State Of Jharkhand And Anr vs Govind Singh on 3 December, 2004

Equivalent citations: AIR 2005 SUPREME COURT 294, 2004 AIR SCW 6799, 2005 AIR - JHAR. H. C. R. 369, (2005) 1 JCR 1 (SC), (2005) 1 KER LT 34, 2005 CRILR(SC&MP) 106, (2005) 1 SUPREME 477, 2004 (7) SLT 393, (2004) 10 JT 349 (SC), 2005 (1) SRJ 549, 2004 (10) SCALE 174, 2004 (8) ACE 693, 2004 (3) BLJR 2340, 2004 (10) JT 349, 2005 (10) SCC 437, 2005 SCC(CRI) 1570, 2005 (1) CALCRILR 422, (2005) 25 ALLINDCAS 100 (SC), (2005) 1 BLJ 752, (2005) 1 ALLCRILR 362, (2005) 2 EASTCRIC 204, (2005) 30 OCR 498, (2005) 1 PAT LJR 207, (2005) 1 RAJ CRI C 238, (2005) 1 RECCRIR 189, (2005) 1 ALLCRIR 12, (2004) 10 SCALE 174, (2005) 1 JLJR 128, (2005) 51 ALLCRIC 296, (2005) 1 CRIMES 49, (2005) 1 SCJ 187, (2005) 1 CURCRIR 6, (2004) 8 SUPREME 678, 2005 CHANDLR(CIV&CRI) 296, 2005 (1) ALD(CRL) 398, 2005 (1) ANDHLT(CRI) 170 SC, (2005) 1 ANDHLT(CRI) 170

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Bench: Arijit Pasayat, S.H. Kapadia

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           CASE NO.:
Appeal (crl.)  1405 of 2004

PETITIONER:
State of Jharkhand and Anr.

RESPONDENT:
Govind Singh

DATE OF JUDGMENT: 03/12/2004

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
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J U D G M E N T (Arising out of SLP (Crl.)No. 343 of 2004) ARIJIT PASAYAT, J Leave granted.

The State of Jharkhand has filed this appeal against the judgment of learned Single Judge of the Jharkhand High Court at Ranchi holding that even though there was no specific provision in Section 52 (3) of the Indian Forest Act, 1927 (in short the "Act") as amended by Bihar Act 9 of 1990 (hereafter referred to as the 'Bihar Act'), a vehicle seized for alleged involvement in commission of forest offence can be released on payment of fine in lieu of confiscation.

Background facts as projected by the appellants are as follows:

> On 10.4.1997 at Barkagaon Protected Forest Area, a truck bearing No. BR 13-9041 was found loaded with 11.8 tonnes of coal. Confiscation Proceeding No.3/1997 arising out of Pelawal case No.28/97 was instituted and show cause notice was issued. The respondent filed reply to the notice. After considering the same the Divisional Forest Officer, Hazaribagh directed confiscation of the truck.
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> An appeal was preferred before the Deputy Commissioner, Hazaribagh, numbered as Case No.40/1997. By order dated 17.7.1999 the appeal was dismissed. The matter was carried in revision by the respondent before the Revisional Authority cum Secretary, Department of Forest and Environment and by order dated 3.12.2002 the revisional authority dismissed the revision. A petition under Article 226 of the Constitution of India, 1950 (in short the 'Constitution') was filed before the High Court. It was the primary stand therein that there was no prohibition in directing release of the vehicle on payment of fine in lieu of confiscation. The High Court held that there was some dispute regarding weight of coal which was being carried. It was noted that the value of the coal was not established and considering the value of coal which was being transported it would be inequitable to direct confiscation and, therefore, it was held that to meet the ends of justice the power to impose fine in lieu of confiscation can be read into under Section 52 (3) of the Act. Accordingly, a fine of Rs.50,000/- was imposed and the seizing authority was directed to release the vehicle on payment thereof.
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> In support of the appeal, learned counsel for the appellant-State submitted that the view taken by the learned Single Judge is contrary to a Division Bench's decision of Patna High Court, Ranchi Bench in the case of Dilip Kumar Pandey v. The State of Bihar and Ors. Criminal Writ Jurisdiction Case No.12 of 1997(R) where considering an identical issue it was held that there was no scope for directing release of the vehicle on payment of fine in lieu of confiscation.
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> There is no appearance on behalf of the respondent in spite of notice.
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> In order to appreciate the stand taken by learned counsel for the appellants, it would be necessary to take note of Section 52 of the Act and the State amendment by the Bihar Act.
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> "Section 52- Seizure of property liable to confiscation: (1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest Officer or Police Officer.
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> (2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be,

make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior."

