

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD  
WRIT PETITION NO.342 OF 2015

- 01 M/s Star Scale Repairing Centre,  
through its Proprietor -  
Shaikh Farooq Shaikh Chand  
Pasha, age: 43 years, Occ:  
Business, R/o Jalna, Tq. And  
District Jalna.
- 02 Subhashchandra Scale Merchant,  
through its Proprietor  
Subhash s/o Radhakishan Agrawal,  
age: 65 years, Occ: Business,  
R/o Jalna, Tq. & Dist. Jalna.
- 03 Sagar Scale Repairing Centre,  
through its Proprietor  
Shaikh Parvez Shaikh Chand  
Pasha, age: 35 years, Occ:Business,  
R/o Jalna, Tq. & District Jalna.
- 04 Agrawal Scale Repairing Center,  
through its Proprietor  
Gopal Radhakishan Agrawal,  
age: 45 years, Occ: Business,  
R/o as above.
- 05 India Service Scale Point,  
through its Proprietor  
Shaikh Irfan Shaikh Rafiq,  
age: 30 years, Occ: Business,  
R/o as above.

Petitioners

Versus

- 01 The State of Maharashtra.
- 02 The Controller of Legal Metrology,  
Maharashtra State,  
Government Barrack No.7,  
Free Press General Road,  
Mumbai – 400 021.

03 Deputy Controller of Legal Metrology,  
Jubilee Park, Aurangabad.

04 Assistant Controller of Legal  
Metrology, District Jalna.

Respondents

Mrs.M.A.Kulkarni, advocate for petitioners.  
Mrs.A.V.Gondhalekar, A.G.P. for Respondents.

**CORAM : R.M.BORDE &  
V.K.JADHAV, JJ.**

**Reserved on : 30<sup>th</sup> April, 2015  
Pronounced on : 09<sup>th</sup> June, 2015.**

**JUDGMENT (Per R.M.Borde, J.):**

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 Petitioners are the proprietary firms doing business of repairing of weights, measures and scales and do possess repairing licences issued by the Legal Metrology Department under the provisions of Legal Metrology Act, 2009. Petitioners are objecting to the circulars issued by the Controller of Legal Metrology, Maharashtra State, Mumbai, dated 22.10.2014 and 27.10.2014.

3 It is recorded in the circular dated 22.10.2014, that the Department issued licences under Section 28 of the Legal Metrology Act, 2009, in favour of repairers authorising them to repair the weights, measures and scales. The repairers are not entitled to collect fees prescribed for verification of the weights, measures and scales and deposit the amount with the Inspector.

The licences issued in favour of the repairers do not contain any clause authorising them to recover verification fees. It is further recorded that several complaints have been received by the Department as well as Anti Corruption Bureau in respect of amount collected by the repairers. It is further warned in the circular that if the repairers continue to collect the amount towards verification fees, appropriate action would be taken under Rule 10 of the Maharashtra Legal Metrology (Enforcement) Rules, 2011 and the licences issued to them would be cancelled. An identical circular has been issued on 27.10.2014 and the repairers are further warned of a criminal action in the event of alleged breach of conditions of licence.

4 The petitioners contend that they have been issued repairing licences under Section 23 of the Legal Metrology Act, 2009 (for short, "Act of 2009") and it is the responsibility of the repairer to repair the weights, measures or scale and submit it for verification to the Department. It is also part of the job of the repairer to re-deliver the verified, stamped and sealed weight, measure or scale to the owner. The Act of 2009 or the Rules of 2011 nowhere provide for any prohibition against the repairer to collect the amount from the owner of the weight, measure or scale and deposit the said amount or fees with the department. It is contended that in fact it is the responsibility of the repairer to maintain record in the form prescribed under Schedule IX and record fees deposited with the department for verification of the weights, measures or scales. It is, thus, suggested that it is the part of the responsibility of the licensed repairer to deposit the fees with the department and secure verification, stamping and sealing

of weights, measures and scales.

