was said that the goldsmiths' work was a handicraft requiring application of skill and the art of making gold ornaments was not an industry within the meaning of Entry 52 of List I, or Entry 33 of List III of the Seventh Schedule. The opposite viewpoint was presented by Mr. Setalvad who argued that the Legislative entries must be construed in a large and liberal sense and that the goldsmith's craft was an industry within the meaning of Entry 24 of List II, Entry 33 of List III and Entry 52 of List I and Parliament is competent to legislate in regard to the manufacture of gold ornaments. The relevant entries in the Lists of the Seventh Schedule of the Constitution are List I, Entry 52—Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest; List II, Entry 24 : Industries subject to the provisions of Entries 7 and 52 of List I; List II, Entry 27 : Production, supply and distribution of goods subject to the provisions of Entry 33 of List III. List III, Entry 33 reads as follows :

A "Trade and commerce in, and the production, supply and distribution of,—

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind
B as such products;

(b) foodstuffs, including edible oilseeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and
C cotton seed; and

(e) raw jute."

Before construing these entries it is useful to notice some of the well-settled rules of interpretation laid down by the Federal Court and by this Court in the matter of construing the entries.
D The power to legislate is given to the appropriate legislatures by Art. 246 of the Constitution. The entries in the three Lists are only legislative heads or fields of legislation; they demarcate the area over which the appropriate legislatures can operate. It is well-established that the widest amplitude should be given to the language of the entries. But some of the entries in the different
E lists or in the same list may overlap or may appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about a harmonious construction. In *In re The Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act,* 1938(1) Sir Maurice Gwyer proceeded to state:

F "Only in the Indian Constitution Act can the particular problem arise which is now under consideration; and an endeavour must be made to solve it, as the Judicial Committee have said, by having recourse to the context and scheme of the Act, and a reconciliation attempted between two apparently conflicting jurisdic-
G tions by reading the two entries together and by interpreting, and, where necessary, modifying, the language of the one by that of the other. If indeed such a reconciliation should prove impossible, then, and only then, will the *non-obstante* clause operate and the federal power prevail; for the clause ought to be regarded as a last resource, a witness to the imperfections of human
H expression and the fallibility of legal draftsmanship." (p. 44)

(1) [1939] F. C. R. 18.

The Federal Court in that case held that the entry "taxes on the sale of goods" was not covered by the entry "duties of excise" and in coming to that conclusion the learned Chief Justice observed :

> "Here are two separate enactments, each in one aspect conferring the power to impose a tax upon goods; and it would accord with sound principles of construction to take the more general power, that which extends to the whole of India, as subject to an exception created by the particular power, that which extends to the Province only. It is not perhaps strictly accurate to speak of the provincial power as being excepted out of the federal power, for the two are independent of one another and exist side by side. But the underlying principle in the two cases must be the same, that a general power ought not to be so construed as to make a nullity of a particular power conferred by the same Act and operating in the same field, when by reading the former in a more restricted sense effect can be given to the latter in its ordinary and natural meaning." (pp. 49-50)

The rule of construction adopted by that decision for the purpose of harmonizing the two apparently conflicting entries in the two Lists would equally apply to an apparent conflict between two entries in the same List. Patanjali Sastri, J, (as he then was) held in *State of Bombay* v. *Narothamadas Jethabai*(1), that the words "administration of justice" and "constitution and organization of all courts" in Entry 1 of List II of the Seventh Schedule to the Government of India Act, 1935 must be understood in a restricted sense excluding from their scope "jurisdiction and powers of courts" specifically dealt with in item 2 of List II. In the words of the learned Judge, if such a construction was not given "the wider construction of entry 1 would deprive entry 2 of all its content and reduce it to useless lumber."

The question to be considered is what is the meaning of the word "industry" in Entry 52 of List I, Entry 24 of List II and Entry 33 of List III. Whatever may be its connotation it must bear the same meaning in all these entries which are so interconnected that conflicting or different meanings given to them would snap the connection. In the Shorter Oxford English Dictionary the word "industry" is defined as "a particular branch of productive labour; a trade or manufacture." According to Webster's Third New International Dictionary (1961 edn.) the word "industry" means "(a) systematic labour especially for the creation

(1) [1951] S.C.R. 51.

