

P. Ramachandra Rao v. State of Karnataka

(2002) 4 SCC 578

R.C. LAHOTI, J. - No person shall be deprived of his life or his personal liberty except according to procedure established by law - declares Article 21 of the Constitution. Life and liberty, the words employed in shaping Article 21, by the founding fathers of the Constitution, are not to be read narrowly in the sense drearily dictated by dictionaries; they are organic terms to be construed meaningfully. Embarking upon the interpretation thereof, feeling the heart-throb of the preamble, deriving strength from the directive principles of State policy and alive to their constitutional obligation, the courts have allowed Article 21 to stretch its arms as wide as it legitimately can. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and retrial - in short everything commencing with an accusation and expiring with the final verdict - the two being respectively the *terminus a quo* and *terminus ad quem* - of the journey which an accused must necessarily undertake once faced with an implication. The constitutional philosophy propounded as right to speedy trial has though grown in age by almost two and a half decades, the goal sought to be achieved is yet a far-off peak. Myriad fact situations bearing testimony to denial of such fundamental right to the accused persons, on account of failure on the part of prosecuting agencies and the executive to act, and their turning an almost blind eye at securing expeditious and speedy trial so as to satisfy the mandate of Article 21 of the Constitution have persuaded this Court in devising solutions which go to the extent of almost enacting by judicial verdict bars of limitation beyond which the trial shall not proceed and the arm of law shall lose its hold. In its zeal to protect the right to speedy trial of an accused, can the court devise and almost enact such bars of limitation though the legislature and the statutes have not chosen to do so - is a question of far-reaching implications which has led to the constitution of this Bench of seven-Judge strength.

2. In Criminal Appeal No. 535 of 2000, the appellant was working as an Electrical Superintendent in Mangalore City Corporation. For the check period 1-5-1961 to 25-8-1987, he was found to have amassed assets disproportionate to his known sources of income. Charge-sheet accusing him of offences under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 was filed on 15-3-1994. The accused appeared before the Special Court and was enlarged on bail on 6-6-1994. Charges were framed on 10-8-1994 and the case proceeded for trial on 8-11-1994. However, the trial did not commence. On 23-2-1999, the learned Special Judge who was seized of the trial directed the accused to be acquitted as the trial had not commenced till then and the period of two years had elapsed which obliged him to acquit the accused in terms of the directions of this Court in ***Raj Deo Sharma v. State of Bihar*** [(1998) 7 SCC 507 {***Raj Deo Sharma (I)*** }]. The State of Karnataka through the DSP Lokayukta, Mangalore preferred an appeal before the High Court putting in issue the acquittal of the accused. The learned Single Judge of the High Court, vide the

impugned order, allowed the appeal, set aside the order of acquittal and remanded the case to the trial court, forming an opinion that a case charging an accused with corruption was an exception to the directions made in *Raj Deo Sharma (I)* as clarified by this Court in *Raj Deo Sharma (II) v. State of Bihar* [(1999) 7 SCC 604]. Strangely enough the High Court not only condoned a delay of 55 days in filing the appeal against acquittal by the State but also allowed the appeal itself - both without even issuing notice to the accused. The aggrieved accused has filed this appeal by special leave. Similar are the facts in all the other appeals. Shorn of details, suffice it to say that in all the appeals the accused persons who were facing corruption charges, were acquitted by the Special Courts for failure of commencement of trial in spite of lapse of two years from the date of framing of the charges and all the State appeals were allowed by the High Court without noticing the respective accused persons.

3. The appeals came up for hearing before a Bench of three learned Judges who noticed the common ground that the appeals in the High Court were allowed by the learned Judge thereat without issuing notice to the accused and upon this ground alone, of want of notice, the appeals hereat could be allowed and the appeals before the High Court restored to file for fresh disposal after notice to the accused but it was felt that a question arose in these appeals which was likely to arise in many more and therefore the appeals should be heard on their merits. In the order dated 19-9-2000, the Bench of three learned Judges stated:

“The question is whether the earlier judgments of this Court, principally, in *‘Common Cause’ A Registered Society v. Union of India* [(1996) 4 SCC 33], *‘Common Cause’ A Registered Society v. Union of India* [(1996) 6 SCC 775], *Raj Deo Sharma v. State of Bihar* and *Raj Deo Sharma (II) v. State of Bihar* would apply to prosecutions under the Prevention of Corruption Act and other economic offences.

Having perused the judgments aforementioned, we are of the view that these appeals should be heard by a Constitution Bench. We take this view because we think that it may be necessary to synthesise the various guidelines and directions issued in these judgments. We are also of the view that a Constitution Bench should consider whether time-limits of the nature mentioned in some of these judgments can, under the law, be laid down.”

4. On 25-4-2001, the appeals were heard by the Constitution Bench and during the course of hearing, attention of the Constitution Bench was invited to the decision of an earlier Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak* [(1992) 1 SCC 225] and the four judgments referred to in the order of reference dated 19-9-2000 by the Bench of three learned Judges. It appears that the learned Judges of the Constitution Bench were of the opinion that the directions made in the two *Common Cause* cases and the two *Raj Deo Sharma* cases ran counter to the Constitution Bench directions in *Abdul Rehman Antulay* case the latter being a five-Judge Bench decision, the appeals deserved to be heard by a Bench of seven learned Judges. The relevant part of the order dated 25-4-2001 reads as under:

“The Constitution Bench judgment in *A.R. Antulay* case holds that ‘it is neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of all criminal proceedings’. Even so, the four judgments aforementioned lay down such

time-limits. Two of them also lay down to which class of criminal proceedings such time-limits should apply and to which class they should not.

We think, in these circumstances, that a Bench of seven learned Judges should consider whether the dictum aforementioned in *A.R. Antulay* case still holds the field; if not, whether the general directions of the kind given in these judgments are permissible in law and should be upheld.

Having regard to what is to be considered by the Bench of seven learned Judges, notice shall issue to the Attorney-General and to the Advocates-General of the States.

The papers shall be placed before the Hon'ble the Chief Justice for appropriate directions. Having regard to the importance of the matter, the Bench may be constituted at an early date."

5. On 20-2-2002, the Court directed, "Common Cause", the petitioner in the two *Common Cause* cases which arose out of writ petitions under Article 32 of the Constitution, heard and decided by this Court as public interest litigations, to be noticed. "Common Cause" has responded and made appearance through counsel.

6. We have heard Shri R.N. Trivedi, the learned Additional Solicitor-General appearing for the Attorney-General for India, Mr Ranjit Kumar, Senior Advocate assisted by Ms Binu Tamta, Advocate for the appellants, Mr Sanjay R. Hegde and Mr Satya Mitra, Advocates for the respondents, Mr S. Muralidhar, Advocate for "Common Cause" and such other Advocates-General and Standing Counsel who have chosen to appear for the States.

7. We shall briefly refer to the five decisions cited in the order of reference as also to a few earlier decisions so as to highlight the issue posed before us.

8. The width of vision cast on Article 21, so as to perceive its broad sweep and content, by the seven-Judge Bench of this Court in *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] inspired a declaration of law, made on 12-2-1979 in *Hussainara Khatoon (I) v. Home Secy., State of Bihar* [(1980) 1 SCC 81] that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty, except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be "reasonable, fair and just"; and therefrom flows, without doubt, the right to speedy trial. The Court said:

"No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21."

Many accused persons tormented by unduly lengthy trial or criminal proceedings, in any forum whatsoever were enabled, by *Hussainara Khatoon (I)*, statement of law, in successfully maintaining petitions for quashing of charges, criminal proceedings and/or conviction, on making out a case of violation of Article 21 of the Constitution. Right to speedy trial and fair procedure has passed through several milestones on the path of constitutional jurisprudence.

In *Maneka Gandhi* this Court held that the several fundamental rights guaranteed by Part III required to be read as components of one integral whole and not as separate channels. The reasonableness of law and procedure, to withstand the test of Articles 21, 19 and 14, must be right and just and fair and not arbitrary, fanciful or oppressive, meaning thereby that speedy trial must be reasonably expeditious trial as an integral and essential part of the fundamental right of life and liberty under Article 21. Several cases marking the trend and development of law applying *Maneka Gandhi* and *Hussainara Khatoon (I)* principles to myriad situations came up for the consideration of this Court by a Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak (A.R. Antulay)*. The proponents of right to speedy trial strongly urged before this Court for taking one step forward in the direction and prescribing time-limits beyond which no criminal proceeding should be allowed to go on, advocating that unless this was done, *Maneka Gandhi* and *Hussainara Khatoon (I)* exposition of Article 21 would remain a mere illusion and a platitude. Invoking of the constitutional jurisdiction of this Court so as to judicially forge two termini and lay down periods of limitation applicable like a mathematical formula, beyond which a trial or criminal proceeding shall not proceed, was resisted by the opponents submitting that the right to speedy trial was an amorphous one, something less than other fundamental rights guaranteed by the Constitution. The submissions made by proponents included that the right to speedy trial flowing from Article 21 to be meaningful, enforceable and effective ought to be accompanied by an outer limit beyond which continuance of the proceedings will be violative of Article 21. It was submitted that Section 468 of the Code of Criminal Procedure applied only to minor offences but the court should extend the same principle to major offences as well. It was also urged that a period of 10 years calculated from the date of registration of crime should be placed as an outer limit wherein shall be counted the time taken by the investigation.

9. The Constitution Bench, in *A.R. Antulay* case, heard elaborate arguments. The Court, in its pronouncement, formulated certain propositions, 11 in number, meant to serve as guidelines. It is not necessary for our purpose to reproduce all those propositions. Suffice it to state that in the opinion of the Constitution Bench (i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial; (iii) who is responsible for the delay and what factors have contributed towards delay are relevant factors. Attendant circumstances, including nature of the offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on — what is called the systemic delays must be kept in view; (iv) each and every delay does not necessarily prejudice the accused as some delays indeed work to his advantage. Guidelines (8), (9), (10) and (11) are relevant for our purpose and hence are extracted and reproduced hereunder:

“(8) Ultimately, the court has to balance and weigh the several relevant factors - ‘balancing test’ or ‘balancing process’ - and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the

offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order - including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded - as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be a qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.”

10. During the course of its judgment also, the Constitution Bench made certain observations which need to be extracted and reproduced:

“83. But then speedy trial or other expressions conveying the said concept - are necessarily relative in nature. One may ask - speedy means, how speedy? How long a delay is too long? *We do not think it is possible to lay down any time schedules for conclusion of criminal proceedings.* The nature of offence, the number of accused, the number of witnesses, the workload in the particular court, means of communication and several other circumstances have to be kept in mind. ... it is *neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of all criminal proceedings.* It is not necessary to do so for effectuating the right to speedy trial. We are also *not satisfied that without such an outer limit, the right becomes illusory.*”

“[E]ven apart from Article 21 courts in this country have been cognizant of undue delays in criminal matters and wherever there was inordinate delay or where the proceedings were pending for too long and any further proceedings were deemed to be *oppressive and unwarranted*, they were put an end to by making appropriate orders.”
(emphasis supplied)

11. In 1986, “Common Cause” - a registered society, espousing public causes, preferred a petition under Article 32 of the Constitution of India seeking certain directions. By a brief order in ‘**Common Cause’ A Registered Society v. Union of India [Common Cause (I)]**, a two-Judge Bench of this Court issued two sets of directions: one, regarding bail, and the other, regarding quashing of trial. Depending on the quantum of imprisonment provided for

several offences under the Indian Penal Code and the period of time which the accused have already spent in jail, the undertrial accused confined in jails were directed to be released on bail or on personal bond subject to such conditions as the Court may deem fit to impose in the light of Section 437 CrPC. The other set of directions directed the trial in pending cases to be terminated and the accused to be discharged or acquitted depending on the nature of offence by reference to (i) the maximum sentence inflictible - whether fine only or imprisonment, and if imprisonment, then the maximum set out in the law, and (ii) the period for which the case has remained pending in the criminal court.

12. A perusal of the directions made by the Division Bench shows the cases having been divided into two categories: (i) traffic offences, and (ii) cases under IPC or any other law for the time being in force. The Court directed the trial courts to close such cases on the occurrence of following event and the period of delay:

Category (i): traffic offences

The Court directed the cases to be closed and the accused to be discharged on lapse of more than two years on account of non-serving of summons to the accused or for any other reason whatsoever.

Category (ii): cases under IPC or any other law for the time being in force

The Court directed that in the following sub-categories if the trial has not commenced and the period noted against each sub-category has elapsed then the case shall be closed and the accused shall be discharged or acquitted -

Nature of the cases

**Period of delay i.e.
trial not commenced for**

Cases compoundable with the permission of the court	More than two years
Cases pertaining to offences which are non-cognizable and bailable	More than two years
Cases in connection with offences punishable with fine only and are not of recurring nature	More than one year
Cases punishable with imprisonment up to one year, with or without fine	More than one year
Cases pertaining to offences punishable with imprisonment up to three years with or without fine	More than two years

The period of pendency was directed to be calculated from the date the accused are summoned to appear in court. The Division Bench, vide direction 4, specified certain categories of cases to which its directions would not be applicable. Vide direction 5, this Court directed the offences covered by direction 4 to be tried on priority basis and observance of this direction being monitored by the High Courts. All the directions were made applicable not only to the cases pending on the day but also to cases which may be instituted thereafter.

13. Abovesaid directions in ***Common Cause (I)*** were made on 1-5-1996. Not even a period of 6 months had elapsed when on 15-10-1996, Shri Sheo Raj Purohit, a public-spirited advocate addressed a letter petition to this Court, inviting its attention to certain consequences

flowing from the directions made by this Court in *Common Cause (I)* and which were likely to cause injustice to the serious detriment of the society and could result in encouraging dilatory tactics adopted by the accused. A two-Judge Bench of this Court, which was the same as had issued directions in *Common Cause (I)*, made three directions which had the effect of clarifying/modifying the directions in *Common Cause (I)*. The first direction clarified that the time spent in criminal proceedings, wholly or partly, attributable to the dilatory tactics or prolonging of trial by action of the accused, or on account of stay of criminal proceedings secured by such accused from higher courts shall be excluded in counting the time-limit regarding pendency of criminal proceedings. Second direction defined the *terminus a quo* i.e. what would be the point of commencement of trial while working out “pendency of trials” in Sessions Court, warrant cases and summons cases. In the third direction, the list of cases, by reference to nature of offence to which directions in *Common Cause (I)* would not apply, was expanded.

14. In *Raj Deo Sharma (I)* an accused charged with offences under Sections 5(2) and 5(1)(c) of the Prevention of Corruption Act, 1947 came up to this Court, having failed in the High Court, seeking quashing of prosecution against him on the ground of violation of right to speedy trial. Against him the offence was registered in 1982 and charge-sheet was submitted in 1985. The accused appeared on 24-4-1987 before the Special Judge. Charges were framed on 4-3-1993. Until 1-6-1995, only 3 out of 40 witnesses were examined. The three-Judge Bench of this Court, which heard the case, set aside the order passed by the High Court and sent the matter back to the Special Judge for passing appropriate orders in the light of its judgment. Vide para 17, the three-Judge Bench issued five further directions purporting to be supplemental to the propositions laid down in *A.R. Antulay*. The directions need not be reproduced and suffice it to observe that by dividing the offence into two categories — those punishable with imprisonment for a period not exceeding 7 years and those punishable with imprisonment for a period exceeding 7 years, the Court laid down periods of limitation by reference to which either the prosecution evidence shall be closed or the accused shall be released on bail. So far as the trial for offences is concerned, for the purpose of making directions, the Court categorized the offences and the nature and period of delay into two, which may be set out in a tabular form as under:

<u>Nature of offence</u>	<u>Nature and period of delay</u>
Offence punishable with imprisonment for a period <i>not exceeding seven years</i> , whether the accused is in jail or not.	Completion of <i>two</i> years from the date of recording the plea of the accused prosecution has examined all the witnesses or not within the said period of two years
Offence punishable with imprisonment for a period <i>exceeding seven years</i> , whether the accused is in jail or not.	Completion of <i>three</i> years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period.

15. The consequence which would follow on completion of two or three years, as abovesaid, is, the Court directed, that the trial court shall close the prosecution evidence and

can proceed to the next step of trial. In respect of the second category, the Court added a rider by way of exception stating:

“(U)nless for very exceptional reasons to be recorded and in the interest of justice the court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time-limit” (of three years).

The period of inability for completing prosecution evidence attributable to conduct of accused in protracting the trial and the period during which trial remained stayed by orders of the court or by operation of law was directed to be excluded from calculating the period at the end of which the prosecution evidence shall be closed. Further, the Court said that the directions made by it shall be in addition to and without prejudice to the directions issued in *Common Cause (I)* as modified in *Common Cause (II)*.

16. *Raj Deo Sharma (I)* came up once again for consideration of this Court in *Raj Deo Sharma v. State of Bihar* hereinafter *Raj Deo Sharma (II)*. This was on an application filed by Central Bureau of Investigation (CBI) for clarification (and also for some modification) in the directions issued. The three-Judge Bench which heard the matter consisted of K.T. Thomas, J. and M. Srinivasan, J. who were also on the Bench issuing directions in *Raj Deo Sharma (I)* and M.B. Shah, J. who was not on the Bench in *Raj Deo Sharma (I)*. In the submission of CBI the directions of the Court made in *Raj Deo Sharma (I)* ran counter to *A.R. Antulay* and did not take into account the time taken by the Court on account of its inability to carry on day-to-day trial due to pressure of work. CBI also pleaded for the directions in *Raj Deo Sharma (I)* being made prospective only i.e. period prior to the date of directions in *Raj Deo Sharma (I)* being excluded from consideration. All the three learned Judges wrote separate judgments. K.T. Thomas, J. by his judgment, to avert “possibility of miscarriage of justice”, added a rider to the directions made in *Raj Deo Sharma (I)* that an additional period of one year can be claimed by the prosecution in respect of prosecutions which were pending on the date of judgment in *Raj Deo Sharma (I)* and the court concerned would be free to grant such extension if it considered it necessary in the interest of administration of criminal justice. M. Srinivasan, J. in his separate judgment, assigning his own reasons, expressed concurrence with the opinion expressed and the only clarification ordered to be made by K.T. Thomas, J. and placed on record his express disagreement with the opinion recorded by M.B. Shah, J.

17. M.B. Shah, J. in his dissenting judgment noted the most usual causes for delay in delivery of criminal justice as discernible from several reported cases travelling up to this Court and held that the remedy for the causes of delay in disposal of criminal cases lies in effective steps being taken by the judiciary, the legislature and the State Governments, all the three. The dangers behind constructing time-limit barriers by judicial dictum beyond which a criminal trial or proceedings could not proceed, in the opinion of M.B. Shah, J., are (i) it would affect the smooth functioning of the society in accordance with law and finally the Constitution. The victims left without any remedy would resort to taking revenge by unlawful means resulting in further increase in the crimes and criminals. People at large in the society would also feel unsafe and insecure and their confidence in the judicial system would be shaken. Law would lose its deterrent effect on criminals; (ii) with the present strength of Judges and infrastructure available with criminal courts it would be almost impossible for the

available criminal courts to dispose of the cases within the prescribed time-limit; (iii) prescribing such time-limits may run counter to the law specifically laid down by the Constitution Bench in *Antulay* case. In the fore-quoted thinking of M.B. Shah, J., we hear the echo of what the Constitution Bench spoke in *Kartar Singh v. State of Punjab* (1994) 3 SCC 569:

“351. No doubt, liberty of a citizen must be zealously safeguarded by the courts; nonetheless the courts while dispensing justice in cases like the one under the TADA Act, should keep in mind not only the liberty of the accused but also the interest of the victim and their near and dear and above all the collective interest of the community and the safety of the nation so that the public may not lose faith in the system of judicial administration and indulge in private retribution.”

18. At the end, M.B. Shah, J. opined that order dated 8-10-1998 made in *Raj Deo Sharma (I)* requires to be held in abeyance and the State Government and Registrars of the High Courts ought to be directed to come up with specific plans for the setting up of additional courts/special courts (permanent/ad hoc) to cope up with the pending workload on the basis of available figures of pending cases also by taking into consideration the criteria for disposal of criminal cases prescribed by various High Courts. In conclusion, the Court directed the application filed by CBI to be disposed of in terms of the majority opinion.

19. A perception of the cause for delay at the trial and in conclusion of criminal proceedings is necessary so as to appreciate whether setting up bars of limitation entailing termination of trial or proceedings can be justified. The root cause for delay in dispensation of justice in our country is poor judge-population ratio. The Law Commission of India in its 120th Report on Manpower Planning in Judiciary (July 1987), based on its survey, regretted that in spite of Article 39-A being added as a major directive principle in the Constitution by the Forty-second Amendment (1976), obliging the State to secure such operation of legal system as promotes justice and to ensure that opportunities for securing justice are not denied to any citizen, several reorganisation proposals in the field of administration of justice in India have been basically patchwork, ad hoc and unsystematic solutions to the problem. The judge-population ratio in India (based on the 1971 census) was only 10.5 Judges per million population while such ratio was 41.6 in Australia, 50.9 in England, 75.2 in Canada and 107 in United States. The Law Commission suggested that India required 107 judges per million of the Indian population; however, to begin with, the judge strength needed to be raised to fivefold i.e. 50 judges per million population in a period of five years but in any case, not going beyond ten years. Touch of sad sarcasm is difficult to hide when the Law Commission observed (in its 120th Report) that adequate reorganisation of the Indian judiciary is at the one and at the same time everybody's concern and, therefore, nobody's concern. There are other factors contributing to the delay at the trial. In *A.R. Antulay* case vide para 83, the Constitution Bench has noted that in spite of having proposed to go on with the trial of a case, five days a week and week after week, it may not be possible to conclude the trial for reasons viz. (1) non-availability of the counsel, (2) non-availability of the accused, (3) interlocutory proceedings, and (4) other systemic delays. In addition, the Court noted that in certain cases there may be a large number of witnesses and in some offences, by their very nature, the evidence may be lengthy. In *Kartar Singh v. State of Punjab*, another Constitution Bench

opined that the delay is dependent on the circumstances of each case because reasons for delay will vary, such as (i) delay in investigation on account of the widespread ramifications of the crime and its designed network either nationally or internationally, (ii) the deliberate absence of witness or witnesses, (iii) crowded dockets on the file of the court etc. In **Raj Deo Sharma (II)** in the dissenting opinion of M.B. Shah, J., the reasons for delay have been summarized as, (1) dilatory proceedings; (2) absence of effective steps towards radical simplification and streamlining of criminal procedure; (3) multitier appeals/revision applications and diversion to disposal of interlocutory matters; (4) heavy dockets, mounting arrears, delayed service of process; and (5) judiciary, starved by executive by neglect of basic necessities and amenities, enabling smooth functioning.

20. Several cases coming to our notice while hearing appeals, petitions and miscellaneous petitions (such as for bail and quashing of proceedings) reveal, apart from inadequate judge strength, other factors contributing to the delay at the trial. Generally speaking, these are: (i) absence of, or delay in appointment of, Public Prosecutors proportionate with the number of courts/cases; (ii) absence of or belated service of summons and warrants on the accused/witnesses; (iii) non-production of undertrial prisoners in the court; (iv) presiding Judges proceeding on leave, though the cases are fixed for trial; (v) strikes by members of the Bar; and (vi) counsel engaged by the accused suddenly declining to appear or seeking an adjournment for personal reasons or personal inconvenience. It is common knowledge that appointments of Public Prosecutors are politicized. By convention, Government Advocates and Public Prosecutors were appointed by the executive on the recommendation of or in consultation with the head of the judicial administration at the relevant level but gradually the executive has started bypassing the merit-based recommendations of, or process of consultation with, District and Sessions Judges. For non-service of summons/orders and non-production of undertrial prisoners, the usual reasons assigned are shortage of police personnel and police people being busy in VIP duties or law and order duties. These can hardly be valid reasons for not making the requisite police personnel available for assisting the courts in expediting the trial. The members of the Bar shall also have to realize and remind themselves of their professional obligation - legal and ethical, that having accepted a brief for an accused, they have no justification to decline or avoid appearing at the trial when the case is taken up for hearing by the court. All these factors demonstrate that the goal of speedy justice can be achieved by a combined and result-oriented collective thinking and action on the part of the legislature, the judiciary, the executive and representative bodies of members of the Bar.

21. Is it at all necessary to have limitation bars terminating trials and proceedings? Is there no effective mechanism available for achieving the same end? The Criminal Procedure Code, as it stands, incorporates a few provisions to which resort can be had for protecting the interest of the accused and saving him from unreasonable prolixity or laxity at the trial amounting to oppression. Section 309, dealing with power to postpone or adjourn proceedings, provides generally for every inquiry or trial, being proceeded with as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same to be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. Explanation 2 to Section 309 confers power on the

court to impose costs to be paid by the prosecution or the accused, in appropriate cases, and putting the parties on terms while granting an adjournment or postponing of proceedings. This power to impose costs is rarely exercised by the courts. Section 258, in Chapter XX Cr PC, on trial of summons cases, empowers the Magistrate trying summons cases instituted otherwise than upon complaint, for reasons to be recorded by him, to stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, to pronounce a judgment of acquittal, and in any other case, release the accused, having effect of discharge. This provision is almost never used by the courts. In appropriate cases, inherent power of the High Court, under Section 482 can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any court, or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases, the High Courts have exercised their jurisdiction under Section 482 CrPC for quashing of first information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the Constitution. The Constitution Bench in *A.R. Antulay* case referred to such power, vesting in the High Court and held that it was clear that even apart from Article 21, the courts can take care of undue or inordinate delays in criminal matters or proceedings if they remain pending for too long and putting an end, by making appropriate orders, to further proceedings when they are found to be oppressive and unwarranted.

22. Legislation is that source of law which consists in the declaration of legal rules by a competent authority. When Judges by judicial decisions lay down a new principle of general application of the nature specifically reserved for the legislature they may be said to have legislated, and not merely declared the law. *Salmond on Principles of Jurisprudence* (12th Edn.) goes on to say -

“we must distinguish law-making by legislators from law-making by the courts. Legislators can lay down rules purely for the future and without reference to any actual dispute; the courts, insofar as they create law, can do so only in application to the cases before them and only insofar as is necessary for their solution. Judicial law-making is incidental to the solving of legal disputes; legislative law-making is the central function of the legislator.”

It is not difficult to perceive the dividing line between permissible legislation by judicial directives and enacting law - the field exclusively reserved for the legislature. We are concerned here to determine whether in prescribing various periods of limitation, adverted to above, the Court transgressed the limit of judicial legislation.

23. Bars of limitation, judicially engrafted, are, no doubt, meant to provide a solution to the aforementioned problems. But a solution of this nature gives rise to greater problems like scuttling a trial without adjudication, stultifying access to justice and giving easy exit from the portals of justice. Such general remedial measures cannot be said to be apt solutions. For two

reasons we hold such bars of limitation uncalled for and impermissible: first, because it tantamounts to impermissible legislation - an activity beyond the power which the Constitution confers on the judiciary, and secondly, because such bars of limitation fly in the face of law laid down by the Constitution Bench in *A.R. Antulay* case and, therefore, run counter to the doctrine of precedents and their binding efficacy.

24. In a monograph "*Judicial Activism and Constitutional Democracy in India*", commended by Professor Sir William Wade, Q.C. as a "small book devoted to a big subject", the learned author, while recording appreciation of judicial activism, sounds a note of caution-

"(I)t is plain that the judiciary is the least competent to function as a legislative or the administrative agency. For one thing, courts lack the facilities to gather detailed data or to make probing enquiries. Reliance on advocates who appear before them for data is likely to give them partisan or inadequate information. On the other hand if courts have to rely on their own knowledge or research it is bound to be selective and subjective. Courts also have no means for effectively supervising and implementing the aftermath of their orders, schemes and mandates. Moreover, since courts mandate for isolated cases, their decrees make no allowance for the differing and varying situations which administrators will encounter in applying the mandates to other cases. Courts have also no method to reverse their orders if they are found unworkable or requiring modification".

Highlighting the difficulties which the courts are likely to encounter if embarking in the fields of legislation or administration, the learned author advises

"the Supreme Court could have well left the decision-making to the other branches of government after directing their attention to the problems rather than itself entering the remedial field".

25. The primary function of the judiciary is to interpret the law. It may lay down principles, guidelines and exhibit creativity in the field left open and unoccupied by legislation. Patrick Devlin in *The Judge* (1979) refers to the role of the Judge as law-maker and states that there is no doubt that historically, Judges did make law, at least in the sense of formulating it. Even now when they are against innovation, they have never formally abrogated their powers; their attitude is: "We could if we would but we think it better not." But as a matter of history, did the English Judges of the golden age make law? They decided cases which worked up into principles. The Judges, as Lord Wright once put it in an unexpectedly picturesque phrase, proceeded "from case to case, like the ancient Mediterranean mariners, hugging the coast from point to point and avoiding the dangers of the open sea of system and science". The golden age Judges were not rationalisers and, except in the devising of procedures, they were not innovators. They did not design a new machine capable of speeding ahead; they struggled with the aid of fictions and bits of procedural string to keep the machine on the road.

26. Professor S.P. Sathe, in his recent work (year 2002) *Judicial Activism in India - Transgressing Borders and Enforcing Limits*, touches the topic "*Directions: A New Form of Judicial Legislation*". Evaluating legitimacy of judicial activism, the learned author has cautioned against court "legislating" exactly in the way in which a legislature legislates and

he observes by reference to a few cases that the guidelines laid down by court, at times, cross the border of judicial law-making in the realist sense and trench upon legislating like a legislature.

“Directions are either issued to fill in the gaps in the legislation or to provide for matters that have not been provided by any legislation. The court has taken over the legislative function not in the traditional interstitial sense but in an overt manner and has justified it as being an essential component of its role as a constitutional court.”

“In a strict sense these are instances of judicial excessivism that fly in the face of the doctrine of separation of powers. The doctrine of separation of powers envisages that the legislature should make law, the executive should execute it, and the judiciary should settle disputes in accordance with the existing law. In reality such watertight separation exists nowhere and is impracticable. Broadly, it means that one organ of the State should not perform a function that essentially belongs to another organ. While law-making through interpretation and expansion of the meanings of open-textured expressions such as ‘due process of law’, ‘equal protection of law’, or ‘freedom of speech and expression’ is a legitimate judicial function, the making of an entirely new law ... through directions ... is not a legitimate judicial function.”

27. Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, in our opinion, cannot be done by judicial directives and within the arena of the judicial law-making power available to constitutional courts, howsoever liberally we may interpret Articles 32, 21, 141 and 142 of the Constitution. The dividing line is fine but perceptible. Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time-limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought to the notice of the court. This is permissible for the judiciary to do. But it may not, like the legislature, enact a provision akin to or on the lines of Chapter XXXVI of the Code of Criminal Procedure, 1973.

28. The other reason why the bars of limitation enacted in *Common Cause (I)*, *Common Cause (II)* and *Raj Deo Sharma (I)* and *Raj Deo Sharma (II)* cannot be sustained is that these decisions, though two- or three-Judge Bench decisions, run counter to that extent to the dictum of the Constitution Bench in *A.R. Antulay* case and therefore cannot be said to be good law to the extent they are in breach of the doctrine of precedents. The well-settled principle of precedents which has crystallised into a rule of law is that a Bench of lesser strength is bound by the view expressed by a Bench of larger strength and cannot take a view in departure or in conflict therefrom. We have in the earlier part of this judgment extracted and reproduced passages from *A.R. Antulay* case. The Constitution Bench turned down the fervent plea of proponents of right to speedy trial for laying down time-limits as bar beyond which a criminal proceeding or trial shall not proceed and expressly ruled that it was neither advisable nor practicable (and hence not judicially feasible) to fix any time-limit for trial of

offences. Having placed on record the exposition of law as to right to speedy trial flowing from Article 21 of the Constitution, this Court held that it was necessary to leave the rule as elastic and not to fix it in the frame of defined and rigid rules. It must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case if the quantum of time consumed up to a given point of time amounted to violation of Article 21, and if so, then to terminate the particular proceedings, and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted, as suggested in *A.R. Antulay*. In *Kartar Singh* case the Constitution Bench while recognising the principle that the denial of an accused's right of speedy trial may result in a decision to dismiss the indictment or in reversing of a conviction, went on to state:

“92. Of course, no length of time is per se too long to pass scrutiny under this principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors - (1) length of delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay.”

29. For all the foregoing reasons, we are of the opinion that in *Common Cause* case (I) [as modified in *Common Cause (II)*] and *Raj Deo Sharma (I)* and *(II)* the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:

(1) The dictum in *A.R. Antulay* case is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in *A.R. Antulay* case adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.

(3) The guidelines laid down in *A.R. Antulay* case are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in *Common Cause (I)*, *Raj Deo Sharma (I)* and *Raj Deo Sharma (II)* could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in *Common Cause (I)*, *Raj Deo Sharma case (I)* and *(II)*. At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts

and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in *A.R. Antulay* case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

(5) The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be a better protector of such right than any guidelines. In appropriate cases, jurisdiction of the High Court under Section 482 CrPC and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions.

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary — quantitatively and qualitatively - by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.

We answer the questions posed in the orders of reference dated 19-9-2000 and 26-4-2001 in the abovesaid terms.

30. The appeals are allowed. The impugned judgments of the High Court are set aside. As the High Court could not have condoned the delay in filing of the appeals and then allowed the appeals without noticing the respective accused-respondents before the High Court, now the High Court shall hear and decide the appeals afresh after noticing the accused-respondent before it in each of the appeals and consistently with the principles of law laid down hereinabove. Before we may part, we would like to make certain observations *ex abundanti cautela*.

31. Firstly, we have dealt with the directions made by this Court in *Common Cause (I) and (II)* and *Raj Deo Sharma (I) and (II)* regarding trial of cases. The directions made in those cases regarding enlargement of accused persons on bail are not the subject-matter of this reference or these appeals and we have consciously abstained from dealing with the legality, propriety or otherwise of directions in regard to bail. This is because different considerations arise before the criminal courts while dealing with termination of a trial or proceedings and while dealing with right of accused to be enlarged on bail.

32. Secondly, though we are deleting the directions made respectively by two- and three-Judge Benches of this Court in the cases under reference, for reasons which we have already stated, we should not, even for a moment, be considered as having made a departure from the law as to speedy trial and speedy conclusion of criminal proceedings of whatever nature and at whichever stage before any authority or the court. It is the constitutional obligation of the State to dispense speedy justice, more so in the field of criminal law, and paucity of funds or resources is no defence to denial of right to justice emanating from Articles 21, 19 and 14 and the preamble of the Constitution as also from the directive principles of State policy. It is high time that the Union of India and the various States realize their constitutional obligation and do something concrete in the direction of strengthening the justice delivery system. We need

to remind all concerned of what was said by this Court in *Hussainara Khatoon (IV) v. Home Secy., State of Bihar* [(1980) 1 SCC 98]:

The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. The State may have its financial constraints and its priorities in expenditure, but, ‘the law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty’, or administrative inability.

33. Thirdly, we are deleting the bars of limitation on the twin grounds that it amounts to judicial legislation, which is not permissible, and because they run counter to the doctrine of binding precedents. The larger question of powers of this Court to pass orders and issue directions in public interest or in social action litigations, specially by reference to Articles 32, 141, 142 and 144 of the Constitution, is not the subject-matter of the reference before us and this judgment should not be read as an interpretation of those articles of the Constitution and laying down, defining or limiting the scope of the powers exercisable thereunder by this Court.

34. And lastly, it is clarified that this decision shall not be a ground for reopening a case or proceeding by setting aside any such acquittal or discharge as is based on the authority of *Common Cause* and *Raj Deo Sharma* cases and which has already achieved finality and reopen the trial against the accused therein.

* * * * *

Padma Sundara Rao v. State of T.N.

(2002) 3 SCC 533

ARJIT PASAYAT, J. - 3. The controversy involved lies within a very narrow compass, that is, whether after quashing of notification under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act”) fresh period of one year is available to the State Government to issue another notification under Section 6. In the case at hand such a notification issued under Section 6 was questioned before the Madras High Court which relied on the decision of a three-Judge Bench in *N. Narasimhaiah v. State of Karnataka* (1996) 3 SCC 88 and held that the same was validly issued.

4. Learned counsel for the appellants placed reliance on an unreported decision of this Court in *A.S. Naidu v. State of T.N.*, SLPs (C) Nos. 11353-55 of 1988 wherein a Bench of three Judges held that once a declaration under Section 6 of the Act has been quashed, fresh declaration under Section 6 cannot be issued beyond the prescribed period of the notification under sub-section (1) of Section 4 of the Act. It has to be noted that there is another judgment of two learned Judges in *Oxford English School v. Govt. of T.N.* [(1995) 5 SCC 206], which takes a view similar to that expressed in *A.S. Naidu* case. However, in *State of Karnataka v. D.C. Nanjudaiah* [(1996) 10 SCC 619] view in *Narasimhaiah* case was followed and it was held that the limitation of 3 years for publication of declaration would start running from the date of receipt of the order of the High Court and not from the date on which the original publication under Section 4(1) came to be made.

5. Learned counsel for the appellant submitted that a bare reading of Section 6 of the Act as amended by Act 68 of 1984, leaves no manner of doubt that the declaration under Section 6 has to be issued within the specified time and merely because the court has quashed the declaration concerned an extended time period is not to be provided. Explanation 1 (appended to the section) specifically deals with exclusion of periods in certain specified cases. If the view expressed in *Narasimhaiah* case is accepted, it would mean reading something into the statute which is not there, and in effect would mean legislation by the court whereas it is within the absolute domain of the legislature. Per contra, learned counsel appearing for the State of Tamil Nadu submitted that the logic indicated in *Narasimhaiah* case is in line with the statutory intent. Placing reliance on the decision in *Director of Inspection of Income Tax (Investigation) v. Pooran Mal and Sons* [(1975) 2 SCR 104], it was submitted that extension of the time-limit is permissible. Section 6(1) of the Act so far as relevant reads as follows:

“6. Declaration that land is required for a public purpose. - (1) Subject to the provisions of Part VII of this Act, when the appropriate government is satisfied, after considering the report, if any, made under Section 5-A sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders, and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4 sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section 5-A sub-section (2):

Provided that no declaration in respect of any particular land covered by a notification under Section 4 sub-section (1) -

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation. - In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4 sub-section (1), is stayed by an order of a court shall be excluded.”

7. As the factual scenario shows, in the case at hand the notification under Section 4(1) of the Act was issued and the declaration was made prior to the substitution of the existing proviso to Section 6(1) by Act 68 of 1984 with effect from 24-8-1984. In other words, the notification under Section 4(1) was issued before the commencement of the Land Acquisition (Amendment) Act, 1984, but after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 [replaced by the Land Acquisition (Amendment and Validation) Act, 1967 (Act 13 of 1967)]. But the substituted proviso was in operation on the date of the impugned judgment. In terms of the proviso, the declaration cannot be made under Section 6 in respect of any land covered by the notification under Section 4(1) of the Act after the expiry of three years or one year from the date of its publication, as the case may be. The proviso deals with two types of situations. It provides for different periods of limitation depending upon the question whether: (i) the notification under Section 4(1) was published after commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, but before commencement of the Land Acquisition (Amendment) Act, 1984, or (ii) such notification was issued after the Land Acquisition (Amendment) Act, 1984. In the former case, the period is three years whereas in the latter case it is one year. Undoubtedly, the notification under Section 6(1) was made and published in the Official Gazette within the period of three years prescribed under the proviso thereto, and undisputedly, the same had been quashed by the High Court in an earlier proceeding. It has to be noted that Explanation 1 appended to Section 6(1) provides that in computing the period of three years, the period during which any action or proceeding to be taken in pursuance of the notification under Section 4(1), is stayed by an order of the court, shall be excluded. Under Tamil Nadu Act 41 of 1980, w.e.f. 20-1-1967, the expression used is “action or proceeding ... is held up on account of stay or injunction”, which is contextually similar.

9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a

legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in **Herrington v. British Railways Board** [*Sub nom British Railways Board v. Herrington* (1972) 1 All ER 749 (HL)]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.

10. What appears to have weighed with the three-Judge Bench in **Narasimhaiah** case is set out in paragraph 12 of the judgment, which reads as under:

“12. Having considered the respective contentions, we are of the considered view that if the construction as put up by the learned counsel for the appellants is given acceptance i.e. it should be within one year from the last of the dates of publication under Section 4(1), the public purpose would always be frustrated. It may be illustrated thus: In a given case where the notification under Section 4(1) was published, dispensing with the enquiry under Section 5-A and declaration was published within one month and as the urgency in the opinion of the Government was such that it did not brook the delay of 30 days and immediate possession was necessary, but possession was not taken due to dilatory tactics of the interested person and the court ultimately finds after two years that the exercise of urgency power was not warranted and so it was neither valid nor proper and directed the Government to give an opportunity to the interested person and the State to conduct an enquiry under Section 5-A, then the exercise of the power pursuant to the direction of the court will be fruitless as it would take time to conduct the enquiry. If the enquiry is dragged for obvious reasons, declaration under Section 6(1) cannot be published within the limitation from the original date of the publication of the notification under Section 4(1). A valid notification under Section 4(1) becomes invalid. On the other hand, after conducting enquiry as per court order and, if the declaration under Section 6 is published within one year from the date of the receipt of the order passed by the High Court, the notification under Section 4(1) becomes valid since the action was done pursuant to the orders of the court and compliance with the limitation prescribed in clauses (i) and (ii) of the first proviso to sub-section (1) of the Act would be made.”

11. It may be pointed out that the stipulation regarding the urgency in terms of Section 5-A of the Act has no role to play when the period of limitation under Section 6 is reckoned. The purpose for providing the period of limitation seems to be the avoidance of inconvenience to a person whose land is sought to be acquired. Compensation gets pegged from the date of notification under Section 4(1). Section 11 provides that the valuation of the land has to be done on the date of publication of notification under Section 4(1). Section 23 deals with matters to be considered in determining the compensation. It provides that the market value of the land is to be fixed with reference to the date of publication of the notification under Section 4(1) of the Act. The prescription of time-limit in that background is, therefore, peremptory in nature. In **Ram Chand v. Union of India** [(1994) 1 SCC 44], it was held by this Court that though no period was prescribed, action within a reasonable time was warranted. The said case related to a dispute which arose before prescription of specific periods. After the quashing of declaration, the same became non est and was effaced. It is

fairly conceded by learned counsel for the respondents that there is no bar on issuing a fresh declaration after following the due procedure. It is, however, contended that in case a fresh notification is to be issued, the market value has to be determined on the basis of the fresh notification under Section 4(1) of the Act and it may be a costly affair for the State. Even if it is so, the interest of the person whose land is sought to be acquired, cannot be lost sight of. He is to be compensated for acquisition of his land. If the acquisition sought to be made is done in an illogical, illegal or irregular manner, he cannot be made to suffer on that count.

12. The rival pleas regarding rewriting of statute and *casus omissus* need careful consideration. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. 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".

13. In *D.R. Venkatchalam v. Dy. Transport Commr* [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 preconceived 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.

14. 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. The legislative *casus omissus* cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in *Narasimhaiah* case. In *Nanjundaiah* case the period was further stretched to have the time period run from date of service of the High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clause (i) and/or clause (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the legislative intent.

15. 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 Danckwerts, L.J., in *Artemiou v. Procopiou* [(1965) 3 All ER 539, 544], "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 legislation 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.

16. The plea relating to applicability of the stare decisis principles is clearly unacceptable. The decision in **K. Chinnathambi Gounder** [AIR 1980 Mad 251], was rendered on 22-6-1979 i.e. much prior to the amendment by the 1984 Act. If the legislature intended to give a new lease of life in those cases where the declaration under Section 6 is quashed, there is no reason why it could not have done so by specifically providing for it. The fact that the legislature specifically provided for periods covered by orders of stay or injunction clearly shows that no other period was intended to be excluded and that there is no scope for providing any other period of limitation. The maxim *actus curiae neminem gravabit* highlighted by the Full Bench of the Madras High Court has no application to the fact situation of this case.

17. The view expressed in **Narasimhaiah** case and **Nanjudaiah** case is not correct and is overruled while that expressed in **A.S. Naidu** case and **Oxford** case is affirmed.

18. There is, however, substance in the plea that those matters which have attained finality should not be reopened. The present judgment shall operate prospectively to the extent that cases where awards have been made and the compensations have been paid, shall not be reopened, by applying the ratio of the present judgment. The appeals are accordingly disposed of and the subsequent notifications containing declaration under Section 6 of the Act are quashed.

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D. M., Aravali Golf Club v. Chander Hass

2007 (14) SCALE 1

A.K. MATHUR and MARKANDEY KATJU, JJ. -**ORDER**

3. This appeal by special leave is directed against the judgment and order dated 17th February, 2006 passed by a learned Single Judge of the High Court of Punjab and Haryana in R.S.A. No.666/2006 whereby the learned Single Judge has affirmed the judgment and decree passed by the First Appellate Court.

4. The brief facts which are necessary for the disposal of the present appeal are that the plaintiffs (respondents in this appeal) were appointed as Mali (gardener) in the service of the defendant-appellant, which is a golf club run by the Haryana Tourism Corporation in the year 1989 and 1988 respectively on daily wages. Subsequently in the year 1989 they were told to perform the duties of Tractor Drivers, though there was no post of tractor driver in the employer's establishment. However for a number of years they continued to be paid wages for the post of Mali.

5. Thereafter on a recommendation made by the Head Office, the appellants started paying them wages of tractor driver on daily wage basis, as per rates recommended by the Deputy Commissioner. Though they continued to work for about a decade as tractor drivers, their services were regularized against the post of Mali in the year 1999 and not as tractor driver. When despite representations their grievance was not redressed, the respondents herein filed civil suit in the month of April, 2001 claiming regularization against the posts of tractor driver. Their claim was rejected by the Trial Court which observed that there was no post of tractor driver in the establishment, and the suit was dismissed. The Trial Court held that plying a tractor is part and parcel of the job of Mali in a Golf Club, since the Golf Field of the Club is vast and needs to be maintained with mechanical gadgets.

6. Aggrieved against the said order of dismissal of the suit, the respondents herein preferred an appeal before the Additional District Judge, Faridabad. Their appeal was accepted and the judgment and decree of the Trial Court was set aside. The First Appellate Court observed that the defendants were taking the work of tractor driver from the plaintiffs since 13.8.1999, and hence it directed the defendants to get the post of tractor driver sanctioned, and to regularize the plaintiffs on that post.

7. Thereafter the Divisional Manager, Aravali Golf Club filed a second appeal before the High Court of Punjab and Haryana. The learned Single Judge held that the post of tractor driver should be created as there is no hitch in not creating the posts of drivers especially when tractors were available and there existed need to use those tractors. It was also observed by the learned Single Judge that simply by relying upon technicalities the State authorities cannot be allowed to suppress the individuals and to deny their lawful rights. The learned Single Judge also held that no substantial question of law arose in the matter. Hence, the second appeal was dismissed and the judgment of the First Appellate Court was upheld.

Aggrieved against the said judgment of the learned Single Judge, the appellants are in appeal before us.

8. The plaintiff-respondents admitted in the plaint that they were appointed as Mali. In the suit the plaintiff-respondents stated that they were working as tractor driver at Aravali Golf Club. Initially they were engaged on daily wages. Thereafter their services were regularized on the post of Mali (gardener) instead of tractor driver. The respondents filed a representation before the concerned authorities for regularizing them on the post of Tractor Driver, but that was not done since there was no post of tractor driver. Therefore, the respondents filed a suit.

9. The suit was contested by the defendants-appellants. The appellants in their written statement submitted that the plaintiffs were appointed as Mali on a daily wage basis on 9.10.1989. The respondent No.1 had earlier filed Writ Petition No.6216/1991 for regularizing his services. The Hon'ble High Court disposed of the said writ petition by passing the order directing the respondent No.1 to make a representation against the termination of his services and the appellants herein were restrained from terminating the services of the respondent No.1 till his representation was decided. The writ petition was accordingly disposed of.

10. In pursuance of the said order the respondent No.1 made representation for regularization of his service on 2.5.1991. The plaintiff-respondent was informed vide order dated 14.5.1991 that there was no post of tractor driver and his case for regularization would be considered as and when sanctioned post of the tractor driver will be available.

11. The plaintiff-respondent was paid wages of tractor driver from August 1990 to 11.5.1999 on daily wage basis on D.C. rate as he was asked to work as a tractor driver. He was also informed that whenever a post of tractor driver was created, his case for appointment of tractor driver will be considered. In the meanwhile services of plaintiff No.1 was regularized as Mali vide order dated 11.5.1999 which was duly accepted by him without any protest. Similar is the case of respondent No.2 herein. He was engaged as Mali on daily wage basis w.e.f. 1.9.1988 and his services were also regularized as Mali vide order dated 11.5.1999.

12. In the written statement in the suit the appellants took preliminary objection that as there is no sanctioned post of tractor driver and hence there is no question of their being appointed on the post of tractor driver. It was also asserted in the written statement that as and when the post of tractor driver will be available their cases will be considered in accordance with law. On the basis of these pleadings, several issues were framed and a finding was recorded by the Trial Court that as there is no sanctioned post of tractor driver, the plaintiffs cannot be regularized in the said post. This is a finding of fact recorded by the Trial Court and it was never disputed at any stage. Aggrieved against the said judgment the respondents herein filed an appeal and the learned First Appellate Court without going into the merit of the matter set aside the judgment and decree of the Trial Court and directed creation of the post of tractor driver, and regularization of the respondents on the said post. Against the said order of the First Appellate Court, the appellants herein preferred a second appeal before the High Court of Punjab and Haryana. The learned Single Judge has affirmed the judgment and order of the First Appellate Court.

13. Learned counsel for the appellants submitted that there is no post of tractor driver, and therefore, there is no question of regularizing the respondents in the said post. It is not disputed that there is no sanctioned post of tractor driver in the appellant's establishment. Learned counsel for the respondents has also not been able to show that there are any sanctioned posts of tractor driver.

14. Since there is no sanctioned post of tractor driver against which the respondents could be regularized as tractor driver, the direction of the First Appellate Court and the learned Single Judge to create the post of tractor driver and regularizing the services of the respondents against the said newly created posts was in our opinion completely beyond their jurisdiction.

15. The Court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the Court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organization. This Court has time and again pointed out that the creation of a post is an executive or legislative function and it involves economic factors. Hence the Courts cannot take upon themselves the power of creation of a post. Therefore, the directions given by the High Court and First Appellate Court to create the posts of tractor driver and regularize the services of the respondents against the said posts cannot be sustained and are hereby set aside.

16. Consequently, this appeal is allowed and the judgment and order of the High Court as well as that of the First Appellate Court are set aside and the judgment of the Trial Court is upheld. The suit is dismissed. No costs.

17. Before parting with this case we would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are repeatedly coming across cases where Judges are unjustifiably trying to perform executive or legislative functions. In our opinion this is clearly unconstitutional. In the name of judicial activism Judges cannot cross their limits and try to take over functions which belong to another organ of the State.

18. Judges must exercise judicial restraint and must not encroach into the executive or legislative domain vide *Indian Drugs & Pharmaceuticals Ltd. v. The Workman of Indian Drugs & Pharmaceuticals Ltd.* (2007)1 SCC 408 and *S.C. Chandra v. State of Jharkhand*, JT 2007 (10) 4 SC 272.

19. Under our Constitution, the Legislature, Executive and Judiciary all have their own broad spheres of operation. Ordinarily it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like Emperors. There is broad separation of powers under the Constitution and each organ of the State ' the legislature, the executive and the judiciary ' must have respect for the others and must not encroach into each others domains.

21. The theory of separation of powers first propounded by the French thinker Montesquieu (in his book *The Spirit of Laws*) broadly holds the field in India too. In chapter XI of his book 'The Spirit of Laws' Montesquieu writes :

“When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the judicial power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.

There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.”

We fully agree with the view expressed above Montesquieu's warning in the passage above quoted is particularly apt and timely for the Indian Judiciary today, since very often it is rightly criticized for 'over-reach' and encroachment into the domain of the other two organs.

22. In *Tata Cellular v. Union of India* [AIR 1996 SC 11], this Court observed that the modern trend points to judicial restraint in administrative action. The same view has been taken in a large number of other decisions also, but it is unfortunate that many courts are not following these decisions and are trying to perform legislative or executive functions. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimization of the Judges' preferences. The Court must not embarrass the administrative authorities and must realize that administrative authorities have expertise in the field of administration while the Court does not. In the word of Chief Justice Neely:

“I have very few illusions about my own limitations as a judge. I am not an accountant, electrical engineer, financier, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator.”

23. In *Ram Jawaya v. State of Punjab* [AIR 1955 SC 549, a Constitution Bench of this Court observed:

The Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption by one organ or part of the State, of functions that essentially belong to another.

17. Before adverting to the controversy directly involved in these appeals we may have a fresh look on the inter se functioning of the three organs of democracy under our

Constitution. Although the doctrine of separation of powers has not been recognized under the Constitution in its absolute rigidity but the constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will, they have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self imposed discipline of judicial restraint.

18. Frankfurter, J. of the U.S. Supreme Court dissenting in the controversial expatriation case of *Trop v. Dulles* [1958 (356) US 86] observed as under:

“All power is, in Madison's phrase, 'of an encroaching nature'. Judicial powers is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self restraint.

Rigorous observance of the difference between limits of power and wise exercise of power 'between questions of authority and questions of prudence' requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a disciplined will to adhere to the difference. It is not easy to stand aloof and allow want of wisdom to prevail to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic. That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorized the judges to sit in judgment on the wisdom of what Congress and the Executive Branch do.”

19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers.

25. Unfortunately, despite these observations in the above mentioned decisions of this Court, some courts are still violating the high constitutional principle of separation of powers as laid down by Montesquieu. As pointed out by Hon'ble Mr. Justice J. S. Verma, the former CJI, in his *Dr. K.L. Dubey Lecture*:

“Judiciary has intervened to question a 'mysterious car' racing down the Tughlaq Road in Delhi, allotment of a particular bungalow to a Judge, specific bungalows for the Judges' pool, monkeys capering in colonies, stray cattle on the streets, clearing public conveniences, levying congestion charges at peak hours at airports with heavy traffic, etc. under the threat of use of contempt power to enforce compliance of its orders. Misuse of the contempt power to force railway authorities to give reservation in a train is an extreme instance.”

26. Recently, the Courts have apparently, if not clearly, strayed into the executive domain or in matters of policy. For instance, the orders passed by the High Court of Delhi in recent times dealt with subjects ranging from age and other criteria for nursery admissions, unauthorized schools, criteria for free seats in schools, supply of drinking water in schools, number of free beds in hospitals on public land, use and misuse of ambulances, requirements for establishing a world class burns ward in the hospital, the kind of air Delhities breathe, begging in public, the use of sub-ways, the nature of buses we board, the legality of constructions in Delhi, identifying the buildings to be demolished, the size of speed-breakers on Delhi roads, auto-rickshaw over-charging, growing frequency of road accidents and enhancing of road fines etc. In our opinion these were matters pertaining exclusively to the executive or legislative domain. If there is a law, Judges can certainly enforce it, but Judges cannot create a law and seek to enforce it.

27. For instance, the Delhi High Court directed that there can be no interview of children for admissions in nursery schools. There is no statute or statutory rule which prohibits such interviews. Hence the Delhi High Court has by a judicial order first created a law (which was wholly beyond its jurisdiction) and has then sought to enforce it. This is clearly illegal, for Judges cannot legislate vide *Union of India v. Deoki Nandan Agarwal* [AIR 1992 SC 96]. In *V.K. Reddy v. State of Andhra Pradesh* [2006 (2) JT 361], this Court observed 'The Judges should not proclaim that they are playing the role of law maker merely for an exhibition of judicial valour'. Similarly, the Court cannot direct the legislature to make a particular law vide *Suresh Seth v. Commissioner, Indore Municipal Corporation* [AIR 2006 SC 767], *Bal Ram Bali v. Union of India* [2007 (10) JT 509], but this settled principle is also often breached by Courts.

28. The *Jagadambika Pal* case of 1998, involving the U.P. Legislative Assembly, and the *Jharkhand Assembly* case of 2005, are two glaring examples of deviations from the clearly provided constitutional scheme of separation of powers. The interim orders of this Court, as is widely accepted, upset the delicate constitutional balance among the Judiciary, Legislature and the Executive, and was described Hon. Mr. J.S. Verma, the former CJI, as judicial aberrations, which he hoped that the Supreme Court will soon correct.

29. Hon'ble Justice A.S. Anand, former Chief Justice of India has recently observed : 'Courts have to function within the established parameters and constitutional bounds.

Decisions should have a jurisprudential base with clearly discernible principles. Courts have to be careful to see that they do not overstep their limits because to them is assigned the sacred duty of guarding the Constitution. Policy matters, fiscal, educational or otherwise, are thus best left to the judgment of the executive. The danger of the judiciary creating a multiplicity of rights without the possibility of adequate enforcement will, in the ultimate analysis, be counter productive and undermine the credibility of the institution. Courts cannot 'create rights' where none exists nor can they go on making orders which are incapable of enforcement or violative of other laws or settled legal principles. With a view to see that judicial activism does not become 'judicial adventurism', the courts must act with caution and proper restraint. They must remember that judicial activism is not an unguided missile ' failure to bear this in mind would lead to chaos. Public adulation must not sway the judges and personal aggrandizement must be eschewed. It is imperative to preserve the sanctity and credibility of judicial process. It needs to be remembered that courts cannot run the government. The judiciary should act only as an alarm bell; it should ensure that the executive has become alive to perform its duties".

30. The justification often given for judicial encroachment into the domain of the executive or legislature is that the other two organs are not doing their jobs properly. Even assuming this is so, the same allegation can then be made against the judiciary too because there are cases pending in Courts for half-a-century as pointed out by this Court in **Rajindera Singh v. Prem Mai** (Civil Appeal No. 1307/2001) decided on 23 August, 2007.

31. If the legislature or the executive are not functioning properly it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfill their expectations, or by other lawful methods e.g. peaceful demonstrations. The remedy is not in the judiciary taking over the legislative or executive functions, because that will not only violate the delicate balance of power enshrined in the Constitution, but also the judiciary has neither the expertise nor the resources to perform these functions.

32. Of the three organs of the State, the legislature, the executive, and the judiciary, only the judiciary has the power to declare the limits of jurisdiction of all the three organs. This is a great power and hence must never be abused or misused, but should be exercised by the judiciary with the utmost humility and self-restraint.

33. Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the State. It accomplishes this in two ways. First, judicial restraint not only recognizes the equality of the other two branches with the judiciary, it also fosters that equality by minimizing inter-branch interference by the judiciary. In this analysis, judicial restraint may also be called judicial respect, that is, respect by the judiciary for the other coequal branches. In contrast, judicial activism's unpredictable results make the judiciary a moving target and thus decreases the ability to maintain equality with the co-branches. Restraint stabilizes the judiciary so that it may better function in a system of inter-branch equality.

34. Second, judicial restraint tends to protect the independence of the judiciary. When courts encroach into the legislative or administrative fields almost inevitably voters,

legislators, and other elected officials will conclude that the activities of judges should be closely monitored. If judges act like legislators or administrators it follows that judges should be elected like legislators or selected and trained like administrators. This would be counterproductive. The touchstone of an independent judiciary has been its removal from the political or administrative process. Even if this removal has sometimes been less than complete, it is an ideal worthy of support and one that has had valuable effects.

35. The constitutional trade 'off for independence is that judges must restrain themselves from the areas reserved to the other separate branches. Thus, judicial restraint complements the twin, overarching values of the independence of the judiciary and the separation of powers.

36. In *Lochner v. New York* [198 US 45(1905)], Mr. Justice Holmes of the U.S. Supreme Court in his dissenting judgment criticized the majority of the Court for becoming a super legislature by inventing a 'liberty of contract' theory, thereby enforcing its particular laissez 'faire economic philosophy. Similarly, in his dissenting judgment in *Griswold v. Connecticut* [381 U.S. 479], Mr. Justice Hugo Black warned that 'unbounded judicial creativity would make this Court a day-to-day Constitutional Convention'. In *The Nature of the Judicial Process* Justice Cardozo remarked : 'The Judge is not a Knight errant, roaming at will in pursuit of his own ideal of beauty and goodness'. Justice Frankfurter has pointed out that great judges have constantly admonished their brethren of the need for discipline in observing their limitations (see Frankfurter's *Some Reflections on the Reading of Statutes*).

37. In this connection we may usefully refer to the well-known episode in the history of the U.S. Supreme Court when it dealt with the New Deal Legislation of President Franklin Roosevelt. When President Roosevelt took office in January 1933 the country was passing through a terrible economic crisis, the Great Depression. To overcome this, President Roosevelt initiated a series of legislation called the New Deal, which were mainly economic regulatory measures. When these were challenged in the U.S. Supreme Court the Court began striking them down on the ground that they violated the due process clause in the U.S. Constitution. As a reaction, President Roosevelt proposed to reconstitute the Court with six more Judges to be nominated by him. This threat was enough and it was not necessary to carry it out. The Court in 1937 suddenly changed its approach and began upholding the laws. 'Economic due process met with a sudden demise.

38. The moral of this story is that if the judiciary does not exercise restraint and over-stretches its limits there is bound to be a reaction from politicians and others. The politicians will then step in and curtail the powers, or even the independence, of the judiciary (in fact the mere threat may do, as the above example demonstrates). The judiciary should, therefore, confine itself to its proper sphere, realizing that in a democracy many matters and controversies are best resolved in non-judicial setting.

39. We hasten to add that it is not our opinion that judges should never be 'activist'. Sometimes judicial activism is a useful adjunct to democracy such as in the School Segregation and Human Rights decisions of the U.S. Supreme Court vide *Brown v. Board of Education* [347 U.S. 483 (1954)], *Miranda v. Arizona* [410 U.S. 113], *Roe v. Wade* [384 U.S. 436], etc. or the decisions of our own Supreme Court which expanded the scope of

Articles 14 and 21 of the [Constitution of India, 1950](#). This, however, should be resorted to only in exceptional circumstances when the situation forcefully demands it in the interest of the nation or the poorer and weaker sections of society but always keeping in mind that ordinarily the task of legislation or administrative decisions is for the legislature and the executive and not the judiciary.

40. In *Dennis v. United States* (United States Supreme Court Reports 95 Law Ed. Oct. 1950 Term U.S. 340-341) Mr. Justice Frankfurter observed:

“Courts are not representative bodies. They are not designed to be a good reflex of a democratic society. Their judgment is best informed, and therefore, most dependable, within narrow limits. Their essential quality is detachment, founded on independence. History teaches that the independence of the judiciary is jeopardized when courts become embroiled in the passions of the day and assume primary responsibility in choosing between competing political, economic and social pressures.”

41. In view of the above discussion we are clearly of the view that both the High Court and First Appellate Court acted beyond their jurisdiction in directing creation of posts of tractor driver to accommodate the respondents.

