

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.801 OF 2021**

Pune Saraf Association & Ors. ... Petitioner
Versus
Union of India & Ors. ... Respondents

Mr. Anil Anturkar, Senior Advocate i/by Mr. Shubham H. Misar, for Petitioners.
Mr. Aditya Thakkar with Mr. Anil D. Yadav, for Respondent Nos.1 and 2.
Mr. Arsh Mishra i/by M.V.Kini and Co., for Respondent No.3.

**CORAM: S.J. KATHAWALLA &
SURENDRA P. TAVADE, JJ.
(VACATION COURT THROUGH VIDEO
CONFERENCING)**

**RESERVED ON : 21ST MAY, 2021
PRONOUNCED ON : 27th MAY, 2021**

P.C.:

1. This Writ Petition impugns :

- (i) Notification dated 14th June, 2018 issued by the Ministry of Consumer Affairs, Food and Public Distribution (“Impugned Notification”);
- (ii) Hallmarking of Gold Jewellery and Gold Artefacts Order 2020 dated 15th January, 2020 (“Impugned Order”);
- (iii) Various provisions of the Bureau of Indian Standards Act, 2016 (“Act”); and
- (iv) The Bureau of Indian Standards [Hallmark] Regulation, 2018 (“Regulation”).

2. The Impugned Order reads as under :

“In exercise of the powers conferred by sub-section (3) of section 14 read with sub- section (2) and (3) of section 15 and sub-section (1) and (2) of section 16 read with section 17 and sub-section (3) of section 25 of the Bureau of Indian Standards Act, 2016 (11 of 2016), the Central Government, after consulting the Bureau of Indian standards, is of the opinion that it is necessary or expedient so to do in the public interest, hereby makes the following Order, namely:—

1. Short title and commencement. — (1) *This Order may be called the **Hallmarking of Gold Jewellery and Gold Artefacts Order, 2020.***

(2) *It shall come into force with effect from the 15th day of January, 2021.*

2. Compulsory selling of precious metals articles of gold marked with Hallmark through certified sales outlets. — (1) *Precious metal articles of gold notified to be marked with hallmark in the notification of the Government of India, Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs number S.O. 2421(E), dated the 14th June, 2018, shall be sold only by registered jewellers through certified sales outlets, after fulfilling the terms and conditions of certificate of registration as specified in regulation 5 of the Bureau of Indian Standards (Hallmarking) Regulations, 2018.*

(2) *Precious metal articles specified in column (2) of the Table below, shall conform to the corresponding Indian Standard given in the column (3) of said Table and shall bear hallmark under a certificate of registration from the Bureau of Indian Standards as per the Bureau of Indian Standards (Hallmarking) Regulations, 2018.*

(3) Nothing in this order shall apply to precious metal articles, specified in column (2) of the Table, in the following cases, namely:—

(a) any article meant for export, which conforms to any specification required by the foreign buyer;

(b) an article with weight less than two grams;

(c) an article which is in course of consignment from outside India to an assaying and hallmarking centre in India recognised as per the Bureau of Indian Standards (Hallmarking) Regulations, 2018, for hallmarking;

(d) any article which is intended to be used for medical, dental, veterinary, scientific or industrial purposes;

(e) any article of gold thread;

(f) any manufactured article which is not substantially complete, and which is intended for further manufacture;

(g) gold bullion in any shape of bar, plate, sheet, foil, rod, wire, strip, tube or coin.

3. Certification and enforcing authority.— *In respect of the goods and articles specified in column (2) of the Table, the Bureau of Indian Standards shall be the certifying and enforcing authority and an officer not below the rank of Joint Secretary of the Department having administrative control over consumer affairs in the Government of the State or Union Territory shall also be the enforcing authority.*

4. Penalty for contravention.— *Any person who contravenes the provisions of this Order shall be punishable under the provisions of the Bureau of Indian Standards Act, 2016.*

TABLE

<i>Serial number</i>	<i>Goods and articles</i>	<i>Indian Standard</i>	<i>Title of Indian Standard</i>
(1)	(2)	(3)	(4)
1.	Gold jewellery and gold artefacts.	IS 1417 : 2016* *as amended by Bureau from time to time.	Gold and gold alloys, jewellery and artefacts — Fineness and Marking — Specification.”

3. As can be seen from the aforesaid Impugned Order, it is now compulsory to hallmark gold jewellery before it can be sold. Further, in the event of a breach of the Impugned Order, there is a penalty which is punishable with maximum imprisonment of one year.

4. By an Order dated 9th October, 2020, issued by the Ministry of Consumer Affairs, Food and Public Distribution, the Impugned Order now comes into force with effect from 1st June, 2021.

5. When this Writ Petition came up for hearing on April 29, 2021, this Court permitted the Petitioners to make a representation in relation to their grievances to the Additional Secretary, Ministry of Consumer Affairs, Food and Public Distribution, Central Government, New Delhi.

6. Accordingly, the Petitioners made their representation on May 1, 2021,

which representation came to be rejected.