A of value; (b) a department or branch of a craft, art, business or manufacture, a division of productive and profit making labour especially one that employs a large personnel and capital especially in manufacturing; (c) a group of productive or profit making enterprises or organisations that have a similar technological structure of production and that produce or supply technically
B substitutable goods, services or sources of income." It was said that if the word "industries" is construed in this wide sense, Entry 27 of List II will lose all meaning and content. It is not possible to accept this contention for, Entry 27 is a general Entry and it is a well-recognised canon of construction that a general power should not be so interpreted as to nullify a particular power con-
C ferred by the same instrument. In *Tika Ramji* v. *State of Uttar Pradesh*(1) the expression "industry" was defined to mean the process of manufacture or production and did not include raw materials used in the industry or the distribution of the products of the industry. It was contended that the word "industry" was a word of wide import and should be construed as including not
D only the process of manufacture or production but also activites antecedent thereto such as acquisition of raw materials and subsequent thereto such as disposal of the finished products of that industry. But this contention was not accepted. It was contended by Mr. Daphtary that if the process of production was to constitute "industry" a process of machinery or mechanical con-
E trivance was essential. But we see no reason why such a limitation should be imposed on the meaning of the word "industry" in the legislative lists. Similarly it was argued by Mr. Palkhivala that the manufacture of gold ornaments was not an industry because it required application of individual art and craftsmanship and aesthetic skill. But mere use of skill or art is not a decisive factor and will not take the manufacture of gold ornaments out
F of the ambit of the relevant legislative entries. It is well settled that the entries in the three lists are only legislative heads or fields of legislation and they demarcate the area over which the appropriate legislature can operate. The legislative entries must be given a large and liberal interpretation, the reason being that the allocation of subjects to the lists is not by way of scientific or
G logical definition but is a mere enumeration of broad and comprehensive categories. It is not, however, necessary for the purpose of this case to attempt to define the expression "industry" precisely or to state exhaustively all its different aspects. But we are satisfied in the present case that the manufacture of gold ornaments by goldsmiths in India is a "process of systematic pro-
H duction" for trade or manufacture and so falls within the connotation of the word "industry" in the appropriate legislative entries.

(1) [1956] S.C.R. 393.

It follows, therefore, that in enacting the impugned Act Parliament was validly exercising its legislative power in respect of matters covered by Entry 52 of List I and Entry 33 of List III. A

It was contended by Mr. Ashoke Sen that the manufacture of gold ornaments cannot be said to constitute an industry unless there was cooperation of labour and capital and there was relationship of employer and employee. It was said that if ornament making activity was largely carried on by self-employed goldsmiths individually and there was no participation by labour and capital in the said activity. Reference was made to the decision of this Court in *Banerji* v. *Mukherjee*(1) in which it was pointed out that the word "industry" in s. 2(j) of the Industrial Disputes Act, 1947 should be construed as an activity systematically or habitually undertaken for production and distribution of goods or for rendering material services to the community at large and that such an activity generally involved cooperation of the employer and the employees and its object was satisfaction of human needs. The same view was taken in the *National Union of Commercial Employees* v. *M. R. Meher*(2) in which it was pointed out that the distinguishing feature of an industry was that for production of goods or for the rendering of service, cooperation between capital and labour or between the employer and his employee must be direct. But these decisions are of no avail to the petitioners because they were concerned with the interpretation of the word "industry" in s. 2(j) of the Industrial Disputes Act, 1947 which reads as follows : B C D E

> "industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen;" F

In interpreting the word "industry" in that section the court thought it necessary to limit the scope of the section having regard to the aim, object and scope of the whole Act. The history of the legislation made it manifest that the Industrial Disputes Act was introduced as an important step in achieving social justice. The Act seeks to ameliorate the service conditions of the workers, to provide a machinery for resolving their conflicts and to encourage their cooperative effort in the service of the community. It was in this context that the expression "industry" was interpreted in *Banerjee's* case(1) and *Meher's* case(2). It was an interpretation adopted by this Court *sacundum subjectae materies*. But what we are concerned in the present case is the interpretation of the G H

(1) [1953] S.C.R. 302. (2) [1962] Supp. 3 S.C.R. 157.

A word "industry" in the legislative lists which constitute part of the Seventh Schedule of the Constitution. It is manifest that the decisions referred to above have no bearing on the question debated in the present case.

