

(2004) 01 BOM CK 0077

Bombay High Court

Case No: Writ Petition No. 3056 of 1990

Mohanlal Vanmalidas and
Company and Others

APPELLANT

Vs

Collector of Customs,
(Preventive) and Gold Control
and Others

RESPONDENT

Date of Decision: Jan. 21, 2004

Acts Referred:

- General Clauses Act, 1897 - Section 6
- Gold (Control) Act, 1968 - Section 27(7), 31

Citation: (2004) 2 BomCR 703 : (2004) 2 MhLj 489

Hon'ble Judges: R.M. Lodha, J; Anoop V. Mohta, J

Bench: Division Bench

Advocate: M.M. Patel, for the Appellant; A.S. Rao and Gopal Krishna, for the Respondent

Final Decision: Dismissed

Judgement

R.M. Lodha, J.

On 28th April 1986 the Office of the Deputy Collector of Customs (Preventive) Gold Control, Bombay issued the show cause notice to the petitioners for the contravention of provisions of Sections 27(7)(b), 31 and 36 read with Rule 13(1) of the Gold (Control) Act, 1968 and the rules framed thereunder and the petitioners were directed to show cause why the gold and gold ornaments total weighing 7460.100 gms. valued at Rs. 12,95,927/-should not be confiscated under the provisions of the Gold (Control) Act, 1968 and why penalty be imposed on them under the said Act. The said notice dated 28th April 1986 reads thus :

"OFFICE OF THE DEPUTY COLLECTOR OF CUSTOMS

(PREVENTIVE) GOLD CONTROL : III FLOOR, P.N.B. HOUSE,

SIR P.M. ROAD, FORT, BOMBAY- 400 001.

F. No. XVII(GC) 8-89/85/7214

Bombay, the 28th April 1986.

SHOW CAUSE NOTICE

1) M/s Mohanlal Vanmalidas and Co.

(G.D.L. No. 699/G/63)

situated at 85, Vithalwadi,

Bombay 400 002

- | | | |
|-----|---------------|------------|
| (a) | Shri | |
| | Chandulal | |
| | Mansukhlal | |
| | Soni | |
| (b) | Shri | |
| | Maheshchandra | |
| | Kanji Soni | All |
| (c) | Shri | |
| | Mansukhlal | |
| | Himmatlal | |
| | Soni | |
| | | } partners |
| | | of the |
| | | abovesaid |
| | | M/s |
| (d) | Shri | |
| | Kirtikant | |
| | Himatlal | |
| | Soni | |
| | | } M/s |
| | | Mohanlal |
| | | Vanmalidas |
| | | and Co. |
| (e) | Smt. | |
| | Jayalaxmi | |
| | Mohanlal | |
| | Soni | |

2) Shri Harkishandas Himmatlal Soni

Proprietor of M/s Zeveri Mohanlal Vanmalidas

(G.D.L.N. No. 115/G/82)

situated at Nusar House, Opera House,

Bombay 400 004

3) Shri Purshottamdas Laxmidas Champaneri (Soni),

Goldsmith Certificate No. SP. 1/75,

4) Shri Rashmikant Purshottamdas Champaneri (Soni),
Goldsmith Certificate No. 38/72,

5) Shri Suresh Sivram Virkar,
Goldsmith Certificate No. 728/69,

6) Shri Manohar Gajanan Narvekar,
Goldsmith Certificate No. 50/GB/76,

7) Shri Sanjay Mahadev Ratate,
Goldsmith Certificate No. 198/83,

8) Shri Mahadev Balu Mane,
Goldsmith Certificate No. 42/CS/78,

9) Shri Narendra Gangadar Bhadiadra,
Goldsmith Certificate No. 71/71,

10) Shri Arvind Rajaram Karekar,
Goldsmith Certificate No. 409/GC/78,

11) Shri Anand Devji Mane,
Goldsmith Certificate No. 408/84,

12) Shri Ravindra Sadanand Mankame,
Goldsmith Certificate No. 470/84,

All certified Goldsmiths working at 51/53, Tel Galli, Vithalwadi,
Bombay 400 002.