7. Mr. Anturkar, Senior Advocate, appearing for the Petitioners submitted that as per the Impugned Order, gold jewellery and artefacts can only be made with purity of 14, 18 and 22 carats and of no other. As per the Respondents' Affidavit in Reply, Hallmark Centres have been provided in 236 districts out of 741 districts across India. In respect of Maharashtra, he submitted that out of a total of 36 districts, there is no Hallmark Centre in 14 districts. In respect of 11 districts, there is only 1 Hallmark Centre and in respect of 2 districts, there are only 3 Hallmark Centres. That even if it is assumed for the sake of argument that the Impugned Order is constitutionally valid, it ought to be stayed owing to the complete lack of infrastructure. In support of this submission, reliance was placed on the Apex Court's decision in *Jamshed Guzdar vs. State Of Maharashtra*¹. He further argued that the system of hallmarking is completely faulty. The random sampling method proposed is completely unscientific. He further relied upon the Apex Court's decision in *Internet and Mobile Association of India vs. RBI*² and the decision of this Court in the case of *Purnartha Investment Advisers Pvt. Ltd. vs. SEBI*³, wherein the five tests to examine the validity of a legislative action, be it a statute or a delegated legislation, have been laid down. Mr. Anturkar therefore concluded that the Impugned Order be stayed until final disposal of this Writ Petition.

1 2005 (2)SCC 591

2 2020 SCC Online SC 275

3 Writ Petition (I) No.638 of 2021

8. Appearing for Respondent No.3 *viz.* the Bureau of Indian Standards, Mr. Arsh Mishra submitted that the Impugned Order has a presumption of constitutional validity and the same being an economic reform, should not be stayed at the ad-interim stage. Mr. Mishra further submitted that the Nagpur Bench of this Court has already passed an Order dated May 7, 2021 in Writ Petition No.1815 of 2021 arising out of the very same Impugned Order directing that no coercive action shall be taken against the jewellers under Section 29(2) of the Act. Relying thereon, it was submitted that whilst being protected under the said Order, the Petitioners cannot seek a stay on the entire subordinate legislation especially when there are already Hallmark Centres in 234 locations across the country. It was further submitted that notwithstanding the fact that 14 districts out of 36 in Maharashtra do not have Hallmark Centres, that has not prevented jewellers in these districts from procuring and selling Hallmarked jewellery. That setting up of Hallmark Centres is a market driven activity. That once the pandemic situation normalises, with an increase in demand, new Hallmark Centres would come up. The inclusion of 24k gold is essential as the same would prevent confusion amongst consumers, and would prevent such consumers from being duped by jewellers. That a detailed and well laid-out procedure has been provided for hallmarking by adopting XRF-X Ray Fluorescence. Mr. Mishra therefore concluded that the Petition is devoid of any merit and thus no ad-interim relief deserves to be granted.

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

10. We have heard the arguments canvassed by the Ld. Advocates in the matter. We have also perused a copy of the Order dated May 7, 2021, passed by the Nagpur Bench of this Court in respect of the Impugned Order.

11. It is an admitted and undisputed position that currently, there are insufficient Hallmark Centres in the country. This, according to us, is a decisive factor to be taken into consideration at the interlocutory hearing of this Writ Petition. Whilst we appreciate that hallmarking is essential for consumer protection and to prevent unfair trade practices, adequate and necessary infrastructure needs to first be put in place prior to imposing such strict consequences on the Petitioners. In response to the Petitioners' representation, the Respondents, in their response thereto have themselves stated that in the absence of a Hallmarking Centre within a particular district, the Petitioners are to approach any other Hallmarking Centre across the country. The Petitioners have been at pains to point out the consequent inequality arising from the Impugned Order which is burdensome. Illustratively, in the districts of Beed, Bhandara and Buldhana over 3000 jewellers are located and there is no Hallmark Centre in these districts.

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

short notice, it would be inequitable for certain jewellers to travel outside their district merely because no Hallmarking Centre is as yet established in their district.

13. We are conscious of the Apex Court's directions in *Bhavesh D. Parish vs. Union of India*⁴, wherein the Apex Court has held that when considering an application for staying the operation of a legislation, and that too pertaining to economic reform or change, the courts must bear in mind that unless the provision is manifestly unjust or glaringly unconstitutional, the courts must show judicial restraint in staying the applicability of the same. Merely because a statute comes up for examination and some arguable point is raised, which persuades the courts to consider the controversy, the legislative will should not normally be put under suspension pending such consideration.

14. Owing to the foregoing decision, considering the purpose for which the Impugned Order has been issued, we are not inclined to stay its effect and operation. However, owing to the on-going Pandemic, coupled with the admitted lack of infrastructure of Hallmark Centres, we deem it fit to restrain the Respondents from taking coercive action against the Petitioners under Paragraph No.4 of the Impugned Order *viz.* "Penalty for Contravention". Having said so, we would expect the Petitioners to try their level best to achieve maximum hallmarking as is permissible in the on-going circumstances from the Hallmarking Centres currently operational in

4 (2000) 5 SCC 471

their respective districts.

15. In the interim, the Respondents are directed to place on record a detailed Affidavit setting-out the step-by-step procedure it seeks to lay down, so as to effectively implement the Impugned Order. This would include detailed particulars and projections of the number of Hallmarking Centres being implemented across various districts in Maharashtra, which currently do not have Hallmarking Centre. Prior to granting the Respondents complete liberty to enforce Paragraph No.4 of the Impugned Order, we would be required to ascertain what steps will be taken by the Respondents to develop sufficient infrastructure so that there is no resultant inequality arising from the Impugned Order.

16. Lastly, at the final hearing of this Writ Petition, this Court will also consider the implication of excluding certain caratage of gold from the purview of the Impugned Order and accordingly test the constitutional validity or otherwise of the Impugned Order.

17. List the Writ Petition for further hearing and directions on 29th June, 2021.

(SURENDRA P. TAVADE, J.)

(S.J.KATHAWALLA, J.)