It was argued by Mr. Palkhivala that even on the assumption B that making of gold articles and ornaments was an industry within the meaning of the legislative entries the control of the said industry was not declared by Parliament to be expedient in the public interest and, therefore, Parliament was not competent to legislate upon the subject matter of the impugned Act. To appreciate this argument it is necessary to notice briefly the provisions of the C Industries (Development and Regulation) Act, 1951 (Act 65 of 1951) which was enacted by Parliament to provide for the development and regulation of certain industries. Under s. 2 of this Act it is declared that it is expedient in the public interest that the Union should take under its control the industries specified in the first schedule. Section 3(1) of the 1951 Act defines a D "scheduled industry" to mean "any of the industries specified in the first schedule". The relevant portion of the first schedule is reproduced below :

"1. METALLURGICAL INDUSTRIES :

A. *Ferrous*

E (1) Iron and steel (metal).

(2) Ferro-alloys.

(3) Iron and steel castings and forgings.

(4) Iron and steel structurals.

(5) Iron and steel pipes.

F (6) Special steels.

(7) Other products of iron and steel.

B. *Non-ferrous*

(1) Precious metals, including gold and silver, and their alloys.

G (1A) Other non ferrous metals and their alloys,

(2) Semi-manufactures and manufactures."

The question presented for determination is whether the manufacture of gold ornaments falls within item 2 "semi-manufactures H or manufactures" under the sub-heading B "non-ferrous" of the heading "metallurgical industries". It was argued that item 2 of sub-heading B cannot be read in isolation but it must be construed in the context of the heading "metallurgical industries" which was

the controlling factor in the interpretation of the item 2 under the sub-heading. To put it differently the argument was that the heading "metallurgical industries" was the key to the interpretation of the item "semi-manufactures or manufactures". It was said that the expression "metallurgical industries" has a definite technical meaning namely an industry engaged in the actual extraction of metal from ores and the processing, manufacturing and converting the base metal into various forms, shapes and classes so as to make them available in a utilisable form for the purpose of various other industries *viz.* : machine building industries, electrical industries, ship building industries, railways etc. In support of this proposition reference was made to the affidavits of Dr. G. S. Tendolkar, Head of the Department of Metallurgy, Indian Institute of Technology, Powai and of Dr. V. A. Altekar, Head of the Chemical Technology Department, University of Bombay and also to certain standard text books on metallurgy. On behalf of the respondents reference was made to the affidavit of Mr. Dayal, Industrial Adviser to the Government of India wherein he states that in the process of manufacture of gold ornaments the goldsmith has to "melt gold (pure virgin metal, old ornaments or scrap); make an alloy of the required specifications; cast it into desired shapes; convert the alloy into semis like rods, strips, wires etc., and fabricate it into the required design, finished articles including ornaments." These involve metallurgical operations like melting, refining, making of alloys, casting, annealing, rolling, forging, pressing, punching, soldering, pressing, die cutting etc., and a goldsmith therefore is employed in the metallurgical industry. It is not necessary for us to express any concluded opinion in this case on the question whether the manufacture of gold ornaments involves any metallurgical process. Even on the assumption that the petitioners are right in saying that the manufacture of gold ornaments is not a metallurgical industry in the technical sense we consider that the heading "metallurgical industry" in the schedule does not control the scope and meaning of the Entry 1-B(2) "semi-manufactures or manufactures". The headings of the schedule do not follow any logical or scientific pattern but are put in merely as devices for convenient grouping of the industries. For example, there is no warrant for excluding electricity meters used in homes from item 15(1) or for excluding weighing machines used at airports or railway stations or ports from item 15(3). There are other examples which show that the heading does not control the meaning of the industry. Thus "lubricating oils and the like" in the item at 2(2) are clearly not "fuels" which is the heading under which they are found. Again, fire fighting equipment and appliances such as fire extinguishers used in homes or in offices or in cinema halls or as accessories to motor cars

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A would clearly be included in the industry at item 8-B(14). Similarly matches [item 36(3)] is not controlled by the heading "timber products" nor is there any warrant for holding that arms and ammunition, item 37, is controlled by the heading "defence industries". As we have already said that there is no scientific or logical scheme in the classification of first schedule of Act 65 B of 1951 but it is a mere enumeration and grouping of various items. We are unable to accept the argument of petitioners that the heading metallurgical industries should be construed as having a controlling effect on the meaning of item B(2) "semi-manufactures or manufactures".