5 It is further contended that the circulars issued by the Controller are in breach of provisions of the Act of 2009 and Rules of 2011 and the Controller is not invested with the authority to issue such circulars. It is contended that merely because certain complaints are lodged against officials of the department with the Anti Corruption Bureau, cannot be a reason for imposing such prohibition against licensed repairers.

6 An affidavit-in-reply has been presented on behalf of the Respondents by In-charge Deputy Controller of Legal Metrology, Aurangabad Region, Aurangabad, controverting the contentions raised by petitioners in the petition. It is contended that petitioners are member of *Maharashtra Rajya Vajane, Mape Parvana Dharak Sanghatana*, which is a State level Trade Association and one of the petitioners – Shri Subhash Agrawal is President of Jalna District Council of Association and other petitioners are members of the Jalna District Council of Association. It is contended that a writ petition has already been presented by the said Association at Mumbai bearing Registration No.11126 of 2014 and this fact has not been disclosed in the petition. It is contended that in view of pendency of petition at the principal seat, instant petition need not be considered and is liable to be dismissed. It is further contended that the Respondents had received many complaints about exorbitant charging of repairing fees by the licensed repairers and certain complaints were also forwarded to the Anti Corruption Bureau. As a result of the complaints to the Anti Corruption Bureau, some of the officers of

the department had to face prosecution, as such, instant circulars have been issued.

7 It is further contended that Section 24(1) of the Legal Metrology Act, 2009 and Rule 16(1) of the Rules of 2011, empowers the Controller to specify the place of verification and procedure for collection of fees. The repairers are issued licences under Section 23(1) of the Act and the only duty of the repairer is to repair the weights, measures and scales provided by the owner and they do not have any entitlement to collect verification fees. It is contended that verification fees can only be collected for due verification of the weights, measures and scales, which is the duty enjoined on the Controller, Legal Metrology Department by the State under Section 24(1) of the Act. It is contended that circular dated 22.10.2014 only stresses the fact that the repairers have no right to collect verification fees and the circular dated 27.10.2014 warns the repairers of the consequences in the event of breach of the directives.

8 It is contended that the circulars have been issued after undertaking study of the prevailing system and on noticing the complaints in respect of excessive collection of fees. It is also stated that these illegal tactics lead to various complaints being tendered to the Anti Corruption Bureau against the employees of the Department by the petitioners and other repairers in the past. It is further contended that the writ petition is essentially presented to continue these *mal practices* i.e. illegality in collecting verification fees and thereby harassing the users and laying bricks for permitting corruption, which tarnishes reputation of the Legal

Metrology Department.

9 That, so far as petition presented at Mumbai by State Level Association is concerned, pendency of such petition shall not be an impediment for considering instant petition. The petitioners herein are not parties impleaded in the petition presented at Mumbai.

10 The Legal Metrology Act, 2009, is brought into force to establish and enforce standards of weights and measures, regulate trade and commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and for matters connected therewith or incidental thereto. Section 2 (p) defines "repairer", as a person who repairs a weight or measure and includes a person who adjusts, cleans, lubricates or paints any weight or measure or renders any other service to such weight or measure to ensure that such weight or measure conforms to the standards established by or under this Act. "Verification" is defined under Section 2(v), thus:

**2(v)** "verification", with its grammatical variations and cognate expressions, includes in relation to any weight or measure, the process of comparing, checking, testing or adjusting such weight or measure with a view to ensuring that such weight or measure conforms to the standards established by or under this Act and also includes re-verification and calibration;

11 Section 23 of the Act provides for prohibition on manufacture, repair or sale of weight or measure without licence, which reads thus:

**23 (1)** No person shall manufacture, repair or sell, or offer, expose or possess for repair or sale, any weight or measure unless he holds a licence issued by the Controller under sub-section (2):

Provided that no licence to repair shall be required by a manufacturer for repair of his own weight or measure in a State other than the State of manufacture of the same.

(2) For the purpose of sub-section (1), the Controller shall issue a licence in such form and manner, on such conditions, for such period and such area of jurisdiction and on payment of such fee as may be prescribed.