"Section 52 as amended by Bihar Act Seizure and its procedure for the property liable for confiscation: (1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, arms, boats, vehicles, ropes, chains or any other article used in committing any such offence, may be seized by any Forest Officer or Police Officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, either produce the property seized before an officer not below the rank of the Divisional Forest Officer authorized by the State Government in this behalf by notification (hereinafter referred to as the authorized officer) or where it is, having regard to quantity of bulk or other genuine difficulty, not practicable to produce the property seized before the authorized officer, or where it is intended to launch criminal proceedings against the offender immediately, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his immediate superior.

(3) Subject to sub-section (5), where the authorized officer upon production before him of property seized or upon receipt of report about seizure, as the case may be, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded, confiscate forest produce so seized together with all tools, arms, boats, vehicles, ropes, chains or any other article used in committing such offence. The Magistrate having jurisdiction to try the offence concerned may, on the basis of the report of the authorized confiscating officer, cancel the registration of a vehicle used in committing the offence, the licence of the vehicle-driver and the licence of the arms. A copy of the order on confiscation shall be forwarded without undue delay to the Conservators of Forests of the forest-circle in which the forest produce, as the case may be, has been seized.

(4) No order confiscating any property shall be made under sub-section (3) unless the authorized officer-

(a) sends an intimation about initiation of proceedings for confiscation of property to the magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) issue a notice in writing to the person from whom the property is seized, and to any other person who may appear to the authorized officer to have some interest in such property;

(c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation; and

(d) gives to the officer effecting the seizure and the persons or person to whom notice has been issued under clause (b), a hearing on date to be fixed for such purposes.

(5) No order of confiscation under sub-section (3) of any tools, arms, boats, vehicles, ropes, chains or any other article (other than the forest produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorized officer that any such tools, arms, boats, vehicles, ropes, chains or other article were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of forest offence"

Learned Single Judge by the impugned judgment held that though the power to levy fine in lieu of confiscation is not there, same has to be read into the statute to fully effectuate the legislative intent. It was a case of casus omissus.

The conclusion is clearly erroneous. It is against the settled principles relating to statutory interpretation.

When the words of a Statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. [See J.P. Bansal v. State of Rajasthan (2003 (5) SCC 134] As a consequence, as construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As was noted by the Privy Council in Crawford v. Spooner (1846) 6 Moore PC1:"We cannot aid the Legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". The view was reiterated by this Court in State of Madhya Pradesh v. G.S. Dall and Flour Mills (AIR 1991 SC 772), and State of Gujarat v. Dilipbhai Nathjibhai Patel (JT 1998(2) SC 253). Speaking briefly the Court cannot reframe the legislation,

as noted in J.P. Bansal's case (supra), for the very good reason that it has no power to legislate.

It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature.

Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. The task is not easy as the "language" is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the legislature cannot be approached as the legislature, after enacting a law or Act, becomes functus officio so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the legislature retains the power to amend or repeal the law so made and can also declare its meaning, but that can be done only by making another law or statute after undertaking the whole process of law-making.

Statute being an edict of the legislature, it is necessary that it is expressed in clear and unambiguous language. In spite of Courts saying so, the draftsmen have paid little attention and they still boast of the old British jingle "I am the parliamentary draftsman. I compose the country's laws. And of half of the litigation, I am undoubtedly the cause", which was referred to by this Court in Palace Admn. Board v. Rama Varma Bharathan Thampuran (AIR 1980 SC 1187 at. P.1195). In Kirby v. Leather (1965 (2) All ER 441) the draftsmen were severely criticized in regard to Section 22(2)(b) of the (UK) Limitation Act, 1939, as it was said that the section was so obscure that the draftsmen must have been of unsound mind.

Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by "an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so". (See: Frankfurter, Some Reflections on the Reading of Statutes in "Essays on Jurisprudence", Columbia Law Review, P.51.) It is true that this Court in interpreting the Constitution enjoys a freedom which is not available in interpreting a statute and, therefore, it will be useful at this stage to reproduce what Lord Diplock said in Duport Steels Ltd. v. Sirs (1980 (1) ALL ER 529, at p.

542):

> "It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if Judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to public interest."

Where, therefore, the "language" is clear, the intention of the legislature is to be gathered from the language used. What is to be borne in mind is as to what has been said in the statute as also what has not been said. A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided, unless it is covered by the rule of exception, including that of necessity, which is not the case here. (See: Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests (AIR 1990 SC 1747 at p. 1752); Shyam Kishori Devi v. Patna Municipal Corpn. (AIR 1966 SC 1678 at p. 1682); A.R. Antulay v. Ramdas Sriniwas Nayak (1984 (2) SCC 500, at pp. 518, 519)]. Indeed, the Court cannot reframe the legislation as it has no power to legislate. [See State of Kerala v. Mathai Verghese (1986 (4) SCC 746, at p. 749); Union of India v. Deoki Nandan Aggarwal (AIR 1992 SC 96 at p.101) The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547). The view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981).