C We proceed to consider the next question arising in this case as to whether the manufacture of ornaments falls within item 1-B (2) "semi-manufactures and manufactures" of the first schedule. It was said that the expression "semi-manufactures or manufactures" in regard to gold means the precious metal in various stages of preparation before its production in a pure state. It was argued D that "semi-manufactures" would mean gold in the form of ingots, wire, strips, sheets and "manufactures" would mean gold, bricks or standard gold bars, gold castings and so on. We are unable to accede to this argument. If the meaning contended for by the petitioners is correct item 1-B(1) and (2) of the first schedule would convey the same meaning. In other words entry No. 1-B E (2) would be superfluous and we cannot attribute tautology to Parliament which cannot be supposed to have used words without meaning. We are, on the contrary, of opinion that the expression "semi-manufactures or manufactures" should be construed in the light of the Brussels Tariff Nomenclature. Section XIV deals with "precious metals and articles thereof". Sub-Chapter II of F Chapter 71 in this section specifically deals with precious metal in unwrought and unworked form and semi-manufactures thereof and sub-Chapter III deals with manufactures of precious metals. Headings 71.07 and 71.08 in this sub-Chapter set out un-wrought or semi-manufactured gold while headings 71.12 to 71.14 in Sub-Chapter III set out finished articles of jewellery, goldsmiths' G wares and other articles of precious metals. The explanatory notes to Brussels Tariff Nomenclature shows (Vol. II, p. 633) that "precious metals in unwrought or semi-manufactured from but which have not reached the stage of articles" are included under Heading 71.05 to 71.10. So far as silver is concerned "unwrought and semi-manufactures" are set out at p. 641 and they include forms like bars, rods, sections, wire, plates, sheets and strips, tubes, H pipes, hollow bars, foils, powder etc. The enumeration of finished articles of gold, that is to say, manufactures of gold is given at p. 640. The enumeration includes articles and ornaments, for

example, jewellery and parts thereof, small objects of personal adornment such as rings, bracelets, necklaces and articles of personal use such as cigarette cases, snuff boxes, powder boxes, lipstick holders etc. (pp. 641—646 of Explanatory notes). In our opinion the expression "semi-manufactures or manufactures" of the first schedule should be construed in the context and background of the classification in the Brussels Tariff Nomenclature. It follows that manufacture of gold ornaments falls within the expression "semi-manufactures or manufactures" in item 1-B(2) of the first schedule and Parliament is, therefore, competent to legislate in regard to the subject matter of the impugned Act.

It was also contended that the provisions of Act 65 of 1951 clearly indicate that what Parliament intended to control under Entry 52 of Union List was not the manufacture of gold ornaments but industrial undertakings as contemplated by s. 2(d) of that Act. It was contended by Mr. Daphtary that the expression "scheduled industry" in s. 2(a) of the Act was synonymous with an industrial undertaking under s. 2(d) and a declaration under s. 2 of the Act would therefore apply to industries carried on in the factories as defined in the Act. It was argued that the Act was intended to apply to industrial undertakings carried on in factories and not to individual craftsmanship of goldsmiths. Section 3(d) of the Act defines an industrial undertaking to mean: "any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government". Section 2(i) defines a "scheduled industry" as meaning any of the industries defined in the first schedule. Chapter III of the Act provides measures for the regulation of scheduled industries. Chapter III-A relates to direct management and control of industrial undertakings in certain cases. In our opinion Act 65 of 1951 performs two distinct and independent functions, namely, (1) a declaration under s. 2 that it is expedient in the public interest that the Union should take under its control the industries specified in the first schedule and (2) the setting up of a machinery for imposing controls on industrial undertakings. There is a distinction made between "scheduled industries" and "industrial undertakings" throughout the Act and separate provision has been made for registration of industrial undertakings for licensing of new industrial undertakings and for the direct management of industrial undertakings by the Central Government in certain cases. Provisions have also been made for regulation of scheduled industries, procedure for grant of licences, power to cause investigation to be made etc. We are, therefore, unable to accept the contention of Mr. Daphtary that the expressions "industrial undertaking" and "scheduled industry" are used synonymously in the Act or the

A expression "scheduled industry" in s. 2 of the Act should be construed as a "scheduled industry" carried on in the manner of an "industrial undertaking."

Having dealt with and negatived the attack upon the validity of the entire Act we shall now proceed to deal with certain sections B of the Act, the validity of which was also questioned. It was argued that the restrictions imposed by sections 4(4), 4(5), 5(1), 5(2), 27(2)(d), 27(6), 16(7), 32 read with 46, 88 and 100 were unreasonable and not in public interest and so are violative of Art. 19(1)(f) and (g) of the Constitution. It was also said that the sections were also violative of Art. 14 of the Constitution C because of the conferment of unchannelled, uncontrolled and arbitrary power in the Administrator and other authorities constituted under the impugned Act.