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Tej Kiran Jain v. N. Sanjiva Reddy

(1970) 2 SCC 272

M. HIDAYATULLAH, C.J. - This is an appeal from the order, August 4, 1969, of a Full Bench of the High Court of Delhi; rejecting a plaint filed by the six appellants claiming a decree for Rs 26,000/- as damages for defamatory statements made by Shri Sanjiva Reddy (former Speaker of the Lok Sabha), Shri Y. B. Chavan (Home Minister) and three members of Parliament on the floor of the Lok Sabha during a Calling Attention Motion. The High Court held that no proceedings could be taken in a Court of law in respect of what was said on the floor of Parliament in view of Article 105(2) of the Constitution. The High Court, however, certified the case as fit for appeal to this Court under Article 133(i)(a) of the Constitution and this appeal has been brought.

2. Notice of the lodgment of the appeal was issued to the respondents in due course but they have not appeared. The Union Government which joined, at its request, as a party in the High Court alone appeared through the Attorney-General. We have not considered it necessary to hear the Union Government.

3. The facts of the case, in so far as they are relevant to our present purpose, may be briefly stated. The appellants claim to be the admirers and followers of Jagaduru Shankaracharya of Goverdan Peeth, Puri. In March, 1969, a World Hindu Religious Conference was held at Patna. The Shankaracharya took part in it and is reported to have observed that untouchability was in harmony with the tenets of Hinduism and that no law could stand in its way and to have walked out when the National Anthem was played.

4. On April 2, 1969 Shri Narendra Kumar Salve, M. P. (Betui) moved a Calling Attention Motion in the Lok Sabha and gave particulars of the happening. A discussion followed and the respondents execrated the Shankaracharya. According to the appellants, the respondents:

“gave themselves up to the use of language which was more common place than serious, more lax than dignified, more unparliamentary than sober and jokes and puns were bandied around the playful spree, and his Holiness Jagadguru Shankaracharya Ananta Shri Vihushit Swami Shri Niranjan Deva Teertha of Govardhan Peeth, Puri, was made to appear as a superous (sic) dog.”

The appellants who hold the Shankaracharya in high esteem felt scandalized and brought the action for damages placing the damages at Rs 26,000. The plaint was rejected as the High Court held that it had no jurisdiction to try the suit.

5. Article 105 of the Constitution, which defines the powers, privileges and immunities of Parliament and its Members, provides:

“105. (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in Parliament or any committee

thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges, and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, and at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise of Parliament or any Committee thereof as they apply in relation to members of Parliament.”

6. The High Court held that in view of clause (2) of the Article no proceedings could lie in any Court in Parliament and the plaint must, therefore, be rejected.

7. Mr Lekhi in arguing this appeal drew our attention to an observation of this Court in *Special Reference No. 1 of 1964* [(1965) 1 SCR 413, 455], where this Court dealing with the provisions of Article 212 of the Constitution pointed out that the immunity under that Article was against an alleged irregularity of procedure but not against an illegality, and contended that the same principle should be applied here to determine whether what was said was outside the discussion on a Calling Attention Motion. According to him the immunity granted by the second clause of the one hundred and fifth article was to what was relevant to the business of Parliament and not to something which was utterly irrelevant.

8. In our judgment it is not possible to read the provisions of the article in the way suggested. The article means what it says in language which could not be plainer. The article confers immunity inter alia in respect of “anything said.....in Parliament”. The word ‘anything’ is of the widest import and is equivalent to ‘everything’. The only limitation arises from the words ‘in Parliament’ which means during the sitting of Parliament and in the course of the business of Parliament. We are concerned only with speeches in Lok Sabha. Once it was proved that Parliament was sitting and Its business was being transacted, anything said during the course of that business was immune from proceedings in any Court this immunity is not only complete but is as it should be. It is of the essence of parliamentary system of Government that people’s representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The Courts have no say in the matter and should really have none.

9. Mr Lekhi attempted to base arguments upon the analogy of an Irish case and another from Massachusetts reported in May’s Parliamentary Practice. In view of the clear provisions of our Constitution we are not required to act on analogies of other legislative bodies. The decision under appeal was thus correct. The appeal fails and is dismissed.

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Jugalkishore v. Raw Cotton Co.

AIR 1955 SC 376

S. R. DAS J. - The facts leading up to this appeal are few and simple. Two persons named Mahomedali Habib and Sakerkhanoo Mahomedali Habib used to carry on business as merchants and pucca 'adatias' in bullion and cotton at Bombay under the name and style of Habib and Sons. In 1948 that firm instituted a suit in the Bombay City Civil Court, being Summary Suit No. 233 of 1948, against the present appellant Jugalkishore Saraf, (A Hindu inhabitant carrying on business at Bombay) for the recovery of Rs. 7,113-7-0 with interest at 6 percent per annum said to be due by him to the firm in respect of certain transactions in gold and silver effected by the firm as pucca 'adatia'.

On 7-2-1949 when that summary suit was still pending a document was executed whereby it was agreed that the two partners would transfer and Messrs. Raw cotton Company, Limited, (hereinafter called the respondent company) would accept the transfer of, 'interalia', all book and other debts due to them in connection with their business in Bombay and full benefit of all securities for the debts and all other property to which they were entitled in connection with the said business. The respondent company did not take steps under O. 22, R. 10, Civil P. C. to get themselves substituted as plaintiffs in the place and stead of Habib and Sons, the plaintiffs on record, but allowed the suit to be continued in the name of the original plaintiffs.

On 15-12-1949 a decree was passed in the summary suit for the sum of Rs. 8,018-7-0 for the debt and interest and the sum of Rs. 410 for costs of the suit, aggregating to Rs. 8,428-7-0, and for further interest at 4 per cent. Per annum from the date of the decree until payment. Habib and Sons being the plaintiffs on record the decree was passed in their favour.

On or about 25-4-1951 the respondent company presented before the Bombay City be an application for execution under O. 21, R. 11, Civil P.C. In the last column of the tabular statement, under the heading "The mode in which the assistance of the Court is required", the respondent company prayed that the Court "be pleased to declare the Applicants the assignees of the decree as the decretal debt along with other debts had been transferred by the plaintiffs to the Applicants by a deed of assignment dated 7-2-1949.

There was, in that column, no specification of any of the modes in which the assistance of the Court might be required as indicated in Clause (j) of O. 21, R. 11 of the Code. On 10-5-1951 the Bombay City Civil Court issued a notice under O. 21, R. 16 of the Code to Habib and Sons, who were the decree-holders on record, and Jugalkishore Saraf, who was the defendant judgment-debtor, requiring them to show cause why the decree passed in the suit on 15-12-1949 in favour of the plaintiffs and by them transferred to the respondent company, should not be executed by the said transferees against the said defendant judgment-debtor.

The defendant judgment-debtor showed cause by filing an affidavit affirmed by him on 15-6-1951. Amongst other things, he denied that the document in question had been executed or that the document transferred the decree to the respondent company.

The Principal question urged before us is as to whether the respondent company can claim to be the transferees of the decree within the meaning of O. 21, R. 16, Civil P. C.

Order 21, R. 16, Civil P. C., omitting the local amendments which are not material for our present purpose, provides-

“16. Where a decree or, if a decree has been passed jointly in favour of two or more persons the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided that, where the decree or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.”

The first thing that strikes the reader is the sequence of events contemplated by this rule. It postulates, first, that a decree has been passed and, secondly, that that decree has been transferred (i) by assignment in writing or (ii) by operation of law. The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. In the present case a literal construction of the rule leads to no apparent absurdity and, therefore, there can be no compelling reason for departing from that golden rule of construction.

It is quite plain that if O. 21, R. 16 is thus construed the respondent company cannot possibly contend that the decree now sought to be executed by them was, after its passing, transferred to them by an assignment in writing within the meaning of that rule, for the document in question was executed on 7-2-1949 but the decree was passed subsequently on 15-12-1949.

It cannot be overlooked that there was no mention in that document of any suit or decree to be passed in that suit as one would have expected if the parties really intended to transfer the future decree also. In this connection it is significant that the residuary item covered “All properties to which the vendors ‘are’ entitled” and not all properties to which they might in future become entitled. Reference may also be made to the provisions of the Transfer of Property Act. Under S. 8 of that Act the transfer of property passes to the transferee all the interest which the transferor is ‘then’ capable of passing in the property and in the legal incidents thereof, and if the property transferred is a debt or actionable claim, also the securities therefore.

It is urged that as the respondent company thus became entitled, by virtue of this document read in the light of S. 8, to all the rights and remedies including the right to prosecute the pending suit and to obtain a decree the decree that was eventually passed

automatically and immediately upon its passing must be taken as having been transferred by this very document. This argument appears to me to really amount to a begging of the question.

The transfer of the debt passed all the interest which the transferors were 'then' capable of passing in the debt and in the legal incidents thereof. There was 'then' no decree in existence and, therefore, the transferors could not 'then' pass any interest in the non-existing decree. Therefore, S. 8, T. P. Act, does not assist the respondent company. Upon the assignment of the debt the respondent company undoubtedly became entitled to get themselves substituted under O. 22, R.10 as plaintiffs in the pending suit but they did not choose to do so and allowed the transferors to continue the suit and a decree to be passed in their favour. The true position, therefore, is that at the date of the transfer of the debt to the respondent company the transferors could not transfer the decree, because the decree did not exist.

On a true construction of the document the transferors agreed only to transfer, besides the five items of specified properties, "All other properties to which the vendors 'are' entitled", that is to say, all properties to which at the date of the document they were entitled. At the date of the document they had the right to proceed with the suit and to get such relief as the Court by its decree might award but no decree had yet been passed in that suit and, therefore, property to which they were then entitled could not include any decree that might in future be passed. It is significant that there was, in the document, no provision purporting in terms to transfer any future decree.

* * * * *

B.N. Mutto v. T.K. Nandi (Dr)

(1979) 1 SCC 361

P. S. KAILASAM, J. - This appeal is by special leave by the landlord against the judgment of the High Court of Delhi whereby it allowed a revision of the respondent-tenant and set aside the order of eviction passed by the Rent Controller, Delhi, rejecting the application of the respondent seeking permission to contest the proceedings for eviction filed by the appellants under Section 14A(1) of the Delhi Rent Control Act.

2. The appellant, Shri B. N. Mutto, Inspector-General of Police, leased the property F-9, East of Kailash, New Delhi, to the respondent from September 15, 1972 at a monthly rent of Rs 2200 exclusive of electricity and water charges. The lease was for the use of the premises for residential and/or professional purposes only and not for commercial purposes. The lease agreement was renewed from time to time and the respondent became a monthly tenant under the Delhi Rent Control Act, 1958. On July 18, 1974 the landlord filed a petition for eviction of the respondent on the grounds of misuser, sub-letting and bona fide requirement. The petition was registered as Suit 182 of 1974 and is still pending.

3. The first appellant, B. N. Mutto, retired as Inspector-General of Police on November 30, 1975. While in office he was occupying premises bearing No. C-II/77 Moti Bagh I, New Delhi, allotted to him by the Government. On September 9, 1975 the Government took a decision that Government servants who own houses in the locality should vacate the Government accommodation allotted to them within 3 months from October 1, 1975. On December 9, 1975 a notice was served on the first appellant by the Deputy Director (Admn.) stating that the Government by its Office Memorandum 12031(I)/74-Pol II dated September 9, 1975 required all Government officials who own houses in Delhi and New Delhi and have also been allotted Government residence to vacate the Government residence before the stipulated date failing which penal rate of licence of market rate shall be charged besides necessary action to evict him from the Government residence. On the same day the appellant filed the present suit for eviction of the respondent. On January 16, 1976 the respondent applied for leave to defend. On March 10, 1976 the Rent Controller refused leave and decreed the suit filed by the landlord. A revision petition was filed by the respondent before the High Court which allowed the revision and set aside the order of the Rent Controller and remanded the proceedings to the Rent Controller for disposal according to law. Against the order of the High Court allowing the revision by the respondent the present appeal has been preferred to this Court by the landlord.

4. The question that arises in this appeal is whether the Rent Controller was right in refusing leave to the respondent to defend the eviction petition filed by the landlord.

5. In order to appreciate the point that arises for consideration it is necessary to refer to the relevant provisions of the Delhi Rent Control Act. Delhi Rent Control Act (Act No. 59 of 1958) came into force on December 31, 1958. By Chapter III the right of the landlord to evict the tenant was restricted. Section 14 prohibited any order or decree for recovery of possession of any of the premises being made by any court in favour of a landlord except under certain circumstances. The landlord was required to make an application to the Controller for

recovery of the possession on one of the grounds mentioned in sub-clauses (a) to (1) in Section 14(1). The provisions of Section 14(1)(e) which are relevant may be referred to:

14. (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant;

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds, namely:-

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation.

Explanation.-For the purposes of this clause “premises let for residential purposes” include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes.

6. By the Delhi Rent Control Act (Amendment) Ordinance (24 of 1975), 1975 the Delhi Rent Control Act was amended. The Ordinance was eventually replaced by the Delhi Rent Control (Amendment) Act 18 of 1976. The amending Act continued the provisions of the Ordinance but extended the summary procedure which was applicable to Section 14(1)(e) to evictions on the ground set out in Section 14A of the Act. The Amending Act came into force on February 9, 1976 but by virtue of sub-section (2) of Section 1 it was deemed to have come into force on December 1, 1975 i.e. on the date on which the Ordinance came into force. Section 14A conferred a right to recover immediate possession of premises to certain persons. The amended Section 14A(1) reads:

(1) Where a landlord who, being a person in occupation of any residential premises allotted to him by the Central Government or any local authority is required, by, or in pursuance of, any general or special order made by that Government or authority, to vacate such residential accommodation, or in default, to incur certain obligations, on the ground that he owns, in the Union territory of Delhi, a residential accommodation either in his own name or in the name of his wife or dependent child, there shall accrue, on and from the date of such order, to such landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether express or implied), custom or usage to the contrary, a right to recover immediately possession of any premises let out by him.

7. This section confers on a landlord who owns a residential accommodation in his own name or in the name of his wife, or dependent child in the Union territory of Delhi and was in occupation of any residential premises allotted to him by the Central Government or any local authority and is required by any general or special order made by the Government or the authority to vacate such residential accommodation or in default to incur certain obligations

on the ground that he owns a residential accommodation in Delhi either in his own name or in the name of his wife or dependent child, a right shall accrue to such landlord to recover immediate possession of any premises let out by him. Apart from conferring rights under Section 14A a summary procedure for trial of applications made under Section 14(1)(e) and Section 14A is provided under Sections 25A, 25B and 25C.

Section 25A provides that the provisions of Chapter IIIA which contains Sections 25A, 25B and 25C and any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or any other law for the time being in force. The special procedure for disposal of application for eviction under Section 14(1)(e) and Section 14A is prescribed by Section 25B. The procedure envisaged is that when an application under Section 14(1)(e) or Section 14A is filed by the landlord the Controller shall issue summons in the prescribed form. Sub-section (4) to Section 25B restricts the right of the tenant to defend by providing that the tenant shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller. In default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid. Subsection (5) to Section 25B states the conditions under which the Controller shall give leave to the tenant to contest the application. It requires that the affidavit filed by the tenant should disclose such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14A. When once the leave is granted to the tenant to contest the application the Controller shall commence hearing of the application as early as practicable.

8. The introduction of Section 14A became necessary as the Government took a decision on September 9, 1975 that the Government servants who own houses in the Union territory of Delhi shall be required to vacate Government accommodation allotted to them within 3 months from October 1, 1975. If they fail to vacate the accommodation they were to be charged licence fee at market rates. The Government servants who were owning houses in the Union territory of Delhi could not get possession of their residential accommodation. It became necessary to confer on them the right to recover immediate possession of their premises and also to prescribe an expeditious procedure for achieving the object. According to the procedure specified in Section 25B it was made incumbent on the tenant to apply for and obtain leave to contest the application for eviction.

9. Coming to the facts of the case the Government took the decision to require the Government officers who have been allotted premises by the Government and who own their own houses in the area specified to vacate the premises allotted by the Government within 3 months from October 1, 1975. Notice of such intention was conveyed to the landlord on December 9, 1975. In the meantime on November 30, 1975 the officer retired from service. Thus on the date on which notice was served on him he had already retired. The petition for eviction was also filed on December 9, 1975 after the officer retired. The main contentions raised by the tenant in the petition for leave to contest were: (1) the landlord cannot invoke the provisions of Section 25B(5) as he was not a Government servant on the date of the

petition; (2) the landlord had already filed a petition for eviction which was registered as O.S. 182 of 1974 and was pending before the Additional Rent Controller. As the eviction is sought on the same ground in the present petition it was submitted that this petition could not be entertained; (3) the premises which the respondent is occupying were let for the purpose of residential or professional purposes and therefore the landlord is not entitled to ask for eviction as the premises are not let for residential purposes.

10. The Rent Controller rejected all the contentions put forward by the respondent. He held that the question as to whether the landlord was a Government servant or not on the date when the notice was received and on the date when he filed the petition is irrelevant so long as he satisfied the requirements laid down in Section 14(1) of the Act. On the second contention the Rent Controller found that the ground for eviction under Section 14A is a new-cause of action and different from the one that was raised in the previous petitions and hence the present petition is not barred. On the third point the Rent Controller found that it is not necessary for an application under Section 14(1) that the building should have been let for residential purposes as required under Section 14(1)(e) and it is sufficient if the landlord requires the premises for residential accommodation. The Rent Controller held that the grounds on which leave to resist an application can be granted are those that are specified in Section 25B(5) alone.

11. On appeal the High Court allowed the revision by the tenant mainly on the ground that the application for eviction must fail on account of the admitted fact that the landlord had retired from service on November 30, 1975 before the Ordinance came into force and was on that account liable to vacate the premises independently of his ownership of the premises in dispute.

12. The important question that arises for consideration is whether the landlord who retired from service on November 30, 1975 before the Ordinance came into force could avail himself of the provisions of Section 14A(1). A reading of Section 14A discloses that a right to recover immediate possession of premises accrues to certain persons if the requisite conditions are satisfied. The conditions are: (1) the landlord must be in occupation of any residential premises allotted to him by the Central Government or any local authority; (2) such landlord is required by a general or special order made by the Government or authority to vacate such residential accommodation or in default to incur certain obligations on the ground that he owns in the Union territory of Delhi a residential accommodation either in his own name or in the name of his wife or dependent child. If the aforesaid conditions are satisfied a right shall accrue to such a landlord on and from the date of such order to recover immediate possession of any premises let out by him. It may be noted that the section does not require that the person who is in occupation of the premises allotted by the Government should be a Government servant. It is necessary that the person is required by the Government or authority to vacate such accommodation imposing certain consequences in the event of his not vacating. The policy decision taken by the Government on September 9, 1975 only related to Government servants who were in occupation of premises allotted to them by the Government. If the Government servant had another house in the locality he was to vacate within 3 months from October 1, 1975. This general order no doubt relates only to Government servants. After the decision was taken it was realized that some provision should

be made to enable the persons in occupation of buildings allotted to them by the Government to get possession of the houses they own but have been let to tenants. In order to enable them to get possession of the premises let by them expeditiously Section 14A(1) was enacted and the expeditious procedure under Section 25B was made applicable. It may also be noted that the order served on the landlord on December 9, 1975 mentions that all Government officials who own houses in Delhi and have also been allotted Government residence are to vacate Government accommodation. The general circular dated September 9, 1975 as well as the notice served on the landlord thus support the view that the intention of the Government was to enable only those Government servants who are in occupation of Government accommodation and who own houses to get immediate possession, though Section 14A does not restrict the right to recover immediate possession to Government servants alone. In these circumstances, the conclusion arrived at by the High Court that a Government servant who had retired before the date on which he had filed the application is not entitled to the benefits of Section 14(1) is understandable.

This view was expressed by this Court in *Nihal Chand v. Kalyan Chand Jain* [(1978) 2 SCR 183, 190], wherein it was observed: "There appears to be some force in the view taken by the High Court that the provision of Section 14A(1) was not intended for Government servants who have retired from Government service or who have been transferred outside Delhi" But this Court did not decide the issue because on the facts of the case it was of the view that the landlord was entitled to invoke the provisions of Section 14A(1) notwithstanding the fact that he had retired from Government service with effect from November 30, 1975.

13. In that case the notice was served on the appellant-landlord on September 30, 1975 which was before the date of retirement which was on November 30, 1975. On the ground that the right to evict the tenant accrued to the landlord when he was in service it was held that he was entitled to the rights conferred under Section 14A. In this case the notice was served on December 9, 1975 and the officer had retired on November 30, 1975. On the reasoning in the above case the appellant will not be entitled to the relief. The question therefore squarely arises in this case as to whether a Government servant who retired before the notice was served on him requiring him to quit the Government accommodation is entitled to the benefit of Section 14A(1).

14. It is not clear as to why the right to recover immediate possession is not confined to Government servants alone under Section 14A. It is clear that according to Government's policy statement the intention was only to require the Government servants to vacate the premises allotted to them by the Government if they had their own houses in the area. It cannot be said that it was by inadvertence that the Legislature mentioned persons instead of Government servants and made the section applicable to persons other than Government servants. It is stated at the Bar that Government accommodation is provided not only to Government servants but also to Members of Parliament and other non-officials who occupy important positions in public life. The Court will not be justified in presuming that when the Government used the word "person" it meant only Government servants. The rule as to construction of the statutes is well-known and has been clearly laid down. **Craies on Statute**

Law (6th Ed., p. 66) relying on *Tasmania v. Commonwealth* [(1904) 1 CLR 329] has stated the rule as follows:

The cardinal rule for the constructions of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves.

The Court has to determine the intention as expressed by the words used. If the words of statutes are themselves precise and unambiguous then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver. Taking into account the object of the Act there could be no difficulty in giving the plain meaning to the word “person” as not being confined to Government servants for it is seen that accommodation has been provided by the Government not only to Government servants but to others also. In the circumstances, the Court cannot help giving the plain and unambiguous meaning to the section. It may be that the retired Government servants as well as others who are in occupation of Government accommodation may become entitled to a special advantage. But the purpose of the legislation being to enable the Government to get possession of accommodation provided by them by enabling the allottees to get immediate possession of the residential accommodation owned but let by them, the Court will not be justified in giving a meaning which the words used will not warrant. On this question therefore we find ourselves unable to concur with the view taken by the High Court.

15. The next question that arises is whether the rights conferred under Section 14A(1) are available to premises that had been let for residential as well as professional purposes. It is admitted that the premises were let for residential as well as professional purposes. Section 14(1)(e) requires that in order to avail the provisions of Section 14(1)(e) the premises should be “let for use as a residence”. It has been held that when premises are let for residential as well as commercial or for residential and professional purposes the provisions of Section 14(1)(e) will not apply. This Court in *Dr Gopal Dass Verma v. Dr S.K. Bhardwaj* [AIR 1963 SC 337] in construing Section 13(1)(a) of the Delhi and Ajmer Rent Control Act, 1952 held that premises let for residential purposes but used by the tenant with the consent of the landlord incidentally for commercial, professional or other purposes cease to be premises let for a residential purpose alone and as such the landlord would not be entitled to eject the tenant under Section 13(1)(e) of the Act. Section 13(1)(e) allowed a decree for ejectment to be passed if the Court is satisfied that the premises let for residential purposes are required bona fide by the landlord who is the owner of such premises for occupation as a residence for himself or his family and that he has no other suitable accommodation. On the facts of the case it was found that right from the commencement of the tenancy a substantial part of the premises was used by Respondent 1 for his professional purpose, and they have also found that this has been done obviously with the consent of the landlord. The Court held that the professional use of a substantial part of the premises with the consent of the appellant clearly takes the case outside Section 13(1)(e). The view expressed in the above case was reiterated by this Court in *Kartar Singh v. Chaman Lal* [(1970) 1 SCR 9]. On the facts it was found that the premises had been taken for residential-cum-business or professional purposes.

By the rent deed the owner inducted as a tenant Labha Mal Arora who was a practising advocate. Along with the rent deed a letter was written by the landlord to the tenant stating

that he had no objection to the tenant having his professional office along with the residence. After the tenant's death in 1952 the premises were used only for residence by his sons and widow till 1957. In August, 1957 the first respondent who qualified himself as a legal practitioner started having an office in the premises. Another son also started practising as a lawyer in the same premises some time later. The landlord served a notice on the sons and widow of the deceased for requiring them to vacate the premises. The court found two rooms were used by the original tenant as his office, one room by his clerk and the premises had been let for residence-cum-business purposes. The plea that the tenant was only granted a licence to use the premises for residence-cum-profession which was personal to him and which came to an end on his death was not accepted. The court agreed with the view expressed in **Dr Gopal Dass Verma** case that a tenant could not be ejected under Section 13(l)(h) because the tenancy of premises let out or used for residence and carrying on of profession could not be terminated merely by showing that the tenant had acquired a suitable residence. The court rejected the contention that the tenant, Labha Mal Arora, had been merely given a permission or licence which was of a personal nature to his office. It also was unable to find that any test of dominant intention was applied in **Dr Gopal Dass Verma** case.

16. It is not necessary for us to go into the question whether the words "let for residential purposes" would exclude premises let predominantly for residential purposes with a licence to use an insignificant part for professional purposes such as lawyer's or doctor's consulting room. The words used in Section 14A are clearly different. Section 14A contemplates the owning by the landlord in the Union territory of Delhi a residential accommodation. If he owns a residential accommodation he has a right to recover immediately possession of any premises let out by him. The emphasis is on residential accommodation. If the premises are one intended for residential accommodation it will not make any difference if the premises are let for residential as well as other purposes. Even though the residential accommodation is let for professional or commercial purposes the premises will not cease to be for residential accommodation. It is common ground that the premises let were put up under the Delhi Development Authority's scheme for residential purposes. The only plea was that though it was put up for residential purposes it was let for residential as well as for professional purposes. The requirement in Section 14(l)(e) that in order to enable the landlord to recover possession the premises ought to have been let for residential purposes is not there in Section 14A(1). In this view we agree with the High Court that it is not necessary in a petition for eviction under Section 14A to satisfy that it was let for residential purposes only.

17. The submission that as a previous application for possession by the landlord was pending this petition would not be permissible cannot be accepted as the grounds on which an application for possession is filed under Section 14A(1) are different and based on special rights conferred on the class of persons who occupied Government accommodation.

18. The only other question that remains to be considered is the scope of the right to contest the suit, that is, on what grounds can the tenant seek leave to resist the suit filed by the landlord under Section 14A(1). The special procedure prescribed under Section 25B is made applicable in cases where the landlord applies for recovery of possession on any of the grounds specified in clause (e) of the Proviso to sub-section (1) of Section 14 or under Section 14A. Sub-section (5) of Section 25B says that the Controller shall give leave to the

tenant to contest if the affidavit filed by the tenant discloses such facts that would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the grounds specified in clause (e) of the Proviso to subsection (1) of Section 14 or Section 14A. Under Section 14(1)(e) the tenant may resist the application on the grounds specified namely that the premises are not let for residential purposes, that they are not required bona fide etc. So far as the facts which would disentitle the landlord from obtaining an order under Section 14A are concerned they can only be that the landlord is not a person in occupation of residential premises allotted to him by the Central Government or that no general or special order has been made by the Government requiring him to vacate such residential accommodation on the terms specified in the section. Leave to contest an application under Section 14A(1) cannot be said to be analogous to the provisions of grant of leave to defend as envisaged in the Civil Procedure Code. Order 37, Rule 2, sub-rule (3) of the Code of Civil Procedure provides that the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend. Sub-rule (1) of Rule 3 of Order 37 lays down the procedure to obtain leave. Under the provisions leave to appear and defend the suit is to be given if the affidavit discloses such facts as would make incumbent on the holder to prove consideration or such other facts as the court may deem sufficient to support the application. The scope of Section 25B(5) is very restricted for leave to contest can only be given if the facts are such as would disentitle the landlord from obtaining an order for recovery of possession on the ground specified in Section 14A.

20. In the result we hold that the landlord who retired before the date on which the notice to quit was given by the Government is also entitled to the benefits of Section 14A and allow the appeal with costs.

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Ramavatar Budhaiprasad v. Asstt. S.T.O.

(1962) 1 SCR 279 : AIR 1961 SC 1325

J. L. KAPUR, J. - These are three petitions under Article 32 of the Constitution challenging the imposition of sales tax on betel leaves by the Sales Tax Officer, Akola. The question raised in all the three petitions is the same and can conveniently be disposed of by one judgment.

2. The petitioners in the three petitions are dealers in betel leaves at Akola, now in the State of Maharashtra and at the relevant time in the State of Madhya Pradesh. The Assistant Sales Tax Officer at Akola assessed the petitioners under the provisions of the C.P. & Berar Sales Tax Act, 1947 (Act 21 of 1947), hereinafter termed the “Act” to the payment of sales tax as follows:

<u>WRIT PETITION NO.</u>	<u>PERIOD</u>	<u>AMOUNT</u>
WP No. 4/58	7-11-53 to 26-10-54	Rs 1882- 9-0
	& 27-10-54 to 14-11-55	Rs 1885-13-0
WP No. 36/58	27-10-54 to 26-10-55	Rs 1890- 3-0
WP No. 37/58	27-10-54 to 14-11-55	Rs 3530- 4-0

The petitioners in WP Nos. 4 and 36 did not appeal under Section 22 of the Act but the petitioner in WP No. 37 did appeal under that section. As he did not deposit the amount of tax the petition was dismissed. He then filed a petition under Article 226 in the High Court of Nagpur but that petition was withdrawn and therefore no decision was given on the merits of the case. In all the petitions the submission of the petitioners is that the order demanding tax was without authority of law inasmuch as betel leaves were not taxable under Section 6 read with the second Schedule of the Act. The imposition of the tax, it is alleged, is an infringement of the petitioners’ right to carry on trade or business guaranteed under Article 19(1)(g) of the Constitution and the prayer is for the issue of a writ of certiorari quashing the order of the Assistant Sales Tax Officer and for prohibition.

“Section 6 of the Act under which the exemption is claimed provides:

6. (1) No tax shall be payable under this Act on the sale of goods specified in the second column of Schedule II, subject to the conditions and exceptions, if any, set out in the corresponding entry in the third column thereof.

(2) The State Government may, after giving by notification not less than one month’s notice of their intention so to do, by a notification after the expiry of the period of notice mentioned in the first notification amend either Schedule, and thereupon such Schedule shall be deemed to be amended accordingly.”

Thus under the Act all articles mentioned in the Schedule were exempt from Sales Tax and articles not so specified were taxable. In the Schedule applicable there were originally two items which are relevant for the purposes of the case. They were Items 6 and 36:

“Item 6 Vegetables - Except when sold in sealed containers. Item 36 Betel leaves.”

3. The Schedule was amended by the C.P. & Berar Sales Tax Amendment Act (Act 16 of 1948) by which Item 36 was omitted. It is contended that in spite of this omission they were

exempt from Sales Tax as they are vegetables. The intention of the legislature in regard to what is vegetables is shown by its specifying vegetables and betel leaves as separate items in the Schedule exempting articles from Sales Tax. Subsequently betel leaves were removed from the Schedule which is indicative of the legislature's intention of not exempting betel leaves from the imposition of the tax. But it was submitted that betel leaves are vegetables and therefore they would be exempt from Sales Tax under Item 6. Reliance was placed on the dictionary meaning of the word "vegetable" as given in *Shorter Oxford Dictionary* where the word is defined as "of or pertaining to, comprised or consisting of, or derived, or obtained from plants or their parts". But this word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". It is to be construed as understood in common language; **Craies on Statute Law** 153 (5th Edn.). It was so held in *Planters Nut Chocolate Co. Ltd. v. The King* [(1952) 1 Dom LR 385, 389]. This interpretation was accepted by the High Court of Madhya Pradesh in *Madhya Pradesh Pan Merchants' Association, Santra Market, Nagpur v. The State of Madhya Pradesh (Sales Tax Department)* [7 STC 99, 102], where it was observed:

"In our opinion, the word 'vegetables' cannot be given the comprehensive meaning the term bears in natural history and has not been given that meaning in taxing statutes before. The term 'vegetables' is to be understood as commonly understood denoting those 'classes of vegetable matter which are grown in kitchen gardens and are used for the table.'

In that case the word "vegetables" was construed and in our opinion correctly construed in relation to the very provisions of the Act which are now in controversy before us. In cases under the U.P. Sales Tax Act betel leaves have been held not to be within the expression "green vegetables"; *Brahma Nand v. The State of Uttar Pradesh* [7 STC 206]; *Firm Shri Krishna Chaudhry v. Commissioner of Sales Tax* [7 STC 742]. In *Bhairondan Tolaram v. The State of Rajasthan* [8 STC 798], they were held not to be plants and in *Kokil Ram & Sons v. The State of Bihar* [(1949) 1 STC 217], it was held that vegetables meant plants cultivated for food and *Pans* are not foodstuffs. In *Dharamdas Paul v. Commissioner of Commercial Taxes* [(1958) 9 STC 194] also they were held not to be vegetables which specifically meant *Sabzi, Tarkari & Sak*. Therefore apart from the fact that the legislature by using two distinct and different items i.e. Item 6 "vegetables" and Item 36 "betel leaves" has indicated its intention, decided cases also show that the word "vegetables" in taxing statutes is to be understood as in common parlance i.e. denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table.

4. In our view, betel leaves are not exempt from taxation. These petitions therefore fail and are dismissed.

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M/s. Motipur Zamindary Co. (Private) Ltd. v. State of Bihar

AIR 1962 SC 660

J. L. KAPUR, J. - The principal question raised in these appeals and petitions under Article 32 of the Constitution is whether sugar-cane falls within the term “green vegetables” and is therefore exempt from sales tax under the exemption given by the notification dated 28-8-1947, issued under Section 6 of the Bihar Sales Tax Act (Act 19 of 47), hereinafter called the “Act”. After hearing the arguments in these appeals, and petitions we announced our decision dismissing them with costs and we now proceed to give our reasons for the same.

2. The three appeals by special leave are brought by the assessee and relate to assessment of sales tax for three years, 1950-51, 1951-52 and 1952-53 for which the amount of sales tax levied was Rs 28,866, 23,383 and 23,298 respectively. Besides the three appeals the assessee Company has filed three petitions under Article 32 challenging the constitutionality of the assessments. In this judgment the appellant and the petitioner is a private limited company and it will be termed “appellant” and the State of Bihar which is respondent will be termed the “respondent”.

3. The appellant took an objection to the assessment and filed appeals to the Deputy Commissioner of Commercial Taxes and then a revision to the Board of Revenue and then at its instance the following question was referred by the Board of Revenue to the High Court for opinion:

“Whether sugar-cane is a green vegetable within the meaning of Item 6 of Notification No. 9884-FT dated 28-8-47 and as such exempt from taxation.”

The High Court answered the question against the appellant and held that “sugar-cane” was not included in the term “green vegetables” and it is the correctness of that answer which has been canvassed before us. In the petitions under Article 32 of the Constitution it was contended that the appellant being a producer of sugar-cane was not a “dealer” within the meaning of the Act and therefore no tax was payable on sale of sugar-cane by it.

4. The exemption under the Act is provided under Section 6 of the Act which, at the relevant time, was as follows:

“6. No tax shall be payable under this Act on the sale of any goods or class of goods specified in this behalf by the (State) Government by notification in the Official Gazette, subject to such conditions as may be mentioned in the notification:

Provided no notification shall be issued under this section without giving in the Official Gazette such previous notice as the State Government may consider reasonable, of its intention to issue such notification.”

Under Section 6 of the Act the notification relied upon was issued on 28-8-1947. This was Notification No. 9884-FT which was in the following terms:

“In exercise of the powers conferred by Section 6 of the Bihar Sales Tax Act, 1947 and in supersession of all the previous notifications on the subject, the Governor of Bihar is pleased to direct that no tax shall be payable under the said Act on the sale of goods specified in the second column of the schedule hereto annexed

subject to the exceptions, if any, set out in the corresponding entry in the third column thereof.

THE SCHEDULE

<u>Serial No. of goods</u>	<u>Description</u>
6.	Exception subject to which the exemption has been allowed. Green vegetables other than potatoes Except when sold in sealed containers....”

The question raised is that sugar-cane falls within the term “green vegetables” in Entry 6 of the Schedule and is therefore exempt from assessment to sales tax. In support of this contention counsel for the appellant relied upon a judgment of the Bombay High Court, *State of Bombay v. R.S. Phadtare* [7 STC 495], where it was held that sugar-cane is “fresh vegetable” and is therefore exempt from sales tax under a similar notification issued under the Bombay Sales Tax Act. Chagla, C.J. there observed at p. 496 as follows:

“In its plain and natural meaning a ‘vegetable’ clearly is wide enough to cover ‘sugar-cane’; but what is urged by the Advocate-General is that we must not give it that wide meaning but must give it the popular meaning as understood by people who deal in vegetables or eat vegetables, and it is urged that from that narrow and restricted point of view sugar-cane is not vegetable. This is a taxing statute and if two constructions are possible we must lean in favour of that construction which gives relief to the subject. That was exactly the approach of the Sales Tax Tribunal and in our opinion that approach was a very proper one.”

This observation is not in accord with the opinion given by this Court in *Ramavatar Budhaiprasad etc. v. Assistant Sales Tax Officer, Akola* [AIR 1961 SC 1325], in which under an almost identical entry it was held that “betel leaves” is not included in the term “vegetables”. After quoting with approval a passage from the judgment of the Nagpur High Court, *Madhya Pradesh Pan Merchants’ Association v. State of Madhya Pradesh* [7 STC 99], this court said:

“The word ‘vegetables’ in taxing statutes is to be understood as in common parlance i.e. denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table.”

If that is the meaning of the word “vegetables” sugar-cane cannot fall within Entry 6 which relates to green vegetables. In *Webster’s Dictionary* “sugar-cane” has been defined as “a grass extensively grown in tropical and warm regions for its sugar” and in *Oxford Dictionary* it is defined as “a tall perennial grass cultivated in tropical and sub-tropical countries and forming the chief source of unmanufactured sugar”. Therefore it cannot be said that sugar-cane falls within the definition of the words “green vegetables”.

5. The second question which was raised before us and which arises in the petitions under Article 32 is that the appellant Company is not a “dealer” within the meaning of the word as defined in Section 2(c) of the Act which is as follows:

“ ‘dealer’ means any person who sells or supplies any goods (including goods sold or supplied in the execution of a contract) whether for commission, remuneration or

otherwise and includes any firm or a Hindu joint family, the Government and any society, club or association which sells or supplies goods to its members”.

The words of this sub-section are very wide and cover the case of the appellant and therefore this point is also without substance and must be rejected. But it was argued that the definition of the word “dealer” in the Act which was amended by Bihar Annual Finance Act, 1950, is applicable only for the financial year beginning 1-4-1950, and not for subsequent years and for that aid was sought from the preamble to the Bihar Annual Finance Act, 1950. That Preamble is as follows:

“Whereas it is expedient to amend the Bihar Sales Tax Act, 1947 and the Bihar Agricultural Income Tax Act, 1948 to levy a tax on passengers and goods; carried by public service vehicles and public carriers and to lay down rates on sales tax payable under Bihar Sales Tax Act, 1947 to fix limit of taxable agricultural income to lay down rates of agricultural income tax and super tax chargeable under Bihar Agricultural Income Tax Act, 1948 for the financial year beginning on the 1-4-1950 and to make further provisions in connection with the finance of this State of Bihar.”

The preamble cannot limit or change the meaning of the plain words of Section 2(c) of the Act which apply to the case of the appellant and therefore the amended section is applicable to the present case. It is an erroneous approach to the question to say that because of the words “for the financial year beginning on the first of April 1950” in the particular context in the preamble, the definition of the word “dealer” was amended only for one year. Nothing has been shown indicating that Section (2)(i) of Bihar Annual Finance Act intended to effect a temporary amendment in the previous definition of the word “dealer” in clause (c) of Section 2 of the Act. The contention is therefore repelled.

6. It was also submitted that the assent of the President was not given to the Bihar Annual Finance Act, 1950. In our opinion that submission is equally without force because tax on sale of goods is a matter entirely within Entry 54 of the State List and the amendment made in the definition of the word “dealer” in the Act did not require the assent of the President.

7. In our opinion the appeals and the petitions under Article 32 are without merit and are therefore dismissed with costs.

* * * * *

State of West Bengal v. Washi Ahmed

(1977) 2 SCC 246

P. N. BHAGWATI, J. - The short question which arises for determination in these appeals is whether green ginger falls within the category of goods described as “vegetables, green or dried, commonly known as ‘sabji, tarkari or sak’” in Item (6) of Schedule I to the Bengal Finance (Sales Tax) Act, 1941. If it is covered by this description, it would be exempt from sales tax imposed under the provisions of that Act. The Sales Tax authorities held that green ginger is used to add flavour and taste to food and it is, therefore, not vegetable commonly known as ‘sabji, tarkari or sak’. The orders of the Sales Tax authorities were challenged to a writ petition filed under Article 226 of the Constitution and a Single Judge of the High Court who heard the writ petition disagreed with the view taken by the Sales Tax authorities and held that green ginger is vegetable within the meaning of that expression as used in Item (6) of the First Schedule to the Act. This view of the learned Single Judge was affirmed by a Division Bench of the High Court on appeal under clause (15) of the Letters Patent. Hence the present appeal by the State with special leave obtained from this Court.

2. The Bengal Finance (Sales Tax) Act, 1941 levies sales tax on the taxable turnover of a dealer computed in accordance with the provisions of that Act. Section 6, sub-section (1) provides that no tax shall be payable under the Act on the sale of goods specified in the first column of Schedule I, subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof and Item (6) of Schedule I specifies in the first column “vegetable, green or dried, commonly known as ‘sabji, tarkari or sak’” so that no tax is payable on the sale of goods falling within this category, subject to the exception set out in the second column, namely, that they would be liable to bear tax “when sold in sealed containers”. It was common ground in the present case that green ginger was not sold by the assessee in sealed containers and the only question which, therefore, requires to be considered is whether green ginger can be regarded as vegetable commonly known as ‘sabji, tarkari or sak’. Now, the word ‘vegetable’ is not defined in the Act but it is well settled as a result of several decisions of this Court of which we may mention only two, namely, **Ramavatar Budkaiprasad v. Assistant Sales Tax Officer, Akola** [AIR 1961 SC 1325] and **Motipur Zamindary Co. Ltd. v. State of Bihar** [AIR 1962 SC 660], that this word, being a word of every day use, must be construed not in any technical sense, not from any botanical point of view, but as understood in common parlance. The question which arose in **Ramavatar** case (supra) was whether betel leaves are “vegetables” and this Court held that they are not included within that term. This Court quoted with approval the following passage from the judgment of the High Court of Madhya Pradesh in **Madhya Pradesh Pan Merchants Association, Santra Market, Nagpur v. State of Madhya Pradesh** [7 STC 99, 102]:

In our opinion, the word “vegetables” cannot be given the comprehensive meaning the term bears in natural history and has not been given that meaning in taxing statutes before. The term “vegetables” is to be understood as commonly understood denoting those classes of vegetable matter which are grown in kitchen gardens and are used for the table.

and observed that “the word Vegetable’ in taxing statutes is to be understood as in common parlance i.e. denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table”. This meaning of the word ‘vegetable’ was reiterated by this Court in *Motipur Zamindary* case where this Court was called upon to consider whether sugarcane can be regarded as vegetable and it was held by this Court that sugarcane cannot be said to fall within the definition of the word ‘vegetable’.

3. It is interesting to note that the same principle of construction in relation to words used in a taxing statute has also been adopted in English, Canadian and American courts. Pollock B. pointed out in *Grenfell v. R. C* [(1876) 1 Ex C 242, 248] that:

(I)f statute contains language which is capable of being construed in a popular sense, such ‘a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning, of course, by the words “popular sense” that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it.

4. It will, therefore, be seen that the word ‘vegetable’ in Item (6) of Schedule 1 to the Act must be construed as understood in common parlance and it must be given its popular sense meaning “that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it” and so construed, it denotes those classes of vegetables which are grown in a kitchen garden or in a farm and are used for the table. Now, obviously green ginger is a vegetable grown in a kitchen garden or in a farm and is used for the table. It may not be used as a principal item of the meal but it certainly forms part of the meal as a subsidiary item. It is an item which is ordinarily sold by a vegetable vendor and both the vegetable vendor who every day deals in vegetables and the housewife who daily goes to the market to purchase vegetables would unhesitatingly regard green ginger as vegetable. The assessee in fact placed evidence before the Sales Tax authorities showing that the Railway authorities also treated green ginger as vegetable for the purpose of railway tariff and charged for the carriage of green ginger at the reduced rate applicable to vegetables and even the Corporation of Calcutta included green ginger in the category of vegetables in the market bulletin published by it fortnightly showing the rates in the municipal market. There can, therefore, be little doubt that green ginger is generally regarded as included within the meaning of the word ‘vegetable’ as understood in common parlance. That apart, we find that Item (6) speaks not simply of vegetables but “vegetables - commonly known as ‘sabji, - tarkari or sak’” and the Division Bench of the High Court held green ginger to fall within the meaning of the words “sabji, tarkari or sak”. We should certainly be very slow to disturb a meaning placed on these words in Bengali language by two judges of the High Court who may reasonably be expected to be quite conversant with that language. We are accordingly of the view that green ginger is included within the meaning of the words “vegetables” - commonly known as ‘sabji, takari or sak’ “ in Item (6) of Schedule I and its sales must be held to be exempt from tax under Section 6 of the Act.

5. The result is that the appeals fail and are dismissed.

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M.V. Joshi v. M.U. Shimpi

AIR 1961 SC 1494

K. SUBBA RAO, J. - This appeal by special leave is directed against the judgment of the High Court of Judicature at Bombay allowing the appeal filed by Respondent 1 against the acquittal of the appellant by the Judicial Magistrate, First Class, Thana, and convicting him under Section 16(1), read with Section 7(i), of the Prevention of Food Adulteration Act, 1954 (hereinafter called “the Act”), and sentencing him to undergo rigorous imprisonment for two months and to pay a fine of Rs 250.

2. The appellant is the proprietor of a shop at Thana known as the Cottage Industries. He is a dealer in butter. On June 27, 1957, the Food Inspector of the Thana Borough Municipality visited the shop of the appellant and purchased from him some quantity of Khandeshi butter. After purchasing the butter, the Food Inspector notified his intention to the appellant that he was going to get the butter analysed. He divided the butter into three equal parts, put them in three separate bottles and duly sealed the bottles in the presence of two *panchas*. He gave one of these bottles to the appellant, sent one to the Public Analyst and kept the third with himself. The appellant signed the labels on the bottles and also passed a receipt in favour of the Food Inspector in token of the receipt of one of the bottles and that receipt was signed by the appellant and counter-signed by two *panch* witnesses.

3. The Public Analyst analysed the butter sent to him and sent his report in due course. In the report it was stated that the butter contained 18.32 per cent foreign fat, 19.57 per cent moisture and 64.67 per cent milk fat.

4. On October 5, 1957, the Food Inspector filed a complaint in the Court of the Judicial Magistrate, First Class, Thana, against the appellant. It was alleged therein that the said butter was found to be “adulterated” as defined in Section 2(1)(a) of the Act and that the appellant had committed an offence under Section 16(1)(a) of the Act by selling the adulterated article of food in contravention of Section 7(i) of the Act and the rules made thereunder. The Judicial Magistrate acquitted the appellant on the ground that it had not been proved beyond reasonable doubt that the butter which was purchased from the shop of the appellant was the very same butter which was sent to the Public Analyst and also for the reason that butter prepared out of curd did not come within the mischief of the definition of the word “butter” in Rule A-11.05 of Appendix B to the Prevention of Food Adulteration Rules, 1955 (Rules). The Food Inspector preferred an appeal against that order of acquittal to the High Court. The High Court held that the conclusion of the learned Judicial Magistrate that the butter purchased from the appellant might have been tampered with before it was sent to the Public Analyst was not based on any evidence on the record. It further held that butter prepared from curds was covered by the definition of the word “butter” given in the relevant rule. It further held that even if the butter prepared out of curds was not butter as defined in the said rule, the appellant would still be liable under Section 2(1)(a) of the Act as it contained foreign fat and, therefore, was an adulterated article of food within the meaning of the said section. In the result it set aside the order of acquittal, convicted the appellant under the Act and sentenced him to rigorous imprisonment for two months and to pay a fine of Rs 250.

5. Learned Counsel for the appellant raised before us the following points: (1) The High Court went wrong in holding that the appellant had committed an offence under the Act, even though the butter in question was not butter within the meaning of the Rules. (2) Butter prepared from curds is not butter within the meaning of Rule A-11.05 of Appendix B to the Rules. (3) Butter sent to the Public Analyst was not the same butter seized from the appellant. (4) The report of the Public Analyst was vague and, therefore, no conviction could be based on it.

6. For the purpose of this appeal we are assuming in favour of the appellant that he would not be liable for conviction unless the butter seized from him was butter within the meaning of the rule. We shall proceed to consider the appeal on that basis. In this view, nothing further need be said on the first question raised by learned Counsel.

7. At the outset it would be convenient to consider the ingredients of the offence alleged to have been committed by the appellant. Section 2(i) of the Act defines the word “adulterated” and it says that an article of food shall be deemed to be adulterated if it satisfies one or other of the conditions prescribed in sub-clauses (a) to (1). We are concerned in this appeal with sub-clause (1) whereunder an article of food shall be deemed to be adulterated if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability. Section 2(xii) defines “prescribed” to mean “prescribed by rules made under this Act”. In exercise of the powers conferred by sub-section (2) of Section 4 and sub-section (1) of Section 23 of the Act, the Central Government made rules prescribing, inter alia, the standards of quality of different articles of food.

Rule 5 says that standards of quality of the various articles of food specified in Appendix B to the Rules are as defined in that appendix. Rule A-11.05 of Appendix B to the Rules defines “butter” to mean “the product prepared exclusively from the milk or cream of cow or buffalo, or both, or without the addition of salt and annatto and shall contain not less than 80 per cent of milk fat and not more than 16 per cent of moisture” and no preservative is permissible in butter. Therefore, if the quality or purity of butter falls below the standard prescribed by the said rule or its constituents are in excess of the prescribed limits of variability, it shall be deemed to be adulterated within the meaning of Section 2 of the Act. If the prescribed standard is not attained, the statute treats such butter, by fiction, as an adulterated food, though in fact it is not adulterated. To put it in other words, by reason of the fiction, it is not permissible for an accused to prove that, though the standard prescribed is not attained, the article of food is in fact not adulterated. The non-conformity with the standard prescribed makes such butter an adulterated food. Section 7 of the Act prohibits the manufacture, sale, storage, or distribution of such food. Section 16 provides a penalty for the contravention of the provisions of Section 7. The first question, therefore, that falls for consideration is whether the butter seized from the appellant was butter as defined by Rule A-11.05 of Appendix B to the Rules.

8. Learned counsel for the appellant argues that butter prepared from curd is not butter as defined in the Act for the following reasons: (1) the definition of the word “butter” does not include the product which is obtained from curd, as it refers only to a product which is prepared from milk or cream; (2) the three words, “milk”, “cream” and “curd”, are separately

and exhaustively defined in the Rules and, therefore, the omission of the word “curd” in the said rule is a clear legislative indication that butter prepared from curd is not butter within the meaning of that rule; and (3) the word “exclusively” found in the rule emphasizes the fact that butter to come under the definition in the Act should have been prepared from milk or cream and from no other product.

9. Before considering the argument advanced, it would be necessary to notice how butter is made. In England, butter is made as follows:

“(A)s quickly as the milk is separated the cream is cooled. The cream is delivered to the creamery, where it is graded according to at least two classes, sweet and sour.... Then it is pasteurized, and if ripened cream butter is to be made a pure culture of *Streptococcus lactis* is introduced to start the desirable souring process. If sweet cream butter is to be made no starter is added. The best storage butter is made from unripened or sweet cream. After pasteurization and ripening the cream is held overnight, when it is churned, washed, salted and worked in the combined churn and worker.” (See *Encyclopaedia Britannica*, Vol. 4, p. 469.)

In India butter is prepared in the rural areas by the indigenous process out of soured milk and cream i.e. curd. In some cities butter is also made directly out of milk and cream; but the percentage of the said production is insignificant compared with the indigenous system obtaining throughout India. Whatever process is adopted, whether butter is taken directly out of milk or taken out of soured milk or cream, it is prepared only from milk. The only difference between the two is that in the case of butter prepared from curd there is an intervening souring process which is not necessary in the case of butter directly prepared from milk or cream. Shortly stated, butter, by whatever process it is prepared, is a product prepared from milk.

10. Now let us look at the relevant rules to consider whether they provide any reasonable basis for sustaining the argument advanced by learned counsel for the appellant. We shall now read the relevant rules of Appendix B to the Rules:

“A-11.01. Milk means the normal clean and fresh secretion obtained by complete milking of the udder of a healthy cow, buffalo, goat or sheep during the period following at least 72 hours after calving or until colostrum free whether such secretion has been processed or not.

A-11.05. Butter means the product prepared exclusively from the milk or cream of cow or buffalo, or of both, or without the addition of salt and annatto and shall contain not less than 80 per cent of milk fat and not more than 16 per cent of moisture. No preservative is permissible in butter.

A-11.06. *Dahi or curd*: (a) Whole milk dahi or curd means the product obtained from fresh whole milk either of cow or buffalo by souring. It shall not contain any ingredient not found in milk.

A-11.10. Cream means the portion of milk rich in milk fat which has risen to the surface of milk on standing and has been removed or which has been separated from milk by centrifugal force. It shall contain not less than 40 per cent of milk fat and

shall not contain any added substance. The fat separated from cream shall conform to the specification prescribed for ghee.

A-11.14. Ghee means the pure clarified fat derived solely from milk or from milk curds or from cream to which no colouring matter or preservative has been added.”

It was asked with some plausibility that if the rule-making authority did not intend to make a distinction, in the context of making butter, between milk, cream and curd, why did it define the said three products separately, and why, in the case of butter, curd was not shown as one of the products from which it could be prepared, while in the case of ghee, it was shown as a separate produce from which ghee could be prepared. The first criticism can easily be answered. Milk, cream and butter have got to be separately defined, for they are sold in those three different forms, and the question of adulteration of the said products would have to be considered separately in regard to the standards prescribed for them. There is also no force in the second criticism. The original rules were framed on September 12, 1955, and the definition of ghee was introduced therein in 1956. The authority making the subsequent rule might have thought of clarifying the definition of ghee to steer clear of the difficulties raised in the case of the definition of butter. Putting aside the general argument, let us now look at the relevant provisions. The following words in the definition stand out prominently: “product prepared exclusively from milk or cream of cow or buffalo, or both”.

To be butter it should comply with the following conditions: (i) it shall be a product from milk or cream; (ii) the said milk or cream shall be that of cow or buffalo, or of both; (iii) the product shall be prepared from the said milk; and (iv) it shall be prepared exclusively from the said milk. “Product” means “a thing produced by nature or a natural process or manufacture”. What is the meaning of the word “prepared”? The Rules use different words for different milk products. In the case of butter, milk and curd, the word used is “obtained”; and in the case of ghee the word used is “derived”. The dictionary meaning of the word “prepare” is, “to bring into proper state for use by some special or technical process, to manufacture, to make or compound”. The word has a comprehensive meaning and takes in different processes involved in making a thing ready for use or consumption in a particular form. Butter is a product prepared by a process out of milk, whether the process involved is a simple or a complicated one, and, therefore, butter drawn from curd is a product prepared from milk. The word “exclusively”, in our view, refers to the milk or cream of cow or buffalo. “Milk” has been defined as secretion obtained by milking of the udder of a healthy cow, buffalo, goat or sheep, whereas the definition of “butter” is confined exclusively to the milk of cow or buffalo. The word “exclusively”, therefore, has no relation to other milk products. The plain meaning of the words used in the section indicates that butter prepared from milk or cream, by whatever process, is comprehended by the definition.

11. Learned Counsel for the appellant contends that the rule being a part of a penal statute, it should be construed in favour of the accused. When it is said that all penal statutes are to be construed strictly it only means that the court must see that the thing charged is an offence within the plain meaning of the words used and must not strain the words. To put it in other words, the rule of strict construction requires that the language of a statute should be so construed that no case shall be held to fall within it which does not come within the reasonable interpretation of the statute. It has also been held that in construing a penal statute

it is a cardinal principle that in case of doubt, the construction favourable to the subject should be preferred. But these rules do not in any way affect the fundamental principles of interpretation, namely, that the primary test is the language employed in the Act and when the words are clear and plain the court is bound to accept the expressed intention of the legislature.

12. The latest view on the relevant rule of construction is found in **Maxwell on Interpretation of Statutes**, 10th Edn., at p. 262, which reads,

“(I)t is now recognized that the paramount duty of the judicial interpreter is to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object”.

Adverting to Acts against adulteration, the learned author quotes Day, J., in **Newby v. Sims** (1894) 63 LJMC 229 as follows:

“I cannot concur in the contention that because these Acts (against adulteration) impose penalties, therefore, their construction should, necessarily, be strict. I think that neither greater nor less strictness should be applied to those than to other statutes.”

So judged, we have no doubt that the butter prepared out of curd falls within the plain meaning of the words in the said rule.

13. Reliance is placed by learned counsel for the appellant on the decision of Miabhoy, J., in **Narshinha Bhaskar v. State of Bombay**, ILR 1958 Bom 637. The decision is certainly in favour of the appellant. But a Full Bench of the same High Court in **Sadashiv v. P.V. Bhalarao**, ILR 1959 Bom 1800, overruled the said decision. In the latter decision Chainani, C.J., after considering the arguments observed at p. 1804 thus:

“The emphasis is, therefore, on the basic material from which butter is prepared and not on the process by which it is made. Dahi is prepared from milk by souring it. Butter prepared from Dahi can, therefore, be said to be butter prepared from milk itself, after it has undergone the process of souring.... There is also a third method, which is used in some dairies and that is produce butter directly from milk itself. In all these three cases, the basic material from which butter is made is milk. Only the processes adopted for making it are different. In one case it is produced from milk directly. In the other two cases, cream and curd are first prepared and these are then churned to obtain butter. The preparation of cream or curd is only an intermediate process in the manufacture of butter from milk. Butter made from Dahi or curd, is therefore also butter made from milk.”

We entirely agree with these observations.

14. Reliance is then placed upon a decision in **Hunt v. Richardson** [(1916) 2 KBD 446] in support of the argument that if the standard prescribed was not maintained, the appellant did not commit any offence, as there was no adulteration of milk fat with other products. In the above case, by Section 6 of the Sale of Food and Drugs Act, 1875, “no person shall sell to the prejudice of the purchaser any article of food which is not of the nature, substance, and quality of the article demanded by the purchaser, under a penalty”. By Section 4 of the said

Act, the Board of Agriculture were empowered to make regulations for determining what deficiency in any of the normal constituents of genuine milk should for the purposes of the Sale of Food and Drugs Acts raise a presumption, until the contrary was proved, that the milk was not genuine. In exercise of their power, the Board of Agriculture made a regulation prescribing that where a sample of milk contained less than 3 per cent of milk fat it was to be presumed that the milk was not genuine by reason of the abstraction therefrom of milk fat or the addition thereto of water. A dealer in milk sold pure milk and the deficiency in the milk fat was not due to any abstraction from the milk or addition thereto, but because of the herbage on which the cows were fed. The court, by a majority, held that no offence was committed by the dealer. The reason given for the decision is found at p. 452 and it is,

“This section does not authorise the Board of Agriculture to define what is milk, or to fix a standard of the normal constituents below which an article shall be deemed not to be milk, and the regulation providing that where a sample of milk contains less than 3 per cent of milk fat it shall be presumed, until the contrary is proved, not to be genuine of necessity implies that it may be proved to be genuine although it contains less than 3 per cent of milk fat. It is to be observed that Section 1 of the same Act of 1899, which deals with the importation of adulterated or impoverished milk, provides in sub-section 7 that for the purposes of that section milk shall be deemed to be adulterated or impoverished if it has been mixed with any other substance, or if any part of it has been abstracted so as in either case to affect injuriously its quality, substance, or nature. This, I think, confirms the view implied in the regulation that milk which has not been so treated although it be deficient in milk fat is none the less deemed to be milk for the purposes of Section 6 of the Sale of Food and Drugs Act, 1875.”

It is, therefore, obvious that under the English Act selling milk below a particular standard is not an offence. The gist of the offence is mixing with milk any other substance or abstracting any part from it so as to affect injuriously the quality, substance, or nature of the milk. The regulation prescribing that milk shall contain not less than 3 per cent of milk fat raises only a rebuttable presumption, and the dealer, notwithstanding such deficiency, can prove that the milk has not been adulterated or impoverished within the meaning of the said Act. But in the Indian Act selling butter below the prescribed standard is deemed to be adulteration. If the standard is not maintained, the butter, by a fiction, becomes an adulterated food. A dealer in such butter cannot adduce evidence to prove that notwithstanding the deficiency in the standard, it is not adulterated.

15. The conclusion we have arrived at is not only supported by the plain words of the rule, but also carries out the clear intention of the Legislature. The Act was passed to make provisions for the prevention of adulteration of food. Butter is a favourite edible fat and is consumed in different ways by innumerable persons in this country. As we have already pointed out, butter is prepared in the rural areas throughout this country by the indigenous process of churning soured milk, whereas only in a few cities butter is prepared directly from milk. The interpretation suggested by learned counsel for the appellant, if accepted, would make the rule a dead-letter, for all practical purposes, and the object of the Legislature would

be defeated. In our view, the intention of the Legislature has been clearly expressed in the rule.

16. We, therefore, hold that butter prepared from curd comes within the definition of “butter” in Rule A-11.05 of Appendix B to the Rules.

17. The second contention turns upon a question of fact. The High Court considered the entire evidence and accepting the evidence of the Food Inspector and the Health Officer, held that the bottle sent to the Public Analyst was the sample seized from the appellant. There are no permissible grounds for allowing the appellant to canvass the correctness of this finding. We, therefore, accept the finding.

18. The last contention is that the report of the Public Analyst is ambiguous and, therefore, the benefit of doubt should be given to the appellant. What is stated is that in the report it is stated that the butter contained 19.57 per cent of moisture, 64.67 per cent of milk fat and 18.32 per cent of foreign fat, totalling 102.56 per cent i.e. more than 100 per cent. It is, therefore, argued that the report on the face of it is incorrect and therefore should not be acted upon. There is an obvious fallacy underlying this argument. 18.32 per cent of foreign fat is not a percentage in relation to the milk but only in relation to the fat. Out of the fat in the milk, the analyst says that 18.32 per cent is foreign fat. In his own words, “The butter fat in the sample contains 18.32 per cent foreign fat.” If that be so, there is no mistake on the face of the report. The report clearly indicates that the butter sold by the appellant was below the standard prescribed under the rule. If so, it follows that the appellant is guilty of the offence with which he was charged.

19. The High Court sentenced the accused to undergo rigorous imprisonment for two months and also to pay a fine of Rs 250. We agree with the High Court that the offence committed by the appellant is a serious one and that ordinarily the punishment should be deterrent. In most of the cases of this kind imprisonment would certainly be a suitable sentence. But in this case, there was a conflict of view even in the Bombay High Court as regards the question whether butter made from curd would be butter within the meaning of the rule. Indeed, it was brought to our notice that on April 16, 1960, the Central Government made another rule amending Rule A-11.05 by inserting the word “curd” in the definition of butter and the amended definition reads, “butter means the product prepared exclusively from milk, cream or curd of cow or buffalo....” This must have been made to clarify the position in view of the conflicting decisions. In the circumstances, we think that a sentence of fine would meet the ends of justice in the present case. We, therefore, set aside the sentence of two months’ rigorous imprisonment and a fine of Rs 250 and instead sentence the appellant to pay a fine of Rs 500. With this modification, the appeal is dismissed.