Sub: Gold Control and Customs-Seizure of gold and gold ornaments weighing 3682.200 gms. Valued at Rs. 6,62,796/- from S/Shri Purshottamdas L. Champaneri (Soni) and Rashmikant P. Champaneri (Soni) at 51/53 Telgalli, Vithal Wadi, Bombay-2 on 31-10-1985/1-11-1985.

2) Seizure of gold and gold ornaments weighing 2141.500 gms. valued at Rs. 3,73,131/- on 25-12-1985 from the abovesaid premises and persons.

3) Seizure of gold and gold ornaments weighing 1496.450 gms. valued at Rs. 2,40,000/- on 17-4-1986 and

4) Seizure of primary gold in the form of lagadi weighing 139.950 gms. valued at Rs. 20,000/- on 28-4-1986 from the abovesaid premises and persons.

WHEREAS it appears that the firm M/s Mohanlal Vanmalidas and Co., holders of Gold Dealer Licence No. 698/G/63 and doing business from the premises situated at 85, Vithalwadi, Bombay-2 and the above said five partners and Shri Harkishandas H. Soni, Prop. of M/s Zaveri Mohanlal Vanmalidas, Holder of

Gold Dealer licence No. 115/G/82 and doing business from Nusar House, Opera House, Bombay-4, appear to have contravened the provisions of -

(i) Section 27(7)(b) of the Gold (Control) Act, 1968 inasmuch as they have commenced, carried on, stored the stock in trade of gold and gold ornaments from a premises other than the one approved/specified for the purpose in the said licence;

(ii) Section 31 of the Gold (Control) Act, 1968 - inasmuch as they bought or otherwise acquired or agreed to buy or otherwise acquired or accepted or otherwise received or agreed to accept or otherwise received articles ornament otherwise than as provided in the said section;

(iii) Section 36 read with Rule 13(1) of the Gold Controls (Forms, Fees and Misc. Matters) Rules, 1968 inasmuch as they acquired accepted, gold and gold ornaments without the conforming to the provisions of the above said section and Rules made thereunder;

AND WHEREAS it appears that the Goldsmiths mentioned at Sr. No. 3 to 12 appears to have aided and abetted the abovesaid two Gold dealers mentioned at Sr. Nos. 1 and 2, in the commission of offence u/s 27(7)(b) of the Gold (Control) Act, 1968;

AND WHEREAS it further appears that the abovesaid Goldsmiths mentioned at Sr. No. 3 to 12 appear to have contravened the provisions of Section 55 of the Gold (Control) Act, 1968, inasmuch as they have failed to keep in such form and in such manner as prescribed under the abovesaid section a true and complete account of the gold owned, possessed, held, controlled or accepted or otherwise received, or sold, delivered, transferred or otherwise disposed of by them in their capacity as Certified Goldsmiths;

AND WHEREAS it appears that S/Shri Purshottamdas Laxmidas Champaneri (Soni) and Rashmikant Purshottamdas Champaneri (Soni) have contravened the provisions of Section 42 of the Gold (Control) Act, 1968 in as much as they were having in their possession primary gold more than what is prescribed in the said section;

AND WHEREAS it further appear that the firm M/s Mohanlal Vanmalidas and Co. and the five partners therein and Shri Harkishandas H. Soni, proprietor of M/s Zaveri Mohanlal Vanmalidas appears to have aided and abetted the abovesaid 10 Goldsmiths mentioned at Sr. No. 3 to 12 in the contravention of the provisions of Section 55 of the Gold (Control) Act, 1968;

AND WHEREAS it also appears that 3 pieces of gold bullion bearing Foreign Markings, weighing 15,000 gms. have been imported into India without any proper permit from the Reserve Bank of India, as required under the Govt. of India, Ministry of Finance (Department of Revenue) New Delhi's Notification No. 12(II) F.I./48 dated 25-8-1948 issued u/s 8(1) of the Foreign Exchange Regulations Act, 1947 which is deemed to have been issued u/s 13(1) of the said Act, 1973 and which prohibition

deemed to have been issued u/s 11 of the Customs Act, 1962;