Before examining this argument it is necessary to set out the circumstances and the social and economic background in which the impugned legislation was passed. It is stated in the counter- D affidavit that the impugned Act was passed in order to bring about reduction in the quantity of smuggled gold by rendering smuggling more dangerous and the disposal of smuggled gold in the domestic market more difficult. Even though import of gold had been banned considerable quantities of contraband gold find their way into this country through illegal channels. The Customs Depart- E ment is in itself not in a position to effectively combat smuggling over the long borders and the coast lines and, therefore, the anti-smuggling measures have to be supplemented by a detailed system of control over internal transactions so as to make the circulation of smuggled gold more difficult, if not impossible. The loss of foreign exchange caused by smuggling of gold was estimated at F nearly Rs. 100 crores per year in the post-devaluation period, and Government felt that it was very necessary to reduce the internal demand for gold and erect barriers to the circulation of smuggled gold within the country. The submission of Mr. Setalvad was that the reasonableness of the impugned provisions of the Act had to be judged in the light of the widespread smuggling of gold which, G if not checked, was calculated to destroy the national economy and hamper the country's economic stability and progress. Reference was made in this connection to the report of the Taxation Enquiry Commission which pointed out that the factual position in regard to the existence of widespread smuggling.

H "Smuggling now constitutes not only a loophole for escaping duties but also a threat to the effective fulfilment of the objectives of foreign trade control. The existence of foreign pockets in the country accentuates the danger.

> The extent of the leakage of revenue that takes place through this process cannot be estimated even roughly, but, we understand, it is not unlikely that it is substantial. Apart from its deleterious effect on legitimate trade, it also entails the outlay of an appreciable amount of public funds on patrol vessels along the sea coasts and permanent works along the land border, and watch and ward staff on a generous scale. It is, therefore, necessary, in our opinion, that stringent measures both legal and administrative should be adopted with a view to minimising the scope of this evil." (p. 320).

It is in this context that the test for ascertaining the reasonableness of the restriction of the rights in Art. 19 is of great importance. There are several decisions of this Court in which the relevant criteria have been laid down. It is, however, sufficient to refer to a passage in the judgment of Patanjali Sastri, C.J. in *State of Madras* v. *V. G. Rao*(1).

> "It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and 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 thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

It is necessary to emphasise that the principle which underlies the structure of the rights guaranteed under Art. 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 subserve 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 to curb or eliminate.

Section 4(4) of the Act empowers the Administrator to authorise such person as he thinks fit to also exercise all or any powers exercised by him under the Act (with certain exceptions) and different persons may be authorised to exercise different powers. Section 4(5) states that "any person authorised by the Administra-

(1) [1952] S.C.R. 597, 607.

A tor to exercise any powers may exercise those powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by way of authorisation." After having heard the argument of Mr. Daphtary we are not satisfied that the delegation of power conferred by s. 4(4) and 4(5) goes beyond the permissible constitutional limits. Delega-
B tion by the Administrator is necessary for the volume of work entrusted to him is great and he cannot be expected to do the bulk of it himself. Absence of such power might seriously impair administrative efficiency. Section 4(4) contemplates that the Administrator may authorise such person as he thinks fit to also exercise all or any of the powers exercisable by him under the
C Act other than the powers specified in that section. It must be assumed that the Administrator will delegate his authority only to competent and responsible persons in pursuance of the power conferred upon him by s. 4(4) of the Act. It was then said that the provisions of s. 5(1) conferred wide and uncontrolled power without any guidelines and was capable of being used with arbi-
D trary discrimination. But s. 5(1) requires that the Administrator should have regard to the policy of the Act in making his orders. His orders should be made within the framework of the Act and should not be inconsistent with the provisions of the Act. As regards s. 5(2)(a) the argument was that unguided power was conferred upon the Administrator or his delegate to regulate or
E fix the price at which any gold whether it be primary gold, article or ornament should be sold. As the power to fix the price may also be exercised not only in respect of primary gold but also in respect of articles and ornaments the business of the petitioners and similarly other persons will be adversely affected. But the section provides the safeguard that the regulation of the price
F should be made by the Administrator after consultation with the Reserve Bank of India. It was argued that the phrase "so far as it appears to him to be necessary or expedient for carrying out the provisions of this Act" was a subjective formula and action of the Administrator in making the orders under s. 5(2)(a) may be arbitrary and unreasonable. But in our opinion the formula is
G not subjective and does not constitute the Administrator the sole judge as to what is in fact necessary or expedient for the purposes of the Act. On the contrary we hold that in the context of the scheme and object of the legislation as a whole the expression cannot be construed in a subjective sense and the opinion of the Administrator as to the necessity or expediency of making the
H order must be reached objectively after having regard to the relevant considerations and must be reasonably tenable in a court of law. It must be assumed that the Administrator will generally address himself to the circumstances of the situation before him