* * * * *

The Queen v. Charles Arthur Hill Heaten Ellis

(1844) 6 Q.B. 499

Stat. 9 G. 4, c. 40, s. 38 (a), empowered justices, by order, to remove lunatic paupers to the county lunatic asylum established under that or any other Act; “and, if no such county lunatic asylum shall have been established,” then to some public hospital or house licensed for the reception of insane persons.

On appeal, in which the churchwardens and overseers of St. Luke’s, Middlesex, were appellants, and C. A. H. H. Ellis, Esq., clerk of the peace of the said county, respondent, against an order of John Tidd Pratt, Esq., and John Johnson, Esq., two of Her Majesty’s justices of the peace in and for the said county, bearing date December 12th, 1843, whereby the overseers of the poor of St. Margaret’s, Westminster, were ordered to cause Harriet Ellis, an insane person, to be conveyed to a house duly licensed for the reception of insane persons in the county of Surrey, it appearing to the said two justices that there was not room or accommodation for the said Harriet Ellis in the county lunatic asylum established at Hanwell in the county of Middlesex : and against a certain other order bearing date the said 12th day of December, A.D. 1843, under the bands and seals of the same two justices, whereby the said justices did adjudge the settlement of the said Harriet Ellis to be in the parish of St. Luke in the county of Middlesex, and did order the overseers of the poor of the said parish of St. Luke to pay the sum of 6s. 6d., being the amount of the reasonable charges of conveying the said Harriet Ellis to the said licensed house; and also to pay to Peter Armstrong, the keeper of the said licensed house, the sum of 10s. per week, which payment the said Peter Armstrong was willing to accept, and the same appeared to the said two justices to be a reasonable charge for the maintenance, medicine, clothing and care of the said H. Ellis whilst confined therein : the sessions quashed the several orders, subject to the opinion of this Court upon the following case.

At the time when the orders in question were applied for and made, there was a county lunatic asylum at Hanwell in and for the county of Middlesex ; which asylum then contained upwards of 900 patients, and was then quite full. When that asylum was first completed under the provisions of stat. 9 G. 4, c. 40, it was capable of containing 300 patients only. It was afterwards enlarged and altered from time to time, until it became capable of containing upwards of 900 patients : but it was proved before the justices who made the orders appealed against that there was no room or accommodation for the said Harriet Ellis in the said county lunatic asylum when the said orders were made. The above facts were admitted on both sides when the appeal came on to be heard. The appellants insisted that, since in fact there was a county lunatic asylum in Middlesex, the justices had no jurisdiction, under stat. 9 G. 4, c. 40, s. 38, to direct such insane pauper’s removal to a house duly licensed for the reception of insane persons : and that, at any rate, the justices had no jurisdiction to remove the pauper to a house out of the county of Middlesex, within which county there were many houses duly licensed for the reception of insane persons and to which the pauper might have been sent.

Prendergast, in support of the order of sessions. The order for removal to the licensed house was made under the supposed authority of stat. 9 G. 4, c. 40, s. 38, which enacts that, where a poor person chargeable to any parish is deemed to be insane, and is brought before

two justices in the manner there pointed out, such justices, if satisfied of the insanity upon view and examination of the pauper, or from other proof, shall inquire into the place of settlement; “And it shall be lawful for them, if they shall so think fit, by an order,” & “to cause the said poor person to be conveyed to and placed in the county lunatic asylum established under the directions of this or any former Act, for the county, or district of united counties, for which or any of which they shall act, and if no such county lunatic asylum shall have been established, then to some public hospital or some house duly licensed for the reception of insane persons;” and the same or two other justices may make order on the overseer of the place of settlement for payment of charges. This enactment provides for two cases; where there is a county lunatic asylum, and where “no such county lunatic asylum shall have been established;” in which latter case only the justices may order removal to a public hospital or licensed house. The justices cannot, because it appears expedient, exercise the same authority in a third state of things, not provided for by the Act, namely when an asylum exists, but is full. *Rex v. Chagford* [4 B. & Aid. 235], is an analogous case. The justices here might perhaps have made an order for removal to the asylum, and suspended it; but they could not make one contrary to the statute. If it is asked what course can be taken in a case of emergency like the present, the answer may be that the lunatic must go to the parish workhouse, like other paupers, the Legislature having made no special provision. Another objection is that two justices of Middlesex make an order for removal to an asylum in Surrey.

Bodkin and Pashley contra. This is a case in which the justices must have a discretion for the purpose of giving effect to statute, which was passed, as the title states, “more effectually to provide for the care and maintenance of pauper and criminal lunatics.” The Legislature must have meant that these should in every case be provided for somewhere. Statutes are not to be expounded according to strict propriety of construction, or even in the usual grammatical sense, if that mode of interpreting would lead to manifest inconvenience, and be inconsistent with the subject and occasion, and the object contemplated by the Legislature. In sect. 44 of stat. 9 G. 4, c. 40, which applies to the urgent case of lunatics wandering abroad and dangerous, the same course of proceeding is directed as under sect. 38 ; but there the object of the statute would be defeated if the construction on the other side were correct. It has been suggested that the pauper may at all events be taken to the parish workhouse ; but stat. 4 & 5 W. 4, c. 76, s. 45, provides that nothing in that Act shall authorize the detention in any workhouse of any dangerous lunatic, insane person or idiot for any longer period than fourteen days, and makes the further detention punishable as misdemeanor. The words “if no such county lunatic asylum shall have been established” in sects. 38 and 41 must extend to the case where an asylum has been established but has been rendered useless for the purpose contemplated : as, for instance, by fire. [Coleridge J. Suppose the keeper of the licensed house will not receive the pauper.] That difficulty does not arise here; the willingness is recited in the order. No doubt that must be a condition precedent : but the Legislature probably assumed that, on payment (which the Act provides for) of a reasonable sum for expences, the keeper of such a house always would be willing. The ground of decision in *Rex v. Chagford*, as appears by the judgment of Holroyd J., was that the words of the statute were too particular to admit of being extended by construction: that is not the case here.

LORD DENMAN C.J. - I think the sessions were right in quashing these orders. The Legislature has not given the power which the justices assumed in granting them. If we upheld them, we should not be construing a statute but making a new enactment. The statute authorizes removal to a licensed house "if no such county lunatic asylum shall have been established." Here an asylum has been established : the words therefore do not apply. The affirmative words, "it shall be lawful for them" "to cause the said poor person to be conveyed to and placed in the county lunatic asylum established under" this Act, are equally free from difficulty. It probably was not supposed, when the Act was framed, that, in this country, a place which had once been a lunatic asylum would cease to be so. As to the difficulty in a case like this, if there is, in effect, no asylum, the justices must make such order at the expence of the parish as they might if the Act had not passed.

COLERIDGE J. This Act created new powers in order to get rid of the miserable care to which pauper lunatics were before subjected, and which, in small parishes, was an important nuisance. Two cases are specified: if a county asylum has been established, it is intended that all the pauper lunatics shall go to it: if none has been established, recourse is to be had to a public hospital or license house: but the inflexible rule attaches, that, under a special power, parties must act strictly on the conditions under which it is given. Here an asylum had been established: therefore the power given where none has been established could not be exercised.

* * * * *

Lee v. Knapp

(1967) 2 Q.B. 442

WINN L.J. – This is an appeal on a case stated by one of the metropolitan stipendiary magistrates in respect of an adjudication made at Clerkenwell magistrates court. It is not necessary to go into the details of the matter. Broadly speaking and in so far as any of the facts are material, what happened was this: the defendant had driven a vehicle round the block in the City in which his company's office stood for the particular purpose of demonstrating to his own van driver, he being the managing director of a clothing manufacturing company, that a new two-ton van that the company had bought was really quite easy to handle; the driver had been doubtful about that.

The question of law is whether or not by leaving the van when he did, and so soon as he did, and going away himself to his company's offices, the defendant committed a breach of section 77 (1) of the Road Traffic Act, 1960, which provides, so far as material, that if in any case owing to the presence of a motor vehicle on a road an accident occurs whereby damage is caused to a vehicle other than that motor vehicle, the driver of the motor vehicle shall stop and, if required so to do by any person having reasonable ground for so requiring, give his name and address and also the name and address of the owner and the identification marks of the vehicle.

The unfortunate car that had been run into was owned by a Mr. Strachan, who heard the noise and, presumably having looked out of the window and seen that his own car which was parked there was involved, at once went down, and I dare say he did not tarry on his way. When he got there the defendant had gone, but the transport manager came up very shortly afterwards and duly exchanged particulars with Mr. Strachan. The police arrived shortly after that. The police did not see Mr. Kay, the transport manager, it seems, but presumably having been told by Mr. Strachan to whom the car belonged, they came to the offices of the company of which the defendant is the managing director, and interviewed him; he at once admitted that he had driven the van but stated truly enough, in his own understanding of the word, that he had stopped and he admitted that he had not personally given the name and address as required by the section.

The word "stopped" requires to be considered in the section which I have read : "the driver of the motor vehicle shall stop and, if required... give his name..." So far as the court is aware, the word and phrase has not fallen to be considered hitherto in any court in this country, but in South Australia in 1935 in *Noblet v. Condon* [1935] S.A.S.R. 329], Napier J., now the Chief Justice, sitting in the Supreme Court there, was called upon to construe the same words in section 52 of the South Australia Road Traffic Act, 1934. I pause to make it clear that I have not overlooked the point made by Mr. Owen that the report which I have before me does not disclose whether or not there is in the Australian statute a subsection (2) such as there is in section 77 of the English Act of 1960, which provides that a driver may report an accident to the police within 24 hours, though he must do it so soon as reasonably practicable, if he has not given his name and other particulars at the scene of the accident. The wording of the Australian section 52 (1) is the same in the material respect: "The driver of the motor vehicle shall stop and if required by any person [certain particulars]"

Napier J. in that case was dealing with an accident where the driver of the vehicle involved had stopped for a period which in the judge's view might have been, or the justices may have inferred that it was, up to three or four minutes. Napier J. said:

"I should be very sorry to give the impression that a momentary pause will exempt the driver of a motor car which is involved in an accident from the necessity for stopponing to give the particulars contemplated by the section. Upon my view of the section, the obligation is to stop for such a period as may be reasonable to enable the questions to be put, if there is anybody in the vicinity who desires to put them..."

I gratefully and respectfully adopt what was said by Napier J. in that decision, and for my own part I, too, think that in section 77 (1) of the Road Traffic Act, 1960, the phrase "the driver of the motor vehicle shall stop" is properly to be construed as meaning that the driver of the motor vehicle shall stop it and remain where he has stopped it for such a period of time as in the prevailing circumstances, having regard in particular to the character of the road or place in which the accident happened, will provide a sufficient period to enable persons who have a right so to do, and reasonable ground for so doing, to require of him direct and personally the information which may be required under the section. I think myself that it is the driver's own personal obligation to stay for such a period as I have indicated, and personally to provide the information.

To my mind it would be wholly unsatisfactory if this were not a personal duty laid upon the driver in his capacity as driver. All kinds of subsequent disputes might arise if some other person such as the transport manager, who was directed by the defendant to provide this information, were to purport to do so on behalf of the driver, and, for example, do it inaccurately or in circumstances in which for some reason or another his authority was repudiated wholly or in part by the driver at a subsequent time.

That being so, I think that upon the facts found by the magistrate he could not but convict. I look in particular at what he said in paragraph 2 of the case:

"I further found that the [defendant] did not remain at the scene of the said accident long enough to give the said Mr. Strachan, or anyone else having reasonable grounds for requiring the said particulars, any opportunity to require them of him, and that the [defendant] did not personally give his name or address".

He construed the section in this respect in the same way in which I venture to think it should be construed.

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G. Narayanaswami v. G. Pannerselvam

(1972) 3 SCC 717

M. H. BEG, J. - This is an appeal under Section 116-A of the Representation of People Act, 1951. The appellant's election, held on April 11, 1970, to the Madras Legislative Council from the Madras District Graduates' Constituency was set aside by a learned Judge of the Madras High Court who decided all the issues except one in favour of the appellant. The only issue decided against the appellant, which is now before us, was framed as follows:

“Whether the first Respondent was not qualified to stand for election to the Graduates' Constituency on all or any of the grounds set out by the petitioner in Paragraphs 7 to 9 of the election Petition?”

2. Paragraphs 7 to 9 of the election petition against the appellant are lengthy, prolix, and argumentative. The case and the contentions of the Respondent G. Panneerselvam, the petitioner before the High Court, which were accepted by the High Court, may be summarised as follows:

3. Firstly, the whole purpose of Article 171 of the Constitution was to confer a right of “functional representation” upon persons possessing certain educational or other qualifications so that the Appellant Narayana-swami, who had only passed the High School Leaving Examination and was not a Graduate, could not be elected at all to the Legislative Council from the Graduates' Constituency; secondly, it would be absurd and destructive of the very concept of representation of especially qualified persons that an individual who does not possess the essential or basic qualification of the electors should be a representative of those who are to be represented because of this special qualification of theirs; and, thirdly, the Constitution being an organic instrument for the governance of the land must be interpreted in a particularly broad and liberal manner so as to give effect to the underlying principles and purposes of the system of representation sought to be set up by it and not in such a way as to defeat them. Hence, the educational qualification of the electors should be read into the system of representation set Up by the Constitution for Legislative Councils as a necessary qualification of candidates in such constituencies.

4. Authorities are certainly not wanting which indicate that Courts should interpret in a broad and generous spirit the document which contains the fundamental law of the land or the basic principles of its Government. Nevertheless, the rule of “plain meaning” or “literal” interpretation, described in **Maxwell's Interpretation of Statutes** as “the primary rule”, could not be altogether abandoned today in interpreting any document. Indeed, we find Lord Evershed, M.R., saying: “The length and detail of modern legislation, has undoubtedly reinforced the claim of literal construction as the only safe rule”. It may be that the great mass of modern legislation, a large part of which consists of statutory rules, makes some departure from the literal rule of interpretation more easily justifiable today than it was in the past. But, the object of interpretation and of “construction” (which may be broader than “interpretation”) is to discover the intention of the law-makers in every case. This object can, obviously, be best achieved by first looking at the language used in the relevant provisions. Other methods of extracting the meaning can be resorted to only if the language used is

contradictory, ambiguous, or leads really to absurd results. This is an elementary and basic rule of interpretation as well as of construction processes which, from the point of view of principles applied, coalesce and converge towards the common purpose of both which is to get at the real sense and meaning, so far as it may be reasonably possible to do this, of what is found laid down. The provisions whose meaning is under consideration have, therefore to be examined before applying any method of construction at all. To these provisions we may now turn.

5. Article 168 of our Constitution shows that the State Legislatures in nine States in India, including Madras, were to consist of two Houses: the Legislative Assembly and the Legislative Council. Article 170 lays down that the Legislative Assembly of each State ‘shall consist of members chosen by direct election from territorial constituencies in the State, in such manner as the Parliament may by law determine.’ After that, comes Article 171 which may be reproduced in toto here:

“171 (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (a) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (2) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following namely:—

Literature, Science, Art, co-operative movement and social service.

6. The term “electorate”, used in Article 171(3), (a), (b) and (c) has. neither been defined by the Constitution nor in any enactment by Parliament. Section 2(1) (a) of the Representation of People Act 43 of 1951, however, says:

“ ‘elector’, in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in Section 16 of the Representation of the People Act, 1950.”

7. The plain and ordinary meaning of the term “electorate” is confined to the body of persons who elect. It does not contain, within its ambit, the extended notion of a body of persons electing representatives “from amongst themselves”. Thus, the use of the term “electorate”, in Article 171(3) of our Constitution, could not, by itself, impose a limit upon the field of choice of members of the electorate by requiring that the person to be chosen must also be a member of the electorate. The qualifications of the electors constituting the “electorate”, and of those who can represent each “electorate” contemplated by the Constitution and then supplemented by Parliament, are separately set out for each House. We may glance at the provisions relating to Legislative Assemblies first.

8. Section 16 of the Representation of People Act, 43 of 1951, lays down the qualifications of an elector negatively by prescribing who shall be disqualified for registration in an electoral roll. A disqualified person is one who:

“(a) is not a citizen of India; or

(b) is of unsound mind and stands so declared by a competent court; or

(c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.”

Section 19 lays down the conditions for registration on the electoral roll of a constituency. The persons to be registered must be less than 21 years of age on the qualifying date and must be ordinarily resident in the constituency. The persons so registered, whose names appear on the electoral roll, constitute the electorate for that Legislative Assembly of each State. Section 5 of the Representation of People Act, 43 of 1951 enacts:

“5. Qualifications for membership of a Legislative Assembly. - A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless -

(a) in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State;

(b) in the case of a seat reserved for an autonomous district of Assam, other than a seat the constituency for which comprises the cantonment and municipality of Shillong, he is a member of a Scheduled Tribe of any autonomous district and is an elector for the Assembly constituency in which such seat or any other seat is reserved for that district; and

(c) in the case of any other seat, he is an elector for any Assembly constituency in that State.”.

9. Coming to the Legislative Council, we find that the qualifications for the four “electorates” are indicated by Article 171(1)(a), (b), (c) and (d). And, the qualifications of candidates for seats in a Legislative Council are given in Section 6 of the Representation of People Act, 43 of 1951, which lays down:

“6. Qualifications for membership of a Legislative Council,- (1) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any Assembly Constituency in that State.

(2) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by nomination by the Governor unless he is ordinarily resident in the State.”

10. A look at Article 171(2), set out above, indicates that the composition of the Legislative Council of a State was a matter to be also provided for by law made by Parliament. It is evident that the Constitution-makers had directed their attention specifically towards the methods of election and composition of the Legislature of each State. They themselves prescribed some qualifications to be possessed by members of each House of the Legislature. Article 173 lays down:

“173. A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he -

(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.”

11. An important and very noticeable difference between qualifications prescribed by Parliament for the membership of a Legislative Assembly by Section 5 of the Representation of People Act of 1951 and those for the membership of a Legislative Council by Section 6 of that Act is that, so far as a member of the Legislative Assembly is concerned, he or she has to

be an Elector in the Constituency from which he or she stands, but a member of a Legislative Council in a State is not, similarly, required to be a member of the electorate. All that Parliament says, in Section 6 of the Representation of People Act, 1951, is that the person to be chosen as a member of the Legislative Council has to be “an elector for any Assembly constituency” in the State to whose Legislative Council he was to be chosen. He has to be “ordinarily resident” in the State to qualify for nomination. No other qualifications, apart from those found in Article 173 of the Constitution and Section 6 of the Representation of People Act of 1951, are to be found laid down anywhere. But, an additional qualification was found, by the judgment under appeal before us, to exist by resorting to a presumed legislative intent and then practically adding it to those expressly laid down.

12. It may be possible to look for legislative intention in materials outside the four corners of a statute where its language is really ambiguous or conflicting. But, where no such difficulty arises, the mere fact that the intentions of the law-makers, sought to be demonstrated by what was said by some of them or by those advising them when the Constitution was on the anvil, were really different from the result which clearly follows from the language used in the legislative provisions under consideration, could not authorise the use of such an exceptional mode of construction. “It is well accepted”, said Lord Morris “that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law”.

13. The judgment under appeal, after discussing the manner in which Article 171 of the Constitution was framed and the different views expressed about the nature of the Second Chambers to be set up by it in our States, says: “The system of functional, which is also called occupational representation, as distinguished from territorial representation, was borrowed from the Irish Constitution and that is the underlying principle in Article 171. The opinion of political thinkers and statesmen on the wisdom of such representation may not be unanimous. Whatever be the divergent views, the accomplished fact in the Constitution is that such a representation has been given recognition and it has to be implemented. In making the Legislative Council as a representative body, the framers of the Constitution have not made it exclusively one of elected representatives according to then-occupations. It is intended to be a heterogeneous and more broad based body consisting of persons of different walks of life, some elected and some nominated, each with the experience in his own field of activity”. The Learned Judge concluded: “It is with these objects that clauses (a), (b), and (c) of Article 171(3) have been conceived so that persons in those walks of life could make their contribution to the Legislative functions of the State. Article 171 in fixing the composition of the Legislative Council as a functional chamber, has also indirectly laid down certain qualifications and also disqualifications of members to be elected thereunder”.

14. Whatever may have been the opinions of Constitution-makers or of their advisers, whose views are cited in the judgment under appeal, it is not possible to say, on a perusal of Article 171 of the Constitution, that the Second Chambers set up in nine States in India were meant to incorporate the principle of what is known as “functional” or “vocational” representation which has been advocated by Guild-Socialist and Syndicalist Schools of Political Thought. Some of the observations quoted above, in the judgment under appeal itself, militate with the conclusions reached there. All that we can infer from our constitutional provisions is that additional representation or weightage was given to persons

possessing special types of knowledge and experience, by enabling them to elect their special representatives also for Legislative Councils. The concept of such representation does not carry with it, as a necessary consequence, the further notion that the representative must also possess the very qualifications of those he represents.

15. In the case of the Graduates' constituency, it is provided in Article 171(3)(a) that the electors must have held their degrees for at least three years before they become qualified as electors. Thus, in laying down the test of competence of voters of such a constituency, mere possession of degrees by them was not considered sufficient. Moreover, graduates are not an occupational or vocational group but merely a body of persons with an educational qualification. It would, therefore, not be correct to describe the additional representation sought to be given to them as an attempt to introduce the "functional" or "vocational" principle. On the face of it, Article 171 appears to be designed only to give a right to choose their representatives to those, who have certain types of presumably valuable knowledge and education. If the presumption of their better competence to elect a suitable representative is there, as we think that there must be, it would be for the members of such a constituency themselves to decide whether a person who stands for election from their constituency possesses the right type of knowledge, experience, and wisdom which satisfy certain standards. It may well be that the Constitution-makers, acting upon such a presumption, had intentionally left the educational qualifications of a candidate for election from the graduates' constituency unspecified.

16. A test laid down by Blackburn, J. in *R. v. Cleworth* to determine what the correct presumption, arising from an omission in a statute should be, was whether what was omitted but sought to be brought within the legislative intention was "known" to the law-makers, and could, therefore, be "supposed to have been omitted intentionally". "It makes no difference", says *Craies on Statute Law* "that the omission on the part of the Legislature was a mere oversight, and that without doubt the Act would have been drawn otherwise had the attention to the Legislature been directed to the oversight at the time the Act was under discussion". In the case before us, it could not possibly be said that the question to be dealt with was not "known" to the legislators. It could not even be said that qualifications of the electors as well as of those to be elected were not matters to which the attention of the law-makers, both in the Constituent Assembly and in Parliament, was not specially directed at all or that the omission must be by mere oversight. The provisions discussed above demonstrate amply how legislative attention was paid to the qualifications of the electors as well as of the elected in every case. Hence, the correct presumption, in such a case, would be that the omission was deliberate.

17. A glance at the legislative history lying behind Article 171 also enables us to reach the conclusion that the omission by the Constitution-makers or by Parliament to prescribe graduation as qualification of the candidate for the graduates' constituency must be deliberate. Sections 60 and 61 of the Government of India Act, 1935 deal with composition of Provincial Legislatures and of the two Chambers of such Legislatures. The Upper Chambers in the Provincial Legislatures were to be composed of members retiring every third year in accordance with provisions of the Fifth Schedule to the Act. Rule 10 of this Schedule lays down:

“In a Province in which any seats are to be filled by representatives of backward areas or backward tribes, representatives of commerce, industry, mining and planting, representatives of landholders, representatives of universities or representatives of labour, persons to fill those seats ... shall be chosen in such manner as may be prescribed.”

On April 30, 1936 the Government of India (Provincial Legislative Assemblies) Order of 1936 was issued by His Majesty in Council. It prescribed the qualifications of persons to be chosen from the “special constituencies” set up for representation in the Legislative Councils. A glance at the provisions relating to these qualifications, including those for the University seats, indicates that it was invariably expressly provided, where it was so intended, that a necessary qualification of a candidate for a seat was that he or she should be “entitled to vote for the choice of a member to fill it.” Hence, legislative history on the subject would also indicate that, whenever any qualification of the candidate was intended to be imposed, this was expressly done and not left to mere implications.

18. We think that the view contained in the Judgment under appeal, necessarily results in writing some words into or adding them to the relevant statutory provisions to the effect that the candidates from graduates’ constituencies of Legislative Councils must also possess the qualification of having graduated. This contravenes the rule of “plain meaning” or “literal” construction which must ordinarily prevail. A logical corollary of that rule is that “a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made”. An application of the rule necessarily involves that addition to or modification of words used in statutory provisions is not generally permissible.

19. Cases in which defects in statutory provisions may or may not be supplied by Courts have been indicated in well known words such as Sutherland’s “*Statutory Construction*” (3rd Edn., Vol. 2) and in Crawford’s “*Construction of Statutes*” (1940 Edn.). Only one passage from the last mentioned work need be cited here: (p. 269):

“Where the statute’s meaning is clear and explicit, words cannot be interpolated. In the first place, in such a case, they are not needed. If they should be interpolated, the statute would more than likely fail to express the legislative intent, as the thought intended to be conveyed might be altered by the addition of new words. They should not be interpolated even though the remedy of the statute would thereby be advanced, or a more desirable or just result would occur. Even where the meaning of the statute is clear and sensible, either with or without the omitted word, interpolation is improper, since the primary source of the legislative intent is in the language of the statute.”

20. We think that the language as well as the legislative history of Articles 171 and 173 of the Constitution and Section 6 of the Representation of People Act, 1951, enable us to presume a deliberate omission of the qualification that the representative of the Graduates should also be a graduate. In our opinion, no absurdity results if we presume such an intention. We cannot infer as the learned Judge of the Madras High Court had done, from the mere fact of such an omission and opinions about a supposed scheme of “functional representation” underlying Article 171 of our Constitution, that the omission was either unintentional or that it led to absurd results. We think that, by adding a condition to be necessary or implied qualifications of a representative of the Graduates which the Constitution-makers, or, in any event the Parliament, could have easily imposed, the learned

Judge had really invaded the legislative sphere. The defect, if any, in the law could be removed only by law made by Parliament.

21. We conclude, after considering all the relevant constitutional and statutory provisions relating to the qualifications of a candidate for election from the Graduates constituency of the Legislative Council of the Madras State, that the appellant possesses all the qualifications laid down for such a candidate. Therefore, we allow this appeal, set aside the Judgment and Order of the Madras High Court, and dismiss the respondent's election petition.

* * * * *

Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama
(1990) 1 SCC 277

K. JAGANNATHA SHETTY, J. - 2. This case raises yet another variant of a vexed question. Does Section 23(2) of the Land Acquisition Act, 1984 (as amended by Act 68 of 1984) providing for higher solatium proprio vigore apply to award made subsequent to September 24, 1984 even though the acquisition commenced prior to the said date. The appeal also raises another important question as to the applicability of Section 23(1-A) providing additional amount of compensation to awards made in such acquisition proceedings.

3. By notification under Section 4 of the Land Acquisition Act, 1894 (the 'Act') published in the government gazette on October 26, 1967, the State Government declared its intention to acquire the land belonging to the respondent for establishing Naval Air Station Dabolim. On February 23, 1968, notification under Section 6 was published in the gazette. On March 5, 1969 the Land Acquisition Officer declared award determining compensation at the rate of 40 paise per square metre with solatium at 15 per cent.

4. The claimant had sought reference under Section 18 of the Act and reference was duly made to the civil court (District Judge). On May 28, 1985, the court after investigation of the claim awarded compensation at Rs 3 per square metre. The court also awarded solatium at 15 per cent and interest at 6 per cent from the date of taking possession till payment of compensation. Not being satisfied, the claimant preferred an appeal to the High Court seeking further enhancement of compensation and also solatium at 30 per cent. This claim was apparently based on the new provisions introduced by the Amending Act 68 of 1984. The High Court accepted the appeal and granted the reliefs in the following terms:

“The impugned award dated May 28, 1985, is modified. The appellant is entitled to the added benefits. In that he shall be entitled to have the compensation at the rate of 12 per cent of the market value from the date of Section 4 notification till the date of possession or the date of award, whichever is earlier. The appellant is further entitled to interest at the rate of 9 per cent for the first year from the date of taking over possession and thereafter at the rate of 15 per cent per annum till the date of deposit or payment as the case may be. The appellant shall be entitled to further 15 per cent solatium in addition to the 15 per cent already granted to him. To the extent indicated above, the award shall stand modified.”

5. The High Court has thus granted three more reliefs to the claimant: (i) Additional amount at the rate of 12 per cent of the market value from the date of notification under Section 4 till the date of taking over possession; (ii) interest at the rate of 9 per cent for the first year from the date of taking possession and 15 per cent for the subsequent years; and (iii) solatium at 30 per cent on the market value.

6. There is no grievance made in this appeal as to the second of the reliefs granted to the claimant. The claimant is entitled to the interest under Section 28 of the Act. The challenge is only against the first and the third of the said reliefs. They were evidently given under the amended Sections 23(1-A) and 23(2) of the Act.

7. We will first take up the question of solatium. On April 30, 1982, the corresponding Bill of the Amending Act 68 of 1984, namely, Land Acquisition (Amendment) Bill, 1982, was introduced in Parliament. On September 24, 1984 it became law as the Land Acquisition (Amendment) Act, 68 of 1984, when it received assent of the President. Before the amendment, Section 23(2) provided solatium at 15 per cent on the market value. After amendment by Act 68 of 1984 solatium was raised to 30 per cent on the market value. Section 23(2) now reads:

“23(2). In addition to the market value of the land, as above provided, the court shall in every case award a sum of 30 per centum on such market value, in consideration of the compulsory nature of the acquisition.”

8. The question herein is whether the higher solatium is attracted to the present case. Section 23(2) has been given limited retrospectivity by supplying transitional provisions under Section 30(2). Section 30(2) reads:

“30. *Transitional provisions*,— (2) The provisions of sub-section (2) of Section 23 and Section 28 of the principal Act, as amended by clause (b) of Section 15 and Section 18 of this Act respectively, shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act after the 30th day of April, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People] and before the commencement of this Act.”

9. The scope of retrospective operation of Section 23(2) was first explained in **K. Kamalajammanniavar v. Special Land Acquisition Officer** [(1985) 2 SCR 914]. A two Judge bench held that the award of 30 per cent solatium will apply only where the award appealed against was made by the Collector or court during the period between April 30, 1982 and September 24, 1984. This decision was rendered on February 14, 1985. Shortly thereafter there was another decision by a three Judge bench in **Bhag Singh v. Union Territory of Chandigarh** [(1985) 3 SCC 737]. There a contrary view was expressed. It was held that even if an award is made by the Collector or court on or before April 30, 1982, and an appeal against such award is pending before the High Court or the Supreme Court on April 30, 1982 or is filed subsequent to that date, 30 per cent solatium under Section 23(2) should be allowed. In taking that view, **Bhag Singh** overruled **Kamalajammanniavar** and approved of the opinion expressed in another three Judge bench in **State of Punjab v. Mohinder Singh** [(1986) 1 SCC 365]. But the recent Constitution Bench in **Union of India v. Raghbir Singh** [(1989) 2 SCC 754] has overruled **Bhag Singh** and **Mohinder Singh** and reiterated the view expressed in **Kamalajammanniavar**. Pathak C.J., speaking for the court in **Raghbir Singh** case rounded off his discussion thus:

“We think that what Parliament intends to say is that the benefit of Section 30(2) will be available to an award by the Collector or the court made between the aforesaid two dates or to an appellate order of the High Court or of the Supreme Court which arises out of an award of the Collector or the court made between the said two dates. The word ‘or’ is used with reference to the stage at which the

proceeding rests at the time when the benefit under Section 30(2) is sought to be extended. If the proceeding has terminated with the award of the Collector or of the court made between the aforesaid two dates, the benefit of Section 30(2) will be applied to such award made between the aforesaid two dates. If the proceeding has passed to the stage of appeal before the High Court or Supreme Court, it is at that stage when the benefit of Section 30(2) will be applied. But in every case, the award of the Collector or of the court must have been made between April 30, 1982 and September 24, 1984.”

10. In stating thus, the decision has set at rest the controversy as to entitlement of higher solatium to cases pending as on the date of commencement of the Amending Act. Section 23(2) was held to apply to awards made in between April 30, 1982 and September 24, 1984. Obviously they must be awards in acquisition commenced prior to the said dates. The award may be of the Collector or court. One or the other must receive 30 per cent solatium on the market value of the land. More important, that the higher solatium could also be given by the High Court or the Supreme Court in appeals against such award.

11. But these decisions do not solve the problem presented here. The award with which we are concerned does not fall within the interregnum i.e. between April 30, 1982 and September 24, 1984. To repeat the facts: The acquisition commenced on October 26, 1967 when the notification under Section 4(1) of the Act was published. On March 5, 1969 the Collector made the award and on May 28, 1985 the reference court made the award. Both the awards, thus apparently fall outside the period prescribed under Section 30(2).

12. Counsel for the appellant on the aforesaid facts ruled out the applicability of Section 30(2) in the first place. Secondly, he also ruled out the applicability of Section 23(2). The first contention was based on the plain terms of Section 30(2) and the second on the ground that Section 23(2) with its isolated splendour is not retrospective in operation. He thus submitted that the claimant's case could not be saved for higher solatium either under Transitional Provisions or by amended Section 23(2) of the Act and it was gone both ways.

13. This submission reminds us of the words of Shakespeare in *The Merchant of Venice*, where Launcelot tells Jessica:

“Truly then I fear you are damned both by father and mother: thus when I shun Scylla, your father, I fall into Charybdis your mother: well, you are gone both ways.”(*The Merchant of Venice* 3.5)

14. The submission that Section 23(2) by itself has no retrospective operation seems to be justified. It is significant to note that Section 23(2) forms part of a scheme of determining compensation for land acquired under the Act. It provides 30 per cent solatium on the market value of the land in consideration of the compulsory nature of the acquisition. It thus operates on the market value of the land acquired. The market value of the land is required to be determined at the date of publication of the notification under Section 4(1). It cannot be determined with reference to any other date. That has been expressly provided for under Section 23(1) of the Act. In the instant case, Section 4(1) notification was published on October 20, 1967. The Amending Act 68 of 1984 came into force on September 24, 1984. The amended Section 23(2) by itself is not retrospective in operation. It cannot proprio vigore

apply to awards in respect of acquisition proceedings commenced prior to September 24, 1984. If, therefore, Section 30(2) does not cover the present case, then amended Section 23(2) has no part to play.

15. This in effect is the result of the plain meaning rule of interpreting Section 30(2) of the Amending Act 68 of 1984. But then, it would seem very odd indeed and anomalous too to exclude the present case from the operation of Section 30(2). Section 30(2) is the Transitional Provisions. The purpose of incorporating Transitional Provisions in any Act or amendment is to clarify as to when and how the operative parts of the enactments are to take effect. The Transitional Provisions generally are intended to take care of the events during the period of transition. Mr Francis Bennion in his book on *Statutory Interpretation* (14 edn., p. 442) outlines the purpose of such provisions:

“189. Transitional Provisions.- Where an Act contains substantive, amending or repealing enactments, it commonly also includes transitional provisions which regulates the coming into operation of those enactments and modify their effect during the period of transition. Where an Act fails to include such provisions expressly, the court is required to draw such inferences as to the intended transitional arrangements as, in the light of the interpretative criteria, it considers Parliament to have intended.”

16. The paramount object in statutory interpretation is to discover what the legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation. “Words are certainly not crystals, transparent and unchanged” as Mr Justice Holmes has wisely and properly warned. [*Towne v. Eisner*, 245 US 418, 425 (1918)] Learned Hand, J., was equally emphatic when he said: “Statutes should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them.”

17. Section 30(2) provides that amended provisions of Section 23(2) shall apply, and shall be deemed to have applied, also to, and in relation to, any award made by the Collector or court between April 30, 1982 and September 24, 1984, or to an appellate order therefrom passed by the High Court or Supreme Court. The purpose of these provisions seems to be that the awards made in that interregnum must get higher solatium inasmuch as to awards made subsequent to September 24, 1984. Perhaps it was thought that awards made after the commencement of the Amending Act 68 of 1984 would be taken care of by the amended Section 23(2). The case like the present one seems to have escaped attention by innocent lack of due care in the drafting. The result would be an obvious anomaly as will be indicated presently. If there is obvious anomaly in the application of law the court could shape the law to remove the anomaly. If the strict grammatical interpretation gives rise to absurdity or inconsistency, the court could discard such interpretation and adopt an interpretation which will give effect to the purpose of the legislature. That could be done, if necessary even by modification of the language used. The legislators do not always deal with specific controversies which the courts decide. They incorporate general purpose behind the statutory words and it is for the courts to decide specific cases. If a given case is well within the general purpose of the legislature but not within the literal meaning of the statute, then the court must strike the balance.

18. The criticism that the literal interpretation of Section 30(2), if adhered to would lead to unjust result seems to be justified. Take for example two acquisition proceedings of two adjacent pieces of land, required for the same public purpose. Let us say that they were initiated on the same day - a day some time prior to April 30, 1982. In one of them the award of the Collector is made on September 23, 1984 and in the other on September 25, 1984. Under the terms of Section 30(2) the benefit of higher solatium is available to the first award and not to the second. Take another example: the proceedings of acquisition initiated, say, in the year 1960 in which award was made on May 1, 1982. Then the amended Section 23(2) shall apply and higher solatium is entitled to. But in an acquisition initiated on September 23, 1984 and award made in the year 1989 the higher solatium is ruled out. This is the intrinsic illogicality if the award made after September 24, 1984, is not given higher solatium. Such a construction of Section 30(2) would be vulnerable to attack under Article 14 of the Constitution and it should be avoided. We, therefore, hold that benefit of higher solatium under Section 23(2) should be available also to the present case. This would be the only reasonable view to be taken in the circumstances of the case and in the light of the purpose of Section 30(2). In this view of the matter, the higher solatium allowed by the High Court is kept undisturbed.

19. This takes us to the second question which we have formulated at the beginning of the judgment: Whether the claimant is entitled to additional amount of compensation provided under Section 23(1-A) of the Act? This is equally a fundamental question and seemingly not covered by any of the previous decisions of this Court.

20. Section 23(1-A) reads as follows:

“23.(1-A) In addition to the market value of the land, as above provided, the court shall in every case award an amount calculated at the rate of 12 per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4, sub-section (1), in respect of such land to the date of award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation: In computing the period referred to in this sub-section any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.”

The objective words used in this sub-section are similar to those that are used in Section 23(2). It enjoins a duty on the court to award the additional amount at 12 per cent on the market value of the land for the period prescribed thereunder. But this again is a part of the scheme for determining compensation under Section 23(1) of the Act. It also operates on the market value of the land acquired. It is plainly and distinctly prospective in its operation since market value has to be determined as on the date of publication of notification under Section 4(1). But the legislature has given new starting point for operation of Section 23(1-A) for certain cases. That will be found from Section 30 sub-sections (1)(a) and (b) of the Transitional Provisions. They read as follows:

“30. Transitional Provisions. - (1) The provision of sub-section (1-A) of Section 23 of the principal Act, as inserted by clause (a) of Section 15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to:

(a) every proceeding for the acquisition of any land under the principal Act pending on the 30th day of April 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982 in the House of the People], in which no award has been made by the Collector before that date.

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the date of commencement of this Act.”

21. Entitlement of additional amount provided under Section 23(12DA) depends upon pendency of acquisition proceedings as on April 30, 1982 or commencement of acquisition proceedings after that date. Section 30 sub-section (1)(a) provides that additional amount provided under Section 23(1-A) shall be applicable to acquisition proceedings pending before the Collector as on April 30, 1982 in which he has not made the award before that date. If the Collector has made the award before that date then, that additional amount cannot be awarded. Section 30 sub-section (1)(b) provides that Section 23(1-A) shall be applicable to every acquisition proceedings commenced after April 30, 1982 irrespective of the fact whether the Collector has made an award or not before September 24, 1984. The final point to note is that Section 30 sub-section (1) does not refer to court award and the court award is used only in Section 30 sub-section (2).

22. In the case before us, on October 26, 1967, the notification under Section 4 was issued. On March 5, 1969 the Collector made the award. The result is that on April 30, 1982 there was no proceedings pending before the Collector. Therefore, Section 30 sub-section (1)(a) is not attracted to the case. Since the proceedings for acquisition commenced before April 30, 1982, Section 30 sub-section (1)(b) is also not applicable to the case. Here, the case is really gone by both ways. It cannot be saved from Scylla or Charybdis. The claimant is, therefore, not entitled to additional amount provided under Section 23(1-A).

26. In the result, the appeal is allowed in part. The judgment of the High Court is modified and the compensation awarded under Section 23(1-A) is deleted. The judgment and decree in other respects are kept undisturbed.

* * * * *

Nokes v. Doncaster Amalgamated Collieries

(1940) AC 1014

VISCOUNT SIMON L.C. - My Lords, the question to be decided in this appeal can be thus stated. When the Court makes an order under s. 154 of the Companies Act, 1929, transferring all the property and liabilities of the transferor company to the transferee company, is the result that a contract of service previously existing between an individual and the transferor company automatically becomes a contract between the individual and the transferee company?

The appellant is a coalminer, and between January, 1937, and June 4, 1937, there existed between him and the Hickleton Main Colliery Company, Ltd., a contract under which he worked at the colliery and received wages from that company. On June 4, 1937, an order was made by the Chancery Division of His Majesty's High Court of Justice under s. 154, which transferred to the respondent company all the property, rights, powers, liabilities and duties of a number of colliery companies, including the Hickleton Main Colliery Company, and which provided that these transferor companies should be dissolved without winding up.

The appellant continued to work at the Hickleton Main Colliery until October 7, 1937, and received wages from the respondents for his labour, but he throughout believed himself to be working under his contract with the Hickleton Main Colliery Company, Ltd., which contract had never been terminated by notice. The company, however, as the result of the order made by the Chancery Division, had ceased to exist. On October 7, 1937, the appellant absented himself from work, in circumstances which would have made him liable under s. 4 of the Employers and Workmen Act, 1875, if he could be regarded as under a contract of service with the respondents. This he denied, and hence, on a case stated by the justices of Doncaster, the general question arises which I have defined above and which the House has now to determine.

Counsel for the appellant argued that a contractual right to personal service was a personal right of the employer and was incapable of being transferred by him to anyone else, and that a duty to serve a specific master could not be part of the property or rights of that master capable of becoming, by transfer, a duty to serve someone else. It is, of course, indisputable that (apart from statutory provision to the contrary) the benefit of a contract entered into by A to render personal service to X cannot be transferred by X to Y without A's consent, which is the same thing as saying that, in order to produce the desired result, the old contract between A and X would have to be terminated by notice or by mutual consent and a new contract of service entered into by agreement between A and Y. The rule is so strict that if the contract is between individuals on both sides and X dies, the contract of service is immediately dissolved - ***Farrow v. Wilson*** - for A never promised to serve X's personal representative and X could only act as employer when alive. Where a firm consisting of four partners engaged the plaintiff as manager for a term of two years, the retirement of two partners from the firm within that period operated as a wrongful dismissal of the plaintiff: ***Brace v. Calder***. If A's contract is to serve a limited company, X & Co., and X & Co. goes into liquidation, the winding-up order operates as a notice of discharge to the servants of the company: Chapman's case.

The rules of law restricting the assignability of contracts are, however, by no means limited to contracts of personal service. In the case of contracts for the sale of goods, for example (unless the contract expressly or by implication covers the purchaser and his assigns), the seller is entitled to rely on the credit of the purchaser and to refuse to recognize any substitute. Similarly, the purchaser is entitled to rely upon the seller and to hold him responsible for due performance. I may add that a possible confusion may arise from the use of the word "assignability" in discussing some of the cases usually cited on this subject. Thus, in *British Waggon Co. and Parkgate Waggon Co. v. Lea* the real point of the decision was that the contract which the Parkgate company had made with Lea for the repair of certain wagons did not call for the repairs being necessarily effected by the Parkgate company itself, but could be adequately performed by the Parkgate Company arranging with the British Waggon company that the latter should execute the repairs. Such a result does not depend on assignment of contract at all. It depends on the view that the contract of repair was duly discharged by the Parkgate company by getting the repairs satisfactorily effected by a third party. In other words, the contract bound the Parkgate company to produce a result, not necessarily by its own efforts, but, if it preferred, by vicarious performance through a sub-contractor or otherwise.

A quite different situation, as it seems to me, is illustrated by the well known case of *Tolhurst v. Associated Portland Cement Manufacturers* and, with all respect to an observation made by Lord Lindley at the end of his judgment in *Tolhurst* case, I doubt whether the *British Waggon Company* case was really an authority very much in point. In *Tolhurst* case the majority of this House took the view that the contract then under discussion was "assignable," because the contract ought to be read and construed as one between the named parties and their respective assigns, although assigns were not in fact mentioned in the document. By so construing the agreement the validity of the transfer of the benefit of the contract from the original company to the new company to which it assigned it became unchallengeable, and Lord Macnaghten insists, at the beginning of his judgment, that once the true interpretation of the contract was settled there was no further legal point in the case at all. *Tolhurst's* case, therefore, was a case in which the terms of the contract provided for its assignment; the *British Waggon Company* case does not turn on assignment, but illustrates the circumstances in which the original contracting party may perform the contract by getting somebody else to do the work in satisfactory fashion.

It will be readily conceded that the result contended for by the respondents in this case would be at complete variance with a fundamental principle of our common law - the principle, namely, that a free citizen, in the exercise of his freedom, is entitled to choose the employer whom he promises to serve, so that the right to his services cannot be transferred from one employer to another without his assent. The whole question, however, is whether s. 154 of the Companies Act, 1929, provides a statutory exception to that principle.

In favour of the view that it does, it is pointed out that the only transfers which the section can authorize are transfers of the undertaking of one company to another, and that if the employer is a company, the servant can have no direct contact with the artificial entity but of necessity deals with and acts under the orders of the company's agents. Moreover, the change involved in a wage earner serving the new company in place of the old is, in normal cases, no

greater than the change he would experience when the company which he is serving throughout changes its directors, its shareholders, its managers, its scope of operations, and its name, all of which it may do without losing its identity. No doubt this is true in many cases, though I am far from saying that the transformation of a small private or family company, in which the wage-earner maintains a personal relation with the principal shareholders who act as managers and directors, into a much larger concern where personal contacts disappear, is in all cases a matter of indifference to the employees. But the point made is that such a transformation can take place without necessarily changing the identity of the company.

It is further argued on behalf of the respondents that s. 154 constitutes a new and simpler machinery for the transfer of the undertaking of an old company to a new company, which thus acquires the undertaking without the necessity of the transferor company going into liquidation. As the Master of the Rolls observed in his judgment, the word "transfer" is not a word of art and the language of s. 154 is in very wide terms. Moreover, s. 154 contemplates, or at any rate provides for, the dissolution of the transferor company when the transfer of its undertaking has been made, and there appears to be no means of calling back to life the company so dissolved, for s. 294 occurs in Part V. of the Companies Act dealing with winding up, whereas s. 154 is found in Part IV.

In these circumstances, and with powerful arguments presented on either side, the House is left with the difficult task of putting the proper construction on s. 154, so far as its application to current contracts of service is concerned. I give full weight to the unanimity of view expressed in the Courts below by judges some of whom speak with special authority on this sort of subject-matter, but after much reflection, and after weighing the reasoning in those judgments and the arguments presented at the Bar of this House, I have to come to the conclusion that contracts of personal service are not automatically transferred by an order made under s. 154.

The principles of construction which apply in interpreting such a section are well established; the difficulty is to adapt well established principles to a particular case of difficulty. The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. We must not shrink from an interpretation which will reverse the previous law, for the purpose of a large part of our statute law is to make lawful that which would not be lawful without the statute, or, conversely, to prohibit results which would otherwise follow. Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words, but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction. At the same time, if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

Here, the wider interpretation of s. 154 which has found favour in the Courts below practically amounts to saying, in reference to current contracts of the transferor company, that an order made under s. 154 strikes out the name of the transferor company and substitutes that

of the transferee company as a party to the contract. Consequently, all current contracts of service are transformed, without consulting the servant, by substituting the new employer for the old. But it is fallacious to suppose that this wide construction of s. 154 would remove all difficulty in transferring contracts for personal service. If, for example, one of the companies to be amalgamated under the procedure of that section has a long-term contract with an individual to be sole manager of its undertaking, what would happen when the transfer takes place to a new and enlarged company?

The remuneration may be quite inadequate, or the individual may be quite unsuited, for so extended a responsibility. Again, if each of half a dozen amalgamating companies has such a contract with its manager, the suggested interpretation of s. 154 appears to lead to absurdity. The truth is that many contracts are not capable of being dealt with by the method said to be involved in the language of s. 154. For example, what would become of a contract which remunerates a manager with a share of the profits of a constituent undertaking, or a contract with a medical man to attend the servants of a company at a fixed total fee? Such contracts cannot be dealt with by simply substituting a new employer for the old, for the nature of the contract necessarily depends upon the old employer continuing to be a contracting party, and any change of employer gives the contract an entirely new meaning.

It seems to me therefore than any difficulties arising in connection with such contracts as I have described above must be disposed of at the time of transfer by negotiation leading either to a new engagement or to compensation. If this is so, it is no longer possible to give an interpretation to s. 154 which would automatically transfer every kind of current contract by merely substituting the name of the new company for the name of the old.

The argument that an order made under the section transfers wage-earners from one employer to another without their consent thus loses much of its force. I do not see why there should be any great practical difficulty in the old company announcing to its work-people that the undertaking is about to be transferred to a new company, giving the necessary notice to terminate existing engagements and informing the wage-earners that the new company is prepared to re-engage them on the same terms, and that continuing service after such a date will be taken as acceptance of the new offer.

At any rate, after examining s. 154 with close attention and considering the consequences of its application in different cases, I can come to no other conclusion than that an order made under it does not automatically transfer contracts of personal service. The word "contract" does not appear in the section at all, and I do not agree with the view expressed in the Court of Appeal that a right to the service of an employee is the property of the transferor company. Such a right cannot be the subject of gift or bequest; it cannot be bought or sold; it forms no part of the assets of the employer for the purpose of administering his estate.

In short, s. 154 when it provides for "transfer" is providing in my opinion for the transfer of those rights which are not incapable of transfer and is not contemplating the transfer of rights which are in their nature incapable of being transferred. I must make it plain that my judgment is limited to contracts of personal service with which the present appeal is concerned. It may well be that current contracts for the supply and purchase of goods are subject to what I may call a statutory novation, except contracts for the supply of "your

requirements" or the like which, like contracts to obey "your orders," do not seem to me capable of automatic transfer.

The conclusion at which I have arrived may be regarded as limiting the usefulness of the section, but to that consideration there are two answers. In the first place I am not justified on that account in giving to the section a wider effect than its true interpretation should provide, and there must be great advantages in avoiding the necessity of liquidation and in effecting transfers without any further act or deed in cases contemplated by the section. In the second place, if the Legislature really desires that workmen should be transferred to a new employer without their consent being obtained, plainer words can be devised to express this intention. I cannot regard s. 154 as plainly authorizing this result and, in my view, the appeal should be allowed with costs here and below, and the question of law raised in the case stated should be answered by saying that a contract of service did not exist between the appellant and the respondents and that the magistrates should dismiss the summons with such order as to costs as they think fit.

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R.M.D. Chamarbaugwalla v. Union of India

1957 SCR 930 : AIR 1957 SC 628

T. L. VENKATARAMA AIYAR, J. - Pursuant to resolutions passed by the legislatures of several States under Article 252, clause (1) of the Constitution, Parliament enacted Prize Competitions Act, (42 of 1955), "the Act", and by a notification issued on March 31, 1956, the Central Government brought it into force on April 1, 1956. The petitioners before us are engaged in promoting and conducting prize competitions in different States of India, and they have filed the present petitions under Article 32 questioning the validity of some of the provisions of the Act and the rules framed thereunder.

2. It will be convenient first to refer to the provisions of the Act and of the rules, so far as they are material for the purpose of the present petitions. The object of the legislation is, as stated in the short title and in the preamble, "to provide for the control and regulation of prize competitions." Section 2(d) of the Act defines "prize competition" as meaning "any competition (whether called a cross-word prize competition, a missing-word prize competition, a picture prize competition or by any other name), in which prizes are offered for the solution of any puzzle based upon the building up, arrangement, combination or permutation of letters, words or figures." Sections 4 and 5 of the Act are the provisions which are impugned as unconstitutional, and they are as follows:

"4. No person shall promote or conduct any prize competition or competitions in which the total value of the prize or prizes (whether in cash or otherwise) to be offered in any month exceeds one thousand rupees; and in every prize competition, the number of entries shall not exceed two thousand.

5. Subject to the provisions of Section 4, no person shall promote any prize competition or competitions in which the total value of the prize or prizes (whether in cash or otherwise) to be offered in any month does not exceed one thousand rupees unless he has obtained in this behalf a licence granted in accordance with the provisions of this Act and the rules made thereunder."

Then follow provisions as to licensing, maintaining of accounts and penalties for violation thereof. Section 20 confers power on the State Governments to frame rules for carrying out the purpose of the Act. In exercise of the powers conferred by this section, the Central Government has framed rules for Part C States, and they have been, in general, adopted by all the States. Two of these rules, namely, Rules 11 and 12 are impugned by the petitioners as unconstitutional, and they are as follows:

"**11. Entry fee.**- (1) Where an entry fee is charged in respect of a prize competition, such fee shall be paid in money only and not in any other manner.

(2) The maximum amount of any entry fee shall not exceed Re 1 where the total value of the prize or prizes to be offered is rupees one thousand but not less than rupees five hundred; and in all other cases the maximum amount of an entry fee shall be at the following rates, namely -

(a) as. 8 where the total value of the prize or prizes to be offered is less than rupees five hundred but not less than rupees two hundred and fifty; and

(b) as. 4 where the total value of the prize or prizes to be offered is less than rupees two hundred and fifty.

12. Maintenance of Register. - Every licensee shall maintain in respect of each prize competition for which a licence has been granted a register in Form C and shall, for the purpose of ensuring that not more than two thousand entries are received for scrutiny for each such competition, take the following steps, that is to say, shall—

(a) arrange to receive all the entries only at the place of business mentioned in the license;

(b) serially number the entries according to their order of receipt;

(c) post the relevant particulars of such entries in the register in Form C as and when the entries are received and in any case not later than the close of business on each day; and

(d) accept for scrutiny only the first two thousand entries as they appear in the register in Form C and ignore the remaining entries, if any, in cases where no entry fee is charged and refund the entry fee received in respect of the entries in excess of the first two thousand to the respective senders thereof in cases where an entry fee has been charged after deducting the cost (if any) of refund.”

3. Now, the contention of Mr Palkhivala, who addressed the main argument in support of the petitions, is that prize competition as defined in Section 2(d) would include not only competitions in which success depends on chance but also those in which it would depend to a substantial degree on skill; that the conditions laid down in Sections 4 and 5 and Rules 11 and 12 are wholly unworkable and would render it impossible to run the competition, and that they seriously encroached on the fundamental right of the petitioners to carry on business; that they could not be supported under Article 19(6) of the Constitution as they were unreasonable and amounted, in effect, to a prohibition and not merely a regulation of the business; that even if the provisions could be regarded as reasonable restrictions as regards competitions which are in the nature of gambling, they could not be supported as regards competitions wherein success depended to a substantial extent on skill, and that as the impugned law constituted a single inseverable enactment, it must fail in its entirety in respect of both classes of competitions. Mr Seervai who appeared for the respondent, disputes the correctness of these contentions. He argues that “prize competition” as defined in Section 2(d) of the Act, properly construed, means and includes only competitions in which success does not depend to any substantial degree on skill and are essentially gambling in their character; that gambling activities are not trade or business within the meaning of that expression in Article 19(1)(g), and that accordingly the petitioners are not entitled to invoke the protection of Article 19(6); and that even if the definition of “prize competition” in Section 2(d) is wide enough to include competitions in which success depends to a substantial degree on skill and Sections 4 and 5 of the Act and Rules 11 and 12 are to be struck down in respect of such competitions as unreasonable restrictions not protected by Article 19(6), that would not affect the validity of the enactment as regards the competitions which are in the nature of gambling, the Act being severable in its application to such competitions.

4. These petitions were heard along with Civil Appeal No. 134 of 1956, wherein the validity of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948, was

impugned on grounds some of which are raised in the present petitions. In our judgment in that appeal, we have held that trade and commerce protected by Article 19(1)(g) and Article 301 are only those activities which could be regarded as lawful trading activities, that gambling is not trade but *res extra commercium*, and that it does not fall within the purview of those Articles. Following that decision, we must hold that as regards gambling competitions, the petitioners before us cannot seek the protection of Article 19(1)(g), and that the question whether the restrictions enacted in Sections 4 and 5 and Rules 11 and 12 are reasonable and in the interests of the public within Article 19(6) does not therefore arise for consideration.

5. As regards competitions which involve substantial skill however, different considerations arise. They are business activities, the protection of which is guaranteed by Article 19(1)(g), and the question would have to be determined with reference to those competitions whether Sections 4 and 5 and Rules 11 and 12 are reasonable restrictions enacted in public interest. But Mr Seervai has fairly conceded before us that on the materials on record in these proceedings, he could not maintain that the restrictions contained in those provisions are saved by Article 19(6) as being reasonable and in the public interest. The ground being thus cleared, the only questions that survive for our decision are (1) whether, on the definition of “prize competition” in Section 2(d), the Act applies to competitions which involve substantial skill and are not in the nature of gambling; and (2) if it does, whether the provisions of Sections 4 and 5 and Rules 11 and 12 which are, *ex concessi* void, as regards such competitions, can on the principle of severability be enforced against competitions which are in the nature of gambling.

6. If the question whether the Act applies also to prize competitions in which success depends to a substantial degree on skill is to be answered solely on a literal construction of Section 2 (d), it will be difficult to resist the contention of the petitioners that it does. The definition of “prize competition” in Section 2(d) is wide and unqualified in its terms. There is nothing in the wording of it, which limits it to competitions in which success does not depend to any substantial extent on skill but on chance. It is argued by Mr Palkhivala that the language of the enactment being clear and unambiguous, it is not open to us to read into it a limitation which is not there, by reference to other and extraneous considerations. Now, when a question arises as to the interpretation to be put on an enactment, what the court has to do is to ascertain “the intent of them that make it”, and that must of course be gathered from the words actually used in the statute. That, however, does not mean that the decision should rest on a literal interpretation of the words used in disregard of all other materials. “The literal construction then”, says **Maxwell on Interpretation of Statutes**, 10th Edn., p. 19, “has, in general, but prima facie preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider, according to Lord Coke: (1) What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason of the remedy”. The reference here is to *Heydon* case [(1584) 3 Co. Rep 76 ER 637]. These are principles well settled, and were applied by this Court in *Bengal Immunity Company Limited v. State of Bihar* [(1955) 2 SCR 603, 633]. To decide the true scope of the present Act, therefore we must have regard to all such factors as can legitimately

be taken into account in ascertaining the intention of the legislature, such as the history of the legislation and the purposes thereof, the mischief which it intended to suppress and the other provisions of the statute, and construe the language of Section 2(d) in the light of the indications furnished by them.

7. Turning first to the history of the legislation, its genesis is to be found in the Bombay Lotteries and Prize Competitions Control and Tax Act (Bom 54 of 1948). That Act was passed with the object of controlling and taxing lotteries and prize competitions within the Province of Bombay, and as originally enacted, it applied only to competitions conducted within the Province of Bombay. Section 7 of the Act provided that “a prize competition shall be deemed to be an unlawful prize competition unless a licence in respect of such competition has been obtained by the promoter thereof”. Section 12 imposed a tax on the amounts received in respect of competitions which had been licensed under the Act. With a view to avoid the operation of the taxing provisions of this enactment, persons who had thereto before been conducting prize competitions within the Province of Bombay shifted the venue of their activities to neighbouring States like Mysore, and from there continued to receive entries and remittances of money therefor from the residents of Bombay State.

In order to prevent evasion of the Act and for effectually carrying out its object, the legislature of Bombay passed Act 30 of 1952 extending the provisions of the Act of 1948 to competitions conducted outside the State of Bombay but operating inside it, the tax however being limited to the amounts remitted or due on the entries sent from the State of Bombay. The validity of this enactment was impugned by a number of promoters of prize competitions in proceedings by way of writ in the High Court of Bombay, and dealing with the contentions raised by them, Chagla, C.J. and Dixit, J. who heard the appeals arising from those proceedings, held that the competitions in question were gambling in character, and that the licensing provisions were accordingly valid, but that the taxes imposed by Sections 12 and 12-A of the Act were really taxes on the carrying on of the business of running prize competitions, and were hit by Article 301 of the Constitution, and were therefore bad. It is against this decision that Civil Appeal No. 134 of 1956, already referred to, was directed.

8. The position created by this judgment was that though the States could regulate the business of running competitions within their respective borders, to the extent that it had ramifications in other States they could deal with it effectively only by joint and concerted action among themselves. That precisely is the situation for which Article 252(1) provides. Accordingly, following on the judgment of the Bombay High Court, the States of Andhra, Bombay, Madras, Orissa, Uttar Pradesh, Hyderabad, Madhya Bharat, Patiala and East Punjab States Union and Saurashtra passed resolutions under Article 252(1) of the Constitution authorising Parliament to enact the requisite legislation for the control and regulation of prize competitions. Typical of such resolutions is the one passed by the legislature of Bombay, which is in these terms:

“This Assembly do resolve that it is desirable that control and regulation of prize puzzle competitions and all other matters consequential and incidental thereto insofar as these matters are concerned with respect to which Parliament has no power to make laws for the States, should be regulated by Parliament by law.”

It was to give effect to these resolutions that Parliament passed the Act now under consideration, and that fact is recited in the preamble to the Act.

9. Having regard to the circumstances under which the resolutions came to be passed, there cannot be any reasonable doubt that the law which the State legislatures moved Parliament to enact under Article 252(1) was one to control and regulate prize competitions of a gambling character. Competitions in which success depended substantially on skill could not have been in the minds of the legislatures which passed those resolutions. Those competitions had not been the subject of any controversy in court. They had done no harm to the public and had presented no problems to the States, and at no time had there been any legislation directed to regulating them. And if the State legislatures felt that there was any need to regulate even those competitions, they could have themselves effectively done so without resort to the special jurisdiction under Article 252(1). It should further be observed that the language of the resolutions is that it is desirable to control competitions. If it was intended that Parliament should legislate also on competitions involving skill, the word “control” would seem to be not appropriate. While control and regulation would be requisite in the case of gambling, mere regulation would have been sufficient as regards competitions involving skill. The use of the word “control” which is to be found not only in the resolution but also in the short title and the preamble to the Act appears to us to clearly indicate that it was only competitions of the character dealt with in the Bombay judgment, that were within the contemplation of the legislature.