12 Section 24 of the Act provides for verification and stamping of weight or measure, which reads thus:

**24 (1)** Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being, or is intended or is likely to be, used by him in any transaction or for protection, shall, before putting such weight or measure into such use, having such weight or measure verified at such place and during such hours as the Controller may, by general or special order, specify in this behalf, on payment of such fees as may be prescribed.

(2) The Central Government may prescribe the kinds of weights and measures for which the verification is to be done through the Government approved Test Centre.

(3) The Government approved Test Centre shall be notified by the Central Government or the State Government, as the case may be, in

such manner, on such terms and conditions and on payment of such fee as may be prescribed.

(4) The Government approved Test Centre shall appoint or engage persons having such qualifications and experience and collect such fee on such terms and conditions for the verification of weights and measures specified under sub-section (2) as may be prescribed.

13 The State Government is invested with the powers to make Rules under Section 53 of the Act and Section 53(2)(c) relates to framing of Rules concerning the form, manner, conditions, period, area of jurisdiction and fees for issuance of licence under sub-section (2) of section 23. The Rules can be framed also in respect of fees for verification and stamping of any weight or measure under sub-section (1) of Section 24 of the Act under clause (d) of Section 53(2). The State Government, in exercise of powers under Section 53 of the Act, has framed Maharashtra Legal Metrology (Enforcement) Rules, 2011. The definition "repair" is provided under Rule 2(c), which reads thus:

**2(c)** "repair" means any adjustment, cleaning, lubrication or painting to any weight or measure or rendering any other service or replacement of any parts to such a weight or measure to ensure that such a weight or measure conforms to the standards established by or under the Act, with or without disturbing sealing of the system.

14 Licensing of manufacturer, repairer and dealer of Weight or Measure is provided under Rule 6 and sub-rule (3) of Rule 6 provides that every licence issued to a manufacturer,



repairer or dealer shall be in the appropriate form LD-3, as set out in Schedule III. The conditions of licence for repairer are provided under Rule 8, which reads thus:

**8 Conditions of licence for Repairer :- (1)**

The person in whose favour licence for repairs is issued, shall, -

(a) comply with all the relevant provisions of the Act and Rules made thereunder for the time being in force;

(b) not encourage or countenance any infringement of the provisions of the Act or the Rules made thereunder for the time being in force;

(c) Display in a conspicuous places licence issued or renewed under the Act in the premises to which it relates:

(d) comply with any general or special directions that may be given by the Controller;

(e) surrender the licence in the event of closure of business and/or cancellation of licence;

(f) (i) present the weight or measure duly repaired to the Legal Metrology Officer for undertaking verification, stamping and sealing, as specified in rule 13, before delivery to the user;

(ii) Present to the Legal Metrology Officer weight or measure which are repaired before the date on which the verification falls due, for verification, stamping and sealing before delivery to the user.

(2) Every condition prescribed after the issue of this licence shall, if notified, be binding on

the persons to whom the licence has been granted.

(3) The repairing work shall be done by the qualified person, as provided by in rule 6(11):

Provided that, nothing in this rule shall apply to the persons who have been holding a valid licence before the commencement of these rules.

(4) Any change in the constitution of the firm or qualified person, should be reported within one month to the licence issuing authority.

(5) A licence issued or renewed under this Act shall neither be saleable, assignable nor transferable.

*Explanation 1:* - The licensee shall not be deemed to have been assigned or transmitted within the meaning of this rule in the following cases, namely:-

(a) where the licensee being an individual enters into a partnership with any other person for carrying on the business concerned; but in any such case the firm may use the licence, if otherwise in force only for so long as the licensee is a member of the firm;

(b) where the licensee being a firm subsequently undergoes a change in its constitution; but in any such case the reconstituted firm may use the licence, if otherwise in force, only for so long as any partner of the original firm at the time of issuance of the licence, continues to be partner of the reconstituted firm.