and not try to promote purposes alien to the object of the Act. As regards s. 5(2)(b) the contention of the petitioners was that substantive provisions have been made in the Act for the grant of licence for manufacture, acquisition, possession and disposal and consumption of gold. Reference was made in this connection to s. 8(6) of the Act which confers power on the Administrator to authorise any person or class of persons to buy or otherwise acquire, accept or otherwise receive or sell, deliver, transfer or otherwise dispose of any primary gold or article. Section 11(1) contains a prohibition in regard to making, manufacturing etc., preparing or processing of any primary gold or ornament or article unless there is authorisation by the Administrator. Section 29 empowers the Administrator to authorise a dealer in any exceptional case to make, manufacture or prepare a primary gold or article." Section 34(2) prohibits sale, delivery, transfer or disposal (1) of primary gold to any person other than a licensed dealer or refiner or certified goldsmith and (2) of any article to any person other than a licensed dealer or refiner. But s. 34(3) provides that notwithstanding anything contained in sub-s. (2) a licensed dealer may sell or deliver primary gold or article to any person in pursuance of an authorisation made by the Administrator or on production by that person of a permit granted by the Administrator in this behalf. Again, section 114(1) confers power on the Central Government to make rules by notification for carrying out the purposes of the Act. Section 114(2)(d) states :

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> "(2) In particular, and without prejudice to the foregoing power, such rules may provide for all or any of the following matters, namely :—
>
> . . . . . F
>
> (d) conditions, limitations and restrictions subject to which—
>
> (i) a dealer may sell, deliver, transfer or otherwise dispose of any gold on the hypothecation, pledge, mortgage or charge of which he had advanced any loan; G
>
> (ii) a refiner may refine gold;
>
> (iii) a licensed refiner may buy, acquire, accept or receive, gold, or melt, assay, refine, extract or alloy gold or subject it to any other process, or sell, deliver, transfer or otherwise dispose of any gold; H

A (iv) a licensed dealer may buy, acquire, accept or receive or sell, deliver, transfer or dispose of gold."

It is manifest upon a review of all these provisions that the power conferred upon the Administrator under s. 5(2)(b) is legislative B in character and extremely wide. A parallel power of subordinate legislation is conferred to the Central Government under s. 114(1) and (2) of the Act. But s. 114(3) however makes it incumbent upon the Central Government to place the rules before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive C sessions. It is clear that the substantive provisions of the Act namely ss. 8, 11, 21, 31(3), 34(3) confer powers on the Administrator similar to those contemplated by s. 5(2)(b) of the Act. In these circumstances we are of opinion that the power of regulation granted to the Administrator under s. 5(2)(b) of the Act suffers from excessive delegation of legislative power and must be held to be constitutionally invalid. D

We now come to s. 27 of the Act which relates to licensing of dealers. It was stated on behalf of the petitioners that the conditions imposed by sub-s. (6) of s. 27 for the grant or renewal of licences are uncertain, vague and unintelligible and consequently wide and unfettered power was conferred upon the statutory authoE rities in the matter of grant or renewal of licence. In our opinion this contention is well-founded and must be accepted as correct. Section 27(6)(a) states that in the matter of issue or renewal of licences the Administrator shall have regard to "the number of dealers existing in the region in which the applicant intends to carry on business as a dealer". But the word "region" is nowhere F defined in the Act. Similarly s. 27(6)(b) requires the Administrator to have regard to "the anticipated demand, as estimated by him, for ornaments in that region". The expression "anticipated demand" is a vague expression which is not capable of objective assessment and is bound to lead to a great deal of uncertainty. Similarly the expression "suitability of the applicant" in s. 27(6) G (e) and "public interest" in s. 27(6)(g) do not provide any objective standard or norm or guidance. For these reasons it must be held that clauses (a), (d), (e) and (g) of s. 27(6) impose unreasonable restrictions on the fundamental right of the petitioner to carry on business and are constitutionally invalid. It was also contended that there was no reason why the conditions H for renewal of licence should be as rigorous as the conditions for initial grant of licence. The requirement of strict conditions for the renewal of licence renders the entire future of the business of th dealer uncertain and subjects it to the caprice and arbitrary will