10. Our attention was invited by Mr Seervai to the statement of objects and reasons in the Bill introducing the enactment. It is therein stated that the proposed legislation falls under Entry 34 of the State List viz. “Betting and gambling.” If we could legitimately rely on this, that would be conclusive against the petitioners. But Mr Palkhivala contends, and rightly, that the Parliamentary history of the enactment is not admissible to construe its meaning, and Mr Seervai also disclaims any intention on his part to use the statement of objects and reasons to explain Section 2(d). We must accordingly exclude it from our consideration. But even apart from it, having regard to the history of the legislation, the declared object thereof and the wording of the statute, we are of opinion that the competitions which are sought to be controlled and regulated by the Act are only those competitions in which success does not depend to any substantial degree on skill.

11. Assuming, however, that prize competitions as defined in Section 2(d) include those in which success depends to a substantial degree on skill as well as those in which it does not so depend, the question then arises for determination whether Sections 4 and 5 of the Act and Rules 11 and 12 are void not merely in their application to the former - as to which there is no dispute -, but also the latter. Mr Palkhivala contends that they are, because, he argues, the rule as to severability of statutes can apply only when the impugned legislation is in excess of legislative competence as regards subject-matter and not when it is in violation of constitutional prohibitions, and further because the impugned provisions are one and indivisible. On the other hand, Mr Seervai for the respondent contends that the principle of severability is applicable when a statute is partially void for whatever reason that might be, and that the impugned provisions are severable and therefore enforceable as against

competitions which are of a gambling character. It is on the correctness of these contentions that we have to pronounce.

12. The question whether a statute which is void in part is to be treated as void *in toto*, or whether it is capable of enforcement as to that part which is valid, is one which can arise only with reference to laws enacted by bodies which do not possess unlimited powers of legislation, as, for example, the legislatures in a Federal Union. The limitation on their powers may be of two kinds: It may be with reference to the subject-matter on which they could legislate, as, for example, the topics enumerated in the Lists in the Seventh Schedule in the Indian Constitution, Sections 91 and 92 of the Canadian Constitution, and Section 51 of the Australian Constitution; or it may be with reference to the character of the legislation which they could enact in respect of subjects assigned to them, as for example, in relation to the fundamental rights guaranteed in Part III of the Constitution and similar constitutionally protected rights in the American and other Constitutions. When a legislature whose authority is subject to limitations aforesaid enacts a law which is wholly in excess of its powers, it is entirely void and must be completely ignored. But where the legislation falls in part within the area allotted to it and in part outside it, it is undoubtedly void as to the latter; but does it on that account become necessarily void in its entirety? The answer to this question must depend on whether what is valid could be separated from what is invalid, and that is a question which has to be decided by the court on a consideration of the provisions of the Act. This is a principle well established in American Jurisprudence.

13. In *In re Hindu Women's Rights to Property Act* [(1941) FCR 12], the question arose with reference to the Hindu Women's Rights to Property Act (18 of 1937). That was an act passed by the Central Legislature, and had conferred on Hindu widows certain rights over properties which devolved by intestate succession and survivorship. While the subject of devolution was within the competence of the Centre under Entry 7 in List III, that was limited to property other than agricultural land, which was a subject within the exclusive competence of the Provinces under Entry 21 in List II. Act 18 of 1937 dealt generally with property, and the contention raised was that being admittedly incompetent and ultra vires as regards agricultural lands, it was void in its entirety. It was held by the Federal Court that the Central Legislature must, on the principle laid down in *Macleod v. Attorney-General for New South Wales* [(1891) AC 455], be presumed to have known its own limitations and must be held to have intended to enact only laws within its competence, that accordingly the word "property" in Act 18 of 1937 must be construed as property other than agricultural land, and that, in that view, the legislation was wholly intra vires. It is contended by Mr Palkhivala that this decision does not proceed on the basis that the Act is in part ultra vires and that the remainder however could be separated therefrom, but on the footing that the Act is in its entirety intra vires, and that thus, no question of severability was decided. That is true; but that the principle of severability had the approval of that Court clearly appears from the following observations of Sir Maurice Gwyer, C.J.:

"It should not however be thought that the Court has overlooked cases cited to it in which the same words have been applied in an Act to a number of purposes, some within and some without the power of the Legislature, and the whole Act has been held to be bad. If the restriction of the general words to purposes within the power of

the Legislature would be to leave an Act with nothing or next to nothing in it, or an Act different in kind, and not merely in degree, from an Act in which the general words were given the wider meaning, then it is plain that the Act as a whole must be held invalid, because in such circumstances it is impossible to assert with any confidence that the Legislature intended the general words which it has used to be construed only in the narrower sense. If the Act is to be upheld, it must remain, even when a narrower meaning is given to the general words, 'an Act which is complete, intelligible and valid and which can be executed by itself' Wynes: Legislative and Executive Powers in Australia p. 51, citing *Presser v. Illinois*." [(1886) 116 US 252].

There is nothing in these observations to support the contention of the petitioners that the doctrine of severability applies only when the legislation is in excess of the competence of the legislature *quoad* its subject-matter, and not when it infringes some constitutional prohibitions.

14. In *State of Bombay v. F.N. Balsara* [(1951) SCR 682], the question was as to the validity of the Bombay Prohibition Act. Sections 12 and 13 of the Act imposed restrictions on the possession, consumption and sale of liquor, which had been defined in Section 2(24) of the Act as including "(a) spirits of wine, methylated spirits, wine, beer, toddy and all liquids consisting of or containing alcohol, and (b) any other intoxicating substance which the Provincial Government may, by notification in the Official Gazette, declare to be liquor for the purposes of this Act." Certain medicinal and toilet preparations had been declared liquor by notification issued by the Government under Section 2(24)(b). The Act was attacked in its entirety as violative of the rights protected by Article 19(1)(f); but this Court held that the impugned provisions were unreasonable and therefore void, insofar as medicinal and toilet preparations were concerned but valid as to the rest. Then, the contention was raised that "as the law purports to authorise the imposition of a restriction on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as it may be applied within the constitutional limits, as it is not severable." In rejecting this contention, the Court observed at p. 717-718:

"These items being thus treated separately by the legislature itself and *being severable*, and it not being contended, in view of the directive principles of State policy regarding prohibition, that the restrictions imposed upon the right to possess or sell or buy or consume or use those categories of properties are unreasonable, the impugned sections must be held valid so far as these categories are concerned."

This decision is clear authority that the principle of severability is applicable even when the partial invalidity of the Act arises by reason of its contravention of constitutional limitations. It is argued for the petitioners that in that case the legislature had through the rules framed under the statute classified medicinal and toilet preparations as a separate category, and had thus evinced an intention to treat them as severable, that no similar classification had been made in the present Act, and that therefore the decision in question does not help the respondent. But this is to take too narrow a view of the decision. The doctrine of severability rests, as will presently be shown, on a presumed intention of the legislature that if a part of a statute turns out to be void, that should not affect the validity of the rest of it, and that that

intention is to be ascertained from the terms of the statute. It is the true nature of the subject-matter of the legislation that is the determining factor, and while a classification made in the statute might go far to support a conclusion in favour of severability, the absence of it does not necessarily preclude it. It is a feature usual in latter-day legislation in America to enact a clause that the invalidity of any part of the law shall not render the rest of it void, and it has been held that such a clause furnishes only prima facie evidence of severability, which must in the last resort be decided on an examination of the provisions of the statute. In discussing the effect of a severability clause, Brandies, J. observed in *Dorchy v. State of Kansas* [(1924) 264 US 286; 68 LEd 686, 690] that it “provides a rule of construction, which may sometimes aid in determining that intent. But it is an aid merely; not an inexorable command.” The weight to be attached to a classification of subjects made in the statute itself cannot, in our opinion, be greater than that of a severability clause. If the decision in *State of Bombay v. F.N. Balsara* [(1951) SCR 682] is examined in the light of the above discussion, it will be seen that while there is a reference in the judgment to the fact that medicinal and toilet preparations are treated separately by the legislature, that is followed by an independent finding that they are severable. In other words, the decision as to severability was reached on the separability in fact of the subjects dealt with by the legislation and the classification made in the rules merely furnished support to it.

15. Then, there are the observations of Patanjali Sastri, C.J. in *State of Bombay v. United Motors (India) Ltd.* [(1953) SCR 1069 at 1098-99]. Dealing with the contention that a law authorising the imposition of a tax on sales must be declared to be wholly void because it was bad in part as transgressing constitutional limits, the learned Chief Justice observed:

“It is a sound rule to extend severability to include separability in enforcement in such cases, and we are of opinion that the principle should be applied in dealing with taxing statutes in this country.”

The petitioners contend that the rule of severability in enforcement laid down in the above passage, following the decision in *Bowman v. Continental Co.* (1921) 256 US 642 is confined in American law to taxing statutes, that it is really in the nature of an exception to the rule against severability of laws which are partially unconstitutional, and that it has no application to the present statute. We are unable to find any basis for this argument in the American authorities. That the decision in *Bowman* case related to a taxing statute is no ground for limiting the principle enunciated therein to taxing statutes. On the other hand, the discussion of the law as to severability in the authoritative text-books shows that no distinction is made in American Jurisprudence between taxing statutes and other statutes. *Corpus Juris Secundum*, Vol. 82, dealing with the subject of severability, states first the principles applicable generally and to all statutes, and then proceeds to consider those principles with reference to different topics, and taxation laws form one of those topics.

16. We have now to consider the decisions in *Punjab Province v. Daulat Singh*, *Romesh Thappar v. State of Madras* [(1950) SCR 594], and *Chintaman Rao v. State of Madhya Pradesh* [(1950) SCR 759] relied on by the petitioners. In *Punjab Province v. Daulat Singh*, the challenge was on the validity of Section 13-A which had been-introduced into the Punjab Alienation of Land Act 13 of 1900 by an Amendment Act 10 of 1938. That section enacted that an alienation of land by a member of an agricultural tribe in Punjab in

favour of another member of the tribe (made either before or after the commencement of the amendment Act) was void for all purposes, when the real beneficiary under the transaction was not a member of the tribe. Section 4 of the Act had empowered the local Government to determine by notification the body or group of persons who are to be declared to be agricultural tribes for the purpose of the Act. A notification dated April 18, 1904, issued under that section provided that:

“In each district of the Punjab mentioned in column 1 of the Schedule attached to this notification, all persons either holding land or ordinarily residing in such district *and* belonging to any one of the tribes mentioned opposite the name of such district, in column 2, shall be deemed to be an ‘agricultural tribe’ within the district.”

The question was whether Section 13-A was void as contravening Section 298(1) of the Government of India Act, 1935, which provided inter alia that no subject of His Majesty domiciled in India shall on grounds only of descent be prohibited from acquiring, holding or disposing of property. It was held by the Federal Court that Section 13-A was void as infringing Section 298(1) to the extent that it prohibited alienation on ground of descent, but that it was valid insofar as it related to a prohibition of the transaction in favour of a person who belonged to the tribe but did not hold land or ordinarily reside in the district, as a prohibition on that ground was not within Section 298(1) and that accordingly an enquiry should be made as to the validity of the impugned alienation with reference to the qualifications of the alienee.

17. Before the Privy Council, Mr Pritt, counsel for the appellant, “conceded that membership of a tribe was generally a question of descent”, and the Board accordingly held that Section 13-A was repugnant to Section 298(1) and was void. Dealing next with the enquiry which was directed by the Federal Court as to the qualifications of the alienee, the Privy Council observed as follows (at p. 20):

“The majority of the Federal Court appear to have contemplated another form of severability, namely, by a classification of the particular cases on which the impugned Act may happen to operate, involving an inquiry into the circumstances of each individual case. There are no words in the Act capable of being so construed, and such a course would in effect involve an amendment of the Act by the court, a course which is beyond the competency of the court, as has long been well established.”

18. It will be noticed that, in the above case, there was no question of the application of the Act to different categories which were distinct and severable either in fact or under the provisions of the Act. The notification issued under Section 4 on which the judgment of the Federal Court was based did not classify those who did not belong to the tribe and those who did not hold property or reside in the district as two distinct groups. It described only one category, and that had to satisfy both the conditions. To break up that category into two distinct groups was to go against the express language of the enactment and to substitute the word “or” for “and”. The Privy Council held that that could not be done, and it also observed that the severability contemplated in the judgment of the Federal Court was an *ad hoc* determination with reference to qualifications of each alienee as distinguished from a distinct

category with reference to the subject-matter. This is not an authority for the position that if the subject-matter of what is valid is severable from that of what is invalid, even then, the Act must be held to be wholly void. More to the point are the following observations (at p. 19-20) on a question which was also raised in that case whether Section 13-A which avoided the alienations made both before and after the Act, having been held to be void insofar as it was retrospective, was void in toto:

“(I)f the retrospective element were not severable from the rest of the provisions, it is established beyond controversy that the whole Act would have to be declared ultra vires and void. But, happily, the retrospective element in the impugned Act is easily severable, and by the deletion of the words ‘either before or’ from the early part of sub-section 1 of the new Section 13-A, enacted by Section 5 of the impugned Act, the rest of the provisions of the impugned Act may be left to operate validly.”

19. Discussing this decision in *State of Bombay v. United Motors (India) Ltd.* [1953 SCR 1069], Patanjali Sastri, C.J. observed (at p. 1098):

“The subject of the constitutional prohibition was single and indivisible, namely, disposition of property on grounds only of (among other things) descent and if, in its actual operation, the impugned statute was found to transgress the constitutional mandate, the whole Act had to be held void as the words used covered both what was constitutionally permissible and what was not.”

That is to say, the notification issued under Section 4 was single and indivisible, and therefore it was not severable. Agreeing with this opinion, we are of opinion that the decision in *Punjab Province v. Daulat Singh* cannot, in view of the decision of this Court in *State of Bombay v. F.N. Balsara*, be accepted as authority for the position that there could be no severability, even if the subject-matters are, in fact, distinct and severable.

20. In *Romesh Thappar v. State of Madras*, the question was as to the validity of Section 9(1-A) of the Madras Maintenance of Public Order Act, 23 of 1949. That section authorised the Provincial Government to prohibit the entry and circulation within the State of a newspaper “for the purpose of securing the public safety or the maintenance of public order.” Subsequent to the enactment of this statute, the Constitution came into force, and the validity of the impugned provision depended on whether it was protected by Article 19(2), which saved “existing law insofar as it relates to any matter which undermines the security of or tends to overthrow the State.” It was held by this Court that as the purposes mentioned in Section 9(1-A) of the Madras Act were wider in amplitude than those specified in Article 19(2), and as it was not possible to split up Section 9(1-A) into what was within and what was without the protection of Article 19(2), the provision must fail in its entirety. That is really a decision that the impugned provision was on its own contents inseverable. It is not an authority for the position that even when a provision is severable, it must be struck down on the ground that the principle of severability is inadmissible when the invalidity of a statute arises by reason of its contravening constitutional prohibitions. It should be mentioned that the decision in *Romesh Thappar v. State of Madras* was referred to in *State of Bombay v. F.N. Balsara* and *State of Bombay v. United Motors (India) Ltd.* and distinguished.

21. In *Chintaman Rao v. State of Madhya Pradesh*, the question related to the constitutionality of Section 4(2) of the Central Provinces and Berar Regulation of Manufacturers of Bidis (Agricultural Purposes) Act 64 of 1948, which provided that, “No person residing in a village specified in such order shall during the agricultural season engage himself in the manufacture of bidis, and no manufacturer shall during the said season employ any person for the manufacture of bidis”. This Court held that the restrictions imposed by Section 4(2) were in excess of what was requisite for achieving the purpose of the Act, which was “to provide measures for the supply of adequate labour for agricultural purposes in bidi manufacturing areas”, that that purpose could have been achieved by limiting the restrictions to agricultural labour and to defined hours, and that, as it stood, the impugned provision could not be upheld as a reasonable restriction within Article 19(1)(g). Dealing next with the question of severability, the Court observed (at p. 765) that:

“The law even to the extent that it could be said to authorise the imposition of restrictions in regard to agricultural labour cannot be held valid because the language employed is wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the right.”

Now, it should be noted that the impugned provision, Section 4(2), is by its very nature inseverable, and it could not be enforced without re-writing it. The observation aforesaid must be read in the context of the particular provision which was under consideration. This really is nothing more than a decision on the severability of the particular provision which was impugned therein, and it is open to the same comment as the decision in *Romesh Thappar v. State of Madras*. That was also one of the decisions distinguished in *State of Bombay v. F.N. Balsara*. The resulting position may thus be stated: When a statute is in part void, it will be enforced as regards the rest, if that is severable from what is invalid. It is immaterial for the purpose of this rule whether the invalidity of the statute arises by reason of its subject-matter being outside the competence of the legislature or by reason of its provisions contravening constitutional prohibitions.

22. That being the position in law, it is now necessary to consider whether the impugned provisions are severable in their application to competitions of a gambling character, assuming of course that the definition of “prize competition” in Section 2(d) is wide enough to include also competitions involving skill to a substantial degree. It will be useful for the determination of this question to refer to certain rules of construction laid down by the American courts, where the question of severability has been the subject of consideration in numerous authorities. They may be summarised as follows:

1. In determining whether the valid parts of a statute are separable from the invalid parts thereof, it is the intention of the legislature that is the determining factor. The test to be applied is whether the legislature would have enacted the valid part if it had known that the rest of the statute was invalid. Vide *Corpus Juris Secundum*, Vol. 82, p. 156; *Sutherland on Statutory Construction*, Vol. 2 pp. 176-177.

2. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable. Vide *Cooley's*

Constitutional Limitations, Vol. I at pp. 360-361; *Crawford on Statutory Construction*, pp. 217-218.

3. Even when the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole. Vide *Crawford on Statutory Construction*, pp. 218-219.

4. Likewise, when the valid and invalid parts of a statute are independent and do not form part of a scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of the legislature, then also it will be rejected in its entirety.

5. The separability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different sections; (Vide *Cooley's Constitutional Limitations*, Vol. I, pp. 361-362); it is not the form, but the substance of the matter that is material, and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provision therein.

6. If after the invalid portion is expunged from the statute what remains cannot be enforced without making alterations and modifications therein, then the whole of it must be struck down as void, as otherwise it will amount to judicial legislation. Vide *Sutherland on Statutory Construction*, Vol. 2, p. 194.

7. In determining the legislative intent on the question of separability, it will be legitimate to take into account the history of the legislation, its object, the title and the preamble to it. Vide *Sutherland on Statutory Construction*, Vol. 2, pp. 177-178.

23. Applying these principles to the present Act, it will not be questioned that competitions in which success depends to a substantial extent on skill and competitions in which it does not so depend, form two distinct and separate categories. The difference between the two classes of competitions is as clear-cut as that between commercial and wagering contracts. On the facts, there might be difficulty in deciding whether a given competition falls within one category or not; but when its true character is determined, it must fall either under the one or the other. The distinction between the two classes of competitions has long been recognised in the legislative practice of both the United Kingdom and this country, and the courts have, time and again, pointed out the characteristic features which differentiate them. And if we are now to ask ourselves the question, would Parliament have enacted the law in question if it had known that it would fail as regards competitions involving skill, there can be no doubt, having regard to the history of the legislation, as to what our answer would be. Nor does the restriction of the impugned provisions to competitions of a gambling character affect either the texture or the colour of the Act; nor do the provisions require to be touched and re-written before they could be applied to them. They will squarely apply to them on their own terms and in their true spirit, and form a code complete in themselves with reference to the subject. The conclusion is therefore inescapable that the impugned provisions, assuming that they apply by virtue of the definition in Section 2(d) to all kinds of competitions, are severable in their application to competitions in which success does not depend to any substantial extent on skill.

24. In the result, both the contentions must be found against the petitioners, and these petitions must be dismissed.

Commissioner of Income-Tax v. Smt. Sodra Devi

1958 SCR 1 : AIR 1957 SC 832

N.H. BHAGWATI, J. - 3. Prior to October 18, 1944, one Rai Bahadur Narsingdas Daga (since deceased), his wife Shrimati Sodradevi (the assessee), and his three major and three minor sons constituted a joint and undivided Hindu family. There was a severance of joint status between the erstwhile members of the said joint family on October 18, 1944, and the joint family properties were accordingly partitioned. On such partition, the business of the Spinning and Weaving Mills and agency shop at Hinganghat fell to the share of the assessee and her three major and three minor sons. A partnership was entered into between the assessee and her three major sons for the purpose of carrying on the business of the Spinning and Weaving Mills and the agency firm at Hinganghat. The three minor sons of the assessee were admitted to the benefits of the partnership. The genuineness of the partnership was not disputed. The only question which arose for the consideration of the Tribunal was whether the income falling to the share of the three minor sons was liable to be included in the total income of the assessee. On a construction of Section 16(3)(a)(ii) of the Act, the Tribunal held that the income falling to the shares of the three minor sons of the assessee was liable to be included in her total income. The assessee thereupon applied to the Tribunal for a reference to the High Court of Judicature at Nagpur of the question of law arising out of its order under Section 66(1) of the Act and the Tribunal submitted a statement of case referring the following question of law for the determination of the High Court:

“Whether on a true construction of the provisions of Section 16(3) (a)(ii) of the Indian Income Tax Act, 1922, the income of the three minor sons of the assessee is liable to be included in her total income.”

4. The High Court heard the reference and came to the conclusion that it was not the intention of the Legislature to include in the income of the mother, the income of her minor children arising from the benefits of partnership of a firm in which the mother is a partner and accordingly answered the referred question in the negative. The High Court, however, granted the necessary certificate under Section 66-A(2) of the Act to the Commissioner of Income Tax, Madhya Pradesh and Bhopal and hence Civil Appeal No. 322 of 1955 before us.

5. One Ishwardas Sahni who died on November 7, 1946, was a partner in the firm of Messrs. Ishwardas Sahni & Bros. The firm's accounting year ended on March 31, 1947. The said Ishwardas Sahni left him surviving his widow Damayanti (the assessee) and two minor sons. The assessee became a partner in the said firm which also admitted her two minor sons to the benefits of the partnership. The Income Tax Authorities included the minor sons' shares in the reconstituted firm's profits in computing the income of the assessee on the ground that “individual” in Section 16(3)(a)(ii) of the Act meant an individual person of either sex. The Income Tax Appellate Tribunal held that the word “individual” must be taken as referring only to a male assessee wherever that occurred in Section 16(3) and directed the deletion from the assessee's income of the shares of her minor sons in the profits of the firm. At the instance of the Commissioner of Income Tax, Delhi, the Tribunal referred to the High Court of Punjab at Simla the question of law arising out of its order under Section 66(1) of the Act together with a statement of case. The referred question was:

“Whether the word ‘individual’ in Section 16(3)(a)(ii) of the Income Tax Act, 1922, includes also a female and whether the shares of the two minor sons of Shrimati Damayanti Sahni in the profits of the re-constituted firm of Messrs. Ishwardas Sahni and Brothers should be included in the income of Shrimati Dayawanti Sahni in assessing her income, profits and gains.”

6. The High Court heard the reference and following the decision given by the High Court of Allahabad in *Shrimati Chanda Devi v. CIT* [(1950) 18 ITR 944], answered the referred question in the affirmative. The assessee obtained the requisite certificate under Section 66-A(2) of the Act from the High Court and that is how Civil Appeal No. 25 of 1955 is before us.

7. The common question of law which we have to determine in these appeals is whether the word “individual” in Section 16(3)(a)(ii) of the Act includes also a female and the income of the minor sons derived from a partnership to the benefits of which they have been admitted is liable to be included in the income of the mother who is a member of that partnership. Section 16(3) of the Act provides:

“In computing the total income of any individual for the purpose of assessment, there shall be included. - (a) so much of the income of a wife or minor child of such individual as arises directly or indirectly:

(i) from the membership of the wife in a firm of which her husband is a partner;

(ii) from the admission of the minor to the benefits of the partnership in a firm of which such individual is a partner;

(iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart; or

(iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration; and

(b) so much of the income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or a minor child or both.”

8. Section 3 of the Act may also be referred to in this context and it runs as follows:

3. Charge of Income Tax.- Where any Central Act enacts that income tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually.”

9. The same description of the assessee is also to be found in Section 4-A, which deals with residence in the taxable territories, Section 48 dealing with refund and Section 58 dealing with the charge of super tax.

10. The word assessee is wide enough to cover not only an “individual” but also a Hindu undivided family, company and local authority and every firm and other association of

persons or the partners of the firm or the members of the association individually. Whereas the word “individual” is narrower in its connotation being one of the units for the purposes of taxation than the word “assessee”, the word “individual” has not been defined in the Act and there is authority for the proposition that the word “individual” does not mean only a human being but is wide enough to include a group of persons forming a unit. It has been held that the word “individual” includes a Corporation created by a statute e.g. a University or a Bar Council, or the trustees of a baronetcy trust incorporated by a Baronetcy Act. It would also include a minor or a person of unsound mind. If this is the connotation of the word “individual” it follows that when Section 16(3) talks of an “individual” it is only in a restricted sense that the word has been used. The section only talks of “individual” capable of having a wife or minor child or both. It therefore necessarily excludes from its purview a group of persons forming a unit or a corporation created by a statute and is confined only to human beings who in the context would be comprised within that category.

11. The Revenue urges before us that the word “individual” as used qua human beings is capable of including within its connotation a male as well as a female of the species and having regard to the context in which the word has been used in Section 16(3), it should be construed as meaning a male of the species when used in juxtaposition with “a wife” and as meaning both a male and a female when used in juxtaposition with “minor child” so that when Section 16(3) talks of “such individual” in sub-clauses, (ii) and (iv) of clause (a) thereof it refers to both a male and a female of the species so as to include within its compass not only a father of the minor child but also a mother.

12. The assessee, on the other hand, contend that the word “individual” used in Section 16(3) is not used in its generic sense but is used in a restricted and narrower sense as connoting only human being and if it is thus restricted there is ample justification for restricting it still further to the male of the species when regarded in the context of Section 16(3). Sub-clauses (i) to (iv) of clause (a) are specific cases where the income of a wife or a minor child of “such individual” arising directly or indirectly from the several sources therein indicated is to be included in computing the total income of the “individual” for the purpose of assessment and the word could not have been used in a different sense for the purposes of sub-clauses (i) and (iii) and sub-clauses (ii) and (iv) of clause (a). The word “such individual” as used in sub-clause (a) can only have been used in one sense and one sense only and if that is the sense in which it could have been used “such individual” should be one who is capable of having a wife or minor child or both and that individual can only be a male of the species and not a female.

13. The question for our determination is a very narrow one and it turns on the construction of Section 16(3) of the Act. The High Court of Madhya Pradesh plunged headlong into a discussion of the reasons which motivated the Legislature into enacting Section 16(3) by Act 4 of 1937, and took into consideration the recommendations made in the *Income Tax Enquiry Report, 1936* and also the statement of objects and reasons for the enactment of the same, without considering in the first instance whether there was any ambiguity in the word “individual” as used therein. It is clear that unless there is any such ambiguity it would not be open to the court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words

which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice (Per Lord Ashbourne in *Nairn v. University of St. Andrews* [(1909) AC 147].

The position in law has been thus enunciated in the judgment of Das, Actg C.J. (as he then was) in the *Bengal Immunity Company Limited v. State of Bihar* [(1955) 2 SCR 603, 632]:

“It is a sound rule of construction of a statute firmly established in England as far back as 1584 when *Heydon* Case was decided that—

“...for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st. What was the common law before the making of the Act.,

2nd. What was the mischief and defect for which the common law did not provide.,

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth., and

4th. The true reason of the remedy; and then the office of all judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*.”

In *In re May fair Property Company* [LR (1898) 2 Ch 28, 35], Lindley, M.R., in 1898 found the rule “as necessary now as it was when Lord Coke reported *Heydon* case”. In *Eastman Photographic Materials Company v. Comptroller General of Patents, Designs and Trade Marks* [(1898) AC 571, 576], Earl of Halsbury re-affirmed the rule as follows:

“My Lords, it appears to me that to construe the statute now in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three things being compared, I cannot doubt the conclusion.”

14. The High Court of Punjab based its conclusion primarily on the use of the word “or” between the word “wife” and the words “minor child” in Section 16(3)(a) of the Act and it was of opinion that these words were used disjunctively and the “individual” referred to in Section 16(3)(a) of the Act may have a wife and minor child or may not have a wife but have a minor child”. If the individual assessed to income tax is a female that individual will have no wife but she may have a minor child and therefore Section 16(3)(a) of the Act does not imply that the individual must necessarily be a male.

15. The argument based on the disjunctive user of the word “wife” and the words “minor child” is capable of being summarily disposed of. Even if the words “such individual” in Section 16(3)(a) of the Act meant only a male of the species the word “wife” and the words “minor child” could only have been used with the word “or” in between. A male of the species may not necessarily have both a wife and a minor child. He may have a wife but no

“minor child”. He may have a minor child but may have no wife at the relevant period. If therefore provision had to be made for the inclusion of the income of a wife or minor child or both in the total income of a male of the species the word “or” was absolutely necessary to be interposed between the word “wife” and the words “minor child”. To construe the word “or” as disjunctive between the word “wife” and the words “minor child” does not necessarily lead to the conclusion that the words “such individual” were used for both a male and a female of the species and were necessarily inconsistent with the user of those words for the male of the species if the context otherwise lead to that conclusion. The reasoning adopted by the learned Judges of the High Court of Punjab therefore does not clinch the matter.

16. We have therefore got to examine whether the use of the word “individual” in Section 16(3)(a) of the Act is in any manner ambiguous. The opening words of Section 16(3) talk of “any individual” whose total income has got to be computed for the purpose of assessment and the words “such individual” used in Section 16(3)(a) have reference only to that individual. That individual must be an assessee and it is in the computation of his total income for the purpose of assessment that the income of the persons mentioned in clauses (a) and (b) have got to be included. Sub-clause (a) refers to two distinct sets of persons bearing a relationship with “such individual”, the assessee. One is a wife and the other is a minor child. The case of the wife is dealt within sub-clauses (i) and (iii) and the case of a minor child is dealt in sub-clauses (ii) and (iv). Sub-clauses (i) and (iii) use the word “her husband” or “the husband” in place of the words “such individual” with reference to the income derived by the wife in the circumstances therein mentioned, though, it may be observed that the user of the words “such individual” would not have made the slightest difference to the position. Sub-clauses (ii) and (iv) which deal with a “minor child” use the words “such individual” in relation to the minor child whose income under the circumstances therein mentioned has to be included in computing the total income of “such individual” for the purpose of assessment. Whereas the words used in sub-clauses (i) and (iii) are specific and refer only to “her husband” and “the husband” as “such individual”, the words used in sub-clauses (ii) and (iv) leave it indefinite as to which is meant by the words “such individual” whether a male and/or a female of the species. If the words used in all these four sub-clauses were to be harmoniously read and the two cases which are mentioned in sub-clauses (i) and (iii) are not to be read differently from the cases mentioned in sub-clauses (ii) and (iv) the only way in which the words “such individual” as used in sub-clauses (ii) and (iv) could be understood would be to read them as confined to a male of the species and not including the female. If these words “such individual” as used in sub-clauses (ii) and (iv) are thus read restricted to a male of the species, all these sub-clauses would have reference only to the male of the species irrespective of the fact that the words “her husband” and “the husband” have been used in sub-clauses (i) and (iii) instead of the words “such individual”.

If the words “such individual” had been used in sub-clauses (i) and (iii) as they have been used in sub-clauses (iii) and (iv) the position would have been just the same because in that event also we would have had to determine whether there was any justification for reading the words “such individual” used with reference to sub-clauses (i) and (iii) in any different sense from the same words “such individual” as used in sub-clauses (ii) and (iv). The crux of the question, therefore, is whether the words “such individual” used in the opening part of

Section 16(3)(a) are used to mean a male of the species when they are read in juxtaposition with the words “a wife” and are used to mean both a male as well as a female of the species, as the case may be, when used in juxtaposition with the words “minor child”.

17. If that was the intention of the legislature there was nothing to prevent it from dividing clause (a) into two sub-clauses whether they were numbered (a) and (ai) or (a) and (b) respectively. The legislature could as well have enacted the provisions in the manner following:

- (a): so much of the income of a wife of such individual as arises directly or indirectly;
 - (i) from the membership of the wife in a firm of which her husband (or such individual) is a partner; or
 - (ii) from assets transferred directly or indirectly to the wife by the husband (or such individual) otherwise than for adequate consideration or in connection with an agreement to live apart;
- (ai) or (b): so much of the income of a minor child of such individual as arises directly or indirectly;
 - (i) from the admission of the minor to the benefits of the partnership in a firm of which such individual is a partner; or
 - (ii) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration.”

18. If these provisions had been enacted in the manner aforesaid it would have been possible to urge, as has been urged before us by the Revenue, that clause (a) referred only to a male of the species who only could have a wife and clause (a) or (b) referred to a male and/or a female of the species.

19. The legislature however chose to adopt a peculiar mode of enactment either for the purpose of economy of words or structural beauty and mixed up both these sets of provisions into the enactment of clause (a) of Section 16(3) of the Act as it stands at present. It rolled in both these sets of cases and used the words “a wife” or “minor child” or “such individual” raising thus the question of construction which has got to be determined by us. “Such individual” as is talked of in Section 16(3)(a) may have a wife, may have a minor child or may have both a wife and a minor child. When “such individual” is thought of in connection with a wife, it can only be a male of the species, but when “such individual” is thought of in connection with a minor child it can be both a male as well as a female of the species, though, of course, when “such individual” is thought of in connection with “both” then again it would have to be a male of the species and certainly not a female. Such an interpretation would lead to the interpretation of the same words “such individual” as meaning two different things in two different contexts. They would mean one thing when used in relation to “a wife” and would mean another thing when used in relation to a “minor child”. They would be capable of being understood in a narrower sense when used in connection with “a wife” and would be capable of being understood in a wider sense when used in connection with a “minor child”. One may as well question the elegance or the propriety of such user of the words “such individual” where the words “as the case may be” are necessarily to be imported in order to

understand the true import of these words, when again they are used not in different parts of the same section but at one place only.

20. If one turns to Section 16(3)(b) the words used therein are “transferred ... by ‘such individual’ for the benefit of his wife or a minor child or both”. There is the indefinite article “a” used before the words “minor child”. If that indefinite article “a” had not been used, the expression would have run “for the benefit of his wife or minor child or both” thus leaving no doubt at all that in clause (b) at least the words “such individual” meant only a male of the species. It is urged however that the use of the indefinite article “a” shows that the words “his wife” and “minor child” and “both” have been used disjunctively and should be read in the same manner as in Section 16(3)(a) of the Act. The words “his wife” would appropriately go with a male of the species but the words “a minor child” would appropriately go with a male as well as a female of the species, though the word “both” could only be appropriate in relation to a male of the species and not a female who can have a minor child but not both a wife and a minor child. The same want of elegance or propriety can be predicated of this expression also and the use of such expressions both in Section 16(3)(a) and Section 16(3)(b) raise questions of construction whether what was meant by the Legislature was only a male of the species in both these contexts or a male and/or female of the species, as the case may be, applying one or the other in accordance with the circumstances attendant upon the computation of the total income of “any individual” for the purpose of assessment.

21. We are of opinion that the very manner in which all the four sub-clauses have been grouped together in Section 16(3)(a) and the manner in which the expression “for the benefit of his wife, a minor child or both” is used in Section 16(3)(b) renders the words “any individual” or “such individual” ambiguous. There is no knowing with certainty as to whether the Legislature meant to enact these provisions with reference only to a male of the species using the words “any individual” or “such individual” in the narrower sense of the term indicated above or intended to include within the connotation of the words “any individual” or “such individual” also a female of the species, wherever appropriate which would of course only be possible in the cases contemplated in sub-clause (ii) and (iv) of Section 16(3)(a) and in one of the three cases contemplated in Section 16(3)(b). The legislature certainly was guilty of using an ambiguous term in enacting Section 16(3) of the Act as it did. In order to resolve this ambiguity therefore we must of necessity have resort to the state of the law before the enactment of the provisions; the mischief and defect for which the law did not provide; the remedy which the legislature resolved and appointed to cure the defect and; the true reason of the remedy within the meaning of the authorities referred to above.

22. Before the enactment of Section 16(3) of the Act by the Indian Income Tax (Amendment) Act, 1937, there was no provision at all for the inclusion of the income of a wife or a minor child in the computation of the total income of “any individual” for the purpose of assessment. Whatever may have been the income of a wife from her membership in a firm of which her husband was a partner or from assets transferred directly or indirectly to her by her husband otherwise than for adequate consideration or in connection with an agreement to live apart, her income was not included in the income of her husband in computing the total income of the husband for the purpose of assessment. Similar was the position in the case of income derived by a minor child from the admission of the minor to the

benefits of partnership in a firm of which “such individual” was a partner or from assets transferred directly or indirectly to the minor child, not being a married daughter, by “such individual” otherwise than for adequate consideration. The income derived by such minor child could not be added to the income of the father for the purpose of assessment. The income derived by the wife or minor child could only be included in computing his or its total income for the purposes of assessment and neither the husband nor the father could be made liable for income tax in respect of such income, whatever may be the reason which actuated them in providing such income for the wife or the minor child.

23. This position was pregnant with difficulties for the Revenue. There were no doubt genuine cases where a wife or the minor child as the case may be, was provided with such income on bona fide severance of joint status between the erstwhile members of a joint and undivided Hindu family and where after such partition the adult member of the family entered into a bona fide partnership admitting the minors to the benefits of the partnership. There were, on the other hand, innumerable cases where such severance of joint status was resorted to mainly with a view to evade a higher incidence of income tax. There were also cases where husbands and fathers provided shares for their wives and minor sons and thus evaded payment of income tax in regard to their shares in the profits of such partnerships. This evil was so rampant that the Income Tax Enquiry Report, 1936, recognised the same and made the following recommendations for remedying the situation (vide pp. 19 and 20 of the Report)

“CHAPTER III — Assessee : Section I — Individuals

(a) Wife’s Income: Our attention has been drawn to the extent to which taxation is avoided by nominal partnerships between husband and wife and minor children. In some parts of the country, avoidance of taxation by this means has attained very serious dimensions. The obvious remedy for this state of affairs so far as husband and wife are concerned is the aggregation for assessment of their incomes, but such a course would involve aggregation in a quite different class of case i.e. where the wife’s income arises from sources unconnected with the husband...

We recommend, therefore, that the incomes of a wife should be deemed to be, for income tax purposes, the income of her husband, but that where the income of the wife is derived from her personal exertions and is unconnected with any business of her husband, her income from her personal exertions upto a certain limit, say Rs 500, should not be so included

(b) Income of Minor Children. There is also a growing and serious tendency to avoid taxation by the admission of minor children to the benefits of partnership in the father’s business. Moreover, the admission is, as a rule, merely nominal, but being supported by entries in the firm’s books, the Income Tax Officer is rarely in a position to prove that the alleged participation in the benefits of partnership is unreal.

We suggest that the income of a minor *should be deemed to be the income of the father* (i) if it arises from the benefits of partnership in a business in which the father is a partner or (ii) if, being the income of a minor other than a married daughter, it is derived from assets transferred directly or indirectly to the minor by his or her father or mother, (iii) if it is derived from assets apportioned to him in the partition of a Hindu Undivided Family.

24. It may be noted that the recommendations of the Enquiry Committee even in the cases hereinbefore mentioned went to the length of including the income of the wife or the minor child as the case may be in the income of the husband or the father in the computation of his total income for the purpose of assessment. The mischief which the Enquiry Report sought to remedy by its recommendations was one which was the result of husbands entering into nominal partnerships between themselves and their wives and fathers admitting their minor children to the benefits of such partnerships. The mischief, if any, resulting from the mothers admitting their minor children to the benefits of partnerships in which they were members was farthest from the thoughts of the Enquiry Committee and was nowhere sought to be remedied. Having regard to the circumstances which prevailed at the time when the Enquiry Committee made its report, the only mischief which they sought to remedy by their recommendations was the one resulting from the male assessee indulging in such tactics for the evasion of income tax by creating nominal partnerships between themselves and their wives on the one hand and their minor children on the other.

25. These recommendations were duly considered by the Government and as a result thereof Act 4 of 1937 was enacted introducing Section 16(3) in the Act. What was intended to be done by the legislature in enacting this amendment may be gleaned to a certain extent from the statement of objects and reasons appended to the Bill which eventually became the amending Act. Though it is not legitimate to refer to the statement of objects and reasons as an aid to the construction or for ascertaining the meaning of any particular word used in the Act or Statute.

26. The statement of objects and reasons which led to the passing of Act 4 of 1937, ran as follows:

“Reference is made in Section 1 and 4 of Chapter III of the Income Tax Enquiry Report, 1936, to the practice of avoiding taxation by means of nominal partnerships between husband and wife or parent and minor child or by the nominal transfer of assets to a wife or minor child (or to an ‘association’ consisting of husband and wife) when there is no substantial separation of the interests of the assessee and the wife or child. These practices are reported to have become very widespread already, with considerable detriment to the revenue, and there is little doubt that if they are not checked there will be progressive deterioration. The proposals in the Report regarding the aggregation of the incomes of husband and wife go beyond the immediate necessities of the case and to that extent their adoption would involve the admission of a new principle which the Government of India do not desire to establish in advance of the general public discussion of the Report which has been arranged; and the present Bill has been so drafted as to deal only with the abuses to which I have referred.”

27. It is clear from the above extracts that the evil which was sought to be remedied was the one resulting from the widespread practice of husbands entering into nominal partnerships with their wives and fathers admitting their minor children to the benefits of the partnerships of which they were members. This evil was sought to be remedied by the enactment of Section 16(3) in the Act. If this background of the enactment of Section 16(3) is borne in mind, there is no room for any doubt that howsoever that mischief was sought to be remedied

by the amending act, the only intention of the Legislature in doing so was to include the income derived by the wife or a minor child, in the computation of the total income of the male assessee, the husband or the father, as the case may be, for the purpose of assessment. If that was the position, howsoever wide the words “any individual” or “such individual” as used in Section 16(3) and Section 16(3)(a) may appear to be so as to include within their connotation the male as well as the female of the species taken by themselves, these words in the context could only have been meant as restricted to the male and not including the female of the species. If these words are used as referring only to the male of the species the whole of the Section 16(3)(a) can be read harmoniously in the manner above comprehending within its scope all the four cases specified in sub-clauses (i) to (iv) thereof and so also Section 16(3)(b). We are therefore of opinion that the words “any individual” and “such individual” occurring in Section 16(3) and Section 16(3)(a) of the Act are restricted in their connotation to mean only the male of the species, and do not include the female of the species, even though by a disjunctive reading of the expression “the wife” or “a minor child” of “such individual” in Section 16(3)(a) and the expression “by such individual” for the benefit of his wife or a minor child or both in Section 16(3)(b), it may be possible in the particular instances of the mothers being connected with the minor children in the manner suggested by the Revenue to include the mothers also within the connotation of these words.

Such inclusion which involves different interpretations of the words “any individual” or “such individual” in the different contexts could never have been intended by the legislature and would in any event involve the addition of the words “as the case may be” which addition is not normally permissible in the interpretation of a statute.

28. We shall now refer to the decisions of the several High Courts in India bearing on the construction of Section 16(3) of the Act. The earliest decision is that of the High Court of Allahabad in *Srimati Chanda Devi v. CIT*. That decision emphasised that the sub-clause (i) of clause (a) of sub-section (3) of Section 16 made it clear that where the husband was a partner the income of the wife, by reason of her being a member of the firm, was to be computed in the income of the husband, and if the legislature had intended that the word “individual” in sub-clause (ii) should mean only the father and not the mother there was no reason why they should not have used similar language as in sub-clause (i) and said “from the admission of the minor to the benefits of partnership in a firm in which *his father* is a partner”. Why the legislature used a particular expression and why it did not use any expression which would have been clearer and better expressive of its intention is really difficult to fathom. We may as well wonder why the legislature did not use the words “such individual” in sub-clauses (i) and (iii) of Section 16(3)(a) in place of the words “her husband” or “the husband” when the intention of the legislature would have been equally carried out by the use of those words. It may be that the draftsman considered the use of the words “her husband” or “the husband” when he used the same in juxtaposition with the words “a wife” as appropriate or more elegant and therefore ignored the obvious user of the words “such individual” which would have been equally appropriate in that context. It would have been better expressive of the intention of the legislature, as we have already divined above (*viz.*: to use the words “any individual” and “such individual” in Section 16(3) and Section 16(3)(a) respectively in the restricted meaning of the male of the species), to have used the words “the

father” in place of the words “such individual” in sub-clauses (ii) and (iv) of Section 16(3)(a). It is however difficult to fathom the mind of the draftsman when he used one particular expression in preference to the other and not much help can be derived from the ratio adopted by the learned Judges of the High Court of Allahabad in the decision just referred to. It is also significant to observe that the learned Judges considered that the language of the section does not create any real difficulty and therefore did not think it worth their while to refer to the *Income Tax Enquiry Report, 1936*, and the passage therefrom which we have quoted above. Suffice it to say that we do not concur with the reasoning adopted by the learned Judges of the High Court of Allahabad and are of the opinion that the decision just referred to insofar as it militates against the reasoning adopted by us herein is incorrect.

31. The latest decision in this context is that of the High Court of Madhya Pradesh in the *CIT v. Smt Sodra Devi* [(1955) 27 ITR 9] which is the subject-matter of Civil Appeal No. 322 of 1955 before us. The High Court there observed that the word “individual” as used in Section 16(3) of the Act was ambiguous and referred to the above quoted passage from the Inquiry Committee’s Report, 1936, as also the statement of objects and reasons and came to the conclusion that the word “individual” was restricted to the male of the species and it was not the intention of the Legislature to impose additional tax on a mother assessee by including in her income the income of her minor children arising from the benefits of partnership of a firm in which the mother and the minors were partners. We are of opinion that the decision reached by the learned judges of the High Court of Madhya Pradesh in that case was correct and the referred question was rightly answered by them in the negative.

32. The result therefore is that Civil Appeal No. 322 of 1955 will be dismissed with costs and Civil Appeal No. 25 of 1955 will be allowed with costs, the referred question being answered in the negative.

S. K. DAS, J. - The substantial question which falls for decision in these two appeals is if the word “individual” in sub-section (3) of Section 16 of the Indian Income Tax Act, hereinafter referred to as the Act, includes also a female, and therefore the income of the minor sons which arises directly or indirectly from their admission to the benefits partnership in a firm of which their mother is a member is to be included in computing the total income of the mother within the meaning of sub-section (3), clause (a), sub-clause (ii), of Section 16. The question is really one of pure construction, that is, construction of sub-section (3) of Section 16 of the Act. Nothing turns upon the facts of the case, and as the material facts have been clearly set out in the judgment just read by my learned brother Bhagwati, J., I do not think that any useful purpose will be served by re-stating them.

34. Therefore, I proceed at once to a consideration of sub-section (3) of Section 16 of the Act and state at the very outset that, to my great regret, I have come to a conclusion different from that of my learned brethren. I shall presently read the sub-section; but before I do so, it will help the exposition which follows if I explain in a few words the standpoint from which I have approached the question. Speaking generally, the expression “construction” includes two things: first, the meaning of the words; and, secondly, their legal effect or the effect which is to be given to them by the courts. As in the case of documents, so in the case of statutes also, they should be construed in a manner which carries out the intention of the Legislature. It may be reasonably asked - how is the intention of the Legislature to be discovered? The answer is

that the intention must first be gathered from the words of the statute itself. If the words are unambiguous or plain, they will indicate the intention with which the statute was passed and the object to be attained by it; in other words, the intention is best declared by the words themselves, and the words of a statute are to be interpreted as bearing their ordinary, natural meaning unless the context requires a different meaning to be given to them. If, however, the words are ambiguous, the policy of the legislation and the scope and object of the statute, where these can be discovered, will show the intention, which may further be brought to light by applying the various well settled rules and presumptions of construction. One such rule is that the statute must be read as a whole and the construction made of all the parts together. I am emphasising this aspect of the question to guard against any possible suggestion that I have started with some a priori idea of the meaning or intention behind sub-section (3) of Section 16 of the Act and have tried by construction to work that idea into the words of the sub-section. I have been conscious all through of the warning given by Lord Halsbury, in the following observations in *Leader v. Duffey* [(1888) 13 App Cas 294, 301]:

“All these refinements and nice distinctions of words appear to me to be inconsistent with the modern view, which is I think in accordance with reason and common sense, that, whatever the instrument, it must receive a construction according to the plain meaning of the words and sentences therein contained. But I agree that you must look at the whole instrument, and, inasmuch as there may be inaccuracy and inconsistency, you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it. But it appears to me to be arguing in a vicious circle to begin by assuming an intention apart from the language of the instrument itself, and having made that fallacious assumption to bend the language in favour of the presumption so made.”

Keeping that warning in mind, I shall first take the words of sub-section (3) of Section 16 and see if they are plain or unambiguous. Alternatively, I shall also consider the proper construction of sub-section (3) of Section 16 on the assumption that the word “individual” used in the sub-section is ambiguous and should therefore be interpreted consistently with the principles laid down in the locus classicus on the subject, namely, the celebrated *Heydon* case [(1584) 3 Co. Rep 7] a reported by Lord Coke and decided by the Barons of the Exchequer in the sixteenth century.

I shall now read sub-section (3) of Section 16 of the Act:

“16. (3) In computing the total income of any individual for the purpose of assessment, there shall be included -

(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly -

(i) from the membership of the wife in a firm of which her husband is a partner;

(ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner;

(iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart; or

(iv) from assets transferred directly or indirectly to the minor child, not being a married daughter, by such individual otherwise than for adequate consideration; and

(b) so much of the income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or a minor child or both.”

I have already stated that the sub-section must be read as a whole and in the context of the other provisions of the Act, particularly Section 16 of which it is a part; it is only then that we shall arrive at its correct meaning consistent with the other provisions of the Act. The word “individual” used in sub-section (3) of Section 16 occurs in several other provisions of the Act e.g. Section 3, Section 4-A, Section 48 and Section 55. It is necessary to quote Section 3 in extenso. That section is in these terms:

“Where any Central Act enacts that income tax shall be charged for any year at any rate or rates, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually.”

It is not disputed before us that the word “individual” occurring in Sections 3, 4-A, 48 and 55 means either a male or a female; nor has it been disputed before us that, according to the ordinary accepted meaning of the word, it means a single human being as opposed to “society”, “family” etc. and that a single human being may be of either sex. Learned counsel appearing for the assessee in the two appeals have pointed out, however, that the word “individual” has not the same width of meaning in sub-section (3) of Section 16 as it has in the other provisions; for example, in Section 3, the word “individual” has been held to include a Corporation created by a statute e.g. a University or a Bar Council or the trustees of a baronetcy trust incorporated by a Baronetcy Act etc; whereas sub-section (3) of Section 16 makes it quite clear that the word “individual” there does not include a Corporation created by a statute. This indeed is correct. But the question before us is whether, in its context, sub-section (3) of Section 16 imposes a further restriction on the word “individual”, confining it to a male individual only. The critical question before us is whether such a further restriction is imposed on the word “individual” either by the express words used in the sub-section or by necessary implication from the clauses and sub-clauses thereof.

35. It is said to be a presumption in construction that the same words are used in the same meaning in the same statute and particularly in the same section or sub-section. The presumption is, however, of the slightest, and there are many instances where the application of this rule or presumption is impossible. The same words may often receive a different interpretation in different parts of the same Act, for words used with reference to one set of circumstances “may convey an intention quite different from what the self-same set of words used with reference to another set of circumstances would or might have produced”. The

classic example of the same word having a somewhat different meaning in the same section is provided by offences against the Person Act, 1861, Section 57 of which deals with bigamy and enacts: "Whosoever, being married, shall marry any other person during the life of the former husband or wife ... shall be guilty of felony". It is obvious that the word "marry" is used in two different senses in the same section. There is another classic example in Article 31 of our Constitution where the word "law" in clause (3) of the said Article has been used in different senses.

36. The word "individual" is not defined in the Act, but the meaning of the word in Sections 3, 4-A, 48 and 55 is reasonably clear. The word "assessee" is defined in clause (2) of Section 2 of the Act, as meaning a person by whom income tax or any other sum of money (which would include super tax, penalty or interest) is payable under the Act. It also includes every person in respect of whom any proceeding under the Act is taken for the assessment (a) of his income, (b) of his loss or (c) of the amount of refund due to him. Thus the definition covers two categories: first, persons by whom any tax, penalty or interest is payable under the Act, whether any proceeding under the Act has been actually taken against them or not; and secondly, persons against whom any of the proceedings specified in this clause has been taken, whether he is or is not liable to pay any tax, penalty or interest. 'A person', under Section 3(42) of the General Clauses Act, includes any company or association or body of individuals, whether incorporated or not; and under clause (9) of the section 'a person' also includes a Hindu undivided family and a local authority. Thus, we have six categories of assessee referred to in Section 3 — (a) the individual, (b) the Hindu undivided family, (c) the local authority, (d) the company, (e) the firm and (f) other association of persons. Read in the context of Section 3 of the Act, the word "individual" means, in the other sections, one of the six categories of assessee referred to in Section 3. The same category is also referred to in sub-section (3) of Section 16, subject only to this restriction that in the context of the sub-section, the word "individual" does not include a Corporation etc.

37. We now turn to the critical question before us - is there a further restriction in the sub-section confining the word "individual" to a male individual only? My answer is that there is nothing in the context of Section 16 or of the sub-section which confines the word "individual" to a male individual only. Section 16 deals with the computation of total income and provides what sums are to be included or excluded in determining the total income. The effect of including exempted income in the assessee's total income is mainly two-fold: first, the tax payable by the assessee is determined with reference to the total income and therefore exempted income which is included in the total income would affect the rate of tax applicable to the chargeable portion of the total income; secondly, in several cases reliefs are given or calculations made with reference to the total income. Sub-section (3) of Section 16 appears *ex facie* to be directed towards preventing an individual's attempt to avoid or reduce the incidence of tax by transferring the assets to his wife or a minor child or admitting the wife as a partner or admitting a minor child to the benefits of partnership in a firm in which such individual is a partner. I agree that the sub-section creates, to some extent, an artificial liability to tax by including the income of A in the income of B, and must therefore be strictly construed; that merely means that the words of the sub-section must be given their strictly natural meaning, and there should be no attempt at artificial stretching one way or the other.

38. What then is the proper construction of the sub-section? It naturally falls into three interconnected parts. The first part controls both clause (a) and clause (b), and states that “in computing the total income of any individual for the purpose of assessment, there shall be included so much of the income etc. as is specified in clauses (a) and (b). The second part is clause (a) itself which starts with an opening sentence that “so much of the income of a wife or minor child of such individual as arises directly or indirectly” from four specific cases shall be included in the total income of the individual, and then the cases are enumerated in four sub-clauses numbered (i), (ii), (iii) and (iv). Then, comes the third part which deals with clause (b). I have divided the sub-section into its three natural parts, but I must make it clear that all the three parts must be construed together as they are interconnected and interdependent. In the first part, there is no difficulty whatsoever, in my opinion, in giving the word “individual” its natural meaning, that is, that the word means either a male or a female.

The opening sentence of clause (a) contains the expression “so much of the income of a wife or minor child of such individual”. Does the use of the word “individual” in the opening sentence of clause (a) give rise to any ambiguity or difficulty? I do not think that it does. It is quite obvious that a female individual cannot have a wife, but she can have a minor child whereas a male individual can have a wife, minor child or both. It has been argued that clause (a) must be interpreted *noscitur a sociis*, and as the expression “a wife or minor child” is capable of meaning only when used in connection with a male individual, the whole sub-section must be confined to a male individual. I am unable to accede to this argument. The collocation or association of the words “a wife or minor child” in connection with the words “such individual” in the opening sentence of clause (a) does not necessarily mean that the individual contemplated is a male individual only. I agree that the word “or” in between the words “wife” and “minor child” must be there, even when the individual talked of is a male only; in other words, the use of the disjunctive word “or” does not necessarily clinch the issue. But I do not see any real difficulty in reading the opening sentence of clause (a) distributively so as to mean a male individual when the wife is being talked of, and either a male or a female individual when a minor child is talked of. I do not think that such a construction does any violence to the words used; on the contrary, in my opinion, it gives effect to the plain meaning of the word “individual”.

39. Turning now to the sub-clauses numbered (i) to (iv), there can be no doubt from the phraseology used that sub-clauses (i) and (iii) refer only to a male individual, because a female individual cannot have a wife. It is worthy of note, however - and this is very important - that sub-clauses (ii) and (iv) make it equally clear that they are not confined to the male individual only in the manner in which sub-clause (i) and (iii) are so confined. In sub-clauses (i) and (iii) the word “individual” is not used, and the words used are “her husband” and “the husband”. In sub-clauses (ii) and (iv) the words used are “such individual”. Why did the Legislature make this difference in phraseology? If the intention was to confine the entire sub-section to a male individual only, nothing could have been easier than to qualify the word “individual” by the adjective “male” in the first part of the sub-section which controls both clauses (a) and (b); alternatively, in sub-clauses (ii) and (iv) it would have been easy to use the word “father” instead of “such individual”. It is true that a change of language is some, though possibly slight indication of a change of intention. I am unable, however, to accept the

argument advanced before us that the phraseology employed in sub-clauses (i) and (iii) different as it is from that employed in sub-clauses (ii) and (iv) can be accounted for on the ground of elegance or felicity of expression. It seems to me that if the intention was to confine the word "individual" to a male individual only, elegance and clarity both required that the word "individual" should be qualified by the adjective "male" and the word "father" should have been used in sub-clauses (ii) and (iv). I am aware that a draftsman often uses different words merely to avoid repetition. I am also aware that it is dangerous to suppose that the Legislature foresees every possible result that may ensue from the "unguarded use of a single word, or that the language used in statutes is so precisely accurate that you can pick out.....this and that expression and, skilfully piecing them together, lay a safe foundation for some remote inference." [as per Lord Loreburn, L.C., in *Nairn v. University of St. Andrews* (1909) AC 147, 161]. But what is noteworthy in the present case is that the difference in phraseology between sub-clauses (i) and (iii) on the one side and sub-clauses, (ii) and (iv) on the other is so striking that the conclusion appears to me to be reasonably plain; it is not really a case of the unguarded use of a single word or picking out an expression here or picking out another expression there in order to piece out some remote inference. The striking difference in phraseology hits, as it were, one in the face when one reads the four sub-clauses. It seems to me that the meaning is very clear. In the opening part of clause (a), the word "individual" is used to mean a male or a female; two of the sub-clauses, however, are confined to the male only and therefore the word "husband" is used in juxtaposition to the word "wife". In the other two sub-clauses, however, the word "individual" is used in order to make it clear that they refer either to a male or to a female individual. I do not see any incongruity or disharmony in the enumeration of the four sub-clauses, nor do I appreciate the argument urged before us that the word "individual", on the construction adopted by me, has a different meaning in two of the four sub-clauses of clause (a). The word "individual" has and retains the same meaning, namely a male or a female, all throughout the sub-section. All that happens is that in two of the sub-clauses of clause (a), when the legislature intends that they should be confined to a male individual only, the word "husband" is used to make the intention clear. On the same reasoning, when the legislature intends in two other sub-clauses that they should apply to either a male or a female, the word "individual" is used to include either of them. I am unable to accept the contention that such an interpretation offends against the rule of harmonious construction. So far as clause (b) of the sub-section is concerned, the word "individual" is again used and that again relates to a male or a female. The last part of the clause reads "by such individual for the benefit of his wife or a minor child or both". Here again the sentence has to be read distributively - that is, when the wife is talked of, the individual can only be a male; when a minor child is talked of, the individual can be a male or a female; when both wife and minor child are talked of, the individual can again be a male only. There was some argument before us with regard to the use of the indefinite article "a" before the words "minor child" and it was submitted by the learned Solicitor-General that if the Legislature intended to confine clause (b) to a male individual only, it could have easily dropped the indefinite article and used the word "his" before the words "minor child". Personally, I do not attach much significance to the use of the indefinite article "a". It is to be noted that no such indefinite article is used before the words "minor child" in the opening sentence of clause (a); but I do not see any compelling reasons why the natural meaning of

the word “individual” should not be given to it in clause (a) and clause (b) of the sub-section. Such meaning can be easily given to both the clauses if they are read distributively, and such reading does not, in my opinion, do any violence to the language used.

40. On a plain reading of the sub-section, I have come to the conclusion that there really is no ambiguity and the word “individual” has been used in the sub-section in its ordinary accepted connotation, that is, either a male or a female individual; two of the sub-clauses of clause (a) are no doubt confined to a male individual and that has been made clear by the use of the words “wife” and “husband”, instead of the words “such individual”.

41. Assuming, however, that there is some ambiguity in the sub-section by reason of (1) the use of the phraseology in sub-clauses (i) and (iii) of clause (a), and (2) of the opening sentence of clause (a) which controls all the four sub-clauses of that clause, what then is the position? The four principles laid down in *Heydon* case have been thus summarised:

“That for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered: (1) what was the common law before the passing of the Act; (2) what was the mischief and defect for which the common law did not provide; (3) what remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth; (4) the true reason of the remedy. And then the office of all the Judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for the continuance of the mischief and *pro privato commodo*, and to add force and life to the cure and remedy according to the true intent of the makers of the Act *pro bono publico*.”

Let me now apply these principles in the construction of sub-section (3) of Section 16 of the Act.

42. The sub-section was introduced in 1937, and before the enactment of the sub-section, there was no provision for the inclusion of the income of a wife or a minor child in the computation of the total income of an individual. The Income Tax Enquiry Report, 1936, referred to the widespread evil of the evasion of tax by the severance of the joint status amongst members of a joint and undivided Hindu family. The Report said:

Our attention has been drawn to the extent to which taxation is avoided by nominal partnerships between husband and wife and minor children. In some parts of the country, avoidance of taxation by this means has attained very serious dimensions. The obvious remedy for this state of affairs so far as husband and wife are concerned is the aggregation for assessment of their incomes, but such a course would involve aggregation in a quite different class of case i.e. where the wife's income arises from sources quite unconnected with the husband....

We recommend, therefore, that the incomes of a wife should be deemed to be, for income tax purposes, the income of her husband, but that where the income of the wife is derived from her personal exertions and is unconnected with any business of her husband, her income from her personal exertions up to a certain limit, say Rs 500, should not be so included....

(b) *Income of minor children.*- There is also a growing and serious tendency to avoid taxation by the admission of minor children to the benefits of partnership in the father's business. Moreover, the admission is, as a rule, merely nominal, but being supported by entries in the firm's books, the Income Tax Officer is rarely in a position to prove that the alleged participation in the benefits of partnership is unreal.