AND WHEREAS it also appears that the actions of S/Shri P. L. Soni and R.P. Soni attract the mischief of the provisions of Section 112 of the Customs Act, 1962 inasmuch as they acquired possession of or were knowingly concerned with carrying, removing, harbouring, receiving, depositing, keeping, concealing, selling or purchasing or in any other manner dealing with the smuggled gold which they had reason to believe is liable to confiscation under the provisions of the Customs Act, 1962, rendering them liable to penalties u/s 112 of the Customs Act, 1962;

AND WHEREAS it appears that no one has come forward to discharge the burden cast u/s 123 of the Customs Act, 1962 of proving that the 3 pieces of yellow metal i.e. gold with foreign markings was not smuggled and has been legally imported;

NOW THEREFORE, the said (1 to 12 above named) are hereby required to show cause to the Collector of Customs (Preve.) who is having his office at II floor, New Custom House, Ballard Estate, Bombay 400 036 as to why the gold and gold ornaments under seizure totally weighing 7,460.100 gms. valued at Rs. 12,95,927/- should not be confiscated u/s 71 of the Gold (Control) Act, 1968 and why penalties should not be imposed on them u/s 74 of the Gold (Control) Act, 1968. Further S/Shri P. L. Soni and R. P. Soni, certified Goldsmiths are also hereby required to show cause to the said Collector of Customs (Prev.), Bombay as to why the three gold bullion weighing 15,000 gms. should not be confiscated u/s 111(d) of the Customs Act, 1962 and why penalties should not be imposed on them u/s 112 of the Customs Act, 1962.

S. Nos. 1 to 12 are further directed to produce all the evidence upon which they intend to rely in support of their defence. They are also directed to inform the adjudicating authority, whether they would like to be heard in person before him before the case is adjudicated. If no mention is made about this in their written reply to the show cause notice, it will be presumed that they do not desire any personal hearing.

If no cause is shown against the action proposed to be taken and/or if nothing is heard within 10(Ten) days from the date of receipt of this Notice and/or if they do not appear before the adjudicating authority when the case is posted for hearing, the decision in the matter will be taken on the basis of evidence already on record.

The basis for liabilities of the gold to confiscation and the persons above named at Sr. Nos. 1 to 12 to penalties under the Gold (Control) Act, 1968 and the Customs Act, 1962 is set out in the Annexure to this Notice.

This notice is issued without prejudice to any other action that may be taken against the said persons at Sr. Nos. 1 to 12 u/s 85 of the Gold (Control) Act, 1968 and u/s 135 of the Customs Act, 1962 and/or under any other provisions of any other law for the time being in force.

Encl. Annexure

Sd/-. 28-4-1986

(M. A. KUNJU)

Superintendent of Customs (P)

Gold Control, Bombay."

2. By means of this writ petition filed under Article 226 of the Constitution of India, the petitioners have impugned the aforesaid show cause notice.

3. Twofold contention was advanced by the learned counsel for the petitioners in challenging the aforesaid show cause notice. Firstly, it was contended that the show cause notice was issued as far back as in the month of April 1986 in respect of the search and seizure effected some time in October/November 1985, yet the respondent No. 1 has not given full inspection of seized documents nor furnished copies thereof in spite of repeated reminders and due to the lapse of considerable time, the proceedings deserve to be quashed. The learned counsel submitted that in the reply filed by the respondents after 13 years of the filing of the writ petition it is admitted that many documents relied upon in support of show cause notice have been lost or mutilated and not available for inspection to the petitioners and, therefore, the show cause notice be quashed. Secondly, it was contended that Gold (Control) Act, 1968 has been repealed by the gold (Control) Repeal Act, 1990 (for short, "Act, 1990") and, therefore, the proceedings under the impugned show cause notice under the repealed law cannot be continued. The learned counsel submitted that the statement of objects and reasons of the Repealing Act, 1990 shows the intention of the Legislature otherwise and, therefore, Section 6 of the General Clauses Act, 1897 has no application. The learned counsel also submitted that there is no saving clause in the Act, 1990 saving the rights, privileges, obligations, liabilities, penalty, forfeiture or continuation or institution of legal proceedings. The learned counsel, thus, submitted that continuation of adjudication proceedings against the petitioners is illegal, ultra vires, invalid and inoperative. In support of his contention, the learned counsel relied upon the judgment of the Supreme Court in [Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others](#), .