of the administrative authorities. There is justificaiton for this argument and the requirement of s. 26 of the Act imposing the same conditions for the renewal of the licence as for the initial grant appears to be unreasonable. In our opinion clauses (a), (b), (e) and (g) are inextricably bound up with the other clauses of s. 27(6) and form part of a single scheme. The result is that clauses (a), (b), (c), (e) and (g) are not severable and the entire s. 27(6) of the Act must be held invalid. Section 27(2)(d) of the Act states that a valid licence issued by the Administrator "may contain such conditions, limitations and restrictions as the Administrator may think fit to impose and different conditions, limitations and restrictions may be imposed for different classes of dealers." On the face of it, this sub-section confers such wide and vague power upon the Administrator that it is difficult to limit its scope. In our opinion s. 27(2)(d) of the Act must be struck down as an unreasonable restriction on the fundamental right of the petitioners to carry on business. It appears, however, to us that if s. 27(2)(d) and s. 27(6) of the Act are invalid the licensing scheme contemplated by the rest of s. 27 of the Act cannot be worked in practice. It is, therefore, necessary for Parliament to enact fresh legislation imposing appropriate conditions and restrictions for the grant and renewal of licences to dealers. In the alternative the Central Government may make appropriate rules for the same purpose in exercise of its rule-making power under s. 114 of the Act.

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We now proceed to deal with ss. 32 and 46 of the Act which are also challenged. Section 32 states :

> "Save as otherwise provided in this Act, no licensed dealer shall either own or have at any time in his possession, custody or control primary gold in any form except in the form of standard gold bars ;
>
> Provided that such dealer may, unless the Central Government (having regard to the needs of the trade, volume of business and public interest) otherwise directs, own or keep in his possession, custody or control not more than—
>
> (a) four hundred grammes, if he does not employ any artisan,
>
> (b) five hundred grammes, if he employs not more than ten artisans,
>
> (c) one thousand grammes, if he employs more than ten but not more than twenty artisans.

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A (d) two thousands grammes, if he employs more than twenty artisans, of primary gold in any form other than in the form of standard gold bars."

Section 46 enacts :

"The total quantity of primary gold in the possession, custody or control, whether individually or collectively, of the artisans employed by a licensed dealer shall not, at any time, exceed the limits specified in section 32".:

Section 32 of the Act authorises a licensed dealer to keep any quantity of standard gold bars and provides a limit upon his holding of primary gold depending on the number of artisans he employs. The definition of the term "standard gold bar" under s. 2(u) does not contemplate the standard gold bar being cut into pieces. A standard gold bar being of a prescribed weight and purity cannot in many cases be handed over to a certified goldsmith without cutting the same. If a dealer, therefore, has to give a cut piece of standard gold bar to a certain goldsmith the remaining portion of the standard gold bar will be treated as primary gold in his hands. Hence the limits prescribed under s. 32 and 46 of the Act are rendered meaningless in view of the statutory definition of the term "standard gold bar" as it stands at present. We are of opinion that ss. 32 and 46 constitute an unreasonable restriction on the right of the petitioners to carry on trade or business and must be held to be invalid.

Section 88 of the Act has also been challenged. Section 88 reads thus :

"(1) A dealer or refiner who knows or has reason to believe that any provision of this Act or any rule or order made thereunder has been, or is being, contravened, by any person employed by him in the course of such employment, shall be deemed to have abetted an offence against this Act.

(2) Whoever abets, or is deemed under sub-section (1) to have abetted, an offence against this Act, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."

This section extends the scope of the vicarious liability of the dealer and makes him responsible for the contravention of any provision of the Act or rule or order by any person employed by him in the course of such employment. 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. In one sense the dealer is punished for the sins committed by his employee. It may perhaps be said if the dealer had been more alert to see that the law was observed the sin might not have been committed. But the section goes further and makes the dealer liable for any past contravention perpetrated by the employee. It is evident that 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 he can reasonably be expected to influence or control. The maxim *qui facit per alium facit per se* is not generally applicable in criminal law. But in s. 88 it has been extended beyond reasonable limits. We are, therefore, of opinion that s. 88 imposes an unreasonable restriction on the fundamental right of the petitioners and is unconstitutional.

We shall now proceed to deal with s. 100 of the Act which also has been challenged. This section imposes a statutory obligation upon a dealer to take all reasonable steps to satisfy himself as to the identity of persons from whom any gold is bought. The section does not specify the nature of steps which a dealer should take for satisfying himself as to the identity of the person from whom any gold is bought. The statutory obligation imposed by the section is uncertain and incapable of proper compliance. It must be held that the section imposes an impossible burden upon the dealers and constitutes an unreasonable restriction.