It is clear, however, that the report is of very little help in the construction of the sub-section, because the legislature did not accept in full the recommendations made in the Report. Two of the rules in *Heydon* case lay down (1) that we must find what was the mischief or defect for which the earlier law did not provide and (2) what remedy the Parliament has resolved and appointed to cure the mischief or defect. In the case under our consideration, the interpretation which has been put by me on sub-section (3) of Section 16 does not militate against any of the aforesaid rules of *Heydon* case. The interpretation put by me undoubtedly remedies the mischief or defect for which the earlier law did not provide. The only serious criticism made by learned counsel for the assessee against that interpretation is that the remedy not merely cures the mischief for which the earlier law did not provide, but it goes a little further and attacks the evil even when the evil is committed by a female individual, though the *Income Tax Enquiry Report* (except in one part) did not in specific terms refer to such an evil committed by a female individual. I can see nothing in the rules laid down in *Heydon* case which militates against the view taken by me. There is no presumption that, while remedying an evil, the legislature may not cast its net very wide so as to remedy the evil in all its aspects. Let me again refer to sub-clause (i) and (ii) of clause (a) of sub-section (3) of Section 16 of the Act. Those two sub-clauses are absolute and unqualified in terms and not subject to any exception. If the wife owns and manages a business and she takes her husband into partnership with her in the business, the result of the partnership would be that the wife's income from the business would be no longer taxable in her hands but would be included in the total income of her husband under the sub-section, even though the husband may be a dormant partner. This clearly shows that the legislature was not confining itself to the recommendations made in the Income Tax Enquiry Report. What is to be included in the total income of an individual under clause (a) is the income of a wife or minor child arising directly or indirectly "from the membership of the wife" in the firm or "from the admission of the minor to the benefits of partnership" in the firm of which the individual is a partner. The clause covers the share of the profits of the firm received by the wife in her capacity as a partner or by the minor child in his or her capacity as one admitted to the benefits of partnership. But the income received from the firm by the wife or the minor child under any other contract with the firm or in any other capacity, does not fall within the clause and is not included in the husband's or parent's total income.

43. From what is stated above, it is clear that the legislature did not confine itself strictly or solely to the recommendations made by the Income Tax Enquiry Committee but provided for all such aspects of the evil or mischief as it thought fit to remedy by the Indian Income Tax (Amendment) Act, 1937. In these circumstances, I do not think that the recommendations made by the Income Tax Enquiry Committee can be relied upon to restrict the meaning of the word "individual" used in sub-section (3) of Section 16 of the Act. As to the Statement of Objects and Reasons which led to the passing of Act 4 of 1937 and which has been set out in

the judgement of the High Court of Madhya Pradesh, I do not think that the Statement can be referred to as an aid to construction for ascertaining the meaning of the word “individual” used in the sub-section. Even if it is referred to “for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy”, the use of the word “parent” in the Statement of Objects and Reasons shows that the evil was not confined to the male individual only, and the sponsor of the Bill was aware of it. The Statement reads: “Section 16(3) was thus designed to bring within the ambit of taxation incomes of wives and minor children as income of husband or *parent*, which otherwise would escape the whole burden of taxation”. I emphasise the use of the word “parent” which would show that the evil contemplated was an evil which was not confined to the “father” only but included the mother as well.

44. My conclusion therefore is that there is nothing in the policy of the legislation and the scope and object of the statute which compels one to cut down the natural meaning of the word “individual” used in sub-section (3) of Section 16 of the Act so as to confine it to a male individual alone.

45. I now turn to such authorities as have been cited before us. There has been a difference of opinion in the High Courts with regard to the interpretation of sub-section (3) of Section 16 of the Act. In *Shrimati Chanda Devi v. CIT* [(1950) 18 ITR 944], the Allahabad High Court has taken the view that the minor’s income which arises directly or indirectly from the admission of the minor to the benefits of partnership in a firm of which the mother is a partner, can be included in the mother’s assessable income under Section 16 (3)(a)(ii) of the Act. The Allahabad High Court proceeded on the footing that the language of the sub-section did not create any real difficulty and it was not open to it to take the help of the Income Tax Enquiry Report. I have considered this case from both the points of view, and have arrived at the same conclusion at which the Allahabad High Court arrived. It is not necessary to mention the other reasons given by the Allahabad High Court, because they have already been stated by me in an earlier part of this judgment. This decision of the Allahabad High Court was followed by the Punjab High Court in the *CIT v. Shrimati Damayanti Sahni* [(1953) 23 ITR 41] which has given rise to one of the two appeals before us. The Punjab High Court gave no additional reason except to state that in clause (a) of sub-section (3) of Section 16, the word “wife” and the words “minor child” were used disjunctively. I have already stated that the use of the disjunctive “or” is not decisive; but there is no real difficulty in reading clauses (a) and (b) distributively. The Madhya Pradesh High Court took a different view in *Sahodradevi N. Daga v. CIT* [(1955) 27 ITR 9], which has given rise to the other appeal before us. In my view, the learned Judges in that case did not attach sufficient importance to sub-clauses, (ii) and (iv) of clause (a). If may say so with great respect, they confined their attention primarily to sub-clauses (i) and (iii) of clause (a) and to clause (b), and from those provisions they inferred that the intention was to confine the word “individual” to a male individual. I venture to think that all the three parts of the sub-section, including the four sub-clauses of clause (a), must be read together in order to understand the true meaning and effect of the sub-section. The learned Judges further seemed to think that the use of the words “such individual” in sub-clause (ii) of clause (a) was due to inadvertence. I am unable to agree. I have already pointed

out that the phraseology in sub-clauses (i) and (iii) of clause (a) is so strikingly different from the phraseology used in sub-clauses, (ii) and (iv) that only one and one reasonable conclusion can be drawn, namely, that the word “individual” has been used in its accepted connotation, and when the legislature wanted to confine the operation of a sub-clause to the male individual only, it used the word “wife” and “husband”; where, however, the legislature wanted to refer to either a male or a female, it used the word “individual” which, in its ordinary connotation, means either a male or a female. For the reasons given above, I agree with the view expressed by the Allahabad and the Punjab High Courts and do not accept the interpretation given by the Madhya Pradesh High Court.

ORDER : BY THE COURT:

In accordance with the Judgment of the majority *Civil Appeal No. 322 of 1955* is dismissed with costs and *Civil Appeal No. 25 of 1955* is allowed with costs, the referred question being answered in the negative.

* * * * *

Utkal Contractors & Joinery (P) Ltd. v. State of Orissa

AIR 1987 SC 1454

O. CHINNAPPA REDDY, J. - On December 12, 1967, the State of Orissa granted 'a license for collection of sal seeds' from eleven Forest Divisions to M/s Utkal Contractors and Joinery Private Limited. The agreement provided for the sale and purchase of sal seeds falling on the ground naturally in the forests. There was a stipulation that the company should establish solvent extraction units in the backward areas of Mayurbhanj and Sambalpur. There was also an option for renewal of the lease for a further period of ten years. It was later agreed that the period from October 1, 1967 to September 30, 1969 should be treated as experimental period and the lease should be deemed to have commenced from October 1, 1969 and to last for a period of ten years. The Orissa Oil Industries Limited, a public limited company, was floated by the Utkal Contractors and Joinery Private Limited and it was agreed that the State Government should also contribute to the share capital of the company. It was agreed that the Utkal Contractors and Joinery Private Limited should supply sal seeds to the two solvent extraction plants of the Orissa Oil Industries Limited, one set up at Bairangpur in Mayurbhanj District with a capacity to crush 21,000 M.T. Sal Seeds and the other at Sasan in Sambalpur District with a capacity to crush 21,000 M.T. Sal Seeds. Thereafter on May 25, 1979, agreements renewing the leases for the purchase and removal of sal seeds from the eleven Forest Divisions for a further period of ten years from October 1, 1979 to September 30, 1989 were entered into by the Utkal Contractors and Joinery Private Limited and the Government of Orissa. This was followed up by an agreement between the Utkal Contractors and Joinery Private Limited and the Orissa Oil Industries Limited for the supply of the entire collection of sal seeds from the eleven Forest Divisions by the Utkal Contractors to the Orissa Oil Industries. While so the Orissa Forest Produce (Control of Trade) Bill, 1981 was introduced in the Legislative Assembly of Orissa State. The Statement of Objects and Reasons was as follows:

Smuggling of various forest produces are increasing day by day. The present provisions of the Orissa Forest Act, 1972 for checking, hoarding and transport of forest produce are not adequate to bring the culprits to book. The said Act is not adequate for imposition of any restrictions or control on trade in forest produce by framing rules thereunder. Barring few items like sal seeds, most of the important items of minor forest produce such as Mahua flowers, Tamarind, Charmaji, Karanja and the like are grown in private holdings as well as in the forest areas owned by government. Unscrupulous traders take advantage of this situation and evade the law under the cover that the produce relates to private land and not to forests under the control of government. Instances of smuggling in such cases are too many and the smugglers are escaping with impunity because of absence of any legislation providing for State monopoly in forest produce. Enactment of a separate legislation for the purpose is, therefore, absolutely necessary.

2. It appears from a perusal of the Statement of Objects and Reasons that the object of the proposed Act was to prevent smuggling of forest produce like Mahua flowers, Tamarind, Charmaji, Karanja, etc. which were grown both in private holdings and government forests. The object of the legislation was to prevent smuggling in such forest produce and to provide

for State monopoly therein. It is seen that the Statement of Objects and Reasons expressly mentions sal seeds as a forest produce which is grown in government forests and not in private holdings.

3. The Orissa Forest Produce (Control of Trade) Act, 1981 received the assent of the President of India on August 21, 1981. Under Section 1(3) of the Act, the State Government is empowered from time to time to issue a notification specifying the area or areas, the forest produce in relation to which and the date with effect from which the Act shall come into force. Purporting to act under this provision, a notification was issued by the Government of Orissa on December 9, 1982 directing that the Act shall come into force at once in the whole of the State of Orissa in relation to sal seeds. We are told that this is the only notification issued so far under Section 1(3) of the Act, despite the fact that in the very Statement of Objects and Reasons it was expressly recited that sal seeds was not a forest produce grown in government forests. In fact, we find that even after the commencement of the Act and before the issue of the notification, there were negotiations between the Utkal Contractor and Joinery Private Limited and the State Government for long term agreements for purchase and sale of sal seeds in Athagarh and Puri Forest Divisions. Such agreements were in fact entered into in relation to Parlakhemundi Forest Division between the State of Orissa and Indo East Extraction Limited. On December 24, 1982, the government refused to accept royalty from Utkal Contractors and Joinery Private Limited in respect of Dhenkanal and Sambalpur Forest Divisions on the ground that the Notification dated December 9, 1982 had the effect of rescinding the contract between the company and the government. Thereupon Utkal Contractors and Joinery Private Limited and Orissa Oil Industries Limited filed a writ petition in the Orissa High Court for a declaration that the Notification dated December 9, 1982 did not have the effect of rescinding the contracts which they had with the State Government. The writ petition was dismissed by the Orissa High Court. The Utkal Contractors and Joinery Private Limited and Orissa Oil Industries Limited have filed Civil Appeal No. 6230 of 1983. In another case, on similar facts the Orissa Minor Oil Private Limited have filed Civil Appeal No. 6231 of 1983.

4. On behalf of the appellants, it was submitted by Shri F.S. Nariman in Civil Appeal No. 6230 of 1983 and Shri S. N. Kacker in Civil Appeal No. 6231 of 1983 that the Orissa Forest Produce (Control of Trade) Act, 1981 had no application to forest produce grown in government forests. The Act was aimed at creating a monopoly in forest produce in the government. Since the government was already the owner of forest produce in government forests all that was necessary to create a monopoly in all forest produce in the government was to vest in the government the exclusive right to purchase forest produce grown in private holdings. That was precisely what was done by the Orissa Forest Produce (Control of Trade) Act, 1981 according to the learned counsel. It was further argued that even otherwise Explanation II to Section 5(1) saved such contracts for the purchase of specified forest produce from government forests also. It was also brought to our notice that such contracts were entered into in pursuance of the avowed Industrial Policy of the Government of Orissa. Shri G. Ramaswamy, learned Additional Solicitor General argued that Orissa Forest Produce (Control of Trade) Act, 1981 was a comprehensive Act intended to control and regulate trade in forest produce whether grown in government forest or land held by private owners. He

urged that the language of Section 5(1)(a) was so wide as to be incapable of any construction other than to say that all contracts relating to trade in forest produce shall stand rescinded irrespective of whether the contract related to forest produce grown in government forests or forest produce grown on private lands. He urged that Explanation II, properly viewed, was an explanation to Section 5(1)(b) only and not to Section 5(1)(a). He argued that in any event the contract was for the collection and not for the purchase of forest produce and therefore, not saved by the explanation. He further urged that the agents contemplated by Section 4 of the Act were not agents to act on behalf of the government. They were “public agents”, named as such, to carry on the activity of purchasing and trading in specified forest produce. They could purchase from and sell to the government. We may straightway say that it was never the case of the government in the High Court that the character of the agents was as suggested by the learned Additional Solicitor General. We do not, therefore, propose to consider the submission of learned Additional Solicitor General whatever justification there may be for the submission on the language of Section 4.

The learned Additional Solicitor General further submitted that even if the agreement which Utkal Contractors and Joinery Private Limited had with the government was saved by Explanation II, the further agreement by which the Utkal Contractors and Joinery Private Limited was required to supply sal seeds to Orissa Oil Industries Limited and the latter was required to purchase from the former was not saved by Explanation II and therefore, no relief could be granted to the appellants. This submission again is a new point raised for the first time in this Court. We do not think we will be justified in permitting the Additional Solicitor General to raise the question at this stage. Such a question was not raised in the High Court probably because the contract between Utkal Contractors and Joinery Private Limited and Orissa Oil Industries Limited appears to have been entered into at the behest of the government. The questions for consideration, therefore, are whether purchase of sal seeds grown in government forests is outside the purview of the Orissa Forest Produce (Control of Trade) Act, 1981 and whether, in any event, whether (*sic*) a contract such as the one with which we are concerned is saved by Explanation II to Section 5(1).

5. We have already referred to the Statement of Objects and Reasons of the Orissa Forest Produce (Control of Trade) Act. We have noticed that the object was to prevent smuggling of those varieties of forest produce as were grown both in government forests and private lands. We also notice that it was expressly mentioned in the Statement of Objects and Reasons that such varieties of forest produce were unlike sal seeds which were grown only in government forests. Even so we notice that the only notification ever issued under the Act was in respect of sal seeds and no other forest produce. We can only comment that curious indeed are the ways of the powers that be.

6. Section 1(3) of the Act declares that the Act shall come into force in such area or areas and in relation to such forest produce and on such date or dates as the State Government may, from time to time, by notification, specify in that behalf. Section 2(c) defines ‘forest produce’ and enumerates various items of forest produce. One of them is sal seeds. Section 2(d) defines “growers of forest produce” to mean “(i) in respect of forest produce grown on land owned by any person, the owner of such land, and (ii) in all other cases the State Government”. Section 2(h) and 2(i) define ‘specified area’ and ‘specified forest produce’ in the following terms:

(h) “specified area” in relation to a specified forest produce means the area specified in the notification under subsection (3) of Section 1 for such specified forest produce;

(i) “specified forest produce” in relation to a specified area means the forest produce specified in the notification issued under sub-section (3) of Section 1 for such specified area.

Section 4 authorises the government to appoint one or more agents for the purchase of and trade in specified forest produce in respect of one or more sub-divisions of a specified area. It is also provided that any person including a Gram Panchayat, a Cooperative Society or the State Tribal Development Corporation may be appointed as an agent. Section 5 is important and we are particularly concerned with subsections (1) and (3) of Section 5 which may be fully extracted here. They are as follows:

5. Restriction on purchase and transport and rescission of subsisting contracts. - (1) On the issue of a notification under sub-section (3) of Section 1 in respect of any area, -

(a) all contracts for the purchase, sale, gathering or collection of specified forest produce grown or found in the said area shall stand rescinded, and

(h) no person other than -

(i) the State Government,

(ii) an officer of the State Government authorised in writing in that behalf, or

(iii) an agent in respect of the unit in which the specified forest produce is grown or found,

shall purchase or transport any specified forest produce in the said area.

Explanation I.- “Purchase” shall include purchase by barter.

Explanation II.- Purchase of specified forest produce from the State Government or the aforesaid government officer or agent or a licensed vendor shall not be deemed to be a purchase in contravention of the provisions of this Act.

Explanation III.- A person having no interest of the holding who has acquired the right to collect the specified forest produce grown or found on such holding shall be deemed to have purchased such produce in contravention of the provisions of this Act.

(3) Any person desiring to sell any specified forest produce may sell them to the aforesaid government officer or agent at any depot situated within the unit wherein such produce was grown or found:

Provided that the State Government, the government officer or the agent shall not be bound to repurchase specified forest produce once sold.

We notice that though Section 5 (1)(a) is in general terms and declares that all contracts for the purchase and sale of forest produce shall stand rescinded and clause (6) bans purchase and transport of forest produce by any person other than the State Government or its officers or agents, explanation II is clear that purchase of specified forest produce from the State Government or its officers or agents is not to be deemed to be a purchase in contravention of the provisions of the Act. Explanation III, we see, declares that a person having no interest in the holding but acquires the right to collect the specified forest produce grown or found on such holding shall be deemed to have purchased such produce in contravention of the provisions of the Act. It is obvious that the reference to holding here is to land held by a person other than the government and not to land owned by the government. We are primarily

concerned in this case with the effect of Section 5(1)(a) and (b) in the light of Explanation II. Sub-section (3) of Section 5 also, we further notice, refers to sale to the officers, or agents of the government by individuals and not sale by the government or its officers or agents to individuals.

7. Section 5(2), which we have not extracted, is an exception to the ban imposed by Section 5(1)(6) on transport of specified forest produce. Section 5(2)(a) provides that notwithstanding anything contained in sub-section (1), any person may transport any specified forest produce within the prescribed limits from the place of purchase of any such produce to the place where such produce is required for bona fide use or for consumption. It is further provided that any specified forest produce purchased from the State Government or any officer or agent or any person for manufacture of goods within the State in which such specified forest produce is used as raw material or by any person for sale outside the State may be transported in accordance with the terms and conditions of a permit issued by the prescribed authority.

8. Section 6 provides for the constitution of an Advisory Committee in respect of each specified forest produce for each revenue division. The object of the Committee is to advise the government “in the matter of fixation of fair and reasonable price of each specified forest produce at which such produce may be purchased by the State Government or its authorised officers or agents when they are offered for sale in such division in accordance with the provisions of this Act”. Section 7 enables the State Government, after consultation with the Advisory Committee to fix the price at which specified forest produce may be purchased by it or by its officers and agents. Again we see that the price to be fixed is in regard to authorised produce that may be purchased by the State Government and not forest produce that may be sold by the State Government. Section 8 enables the State Government to open depots for the convenience of the growers of specified forest produce and Section 9 obliges the State Government to purchase at the price fixed under Section 7 any specified forest produce offered for sale at the depot. Section 10 enables growers of forest produce to get themselves registered. Section 11 enables every manufacturer who uses any specified forest produce as a raw material and every trader or consumer to get himself registered. Section 12 enables the State Government to dispose of specified forest produce purchased by the State Government or its officers or agents by sale or otherwise as the State Government may direct. Section 13 bans any person from engaging himself in retail sale of any specified forest produce except under a licence granted under this section. Section 15 provides for searches and seizures. Section 16 provides for penalties. Section 22(1) provides: “Nothing contained in the Orissa Forest Act, 14 of 1972 shall apply to specified forest produce in respect of matters for which provisions are made under this Act.”

9. In considering the rival submissions of the learned counsel and in defining and construing the area and the content of the Act and its provisions, it is necessary to make certain general observations regarding the interpretation of statutes. A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of

committees which preceded the Bill and the reports of Parliamentary Committees Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for. Parliament cannot be assumed to legislate for the sake of legislation; nor can it be assumed to make pointless legislation. Parliament does not indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily. Again, while the words of an enactment are important, the context is no less important. For instance:

(T)he fact that general words are used in a statute is not in itself a conclusive reason why every case falling literally within them should be governed by that statute, and the context of an Act may well indicate that wide or general words should be given a restrictive meaning. [Halsbury 4th edn.. Vol. 44 page 874]

10. In *Attorney-General v. H.R.H. Prince Ernest Augustus* [(1957) 1 All ER 49, 53], Viscount Simonds said:

My Lords, the contention of the Attorney-General was, in the first place, met by the bald general proposition that, where the enacting part of a statute is clear and unambiguous, it cannot be cut down by the preamble, and a large part of the time which the hearing of this case occupied was spent in discussing authorities which were said to support that proposition. I wish, at the outset, to express my dissent from it, if it means that I cannot obtain assistance from the preamble in ascertaining the meaning of the relevant enacting part. For words, and particularly general words, cannot be read in isolation; their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use context in its widest sense which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern that the statute was intended to remedy.

11. In *Chertsey UDC v. Mixnam's Properties* [(1964) 2 All ER 627, 632], Lord Reid said that the general effect of the authorities was properly stated in *Maxwell's Interpretation of Statutes* as follows:

General words and phrases therefore, however wide and comprehensive they may be in their literal sense, must usually be construed as being limited to the actual objects of the Act.

Though no reference was made to Maxwell this Court in *Empress Mills v. Municipal Committee, Wardha* [AIR 1958 SC 341, 348], stated the same proposition:

It is also a recognised principle of construction that general words and phrases however wide and comprehensive they may be in their literal sense must usually be construed as being limited to the actual objects of the Act.

12. In *Maunsell v. Olins* [(1975) 1 All ER 16, 21, 18], Lord Wilberforce observed:

I am not, myself, able to solve this problem by a simplistic resort to plain meaning. Most language, and particularly all language used in rents legislation, is opaque: all general words are open to inspection, many general words demand inspection, to see whether they really bear their widest possible meaning.

13. But we think that when we rely upon rules of construction we must always bear in mind Lord Reid's admonition in *Maunsell v. Olins* to the following effect:

Then rules of construction are relied on. They are not rules in the ordinary sense of having some binding force. They are our servants not our masters. They are aids to construction, presumptions or pointers. Not infrequently one 'rule' points in one direction, another in a different direction. In each case we must look at all relevant circumstances and decide as a matter of judgment what weight to attach to any particular 'rule'.

14. Bearing these broad rules in mind, we may now examine the Act and the argument. The reason for the Act is not far to seek. Earlier we have set out the Statement of Objects and Reasons. The Statement of Objects and Reasons is explicit that the Act was proposed to be enacted to prevent smuggling of forest produce grown in government lands under the guise of produce grown on private lands. This was sought to be achieved, as stated in the preamble by the creation of a State monopoly. Since the State was already the owner of the forest produce grown on government land, what was necessary and sufficient to be done by the proposed legislation was to vest in the government the exclusive right to purchase forest produce grown on private land. We may now proceed to examine the scheme and the provisions of the Act to find out whether this was not precisely what was done.

15. At the outset, we notice that 'grower of forest produce' is defined to include the State Government but on an examination of the remaining provisions of the Act we find that the expression 'grower of forest produce' is not found in any other provision except Section 5(2)(a) and Section 10. Section 5(2)(a) provides for the transport of produce by the grower of forest produce from a place within one unit to another place within the unit. Section 10 requires every grower of specified forest produce to get himself registered in the prescribed manner. Obviously neither Section 5(2)(a) nor Section 10 has any application to the government. Therefore, the circumstance that grower of forest produce is defined so as to include the government appears to us to be of no consequence in determining whether the Act is applicable to forest produce grown on government lands. On the other hand, from the extracts and summary of the other provisions of the Act that we have given earlier, we find that section after section deals with purchase of forest produce which, in the circumstances, can only refer to purchase of forest produce grown on private holdings since there can be no question of or providing for the purchase by the government of forest produce grown on government lands. Section 4 enables the appointment by the State Government of agents for the purchase of and trade in specified forest produce. Section 5(1)(b) refers to purchase or transport of specified forest produce by the State Government, its officers and agents. Section

5(3) refers to sale of forest produce to the government, its officers or agents. Section 7 refers to the fixation of price at which the government, its officers or agents may purchase forest produce. Section 8 enables the opening of depots for the purchase of forest produce by the government, its officers and agents. Section 9 deals with the obligation of the State Government, its agents and officers to purchase specified forest produce. All these provisions, we see, deal with purchase of forest produce by the State Government. As stated by us earlier, this can only be of forest produce grown in private holdings and not in government forests.

The only provision which deals with sale of forest produce by the State Government is Section 12 and that again is confined to the sale of specified forest produce purchased by the State Government, its officers or agents. Thus, Section 4, Section 5(1)(b), Section 5(3), Section 7, Section 8, Section 9, Section 10 and Section 12, all deal with the forest produce grown in private holdings and all those provisions except Sections 10 and 12 deal with purchase of forest produce by the government, its officers or agents. Section 10, as we have already seen, deals with registration of growers of forest produce and Section 12 with sale of forest produce purchased by the government. Thus none of these provisions deals with forest produce grown in government lands nor is there any other provision in the Act which expressly deals with forest produce grown in government lands. The scheme of the Act is, therefore, fully in tune with the object set out in the Statement of Objects and Reasons and in the preamble, namely, that of creating a monopoly in forest produce by making the government the exclusive purchaser of forest produce grown in private holdings. It was argued by the learned Additional Solicitor General that Section 5(1)(a) was totally out of tune with the rest of the provisions and, while the rest of the provisions dealt with forest produce grown in private holdings, the very wide language of Section 5(1)(a) made it applicable to all forest produce whether grown in private holdings or government forests. We do not think that it is permissible for us to construe Section 5(1)(a) in the very wide terms in which we are asked to construe it by the learned Additional Solicitor General because of its wide language, as that would merely introduce needless confusion into the scheme of the Act. Having scanned the object and the scheme of the Act, having examined each of the provisions of the Act textually and contextually, we do not think that it is proper for us to construe the words of Section 5(1)(a) in their literal sense; we think that the proper way to construe Section 5(1)(a) is to give a restricted meaning to the wide and general words there used so as to fit into the general scheme of the Act. Sections 5(1)(a) and 5(1)(b) are connected by the conjunction 'and', and having regard to the circumstances leading to the enactment and the policy and design of the Act, we think that the clauses (a) and (b) must be construed in such a way as to reflect each other. We have no doubt that the contracts relating to specified forest produce which stand rescinded are contracts in relation to forest produce grown in private holdings only.

If the very object of the Act is to create a monopoly in forest produce in the government so as to enable the government, among other things, to enter into contracts, there was no point in rescinding contracts already validly entered into by the government. Again Section 5(1) does not bar any future contracts by the government in respect of forest produce; if so, what is the justification for construing Section 5(1)(a) in such a way as to put an end to contracts already entered into by the government. Viewing Sections 5(1)(a) and 5(1)(b) together and in

the light of the preamble and the Statement of Objects and Reasons and against the decor of the remaining provisions of the Act, we have no doubt that Section 5(1) like the rest of the provisions applies to forest produce grown in private holdings and not to forest produce grown on government lands.

16. One of the submissions of the learned Additional Solicitor General was that despite noticing in the Statement of Objects and Reasons that 'sal seeds' were grown in government lands only yet 'sal seeds' were included in the definition of forest produce and this was a clear indication that forest produce grown in government lands was also meant to be dealt with by the Act. We do not think that the mere inclusion of 'sal seeds' in the definition of forest produce can lead to such consequences in the teeth of the several provisions of the Act. Several species of forest produce were included in the definition of forest produce and among them 'sal seeds' were also included so as to eliminate even the remote possibility of the existence of some stray private holdings in which sal seeds may have been grown.

17. In the view that we have taken it is unnecessary for us to consider the further submission that Explanation II to Section 5(1) saves the present contract or that Explanation II is an explanation only to Section 5(1)(a) and not to Section 5(1)(b). We declare that the Act and the notification issued under the Act do not apply to forest produce grown in government forests and that it was not therefore, open to the government to treat the contract dated May 25, 1979 as rescinded. As a result of the attitude of the government in treating the contract as rescinded from the date of the notification the appellants were not able to collect and purchase the sal seeds from the government forests which they have taken on lease for a period of about four years. The question arises whether any further relief in addition to declaration may be granted by us. It was suggested on behalf of the appellants that their lease should be extended by another period of four years. We do not think that it is permissible for us to extend the lease for a further period of four years in that fashion. We can only leave it open to the parties to work out their rights in the light of the declaration granted by us. We find that various interim orders were made from time to time. The rights of the parties will naturally have to be worked out after taking into account the interim orders.

18. Civil Appeal No. 6231 is an appeal by other persons similarly placed as the appellants in Civil Appeal No. 6230 of 1983 in respect of a different contract. Both the appeals *ire* allowed with costs in the manner indicated above. We mentioned at the outset that although several species of forest produce were included in the definition of forest produce under the Act, the only notification issued under the Act in respect of any species of forest produce was in necessary if what was stated in the Statement of Objects and Reasons was correct. We are not a little surprised that the only occasion for using the machinery of Orissa Forest Produce (Control of Trade) Act, 1981 was to issue a notification in respect of sal seeds and not in respect of other forest produce, leaving an uneasy feeling with us that the notification was issued only with the object of putting an end to those contracts solemnly entered into by the Orissa Government for the avowed purpose of encouraging the setting up of certain industries in the State of Orissa. The allegation of the appellants is that this has been done with a view to help certain industrialists outside the State. We desire to express no opinion on this allegation.

* * * * *

Smith v. Hughes

(1960) 1 W.L.R. 830

LORD PARKER C. J. – These are six appeals by way of case stated by one of the stipendiary magistrates sitting at Bow Street, before whom informations were preferred by police officers against the defendants, in each case that she “being a common prostitute, did solicit in a street for the purpose of prostitution, contrary to section 1 (1) of the Street Offences Act, 1959”. The magistrate in each case found that the defendant was a common prostitute, that she had solicited and that the solicitation was in a street, and in each case fined the defendant.

The defendants in each case were not themselves physically in the street but were in a house adjoining the street. In one case the defendant was on a balcony and she attracted the attention of men in the street by tapping and calling down to them. In other cases the defendants were in ground-floor windows, either closed or half open, and in another case in a first-floor window.

The sole question here is whether in those circumstances each defendant was soliciting in a street or public place. The words of section 1 (1) of the Act of 1959 are in this form : “It shall be an offence for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution”. Observe that it does not say there specifically that the person who is doing the soliciting must be in the street. Equally, it does not say that it is enough if the person who receives the solicitation or to whom it is addressed is in the street. For my part, I approach the matter by considering what is the mischief aimed at by this Act. Everybody knows that this was an Act intended to clean up the streets, to enable people to walk along the streets without being molested or solicited by common prostitutes. Viewed in that way, it can matter little whether the prostitute is soliciting while in the street or is standing in a doorway or on a balcony, or at a window, or whether the window is shut or open or half open; in each case her solicitation is projected to and addressed to somebody walking in the street. For my part, I am content to base my decision on that ground and that ground alone. I think the magistrate came to a correct conclusion in each case, and that these appeals should be dismissed.

HILBERY, J. - I agree 39 Curzon Street, from the papers in front of us, appears to be let to prostitutes who practise their profession from that address, and the way of practising it is shown by the cases stated, as my Lord has said, and in one case by tapping on the window pane with some metal object as men passed by in the street in front of her, and then openly inviting them into her room. In the other cases it was done by tapping on the windows of various rooms occupied by these prostitutes and then, if the window was open, giving invitations by way of solicitation or signals representing solicitation. In each case signals were intended to solicit men passing by in the street.

They did effect solicitation of the men when they reached those men. At that moment the person in the street to whom the signal was addressed was solicited and, being solicited in the street, I agree with the conclusion of my Lord and for these reasons I have intimated I agree that these appeals must be dismissed.

Avtar Singh v. State of Punjab

AIR 1955 SC 1107.

SARKAR J.- The appellant was prosecuted for theft of electrical energy from the Punjab State Electricity Board and 104 was convicted. In this appeal the appellant has not sought to challenge the finding that he had committed the theft. He has only raised a point of law that his conviction was illegal in view of certain statutory provisions to which, therefore, we immediately turn.

The statute concerned is the Indian Electricity Act, 1910. Section 39 of the Act, so far as material, provides, "Whoever dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code". It is not in dispute that the appellant had committed the theft mentioned in this section. Section 50 of the Act provides, "No prosecution shall be instituted against any person for any offence against the Act.... except at the instance of the Government or an Electrical Inspector, or of a person aggrieved by the same." The appellant's contention is that his prosecution was for an offence against the Act and it was incompetent as it had not been established that it had been instituted at the instance of any of the persons mentioned, in s. 50. The Courts below held that the prosecution was not for an offence against the Act and in that view of the matter held that s. 50 did not apply. On the question whether it had been instituted by a person mentioned in S. 50, the prosecution gave no materials for a decision.

The question whether theft of electricity is an offence against the Act or not has come up before the High Courts on several occasions and the decisions disclose a diversity of opinion.

It will be convenient to refer to these opinions at this stage. In *State v. Maganlal Chunilal Bogwat* [AIR 1956 Bom.354], *Tulsi Prasad v. The State* [(1964)1Cr.LJ] and *Public Prosecutor v. Abdul Wahab* [(1964)LW Mad 271(FB)], it was held that the theft was not an offence against the Act while the contrary view was taken in *Emperor v. Vishwanath* [ILR 1937 All.102], *Dhoolchand v. State* [(1956) ILR Raj. 6] and In *re P. N. Venkatarama Naicker* [AIR 1962 Mad 497].

In our opinion, the view expressed by the Allahabad High Court in *Emperor v. Vishwanath* is the correct one. The matter was there put in these words:

The learned Sessions Judge was of opinion that the offence was not an offence against the Act because it was one punishable under the provisions of s. 379 of the Indian Penal Code. We think that this would not have been an offence under section 379 of the Indian Penal Code if it had not been for the provisions of section 39 of the Indian Electricity Act. It was, therefore, an offence which was created by that section and we are of opinion that the legislature intended section 50 to apply to an offence of this nature.

We are in complete agreement with this statement of the law.

We may now set out the reasons on which the contrary view was taken and state why we are unable to accept them. In *State v. Maganlal Chunilal Bogawat*, it was stated that s.39 of the Electricity Act only extended the operation of s.379 (s. 378?) of the Penal Code and

Vishwanath case was wrongly decided as s. 39 expressly made the dishonest abstraction of electrical energy an offence punishable under the Code. In *Tulsi Prasad v. The State* an additional reason in support of the same view was given and that was that s. 39 could not create an offence as it did not provide for any punishment. The case of *Public Prosecutor v. Abdul Wahab* [AIR 1956 Bom. 354] seems to have proceeded on the basis that s. 39 created a fiction by which something which was not a theft within the Indian Penal Code became one under it and so the offence was really under the Code. It was also stated that the purpose of the fiction was merely to create an offence but as the punishment for it was provided only under the Indian Penal Code, the offence really became one under the latter statute.

With regard to the first reason that s. 39 of the Act extended the operation of s. 378 of the Code, it seems to us beyond question that s. 39 did not extend s. 378 in the sense of amending it or in any way altering the language used in it. Section 378, read by itself even after the enactment of s. 39, would not include a theft of electricity for electricity is not considered to be movable property.

The only way in which it can be said that s. 39 extended s. 378 is by stating that it made something which was not a theft under s. 378, a theft within the meaning of that section. It follows that if s. 39 did so, it created the offence itself and s. 378 did not do so. In this view of the matter we do not think it possible to say that the thing so made a theft and an offence, became one by virtue of s. 378.

Next as to s. 39 not providing for a punishment, apart from the question whether an offence can be created by a statutory provision without that provision itself providing for punishment, on which we express no opinion, we think it clear that S. 39 must be read as providing for a punishment.

First it is clear to us that the Act contemplated it as doing so, for ss. 48 and 49 speak of penalties imposed by s. 39 and acts punishable under it. In *Public Prosecutor v. Abdul Wahab* it was stated that the language used in ss. 48 and 49 cannot be regarded as strictly accurate. Such an interpretation is not permitted for "the words of an Act of Parliament must be construed so as to give sensible meaning to them." The words ought to be construed *ut res magis valeat quam pereat* : *Curtis v. Stovin* [I.L.R. (1937) All. 102]. And we find no difficulty in taking the view that S. 39 does provide for a punishment. It says that the dishonest abstraction of energy shall be deemed to be theft within the meaning of the Indian Penal Code. The section, therefore, makes something which was not a theft within that Code, a theft within it, for if the abstraction was a theft within the Code, the section would be unnecessary. It follows from this that the section also makes that theft punishable in the manner provided in it, for if the act is deemed to be a theft within the Code it must be so deemed for all purposes of it, including the purpose of incurring the punishment. In *State v. Maganlal Chunilal Bagawat* [(1964) 1 Cr. L.J. 472], it was also stated that the offence of abstraction of energy is by s. 39 expressly made punishable under S. 379. We find no such express provision in S. 39. Even if there was such a provision in the Act, the liability to punishment would arise not under the Code but really because of s. 39. It will be impossible to hold that without S. 39 there is any liability to punishment under the Code for any abstraction of electrical energy. In *Public Prosecutor v. Abdul Wahab* it was observed that since s. 39 created a theft within the meaning of the Indian Penal Code by means of a fiction,

it followed that as the fiction could not be departed from, the offence so fictionally created was one under the Code. We are unable to appreciate this reasoning. If a provision says that something which is not an offence within the meaning of another statute is to be deemed to be such, the offence is, in our view, created by the statute which raises the fiction and not by the statute within which it is to be deemed by that fiction to be included. If the other view was correct, it would have to be held that the offence was one within the last mentioned statute *proprio vigore* and this clearly it is not.

At this stage we might point out that in *Abdul Wahab* case it was stated that "It can be accepted that s. 39 of the Act creates an offence." It seems to us that if so much is conceded, it is impossible to say that s. 50 would not apply to a prosecution in respect of it for it applies to every prosecution "for any offence against this Act".

To put it shortly, dishonest abstraction of electricity mentioned in S. 39 cannot be an offence under the Code for under it alone it is not an offence the dishonest abstraction is by s. 39 made a theft within the meaning of the Code, that is, an offence of the variety described in the Code as theft. As the offence is created by raising a fiction, the section which raises the fiction, namely s. 39 of the Act, must be said to create the offence. Since the abstraction is by s. 39 to be deemed to be an offence under the Code, the fiction must be followed to the end and the offence so created would entail the punishment mentioned in the Code for that offence. The punishment is not under the Code itself for under it abstraction of energy is not an offence at all. We may now refer to certain general considerations also leading to the view which we have taken.

First, we find that the heading which governs ss. 39 to 50 of the Act is "Criminal Offences and Procedure". Obviously, therefore, the legislature thought that s. 39 created an offence. We have also said that ss. 48 and 49 indicate that in the legislature's contemplation s. 39 provided for a punishment. That section must, therefore, also have been intended to create an offence to which the punishment was to attach. The word 'offence' is not defined in the Act.

Since for the reasons earlier mentioned, in the legislature's view s. 39 created an offence, it has to be held that was one of the offences to which s. 50 was intended to apply. Lastly, it seems to us that the object of S. 50 is to prevent prosecution for offences against the Act being instituted by anyone who chooses to do so because the offences can be proved by men possessing special qualifications. That is why it is left only to the authorities concerned with the offence and the persons aggrieved by it to initiate the prosecution. There is no dispute that s. 50 would apply to the offences mentioned in ss. 40 to 47. Now it seems to us that if we are right in our view about the object of s. 50, in principle it would be impossible to make any distinction between s. 39 and any of the sections from s. 40 to s. 47. Thus s. 40 makes it an offence to maliciously cause energy to be wasted. If in respect of waste of energy S. 50 is to have application, there is no reason why it should not have been intended to apply to dishonest abstraction of energy made a theft by s.39. For all these reasons we think that the present is a case of an offence against the Act and the prosecution in respect of that offence would be incompetent unless it was instituted at the instance of a person named in s. 50.

Learned counsel for the respondent also sought to contend that the present prosecution was at the instance of a person aggrieved by the theft. We do not think we should allow him at this stage to go into that question. The appellant has all along been contending that his prosecution was bad because it was not at the instance of the Government or an Electrical Inspector or a person aggrieved by the theft. It was clearly for the respondent if it was minded to go into that question, to establish that the prosecution had been instituted at the instance of a person aggrieved as it now seeks to do. It has never been disputed at any earlier stage that the prosecution had not been at the instance of one of the persons mentioned in s. 50. The onus of proving that fact was clearly on the respondent. It is a question of fact and we have no material on the record by which we can decide it. We, therefore, think that this case must be decided on the basis, as it was in the courts below, that the prosecution would be incompetent under s. 50 if it was in respect of an offence against the Act. We have found that it was in respect of such an offence.

The result is that the appeal is allowed and the conviction of the appellant is set aside.

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Corporation of Calcutta v. Liberty Cinema

AIR 1965 SC 661

SARKAR J.- The appellant Corporation was constituted by the Calcutta Municipal Act, 1951, an Act passed by the Legislature of the State of West Bengal. The Act was intended to consolidate and amend the law relating to the Municipal affairs of Calcutta and it defined the duties, powers and functions of the Corporation in whose charge those affairs were placed. The respondent is a firm owning a cinema house and carrying on business of public cinema shows.

Section 443 of the Act provides that no person shall without a licence granted by the Corporation keep open any cinema house for public amusement. It, however, does not say that any fee is to be paid for the licence. But sub-s. (2) of S. 548 says that for every licence under the Act, a fee may, unless otherwise provided, be charged at such rate as may from time to time be provided. In 1948 the Corporation had fixed the scale of fees on the basis of the annual valuation of the cinema-houses made by a method which does not appear on the record. The respondent had under these sections obtained a licence for its cinema house and had been paying a licence fee calculated on the aforesaid basis. The fee as calculated was Rs. 400 per year. By a resolution passed on March 14, 1958 the Corporation changed the basis of assessment of the licence fee with effect from April 1, 1958. Under the new method the fee was to be assessed at rates prescribed per show according to the sanctioned seating capacity of the cinema houses. The respondent's cinema house, had 551 seats and under the changed method it became liable to a fee of Rs. 5 per show. In the result it became liable to pay a fee of Rs. 6,000 per year.

The respondent then moved the High Court at Calcutta under Art. 226 of the Constitution for a writ quashing the resolution. The application was first heard by Sinha J. who allowed it. This order was confirmed by an appellate Bench of the same Court consisting of Bose C. J. and C. K. Mitter J. on appeal by the Corporation. Hence the present appeal.

In this Court the levy was challenged on three grounds the first of which may be disposed of at once. That ground was that the levy amounted to expropriation and was, therefore, invalid as violating cls. (f) and (g) of sub-Art. (1) of Art. 19. Sinha J. rejected this contention as on the materials on the record it could not be said that the new rate was so high as to make it impossible for the respondent to carry on its business. The learned Judges of the appellate Bench do not appear to have taken a different view of the matter. It seems to us that a fee at the rate of Rs. 5 per show in a house with a seating capacity of 551 cannot in any sense be said to be unreasonably high. With that seating capacity the respondent would at a reasonable estimate be collecting about Rs. 1,000 per show and paying the sum of Rs. 5 per show. No doubt the increase in the rate of fee from Rs. 400 to Rs. 6,000 per year was large. But at the same time the circumstances obtaining in our country had undergone an immense change between 1948 when the fee was earlier fixed and 1958. The challenge to the levy on the ground that it amounted to expropriation is wholly unfounded and was rightly rejected in the High Court.

Substantially the same argument was advanced from a different point of view. It was said that Art. 19(1), (f) and (g) were violated in any case as S. 548 gave an arbitrary power of taxation. This contention found favour with the learned Judges of the High Court but, with respect to them, we are unable to agree. In our view, for reasons to be later stated, no arbitrary power of taxation was conferred by s. 548.

The second challenge to the levy was put in this way. The levy authorised by ss. 443 and 548 was a fee in return for services to be rendered and not a tax and it had therefore to be commensurate with the costs incurred by the Corporation in providing those services. The present levy of Rs. 6,000 per year was far in excess of those costs and was for that reason invalid. The Corporation's answer to this contention is that the levy was a tax and not a fee taken in return for services and no question of its being proportionate to any costs for services arose. The Corporation does not dispute that if the levy was a fee in the sense mentioned, it would be invalid. The only question on this part of the case, therefore, is, was the levy a fee in return for services? Another subsidiary question is, what is the nature of the services which makes a levy in respect of them, a fee? It is not disputed that a levy made in return for services rendered would be a fee. It is, therefore, unnecessary to consider what a fee is or the tests by which it is to be determined. Nor is it necessary to discuss whether in order that a levy may be a fee the statute imposing it must intend primarily to confer the benefits of the services on those who pay it and benefits received from those services by the public at large, if any, must be secondary. A discussion of these aspects of fees, will be unprofitable and will only cloud the point really in issue.

Now, on the first question, that is, whether the levy is in return for services, it is said that it is so because s. 548 uses the word "fee". But, surely, nothing turns on words used. The word "fee" cannot be said to have acquired a rigid technical meaning in the English language indicating only a levy in return for services. No authority for such a meaning of the word was cited. However that may be, it is conceded by the respondent that the Act uses the word "fee" indiscriminately. It is admitted that some of the levies authorised are taxes though called fees. Thus, for example, as Mitter J. pointed out, the levies authorised by ss. 218, 222 and 229 are really taxes though called fees, for no services are required to be rendered in respect of them. The Act, therefore, did not intend to use the word fee as referring only to a levy in return for services. This contention is not really open to the respondent for s. 548 does not use the word "fee"; it uses the words "licence fee" and those words do not necessarily mean a fee in return for services. In fact in our Constitution fee for licence and fee for services rendered are contemplated as different kinds of levy. The former is not intended to be a fee for services rendered. This is apparent from a consideration of Art. 110(2) and Art. 199(2) where both the expressions are used indicating thereby that they are not the same. In *Shannon v. Lower Mainland Dairy Products Board* [(1938) A. C. 708 484] it was observed:

“(If licences are granted, it appears to be no objection that fees should be charged in order either to defray the costs of administering the local regulation or to increase the general funds of the Province or for both purposes. It cannot, as their Lordships think, be an objection to a licence plus a fee that it is directed both to the regulation of trade and to the provision of revenue.”

It would, therefore, appear that a provision for the imposition of a licence fee does not necessarily lead to the conclusion that the fee must be only for services rendered.

It may also be stated that a statute has to be read so as to make it valid and, if possible, an interpretation leading to a contrary position should be avoided; it has to be construed *ut res magis valeat quam pareat*: see *Broom's Legal Maxims* (10 ed.) p. 361, *Craies on Statutes* (6th ed.) p. 95 and *Maxwell on Statutes* (11th ed.) p. 221. Therefore again, the word "fee" in s. 548 should be read as meaning a tax, for as we shall show later, it made no provision for services to be rendered; any other reading would make the section invalid. A construction producing that result has to be avoided. We do not also think that by reading the word as referring to a tax we would be doing any violence to the language used.

In the result we would allow the appeal.

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Rev. Stainislaus v. State of Madhya Pradesh

(1977) 1 SCC 677 : AIR 1977 SC 908

A.N. RAY, C.J. - 3. This controversy in the Madhya Pradesh cases relates to the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968. The controversy in the Orissa cases arises out of the Orissa Freedom of Religion Act, 1967.

4. The provisions of the two Acts in so far as they relate to prohibition of forcible conversion and punishment therefor, are similar and the questions which have been raised before us are common to both of them.

5. The Sub-Divisional Magistrate of Baloda-Bazar sanctioned the prosecution of Rev. Stainislaus for the commission of offence under Sections 3, 4 and 5(2) of the Madhya Pradesh Act. When the case came up before Magistrate, First class, Baloda-Bazar, the appellant Rev. Stainislaus raised a preliminary objection that the State Legislature did not have the necessary legislative competence and the Madhya Pradesh Act was ultra vires the Constitution as it did not fall within the purview of Entry 1 of List II and Entry 1 of List III of the Seventh Schedule. The appellant's contention was that it was covered by Entry 97 of List I so that Parliament alone had the power to make the law and not the State Legislature. An objection was also raised that the provisions of Sections 3, 4 and 5(2) of the Act contravened Article 25 of the Constitution and were void. The Magistrate took the view that there was no force in the objection and did not refer the case to the High Court under Section 432 of the Code of Criminal Procedure, 1898.

6. The appellant applied to the Additional Sessions Judge for a revision of the Magistrate's order refusing to make a reference to the High Court. The Additional Sessions Judge also took the view that no question of constitutional importance arose in the case. and he did not think it necessary to make a reference to the High Court.

7. The appellant thereupon applied to the High Court for revision under Section 439 of the Code of Criminal Procedure and he also filed a petition under Articles 226 and 227 of the Constitution.

8. The High Court heard both the revision and the writ petition together. The appellant raised the following three questions in the High Court:

- (i) that Sections 3, 4, 5(2) and 6 of the M. P. Dharma Swatantraya, Adhiniyam, 1968 are violative of the petitioner's fundamental rights guaranteed by Article 25(1) of the Constitution of India;
- (ii) that in exercise of powers conferred by Entry 1 of List II, read with Entry 1 of List III of the Seventh Schedule the Madhya Pradesh Legislature in the name of public order could not have enacted the said legislation. But the matter would fall within the scope of Entry 97 of List 'I' of the Seventh Schedule, which confers residuary powers on Parliament to legislate in respect of any matters not covered by List I, List II or List III. Therefore, it is contended that Parliament alone had the power to legislate on this subject and the legislation enacted by the State Legislature is ultra vires the powers of the State legislature;

(iii) that Section 5(1) and Section 5(2) of the M. P. Dharma Swatantrya Adhiniyam, 1968 amount to testimonial compulsion and, therefore, the said provisions are violative of Article 20(3) of the Constitution of India.

9. The High Court examined the controversy with reference to the relevant provisions of the Madhya Pradesh Act and the Madhya Pradesh Dharma Swatantrya Rules, 1969 and held as follows:

What is penalised is conversion by force, fraud or by allurement. The other element is that every person has a right to profess his own religion and to act according to it. Any interference with that right of the other person by resorting to conversion by force, fraud or allurement cannot, in our opinion, be said to contravene Article 25(1) of the Constitution of India, as the Article guarantees religious freedom subject to public health. As such, we do not find that the provisions of Sections 3, 4 and 5 of the M. P. Dharma Swatantrya Adhiniyam, 1968 are violative of Article 25(1) of the Constitution of India. On the other hand, it guarantees that religious freedom to one and all including those who might be amenable to conversion by force, fraud or allurement. As such, the Act, in our opinion, guarantees equality of religious freedom to all, much less can it be said to encroach upon the religious freedom of any particular individual.

10. The High Court therefore held that there was no justification for the argument that Sections 3, 4 and 5 of the Madhya Pradesh Act were violative of Article 25(1) of the Constitution. The High Court in fact went on to hold that those sections “establish the equality of religious freedom for all citizens by prohibiting conversion by objectionable activities such as conversion by force, fraud and by allurement”.

11. As regards the ‘question of legislative competence, the High Court took note of some judgments of this Court and held that as “the phrase ‘public order’ conveys a wider connotation as laid down by their Lordships of the Supreme Court in the different cases, we are of the opinion that the subject matter of the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 falls within the scope of Entry 1 of List II of the Seventh Schedule relating to the State List regarding public order”.

12. On the remaining point relating to testimonial compulsion with reference to Article 20(3) of the Constitution, the High Court held that Section 5 of the Madhya Pradesh Act read with Form A, prescribed by the Rules, merely made provision for the giving of intimation to the District Magistrate about conversion and did not require its maker to make a confession of any offence as to whether the conversion had been made on account of fraud, force or allurement, which had been penalised by the Act. The High Court thus held, that mere giving of such information was not violative of Article 30(1) of the Constitution. But the question of testimonial compulsion within the meaning of Article 20(3) of the Constitution has not been raised for our consideration.

13. The Orissa cases arose out of petitions under Article 226 of the Constitution challenging the vires of the Orissa Act. The High Court stated its conclusions in those cases as follows:

(1) Article 25(1) guarantees propagation of religion and conversion is a part of the Christian religion.

(2) Prohibition of conversion by 'force' or by 'fraud' as defined by the Act would be covered by the limitation subject to which the right is guaranteed under Article 25(1).

(3) The definition of the term 'inducement' is vague and many proselytizing activities may be covered by the definition and the restriction in Article 25(1) cannot be said to cover the wide definition.

(4) The State Legislature has no power to enact the impugned legislation which in pith and substance is a law relating to religion. Entry 1 of either List II or List III does not authorise the impugned legislation.

(5) Entry 97 of List I applies.

The High Court has therefore declared the Orissa Act to be ultra vires the Constitution and directed the issue of mandamus to the State Government not to give effect to it. The criminal cases which were pending have been quashed.

14. The common questions which have been raised for our consideration are (1) whether the two Acts were violative of the fundamental right guaranteed under Article 25(1) of the Constitution, and (2) whether the State Legislatures were competent to enact them?

15. Article 25(1) of the Constitution reads as follows:

25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

16. Counsel for the appellant has argued that the right to 'propagate' one's religion means the right to convert a person to one's own religion. On that basis, counsel has argued further that the right to convert a person to one's own religion is a fundamental right guaranteed by Article 25(1) of the Constitution.

17. The expression 'propagate' has a number of meanings, including "to multiply specimens of (a plant, animal, disease, etc.) by any process of natural reproduction from the parent stock", but that cannot, for obvious reasons be the meaning for purposes of Article 25(1) of the Constitution. The Article guarantees a right to freedom of religion, and the expression 'propagate' cannot therefore be said to have been used in a biological sense.

18. The expression 'propagate' has been defined in the Shorter Oxford Dictionary to mean "to spread from person to person, or from place to place, to disseminate, diffuse (a statement, belief, practice, etc.)".

19. According to the Century Dictionary (which is an *Encyclopaedic Lexicon of the English Language*), Vol. VI, 'propagate' means as follows:

To transmit or spread from person to person or from place to place; carry forward or onward; diffuse; extend; as to propagate a report; to propagate the Christian religion.

20. We have no doubt that it is in this sense that the word 'propagate' has been used in Article 25(1), for what the Article -grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. It has to

be remembered that Article 25(1) guarantees “freedom of conscience” to every citizen, and not merely to the followers of one particular religion, and that, in turn postulates that there is no fundamental right to convert another person to one’s own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the “freedom of conscience” guaranteed to all the citizens of the country alike.

21. The meaning of guarantee under Article 25 of the Constitution came up for consideration in this Court in ***Ratilal Panachand Gandhi v. State of Bombay*** [AIR 1954 SC 388] and it was held as follows:

Thus, subject to the restrictions which this Article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others.

This Court has given the correct meaning of the Article, and we find no justification for the view that it grants a fundamental right to convert persons to one’s own religion. It has to be appreciated that the freedom of religion enshrined in the Article is not guaranteed in respect of one religion only, but covers all religions alike, and it can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following the other religions. What is freedom for one, is freedom for the other, in equal measure, and there can therefore be no such thing as a fundamental right to convert any person to one’s own religion.

22. It has next been argued by counsel that the Legislatures of Madhya Pradesh and Orissa States did not have legislative competence to pass the Madhya Pradesh Act and the Orissa Act respectively, because their laws regulate ‘religion’ and fall under the Residuary Entry 97 in List I of the Seventh Schedule to the Constitution.

23. It is not in controversy that the Madhya Pradesh Act provides for the prohibition of conversion from one religion to another by use of force or allurement, or by fraudulent means, and matters incidental thereto. The expressions “allurement” and “fraud” have been defined by the Act. Section 3 of the Act prohibits conversion by use of force or by allurement or by fraudulent means and Section 4 penalises such forcible conversion. Similarly Section 3 of the Orissa Act prohibits forcible conversion by the use of force or by inducement or by any fraudulent means, and Section 4 penalises such forcible conversion. The Acts therefore clearly provide for the maintenance of public order for, if forcible conversion had not been prohibited, that would have created public disorder in the State.

24. The expression “public order” is of wide connotation. It must have the connotation which it is meant to provide as the very first Entry in List II. It has been held by this Court in ***Ramesh Thappar v. State of Madras*** [AIR 1950 SC 124] that “public order” is an expression of wide connotation and signifies state of tranquillity which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established.

25. Reference may also be made to the decision in *Ramjilal Modi v. State of U.P.* [AIR 1957 SC 620] where this Court has held that the right of freedom of religion guaranteed by Articles 25 and 26 of the Constitution is expressly made subject to public order, morality and health, and that it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interests of public order.

It has been held that these two Articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order. Reference may as well be made to the decision in *Arun Ghoshe v. State of West Bengal* [(1970) 1 SCC 98] where it has been held that if a thing disturbs the current of the life of the community, and does not merely affect an individual, it would amount to disturbance of the public order. Thus if an attempt is made to raise communal passions, e.g. on the ground that some one has been “forcibly” converted to another religion, it would, in all probability, give rise to an apprehension of a breach of the public order, affecting the community at large. The impugned Acts therefore fall within the purview of Entry 1 of List II of the Seventh Schedule as they are meant to avoid disturbances to the public order by prohibiting conversion from one religion to another in a manner reprehensible to the conscience of the community. The two Acts do not provide for the regulation of religion and we do not find any justification for the argument that they fall under Entry 97 of List I of the Seventh Schedule.

26. In the result Civil Appeals 1489 and 1511 of 1974 and Criminal Appeal 255 of 1974 fail and are dismissed while Civil Appeals 344-346 of 1976 are allowed and the impugned judgment of the Orissa High Court dated October 24, 1972 is set aside.

* * * * *

S.R. Chaudhuri v. State of Punjab

(2001) 7 SCC 126

A.S. ANAND, C.J. – Respondent 2 Shri Tej Parkash Singh, was appointed as a Minister in the State of Punjab on the advice of the Chief Minister, Sardar Harcharan Singh Brar on 09-09-1995. At the time of his appointment as a Minister, he was not member of the Legislative Assembly in Punjab. He failed to get himself elected as a member of the Legislature of the State of Punjab within a period of six months and submitted his resignation from the Council of Ministers on 08-03-1996. During the term of the same Legislative Assembly, there was a change in the leadership of the ruling party. Smt Rajinder Kaur Bhattal, Respondent 3, was, on her election as leader of the ruling party, appointed Chief Minister of the State of Punjab on 21-11-1996. Respondent 2, who had not been elected as a Minister w.e.f. 23-11-1996. The appellant filed a petition seeking writ of quo warranto against Respondent 2. It was stated in the petition that appointment of Respondent 2 for a second time during the term of the same Legislature, without being elected as a member of the Legislature was violative of constitutional provisions and, therefore, bad. The Division Bench of the High Court vide order dated 03-12-1996 dismissed the writ petition in limine. This appeal by special leave calls in question the order and judgment of the High Court dismissing the writ petition in limine.

2. Since the meaningful question involved in this appeal revolves around the ambit and scope of Article 164 and in particular, of Article 164(4) of the Constitution of India –let us first examine that article:

“164. Other provisions as to Ministers. - (1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:

Provided that in the State of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and Backward Classes or any other work.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.”

3. Under Article 164(1), the Governor shall appoint the Chief Minister exercising his own discretion, according to established practice and conventions. All other Ministers are to be appointed by the Governor on the advice of the Chief Minister. In view of the provisions

of Article 164(2) the Council of minister shall all be collectively responsible to the Legislative Assembly of the State. This provisions, in a sense, indicates that members of the Council of Ministers is collectively responsible. This, however, is subject to an exception provided by Article 164(4) to meet an extraordinary situation, where the Chief Minister considers the inclusion of a particular person, who is not a member of the Legislature, in the Council of Ministers necessary. To take care of such a situation, Article 164(4) provides that if a non-member is appointed a Minister, he would cease to be a Minister unless in a short period of six consecutive months from the date of his appointment he gets elected to the Legislature.

4. Article 164(4) can in fact trace its lineage to Section 10(2) of the Government of India Act, 1935 which reads:

“10. (2) A Minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature shall at the expiration of that period cease to be a Minister.”

7. Article 144(3) of the Draft Constitution which corresponds to Article 164(4) of the Constitution reads:

“144.(3) A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.”

8. During the debate on this draft article, Mr. Mohd. Tahir, MP, proposed the following amendment:

“That for clause (3) of Article 144, the following be substituted:

(3) A Minister shall, at the time of his being chosen as such be a member of the Legislative Assembly or Legislative Council of the State, as the case may be.”

9. Speaking in support of the proposed amendment, Mr. Tahir said in the Constituent Assembly:

“This provision appears that it does not fit with the spirit of democracy. This is a provision which was also provided in the Government of India Act of 1935 and of course those days were the days of imperialism and fortunately those days have gone. This was then provided because if a Governor finds his choice in someone to appoint as Minister and fortunately or unfortunately if that man is not elected by the people of the country, then that man used to be appointed as Minister through the back door as has been provided in the Constitution and in the 1935 Act. But now the people of the States will elect members of the Legislative Assembly and certainly we should think they will send the best men of the States to be their representatives in the Council or Legislative Assembly. Therefore I do not find any reason why a man who till then was not elected by the people of the States to be their representative in the Legislative Assembly or the Council, then Sir, why that man is to be appointed as the Minister.”

10. Dr. Ambedkar opposing the amendment replied:

“Now, with regard to the first point, namely, that no person shall be entitled to be appointed a Minister unless he is at the time of his appointment an elected member of the House, I think it forgets to take into consideration certain important matters which cannot be overlooked. First is this, - it is perfectly possible to imagine that a person who is otherwise competent to hold the post of a Minister has been defeated in a constituency for some reason which, although it may be perfectly good, might have annoyed the constituency and he might have incurred the displeasure of that particular Constituency. It is not a reason why a member so competent as that should be not permitted to be appointed a member of the Cabinet on the assumption that he shall be able to get himself elected either from the same constituency or from another constituency. After all the privilege that is permitted is a privilege that extends only for six months. It does not confer a right to that individual to sit in the House without being elected at all. My second submission is this, that the fact that a nominated Minister is a member of the Cabinet, does not either violate the principle of confidence, because if he is a member of the Cabinet, if he is prepared to accept the policy of the Cabinet, stands part of the Cabinet and resigns with the Cabinet, when he ceases to have the confidence of the House, his membership of the Cabinet does not in any way cause any inconvenience or breach of the fundamental principles on which parliamentary government is based.” (emphasis supplied)

11. After the debate the proposed amendment was negatived and Article 144(3) was adopted.

12. The ambit and scope of Article 164(4) came up for consideration before a Constitution Bench of this Court in *Har Sharan Verma v. Tribhuvan Narain Singh, Chief Minister and U.P.* [(1971) 1 SCC 616] The issue arose in connection with the appointment of Shri T.N. Singh, who was not a member of either House of Legislature of the State of Uttar Pradesh, as Chief Minister of Uttar Pradesh. The Constitution Bench referred to the position as prevailing in England. It was observed that invariably all Minister is not a member of Parliament but if in some exceptional case, a Minister is not a member of Parliament, he can continue to be a Minister for a brief period during which he must get elected in order to continue as a Minister. This Court upholding the judgment of the High Court, rejected the challenge to the appointment of Shri T.N. Singh as Chief Minister in view of Article 164(4) of the Constitution. The Court opined that the Governor has the discretion to appoint, as a Chief Minister, a person, who is not a member of the Legislature at the time of his appointment but the Chief Minister is required, with a view to continue in office as a Chief Minister, to get himself elected to the Legislature within a period of six consecutive months from the date of his appointment.

13. The issue was once again raised by the same writ petitioner and was considered by a Division Bench of this Court in *Har Sharan Verma v. State of U.P.* [(1985) 2 SCC 48]. The writ petitioner argued that a Governor cannot appoint a person, who is not a member of the

Legislature, as a Minister under Article 164(1) According to the writ petitioner, Article 164(4) of the Constitution in terms would only be applicable to a person, who has “been a Minister but who ceases to be a member of the Legislature for some reason or the other, such as the setting aside of his election in any election petition”. Sustenance for this argument was sought from the provisions of amended Article 173(a) which provides:

“173. Qualification for membership of the State Legislature. - A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he

(a) is a citizen of India, and makes and subscribes before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;”

14. Relying upon the Constitution Bench judgment in *Har Sharan Verma v. Tribhuvan Narain Singh*, the Court opined:

“15. It is thus seen that there is no material change brought about by reason of the amendment of Article 173(a) of the Constitution in the legal position that a person who is not a member of the State Legislature may be appointed as a Minister subject, of course, to clause (4) of Article 164 of the Constitution which say that a Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.”