*Explanation 2:-* For the purpose of Explanation 1, "firm" has the same meaning as under section 4 of the Indian Partnership Act, 1932 (9 of 1932).

(6) The Controller may cause a co-ordinated programme to be undertaken, at such a place and in such a manner as he may think fit for the establishment of maximum repairing charges for a weight or measure. The repairer shall abide to the ceiling of maximum repairing charges.

15 The Controller or such other Legal Metrology Officer authorized by him in this behalf may, if he has any reasonable cause to believe that the holder of any licence which is issued, renewed or continued under the Act has made any statement in, or in relation to, any application for the issue, renewal or continuance of the licence, which is incorrect or false in any material particular or the licensee has failed to comply any of the conditions of the licence or has contravened any provisions of the Act or any rule or order made thereunder, suspend such licence, pending the completion of any inquiry against the holder of such licence, in view of Rule 10 of the Rules. The Controller or such other Legal Metrology Officer authorised by him may also after conducting due inquiry, contemplated under Rule 10, is empowered to direct cancellation of licence granted under Section 23 of the Act. Rule 12 of the Rules provides that the manufacturer or repairer or dealer in the weight or measure shall maintain records and registers in the appropriate form set out in Schedule VIII and also submit such periodical reports or returns as may be specified. The verification and inspection of the weights and measures is provided under Rule 13(6) of the Rules, which provides that where a weight or measure is brought to the Legal Metrology Officer for verification, he may verify the same after receipt of the requisite fees. Stamping and sealing of weight or measure is provided under

Rule 14 and sub-rule (3) of Rule 14 provides that on completion of verification, stamping and sealing, the Legal Metrology Officer shall issue a certificate of verification in the form set out in Schedule IX and in case of rejected weight or measure, a separate Certificate shall be issued in the same form and the reasons of rejections against each weight or measure shall be mentioned in the form set out in Schedule X and issued to the person who has presented such weight or measure for verification.

16 The provision in respect of fees for verification is provided under Rule 15 and there is no prohibition in the said rule for deposit of fees by the licensed repairer. Rule 16 of the Rules provide for collection of fees and deposit into the Treasury, which reads thus:

**16 Collection of fees and deposit into the**

**Treasury:-** (1) Before commencing the work of verification, the Legal Metrology Officer shall inform the person concerned of the fees payable by him under these rules and shall receive the same in the manner as specified by the controller and issue a receipt in the form approved by the Controller, one copy of such receipt being kept on record:

Provided that, fees payable by a department of the Central or State Government under these rules may be realized in such manner as may be directed by the Controller.

(2) The Legal Metrology Officer shall maintain a register, in the form approved by the Controller, which shall be written up from day-to-day and shall show the amount of fees and other charges collected during the day.

(3) All payment received by the Legal Metrology Officer during the week shall be paid into the Government Treasury under the appropriate "Head of Account" on such dates or days as may be specified by the Controller from time to time, and a receipt thereof be obtained and an intimation to that effect be sent to the Controller or other officer authorized by him in this behalf.

17 On perusal of the provisions of the Act and Rules, there appears to be no prohibition for licensed repairer in depositing the fees for verification on behalf of owner of the weights, measures or the scale. The licence for repair of weight and measure is issued under Section 23 of the Act in form LD-3, as prescribed under Schedule III in accordance with Rule 6(3). The licence issued to the repairer provides for conditions of licence, as has been prescribed under Rule 8. Under Rule 8 (1)(f)(i), it is the responsibility of the repairer to present the weight or measure duly repaired to the Legal Metrology Officer for undertaking verification, stamping and sealing, as specified in Rule 13, before delivery to the user; and in view of Rule 8(1)(f)(ii), the repairer has to present to the Legal Metrology Officer weights or measures which are repaired before the date on which the verification falls due, for verification, stamping and sealing before delivery to the user.