4. On the other hand, the learned counsel for the respondents submitted that the respondents propose to complete the adjudication proceedings on the basis of the documents and the record referred to in Exhibit "I" annexed with the reply affidavit dated 22nd January 2003 and the petitioners shall be provided inspection of the record referred to in Exhibit "I" and the necessary copies shall also be given to the petitioners. The learned counsel for the respondents submitted that upon repeal of Gold (Control) Repeal Act, 1990, Section 6 of General Clauses Act, 1897 comes into play and, therefore, the repeal of the Gold (Control) Act, 1968 shall not, inter alia, affect the investigation and the legal proceedings already commenced under the repealed Act.

5. It is true that some of the documents referred to in the Annexure annexed with the show cause notice are not available with the respondents. The respondents have admitted that in the year 1987 the Office was shifted and in the process of shifting, some of the relevant documents got mixed up or mutilated. Efforts were made to locate these documents, but could not be traced and, therefore, it was decided to proceed with the show cause notice without relying upon the documents not traceable. The respondents have stated that the adjudication proceedings shall be completed on the basis of the documents listed in Exhibit "I" annexed to the reply. In our considered view, in the facts and circumstances of the present case, the adjudication proceedings pursuant to the impugned show cause notice are not liable to be quashed merely because all the documents referred to in the annexure annexed to the show cause notice are not available with the respondents. No prejudice shall be caused to the petitioners if they take inspection of the documents which are available (details of which have been given in Exhibit "I" annexed with the reply affidavit) and copies of such documents are made available to the petitioners. On the basis of such inspection and copies of the documents, the petitioners may respond to the show cause notice and raise all available objections. The adjudicating authority, shall then hear the noticees and complete the adjudication proceedings.

6. As regards the second contention, we may notice that the Gold (Control) Act, 1968 has been repealed by the Gold (Control) Repeal Act, 1990. The Act, 1990 says that the Gold (Control) Act, 1968 is hereby repealed.

7. Relying on the statement of objects and reasons, the learned counsel for the petitioners contends that the said statement of objects and reasons clearly show that Legislature never intended applicability of Section 6 of the General Clauses Act, 1897.

8. The statement of objects and reasons of the Gold (Control) Repeal Act, 1990 reads thus:

"STATEMENT OF OBJECTS AND REASONS

Gold control which, regulated the domestic trade and movement of gold within the country was introduced on 9th January, 1963 as part of the Defence of India Rules. Later on, the Gold Control Act, 1968 was enacted with the broad objectives of controlling the production, manufacture, supply, distribution, use and possession of and business in gold, ornaments and articles of gold. The said enactment was meant to supplement other preventive measures to make circulation of smuggled gold difficult and its detection easier by extending the control over gold beyond the stage of import.

2. Over the past 22 years, the results achieved under the Act have not been encouraging and the desired objectives for which the Act was introduced have not been achieved due to various socio-economic and cultural factors in the vast multitude of the country's population and the lack of administrative machinery. On

the other hand, this regressive and purely regulatory Act has given rise to considerable dissatisfaction in the minds of the public as it has caused hardship and harassment to the artisans and small self employed goldsmiths who have not been able to develop their skills and earn proper living on account of the rigours which this Act imposed upon them.

3. Taking these factors into consideration and the advice of experts who have examined issues related to this Act, it is proposed to repeal the Gold (Control) Act, 1968."

9. We are not persuaded by the submission of the learned counsel for the petitioners that the contrary intention of the Legislature in not making applicable Section 6 of General Clauses Act is discerned from the statement of objects and reasons. It may be immediately noticed that the Act, 1990, whereby Gold (Control) Act, 1968 has been repealed is an Act of bare repeal. The legal position is well settled that in the case of bare repeal, there is hardly any room for a contrary intention of the Legislature in not making applicable Section 6 of the General Clauses Act. Upon repeal of a statute, no proceeding under the repealed statute can be commenced and continued unless such proceeding is saved. To obviate the necessity of inserting saving clause in each and every repealing statute, a general provision has been made in Section 6 of the General Clauses Act, 1897. The reason for enacting Section 6 of the General Clauses Act has been considered by the Supreme Court in *State of Punjab v. Mohar Singh*, AIR 1955 SC 84. The Supreme Court observed thus :