15. An issue of interpretation of Article 75(5) which is in pari materia with Article 164(4) came up for consideration in *Harsharan Verma v. Union of India* [(1987) Supp SCC 310]. In this case, appointment of Shri Sita Ram Kesari, as a Minister of State in the Central Cabinet was put in issue in a writ petition filed in the Allahabad High Court, once again by the same writ petitioner, Shri Har Shafran Verma, on the ground that since Shri Kesari was not a member of either House of Parliament on the date of his appointment as a Minister, he could not have been appointed as a Minister of State in the Central Cabinet. The High Court dismissed the writ the High Court and after taking note of Article 7, which makes provision for appointment of Central Ministers and particularly clause (5) thereof, which reads:

“75. (5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.”

and Article 88, which provides:

“88. Every Minister and the Attorney General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the House, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.”

opined:

“The combined effect of these two articles is that a person not being a member of either house of Parliament can be a Minister up to a period of six months. Though he would not have any right to vote; he would be entitled to participate in the proceedings thereof. The petitioner admits that in the thirty-seven years of constitutional regime in this country there have been several instances where a person

has held the office as Minister either at the Centre or in the State (there are corresponding provisions for the State), not being a member of the appropriate Legislature at the time of appointment.”

Thus, this Court once again held that a person, not being a member of either House of Legislature could be appointed a Minister, but he could continue as a Minister for a period of six consecutive months only during which period he should get himself elected to the Legislature or else he must cease to be a Minister after expiry of that period.

16. Shri H.D. Deve Gowda, who was not a member of either House of Parliament was appointed as the Prime Minister of India. His appointment was put in issue in *S.P. Anand v. H.D. Deve Gowda*: [(1996) 6 SCC 734]. After noticing carious provisions of the Constitution, this Court while upholding his appointment observed:

“2. A Constitution Bench of this Court had occasion to consider whether a person who is not a member of either house of the State Legislature could be appointed a Minister of State and this question was answered in the affirmative in a true interpretation of Articles 163 and 164 of the Constitution which, in material particulars, correspond to Articles 74 and 75 bearing on the question of appointment of the Prime Minister.”

and went on to say:

“14. On a plain reading of Article 75(5) it is obvious that the Constitution-makers desired to permit a person who was not a member of either House of Parliament to be appointed a Minister for a period of six consecutive months and if during the said period he was not elected to either House of Parliament, he would cease to be a Minister.”

The Bench also repelled the argument that if a non-member of the House is chosen as a Prime Minister, it could be against the national interest and the country would be running a great risk. It was observed:

“Therefore, even though a Prime Minister is not a member of either House of Parliament, once he is appointed he becomes answerable to the House and so also his Ministers and the principle of *collective responsibility* governs the democratic process. Even if a person is not a member of the House, if he has the support and confidence of the House, he can be chosen to head the Council of Ministers without violating the norms of democracy and the requirement of being accountable to the House would ensure the smooth functioning of the democratic process. We, therefore, find it difficult to subscribe to the petitioner’s contention that if a son who is not a member of the House is chosen as Prime Minister, national interest would be jeopardized or that we would be running a great risk. The English convention that the Prime Minister should be a member of either House, preferably House of

Commons, is not our constitutional scheme since our Constitution clearly permits a non-member to be appointed a Chief Minister or a Prime Minister for a short duration of six months.”

17. Thus, we find that this Court, including its Constitution Bench, has consistently taken the view on an interpretation of Article 163, Article 164(1) and Article 164(4) that a person who is not a member of the Legislature, may be appointed a Minister for a short period, but if during the period of six consecutive months he is not elected to the Legislature, he would cease to be a Minister at the expiry of that period.

18. The absence of the expression “from amongst members of the Legislature” in Article 164(1) is indicative of the position that whereas under that provision a non-legislator can be appointed as a Chief Minister or a Minister but that appointment would be governed by Article 164(4), which places a restriction on such a non-member to continue as a Minister or the Chief Minister, as the case may be, unless he can get himself elected to the Legislature within the period of six consecutive months from the date of his appointment. Article 164(4) is, therefore not a source of power or an enabling provision for appointment of a non-legislator as a Minister even for a short duration. It is actually in the nature of a disqualification or restriction for a non-member, who has been appointed as a Chief Minister or a Minister, as the case may be, to continue in office without getting himself elected within a period of six consecutive months.

19. It is not the case of the appellant that Respondent 2 Shri Tej Parkash Singh suffered from any Constitutional or statutory disqualification to contest an election on the date of his first appointment as a Minister or even on the date of his reappointment as a Minister. The challenge is confined to the issue of reappointment of the respondent, without getting elected within six consecutive months of his first appointment. In this view of the matter, we have declined an invitation of learned counsel for the appellant to express our opinion on the question whether a non-legislator can be appointed as a Minister, if on the date of such appointment, he suffers from a Constitutional or statutory disqualification to contest the election within the next six consecutive months. We are not expressing our opinion on the issue, as it is not directly involved in the present case and the settled practice of this Court is not to express opinion on issues which do not essentially arise in a case under consideration.

20. The issue before us, however, is somewhat different. The issue is: can a non-member, who fails to get elected during the period of six consecutive months, after he is appointed as a Minister or while a minister has ceased to be a legislator, be reappointed as a Minister, without being elected to the Legislature after the expiry of the period of six consecutive months? This issue was not considered in either of the four cases referred to above - there is no other decided case dealing with the issue brought to our notice either. With a view to consider the issue, it would, therefore, be useful to consider the Constitutional scheme governing a democratic parliamentary form of government and interpret Articles 164(1) and 164(4) in that light.

21. Parliamentary democracy generally envisages (i) representation of the people, (ii) responsible government, and (iii) accountability of the Council of Ministers to the Legislature. The essence of this is to draw a direct line of authority from the people through the Legislature to the executive. The character and content of parliamentary democracy in the ultimate analysis depends upon the quality of persons who man the Legislature as representatives of the people. It is said that “elections are the barometer of democracy and the contestants the lifeline of the parliamentary system and its set-up”.

22. India has to a large measure adopted the Westminster form of government. This position was recognized in *Samsher Singh v. State of Punjab* [1975 1 SCR 814] when Justice Krishna Iyer observed:

“104. Not the Potomac, but the Thames, fertilizes the flow of the Yamuna, if we may adopt a riverine imagery. In this thesis we are fortified by the precedent of this Court, strengthened by Constituent Assembly proceedings and reinforced by the actual working of the organs involved for about a ‘silver jubilee’ span of time.”

23. In the Westminster system, it is an established convention that Parliament maintains its position as controller of the executive. By a well-settled convention, it is the person who can rely on the support of a majority in the House of Commons, who form a Government and is appointed as the Prime Minister. Generally speaking, he and his Ministers must invariably all be members of Parliament (House of Lords or House of Commons) and they are answerable to it for their actions and policies. Appointment of a non-member as a Minister is a rare exception and if it happens, it is for a short duration. Either the individual concerned gets elected or is conferred life peerage.

24. In *Halsbury's Laws of England* (4th Edn., Vol. 8, para 819) dealing with British conventions it is observed:

“819. The paramount convention is that Sovereign must act on the advice tendered to her by her Minister, in particular the Prime Minister. She must appoint as Prime Minister the member of the House of Commons who can acquire the confidence of the House, and must appoint such persons to be members of the Ministry and Cabinet as he recommends.

Since the Sovereign must always act upon ministerial advice, Ministers are always politically responsible to the House of Commons for their acts, even if done in her name. Their responsibility is both personal and collective.”

25. In para 1006 of Vol. 34 of *Halsbury's Laws of England* (4th Edn.) it is recorded:

“1006. *Effect of the presence of Ministers in Parliament.*- In addition to the methods of parliamentary control, the practice and procedure of both Houses ensures that the action of the executive is always open to the criticism of Parliament. *Ministers of the Crown cannot indefinitely remain in office without being members of either the House of Lords or the House of Commons.* In either House it is permissible for members to address questions to Ministers with regard to the administration of their departments, and in both Houses motions may be made reflecting on the conduct of a particular Minister or of the Government as a whole.”

26. Sir Ivor Jennings in his treatise on *Cabinet Government* (3rd Edn., p. 60), while dealing with the convention relating to formation of Government in England, after a Prime Minister has been appointed says:

“It is well-settled convention that these Ministers should be either Peers or members of the House of Commons. There have been occasional exceptions. Mr. Gladstone once held office out of Parliament for nine months. The Scottish Law Officers sometimes, as in 1923 and 1924, are not in Parliament. General Smuts was

Minister without portfolio and a member of the War Cabinet from 1916 until 1918. Mr. Ramsay MacDonald and Mr. Malcolm MacDonald were members of the Cabinet though not in Parliament from the general election of November 1935 until early in 1936.”

27. According to Wade and Bradley: *Constitutional and Administrative Law* 268:

“It is the convention that ministerial office-holders should be members of one or other House of Parliament. Such membership is essential to the maintenance of ministerial responsibility...When a Prime Minister appoints to ministerial office someone who is not already in Parliament, a life peerage is usually conferred on him”

32. We find from the positions prevailing in England, Australia and Canada that the essential of a system of representative government, like the one we have in our country, are that invariably all Ministers are chosen out of the members of the Legislature and only in rare cases, a non-member is appointed as a Minister, who must get himself returned to the Legislature by direct or indirect election within a short period. He cannot be permitted to continue in office indefinitely unless he gets elected in the meanwhile. The scheme of Article 164 of the Constitution is no different, except that the period of grace during which the non-member may get elected has been fixed as “six consecutive months”, from the date of his appointment. The framers of the Constitution did not visualize that a non-legislator can be repeatedly appointed as a Minister for a term of six months each time, without getting elected because such a course strikes at the very root of parliamentary democracy. According to learned counsel for the respondent, there is no bar to this course being adopted on the “plain language of the article”, which does not “expressly” prohibit reappointment of the Minister, without being elected, even repeatedly, during the term of the same Legislative Assembly. We cannot persuade ourselves to agree.

33. Constitutional provisions are required to be understood and interpreted with an object-oriented approach. A Constitution must not be construed in a narrow and pedantic sense. The word used may be general in terms but, their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve. Debates in the Constituent Assembly referred to in an earlier part of this judgment clearly indicate that a non-member’s inclusion in the Cabinet was considered to be a “privilege” that extends only for six months, during which period the member must get elected, otherwise he would cease to be a Minister. It is a settled position that debates in the Constituent Assembly may be relied upon as an aid to interpret a Constitutional provision because it is the function of the court to find out the intention of the framers of the Constitution. We must remember that a Constitution is not just a document in solemn form, but a living framework for the Government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the democratic spirit underlying it being respected in letter and in spirit. The debates clearly indicate the “privilege” to extend “only” for six months.

34. The very concept of responsible government and representative democracy signifies government by the people. In Constitutional terms, it denotes that the sovereign power which

resides in the people is exercised on their behalf by their chosen representatives and for exercise of those powers, the representatives are necessarily accountable to the people for what they do. The members of the Legislature, thus, must own their power directly or indirectly to the people. The members of the State Assemblies like the Lok Sabha trace their power directly as elected by the people while the members of the Council of State like the Rajya Sabha own it to the people indirectly since they are chosen by the representatives of the people. The Council of Ministers of which the Chief Minister is the head in the State and on whose aid and advice the Governor has to act, must, therefore, owe *their power to the people, directly or indirectly*.

35. The sequence and scheme of Article 164, which we have referred to in an earlier part of our order, clearly suggests that ideally, every Minister must be a member of the Legislature at the time of his appointment, though in exceptional cases, a non-member may be given a ministerial berth or permitted to continue as a Minister, on ceasing to be a member, for a short period of six consecutive months only to enable him to get elected to the Legislature in the meanwhile. As a member of the Council of Ministers, every Minister is collectively responsible to the Legislative Assembly. A Council of Ministers appointed during the term of a Legislative Assembly would continue in office so long as they continue to enjoy the confidence of the Legislative Assembly. A person appointed as a Minister, on the advice of the Chief Minister, who is not a member of the Legislature, with a view to continue as a Minister must, therefore, get elected during a short period of six months. A Minister must, therefore, get elected during a short period of six months. A Minister must, therefore, get elected during the term of that Legislative Assembly and if he fails to do so, he must cease to be a Minister. Reappointment of such a person, who fails to get elected as a member within the period of grace of six consecutive months, would not only disrupt the sequence and scheme of Article 164 but would also defeat and subvert the basic principle of representative and responsible government. Framers of the Constitution by prescribing the time-limit of "six consecutive months" during which a non-legislator Minister must get elected to the Legislature clearly intended that a non-legislator cannot be permitted to remain a Minister for any period beyond six consecutive months, without getting elected in the meanwhile. Resignation by the individual concerned before the expiry of the period of six consecutive months, not followed by his election to the Legislature, would not permit him to be appointed a Minister once again without getting elected to the Legislature during the term of the Legislative Assembly. The "privilege" of continuing as a Minister for "six months" without being an elected member is only a one-time slot for the individual concerned during the term of the Legislative Assembly concerned. It exhausts itself if the individual is unable to get himself elected within the period of grace of "six consecutive months". The privilege is personal for the individual concerned. It is he who must cease to be a Minister, if he does not get elected during the period of six months. The "privilege" is not of the Chief Minister on whose advice the individual is appointed. Therefore, it is not permissible for a different Chief Minister, to appoint the same individual as a Minister, without him getting elected, during the term of the same Assembly. The individual must cease to be a Minister, if during a period of six consecutive months, starting with his initial appointment, he is not elected to the Assembly. The change of a Chief Minister, during the term of the same Assembly would, therefore, be of

no consequence so far as the individual is concerned. To permit the individual to be reappointed during the term of the same Legislative Assembly, without getting elected during the period of six consecutive months, would be subversion of parliamentary democracy. Since Article 164(4) provides a restriction for a non-legislator Minister to continue in office beyond a period of six consecutive months, without being elected, it clearly demonstrates that the individual concerned appointed as a Minister under Article 164(1) without being a member of the Legislature must cease to be a Minister unless elected within six consecutive months. Reappointing that individual without his getting elected, would, therefore, be an abuse of constitutional provisions and subversive of constitutional guarantees. Every Minister must draw his authority, directly or indirectly, from the political sovereign – the electorate. Even a most liberal interpretation of Article 164(4) would show that when a person is appointed as a Minister, who at that time is not a member of the Legislature, he becomes a Minister on clear constitutional terms that he shall continue as a Minister for not more than six consecutive months, unless he is able to get elected in the meanwhile. To construe this provision as permitting repeated appointments of that individual as a Minister, without getting elected in the meanwhile, would not only make Article 164(4) nugatory but would also be inconsistent with the basic premise underlying Article 164. It was not the intention of the founding fathers that a person could continue to be a Minister without being duly elected, by repeated appointments, each time for a period of six consecutive months. If this were permitted, a non-legislator could by repeated appointments remain a Minister even for the entire term of the Assembly – a position wholly unacceptable in any parliamentary system of government. Such a course would be contrary to the basic principles of democracy, an essential feature of our Constitution. The intention of the framers of the Constitution to restrict such appointment for a short period of six consecutive months, cannot be permitted to be frustrated through manipulation of “reappointment”.

36. Farmers of the Constitution have used the expression “six consecutive months”, which implies that the period of six months must run continuously and not even intermittently. It would commence from the time a non-legislator is either appointed as a Minister or a Minister who becomes a non-legislator, is allowed to continue as such, and comes to an end at the expiry of that period. The use of the expression “consecutive” is significant. It cannot be defeated by interpreting Article 164(4) as permitting appointment even for a total period of six months, during the term of a Legislative Assembly, let alone, that the appointment of such a non-legislator as a Minister can be for six months “at a time”, without his getting a mandate from the electorate in the meanwhile.

37. As already noticed, Article 164(4) in terms provides only a disqualification or a restriction for a Minister, who for any period of six consecutive months, is not a member of the Legislature of the State to continue as such. It expressly provides that he shall on the expiration of that period cease to be a Minister unless he gets elected during that period by direct or indirect election. We must also bear in mind that no right is conferred on the non-member Minister concerned even during the period of “six months”, when he is permitted to continue in office, to vote in the House. The privilege to vote in the House is conferred only on members of the House of the Legislature of a State (Article 189). It does not extend to non-elected Ministers. He may address the House but he cannot vote as an MLA. None of the

powers or privileges of an MLA extend to that individual. Though under Article 177, the individual shall have a right to speak and to otherwise take part in the proceedings of the Legislative immunity as provided by Article 194 (2). The individual cannot draw any of the benefits of an MLA without getting elected. All these disabilities also clearly go to suggest that “six months’ clause” in Article 164(4) cannot be permitted to be repeatedly used for the same individual without his getting elected in the meanwhile. It would be too superficial to say that even though the individual Minister is a person who cannot even win an election by direct or indirect means, he should be permitted to continue as a Minister for a period beyond six months, without being elected at all and represent the electorate which has not even returned him. It would be subversive of the principle of representative government and undemocratic. It would be perversion of the Constitution and even a fraud on it.

38. Obligation of the judiciary is to administer justice according to law but the law must be one that commands legitimacy with the people and legitimacy of the law itself would depend upon whether it accords with justice. Article 164(1) and 164(4) have therefore, to be so construed that they further the principles of a representative and responsible government. The legitimacy of the law would be to ensure that the role of the political sovereign - the people - is not undermined. All Ministers must always owe their power, directly or indirectly, to them, except for the short duration as envisaged by Article 164(4). The interpretation, therefore, must be such that expectation of the founding fathers and constitutionalists are fulfilled rather than frustrated.

39. India is a democratic republic. Its chosen system of political organization is reflected in the Preamble to the Constitution, which indicates the source from which the Constitution comes viz. “WE, THE PEOPLE OF INDIA”. By permitting a non-legislator Minister to be reappointed, without getting elected within the period prescribed by Article 164(4), would amount to ignoring the electorate in having its say as to who should represent it - a position which is wholly unacceptable. The seductive temptations to cling to office regardless of Constitutional restraint must be totally eschewed. The will of the people cannot be permitted to be subordinated to political expediency of the Prime Minister or the Chief Minister, as the case may be, to have in his Cabinet a non-legislator as a Minister for an indefinite period by repeated reappointments without the individual seeking popular mandate of the electorate.

42. We are therefore, of the considered opinion that it would be subverting the Constitution to permit an individual, who is not a member of the Legislature, to be appointed a Minister repeatedly for a term of “six consecutive months”, without him getting himself elected in the meanwhile. The practice would be clearly, derogatory to the constitutional scheme, improper, undemocratic and invalid. Article 164(4) is at best only in the nature of an exception to the normal rule of only members of the Legislature being Ministers, restricted to a short period of six consecutive months. This exception is essentially required to be used to meet a very extraordinary situation and must be strictly construed and sparingly used. The clear mandate of Article 164(4) that if an individual concerned is not able to get elected to the Legislature within the grace period of six consecutive months, he shall cease to be a Minister, cannot be allowed to be frustrated by giving a gap of a few days and reappointing the individual as a Minister, without his securing confidence of the electorate in the meanwhile.

Democratic process which lies at the core of our Constitution schemes cannot be permitted to be flouted in this manner.

43. It may be of some interest to notice certain provisions of the Constitution of Jammu and Kashmir, 1957. Section 36 of the J & K Constitution corresponds to Article 164(1) of the Constitution of India; with the difference that the expression “the Minister shall hold office during the pleasure of the Governor” is missing from Section 36. This expression has, however, been separately incorporated in Section 39, which provides that all Ministers and Deputy Ministers shall hold office during the pleasure of the Governor, Section 37(2) corresponds to Article 164(4) of the Constitution. Section 38 of the J & K Constitution is, however, a provision which has no corresponding provision in the Constitution of India. This section reads thus:

“**38. Deputy Ministers.**— The Governor may on the advice of the Chief Minister appoint from amongst the members of either House of Legislature such number of Deputy Ministers as may be necessary.”

If constitutional provisions of Articles 164(1) and 164(4) are permitted to be perverted or distorted in the manner as was done in the present case, Section 38 of the Constitution of Jammu and Kashmir may require some serious consideration by Parliament for adoption, notwithstanding the statement of Dr. Ambedkar (supra) against incorporation of such a restriction either in Article 164(1) or in Article 75(1).

44. From the above discussion, it follows that reappointment of Shri Tej Parkash Singh, the respondent, as a Minister with effect from 23-11-1996, after his resignation from the Council of Ministers on 8-3-1996, during the term of the same Legislative Assembly, without getting elected in the meanwhile, was improper, undemocratic, invalid and unconstitutional. His reappointment is accordingly set aside though at this point of time, it is of no consequence. We have dealt with the issue because of its importance. The Division Bench of the High Court fell in error in dismissing the writ petition filed by the appellant in limine.

45. Since we have held that reappointment of Shri Tej Parkash Singh as a Minister in the State of Punjab with effect from 23-11-1996 was invalid and unconstitutional, we consider it appropriate to observe, with a view to avoid reopening of settled matters, that this judgment shall not render any order made or action taken by Shri Tej Parkash Singh, as a Minister, after his reappointment to the Council of Ministers, as bad or invalid only on account of his reappointment as a Minister having been found to be invalid. This appeal, therefore, succeeds and is allowed.

* * * * *

All India Reporter Karamchari Sangh v. All India Reporter Ltd.

1988 Supp SCC 472 : AIR 1988 SC 1325

E. S. VENKATARAMIAH, J. - The question which arises for consideration in this case is whether the law reports namely, All India Reporter, Criminal Law Journal, Labour and Industrial Cases, Taxation Law Reports, Allahabad Law Journal and U.P. Law Tribune published by Respondent 1, All India Reporter Limited, are newspapers as defined in the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Act No. 45 of 1955) (hereinafter referred to as “the Act”) and whether the employees of Respondent 1 engaged in the production or publication of the said law reports are entitled to the benefits conferred upon the employees of newspaper establishments by the Act.

2. The Act was enacted on December 20, 1955 with the object of regulating certain conditions of service of working journalists and other employees employed in the newspaper establishments. The expression “newspaper” is defined by Section 2(b) of the Act as follows:

“ ‘Newspaper’ means any printed periodical work containing public news or comments on public news and includes such other class of printed periodical work as may, from time to time, be notified in this behalf by the Central Government in the official Gazette.”

3. A “newspaper employee” is defined by Section 2(c) of the Act as any working journalist, and includes any other person employed to do any work in, or in relation to, any newspaper establishment. “Newspaper establishment” is defined by Section 2(d) of the Act as an establishment under the control of any person or body of persons, whether incorporated or not, for the production or publication of one or more newspapers or for conducting any news agency or syndicate. The expression “working journalist” is defined by Section 2(f) of the Act as a person whose principal avocation is that of a journalist and who is employed as such, either whole time or part-time, in or in relation to, one or more newspaper establishments and includes an editor, a leader writer, news editor, sub-editor, feature writer, copy-tester, reporter, correspondent, cartoonist, news photographer and proof-reader, but does not include any such person who is employed mainly in a managerial or administrative capacity, or being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature. A “non-journalist newspaper employee” means any person employed to do any work in, or in relation to, any newspaper establishment, but does not include any such person who is a working journalist, or is employed mainly in a managerial or administrative capacity or being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature as stated in Section 2(dd) of the Act.

4. Chapter II of the Act deals with certain conditions of service of the working journalists. Those provisions relate to the retrenchment, payment of gratuity, hours of work leave, fixation or revision of wages etc. Chapter II-A of the Act deals with similar conditions of service of non-journalist newspaper employees.

5. Section 9 of the Act authorises the Central Government to appoint a Wage Board consisting of two persons representing employers in relation to newspaper establishments, two persons representing working journalist; and three independent persons, one of whom shall be a person who is, or has been, a judge of a High Court or of the Supreme Court and who shall be appointed by that Government as the Chairman thereof for the purpose of making recommendations with regard to fixation or revision of wages of working journalists. Similarly, Section 13-C of the Act provides for the constitution of a Wage Board for the purpose of making recommendations regarding the fixation or revision of the rates of wages in respect of non-journalist newspaper employees. Section 13-AA which was inserted by Act 6 of 1979 provides for the constitution of a Tribunal for fixing or revising rates of wages in respect of working journalists where the Central Government is of opinion that the Board constituted under Section 9 for the purpose of fixing or revising rates of wages in respect of working journalists under the Act has not been able to function effectively. That Tribunal has to consist of a judge of the High Court or of the Supreme Court. Similarly Section 13-DD of the Act empowers the Central Government to constitute a Tribunal where it is of opinion that the Board constituted under Section 13-C of the Act has not been able to function effectively. Section 13-AA and Section 13-DD of the Act came into force with effect from January 31, 1979. In exercise of the powers conferred by Section 13-AA and Section 13-DD of the Act the Central Government constituted under two separate notifications two Tribunals on February 9, 1979 with Justice Palekar, a former judge of the Supreme Court, as the member of each of the two Tribunals to make recommendations in respect of fixing or revising wages of working journalists as well as non-working journalists. Justice Palekar made his recommendations on August 12, 1980. In exercise of its powers under Section 12 of the Act the Central Government accepted a part of the recommendations and made an order thereon on December 26, 1980 and accepted the remaining part of the recommendations and made another order thereon on July 20, 1981.

6. Respondent 1, All India Reporter Limited, was not served with any individual notice by the Tribunal before it passed its award. Respondent 1 also did not send a reply to the questionnaire issued by the Tribunal nor it gave any evidence before the Tribunal in respect of the matters referred to therein. However on July 15, 1981 and August 3, 1981 the Deputy Labour Commissioner, Nagpur wrote to Respondent 1 asking it to file its written statements in the matter of non-implementation of the Palekar Award as the orders of the Central Government made under Section 12 of the Act were popularly called. The first respondent submitted its reply in October 1981 inter alia contending that it was not running a newspaper establishment and publications published by the company were not the newspapers and as such the Palekar Award was not applicable to it. Again on November 18, 1982 the Deputy Labour Commissioner, Nagpur wrote a letter to the Manager of Respondent 1 informing him that Respondent 1 was liable to implement the order of the Central Government made on the recommendations of the Palekar Tribunal in respect of its employees since Respondent 1 was a newspaper establishment. Immediately after the service of the said notice Respondent 1 filed a writ petition on the file of the High Court of Judicature at Bombay, Nagpur Bench in Writ Petition No. 2388 of 1982 questioning the validity of the notice served on it by the Deputy Labour Commissioner, Nagpur calling upon it to implement the orders of the Central Government on the basis of the award of the Palekar Tribunal. Initially the State of

Maharashtra, the Commissioner of Labour and the Deputy Labour Commissioner, Nagpur had been impleaded as respondents. Thereafter during the pendency of the writ petition the Indian Federation of Working Journalists and the All India Reporter Karamachari Sangh were impleaded as respondents in the writ petition.

7. It was urged before the High Court on behalf of Respondent 1, All India Reporter Limited, that the law reports published by it were not newspapers as defined in the Act and therefore the order made by the Central Government on the basis of the recommendations of Justice Palekar were not applicable to its establishment. The High Court accepted the plea of Respondent 1 and declared that the law reports were not newspapers within the meaning of Section 2(b) of the Act and that the demand made by the Deputy Labour Commissioner to comply with the order made by the Central Government on the basis of the recommendations of Justice Palekar was unsustainable by its judgment dated April 22, 1983. Aggrieved by the decision of the High Court the appellants have filed this appeal by special leave.

8. Respondent 1, All India Reporter Limited, publishes in addition to the law reports referred in the first paragraph of this judgment several other books, commentaries, digests and manuals. But we are concerned in this case with the narrow question whether the six law reports which are being published by Respondent 1 are newspapers within the meaning of the Act and whether the employees engaged in their production or distribution are entitled to the benefit of the orders made by the Central Government on the basis of the recommendations of the Palekar Tribunal.

9. The definition of the expression “newspaper” has already been set out above. In order to be a newspaper a work must be a (i) printed work; (ii) a periodical; and (iii) should contain public news or comments on public news. Any other class of printed periodical work as may, from time to time, be notified in this behalf by the Central Government in the Official Gazette may also be a newspaper. There is no dispute in the present case that the law reports are printed works and that they are periodicals. The only question which remains to be considered is whether they contain public news or comments on public news.

10. Entry 39 of List III of the Seventh Schedule to the Constitution reads thus: “Newspapers, books and printing presses.” Newspapers and books are no doubt shown as separate items but the distinction between them sometimes becomes very thin or totally vanishes. In this connection it is necessary to reproduce a passage from the Report of the Royal Commission on the Press (1947-49) appointed by the British Government and presided over by Sir William David Ross. It reads thus:

“The newspaper and periodical press of Great Britain consists of over 4000 publications ranging from newspapers famous throughout the world to the journals of obscure societies. Its limits are ill-defined, for there is no definition of either ‘newspaper’ or ‘periodical’ which enables each to be infallibly distinguished from the other and from publications which are properly speaking neither. The term ‘newspaper’ is usually applied (except so far as concerns the important class of trade newspapers) to publications devoted mainly to recording current events, and ‘periodicals’ to magazines, reviews, and journals which, insofar as they are concerned with current events at all, are concerned to comment rather than to report;

but newspapers merge into advertising sheets, periodicals into books and pamphlets, and both into one another.”

11. The expression “news” is not defined in the Act. Several definitions of the expression “news” collected from the different dictionaries and digests have been cited before us. It is enough if we refer to the meaning of the word “news” given in the *Shorter Oxford English Dictionary* for purposes of this case. It says that “news” means tidings, new information of recent events; new occurrences as a subject of report or talk. The law reports which are being published by Respondent 1 are reports of recent decisions of the Supreme Court of India and of the High Courts in India which are supplied to it by its agents appointed at New Delhi and other places where High Courts are situated. It cannot be disputed that these decisions are of public importance. Article 141 of the Constitution provides that the law declared by Supreme Court shall be binding on all courts within the territory of India. Even apart from Article 141 of the Constitution the decisions of the Supreme Court, which is a court of record, constitute a source of law as they are the judicial precedents of the highest court of the land. They are binding on all the courts throughout India. Similarly the decisions of every High Court being judicial precedents are binding on all courts situated in the territory over which the High Court exercises jurisdiction. Those decisions also carry persuasive value before courts which are not situated within its territory. The decisions of the Supreme Court and of the High Courts are almost as important as statutes, rules and regulations passed by the competent legislatures and other bodies since they affect the public generally. It is well known that the decisions of the superior courts while they settle the disputes between the parties to the proceedings in which they are given they are the sources of law insofar as all others are concerned. As soon as a decision is rendered the members of the public would be interested in knowing it. At any rate lawyers and others connected with courts and judicial proceedings who constitute a substantial section of the public are interested in knowing the contents and the effect of the decisions. Respondent 1, All India Reporter Limited, and other publishers of law reports in the interests of their own business vie with each other to publish the judgments of the Supreme Court or of the High Courts as early as possible in their law reports which are published periodically either weekly, fortnightly or monthly. They believe that faster the decisions are published in their reports, larger will be the number of subscribers. In fact we have a law report which is published from Delhi which publishes the judgments rendered by the Supreme Court within a day or two. The contents of these law reports constitute news insofar as the subscribers and the readers of these reports are concerned. It is by reading these law reports they come to know of the latest legal position prevailing in the country on any question decided in the decisions reported in the said reports. Hence it is difficult to agree with the submission made on behalf of Respondent 1 that the law reports do not carry any news and that the public is not interested in them. We are of the view that any decision published in the law reports of Respondent 1 contain information about the recent events which have taken place in the Supreme Court or in the High Courts which are public bodies and these are matters in which the public is interested. We find it also difficult to agree with the submission made on behalf of Respondent 1 that since the law reports are going to be preserved by the lawyers as reference books after getting them rebound subsequently they should be treated as books. It may be that the decisions contained in these law reports may

cease to be items of news after some time but when they are received by the subscribers they do possess the character of works containing news.

12. Strong reliance was placed on behalf of Respondent 1 on the decision of the High Court of Orissa in *P.S.V. Iyer v. CST* [AIR 1960 Ori 221], in which the question that arose for consideration was whether a law journal - Cuttack Law Times, which was a non-official monthly journal containing the decisions of the Orissa High Court, the Orissa Board of Revenue and also of the Supreme Court was a newspaper and if it was a newspaper whether it was competent for the legislature of the State of Orissa to levy sales tax on the sale of the said journal. The said question arose in that form in view of the language of entry 54 of List II of the Seventh Schedule to the Constitution which read as follows:

“54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A of List I.”

13. The language of Entry 92 of List I of the Seventh Schedule to the Constitution which conferred on Parliament alone the power to tax sale or purchase of newspapers was in the following terms:

“92. Taxes on the sale or purchase of newspapers and on advertisements published therein.”

After referring to the definition of the expression “newspaper” in the Press and Registration of Books Act, 1867, the Indian Post Offices Act, 1898, the Parliamentary Proceedings (Protection of Publication) Act, 1956, the Delivery of Books and Newspapers Act, 1956, the Newspaper (Price and Page) Act, 1956, etc. the High Court of Orissa held that the Cuttack Law Times was not a newspaper because according to it the necessary prerequisite of a periodical in order to make it a newspaper was that it should contain mainly public news or comments on public news and that books containing authoritative reports for future reference could, by no means, be said to contain news so as to become newspaper. Accordingly, the High Court of Orissa held that the sale of Cuttack Law Times, which according to it was not a newspaper, could be taxed by the State legislature under Entry 54 of List II of the Seventh Schedule to the Constitution of India. We find it difficult to agree with the above decision since the High Court of Orissa omitted to take into consideration that information about recent decisions of courts of record could be news in which the public was interested. The fact that a law report could be used as a reference book at a later stage was not sufficient to hold that the law report did not contain public news when it was received by the subscriber.

14. The High Court of Madras declined to follow the above decision of the Orissa High Court in its decision in *T.V. Ramnath v. Union of India* [1975 Lab IC 488], in which the Madras Law Journal, a law report published from Madras, was held to be a newspaper and the establishment in which the said law report was being published was a newspaper establishment which attracted the provisions of that Act. We agree with the following observations made in the said decision by Ismail, J.:

“Similarly, the publications of the petitioner in the second writ petition can be said to contain ‘public news’ or ‘comments on public news’ since it contains reports of the judgments of the courts as well as comments on such judgments. Even though,

the same may be primarily intended for that section of the public which is concerned with law and the administration of law, in the present days, nothing prevents any educated individual taking interest in such publications and the news themselves being of interest to such persons. Therefore I am clearly of the opinion that the expression 'public news' is of sufficiently wide amplitude to cover the publications of both the petitioners in question."

15. It is seen that the editor of the law report containing the above decision has appended an editorial comment on this stating that this decision is wrong and that the Orissa High Court's decision was right. Justice A.N. Grover, who later became a judge of the Supreme Court of India and the Chairman of the Press Council, as a judge of the Punjab and Haryana High Court held in *L.D. Jain v. General Manager, Government of India Press* [ILR 1967 P and H 193], that the Gazette of India which was the official publication of all kinds of news and information was a newspaper within the meaning of Section 2(b) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 and that it was not essential for a newspaper to conform strictly to the usual pattern of a daily or weekly or monthly newspaper or a magazine containing news which members of the public ordinarily read in order to get reports of recent events, comments on them etc. In doing so, he distinguished the decision of the Australian Court in *Ex Parte Stillwell* [(1923) 29 VLR 413], in which the *Bradshaw's Guide* was held to be a book of reference which lacked every element of what could be called a newspaper on which the Orissa High Court had relied.

16. Respondent 1 cannot derive any assistance from the decision of the High Court of Bombay in *CST v. M/s Express Printing Press*, AIR 1983 Bom 190, in which the Bombay High Court held that the two publications by name "*Joker*" and "*Jabara*" which contained predictions or forecasts of lucky numbers were not newspapers since those publications had nothing to do with any recent event which had taken place.

17. In the Annual Report of the Registrar of Newspapers for India, 1957 there is an interesting discussion of certain specific cases in which the question was whether the publications involved were newspapers or not. In the course of the said report it is observed thus:

"In this connection the Press Registrar scrutinised reports published in certain foreign countries regarding their own press and it was noticed that in the catalogues prepared by them specialised newspapers such as the one under consideration were not excluded from the list of newspapers. Even technical journals such as medical periodicals, journals related to sciences, arts etc., were included. A catalogue of Yugoslav newspapers and magazines, for instance, includes publications relating to the following subjects:

Political information; economics; law and States administration; education; philology; natural sciences; medicine; agriculture; technology; geography; ethnography; history; archives; archaeology; literature; music; applied art; film; chess; photography; tourism; stamp collecting; physical culture and sport; humour and religion.

In a catalogue of Russian papers for 1958 all the above categories of newspapers and periodicals have been included in addition to many others which deal exclusively with party affairs.”

18. It is significant that the expression “newspaper” as defined in the Act includes not merely “public news” but also “comments on public news”. Every law report contains the editorial note at the commencement of the decisions printed therein and also comments on some of the recent decisions. Law reports also contain, newly enacted Acts, rules and regulations, book reviews and advertisements relating to law books, handwriting and fingerprint experts etc., speeches made at conferences in which the legal fraternity is interested etc. Though the publication of these items by itself may not occupy a substantial part of a law report to make it a newspaper, the publication of the recent judgments itself is sufficient to make a law report a newspaper which may after some time cease to be a newspaper and become a book of reference.

19. The Act in question is a beneficent legislation which is enacted for the purpose of improving the conditions of service of the employees of the newspaper establishments and hence even if it is possible to have two opinions on the construction of the provisions of the Act the one which advances the object of the Act and is in favour of the employees for whose benefit the Act is passed has to be accepted.

20. We are of the view that the law reports published by Respondent 1 are newspapers and the employees employed by Respondent 1 in their production or publication of the said law reports should be extended the benefit of the orders passed by the Central Government on the basis of the recommendations made by the Palekar Award. We, accordingly, allow the appeal, set aside the judgment of the High Court and dismiss the writ petition filed by Respondent 1 before the High Court.

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State of Mysore v. R.V. Bidap

(1974) 3 SCC 337

V.R. KRISHNA IYER, J. - A short issue as to the expiration of the constitutionally guaranteed tenure of office of a Member of the Public Service Commission, who, in the middle of his term, reincarnates as its Chairman and claims a fresh six-year spell, has lent itself to considerable argument at the Bar, the contributory causes being the differing views of Courts, varying practices of States, apparent incongruity between the paramount purpose and the expressed language of the provisions and the slight obscurity of the relevant articles, the expert drafting and careful screening by the 'founding fathers' notwithstanding.

2. One Shri Bidap, the respondent in this appeal, was appointed Member of the State Public Service Commission by the Governor of Mysore on March 20, 1967. While his term was (till running, the Governor was pleased to appoint him Chairman of the Commission with effect from February 15, 1969. The State took the view that the six-years assured to him by Article 316(2) commenced to run from the date he became Member simpliciter and did not receive a fresh start, from the later date when he assumed office as Chairman. Government's view on the issue was revealed in answer to an interpellation in the Legislative Council made on March 17, 1973. On this reckoning the Chairman's term would have ended on the 19th and so, the panicked respondent hastened to the High Court to avert the peril of premature ouster and sought an appropriate writ interdicting Government's move. The timely interim order and the eventual allowance of the writ petition balked the hope of Government and drove the State to this Court in quest of a final pronouncement on the constitutional question involved. While there is divergence of judicial opinion at the High Court level, the preponderance of authority including a ruling of the Mysore High Court itself, militates against the appellant's standpoint. A broad consensus of administrative practice evolved by the Union Government in response to an opinion tendered by the Attorney-General on a reference made to him at the instance of the Conference of All India Chairmen of Public Service Commissions (prompted by divergent views expressed in a full Bench judgment of the Calcutta High Court) also goes against the appellant's position. Technically, neither the appellant nor, for that matter, any citizen is bound by administrative verdicts on questions of law and when the High Courts disagree, the law becomes uncertain necessitating resolution of the conflict by the Supreme Court. It is apt to remember the words of Rich.J:

“One of the tasks of this Court is to preserve uniformity of determination. It may be that in performing the task the Court does not achieve the uniformity that was desirable and what uniformity is achieved may be uniformity of error. However in that event it is at least uniformity”

Moreover, in a Government of laws like ours, the last court has the last word on a given law, it being permissible to the Legislature, subject to constitutional limitations, to amend the law, if necessary. The question in the present case being one of general public importance has to be decided by this Court silencing the present and potential disputes and laying down a binding rule for the whole country.

3. Counsel for the appellant strenuously contends that there is high policy animating the provisions which limit the official life of a Member of the Public Service Commission to a significantly short term of six years coupled with an almost blanket ban on the holding of other office or taking up of other employment under Government on ceasing to be a Member. Before we focus on the fasdculus of Articles 316 to 319 to assess the force of this and other submissions, two basic questions fall to be considered. Is there any public policy of great moment behind these Articles and if so, what is it? Secondly, assuming its existence and importance, could this Court, while interpreting die provisions of the Constitution, listen to such extrinsic voices, however natural, logical and pursuasive, or be guided by the golden rule of grammatical construction which treats the text of the statute as a sort of forensic sound-proof room?

4. The working life of an Indian official in administration can easily be, and is, several times the six short years granted to a Public Service Commission Member under Article 316(2). Further employment in public service is also not unusual for superannuated officers, particularly at the higher echelons. And yet there is substantial, although not total prohibition of subsequent employment in public service of Commission Members written into the Constitution by Article 319. The learned counsel rightly stresses that the Public Service Commission has vast powers of recruitment of candidates for an immense and increasing host of Government posts which in a country with considerable unemployment are prone to be abused if too close and too long a familiarity with certain sectors were to be established. The prospect and peril of the Executive tempting with renewals of membership to influence the incumbents may corrupt that institution which must zealously be kept above suspicion. This is the *raison d'être* of the narrow period prescribed by Article 316(2), the taboo on reappointment in Article 316(3) and on taking up of any Government service clamped down by Article 319. This view gains strength from the proceedings of the Constituent Assembly, particularly the speech of Dr Ambedkar. May be there is plausibility in the point that the three limitations on the office of membership (made a shade more rigorous in the case of chairmanship) were directed towards obviation of abuse. Even so, is that a dominant concern of court in the interpretation of the statute or altogether irrelevant? Are Constituent Assembly Debates and objects in the mind of law-makers put out of the judicial area of vision by the classical exclusionary rules which are part of our legal heritage from the British?

5. Anglo-American jurisprudence, unlike other systems, has generally frowned upon the use of parliamentary debates and press discussions as throwing light upon the meaning of statutory provisions. Willes, J., in *Miller v. Talyer* [(1769) 4 Bum 2303, 2332] stated that the sense and meaning of an Act of Parliament must be collected from what it says when passed into law, and not from the history of changes it underwent in the House where it took its rise. That history is not known to the other House or to the Sovereign. In *Assam Railways and Trading Co. Ltd. v. I. R. C.* [(1835) AC 445 at p. 458], Lord Writ in the Privy Council said:

“It is clear that the lad|uafe of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law is inadmissible and the report of commissioners is even more removed from value as evidence of intention, because it does not follow that their recommendations were accepted.”

The rule of grammatical construction has been accepted in India before and after Independence. In the *State of Traowcon-Cockin v. Bombay Company Ltd., Alleppey* [AIR 1952 SC 366], Chief Justice Patanjali Sastri delivering the judgment of the Court, said:

“It remains only to point out that the use made by the learned Judges below of the speeches made by the members of the Constituent Assembly in the course of the debates on the draft Constitution is unwarranted. That this form of extrinsic aid to the interpretation of statutes is not admissible has been generally accepted in England, and the same rule has been observed in the construction of Indian statutes—see *Administrator-General of Bengal v. Prem Lal Mullick*, 22 Ind. Appl. 107 (P. C.) at p. 118. The reason behind the rule was explained by one of us in *Gopalan v. State of Madras* [(1950) SCR 88] thus:

A speech made in the course of the debate on a bill could at best be indicative of the subjective intent of the speaker, but it could not reflect the inarticulate mental process lying behind the majority vote which carried the bill. Nor is it reasonable to assume that the minds of all those legislators were in accord.”

Or, as it is more tersely put in an American case:

“Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other. *United States v. Tram-Missouri Freight Association* [(1897) 169 U. S. 290 at p. 318] (sic).

This rule of exclusion has not always been adhered to in America, and sometimes distinction is made between using such material to ascertain the purpose of a statute and using it for ascertaining its meaning. It would seem that the rule is adopted in Canada, and Australia - see *Craies on Statute Law*, 5th Edn. p. 122 (pp. 368-9).”

In the American jurisdiction, a more natural note has sometimes been struck. Mr Justice Frankfurter was of the view that:

“If the purpose of construction is the ascertainment of meaning, nothing that is logically relevant should be excluded, and yet, the Rule of Exclusion, which is generally followed in England, insists that, in interpreting statutes, the proceedings in the Legislatures, including speeches delivered when the statute was discussed and adopted, cannot be cited in courts.”

Crawford on Statutory Construction at page 388 notes that:

“The judicial opinion on this point is certainly not quite uniform and there are American decisions to the effect that the general history of a statute and the various steps leading up to an enactment including amendments or modifications of the original bill and reports of Legislative Committees can be looked at for ascertaining the intention of the legislature where it is in doubt; but they hold definitely that the legislative history is inadmissible when there is no obscurity in the meaning of the statute.”

The Rule of Exclusion has been criticised by jurists as artificial. The trend of academic opinion and the practice in the European system suggest that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be

admissible. Recently, an eminent Indian jurist has reviewed the legal position and expressed his agreement with Julius Stone and Justice Frankfurter. Of course, nobody suggests that such extrinsic materials should be decisive but they must be admissible. Authorship and interpretation must mutually illumine and interact. There is authority for the proposition that resort may be had to these sources with great caution and only when incongruities and ambiguities are to be resolved. There is a strong case for whittling down the Rule of Exclusion followed in the British courts and for less apologetic reference to legislative proceedings and like materials to read the meaning of the words of a statute. Where it is plain, the language prevails, but where there is obscurity or lack of harmony with other provisions and in other special circumstances, it may be legitimate to take external assistance such as the object of the provisions, the mischief sought to be remedied, the social context, the words of the authors and other allied matters. The law of statutory construction is a strategic branch of jurisprudence which must, it may be felt, respond to the great social changes but a conclusive pronouncement on the particular point arising here need not detain us because nothing decisive as between the alternative interpretations flows from a reliance on the Constituent Assembly proceedings or the broad purposes of the statutory scheme.

6. A few excerpts from the drafting preludes to the framing of the Constitution from the masterly study by B. Shiva Rao and relevant quotes from a few important speeches in the House may be apposite and illuminating. The Royal Commission on Superior Services in India, popularly called the Lee Commission (1924) observed:

“Wherever democratic institutions exist, experience has shown that to secure an efficient civil service it is essential to protect it as far as possible from political or personal influences and give it that position of stability and security which is vital to its successful working as the impartial and efficient instrument by which governments, of whatever political complexion, may give effect to their policies. In countries where this principle has been neglected, and where the ‘spoils system’ has taken its place, an inefficient and disorganised civil service has been the inevitable result and corruption has been rampant.”

As a result of these recommendations Public Service Commissions were set up in the country with the objectives outlined by the Lee Commission. B. Shiva Rao has drawn attention to the doings of the drafting committee:

“Santhanam, Ananthasayanam Ayyangar, Mrs Durgabai and T. T. Krishnamachari suggested an amendment to lay down..... that a member of a State Commission would *on retirement* be ineligible for any office other than the Chairman or a member of the Union Commission or the Chairman, *of* a State Commission. The principle of this amendment was accepted by the Drafting Committee which incorporated it in suitable terms in the revised draft of the article moved by Ambedkar in the Comtituent Assembly on August 22, 1949.”

Dr Ambedkar introducing the provisions spoke:

“Now I come to the other important matter relating to the employment or eligibility for employment of the members of the Public Service Commission - both the Union and State Public Services Commissions. Members will see that according

to Article 285, clause (3), we have made both the Chairman and the Members of the Central Public Services Commission as well as the Chairman of the State Commission and the members of the State Commission, ineligible for reappointment to the same posts: that is to say, once a term of office of a Chairman and Member is over, whether he is a Chairman of the Union Commission or the Chairman of a State Commission, we have said that he shall not be reappointed. I think that is a very salutary provision, because any hope that might be held out for reappointment, or continuation in the same appointment, may act as a sort of temptation which may induce the Member not to act with the same impartiality that he is expected to act in discharging his duties. Therefore, that is a fundamental bar which has been provided in the draft article.”

Mr Jaspat Roy Kapoor tabled several amendments in support of which he spoke at length. One of the amendments, which was turned down by the House but highlights portions of the area of the present controversy and his speech in support thereof, may be excerpted here:

“That at the end of the proposed new Article 285-C, the following proviso be added:

Provided that a member’s total period of employment in the different Public Service Commissions *shall not exceed twelve years.*”

“This amendment is more than important than my other amendments. It was confirmed in this view from what I heard Dr Ambedkar say this morning in moving his own amendment. He said, while explaining Article 285 that a person shall not hold office as a Member of a Public Service Commission for more than six years. That of course is partially provided in clause (3) of Article 285. But that clause refers only to the reemployment of a person to that particular post. So far as the other posts are concerned, that clause does not apply. So, according to Article 285-C a Member of a Public Service Commission can continue to be a Member of one or other of the Public Service Commissions for any number of years. I say ‘any number of years’ because, for six years one can be a member of a State Public Service Commission. Thereafter, for another six years, he can be the Chairman of a State Public Service Commission. It comes to twelve years. Thereafter again he can be.... I submit this is not a satisfactory state of affairs.”

Shri H. V. Kamath adverted, in his speech, to this topic when he said:

“It is agreed on all hands that the permanent services play an important role in the administration of any country. With the independence of our country the responsibilities of the services have become more onerous. They may make or mar the efficiency of the machinery of administration - call it steel frame or what you will - a machinery which is so vital for the peace and progress of the country.”

“If a Member of the Public Service Commission is under the impression that by serving and kowtowing to those in power he could get an office of profit under the Government of India or in the Government of a State, then I am sure he would not be able to discharge his functions impartially or with integrity.”

“The public here have sometimes been made to feel that family or group interests have been promoted at the expense of the national; and to protect the Ministers against such a charge, it is necessary that the Public Service Commissions must be kept completely independent of the executive....”

From the parliamentary proceedings the focal point of constitutional vigilance becomes manifest. An indefinite term of office and frequent renewals for any incumbent in the same State or in the Union linked up with tendencies of superannuating officials to prospect for post-retirement posts are fraught with possible patronage and interference with the purity of the Commission's functioning and should be prevented by legal interdict. Article 316(2) sets a limit of six years for the office of a Member of a Public Service Commission and an outer limit of 60 years of age (65 in the case of the Union Public Service Commission). There is an express bar on reappointment on the expiration of the first term [Article 316(2)]. There is a further prohibition against the securing of any State employment by Members of the Commission on ceasing to be such Members, subject to a few exceptions (Article 319). If the argument of the appellant were to be accepted, a Member, be he Chairman or not, or one or the other in succession, will get a total term of six years only. That is to say, even in the middle of his term as Member, if he is appointed Chairman, he will get only a run of six years to serve from the date he became an ordinary Member. On the other hand, if the rival contention of the respondent were to prevail, in the case of a Member of a State Public Service Commission, there is a possibility of his getting a maximum of six years as ordinary Member and another six years as Chairman of the Commission in the same State. Of course, we are not concerned with the prospect of appointments in other States as the mischief sought to be prevented is the possibility of abuse by too long a tenure in the same State. The situation in which a Member may thus enjoy a twelve-year term is so rare and, perhaps, may fall to the good fortune of only a few exceedingly good Members - and, indeed, anything between six to twelve years may not be so very long in the effective life of a public servant - that the apprehension of the object of a brief term being frustrated does not disturb us.

In this context, it is reassuring to note that in twelve states and the Union there have been, as disclosed by Ext. 'G', only two instances beyond eight years of tenure and only 19 cases where more than a six year term is seen to have been obtained. May be Ext. 'G' is not exhaustive, and incidentally it indicates the practice which has prevailed in the country during the last over two decades of reading Article 319(d) as enabling a fresh term of office from the date of appointment as Chairman. It is clear that though mere practice cannot legitimise what is illegal, it contradicts the consternation raised by the appellant of likely misuse of power. In the last resort, the menace to purity of these high offices comes as much from dubious pressures and patronage as from other causes and where the highest seats of power do not guard against these evils, no constitution, no law, no court can save probity in Administration. We cannot assent to the appellant's argument of fear.

7. Nor is this question of law *res integra*. The Calcutta High Court had considered it in a Full Bench decision reported in AIR 1966 Cat 290. The majority view was that the term of office of six years was to be computed from the date of the appointment as Member of the Commission and even if, in midstream, he was made Chairman, time ran out finally at the end of the first six years. The minority opinion handed in by Mitter, J., took a contrary view based

on an harmonious reading of Articles 316 and 319 reaching the result that a Member appointed as Chairman inaugurates a new term from the later date. The Mysore High Court was confronted with this question in Writ Petitions Nos. 6492, 5031 and 3758 of 1969. There the challenge to the validity of the Chairman's continuance in office was made by certain disappointed applicants for the post of District Educational officer. The High Court followed the minority view of Mitter, J., and the respondent in this appeal has produced a copy of the Mysore judgment as Ext. 'B' along with his Writ Petition since the ruling has not been reported. The Orissa High Court also fell in line with Mysore, dissenting from the majority judgment in the Calcutta case. That decision, reported in AIR 1970 Orissa 205, reads into the appointment of a Member as Chairman an ipso facto cessation of his former office as Member when he enters upon the duties of his new office, and thus seeks to reconcile Article 316 with Article 319. The High Court of Patna responded to this issue in a like manner in a judgment rendered in C. W. J. C. 1997 of 1970. It may be noticed that a Special Leave Petition against this judgment was dismissed in limine by the Supreme Court.

8. It now remains to understand the ratio of those decisions in the light of the anatomy of the constitutional scheme contained in Articles 316 to 319. It is obvious from the language of the articles, admitted by both sides and accepted by all the decisions that a Chairman also is a Member. The appellant's argument is the Article 316(2) fixes a term of office of six years for a member, who ex hypothesis includes a Chairman, and so the incumbent, be he member simpliciter or member-cum-Chairman or for part of the period member and later Chairman, cannot exceed the legal span of six years in all, membership being a common denominator covering both offices. The framers have taken care to limit the life of member to a term of six years. And wherever [unlike in Article 316(2)] distinct treatment for the two offices is intended, clear language separately dealing with them, or by making references, has been used, as is so evident from Articles 316(1-A), 317 and 319. To fortify the reasoning, reliance is placed on Article 316(3) which places an embargo on reappointment on expiry of the term of office of member (which expression covers Chairman). A larger-than-six-year term by tacking on Chairmanship to membership would violate sub-article (2) and subvert sub-article (3) of Article 316, runs the submission. So presented the argument seems impressive. But this apparent tenor gets a severe jolt when we turn to Article 319(1) (d), for, if full credit were to be given to the opening words, "on ceasing to hold office" a member of a Public Service Commission is declared to be eligible for appointment as its Chairman at the expiration of his six-year term as ordinary member. A member ceased to hold office when six years of service are over and remotely when he is removed for infirmities (Article 317). To deny this effect to the provision, which is an integral part of the scheme, and to confine its operation to recondite instances of insolvents, delinquents and imbeciles dealt with in Article 317 is to argue Article 319 into a *reductio ad absurdum*.

10. A closer probe into the key Articles 316 and 319 informed by the brooding presence of a constitutional purpose behind them may now be undertaken. A subject-wise dichotomy suggests that Article 316 deals with the appointment of the Chairman and members of the Commission, their term of office and their ineligibility for re-appointment, while Article 319 relates to a different topic viz., the prohibition, with narrow exceptions against further employment in State service. Concern for purity of the office and vulnerability to abuse of

powers are writ large on these provisions. Even so, a few legal ideas pervading the articles will dissolve the difficulties conjured up based on Article 316(2) and (3). Let us itemise them.

- (1) A Chairman is also a member, as the very first words of Article 316 indicate.
- (2) Nevertheless, the office of member is different from that of Chairman and so also the duties attached to each, as is eloquently evident from Article 316 (1-A).

Thus while both are members, they hold different offices. Sub-article (2) sanctions the holding of office by a member for six years “from the date on which he enters upon his office” which is signified by his entering ‘on the duties thereof, to adopt the language of (1-A). An office, as is thus self-evident, has duties and a member simpliciter has certain duties while a Chairman qua Chairman has other duties of office. The offices are different though both the holders are generically members. The prescription of the *terminus a quo* in (2) is ‘from the date on which he enters upon his office’ which, in the case of a Chairman appointed directly as such or originally as member and later elevated as Chairman, begins when he starts functioning as Chairman. So far is clear.

11. Article 316(3) neatly fits in and indeed the draftsman has perspicaciously focussed attention here on the office of a person and the incumbent’s ineligibility to *reappointment* to *that* office. The cardinal point is the identity of the office and the injunction is against reappointment to that particular office. A member can fill one of two offices - as an ordinary member or as a member-Chairman and the disability for reappointment attaches to the specific office. The distinction is fine but real. No member who holds the office of just a member pure and simple shall be re-appointed to the office i.e., to the office of member pure and simple. The offices being different it is semantically wrong to describe the appointment of a member to the office of Chairman as reappointment. To re-appoint to an office predicates the previous holding of that identical office. Re-, as a prefix, has the sense of ‘again’. It follows straight from this that an ordinary member when elevated to the higher office “of Chairman is not reappointed and does not contravene Article 316(2) or (3) even if it be on the full course of six years of the office of ordinary member having run out.

12. Now let us study the ambit and limitations of Article 319. It primarily enumerates the prohibitions attached to the holders of offices of Chairman and member of Public Service Commissions but carves out a few ‘savings’ to the ‘dents’. We are directly concerned with sub-clause (d) which bars a member from taking up employment under Government but expressly declares, by way of exception, eligibility for appointment “as the Chairman of that or any other State Public Service Commission”, *on ceasing to hold office as member*. The fair meaning of this provision is that a member of Public Service Commission of a State on ceasing to hold office as such is eligible for appointment as Chairman of that Commission itself. Ordinarily when a member has run out his term under Article 316(2), he *ceases* to hold office. Article 316(2) states that a member shall office for a term of six years which means that on the expiration of that period he ceases to hold office. So the normal way a member ceases to hold office is by his six-year term spending itself out (or by his crossing the age bar of 60 or 65, as the case may be). Logically, therefore. Article 319 means that a member on ceasing to hold office, as a result of his six-year term expiring, shall be eligible for appointment as Chairman of the same Commission. There is no contravention of Article

316(3) which prevents re-appointment to the same office. In the present case, the *office* of member is different from the *office* of the Chairman and so there is no un-appointment to that office when a member is made Chairman. Similarly, Article 316(2) is not breached because there is a six-year term for each office. The counter argument on the basis of Article 316(2) and (3) fails to explain Article 319(1) which expressly authorises appointment of a member as Chairman *on ceasing to hold office*. The very strained argument that the cessation contemplated is not the straightforward category of persons whose six-year term has expired, but the condemned and recondite category covered by Article 317(3) is too jejune for judicial acceptance. For one thing it is extraordinary to think that persons covered by Article 317(3) will at all be considered for appointment to a higher post of Chairman. That sub-article speaks of removal of a member because of insolvency or objectionable engagement in paid employment outside the duties of his office or ineffectiveness to continue in office by reason of infirmity of mind or body. The argument is only to be mentioned to be rejected and it is hardly fair to the framers of the Constitution to think that they would have contemplated such unworthies to be appointed to higher posts by a special provision under Article 319 while the whole purpose of that article is to maintain purity in service by prohibiting temptation for future office! or employment.

13. The learned Advocate General urged that Article 316(2) would be stultified by the interpretation we adopt of Article 319. If a member can be appointed as Chairman on ceasing to hold office under Article 316(2), he could as well be appointed so not merely when his six-year term has expired but also after he has attained the age of sixty years. There is a fallacy in this submission which will be apparent on a careful reading of Article 316(2). That sub-article says that a “member shall hold office for six years or until he attains sixty years, whichever is earlier. When an ordinary member is appointed chairman by virtue of the permission written into Article 319(d), what really happens is that the incumbent takes hold of a new office, namely, that of Chairman. He is a member all the same, as we have earlier seen. This member-cum-Chairman in terms of Article 316(2) shall hold office, which in this case means his new office, for a term of six years or until he attains the age of sixty years. If he is appointed Chairman past sixty, the appointment will be still-born because by the mandate of Article 316(2) he shall hold office only until he attains the age of superannuation. This date having already transpired, he cannot hold the office at all

14. Another conundrum raised is as to how when an ordinary member in the course of the six-year period is appointed Chairman we can read into such an appointment a ‘ceasing to hold office’ as member, this being a requirement for Article 319 to apply. The obvious answer is that when a member holding the office of a member takes up the office of Chairman, he, by necessary implication and *co instante*, relinquishes or ceases to hold his office as ordinary member. It is inconceivable that he will hold two offices at the same time and that will also reduce the number of members of the Public Service Commission. Therefore, logically and legally we may spell out an automatic expiry of office of the member qua ordinary member on his assumption of office qua Chairman.

15. Nor is the public mischief sought to be avoided by Articles 316 and 319 defeated by this interpretation. In any case they cannot serve indefinitely, nor remain for anything like twenty-five or thirty years which is the normal tenure of a Government servant.

16. The various rulings we have adverted to earlier substantially adopt the arguments we have set out, although in some of them there is marginal obscurity. The thrust of the reasoning accepted in all but the Calcutta case substantially agrees with what has appealed to us. For these reasons we dismiss the appeal.

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Bowers v. Gloucester Corporation

(1963) 1 Q.B. 883

LORD PARKER C.J. – This is an appeal by case stated from a decision of the recorder of Gloucester who quashed a revocation of a hackney carriage license which had been adjudicated by the watch committee of the Gloucester Corporation.

The matter arises in this way. The respondent has been for a number of years a hackney carriage proprietor licensed in that regard by the watch committee. It is unnecessary to go into the history, but the powers and functions of the commissioners under the Town Police Clauses Act, 1847, in regard to hackney carriages are now exercised by the corporation's watch committee. The watch committee on February 12, 1962, revoked a license held by the respondent, being No. 31. They did that in purported exercise of powers under section 50 of the Town Police Clauses Act, 1847, in regard to hackney carriages are now exercised by the corporation's watch committee. The watch committee on February 12, 1962, revoked a license held by the respondent, being No. 31. They did that in purported exercise of powers under section 50 of the Town Police Clauses Act, 1847, which is in these terms : "The commissioners may, upon the conviction for the second time of the proprietor or driver of any such hackney carriage for any offence under the provisions of this or the special Act with respect to hackney carriages, or any bye-law made in pursuance thereof, suspend or revoke, as they deem right, the license of any such proprietor or driver".