We proceed to consider next the question arising in this case whether the provisions with regard to licensing of dealers and certification of goldsmiths are discriminatory and violate the guarantee of equal protection under Art. 14 of the Constitution. Reference was made to ss. 27 and 39 of the impugned Act and it was argued that the provisions with regard to licensing of dealers were more harsh than in the case of registered goldsmiths. But in our opinion licensed dealers and certified goldsmiths form separate classes and the classification made by the impugned Act is a reasonable classification. A licensed dealer is essentially a trader who does the business of buying and selling ornaments while a certified goldsmith is a craftsman who does the actual manufacture of ornaments and does not trade in ornaments. A licensed dealer can make or manufacture ornaments from his own gold but a certified goldsmith can make or manufacture new ornaments for his customers only from their gold. A licensed dealer can sell ornaments to the public and can keep ready stock of such ornaments for the purpose of sale while a certified gold-

A smith is not permitted to do the business of selling ornaments. A licensed dealer may have in his possession primary gold in the form of standard gold bars without any limit and melted gold in the form other than the standard bars in quantities ranging from 400 to 2,000 grammes. A certified goldsmith cannot have in his possession more than 300 grammes of primary gold. A licensed B dealer can employ as many persons as he likes as his artisans but a certified goldsmith cannot employ more than one hired labourer to assist him in his work as goldsmith and even this hired labourer cannot make, manufacture, prepare or process any ornament. When a law is challenged as violative of Art. 14 of the Constitution it is necessary in the first place to ascertain the policy under- C lying the statute and the object intended to be achieved by it. Having ascertained the policy and object of the Act the Court has to apply a dual test in examining its validity (1) whether the classification is rational and based upon an intelligible differentia which distinguishes persons or things that are grouped together from others that are left-out of the group and (2) whether the D basis of differentiation has any rational nexus or relation with its avowed policy and object. In the present case both the tests are satisfied and we hold that ss. 27 and 39 of the impugned Act do not violate the guarantee under Art. 14 of the Constitution.

The only other point that remains to be decided is whether as a result of some of the sections of the impugned Act being E struck down, what is left of the impugned Act should survive or whether the whole of the impugned Act should be declared invalid. We are of opinion that the provisions which are declared invalid cannot affect the validity of the Act as a whole. In a case of this description the real test is whether what remains of the statute is so inextricably bound up with the invalid part that what remains F cannot independently survive or as it is sometimes put whether on a fair review of the whole matter it can be assumed that the legislature would have enacted at all that which survives without enacting the part that is *ultra vires*. The matter is clearly put in Cooley on Constituitonal Limitations, 8th edn. at p. 360 :

> "It would be inconsistent with all just principles of G constitutional law to adjudge these enactments void because they are associated in the same act, but not connected with or dependent on others which are unconstitutional. Where, therefore, a part of a statute is unconstitutional, that fact does not authorise the courts to declare the remainder void also, unless all the provisions are H connected in subject-matter depending on each other, operating together for the same purpose, or otherwise so connected together in meaning, that it cannot be presumed the legislature would have passed the one without

the other. The constitutional and unconstitutional provisions may even be contained in the same section, and yet be perfectly distinct and separable, so that the first may stand though the last fall. The point is not whether they are contained in the same section; for the distribution into sections is purely artificial; but whether they are essentially and inseparably connected in substance. If, when the unconstitutional portion is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained."

Applying the test to the present case we are of opinion that the provisions held to be invalid are not inextricably bound up with the remaining provisions of the Act. It is difficult to hold that Parliament would not have enacted the impugned Act at all without including that part which is found to be *ultra vires*. The Act still remains substantially the Act as it was passed, that is, an Act to provide for the control, production, manufacture, supply, distribution, use and possession of gold and gold ornaments and articles of gold. In the result we hold that the following provisions of the impugned Act are invalid.

Sections 5(2)(b), 27(2)(d), 27(6), 32, 46, 88 and 100.

The petitioners are, therefore, entitled to a writ in the nature of *mandamus* under Art. 32 of the Constitution commanding the respondents not to take any steps to implement any of the invalid provisions of the Act. Writ petitions 282, 407 and 408 of 1968 are allowed to this extent. There will be no order with regard to costs in any of these petitions.

V.P.S. *Petitions allowed in part.*