"(6) Under the law of England, as it stood prior to the Interpretation Act of 1889, the effect of repealing a statute was said to be to obliterate it as completely from the records of Parliament as if it had never been passed, except for the purpose of those actions, which were commenced, prosecuted and concluded while it was an existing law: Vide *Craies on Statute Law*, 5th edn. Page 323. A repeal therefore without any saving clause would destroy any proceedings whether not yet begun or whether pending at the time of the enactment of the Repealing Act and not already prosecuted to a final judgment so as to create a vested right: Vide *Crawford on Statutory Constitution*, pp. 599-600. To obviate such results a practice came into existence in England to insert a saving clause in the repealing statute with a view to preserve rights and liabilities already accrued or incurred under the repealed enactment.

Later on, to dispense with necessity of having to insert a saving clause on each occasion, Section 38(2) was inserted in the Interpretation Act of 1889 which provides that a repeal, unless the contrary intention appears, does not affect the previous operation of the repealed enactment or anything duly done or suffered under it and any investigation, legal proceeding or remedy may be instituted, continued or enforced in respect of any right, liability and penalty under the repealed Act as if the Repealing Act had not been passed. Section 6 of the General Clauses Act, as is well known, is on the same lines as Section 38(2) of the Interpretation Act of England."

10. Since there appears to be no intention to the contrary appearing in the repealing statute viz. The Gold (Control) Repeal Act, 1990, we have no hesitation in holding that Section 6 of the General Clauses Act is clearly attracted and, therefore, the proceedings pursuant to the impugned show cause notice may be continued. The reliance placed by the learned counsel for the petitioners on the judgment of the Supreme Court in *Kolhapur Canesugar Work Ltd.* (supra) is misplaced. The controversy before the Supreme Court in that case arose out of show cause notice issued under Rules 10 and 10A of the Central Excise Rules, 1944 as were obtaining prior to 6th August 1977. Rules 10 and 10A were omitted and replaced by notification No. 267/77 dated 6th August 1977. The Supreme Court found that the then existing Rules 10 and 10A were not saved by the new Rule and, therefore, the proceedings initiated under the old Rule could not continue having become non-est. It was held that Section 6 of the General Clauses Act had no application as it did not apply to the case of repeal of a rule. In *Kolhapur Canesugar Works Ltd.* (supra) the Supreme Court referred to the judgment of the Constitution Bench in [Rayala Corporation \(P\) Ltd. and M.R. Pratap Vs. Director of Enforcement, New Delhi](#), wherein it was held that Section 6 of the General Clauses Act was only applicable to only repeals and not to omissions and when the repeal is of Central Act and not of a rule. In the case before us, Gold (Control) Act, 1968 has been repealed by the Gold (Control) Repeal Act, 1990. The Act, 1990 is an enactment of bare repeal. Section 6 of the General Clauses Act in the circumstances is clearly attracted. From the statement of objects and reasons of Act, 1990, we find it difficult to hold that the intention to the contrary for non-applicability of Section 6 could be gathered. As already indicated by us it is the settled legal position that in the case of a bare repeal, there is hardly any room for contrary intention. We have, thus, no hesitation in holding that Section 6 of the General Clauses Act is applicable.

11. We, accordingly, find no merit in both the contentions raised by the learned counsel for the petitioners.

12. Consequently, we dismiss the writ petition. However, we accept and record the statement of the learned counsel for respondent No. 1 that within four weeks from today, inspection of all the documents referred to in the list Exhibit "I" annexed with the reply affidavit shall be given to the petitioners and they shall also be provided with the legible copies of the documents referred to in Exhibit I within the aforesaid time. The petitioners shall file reply to the show cause notice within one month from the receipt of the copies of the documents as afore directed and the Adjudicating Authority shall complete the adjudication proceedings within three months from the date the reply is filed by the petitioners.

13. We find from the proceedings that vide order dated 20th November 1990 the petitioners were returned seized gold and gold ornaments on their furnishing bank guarantee in the sum of Rs. 13,00,000/-. We direct the petitioners to keep the bank guarantee alive until the disposal of adjudication proceedings and for a period of

one month thereafter.

14. All the contentions of the petitioners are kept open to be agitated before the adjudicating authority.

15. No costs.

Certified copy expedited.