This respondent had been found guilty in the past of one offence against the Town Police Clauses Act, 1847, in that he permitted the use of a vehicle without a hackney carriage license. He had also been convicted of four offences against the licensing authority's by-laws, those offences being of a different character. In order of date, the offence first committed was a contravention of the Act to which I have referred. The second was a contravention of by-law 12 in that he did not have a taximeter; the third was a contravention of by-law 15, in that there was not exhibited any statement of fares. The next was that he caused or suffered the number of the license to be concealed from the public view whilst plying for hire, which was a breach of by-law 9. Finally, he failed to have a taximeter fitted and so placed that letters and figures thereof were plainly visible to a passenger; that, unlike the second offence, was a case in which he did have a taximeter, but failed to comply with the provisions of the by-law in paragraph (iv) in regard to the letters and figures being visible. It was in those circumstances that the watch committee revoked this license.

On appeal before the recorder, the recorder took the view that section 50 of the Town Police Clauses Act, 1847, was at any rate ambiguous, and he felt that, being a penal section, it should be given an interpretation most favourable to the appellant before him. The argument advanced before the recorder was that there had to be a conviction for the second time of the same offence, that although a taxi driver might be convicted of 40 or more offences against the by-laws and 10 or more offences against the Act, yet unless any two of them were convictions in regard to the particular paragraph of the by-law or the particular section in the Act, there was no power to revoke the licenses.

In my judgment the recorder came to a wrong conclusion in this case. It may be, and I think it is, a matter of first impression. When I first read these words, it seemed to me that any offence means what it says, “any offence”, and that it is quite unnecessary, before the power of revocation arises, that there should be two convictions for two identical offences. It seems to me that that is so on general principles of construction. I think that this is a typical case where, in argument before the court, a confusion has arisen between a provision which is ambiguous and a provision which is difficult to interpret. It may well be that many sections of Act are difficult to interpret, but can be interpreted by the proper canons of construction. A provision can only be said to be ambiguous, in the sense that if it be a penal section it would be resolved in a manner most favourable to the citizen, where having applied all the proper canons of interpretation the matter is still left in doubt.

In the present case it seems to me, first, that, approaching this on ordinary canons of interpretation, “any” must be given the wide meaning which it undoubtedly bears. Secondly, the mischief aimed at by the Act, which is clearly that a strict control should be kept on taxicab drivers and proprietors, can also be taken into account, together with the complete absurdity which arises bearing in mind the mischief aimed at, if a man can show himself to be utterly unfitted to be a taxicab driver or proprietor by committing 30, 40 or 50 offences, and yet not have his license revoked because he has always committed a different offence.

In my judgment “any” means what it says. There is clearly power here to revoke the license and the matter should go back to the recorder with the direction that there was power to revoke, and then he should then consider the matter on its merits.

Appeal allowed with costs.

* * * * *

George Baneerji v. Emperor

(1917) 18 Cr.L. J. 45

WALSH, J. - In this case the Sessions Judge of Allahabad has referred to this Court an order of the first class Magistrate which came before him by way of revision. As the first class Magistrate says, this is really a test case to decide how certain vehicles should be taxed. The complaint was made by the Municipal Board against Mr. G. Banerji of Canning Road for using a bicycle with a motor-wheel attachment without a license. The question is one of taxation and, as the Sessions Judge rightly says in his order of reference, enactments which render the public liable to pay taxes or charges of this nature must be construed strictly; or in other words, unless the language under which they are sought to be charged is perfectly clear, the charging authorities are not entitled to assess a charge inasmuch as the public have a right to know what exactly are the charges imposed upon them. Now in this case there are three classes of vehicles which are material (1) a motor car. (2) a motor bicycle. (3) a bicycle. The vehicle in question is of modern invention, that is to say, it is an ordinary bicycle with a motor-wheel which may be affixed to or detached from the bicycle itself as the rider chooses, but which when attached provides a motor power which enables the rider to propel the machine by motor power. Now that is really not a motor car, neither in the ordinary nor in the commercial sense of the word; and there is a definition of motor car in the notification of the Municipality itself which does not include the bicycle in question. Secondly, it is not, in my opinion a motor bicycle, which in the ordinary commercial use of the term must be understood to mean a bicycle which is propelled entirely by motor. A motor bicycle means a motor. The vehicle in question is a vehicle with two wheels which is propelled sometimes by motor and sometimes without. It is built and constructed and designed for the purpose of being used and propelled both by mechanical power and by human agency. The motor which is only contained in the extra motor-wheel or auto-wheel, as it is called is a temporary attachment and is no part of the vehicle itself. A bicycle may be propelled presumably in various ways besides that of ordinary propulsion by human agency from the saddle, e. g., it may be propelled before a wind with a sail that is merely a temporary aid or attachment which is independent of the original construction and design of the vehicle. The vehicle was undoubtedly a bicycle, and Mr. Banerji has never disputed his liability to have it treated as such. If the Municipal authorities have the right and desire to impose a further burden upon him, they must obtain a notification which in clear terms will bring it within the definition and impose an additional liability by way of tax. The result is that I accept the recommendation of the Sessions Judge and set aside the conviction and direct that the fine, if paid, be refunded.

Conviction quashed.

* * * * *

The Empress Mills, Nagpur v. The Municipal Committee, Wardha

1958 SCR 1102 : AIR 1958 SC 341

J. L. KAPUR, J. - This is an appeal by Special Leave against a judgment and order of the High Court of Judicature at Nagpur dated February 14, 1950 and the question for decision turns upon the construction of Section 66(1)(o) of the C.P. & Berar Municipalities Act (Act II of 1922) which in this judgment will be termed "the Act".

2. A short recital of the facts of the case will suffice for its decision. The appellant is a company which has its spinning and weaving mills at Yeotmal. The appellant's bales of cotton are transported from Yeotmal to Nagpur by road and vehicles carrying them past through the limits of Wardha Municipality. The goods being in transit, the vehicles carrying them do no more than use the road which traverses the municipal limits of Wardha and is a PWD road. The goods are neither unloaded nor reloaded at Wardha but are merely carried across through the municipal area. The Municipal Committee purporting to act under Section 66(1)(o) of the Act and Rule 1 of the rules made thereunder collected Rs 240 as terminal tax on these goods on the ground that they were exported by the appellant from the limits of the Municipality of Wardha. The appellant thereupon claimed a refund of this sum. On refusal by the Municipality the appellant took an appeal to the Deputy Commissioner, Wardha which was sent for disposal to the Sub-Divisional Officer, who, on March 11, 1946, referred the following two of questions under Section 83(2) of the Act to the High Court for its opinion:

(1) Whether goods passing through the limits of Wardha Municipality by road despatched from Yeotmal to their destination at Nagpur without being unloaded or reloaded at Wardha are liable for an export terminal tax?

(2) Whether the respondent Municipal Committee is not liable to refund the export terminal tax collected on such goods?

(3) The reference in the first instance came up for hearing before Sheode, J., who referred the matter to a Division Bench and the Division Bench in turn referred it to a Full Bench. The High Court after referring to a number of decided cases was of the opinion that the tax had been validly imposed and the appellant was therefore not entitled to a refund.

(4) The powers of the Municipality to impose, assess and collect taxes are set out in Chapter 9 of the Act and Section 66(1) enumerates the taxes which may be imposed. Clause (d) of sub-section (1) deals with tolls; clause (e) with octroi and clause (o) with terminal tax. The sub-section provides:

"66. (1) A committee may, from time to time, and subject to the provisions of this Chapter, impose in the whole or in any part of the municipality any of the following taxes for the purposes of this Act, namely:

(d) a toll on vehicles and animals used as aforesaid entering the limits of the municipality, and on boats moored within those limits;

(e) an octroi on animals or goods brought within the limits of the municipality for sale, consumption or use within those limits;

(o) a terminal tax on goods or animals imported into or exported from the limits of a municipality;

Provided that a terminal tax under this clause and an octroi under clause (e) shall not be in force in any municipality at the same time....”

Rule I of the Terminal Tax Rules made under the Act relates to exports and Rule 2 to imports. They provide:

(1) On the following goods exported by rail or road a terminal tax shall be levied at the rate noted against each; at 2 as. per maund of 40 seers; Cotton....

(2) On the following goods imported by rail or road a terminal tax shall be levied at the rate noted against each.”

Then follows the Schedule.

5. The High Court was of the opinion that

“The words ‘export’ and ‘import’ have no special meaning. They bear the ordinary dictionary meaning, which has been the foundation for the decisions to which I have referred in the opening portion of my opinion. These words mean only ‘taking out of and bringing into’.”

The appellant’s contention is that the words “imported into or exported from” do not merely mean “to bring into” or to carry out of or away from but also have reference to and imply the termination or the commencement of the journey of the goods sought to be taxed and therefore goods in transit which are transported across the limits of a Municipal Committee are neither imported into the municipal limits nor exported therefrom. It is also contended that even if the words ‘imported into or exported from’ are used merely to mean “to bring into” or “to carry out of or away from” the qualifying of the tax by the adjective “terminal” is indicative of the *terminus ad quem* or *terminus a quo* of the journey of the goods and excludes the goods in transit. The respondent on the other hand submits that the tax is leviable merely on the entry of the goods into the municipal limits or on their exit therefrom and the word “terminal” has reference to the termini of the jurisdictional limits of the municipality and not to the journey of the goods. The efficacy of the relative contentions of the parties therefore requires the determination of the construction to be placed on the really important words of which are “terminal tax”, “imported into or exported from” and the “limits of the Municipality.” In construing these words of the statute if there are two possible interpretations then effect is to be given to the one that favours the citizen and not the one that imposes a burden on him.

6. “Import” is derived from the Latin word *importare* which means “to bring in” and ‘export’ from the Latin word *exportare* which means to carry out but these words are not to be interpreted only according to their literal derivations. Lexicologically they do not have any reference to goods in ‘transit’ a word derived from *transire*, bearing a meaning similar to transport i.e. to go across. The dictionary meaning of the words ‘import’ and ‘export’ is not restricted to their derivative meaning but bear other connotations also. According to *Webster’s International Dictionary* the word “import” means to bring in from a foreign or external source; to introduce from without; especially to bring (wares or merchandise) into a place or country from a foreign country in the transactions of commerce; opposed to export.

8. The word “transit” in the *Oxford Dictionary* means the action or fact of passing across or through; passage or journey from one place or point to another; the message or carriage of

persons or goods from one place to another; it also means to pass across or through (something) to traverse, to cross. Even according to the ordinary meaning of the words which is relied upon by the respondent, goods which are in transit or are being transported can hardly be called goods “imported into or exported from” because they are neither being exported nor imported but are merely goods carried across a particular stretch of territory or across a particular area with the object of being transported to their ultimate destination which in the instant case was Nagpar.

17. The respondent also relied on *Muller v. Baldwin* [(1874) 9 QB 457], where it was held that “coals exported from the Port” must be taken to have been used in its ordinary meaning of “carried out of the Port” and therefore included coals taken out of the port in a steamer as “bunker coals” that is, coals taken on board for the purpose of consumption on the voyage. The argument that the term “exported” must receive a qualified interpretation and that it means taken for the purpose of trade only was rejected. Lush, J., said at p. 461:

“There is nothing in the language of the Act to shew that the word ‘exported’ was used in any other than its ordinary sense Construing the words of the Act upon this principle, we feel bound to hold that coals carried away from the port, not on a temporary excursion, as in a tug or pleasure-boat, which intends to return with more or less of the coals on board, and which may be regarded as always constructively within the port, but taken away for the purpose of being wholly consumed beyond the limits of the port, are coals ‘exported’ within the meaning of the Act.”

18. Now three things clearly emerge from that *Muller* case; (1) that the word “export” was not applied to coals in transit because the coals were taken from the port and started journey from there and would be included in the phrase “taken out” of the port, and (2) that temporary taking out was not “export” as was held in *Maganlal Bhagwandas v. Ahmedabad Municipality*; (3) that the test is the intention with which the goods were brought in or taken out.

19. It was urged that in accordance with the current authority of the different courts of India, a different interpretation should not be placed on the words of the section but this argument is of little avail in a case where the decision has not been acquiesced in for long or the authorities are not absolutely unanimous. Moreover it is not a case of disturbing the course of construction which has continued unchallenged for such a length of time as to acquire the sanction of continued decisions over a very long period and there is therefore no principle which will preclude this court from correcting the error.

20. In another case *Wilson v. Robertson* [(1855) 24 LJ QB 185] under the statute the duty was imposed on all goods “imported into or exported from Berwick harbour” which extended down the Tweed to the sea but no part of it extended above the bridge. Goods were brought up the river in a sea-going vessel which having first used rings and posts put up by the Harbour Commissioners in order to moor while lowering the masts, passed through Berwick Bridge, and unloaded her cargo about two hundred yards above the bridge and beyond the limits of the harbour. It was held that goods were not “imported into” the harbour so as to make any dues payable in respect of them. The argument raised there was that as there was no harbour down the Tweed except Berwick and though the goods were actually

unloaded above the Berwick bridge and out of the limits of the harbour it was substantially imported into the harbour. The vessel in that case was obliged to stop before passing the bridge and avail herself of the benefits of the machinery and works provided by the Commissioners and that was part of the means used towards the unloading of the vessel and it was argued that this would amount to import. Lord Cambell, C.J., said:

“The argument on behalf of the plaintiff would be very pertinent if addressed to a Committee of the House of Commons in favour of making the harbour dues payable in such a case as the present. We can, however, look only to what the legislature has enacted, in order to see whether this burthen is cast upon the defendants. The dues are only to be paid upon goods imported into the harbour of Berwick, the limits of which are defined by the Act, and which does not extend above the bridge. Now, has this iron been so imported? It is admitted that, if it had been carried through the bridge to a port higher up the river, no dues would have been payable; and the plaintiff’s counsel by that admits himself out of court....”

These observations support the submissions against the meaning of “export” or “import” being merely taking out of or bringing into.

21. *Mersey Docks and Harbour Board v. Twigge* [(1898) 67 LJ QB 604] was a case of goods shipped from a foreign port under a through bill of lading to Liverpool, landed in London and sent from there to Liverpool in another ship and it was held that such goods were imported into Liverpool from ports beyond the seas and not from London. The transit began at Singapore and ended at Liverpool and was not broken by the transshipment in London.

22. By giving to the words “imported into or exported from” their derivative meaning without any reference to the ordinary connotation of these words as used in the commercial sense, the decided cases in India have ascribed too general a meaning to these words which it appears from the setting, context and history of the clause was not intended. The effect of the construction of “import” or “export” in the manner insisted upon by the respondent would make rail-borne goods passing through a railway station within the limits of a Municipality liable to the imposition of the tax on their arrival at the railway station or departure therefrom or both which would not only lead to inconvenience but confusion, and would also result in inordinate delays and unbearable burden on trade both inter-State and intra-State. It is hardly likely that that was the intention of the legislature. Such an interpretation would lead to absurdity which has, according to the rules of interpretation, to be avoided.

23. Chief Justice Marshall dealing with the word “importation” said in *Brown v. State of Maryland* [(1827) 12 Wheat 419, 442]:

“The practice of most commercial nations conforms to this idea. Duties, according to that practice, are charged on those articles only which are intended for sale or consumption in the country. Thus sea-stores, goods imported and re-exported in the same vessel, goods landed and carried over land for the purpose of being re-exported from some other port, goods forced in by stress of weather, and landed, but not for sale are exempted from the payment of duties. The whole course of legislation on the subject shows that in the opinion of the legislature the right to sell is connected with the payment of the duties.”

Continuing the learned Chief Justice at p. 447 observed:

“Sale is the object of importation, and is an essential ingredient of that intercourse, of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing, then, as importation itself....”

This supports the contention raised that “import” is not merely the bringing into but comprises something more i.e. “incorporating and mixing up of the goods imported with the mass of the property” in the local area. The concept of “import” as implying something brought for the purpose of sale or being kept is supported by the observations of Kelly, C.B. in *Harvey v. Mayor and Corporation of Lyme Regis* [(1869) 4 Ex 260, 262]. There the claim for a toll was made under the Harbour Act and the words for construction were “goods landed or shipped within the same cobb or harbour.” Construing these words Kelly, C.B. said:

“The ordinary meaning and purport of the words is perfectly clear, namely, that tolls are to be paid on goods substantially imported; that is, in fact, carried into the port for the purpose of the town and neighbourhood.”

24. Similarly the word “export” has reference to taking out of goods which had become part and parcel of the mass of the property of the local area and will not apply to goods in transit i.e. brought into the area for the purpose of being transported out of it. If the intention was to tax such goods then the word used should have been “re-exported” which means to export (imported goods) again; Re-exportation means the exportation of imported goods.

25. Even assuming that the words “imported into” or “exported from” could be restricted only to their derivative meaning and thus construed to mean only “brought into or taken out or away from” this general meaning it was submitted by the appellant is qualified by the use of the prefix “terminal” used adjectively with the word “tax”, which makes it necessary to determine the meaning of the term “terminal tax”. And the question then arises does it have reference to the jurisdictional limits of the Municipality or to the ultimate termination or the commencement of the journey of the goods as the case may be. In dealing with this the High Court said:

“It remains to consider what is signified by the word ‘terminal’. It is obvious that it could refer either to the termini of the goods or the termini of the Municipality. It is clear to me that the word ‘terminal’ refers not to the destination or origin of the goods but to the termini of the Municipal limits. Digby, J., pointed out that it refers to the traffic rather than the origin of the goods.”

According to the *Oxford Dictionary* “terminal” means end, boundary; situated at or forming the end or extremity of something; situated at the end of a line of railway; forming or belonging to, a railway terminus.

26. “Terminus” means the point to which motion or action tends, goal, end, finishing point; sometimes that from which it starts; starting point. An end; extremity; the point at which something comes to an end.

27. In *Corpus Juris*, Vol. 62 it is stated at p. 729 that “terminal” in connection with transportation means inter alia “the fixed beginning or ending point of a given run”.

28. If “terminal” besides the above meaning has an additional meaning also and that meaning signifies the termini or the jurisdictional limits of the municipal area even then the construction to be placed on the term should be the one that favours the tax-payer, in accordance with the principle of construction of taxing statutes, which must be strictly construed and in case of doubt must be construed against the Taxing Authorities and doubt resolved in favour of the tax-payer. In *Crawford on Statutory Constructions* in para 257, at p. 504 the following passage pertaining to construction of taxing statutes taken from *Bedford v. Johnson* [102 Colo 203, 78 Pac (2) 373(Q)] is quoted:

“Statutes levying taxes or duties upon citizens will not be extended by implication beyond the clear import of the language used, nor will their operation be enlarged so as to embrace matters not specifically pointed out, although standing upon a close analogy, and all questions of doubt will be resolved against the government and in favour of the citizen, and because burdens are not to be imposed beyond what the statute expressly imparts.”

In that case the court refused to regard automobile parking lots as falling within the scope of a statute which imposed a tax on general warehouse storage establishments. On this principle the word “terminal” must in the context be construed as having reference to terminus and has to be read to connote the idea of the end of something connected with motion and not that of an intermediate stage of a journey.

34. We are, therefore, of the opinion that the terminal tax under Section 66(1)(o) is not leviable on goods which are in transit and are only carried across the limits of the Municipality, and would therefore allow this appeal, reverse the decision of the Nagpur High Court. The appellant will have its costs in this Court and in the High Court.

* * * * *

A.S. Sulochana v. C. Dharmalingam

(1987) 1 SCC 180 : AIR 1987 SC 242

M. P. THAKKAR, J. -The view taken by the High Court that a tenant sought to be evicted on the ground of unlawful sub-letting under Section 10(2)(ii)(a) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 must himself have been guilty of the contravention and that the alleged contravention by his father when he was a tenant can be of no avail for evicting him is assailed in this appeal by special leave. The High Court has so pronounced in the backdrop of the admitted fact that respondent had himself not created any sub-tenancy after he became the tenant in 1968 upon the death of his father. The plea raised by the appellant that the tenancy created in 1952 by the father of respondent rendered him liable to be evicted in the suit instituted by the appellant in 1970 was repelled.

2. Facts not in dispute are:

(1) The father of the appellant had granted a lease in favour of the father of respondent prior to 1952.

(2) The father of the appellant as also the father of respondent both have died.

(3) Respondent was accepted as a tenant upon the death of his father in 1968.

(4) The suit for eviction giving rise to the present appeal was instituted for eviction on the ground of unlawful Sub-letting in 1970 by the appellant who had inherited the property from her father.

(5) Admittedly, neither the appellant nor the respondent have any personal knowledge about the terms and conditions of the lease originally granted by the father of the appellant in favour of the father of Respondent 1.

(6) So also neither the appellant nor the respondent have any personal knowledge in what circumstance the father of the respondent had created a sub-tenancy in favour of Kuppaswami Sah, way back in 1952, eighteen years before the institution of the suit.

(7) Neither the appellant nor respondent has any personal knowledge as to whether or not the sub-tenancy was created with the written consent of the landlord eighteen years back in 1952.

And on these facts the prayer for eviction must be denied regardless of the question of interpretation which will be presently tackled. The mere fact that for as many as 18 years no objection was raised, and no action for possession was instituted against the father of the appellant in his lifetime notwithstanding the fact that a sub-tenant was openly in occupation of a part of the rented premises, would give rise to an inference that it was never treated as unlawful sub-letting by the appellant or her father. There is nothing on record to show that the sub-letting in question, which was made in 1952, 18 years before the institution of the suit in 1970, was in violation of the relevant provisions of law. The appellant cannot succeed unless the appellant establishes that Section 10(2)(ii)(a) has been violated and the tenant has incurred the liability to be evicted on the ground of unlawful sub-letting notwithstanding the fact that the lease did not confer on him any such right, and that such unlawful sub-tenancy was

created without the written consent of the then landlord. There is no evidence, direct or circumstantial, on the basis of which it can be said that the lease did not confer on the father of the respondent the right to create a sub-tenancy. Or that it was done without the written consent of the then landlord, that is to say, the father of the appellant. Under the circumstances, in any view of the matter the appellant cannot successfully evict the respondent on the ground of having created an unlawful sub-tenancy within the meaning of Section 10(2)(ii)(a) of the Act.

3. Examining the profile of the view taken by the High Court that the offending sub-letting must be by the tenant sought to be evicted himself, and not by his predecessor, it appears to be blemishless. Section 10(2) opens with the words “A landlord who seeks to evict his tenant” and provides that if the tenant has created a sub-tenancy without the written consent of the landlord, he will be liable to be evicted. Pray who is the “tenant” whom the landlord wants to evict? That tenant is the respondent. Did he violate Section 10(2)(ii)(a) and sub-let the rented premises? The answer is “no”. It is of little use to give the answer, not he, but his predecessor, his late father, had sub-let the premises. When the statute says the tenant who is sought to be evicted must be guilty of the contravention, the court cannot say, “guilt of his predecessor in interest” will suffice. The flouting of the law, the sin under the Rent Act must be the sin of the tenant sought to be evicted, and not that of his father or predecessor in interest. Respondent inherited the tenancy, not the sin, if any, of his father. The law in its wisdom seeks to punish the guilty who commits the sin, and not his son who is innocent of the rent law offence. It being a penal provision in the sense that it visits the violator with the punishment of eviction, it must be strictly construed, for it causes less misery to be sheltered in a jail, than to be shelterless without. Be that as it may the conclusion recorded by the High Court is fault-free.

4. We, therefore, see no reason to interfere with the order of the High Court in exercise of our jurisdiction under Article 136 of the Constitution of India. The appeal accordingly fails and is dismissed.

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Sri Venkataramana Devaru v. State of Mysore

1958 SCR 895 : AIR 1958 SC 255

T. L. VENKATARAMA AIYAR, J. - The substantial question of law, which arises for decision in this appeal, is whether the right of a religious denomination to manage its own affairs in matters of religion guaranteed under Article 26(b) is subject to, and can be controlled by, a law protected by Article 25(2)(b), throwing open a Hindu public temple to all classes and sections of Hindus.

2. In the District of South Kanara which formed until recently part of the State of Madras and is now comprised in the State of Mysore, there is a group of three villages, Mannampady, Bappanad and Karnad collectively known as *Moolky Petah*; and in the village of Mannampady, there is an ancient temple dedicated to Sri Venkataramana, renowned for its sanctity. It is this institution and its trustees, who are the appellants before us. The trustees are all of them members of a sect known as Gowda Saraswath Brahmins. It is said that the home of this community in the distant past was Kashmir, that the members thereof migrated thence to Mithila and Bihar, and finally moved southwards and settled in the region around Goa in sixty villages. They continued to retain their individuality in their new surroundings, spoke a language of their own called *Konkani*, married only amongst themselves, and worshipped idols which they had brought with them. Subsequently, owing to persecution by the Portuguese, they migrated further south, some of them settling at Bhatkal and others in Cochin. Later on, a chieftain who was ruling over the Moolky area brought five of these families from Bhatkal, settled them at Mannampady, erected a temple for their benefit and installed their idol therein, which came to be known as Tirumalaivaru or Venkataramana, and endowed lands therefor. In course of time, other families of Gowda Saraswath Brahmins would appear to have settled in the three villages constituting Moolky, and the temple came to be managed by members of this community residing in those villages.

3. In 1915, a suit, OS No. 26 of 1915, was instituted in the Court of the Subordinate Judge of South Kanara under Section 92 of the Code of Civil Procedure for framing a scheme for this temple. Exhibit A-6 is the decree passed in that suit. It begins by declaring that "Shri Venkataramana temple of Moolky situated in the village of Mannampadi, Nadisal Mangane, Mangalore taluk is an ancient institution belonging to the Gowda Saraswath Brahmin community i.e. the community to which the parties to the suit belong residing in the Moolky Petah i.e. the villages of Bappanad, Karnad and Mannampadi according to the existing survey demarcation". Clause 2 of the decree vests the general control and management of the affairs of the temple, both secular and religious, in the members of that community. Clause 3 provides for the actual management being carried on by a Board of Trustees to be elected by the members of the community aforesaid from among themselves. Then follow elaborate provisions relating to preparation of register of electors, convening of meetings of the general body and holding of elections of trustees. This decree was passed on 9-3-1921, and it is common ground that the temple has ever since been managed in accordance with the provisions of the scheme contained therein.

4. This was the position when the Madras Temple Entry Authorisation Act (Madras 5 of 1947), hereinafter referred to as "the Act", was passed by the Legislature of the Province of

Madras. It will be useful at this stage to set out the relevant provisions of the Act, as it is the validity of Section 3 thereof that is the main point for determination in this appeal. The preamble to the Act recites that the policy of the Provincial Government was "to remove the disabilities imposed by custom or usage on certain classes of Hindus against entry into Hindu temples in the Province which are open to the general Hindu public". Section 2(2) defines "temple" as "a place by whatever name known, which is dedicated to or for the benefit of or used as of right by the Hindu community in general as a place of public religious worship". Section 3(1) enacts that,

"Notwithstanding any law, custom or usage to the contrary, persons belonging to the excluded classes shall be entitled to enter any Hindu temple and offer worship therein in the same manner and to the same extent as Hindus in general; and no member of any excluded class shall, by reason only of such entry or worship, whether before or after the commencement of this Act, be deemed to have committed any actionable wrong or offence or be sued or prosecuted therefor."

Section 6 of the Act provides that,

"If any question arises as to whether a place is or is not a temple as defined in this Act, the question should be referred to the Provincial Government and their decision shall be final, subject however to any decree passed by a competent civil court in a suit filed before it within six months from the date of the decision of the Provincial Government."

It is the contention of the appellants - and that, in our opinion, is well-founded - that the true intent of this enactment as manifest in the above provisions was to remove the disability imposed on Harijans from entering into temples, which were dedicated to the Hindu public generally.

5. Apprehending that action might be taken to put the provisions of this Act in operation with reference to the suit temple, the trustees thereof sent a memorial to the Government of Madras claiming that it was a private temple belonging exclusively to the Gowda Saraswath Brahmins, and that it therefore did not fall within the purview of the Act. On this, the Government passed an order on 25-6-1948, Ex. B-13, that the temple was one which was open to all Hindus generally, and that the Act would be applicable to it. Thereupon, the trustees filed the suit, out of which the present appeal arises, for a declaration that the Sri Venkataramana temple at Moolky was not a temple as defined in Section 2(2) of the Act. It was alleged in the plaint that the temple was founded for the benefit of the Gowda Saraswath Brahmins in Moolky Petah, that it had been at all times under their management, that they were the followers of the Kashi Mutt, and that it was the head of the Mutt that performed various religious ceremonies in the temple, and that the other communities had no rights to worship therein. The plaint was filed on 8-2-1949. On 25-7-1949, the Province of Madras filed a written statement contesting the claim. Between these two dates, the Madras Legislature had enacted the Madras Temple Entry Authorisation (Amendment) Act (Madras 13 of 1949), amending the definition of "temple" in Section 2(2) of Act 5 of 1947, and making consequential amendments in the preamble and in the other provisions of the Act. According to the amended definition, a temple is "a place which is dedicated to or for the

benefit of the Hindu community or any section thereof as a place of public religious worship". This Amendment Act came into force on 28-6-1949. In the written statement filed on 25-7-1949, the Government denied that the temple was founded exclusively for the benefit of the Gowda Saraswath Brahmins, and contended that the Hindu public generally had a right to worship therein, and that, therefore, it fell within the definition of temple as originally enacted. It further pleaded that, at any rate, it was a temple within the definition as amended by Act 13 of 1949, even if it was dedicated for the benefit of the Gowda Saraswath Brahmins, inasmuch as they were a section of Hindu community, and that, in consequence, the suit was liable to be dismissed.

6. On 26-1-1950, the Constitution came into force, and thereafter, on 11-2-1950, the plaintiffs raised the further contention by way of amendment of the plaint that, in any event, as the temple was a denominational one, they were entitled to the protection of Article 26, that it was a matter of religion as to who were entitled to take part in worship in a temple, and that Section 3 of the Act, insofar as it provided for the institution being thrown open to communities other than Gowda Saraswath Brahmins, was repugnant to Article 26(b) of the Constitution and was, in consequence, void.

7. On these pleadings, the parties went to trial. The Subordinate Judge of South Kanara, who tried the suit, held that though the temple had been originally founded for the benefit of certain immigrant families of Gowda Saraswath Brahmins, in course of time it came to be resorted to by all classes of Hindus for worship, and that accordingly it must be held to be a temple even according to the definition of "temple" in Section 2(2) of the Act, as it originally stood. Dealing with the contention that the plaintiffs had the right under Article 26(b) to exclude all persons other than Gowda Saraswath Brahmins from worshipping in the temple, he held that "matters of religion" in that Article had reference to religious beliefs and doctrines, and did not include rituals and ceremonies, and that, in any event, Articles 17 and 25(2) which had been enacted on grounds of high policy must prevail. He accordingly dismissed the suit with costs. Against this decision, the plaintiffs preferred an appeal to the High Court of Madras, AS No. 145 of 1952.

8. It is now necessary to refer to another litigation inter partes, the result of which has a material bearing on the issues which arise for determination before us. In 1951, the Madras Legislature enacted the Madras Hindu Religious and Charitable Endowments Act, (Madras 19 of 1951) vesting in the State the power of superintendence and control of temples and Mutts. The Act created a hierarchy of officials to be appointed by the State, and conferred on them enormous powers of control and even management of institutions. Consequent on this legislation, a number of writ applications were filed in the High Court of Madras challenging the validity of the provisions therein as repugnant to Articles 19, 25 and 26 of the Constitution, and one of them was Writ Petition No. 668 of 1951 by the trustees of Sri Venkataramana Temple at Moolky. They claimed that the institution being a denominational one, it had a right under Article 26(b) to manage its own affairs in matters of religion, without interference from any outside authority, and that the provisions of the Act were bad as violative of that right. By its judgment dated 13-12-1951, the High Court held that the Gowda Saraswath Brahmin community was a section of the Hindu public, that the Venkataramana Temple at Moolky was a denominational temple founded for its benefit, and that many of the

provisions of the Act infringed the right granted by Article 26(b) and were void. *Vide Devaraja Shenoy v. State of Madras* [(1952) 2 MLJ 481]. Against this judgment, the State of Madras preferred an appeal to this Court, but ultimately, it was withdrawn and dismissed on 30-9-1954.

9. To resume the history of the present litigation: Subsequent to the dismissal of Civil Appeal No. 15 of 1953 by this Court, the appeal of the plaintiffs, AS No. 145 of 1952, was taken up for hearing, and on the application of the appellants, the proceedings in the writ petition were admitted as additional evidence. On a review of the entire materials on record, including those relating to the proceedings in Writ Petition No. 668 of 1951, the learned Judges held it established that the Sri Venkataramana Temple was founded for the benefit of the Gowda Saraswath Brahmin community, and that it was therefore a denominational one. Then, dealing with the contention that Section 3 of the Act was in contravention of Article 26(b), they held that as a denominational institution would also be a public institution, Article 25(2)(b) applied, and that, thereunder, all classes of Hindus were entitled to enter into the temple for worship. But they also held that the evidence established that there were certain religious ceremonies and occasions during which the Gowda Saraswath Brahmins alone were entitled to participate, and that that right was protected by Article 26(b). They accordingly, reserved the rights of the appellants to exclude all members of the public during those ceremonies and on those occasions, and these were specified in the decree. Subject to this modification, they dismissed the appeal. Against this judgment, the plaintiffs have preferred Civil Appeal No. 403 of 1956 on a certificate granted by the High Court.

11. On the arguments addressed before us, the following questions fall to be decided:

(1) Is the Sri Venkataramana Temple at Moolky, a temple as defined in Section 2(2) of Madras Act 5 of 1947?

(2) If it is, is it a denominational temple?

(3) If it is a denominational temple, are the plaintiffs entitled to exclude all Hindus other than Gowda Saraswath Brahmins from entering into it for worship, on the ground that it is a matter of religion within the protection of Article 26(b) of the Constitution?

(4) If so, is Section 3 of the Act valid on the ground that it is a law protected by Article 25(2)(b), and that such a law prevails against the right conferred by Article 26(b); and

(5) If Section 3 of the Act is valid, are the modifications in favour of the appellants made by the High Court legal and proper?

12. On the first question, the contention of Mr M.K. Nambiar for the appellants is that the temple in question is a private one, and therefore falls outside the purview of the Act. This plea, however, was not taken anywhere in the pleadings. The plaint merely alleges that the temple was founded for the benefit of the Gowda Saraswath Brahmins residing in Moolky Petah. There is no averment that it is a private temple. It is true that at the time when the suit was instituted the definition of "temple" as it then stood, took in only institutions which were dedicated to or for the benefit of the Hindu public in general, and it was therefore sufficient

for the plaintiffs to aver that the suit temple was not one of that character, and that it would have made no difference in the legal position whether the temple was a private one, or whether it was intended for the benefit of a section of the public. But then, the legislature amended the definition of “temple” by Act 13 of 1949, and brought within it even institutions dedicated to or for the benefit of a section of the public; and that would have comprehended a temple founded for the benefit of the Gowda Saraswath Brahmins but not a private temple. In the written statement which was filed by the Government, the amended definition of “temple” was in terms relied on in answer to the claim of the plaintiffs. In that situation, it was necessary for the plaintiffs to have raised the plea that the temple was a private one, if they intended to rely on it. Far from putting forward such a plea, they accepted the stand taken by the Government in their written statement, and simply contended that as the temple was a denominational one, they were entitled to the protection of Article 26(b). Indeed, the Subordinate Judge states in para 19 of the judgment that it was admitted by the plaintiffs that the temple came within the purview of the definition as amended by Act 13 of 1949.

14. (2) The next question is whether the suit temple is a denominational institution. Both the Courts below have concurrently held that at the inception the temple was founded for the benefit of Gowda Saraswath Brahmins; but the Subordinate Judge held that as in course of time public endowments came to be made to the temple and all classes of Hindus were taking part freely in worship therein, it might be presumed that they did so as a matter of right, and that, therefore, the temple must be held to have become dedicated to the Hindu public generally. The learned Judges of the High Court, however, came to a different conclusion. They followed the decision in *Devaraja Shenoy v. State of Madras* and held that the temple was a denominational one. The learned Solicitor-General attacks the correctness of this finding on two grounds. He firstly contends that even though the temple might have been dedicated to the Gowda Saraswath Brahmins, that would make it only a communal and not a denominational institution, unless it was established that there were religious tenets and practices special to the community, and that that had not been done. Now, the facts found are that the members of this community migrated from *Gowda Desa* first to the Goa region and then to the south, that they carried with them their idols, and that when they were first settled in Moolky, a temple was founded and these idols were installed therein. We are therefore concerned with the Gowda Saraswath Brahmins not as a section of a community but as a sect associated with the foundation and maintenance of the Sri Venkataramana Temple, in other words, not as a mere denomination, but as a religious denomination. From the evidence of PW 1, it appears that the Gowda Saraswath Brahmins have three *Gurus*, that those in Moolky Petah are followers of the head of the Kashi Mutt, and that it is he that performs some of the important ceremonies in the temple. Exhibit A is a document of the year 1826-27. That shows that the head of the Kashi Mutt settled the disputes among the Archakas, and that they agreed to do the puja under his orders. The uncontradicted evidence of PW 1 also shows that during certain religious ceremonies, persons other than Gowda Saraswath Brahmins have been wholly excluded. This evidence leads irresistibly to the conclusion that the temple is a denominational one, as contended for by the appellants.

On the findings of the Court below that the foundation was originally for the benefit of the Gowda Saraswath Brahmin community, the fact that other classes of Hindus were

admitted freely into the temple would not have the effect of enlarging the scope of the dedication into one for the public generally. On a consideration of the evidence, we see no grounds for differing from the finding given by the learned Judges in the court below that the suit temple is a denominational temple founded for the benefit of the Gowda Saraswath Brahmins. [The first two questions were answered in the affirmative].

16. (3) On the finding that the Sri Venkataramana Temple at Moolky is a denominational institution founded for the benefit of the Gowda Saraswath Brahmins, the question arises whether the appellants are entitled to exclude other communities from entering into it for worship on the ground that it is a matter of religion within the protection of Article 26(b). It is argued by the learned Solicitor-General that exclusion of persons from entering into a temple cannot ipso facto be regarded as a matter of religion, that whether it is so must depend on the tenets of the particular religion which the institution in question represents, and that there was no such proof in the present case. Now, the precise connotation of the expression “matters of religion” came up for consideration by this Court in *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* [(1954) SCR 1005] and it was held therein that it embraced not merely matters of doctrine and belief pertaining to the religion but also the practice of it, or to put it in terms of Hindu theology, not merely its *Gnana* but also its *Bhakti* and *Karma Kandas*. The following observations of Mukherjea, J., (as he then was) are particularly apposite to the present discussion:

“In the first place, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b).”

17. It being thus settled that matters of religion in Article 26(b) include even practices which are regarded by the community as part of its religion, we have now to consider whether exclusion of a person from entering into a temple for worship is a matter of religion according to Hindu Ceremonial Law.

18. [After careful examination of Hindu ceremonial law pertaining to temples, the Court proceeded]. Thus, under the ceremonial law pertaining to temples, who are entitled to enter into them for worship and where they are entitled to stand and worship and how the worship is to be conducted are all matters of religion. The conclusion is also implicit in Article 25 which after declaring that all persons are entitled freely to profess, practise and propagate religion, enacts that this should not affect the operation of any law throwing open Hindu religious institutions of a public character to all classes and sections of Hindus. We have dealt with this question at some length in view of the argument of the learned Solicitor-General that exclusion of persons from temple has not been shown to be a matter of religion with reference

to the tenets of Hinduism. We must, accordingly hold that if the rights of the appellants have to be determined solely with reference to Article 26(b), then Section 3 of Act 5 of 1947, should be held to be bad as infringing it.

19. (4) That brings us on to the main question for determination in this appeal, whether the right guaranteed under Article 26(b) is subject to a law protected by Article 25(2)(b) throwing the suit temple open to all classes and sections of Hindus. We must now examine closely the terms of the two Articles. Article 25, omitting what is not material, is as follows:

“(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law -

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.”

Article 26 runs as follows:

“Subject to public order, morality and health, every religious denomination or any section thereof shall have the right -

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.”

20. We have held that matters of religion in Article 26(b) include the right to exclude persons who are not entitled to participate in the worship according to the tenets of the institution. Under this Article, therefore, the appellants would be entitled to exclude all persons other than Gowda Saraswath Brahmins from entering into the temple for worship. Article 25(2)(b) enacts that a law throwing open public temples to all classes of Hindus is valid. The word “public” includes, in its ordinary acceptance, any section of the public, and the suit temple would be a public institution within Article 25(2)(b), and Section 3 of the Act would therefore be within its protection. Thus, the two Articles appear to be apparently in conflict. Mr M.K. Nambiar contends that this conflict could be avoided if the expression “religious institutions of a public character” is understood as meaning institutions dedicated to the Hindu community in general, though some sections thereof might be excluded by custom from entering into them, and that, in that view, denominational institutions founded for the benefit of a section of Hindus would fall outside the purview of Article 25(2)(b) as not being dedicated for the Hindu community in general. He sought support for this contention in the law relating to the entry of excluded classes into Hindu temples and in the history of legislation with reference thereto, in Madras.

25. The answer to this contention is that it is impossible to read any such limitation into the language of Article 25(2)(b). It applies in terms to all religious institutions of a public

character without qualification or reserve. As already stated, public institutions would mean not merely temples dedicated to the public as a whole but also those founded for the benefit of sections thereof, and denominational temples would be comprised therein. The language of the Article being plain and unambiguous, it is not open to us to read into it limitations which are not there, based on a priori reasoning as to the probable intention of the legislature. Such intention can be gathered only from the words actually used in the statute; and in a court of law, what is unexpressed has the same value as what is unintended. We must therefore hold that denominational institutions are within Article 25(2)(b).

29. The result then is that there are two provisions of equal authority, neither of them being subject to the other. The question is how the apparent conflict between them is to be resolved. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction. Applying this rule, if the contention of the appellants is to be accepted, then Article 25(2)(b) will become wholly nugatory in its application to denominational temples, though, as stated above, the language of that Article includes them. On the other hand, if the contention of the respondents is accepted, then full effect can be given to Article 26(b) in all matters of religion, subject only to this that as regards one aspect of them, entry into a temple for worship, the rights declared under Article 25(2)(b) will prevail. While, in the former case, Article 25(2)(b) will be put wholly out of operation, in the latter, effect can be given to both that provision and Article 26(b). We must accordingly hold that Article 26(b) must be read subject to Article 25(2)(b).

30. (5) It remains to deal with the question whether the modifications made in the decree of the High Court in favour of the appellants are valid. Those modifications refer to various ceremonies relating to the worship of the deity at specified times each day and on specified occasions. The evidence of PW 1 establishes that on those occasions, all persons other than Gowda Saraswath Brahmins were excluded from participation thereof. That evidence remains uncontradicted, and has been accepted by the learned Judges, and the correctness of their finding on this point has not been challenged before us. It is not in dispute that the modifications aforesaid relate, according to the view taken by this Court in **Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt** to matters of religion, being intimately connected with the worship of the deity. On the finding that the suit temple is a denominational one, the modifications made in the High Court decree would be within the protection of Article 26(b).

31. The learned Solicitor-General for the respondents assails this portion of the decree on two grounds. He firstly contends that the right to enter into a temple which is protected by Article 25(2)(b) is a right to enter into it for purposes of worship, that that right should be liberally construed, and that the modifications in question constitute a serious invasion of that right, and should be set aside as unconstitutional. We agree that the right protected by Article 25(2)(b) is a right to enter into a temple for purposes of worship, and that further it should be construed liberally in favour of the public. But it does not follow from this that that right is absolute and unlimited in character. No member of the Hindu public could, for example, claim as part of the rights protected by Article 25(2)(b) that a temple must be kept open for

worship at all hours of the day and night, or that he should personally perform those services, which the Archakas alone could perform. It is again a well-known practice of religious institutions of all denominations to limit some of its services to persons who have been specially initiated, though at other times, the public in general are free to participate in the worship. Thus, the right recognised by Article 25(2)(b) must necessarily be subject to some limitations or regulations, and one such limitation or regulation must arise in the process of harmonising the right conferred by Article 25(2)(b) with that protected by Article 26(b).

35. In the result, both the appeal and the application for special leave to appeal must be dismissed.

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K.M. Nanavati v. State of Bombay

(1961) 1 SCR 497 : AIR 1961 SC 112

B. P. SINHA, C.J. - It involves the question as to what is the content of the power conferred on the Governor of a State under Article 161 of the Constitution; and whether the order of the Governor of Bombay dated March 11, 1960, impinges on the judicial powers of this court, with particular reference to its powers under Article 142 of the Constitution.

2. For the determination of the constitutional issue raised in this case, it is not necessary to go into the merits of the case against the petitioner. It is only necessary to state the following facts in order to appreciate the factual background of the order of the Governor of Bombay aforesaid impugned in this case. The petitioner was Second in Command of I. N.S. Mysore, which came to Bombay in the beginning of March 1959. On April 27, 1959, the petitioner was arrested in connection with a charge of murder under Section 302 of the Indian Penal Code. He was produced before the Additional Chief Presidency Magistrate, Greater Bombay, in connection with that charge on April 28, 1959. The Magistrate remanded him to police custody on that day. On the following day (April 29, 1959) the Magistrate received a letter from the Flag Officer, Bombay, to the effect that he was ready and willing to take the accused in naval custody as defined in Section 3(12) of the Navy Act, 1957, in which custody he would continue to be detained under the orders of the Naval Provost Marshall in exercise of his authority under Section 89(2) and (3) of the Navy Act. There upon the Magistrate made the order directing that the accused should be detained in the Naval Jail and Detention Quarters in Bombay. The Magistrate has observed in his order that he had been moved under the instructions of the Government of India. The petitioner continued to remain in naval custody all along. In due course, he was placed on trial before the Sessions Judge, Greater Bombay. The trial was by a jury. The jury returned a verdict of 'not guilty' by a majority of eight to one. The learned Sessions Judge made a reference to the High Court under Section 307 of the Criminal Procedure Code, disagreeing with the verdict of the jury. The reference, being Cr. Ref No. 159 of 1959, was heard by a Division Bench of the Bombay High Court. The High Court accepted the reference and convicted the petitioner under Section 302 of the Indian Penal Code and sentenced him to imprisonment for life, by its judgment and order dated March 11, 1960. On the same day, the Governor of Bombay passed the following order:

“In exercise of the powers conferred on me by Article 161 of the Constitution of India, I, Shri Prakasa, Governor of Bombay, am pleased hereby to suspend the sentence passed by the High Court of Bombay on Commander K.M. Nanavati in Sessions Case No. 22 of IVth Sessions of 1959 until the appeal intended to be filed by him in the Supreme Court against his conviction and sentence is disposed of and subject meanwhile to the conditions that he shall be detained in the Naval Jail Custody in I. N.S. Kunjali.”

3. In pursuance of the judgment of the High Court, a writ issued to the Sessions Judge, Greater Bombay, communicating the order of the High Court convicting and sentencing the petitioner as aforesaid. The Sessions Judge issued a warrant for the arrest of the accused and sent it to the police officer in charge of the City Sessions Court for Greater Bombay for execution. The warrant was returned unserved with the report that the warrant could not be

served in view of the order set out above passed by the Governor of Bombay suspending the sentence upon the petitioner. The Sessions Judge then returned the writ together with the unexecuted warrant to the High Court.

4. In the meantime an application for leave to appeal to the Supreme Court was made soon after the judgment was pronounced by the High Court and the matter was fixed for hearing on March 14, 1960. On that day the matter of the unexecuted warrant was placed before the Division Bench which directed that, in view of the unusual and unprecedented situation arising out of the order of the Governor the matter should be referred to a larger Bench. Notice was accordingly issued to the State of Bombay and to the accused person. A Special Bench of five Judges of that court heard the matter. The High Court examined the validity of the action taken by the Governor and came to the conclusion that it had the power to examine the extent of the Governors power under Article 161 of the Constitution and whether it had been validly exercised in the instant case. After an elaborate examination of the questions raised before it, the Special Bench came to the conclusion that the order passed by the Governor was not invalid. It also held that the condition of the suspension of the order that the petitioner be detained in naval custody was also not unconstitutional, even though the accused could not have been detained in Naval Jail under the provisions of the Navy Act, after he had been convicted by the High Court. The court also held negating the contention raised on behalf of the Advocates appearing as *amicus curiae*, that the order of the Governor did not affect the power of the Supreme Court with particular reference to Rule 5 of Order 21 of the Rules of the Supreme Court, which will be set out in full hereinafter. The reason for this conclusion, in the words of the High Court, is:

“As the sentence passed upon the accused has been suspended, it is not necessary for the accused to surrender to his sentence. Order 21, Rule 5 of the Supreme Court Rules will not, therefore, apply in this case.”

The High Court also overruled the plea of *mala fides*. In the result, the High Court held that as the order made by the Governor had not been shown to be unconstitutional or contrary to law, the warrant should not be reissued until the appeal to be filed in the Supreme Court had been disposed of, unless the order made by the Governor stands cancelled or withdrawn before that event.

5. The petitioner filed his petition for special leave in this court on April 20, 1960, and also made an application on April 21, 1960, under Order 45, Rules 2 and 5 of the Supreme Court Rules for exemption from compliance with Order 21, Rule 5 of those Rules. It was stated in the petition that, soon after his arrest, the petitioner throughout the trial before the Sessions Court and the hearing of the reference in the High Court, had been in naval custody and continued to be in that custody, that he had been throughout of good behaviour and was ready and willing to obey any order of this court, but that the petitioner “not being a free man it was not possible for him to comply with the requirements of Rule 5 of Order 21 of the Supreme Court Rules...” He, therefore, prayed that he may be exempted from compliance with the aforesaid Rule and that his petition for special leave to appeal be posted for hearing without his surrendering to his sentence. On April 25, 1960, the special leave petition along with the application for exemption aforesaid was placed before a Division Bench which passed the following order:

“This is a petition for special leave against the order passed by the Bombay High Court on reference, convicting the petitioner under Section 302 of the Indian Penal Code and sentencing him to imprisonment for life. Along with his petition for special leave an application has been filed by the petitioner praying that he may be exempted from surrendering under Order XXI, Rule 5, of the Rules of this court. His contention in this application is that he is ready and willing to obey any order that this court may pass but that as a result of the order passed by the Governor of Bombay under Article 161 of the Constitution he is not a free man to do so and that is put forward by him as an important ground in support of his plea that he may be exempted from complying with the relevant Rule of this court. This plea immediately raises an important constitutional question about the scope and extent of the powers conferred on the Governor under Article 161 of the Constitution and that is a constitutional matter which has to be heard by a Constitution Bench of this court. We would accordingly direct that notice of this application should be served on the Attorney-General and the State of Bombay and the papers in this application should be placed before the learned Chief Justice to enable him to direct in due course, in consultation with the parties concerned, when this application should be placed for hearing before the Constitution Bench.”

6. After the aforesaid order of this court, it appears that on July 6, the petitioner swore an affidavit in Bombay to the effect that his application aforesaid for exemption from compliance with the requirements of Rule 5 of Order 21 of the Rules had been made under a misapprehension of the legal position and that the true position had been indicated in the judgment of the Special Bench of the Bombay High Court to the effect that Rule 5 of Order 21 of the Rules would not apply to his case in view of the Governor's order aforesaid and that, therefore, his special leave petition be directed to be listed for admission. It is apparent that this change in the petitioner's position as regards the necessity for surrender is clearly an afterthought. Certainly, it came after the Division Bench had directed the constitutional matter to be heard as a preliminary question.

7. That is how the matter has come before us. Before we heard the learned Advocate-General of Bombay, and the learned Additional Solicitor-General on behalf of the Union of India, we enquired of Shri, J.B. Dadachanji, Advocate for the petitioner, whether the petitioner was prepared to get himself released from the Governor's order in order to present himself in this Court so that the hearing of his special leave petition might proceed in the ordinary course, but he was not in a position to make a categorical answer and preferred to have the constitutional question determined on its merits.

8. The learned Advocate-General of Bombay has argued with his usual vehemence and clarity of expression that the power of pardon, including the lesser power of remission and suspension of a sentence etc. is of a plenary character and is unfettered; that it is to be exercised not as a matter of course, but in special circumstances requiring the intervention of the Head of the Executive; that the power could be exercised at any time after the commission of an offence; that this power being in the nature of exercise of sovereign power is vested in the Head of the State and has, in some respects, been modified by statute; that the power of pardon may be exercised unconditionally or subject to certain conditions to be imposed by the

authority exercising the power; that such conditions should not be illegal or impossible of performance or against public policy. It was further argued that the power of pardon is vested in the Head of the State as an index of sovereign authority irrespective of the form of Government. Thus the President of the United States of America and Governors of States, besides, in some cases Committees, have been vested with those powers, which cannot be derogated from by a Legislature. So far as India is concerned, before the Constitution came into effect such powers have been regulated by statute, of course, subject to the power of the Crown itself. After the Constitution, the power is contained in Article 72 in respect of the President, and Article 161 in respect of the Governor of a State. Articles 72 and 161 are without any words of limitation, unlike the power of the Supreme Court contained in Articles 136, 142, 145 and other Articles of the Constitution. Hence, what was once a prerogative of the Crown has now crystallized into the common law of England and statute in India, for example, Section 401 of the Code of Criminal Procedure, or Articles 72 and 161 of the Constitution. He particularly emphasised that the two powers, namely, the power of the Executive to grant pardon, in its comprehensive sense, and of the Judiciary are completely apart and separate and there cannot be any question of a conflict between them, because they are essentially different, the one from the other. The power of pardon is essentially an executive action. It is exercised in aid of justice and not in defiance of it.

With reference to the particular question, now before us, namely, how far the exercise of the executive power of pardon contained in those two Articles of the Constitution can be said to impinge on the judicial functions of this court, it was argued that Rule 5 of Order 21 of the Rules of this court postulates the existence of a sentence of imprisonment and, as in this case, as a result of the Governor's order, there is no such sentence running there could not be any question of the one trespassing into the field of the other. Rule 5 aforesaid of this court represents the well settled practice of this court, as of other Courts, that a person convicted and sentenced to a term of imprisonment should not be permitted to be in contempt of the order of this court, that is to say, should not be permitted to move the appellate court without surrendering to the sentence. But the petitioner is not in such contempt, because Rule 5 did not apply to him. The order of sentence against him having been suspended, he is not disobeying any Rule or process of this court or of the High Court. The power of the Supreme Court to make Rules is subject to two limitations, namely, (1) to any law made by Parliament and (2) the approval of the President. On the other hand, Articles 72 and 161 enshrine the plenary powers of the sovereign State to grant pardon etc., and are not subject to any limitations. There could, therefore, be no conflict between these two, and if there were any conflict at all, the limited powers of the court must yield to the unlimited powers of the Executive. As regards the condition imposed by the Governor, subject to which the sentence passed against the petitioner had been suspended, the condition was not illegal, because it did not offend against any peremptory or mandatory provisions of law. It is not the same thing to say that the condition was not authorised by law as to say that the condition was illegal, in the sense that it did what was forbidden by law. We were referred to the various provisions of the Indian Navy Act, 1957 to show that there were no provisions which could be said to have been contravened by the condition attached to the order of suspension by the Governor. Furthermore, the naval custody in which the petitioner continues had been submitted to by the petitioner and what has been consented to cannot be illegal, though it may not have been

authorised by law. Lastly, it was contended that the observation of the High Court in the last paragraph of its judgment was entirely uncalled for, because once it is held, as was held by the High Court, that the Governor's order was not unconstitutional, it was not open to the High Court to make observations which would suggest that the Governor had exercised his power improperly. If the exercise of the power by the Governor is not subject to any conditions, and is not justifiable, it was not within the power of the High Court even to suggest that the Governor should not have passed the order in question. The learned Additional Solicitor-General adopted the able arguments of the Advocate-General and added that, in terms, there was no conflict between Articles 142 and 161 of the Constitution.

9. Mr C.B. Aggarwala argued that the exercise of the Rule making power by the Supreme Court is not a mere statutory power, but is a constitutional privilege; that the Supreme Court alone could lay down Rules and conditions in accordance with which applications for special leave to appeal to the court could be entertained; that the material Rule governing the present case was made under the constitutional power of the Supreme Court under Article 145 and that the Advocate-General was in error in describing it as subordinate legislation; that the fact that the Rules made by this court under Article 145 of the Constitution require the approval of the President cannot convert them into Rules made under a law enacted in pursuance of power conferred, either by Article 123 or Article 245 of the Constitution; that the underlying idea behind Rule 5 of Order 21 of the Rules of this court is to see that the petitioner to this court or the appellant should remain under the directions of the court; that the Governor by passing the order in question has deprived the Supreme Court of its power in respect of the custody of the convicted person; that the power under Article 161 has to be exercised within the limits laid down by Article 154 of the Constitution. It was also argued that the petitioner could have got his relief from this court itself when he put in his application for special leave and that in such a situation the Executive should not have intervened. In other words, the contention was that, like the courts of Equity, which intervened in aid of justice when law was of no avail to the litigant, the Executive also should exercise their power only where the courts have not been clothed with ample power to grant adequate relief in the particular circumstances governing the case. It was further argued that on a true construction of the provisions of the law and the Constitution, it would appear that the Governor's power extends only up to a stage and no more, that is to say, the Governor could suspend the operation of the sentence only until the Supreme Court was moved by way of special leave and then it was for the court to grant or to refuse bail to the petitioner. Once the court has passed an order in that respect, the Governor could not intervene so as to interfere with the orders of the court. Alternatively, it was argued that, even assuming that an order of suspension in terms made by the Governor, could at all be passed during the pendency of the application for leave to appeal to this court, such an order could be passed only by the President, and not by the Governor. In any view of the matter, it was further argued, the Governor could pass an order contemplated by Article 161, but could not add a condition, as he did in the present case, which was an illegal condition. It was further argued that the generality of the expressions used in Section 401 of the Criminal Procedure Code has to be put down by the specific provisions of Section 426 of that Code. In other words, when there is an appeal pending or is intended to be preferred, during that limited period, the trial court itself or the appellate court, has to exercise its judicial function

in the matter of granting bail etc. and the appropriate Government is to stay its hands during that time.

10. Before dealing with the main question as to what is the scope of the power conferred upon the Governor by Article 161 of the Constitution, it will be convenient to review in a general way the law of pardon in the background of which the controversy has to be determined. Pardon is one of the many prerogatives which have been recognised since time immemorial as being vested in the sovereign, wherever the sovereignty might lie. Whether the sovereign happened to be an absolute monarch or a popular republic or a constitutional king or queen, sovereignty has always been associated with the source of power — the power to appoint or dismiss public servants, the power to declare war and conclude peace, the power to legislate and the power to adjudicate upon all kinds of disputes. The King, using the term in a most comprehensive sense, has been the symbol of the sovereignty of the State from whom emanate all power, authority and jurisdictions. As kingship was supposed to be of divine origin, an absolute king had no difficulty in proclaiming and enforcing his divine right to govern, which includes the right to Rule, to administer and to dispense justice. It is a historical fact that it was this claim of divine right of kings that brought the Stuart Kings of England in conflict with Parliament as the spokesman of the people. We know that as a result of this struggle between the King, as embodiment of absolute power in all respects, and Parliament, as the champion of popular liberty, ultimately emerged the constitutional head of the Government in the person of the King who, in theory, wields all the power, but, in practice, laws are enacted by Parliament, the executive power vests in members of the Government, collectively called the Cabinet, and judicial power is vested in a Judiciary appointed by the Government in the name of His Majesty. Thus, in theory, His Majesty or Her Majesty continues to appoint the Judges of the highest courts, the members of the Government and the public servants, who hold office during the pleasure of the sovereign. As a result of historical processes emerged a clear cut division of governmental functions into executive, legislative and judicial. Thus was established the “Rule” of Law “which has been the pride of Great Britain and which was highlighted by Prof. Dicey. The Rule of Law, in contradistinction to the Rule of man, includes within its wide connotation the absence of arbitrary power, submission to the ordinary law of the land, and the equal protection of the laws. As a result of the historical process aforesaid, the absolute and arbitrary power of the monarch came to be canalised into three distinct wings of the Government. There has been a progressive increase in the power, authority and jurisdiction of the three wings of the Government and a corresponding diminution of absolute and arbitrary power of the King. It may, therefore, be said that the prerogatives of the Crown in England, which were wide and varied, have been progressively curtailed with a corresponding increase in the power, authority and jurisdiction of the three wings of Government, so much so that most of the prerogatives of the Crown, though in theory they have continued to be vested in it, are now exercised in his name by the Executive, the legislature and the Judiciary. This dispersal of the Sovereign’s absolute power amongst the three wings of Government has now become the norm of division of power; and the prerogative is no greater than what the law allows. In the celebrated decision of the House of Lords in the case of *Attorney-General v. De Keyser’s Royal Hotel, Limited* [(1920) AC 508], which involved the right of the Crown by virtue of its prerogative, to take possession of private property for administrative purposes in connection

with the defence of the realm, it was held by the House of Lords that the Crown was not entitled by virtue of its prerogative or under any statute, to take possession of property belonging to a citizen for the purposes aforesaid, without paying compensation for use and occupation.

11. It was argued by Sir John Simon, K.C., for the respondents that:

“The prerogative has been defined by a learned author as ‘the residue of discretionary or arbitrary authority which at any given time is legally left in the hands of the Crown’. It is the ultimate resource of the executive, and when there exists a statutory provision covering precisely the same ground there is no longer any room for the exercise of the Royal Prerogative. It has been taken away by necessary implication because the two rights cannot live together” (See p. 518 of the Report).

This argument on behalf of the respondents appears to have been accepted by Lord Dunedin, who delivered the leading opinion of the House in these terms:

“The prerogative is defined by a learned constitutional writer as ‘the residue of discretionary or arbitrary authority which at any given time is legally left in the hands of the Crown’. Inasmuch as the Crown is a party to every Act of Parliament it is logical enough to consider that when the Act deals with something which before the Act could be effected by the prerogative, and specially empowers the Crown to do the same thing, but subject to conditions, the Crown assents to that, and by that act, to the prerogative being curtailed.”

12. We have thus briefly set out the history of the genesis and development of the Royal Prerogative of Mercy because Mr Seervai has strongly emphasised that the Royal Prerogative of Mercy is wide and absolute, and can be exercised at any time. Very elaborate arguments were addressed by him before us on this aspect of the matter and several English and American decisions were cited. Insofar as his argument was that the power to suspend the sentence is a part of the larger power of granting pardon it may be relevant to consider incidentally the scope and extent of the said larger power; but, as we shall presently point out, the controversy raised by the present petition lies within a very narrow compass; and so concentration on the wide and absolute character of the power to grant pardon and over-emphasis on judicial decisions which deal directly with the said question would not be very helpful for our present purpose. In fact we apprehend that entering into an elaborate discussion about the scope and effect of the said larger power, in the light of relevant judicial decisions, is likely to create confusion and to distract attention from the essential features of the very narrow point that falls to be considered in the present case. That is why we do not propose to enter into a discussion of the said topic or to refer to the several decisions cited under that topic.