18 Thus, it is the duty under the conditions of licence to ensure that the repaired weight or measure is duly verified, stamped or sealed before delivering the same to the user. It is obvious that the repairer, whose duty is to deliver duly verified, stamped and sealed weight and measure to the user, cannot get the verification, stamping or sealing done from the Legal Metrology

Officer without making payment of verification fees. It is illogical to contend that the licensed repairer must deliver duly stamped, verified or sealed weight and measure after repairing to its user, but he shall not deposit the fees for verification. Under Rule 12 of the Rules, the repairer is expected to maintain the records and registers in appropriate form set out in Schedule VIII and also submit periodical reports or returns as may be specified. The form set out in Schedule VIII contains a column in respect of verification fees. If, at all, a repairer is to maintain the records also in respect of verification fees, it would be illogical to contend that he cannot collect and deposit verification fees with the appropriate authority on behalf of the owner or user of the weights and measures. In the event of rejection of application for verification of weight and measure, the Legal Metrology Officer is expected to issue a communication prescribed in Schedule X of the Rules and such communication shall have to be issued to the person who has presented such weight or measure for verification. It is, thus, clear that in the event of rejection of request for verification, notice shall have to be issued to the person who has presented the weight or measure for verification including the repairer of such weights and measures so as to enable him to remove the deficiencies within seven days from the date of receipt of such notice. If, at all, the repairer is expected to remove the deficiencies within seven days from the date of receipt of notice in form Schedule X, it is unreasonable to infer that such licensed repairer is not entitled to deposit the fees for verification with the authorised officer on behalf of user of weights and measures.

of fees and deposit into the Treasury, the Legal Metrology Officer, before commencing the work of verification, shall have to inform the person concerned of the fees payable by him under these rules and shall receive the same in the manner as specified by the controller and issue a receipt in the form approved by the Controller. The "person concerned" shall obviously be either the person who is authorised to tender the weight and measure under repair for verification with the Legal Metrology Officer or the user thereof. Thus, there is no prohibition under Rule 16 also for deposit of fees by the licensed repairer. It is beyond comprehension as to how the Controller has drawn a conclusion as to the impermissibility of the licensed repairer to collect the fees for verification of the weights and measures on behalf of the user thereof and deposit the same with the officer concerned. The deposit of the fees shall obviously be in the name of the user of the weights and measures.

20 It is also surprising as to how the Controller has drawn a conclusion that such collection of fees may amount to an offence. In fact, it is the responsibility of the licensed repairer to repair the weights and measures or the scale, submit it for verification to the authorised officer and only after receiving certificate of verification, deliver the same to the user. The deposit of fees for verification shall obviously be an integral part of the process. If, at all, there are any complaints as regards overcharging of the amount, it would be open for the Respondents to initiate action under Rule 10 and impose appropriate penalty including cancellation of licence in observance of the procedure prescribed under the Act of 2009 and Rules of 2011. Merely because there are certain complaints lodged

by the users of the weights and measures and the petitioners to the Anti Corruption Bureau against the officers of the Legal Metrology Department, cannot be a ground for issuance of circulars/orders prohibiting the licensed repairers from collecting the fees and depositing the same with the authorised officer in the name of the users of the weights and measures.

21 The letters/circulars dated 22.10.2014 and 27.10.2014, impugned in the petition, issued by the Controller, Legal Metrology Department, Maharashtra State, Mumbai, deserve to be quashed and set aside and same are accordingly quashed and set aside. It would be open for the Legal Metrology Officer or the officer authorised, in that behalf, to accept the fees deposited by the licensed repairer towards verification, stamping or sealing of the weights and measures or scale on behalf of its user or the owner and issue appropriate receipt. In the event of breach of the conditions of the licence by any licensed repairers, it would be open for the respondents to initiate action and impose penalty in accordance with Rule 10 of the Rules of 2011 after observing the procedure prescribed thereunder.

22 Rule is accordingly made absolute. There shall be no order as to costs. In view of disposal of writ petition, pending Civil Applications do not survive and stand disposed of.

**V.K.JADHAV**  
**JUDGE**

adb/wp34215

**R.M.BORDE**  
**JUDGE**