In Dr. R. Venkatchalam and Ors. etc. v. Dy. Transport Commissioner and Ors. etc. (AIR 1977 SC 842), it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain (AIR 2000 SC 1578). The legislative casus omissus cannot be supplied by judicial interpretative process.

Two principles of construction one relating to casus omissus and the other in regard to reading the statute as a whole appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danackwerts, L.J. in Artemiou v. Procopiou (1966 1 QB 878), "is not to

be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislature and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. IRC (1966 AC

557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".

It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt." "But," on the other hand, "it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See Fenton v. Hampton 11 Moore, P.C.

345). A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit proetereunt legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute - Casus omissus et oblivioni datus dispositioni communis juris relinquitur; "a casus omissus," observed Buller, J. in Jones v. Smart (1 T.R. 52), "can in no case be supplied by a court of law, for that would be to make laws."

Keeping in view the aforesaid legal principles the inevitable conclusion is that the High Court was not justified in reading into Section 52 (3) of the Act the power to direct release by imposing fine in lieu of confiscation.

The matter can be looked at from another angle. Section 68 of the Act reads as follows:

> "Section 68- Power to compound offences: (1) The State Government may, by notification in the Official Gazette, empower a Forest Officer-
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> (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in Section 62 or Section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and (b when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.
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> (2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any seized shall be released, and no further proceedings shall be taken against such person or property.

> (3) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of fifty rupees."

The said section was also amended by the State amendment. The amended provision reads as follows:

> "Section 68- Power to compound offences: (1) The State Government may, by notification in the Official Gazette, empower a Forest Officer-
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> (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in clauses (c) and (d) to Section 26, clauses (c) and (d) to Section 33 or Section 62 or Section 63, sum of money by way of compensation for the offence which such person is suspected to have committed, and
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> (b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.
>
> (2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any seized shall be released, and no further proceedings shall be taken against such person or property.
>
> (3) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of an Assistant Conservator of Forest."

The power to act in terms of Section 68 of the Act is limited to offences other than those specified in clauses (c) and (d) to Section 26, clauses) and (d) to Section 33 or Section 62 or Section 63. Sub-section (1)(b) of Section 68 is also relevant. It provides that where any property has been seized as liable for confiscation, an officer empowered by the State Government has power to release the same on payment of the value thereof as estimated by such officer. The officer has to be empowered in the official gazette by the State Government. To act in terms of the position the value of the property seized or as liable for confiscation has to be estimated. Therefore, on a combined reading of Section 52 and Section 68 of the Act as amended by the Bihar Act, the vehicle as liable for confiscation may be released on payment of the value of the vehicle and not otherwise. This is certainly a discretionary power, exercise of which would depend upon the gravity of the offence. The officer is empowered to release the vehicle on the payment of the value thereof as compensation. This discretion has to be judicially exercised. Section 68 of the Act deals with power to compound offences. It goes without saying that when the discretionary power is conferred, the same has to be exercised in a judicial manner after recording of reasons by the concerned officer as to why the compounding was necessary to be done. In the instant case, learned Single Judge did not refer to the

power available under Section 68 of the Act and on the contrary, introduced the concept of reading into Section 52 of the Act, a power to levy fine in lieu of confiscation which is impermissible. In the impugned judgment nowhere the value of the truck which was liable for confiscation was indicated. It appears that the first appellate Court and the revisional authority did not consider it to be a fit case where the vehicle was to be released and were of the considered view that confiscation was warranted. They took specific note of the fact that fake and fabricated documents were produced to justify possession of the seized articles. In any event the respondent had not made any prayer for compounding in terms of Section 68 of the Act.

Confiscation in terms of sub-section (3) of Section 52 of the Act is the immediate statutory action which provides that when forest offence as defined in Section 2(3) of the Act is believed to have been committed in respect of the seized vehicle, the authorized officer may confiscate the forest produce and the vehicle involved in the transportation of the forest produce. Foundation for action in terms of Section 52(3) of the Act is the belief entertained by the concerned officer that forest offence has been committed. It is not the value of the forest produce which is relevant, but the value of the article liable for confiscation. In the instant case it is the truck carrying the forest produce.

Judgment of the High Court is clearly indefensible, deserves to be set aside which we direct. The appeal is allowed.