13. Let us now turn to the law on the subject as it obtains in India since the Code of Criminal Procedure was enacted in 1898. Section 401 of the Code gives power to the executive to suspend the execution of the sentence or remit the whole or any part of the punishment without conditions or upon any conditions which the person sentenced accepts. Section 402 gives power to the executive without the consent of the person sentenced to commute a sentence of death into imprisonment for life and also other sentences into

sentences less rigorous in nature. In addition the Governor-General had been delegated the power to exercise the prerogative power vesting in His Majesty. sub-section (5) of Section 401 also provides that nothing contained in it shall be deemed to interfere with the right of His Majesty, or the Governor-General when such right is delegated to him, to grant pardons, reprieves, respites or remissions of punishment. This position continued till the Constitution came into force. Two provisions were introduced in the Constitution to cover the former royal prerogative relating to pardon, and they are Articles 72 and 161. Article 72 deals with the power of the President to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence. Article 161 gives similar power to the Governor of a State with respect to offenses against any law relating to a matter to which the executive power of the State extends. Sections 401 and 402 of the Code have continued with necessary modifications to bring them into line with Articles 72 and 161. It will be seen, however, that Articles 72 and 161 not only deal with pardons and reprieves which were within the royal prerogative but have also included what is provided in Sections 401 and 402 of the Code. Besides the general power, there is also provision in Sections 337 and 338 of the Code to tender pardon to an accomplice under certain conditions.

14. In this case we are primarily concerned with the extent of the power of pardon vested in the State so far as the Governor is concerned by Article 161 of the Constitution. Article 161 is in these terms:

“The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.”

Though Article 161 does not make any reference to Article 72 of the Constitution, the power of the Governor of a State to grant pardon etc. to some extent overlaps the same power of the President, particularly in the case of a sentence of death. Articles 72 and 161 are in very general terms. It is, therefore, argued that they are not subject to any limitations and the respective area of exercise of power under these two Articles is indicated separately in respect of the President and of the Governor of a State. It is further argued that the exercise of power under these two Articles is not fettered by the provisions of Articles 142 and 145 of the Constitution or by any other law.

15. It will be seen that it consists of two parts. The first part gives power to this court in the exercise of its jurisdiction to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. The second part deals with the enforcement of the order passed by this court. Article 145 gives power to this court with the approval of the President to make Rules for regulating generally the practice and procedure of the court. It is obvious that the Rules made under Article 145 are in aid of the power given to this court under Article 142 to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. Rule 5 of Order 21 of the Rules of this court was framed under Article 145 and is in these terms:

“Where the petitioner has been sentenced to a 522 term of imprisonment, the petition shall state whether the petitioner has surrendered. Unless the court otherwise

orders, the petition shall not be posted for hearing until the petitioner has surrendered to his sentence.”

This Rule was, in terms, introduced into the Supreme Court Rules last year and it only crystallized the preexisting practice of this court, which is also the practice in the High Courts. That practice is based on the very sound principle which was recognised long ago by the Full Bench of the High Court of Judicature, North Western Provinces, in 1870, in the case of *The Queen v. Bisheshar Pershad* [Vol 2, NWP High Court Reports, P 441]. In that case no order of conviction had been passed. Only a warrant had been issued against the accused and as the war rant had been returned unserved a proclamation had been issued and attachment of the property of the accused had been ordered, with a view to compelling him to surrender. The validity of the warrant had been challenged before the High Court. The High Court refused to entertain his petition until he had surrendered because he was deemed to be in contempt of a lawfully constituted authority. The accused person in pursuance of the order of the High Court surrendered and after he had surrendered, the matter was dealt with by the High Court on its merits. But as observed above the Rules framed under Article 145 are only in aid of the powers of this court under Article 142 and the main question that falls for consideration is, whether the order of suspension passed by the Governor under Article 161 could operate when this court had been moved for granting special leave to appeal from the judgment and order of the High Court. As soon as the petitioner put in a petition for special leave to appeal the matter became sub judice in this court. This court under its Rules could insist upon the petitioner surrendering to his sentence as a condition precedent to his being heard by this court, though this court could dispense with and in a proper case could exempt him from the operation of that Rule. It is not disputed that this court has the power to stay the execution of the sentence and to grant bail pending the disposal of the application for special leave to appeal. Rule 28 of Order 21 of the Rules does not cover that period, but even so the power of the court under Article 142 of the Constitution to make such order as is necessary for doing complete justice in this case was not disputed and it would be open to this court even while an application for special leave is pending to grant bail under the powers it has under Article 142 to pass any order in any matter which is necessary for doing complete justice.

16. But it has been argued that, even as the terms of Article 161 are without any limitation, the provisions of Section 401 of the Code of Criminal Procedure are also in similarly wide terms, and do not admit of any limitations or fetters on the power of the Governor; the Governor could, therefore, suspend the execution of the sentence passed by the High Court even during the period that the matter was pending in this court. In other words, the same power of dealing with the matter of suspension of sentence is vested both in this court as also in the Governor.

17. This immediately raises the question of the extent of the power under Section 401 of the Code with respect to suspension as compared with the powers of the Court under Section 426, which enables the court pending appeal to suspend the sentence or to release the appellant on bail. It will be seen from the language of Section 426 of the Code of Criminal Procedure dealing with the power of the appellate court that, for reasons to be recorded in writing, the court may order that the execution of the sentence be suspended or that if the

accused is in confinement he may be released on bail or on his own bond. Section 401 occurs in Chapter XXIX, headed "Of suspensions, remissions and commutations of sentences." This Chapter, therefore, does not deal with all the powers vested in the Governor under Article 161 of the Constitution, but only with some of them. Section 426 is in Chapter XXXI, headed as "of appeal, reference and revision". Section 426, therefore, deals specifically with a situation in which an appeal is pending and the appellate court has seisin of the case and is thus entitled to pass such orders as it thinks fit and proper to suspend a sentence. It will thus be seen that whereas Chapter XXIX, in which Section 401 occurs, deals with a situation in which pendency of an appeal is not envisaged, Section 426 deals with a situation in which pendency of an appeal is postulated. In other words, Chapter XXIX deals with persons sentenced to punishment for an offence simpliciter in general terms, whereas Section 426 deals with a special case and therefore must be out of the operation of Section 401. But it has been vehemently argued by the learned Advocate-General that the words "at any time" indicate that the power conferred by Section 401 may be exercised without any limitation of time. In the context of Section 401 "any time" can only mean after conviction. It cannot mean before conviction, because there cannot be any sentence before conviction. The question then is: "Does it cover the entire period after the order of conviction and sentence even when an appeal is pending in the appellate court and Section 426 can be availed of by the appellant?"

18. It will be seen that Section 426 is as unfettered by other provisions of the Code as Section 401 with this difference that powers under Section 426 can only be exercised by an appellate court pending an appeal. When both the provisions are thus unfettered, they have to be harmonised so that there may be no conflict between them. They can be harmonised without any difficulty, if Section 426 is held to deal with a special case restricted to the period while the appeal is pending before an appellate court while Section 401 deals with the remainder of the period after conviction. We see no difficulty in adopting this interpretation nor is there any diminution of powers conferred on the executive by Section 401 by this interpretation. The words "at any time" emphasise that the power under Section 401 can be exercised without limit of time, but they do not necessarily lead to the inference that this power can also be exercised while the court is seized of the same matter under Section 426.

19. Turning now to Articles 142 and 161, the argument of Mr Seervai is that though this court has the power to suspend sentence or grant bail pending hearing of the special leave petition, that would not affect the power of the executive to grant a pardon, using the term in its comprehensive sense, as indicated above. Reference was in this connection made to **Balmukand v. King-Emperor** [(1915) 42 IA 133]. That was a case where a convicted person had moved His Majesty in Council for special leave to appeal and the question arose as to the power of the executive to suspend the sentence. In that connection Lord Haldane, L.C., made the following observations:

"With regard to staying execution of the sentence of death, Their Lordships are unable to interfere. As they have often said, this Board is not a court of Criminal Appeal. The tendering of advice to His Majesty as to the exercise of his prerogative of pardon is a matter for the Executive Government and is outside Their Lordships' province. It is, of course, open to the petitioners' advisers to notify the Government of India that an appeal to this Board is pending. The Government of India will no doubt give due weight to the

fact and consider the circumstances. But Their Lordships do not think it right to express any opinion as to whether the sentence ought to be suspended.”

These observations were made because the Judicial Committee of the Privy Council, unlike the Supreme Court, was not a court of criminal appeal and therefore the question of suspending the operation of the sentence of death was not within their judicial purview. The granting of special leave by the Privy Council was an example of the residuary power of the Sovereign to exercise his judicial functions by way of his prerogative and therefore the petitioner was left free in that case to approach the Government of India, as the delegate of the Sovereign, to exercise the prerogative power in view of the circumstance that an appeal to the Privy Council was intended. The footnote to the Report also contains the following:

“The petitioners were reprieved by the Government of India pending the hearing of the petition for leave to appeal”.

It is noteworthy that the reprieve granted in that case covered only the period until the grant or refusal of the petition for leave to appeal and did not go further so as to cover the period of pendency of the appeal to the Privy Council, unlike the order now impugned in this case. The power which was vested in the Crown to grant special leave to appeal to convicted persons from India has now been conferred on this court under Article 136. The power under Article 136 can be exercised in respect of “any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.” This wide and comprehensive power in respect of any determination by any court or tribunal must carry with it the power to pass orders incidental or ancillary to the exercise of that power. Hence the wide powers given to this court under Article 142 “to make such order as is necessary for doing complete justice in any cause or matter pending before it”. As already indicated, the power of this court to pass an order of suspension of sentence or to grant bail pending the disposal of the application for special leave to appeal has not been disputed and could not have been disputed keeping in view the very wide terms in which Article 142 is worded. When an application for special leave to appeal from a judgment and order of conviction and sentence passed by a High Court is made, this court has been issuing orders of interim bail pending the hearing and disposal of the application for special leave as also during the pendency of the appeal to this court after special leave has been granted. So if Mr Seervai’s argument is correct that the pendency of a special leave application in this court makes no difference to the exercise of the power by the executive under Article 161, then both the judiciary and the executive have to function in the same field at the same time. Mr Seervai however contended that there could never be a conflict between the exercise of the power by the Governor under Article 161 and by this court under Article 142 because the power under Article 161 is executive power and the power under Article 142 is judicial power and the two do not act in the same field. That in our opinion is over-simplification of the matter. It is true that the power under Article 161 is exercised by the executive while the power under Article 142 is that of the judiciary; but merely because one power is executive and the other is judicial, it does not follow that they can never be exercised in the same field. The field in which the power is exercised does not depend upon the authority exercising the power but upon the subject-matter. What is the power which is being exercised in this case? The power is being exercised by the executive to suspend the sentence; that power can be

exercised by this court under Article 142. The field in which the power is being exercised is also the same, namely, the suspension of the sentence passed upon a convicted person. It is significant that the Governor's power has been exercised in the present case by reference to the appeal which the petitioner intended to file in this court. There can therefore be no doubt that the judicial power under Article 142 and the Executive power under Article 161 can within certain narrow limits be exercised in the same field. The question that immediately arises is one of harmonious construction of two provisions of the Constitution, as one is not made subject to the other by specific words in the Constitution itself. As already pointed out, Article 161 contains no words of limitation; in the same way, Article 142 contains no words of limitation and in the fields covered by them they are unfettered. But if there is any field which is common to both, the principle of harmonious construction will have to be adopted in order to avoid conflict between the two powers. It will be seen that the ambit of Article 161 is very much wider and it is only in a very narrow field that the power contained in Article 161 is also contained in Article 142, namely, the power of suspension of sentence during the period when the matter is sub judice in this court. Therefore on the principle of harmonious construction and to avoid a conflict between the two powers it must be held that Article 161 does not deal with the suspension of sentence during the time that Article 142 is in operation and the matter is sub judice in this court.

20. In this connection it is well to contrast the language of Section 209(3) and Section 295(2) of the Government of India Act, 1935. Section 209(3) gave power to the Federal Court to order a stay of execution in any case under appeal to the court, pending the hearing of the appeal. Section 295(2) provided that nothing in this Act shall derogate from the right of His Majesty, or of the Governor-General if any such right is delegated to him by His Majesty, to grant pardons, reprieves, respites or remissions of punishments. It may have been possible to argue on the language of section 295(2) that the prerogative exercised by His Majesty transcended the power of the Federal Court under Section 209(3); but when we compare the language of Articles 72 and 161 with the language of Section 295(2) of the Government of India Act, we find no words like "Nothing in this Constitution" or "Notwithstanding anything contained in this Constitution" in them. Such words have been used in many articles of the Constitution: (See for example, Article 262(2) which provides specifically for taking away by Parliament by law the power of this court in disputes relating to water and begins with words "Notwithstanding anything in this Constitution"). The absence therefore of any such qualifying words in Article 161 makes the power of this court under Article 142 of the same wide amplitude within its sphere as the power conferred on the Governor under Article 161. Therefore if there is any field where the two powers can be exercised simultaneously the principle of harmonious construction has to be resorted to in order that there may not be any conflict between them. On that principle the power under Article 142 which operates in a very small part of the field in which the power under Article 161 operates, namely, the suspension and execution of sentence during the period when any matter is sub judice in this court, must be held not to be included in the wider power conferred under Article 161.

21. In the present case, the question is limited to the exercise by the Governor of his powers under Article 161 of the Constitution suspending the sentence during the pendency of the special leave petition and the appeal to this court; and the controversy has narrowed down to whether for the period when this court is in seisin of the case the Governor could pass the

impugned order, having the effect of suspending the sentence during that period. There can be no doubt that it is open to the Governor to grant a full pardon at any time even during the pendency of the case in this court in exercise of what is ordinarily called "mercy jurisdiction". Such a pardon after the accused person has been convicted by the court has the effect of completely absolving him from all punishment or disqualification attaching to a conviction for a criminal offence. That power is essentially vested in the head of the Executive, because the judiciary has no such "mercy jurisdiction". But the suspension of the sentence for the period when this court is in seisin of the case could have been granted by this court itself. If in respect of the same period the Governor also has power to suspend the sentence, it would mean that both the judiciary and the executive would be functioning in the same field at the same time leading to the possibility of conflict of jurisdiction. Such a conflict was not and could not have been intended by the makers of the Constitution. But it was contended by Mr Seervai that the words of the Constitution, namely, Article 161 do not warrant the conclusion that the power was in any way limited or fettered. In our opinion there is a fallacy in the argument insofar as it postulates what has to be established, namely, that the Governor's power was absolute and not fettered in any way. So long as the judiciary has the power to pass a particular order in a pending case to that extent the power of the Executive is limited in view of the words either of Sections 401 and 426 of the Code of Criminal Procedure and Articles 142 and 161 of the Constitution. If that is the correct interpretation to be put on these provisions in order to harmonise them it would follow that what is covered in Article 142 is not covered by Article 161 and similarly what is covered by Section 426 is not covered by Section 401. On that interpretation Mr Seervai would be right in his contention that there is no conflict between the prerogative power of the sovereign state to grant pardon and the power of the courts to deal with a pending case judicially.

25. As a result of these considerations we have come to the conclusion that the order of the Governor granting suspension of the sentence could only operate until the matter became sub judice in this court on the filing of the petition for special leave to appeal. After the filing of such a petition this court was seized of the case which would be dealt with by it in accordance with law. It would then be for this Court, when moved in that behalf, either to apply Rule 5 of Order 21 or to exempt the petitioner from the operation of that Rule. It would be for this court to pass such orders as it thought fit as to whether the petitioner should be granted bail or should surrender to his sentence or to pass such other or further orders as this court might deem fit in all the circumstances of the case. It follows from what has been said that the Governor had no power to grant the suspension of sentence for the period during which the matter was sub judice in this court.

26. A great deal of argument was addressed to us as to whether the condition imposed by the Governor in his order impugned in this case was or was not legal. In the view we have taken of the Governor's power, so far as the relevant period is concerned, namely, after the case became sub judice in this court, it is not necessary to pronounce upon that aspect of the controversy.

27. In the result the application dated April 21, 1960, as amended by the affidavit of July 6, 1960, praying that the special leave petition be listed for hearing without requiring the petitioner to surrender in view of the order of the Governor fails and is dismissed.

Calcutta Gas Co. v. State of West Bengal

AIR 1962 SC 1044

K. SUBBA RAO, J. - This appeal it raises the question of constitutional validity of Oriental Gas Company Act, 1960. Oriental Gas Company was originally constituted by a deed of settlement dated April 25, 1853, by the name of Oriental Gas Company, and it was subsequently registered in England under the provisions of the English Joint Stock Companies Act, 1862. By Act 5 of 1857 passed by the Legislative Council of India, it was empowered to lay pipes in Calcutta and its suburbs and to excavate the streets for the said purpose. By Acts of the Legislative Council of India passed from time to time special powers were conferred on the said Company. In 1946 Messrs Soorajmull Nagarmull, a firm carrying on business in India, purchased 98 per cent of the shares of the said Oriental Gas Company Limited. The said firm floated a limited liability company named Calcutta Gas Co. (Proprietary) Limited and it was registered in India with its registered office at Calcutta. On July 24, 1948, under an agreement entered into between Oriental Gas Company and Calcutta Gas Company, the latter was appointed the manager of the former Company in India for a period of 20 years from July 5, 1948. Oriental Gas Company is the owner of the industrial undertaking, inter alia, for the production, manufacture, supply, distribution and sale of fuel gas in Calcutta. Calcutta Gas Company, by virtue of the aforesaid arrangement, was in charge of its general management for a period of 20 years for remuneration. The West Bengal Legislature passed the impugned Act and it received the assent of the President on October 1, 1960. On October 3, 1960, the West Bengal Government issued three notifications - the first declaring that the said Act would come into force on October 3, 1960, the second containing the Rules framed under the Act, and the third specifying October 7, 1960, as the date with effect from which the State Government would take over for a period of five years the management and control of the undertaking of Oriental Gas Company for the purposes of, and in accordance with, the provisions of the said Act. The appellant i.e. Calcutta Gas Company, filed a petition under Article 226 of the Constitution in the High Court for West Bengal at Calcutta for appropriate writs for restraining the State Government from giving effect to the said Act and for quashing the said notifications. Respondents 1 to 4 to the petition were the State of West Bengal and the concerned officers, and Respondent 5 was Oriental Gas Company Limited. In the petition, the appellant contested the constitutional validity of the Act on various grounds, and in the counter-affidavit, the contesting respondents i.e. Respondents 1 to 4, sought to sustain its validity and also questioned the maintainability of the petition at the instance of the appellant. Ray, J., gave the following findings on the contentions raised before him: (1) The appellant has no legal right to maintain the petition; (2) the appellant cannot question the validity of the Act on the ground that its provisions infringed his fundamental rights under Articles 14, 19 and 31 in view of Article 31-A(1)(b) of the Constitution; (3) the West Bengal Legislature had the legislative competence to pass the impugned Act by virtue of Entry 42 of List III of the Seventh Schedule to the Constitution; (4) Entry 25 of List II also confers sufficient authority and power on the State Legislature to make laws affecting gas and gas-works; and (5) even if the Act incidentally trenches upon any production aspect, the pith and substance of the legislation is gas and gas-works within the

meaning of Entry 25 of List II. The learned Judge rejected all the contentions of the appellant and dismissed the petition by his order dated November 15, 1960.

3. Learned Attorney-General, appearing for the appellant, has repeated before us all the contentions, except that relating to fundamental rights, which his client had unsuccessfully raised before the High Court. His contentions may be summarized thus: (1) The finding of the High Court that the appellant has no locus standi to file the petition cannot be sustained, as under the impugned Act the appellant's legal rights under the agreement entered into by it with Oriental Gas Company on July 24, 1948, were seriously affected. (2) Under Article 226 of the Constitution Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I: Parliament in exercise of the said power passed the Industries (Development and Regulation) Act, 1951, by virtue of Entry 52 of the said List; the two entries in List II, namely, Entries 24 and 25, cannot sustain the Act, as Entry 24 is subject to the provisions of Entry 52 of List I; and Entry 25 must be confined to matters other than those covered by Entry 24, and, therefore, the West Bengal Legislature is not competent to make a law regulating the gas industry. (3) Assuming that the State Legislature has power to pass the Act by virtue of Entry 25 of List II, under Article 254(1) of the Constitution the law made by Parliament, namely, the Industries (Development and Regulation) Act, 1951, shall prevail, and the law made by the State Legislature, namely, the impugned Act, shall be void to the extent of repugnancy and (4) the view of the High Court that the validity of the Act could be sustained under Entry 42 of List III is wrong, as under the impugned Act the State only takes over the management of the Company and manages it for and on behalf of the Company, whereas the concept of requisition under the said entry requires that the State shall take legal possession of property of the person from whom it is requisitioned, on its own behalf or on behalf of a petitioner other than the owner thereof.

4. The learned Advocate-General of West Bengal, and Mr Sen, who followed him, seek to sustain the validity of the impugned Act not only under Entry 25 of List II but also under Entries 33 and 42 of List III of the Seventh Schedule to the Constitution.

6. To appreciate the rival contentions in regard to the other points, it would be convenient and necessary to notice briefly the provisions of the Industries (Development and Regulation) Act, 1951, hereinafter called the "Central Act", and the impugned Act. The Central Act was passed, as its long title shows, to provide for the development and regulation of certain industries. Under Section 2 of the Central 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. Under Heading 2 of the First Schedule, Item (3) is "fuel gases — (coal gas, natural gas and the like)". "Industrial undertaking" is defined to mean any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government; and "factory" is defined to mean any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on. Section 9 authorizes the Government to levy and collect access from the industries. Chapter III provides for the regulation of scheduled industries: Section 15 empowers the Government to make or cause to be made a full and complete investigation of the affairs of any scheduled industry, if it is of opinion that there is a likelihood of substantial fall in the volume of production or a marked deterioration in the quality of any article produced, or there is likely

to be a rise in the price of any article produced therein, or that an undertaking is being managed in a manner highly detrimental to the scheduled industry concerned; and Section 16 authorizes the Central Government, after making the said investigation to issue such directions to the industrial undertaking or undertakings concerned as may be appropriate in the circumstances in order to regulate the production of any article or articles and fix the standards of production, to require it to take such steps to stimulate the development of the industry, to prohibit from resorting to any act or practice which might reduce its production capacity or economic value, or to control the prices or regulate the distribution of articles produced therein. Chapter III-A confers power on the Central Government to assume management or control of an industrial undertaking in certain cases: Section 18-A enables it to take control of an industrial undertaking, and Section 18-B(1), inter alia, provides that on the issue of the notified order under Section 18-A, all persons in charge of management, including persons holding office as Managers or Directors of the industrial undertaking immediately before the issue of the notified order shall be deemed to have vacated their offices as such, and that any contract of management between the industrial undertaking and any managing agent or any director thereof holding office as such immediately before the issue of the notified order shall be deemed to have been terminated and the person or persons appointed under the Act shall be empowered to take over the management and conduct the affairs of the company in the place of the previous management. Chapter III-B enables the Central Government for securing the equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry, and for controlling and regulating the supply, distribution, and price of the said articles. Section 20 of the Act declares that after the commencement of the Act, it shall not be competent for any State Government or a local authority to take over the management or control of any industrial undertaking under any law for the time being in force which authorizes any such Government or local authority so to do. Briefly stated, the Central Act declares that it is expedient in the public interest to take under its control the scheduled industries; its provisions are designed to provide for the development and regulation of the said industries; it enables the Central Government, for the purpose of promoting and regulating the said industries, to investigate into the affairs of an undertaking, to regulate its production, supply and distribution, and, if necessary, to take over the management of the undertaking.

7. Coming to the impugned Act, its provisions are confined only to the affairs of Oriental Gas Company Limited. Its long title shows that it was passed to provide for the taking over for a limited period of the management and control, and the subsequent acquisition of the undertaking of Oriental Gas Company Limited. Its Preamble says that it was thought expedient to provide for the increase of the production of gas and improving the quality thereof for supply to industrial undertakings, hospitals and other welfare institutions, to local authorities for street lighting and to the public in general for domestic consumption and for that purpose to provide for the taking over for a limited period of the management and control, and the subsequent acquisition, of the undertaking. Under Section 4, with effect from the appointed day and for a period of five years thereafter the undertaking of the company shall stand transferred to the State Government for the purpose of management and control. Under Section 6, the undertaking of the company shall be run by the State Government and shall be used and utilised by the State Government for purposes of production of gas and

supply thereof to public institutions mentioned therein and for other purposes. Sections 8 and 9 provide for payment of compensation for taking over the said management. It would be seen that the impugned Act intends to servo the same purpose as the Central Act, though its operation is confined to Oriental Gas Company. Both the Acts are conceived to increase the production, quality and supply pertaining to an industry, and for that purpose to enable the appropriate Government, if necessary, to take over the management for regulating the industry concerned to achieve the said purposes. The impugned Act occupies a part of the field already covered by the Central Act. The question is whether the State Legislature has the constitutional competency to encroach upon the said field.

8. At this stage it would be convenient to read the relevant articles of the Constitution.

“246. (1) Notwithstanding anything in clauses (2) and (3) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the ‘Union List’).

(3) Subject to clauses (1) and (2), the legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the ‘State List’).

List I - Union List

Entry 7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

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 - State List

Entry 24. Industries subject to the provisions of Entries 7 and 52 of List I.

Entry 25. Gas and gas-works.

Entry 26. Trade and commerce within the State subject to the provisions of Entry 33 of List III.

Entry 27. Production, supply and distribution of goods subject to the provisions of Entry 33 of List III.”

Before construing the said entries, it would be useful to notice some of the well settled rules of interpretation laid down by the Federal Court and this Court in the matter of construing the entries. The power to legislate is given to the appropriate legislatures by Article 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 also well settled that widest amplitude should be given to the language of the entries. But some of the entries in the different Lists or in the same List may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of this Court to reconcile the entries and bring about harmony between them. When the question arose about reconciling Entry 45 of List I, duties of excise, and Entry 18 of List II, taxes on the sale of goods, of the Government of India Act, 1935, Gwyer, C.J., in *In re Central Provinces and Berar Act 14 of 1938* [(1939) FCR 18] observed:

“A grant of the power in general terms, standing by itself, would no doubt be construed in the wider sense; but it may be qualified by other express provisions in the same enactment, by the implication of the context, and even by considerations arising out of what appears to be the general scheme of the Act.”

The learned Chief Justice proceeded to state:

“... 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 at empted between two apparently conflicting jurisdictions 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 a reconciliation should prove impossible, then, and only then, will the non obstante clause operate and the federal power prevail.”

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.”

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. Narothamdas Jethabai* [(1951) SCR 51], that the words “administration of justice” and “constitution and organization of all courts” in Item 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”. This rule of construction has not been dissented from in any of the subsequent decisions of this Court. It may, therefore, be taken as a well settled rule of construction that every attempt should be made to harmonize the apparently conflicting entries not only of different Lists but also of the same List and to reject that construction which will rob one of the entries of its entire content and make it nugatory.

With this background let us construe the aforesaid entries. There are three possible constructions, namely, (1) Entry 24 of List II, which provides for industries generally, covers the industrial aspect of gas and gas-works leaving Entry 25 to provide for other aspects of gas

and gas-works; (2) Entry 24 provides generally for industries, and Entry 25 carves out of it the specific industry of gas and gas-works, with the result that the industry of gas and gas-works is excluded from Entry 24; and (3) the industry of gas and gas-works falls under both the entries, that is, there is a real overlapping of the said entries. Having regard to the aforesaid principle, while giving the widest scope to both the entries, we shall adopt the interpretation which reconciles and harmonizes them.

9. The first question that occurs to one's mind is, what is the meaning of the expression "industry" in Entry 24 of List II? Is it different from the meaning of that expression in Entry 52 of List II? Whatever may be its connotation, it must bear the same meaning in both the entries, for the two entries are so interconnected that conflicting or different meanings given to them would snap the connection. Entry 24 is subject to the provisions of Entry 7 and Entry 52 of List I. Entry 7 of List I provides for industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war, and Entry 52 for industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest. Therefore, ordinarily industry is in the field of State legislation; but, if Parliament by law makes a relevant declaration or declarations, the industry or industries so declared would be taken off its field and passed on to Parliament. In the premises, the expression "industry" in all the entries must be given the same meaning. Now, what is the meaning of the word "industry"? In *Tika Ramji v. State of U.P.* [(1956) SCR 393], the expression "industries" is defined to mean the process of manufacture or production and does not include the 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 only the process of manufacture or production but also activities antecedent thereto such as acquisition of raw materials and subsequent thereto such as disposal of the finished products of that industry. But that contention was not accepted. It is not necessary in this case to attempt to define the expression "industry" precisely or to state exhaustively all its ingredients. Assuming that the expression means only production or manufacture, would it take in its sweep production or manufacture, of gas? Entry 24 in List II in its widest amplitude takes in all industries, including that of gas and gas-works. So too, Entry 25 of the said List comprehends gas industry.

There is, therefore, an apparent conflict between the two entries and they overlap each other. In such a contingency the doctrine of harmonious construction must be invoked. Both the learned counsel accept this principle. While the learned Attorney-General seeks to harmonize both the entries by giving the widest meaning to the word "industry" so as to include the industrial aspect of gas and gas-works and leaving the other aspects to be covered by Entry 25, learned counsel for the contesting respondents seeks to reconcile them by carving out gas and gas-works in all its aspects from Entry 24. If industry in Entry 24 is interpreted to include gas and gas-works, Entry 25 may become redundant, and in the context of the succeeding entries, namely, Entry 26, dealing with trade and commerce, and Entry 27, dealing with production, supply and distribution of goods it will be deprived of all its contents and reduced to "useless lumber". If industrial, trade, production and supply aspects are taken out of Entry 25, the substratum of the said entry would disappear: in that event we would be attributing to the authors of the Constitution ineptitude, want of precision and tautology. On

the other hand, the alternative contention enables Entries 24 and 25 to operate fully in their respective fields: while Entry 24 covers a very wide field, that is, the field of the entire industry in the State, Entry 25, dealing with gas and gas-works, can be confined to a specific industry, that is, the gas industry. There may be many good reasons for the authors of the Constitution giving separate treatment to gas and gas-works. If one can surmise, it may be that, as the industry of gas and gas-works was confined to one or two States and was not of all-India importance, it was carved out of Entry 24 and given a separate entry, as otherwise if a declaration by law was made by Parliament within the meaning of Entry 7 or Entry 52 of List I, it would be taken out of the legislative power of States. Be it as it may, the express intention of the Constitution is to treat it, in normal times, as a state subject and it is not in the province of this Court to ascertain and scrutinize the reasons for doing so. It is suggested that this interpretation would prevent Parliament to make law in respect of gas and gas-works during war or other national emergency. Apart from the relevancy of such a consideration, the apprehension has no justification, for under Article 249 Parliament is enabled to take up for legislation any matter which is specifically enumerated in List II whenever the Council of States resolves by two-thirds majority that such a legislation is necessary or expedient in the national interest. So too, under Article 250 Parliament can make laws with respect to any of the matters enumerated in the State List, if a proclamation of emergency is in operation. Article 252 authorizes the Parliament to legislate for two or more States, if the Houses of the legislatures of those States give their consent to the said course. Subject to such emergency or extraordinary powers, the entire industry of gas and gas-works is within the exclusive legislative competence of a State. It is, therefore, clear that the scheme of harmonious construction suggested on behalf of the State gives full and effective scope of operation for both the entries in their respective fields, while that suggested by learned counsel for the appellant deprives Entry 25 of all its content and even makes it redundant. The former interpretation must, therefore, be accepted in preference to the latter. In this view, gas and gas-works are within the exclusive field allotted to the States. On this interpretation the argument of the learned Attorney-General that, under Article 246 of the Constitution, the legislative power of State is subject to that of Parliament ceases to have any force, for the gas industry is outside the legislative field of Parliament and is within the exclusive field of the legislature of the State. We, therefore, hold that the impugned Act was within the legislative competence of the West Bengal Legislature and was, therefore, validly made.

10. In this view the alternative argument advanced on behalf of the State, namely, that the impugned Act was made by virtue of Entry 33 and Entry 42 of List III need not be considered. We should not be understood to have expressed our view one way or other on this aspect of the case.

11. Nor is the contention of learned Attorney-General that Section 20 of the Central Act would still be valid vis-a-vis gas industry has any force. Under Section 20 of the Central Act,

“After the commencement of this Act, it shall not be competent for any State Government or a local authority to take over the management or control of any industrial undertaking under any law for the time being in force which authorizes any such Government or local authority so to do.”

We have expressed the view that the legislature of a State has the exclusive power to make law in respect of gas industry by virtue of Entry 25 of List II, and that Entry 24 does not comprehend gas industry. As we have indicated earlier, the expression “industry” in Entry 52 of List I bears the same meaning as that in Entry 24 of List II, with the result that the said expression in Entry 52 of List I also does not take in a gas industry. If so, it follows that the Central Act, insofar as it purported to deal with the gas industry, is beyond the legislative competence of Parliament. Section 20 is an integral part of the Central Act, and if it is taken out of the Act, it can only operate in vacuum. The said section was introduced for the effective implementation of the provisions of the Central Act. It was also enacted by virtue of Entry 52 of List I of the Seventh Schedule to the Constitution. If the Act was constitutionally void insofar as it purported to affect the gas industry, for the aforesaid reasons, Section 20 would equally be void to the same extent for the same reasons. In this context two decisions of this Court, namely, *Raghubir Singh v. State of Ajmer* [(1959) Supp (1) SCR 478] and *State of Bihar v. Umesh Jha* [AIR 1962 SC 50] may usefully be consulted, for in the said decisions this Court held that ancillary provisions enacted for carrying out the objects of a main Act would fall with the main Act on the ground that they were enacted only to subserve the purpose of the main Act. Section 20, therefore, will not avail the appellant to question the validity of the State action.

12. In the result, we agree with the High Court that the impugned Act was within the legislative competence of the West Bengal State Legislature and was validly made. The appeal fails and is dismissed.

* * * * *

Sirsilk Ltd. v. Govt. of Andhra Pradesh

(1964) 2 SCR 448 : AIR 1964 SC 160

K.N. WANCHOO. J. - 2. Briefly the facts in Appeal No. 220 are that an order referring certain disputes between the appellant and its workmen was made to the Industrial Tribunal, Andhra Pradesh on 6-6-1956. The Tribunal sent its award to Government in September 1957. Under Section 17 of the Industrial Disputes Act 14 of 1947, the award has to be published by the appropriate Government within a period of thirty days from the date of its receipt by the Government in such manner as the Government thinks fit. Before however the Government could publish the award under Section 17, the parties to the dispute which had been referred for adjudication came to a settlement and on 1-10-1957, a letter was written to Government signed jointly on behalf of the employer and the employees intimating that the dispute which had been pending before the Tribunal had been settled and a request was made to Government not to publish the award. The Government however expressed its inability to withhold the publication of the award, the view taken by the Government being that Section 17 of the Act was mandatory and the Government was bound to publish the award. Thereupon the appellants filed writ petitions before the High Court under Article 226 of the Constitution praying that the Government may be directed not to publish the award sent to it by the Industrial Tribunal. The High Court held that Section 17 was mandatory and it was not open to Government to withhold publication of an award sent to it by an Industrial Tribunal. Therefore it was not open to the High Court to direct the Government not to publish the award when the law enjoined upon it to publish it. The writ petitions were therefore dismissed. There were then applications for certificates which were granted and that is how the matter has come up before us.

3. The main contention on behalf of the appellants before us is that Section 17 of the Act when it provides for the publication of an award is directory and not mandatory. In the alternative, it is contended that even if Section 17 is mandatory some *via media* has to be found in view of the conflict that would arise between an award published under Section 17(1) and a settlement which is binding under Section 18(1) and therefore where there is a settlement which is binding under Section 18(1), it would be open to the Government not to publish the award in these special circumstances.

4. We are of opinion that the first contention on behalf of the appellants, namely, that the publication of the award under Section 17(1) is directory cannot be accepted. Section 17(1) lays down that every award shall within a period of thirty days from the date of its receipt by the appropriate Government be published in such manner as the appropriate Government thinks fit. The use of the "word" shall is a pointer to Section 17(1) being mandatory, though undoubtedly in certain circumstances the word "shall" used in a statute may be equal to the word "may". In the present case, however it seems to us that when the word "shall" was used in Section 17(1) the intention was to give a mandate to Government to publish the award within the time fixed therein. This is enforced by the fact that sub-section (2) of Section 17 provides that "the award published under sub-section (1) shall be final and shall not be called in question by any court in any manner whatsoever". Obviously when the legislature intended the award on publication to be final, it could not have intended that the Government

concerned had the power to withhold publication of the award. Further Section 17-A shows that whatever power the Government has in the matter of an award is specifically provided in that section, which allows the Government in certain circumstances to declare that the award shall not become enforceable on the expiry of thirty days from the date of its publication, which under Section 17-A is the date of the enforceability of the award. Section 17-A also envisages that the award must be published though the Government may declare in certain contingencies that it may not be enforceable. Sub-section (2) of Section 17-A also gives power to Government to make an order rejecting or modifying the award within ninety days from the date of its publication. It is clear therefore reading Section 17 and Section 17-A together that the intention behind Section 17(1) is that a duty is cast on government to publish the award within thirty days of its receipt and the provision for its publication is mandatory and not merely directory.

5. This however does not end the matter, particularly after the amendment of the Act by Central Act 36 of 1956 by which Section 18(1) was introduced in the Act. Section 18(1) provides that a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. "Settlement" is defined in Section 2(p) as meaning a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the appropriate Government and the Conciliation Officer. When such an agreement has been arrived at though not in the course of conciliation proceedings, it becomes a settlement and Section 18(1) lays down that such a settlement shall be binding on the parties thereto. Further Section 18(3) provides that an award which has become enforceable shall be binding on all parties to the industrial dispute and others. Section 19(1) provides that a settlement comes into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of settlement is signed by the parties to the dispute. In the present case the settlement that was arrived at between the parties to the dispute was signed on 1-10-1957, and as it had not fixed any date for its coming into force, it became operative from 1-10-1957 itself and was binding on the parties to the agreement who were also before the Industrial Tribunal and would be bound by the award after its publication.

6. The contention on behalf of the appellant in the alternative is this. It is said that the main purpose of the Act is to maintain peace between the parties in an industrial concern. Where therefore parties to an industrial dispute have reached a settlement which is binding under Section 18(1), the dispute between them really comes to an end. In such a case it is urged that the settlement arrived at between the parties should be respected and industrial peace should not be allowed to be disturbed by the publication of the award which might be different from the settlement. There is no doubt that a settlement of the dispute between the parties themselves is to be preferred where it can be arrived at to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award, as it is arrived at by the free will of the parties and is a pointer to there being goodwill between them. Even though this may be so, we have still to reconcile the mandatory character of the provision contained

in Section 17(i) for the publication of the award to the equally mandatory character of the binding nature of the settlement arrived at between the parties as provided in Section 18(1). Ordinarily there should be no difficulty about the matter, for if it settlement has been arrived at between the parties while the dispute is pending before the tribunal, the parties would file the settlement before the tribunal and the tribunal would make the award in accordance with the settlement. In *State of Bihar v. D.N. Ganguly* [(1959) SCR 1191], dealing with an argument urged before this Court that where a settlement has been arrived at between the parties while an industrial dispute *is* pending before a tribunal, the only remedy for giving effect to such a settlement would be to cancel the reference, this Court observed that though the Act did not contain any provision specifically authorising the Industrial Tribunal, to record a compromise and pass an award in its terms corresponding to the provisions of Order 23 Rule 3 of the Code of Civil Procedure, it would be very unreasonable to assume that the Industrial Tribunal would insist upon dealing with the dispute on the merits even after it is informed that the dispute has been amicably settled between the parties, and there can be no doubt that if a dispute before a tribunal is amicably settled, the tribunal would immediately agree to make an award in terms of the settlement between the parties. In that case this Court dealt with what would happen if a settlement was arrived at while the matter was pending before the tribunal. The difficulty arises in the present case because the proceedings before the Tribunal had come to an end, and the Tribunal had sent its award to Government before the settlement was arrived at on 1-10-1957. There is no provision in the Act dealing with such a situation just as there was no provision in the Act dealing with the situation which arose where the parties came to an agreement while the dispute was pending before the Tribunal. This Court held in *Ganguly* case that in such a situation the settlement or compromise would have to be filed before the Tribunal and the Tribunal would make an award thereupon in accordance with the settlement. Difficulty however arises when the matter has gone beyond the purview of the Tribunal as in the present case. That difficulty in our opinion has to be resolved in order to avoid possible conflict between Section 18(1) which makes the settlement arrived at between the parties otherwise than in the course of conciliation proceeding binding on the parties and the terms of an award which are binding under Section 18(3) on publication and which may not be the same as the terms of the settlement binding under Section 18(1). The only way in our view to resolve the possible conflict which would arise between a settlement which is binding under Section 18(1) and an award which may become binding under Section 18(3) on publication is to withhold the publication of the award once the Government has been informed jointly by the parties that a settlement binding under Section 18(1) has been arrived at. It is true that Section 17(1) is mandatory and ordinarily the Government has to publish an award sent to it by the Tribunal; but where a situation like the one in the present cases arises which may lead to a conflict between a settlement under Section 18(1) and an award binding under Section 18(3) on publication, the only solution is to withhold the award from publication. This would not in our opinion in any way affect the mandatory nature of the provision in Section 17(1), for the Government would ordinarily have to publish the award but for the special situation arising in such cases.

7. The matter may be looked at in another way. The reference to the Tribunal is for the purpose of resolving the dispute that may have arisen between employers and their workmen. Where a settlement is arrived at between the parties to a dispute before the Tribunal after the

award has been submitted to Government but before its publication, there is in fact no dispute left to be resolved by the publication of the award. In such a case, the award sent to Government may very well be considered to have become infructuous and so the Government should refrain from publishing such an award because no dispute remains to be resolved by it.

8. It is however urged that the view we have taken may create a difficulty inasmuch as it is possible for one party or the other to represent to the Government that the settlement has been arrived at as a result of fraud, misrepresentation or undue influence or that it is not binding as to workmen's representative had bartered away their interests for personal considerations. This difficulty, if it is a difficulty, will always be there even in a case where a settlement has been arrived at ordinarily between the parties and is binding under Section 18(1), even though no dispute has been referred in that connection to a tribunal. Ordinarily however such difficulty should not arise at all, if we read Sections 2(p), 18(1) and 19(1) of the Act together. Section 2(p) lays down what a settlement is and it includes "a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the appropriate government and the Conciliation Officer". Therefore the settlement has to be signed in the manner prescribed by the rules and a copy of it has to be sent to the Government and the Conciliation Officer. This should ordinarily ensure that the agreement has been arrived at without any of those defects to which we have referred above, if it is in accordance with the rules. Then Section 18(1) provides that such a settlement would be binding between the parties and Section 19(1) provides that it shall come into force on the date it was signed or on the date on which it says that it shall come into force. Therefore as soon as an agreement is signed in the prescribed manner and a copy of it is sent to the Government and the Conciliation Officer it becomes binding at once on the parties to it and comes into operation on the date it is signed or on the date which might be mentioned in it for its coming into operation. In such a case there is no scope for any inquiry by Government as to the bona fide character of the settlement which becomes binding and comes into operation once it is signed in the manner provided in the rules and a copy is sent to the Government and the Conciliation Officer. The settlement having thus become binding and in many cases having already come into operation, there is no scope for any enquiry by the Government as to the bona fides of the settlement. In such a case in view of the possibility of conflict between the settlement in view of its binding nature under Section 18(1) and an award which might become binding on publication under Section 18(3), the proper course for the Government is to withhold the award from publication to avoid this conflict. If any dispute of the nature referred to above arises as to a settlement, that would be another industrial dispute, which the Government may refer for adjudication and if on such an adjudication the settlement is found not to be binding under Section 18(1) of the Act it will always be open to the Government then to publish the award which it had withheld, though we do not think that such instances are likely to be anything but extremely rare. We are therefore of opinion that though Section 17(1) is mandatory and the Government is bound to publish the award received by it from an Industrial Tribunal, the situation arising in a case like the present is of an exceptional nature and requires reconciliation between Section 18(1) and Section 18(3), and in such a situation the only way to reconcile the two provisions is to withhold the publication of the award, as a binding settlement has already

come into force in order to avoid possible conflict between a binding settlement under Section 18(1) and a binding award under Section 18(3). In such a situation we are of opinion that the Government ought not to publish the award under Section 17(1) and in cases where government is going to publish it, it can be directed, not to publish the award in view of the binding settlement arrived at between the parties under Section 18(1) with respect to the very matters which were the subject-matter of adjudication under the award. We therefore allow the appeals and direct the Government not to publish the awards sent to it by the Industrial Tribunal in these cases in view of the binding nature of the settlements arrived at between the parties under Section 18(1) of the Act.

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The Remington Rand of India Ltd. v. The Workmen

(1968) 1 SCR 164 : AIR 1968 SC 224

G.K. MITTER, J. - 2. The first point taken against this award is that it cannot be given effect to as it was published beyond the period fixed in the Act. The notification accompanying the gazette publication stated that Government had received the award on 14th October, 1966. It was argued by Mr Gokhale that in terms of Section 17(1) of the Industrial Disputes Act the award had to be published "within a period of thirty days from the date of its receipt by the appropriate Government". According to learned counsel, the award having reached Government on 14th October, 1966 it should have been published at the latest on 12th November, 1966 as Section 17(1) of the Act was mandatory. Our attention was also drawn to sub-section (2) of Section 17 according to which it is only the award published under sub-section (1) of Section 17 that is final and cannot be called in question by any court in any manner. We were also referred to Section 17-A and Section 19. Under sub-section (1) of Section 17-A an award becomes enforceable on the expiry of thirty days from the date of its publication under Section 17 and under sub-section (3) of Section 19 an award is to remain in operation for a period of one year from the date on which the award becomes enforceable under Section 17-A. From all these provisions it was argued that the limits of time mentioned in the sections were mandatory and not directory and if an award was published beyond the period of thirty days, in contravention of Section 17(1) it could not be given effect to.

Keeping the above principles in mind, we cannot but hold that a provision as to time in Section 17(1) is merely directory and not mandatory. Section 17(1) makes it obligatory on the Government to publish the award. The limit of time has been fixed as showing that the publication of the award ought not to be held up. But the fixation of the period of 30 days mentioned therein does not mean that the publication beyond that time will render the award invalid. It is not difficult to think of circumstances when the publication of the award within thirty days may not be possible. For instance, there may be a strike in the press or there may be any other good and sufficient cause by reason of which the publication could not be made within thirty days. If we were to hold that the award would therefore be rendered invalid, it would be attaching undue importance to a provision not in the mind of the legislature. It is well known that it very often takes a long period of time for the reference to be concluded and the award to be made. If the award becomes invalid merely on the ground of publication after thirty days, it might entail a fresh reference with needless harassment to the parties. The non-publication of the award within the period of thirty days does not entail any penalty and this is another consideration which has to be kept in mind. What was said in *Sirsilk Ltd. v. Government of Andhra Pradesh* merely shows that it was not open to Government to withhold publication but this Court never meant to lay down that the period of time fixed for publication was mandatory.

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Calcutta Municipal Corpn. v. East India Hotels Ltd.

(1994) 5 SCC 690

KULDIP SINGH, J. - The East India Hotels Limited (the company), Respondent 1 in the appeal herein, owns and runs “Oberoi Grand” - five star hotel - in the city of Calcutta. The hotel had, at the relevant time, three restaurants within its premises called the Moghul Room, the Polynesia and the Princes. The question for our consideration is whether the company is required to pay the licence fee and obtain licences, to run the said restaurants, in terms of Section 443 of the Calcutta Municipal Act, 1951 (the Act). A Division Bench of the Calcutta High Court in appeal answered the question in the negative and in favour of the company.

2. It is not disputed that prior to the present proceedings the company has always been obtaining licences from the Corporation under Section 443 of the Act in respect of the restaurants. Initially, the licence fee was Rs 250 per annum per restaurant. The said fee was increased from time to time. The Corporation, by an order dated 22-3-1982, increased the licence fee to Rs 15,000 in respect of each of the places of amusement/recreation under Section 443 of the Act.

3. The company challenged the increase of the licence fee to Rs 15,000 before the Calcutta High Court by way of a writ petition under Article 226 of the Constitution of India. Before the learned Single Judge three points were raised. It was contended that under Section 218 read with Schedule IV to the Act, the Corporation could not fix more than Rs 250 as licence fee. The learned Judge rejected the contention on the ground that the licence fee was levied under Section 443 of the Act to which Schedule IV to the Act has no relevance. The other points raised before the learned Single Judge were that there was no valid order made by the Corporation and no opportunity of hearing was afforded to the company before enhancing the licence fee. Both these contentions were also rejected. As a consequence the learned Single Judge dismissed the writ petition. The company filed appeal against the judgment of the learned Single Judge which was heard by a Division Bench of the High Court.

4. The only point raised by the company, before the Division Bench of the High Court, was neither pleaded in the writ petition nor argued before the learned Single Judge. The Division Bench permitted the point to be raised on the following reasoning:

“We permitted the learned advocate for the appellants to raise this new contention and urge the new plea as it appeared to us that the same was purely a question of law. In our view, no new facts were required to be pleaded or brought on record to enable us to consider this new contention and decide on the issue.”

5. Before we state the point it would be useful to go through the provisions of Section 443 of the Act which are as under:

“443. Licensing and control of theatres, circuses and places of public amusement. -

No person shall, without or otherwise than in conformity with the terms of a licence granted by the Commissioner in this behalf, keep open any theatre, circus, cinema house, dancing hall or other similar place of public resort, recreation or amusement:

Provided that this section shall not apply to private performances in any such place.”

It was argued before the Division Bench of the High Court that the provisions of Section 443 of the Act were not applicable to the restaurants, despite the fact that recreation/amusement in the shape of music, cabaret shows and dancing etc. was provided in such establishments. The Division Bench posed the following question for its consideration:

“The short question before us is whether the objects ‘theatre, circus, cinema house, dancing hall’ referred to in Section 443 of the Act can or should be construed *ejusdem generis* and whether on such construction it is to be held that restaurant though providing items of amusement is not a place of public resort, recreation or amusement similar to a theatre, circus, cinema house or dancing hall and as such does not come within the mischief of Section 443.”

6. The Division Bench of the High Court culled out the principles for the applicability of the rule of *ejusdem generis* from the judgments of this Court in **Jage Ram v. State of Haryana** [(1971) 1 SCC 671] and **Amar Chandra Chakraborty v. Collector of Excise** [AIR 1972 SC 1863]. Construing Section 443 of the Act the High Court found that “theatre, circus, cinema house, dancing hall” have been specifically mentioned followed by the expression “other similar places of public resort, recreation or amusement” which are of general nature. Applying the principles of *ejusdem generis*, the Division Bench came to the conclusion that the general words are intended to have a restricted meaning in the sense that “other similar places” must fall within the class enumerated by the specific words. On the said reasoning, the Division Bench of the High Court held as under:

“For the reasons above, the contentions of the appellants before us do not appear to be without substance. We hold that under Section 443 of the Calcutta Municipal Act, 1951 the Corporation of Calcutta is entitled to issue licences against payment of fees to theatres, circuses, cinema houses, dancing halls and other similar places of public resort, recreation or amusement but not to other establishment which do not fall in same class as the above. We hold further that a restaurant which provides items of amusement occasionally or incidentally in its main business, to its customers is not a place of public resort, recreation or amusement similar to a theatre, circus, cinema house dancing hall, which form a class by themselves, and does not fall within the mischief of Section 443. The respondents have no jurisdiction to call upon Appellant 1 to take out a licence under Section 443.”

7. It was not necessary for the Division Bench of the High Court to rely on the rule of *ejusdem generis* in this case. The provisions of Section 443 of the Act are on the face of it clear and unambiguous and, as such, there was no occasion to call into aid the said rule. Section 443 clearly states that a theatre, circus, cinema house, dancing hall or “other similar place” of public resort, recreation or amusement cannot be run without obtaining a licence from the Commissioner of the Corporation. It is thus obvious that apart from the four places of recreation/amusement specifically mentioned in the section “any other place” which comes within the mischief of the Act must be “a similar place”. The short question for our

consideration, therefore, is whether the three restaurants run by the company in the premises of the hotel are similar to any of the four instances given under Section 443 of the Act.

8. Since the question argued before the Division Bench was neither pleaded nor raised before the learned Single Judge, the necessary facts required to support the said question were not directly forthcoming from the writ petition, a copy of which is placed on the appeal-papers. In any case, the company's own case in the writ petition before the High Court was:

"In order to be categorised as a Government classified hotel, it should have certain basic features and amenities like cabaret and evening entertainments etc. and unless these special facilities were available and continued to remain available your petitioners' said hotel would not have been a Government classified hotel. Your petitioners crave leave to refer to the said question arise for classification at the time of hearing if necessary.

Your petitioners state that the said hotel is a residential hotel and maintain a very high standard of service for twenty-four hours round the clock. It also provides entertainment during the evening, specially to cater for the tourist foreign visitors but also earn foreign exchange for the country. The said hotel enjoys international reputation

As stated above your petitioners run a hotel, in which lodging and meals including service of alcoholic beverages, both foreign liquor and Indian-made foreign liquor are provided to the residents and customers from the restaurants, bars and other rooms within the hotel precincts. The said restaurants cater for outsiders though mostly foreign tourists and the said restaurants are being maintained and/or run in accordance with the international standards for which your petitioner have had to incur heavy overhead expenses as is the case in the matter of maintenance of lodging. These restaurants and bars are part and parcel of the hotel though the same is not restricted to residents of the hotel only."

In the written statement filed before the High Court, the Corporation affirmed as under:

"With reference to paragraph 7 of the petition I dispute and deny the allegations. I say that the hotel provides entertainment with all items of music amusement etc. and is famous for its cabaret any allegation contrary thereto are denied. I say that before entering into the cabaret room one has to purchase a special ticket for admission on a very high price."

9. It is not disputed in the counter filed by the company in the special leave petition that the said restaurants in the evening provide piped music and sometimes vocal as well as instrumental music. The said restaurants also have dancing floors where the guests are allowed to dance to the tune of the music.

10. The admitted facts, therefore, are that there are dancing floors in the restaurants where the residents and other guests entertain themselves. The entertainment is further provided by music including vocal music. At the relevant time the cabaret shows were also performed in the restaurant to entertain the guests. In the counter filed in this Court the company has,

however, stated that cabaret shows are done on rare occasions like Christmas and New Year eve etc.

11. A “dancing hall” cannot operate without obtaining a licence under Section 443 of the Act. What is a dancing hall? A dancing hall as understood in the ordinary parlance is a place where dancing floor is provided and live orchestra or music in any other form is played to entertain the guests who wish to come on the floor and dance. Dancing halls are peculiar to the Western social life. In the cosmopolitan cities in this country, even today, one finds number of dancing halls and discotheques where people go in the evenings and entertain themselves. We see no difference in a “dancing hall” and a restaurant where a proper dancing floor is provided and the guests entertain themselves by using the floor to the tune of live or recorded music. Simply because the recreation in the shape of dancing is provided along with a posh-eating place would not make it different than a “dancing hall” where drinks and eatables are also invariably provided. We are, therefore, of the view that the restaurants run by the company are places similar to the dancing halls and, as such, are places of public amusement covered by the provisions of Section 443 of the Act. We allow the appeal, set aside the impugned judgment of the Division Bench of the High Court and dismiss the writ petition of the company filed before the Calcutta High Court.

* * * * *

Oswal Agro Mills Ltd. v. CCE

1993 Supp (3) SCC 716

K. RAMASWAMY, J. - Common questions of law which arose for decision in these 8 appeals need disposal by this judgment. The question relates to classification of “toilet soap” in Excise Item 15 of the First Schedule to the Central Excises and Salt Act 1 of 1944 as amended in 1964 for short ‘the Act’. In addition, in C.A. Nos. 813 of 1986, 3632-34 of 1988 and 1102 of 1989 sequel to its finding, they claim refund of excess excise duty. The facts in C.A. Nos. 2702 and 2785 of 1984 are sufficient for disposal. The appellants laid before Assistant Collector classification list claiming “toilet soaps” Kalpa and Oasis, in other appeals Jai, O.K., Moti, Rain drop, Gold and Ria as bath soaps under tariff Item 15(1) of the First Schedule (Household). By notice dated August 31, 1982, the Assistant Collector called upon the appellants to show cause as to why they cannot be classified under tariff Item 15(2) ‘other sorts’ and be levied excise duty at 15 per cent ad valorem (as then stood). The appellants after filing their reply thereto and having had personal hearing, by proceedings dated November 27, 1982, the Assistant Collector classified toilet soaps as “other sorts” under tariff Item 15(2) of the Schedule. On appeal the Collector by order dated January 21, 1983 classified them under tariff Item No. 15(1) “household”. On second appeal, the CEGAT by its order dated June 20, 1984 reversed the appellate order and upheld the Assistant Collector’s order. Same is the case with regard to all other appeals except resultant claim for refund. In 1954 tariff Item No. 15-A was introduced in the First Schedule of the Act thus:

“15-A. ‘Soap’ means all varieties of the product known commercially as soap -

I. Soap, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power or of steam for heating:

(1) Soap, household and laundry -

(a) Plain bars of not less than one pound in weight Rupees five & annas four per cent.

(b) other sorts Rupees six & annas two per cent.

(2) Soap toilet Rupees fourteen per cent.

(3) Soap, other than household and laundry or toilet. Rupees fourteen per cent.”

2. This entry as amended in 1964 reads thus:

“15. ‘Soap’ means all varieties of products known commercially as soap:

(1) Soap, household and laundry 20 per cent ad valorem

(2) Other sorts 20 per cent ad valorem

(Ad valorem rate of tariff varies from time to time as per amendments).”

Later it was amended in the year 1979 empowering the Government to grant exemption under Section 8 of the Act. The details thereof are not material for the purpose of these cases. It is seen that in 1954 in tariff entry 15-A “soap” means all varieties of the product known commercially as soap. Item I provided that soap in relation to its manufacture with the aid of power or of steam for heating, they were classified as plain bars, other sorts, toilet soaps and soap, other than household or laundry or toilet. While amending the entry in 1964 the

language couched therein as seen earlier is thus: 'soap' means all varieties of products known commercially as soap: (1) Soap, household and laundry (2) "Other sorts" and graded ad valorem tariff has been prescribed. It is seen that household and laundry soap was subjected to levy of tariff at a lesser rate than "other sorts" ad valorem. The contention of Shri Ganguli, the learned senior counsel for the Union is that statute always kept distinction between soap "household and laundry" and "other sorts". Toilet soap was kept in the packet of other sorts. Household and laundry soaps are being used for cleaning household articles and utensils and washing the clothes while toilet soaps are for bathing purpose. The latter compose of diverse varieties, based on personal liking and taste, which are being used. They are commercially known as other sorts but not household. The legislative history furnishes unimpeachable evidence that soaps used for household and laundry are compendiously treated as a class and are subjected to imposition of lesser tariff. They receive their colour from each other as compendiously known in the commercial parlance that the former are meant for use for household purposes while toilet soap are for use for bath and are subject to higher rate of tariff at par with soap for commercial and industrial purposes. They bear higher rate of tariff. The explanatory note appended to the Finance Bill, 1964 would furnish the legislative intentment to amend the tariff item and the treatment meted out to toilet soap for tariff purpose. It is accordingly understood by the department and also by the trade circles. The appellants too initially treated toilet soap as other sorts but later, on legal opinion, they claimed them as household soaps. The construction adopted by the Tribunal is consistent with the standard works on soaps. M/s Harish Salve and Ashok Desai, contended that in 1954 toilet soap was treated as an independent tariff sub-item and household and laundry soaps were treated as separate entity and separately subjected to varied rates of tariff. On amendment in 1964 toilet soap was omitted as a separate entity and was brought as part of the genus, namely, "soap household", as toilet soap is always a household soap. Therefore, the reliance by Revenue on varied rates of duty or departmental *contemporanea expositio* have no bearing. The object of classification does not show that toilet soap is not part of the genus "soap household" unless it is established otherwise.

3. The question, therefore, emerges whether "toilet soap" would be household soap within the meaning of tariff Item 15(1) of the Schedule. Undoubtedly true, as contended by Shri Ganguli, that preceding the amendment toilet soap was classified separately under sub-item (2) and assessed to duty accordingly. But by amendment the distinction was wiped out and toilet soap was brought into common hotchpotch. So the contention that the variety of products known commercially as soaps have been enumerated or included compendiously, retaining their original colour even after the amendment made in the Finance Act, 1964 and falls into "other sorts" same genus, *prima facie*, though attractive, on consideration from proper perspective and in its setting in common commercial parlance, soap "toilet" appears to fall in household in sub-item 1 of tariff Item 15 of the Schedule. It is true that the heading "soaps" are commercially known to be of diverse variety.

4. The provisions of the tariff do not determine the relevant entity of the goods. They deal whether and under what entry, the identified entity attracts duty. The goods are to be identified and then to find the appropriate heading, sub-heading under which the identified goods/products would be classified. To find the appropriate classification description

employed in the tariff nomenclature should be appreciated having regard to the terms of the headings read with the relevant provisions or statutory rules or interpretation put up thereon. For exigibility to excise duty the entity must be specified in positive terms under a particular tariff entry. In its absence it must be deduced from a proper construction of the tariff entry. There is neither intendment nor equity in a taxing statute. Nothing is implied. Neither can we insert nor can we delete anything but it should be interpreted and construed as per the words the legislature has chosen to employ in the Act or rules. There is no room for assumption or presumptions. The object of the Parliament has to be gathered from the language used in the statute. The contention that toilet soap is commercially different from household and laundry soaps, as could be seen from the opening words of Entry 15, needs careful analysis. It is well, at the outset, to guard against confusion between the meaning and the legal effect of an expression used in a statute. Where the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation which are merely presumption in cases of ambiguity in the statute. The court would interpret them as they stand. The object and purpose has to be gathered from such words themselves. Words should not be regarded as being surplus nor be rendered otiose. Strictly speaking there is no place in such cases for interpretation or construction except where the words of statute admit of two meanings. The safer and more correct course to deal with a question of construction of statute is to take the words themselves and arrive, if possible, at their meaning, without, in the first place, reference to cases or theories of construction. Let us, therefore, consider the meaning of the word soap "household". The word household signifies a family living together. In the simplistic language toilet soap being used by the family as household soap is too simplification to reach a conclusion. Therefore, one has to gather its meaning in the legal setting to discover the object which the Act seeks to serve and the purpose of the amendment brought about. The task of interpretation of the statute is not a mechanical one. It is more than mere reading of mathematical formula. It is an attempt to discover the intention of the legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts. It is also idle to expect that the draftsman drafted it with divine prescience and perfect and unequivocal clarity. Therefore, court would endeavour to eschew literal construction if it produces manifest absurdity or unjust result. In *Manmohan Das v. Bishun Das* [AIR 1967 SC 643], a Constitution Bench held as follows:

"The ordinary rule of construction is that a provision of a statute must be construed in accordance with the language used therein unless there are compelling reasons, such as, where a literal construction would reduce the provision to absurdity or prevent the manifest intention of the legislature from being carried out."

5. In *Ramavatar Budhaiprasad v. Assistant STO* [AIR 1961 SC 1325], another Constitution Bench was to consider whether "betel leaves" are "vegetable" within the meaning of Item 6 of Second Schedule to the M.P. Sales Tax Act. It was contended that betel leaves are vegetable and, therefore, they are exempted from the payment of sales tax. While construing Item 6, this Court held that the words must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense

meaning “that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it”. It is to be construed as understood in common language. Therefore, betel leaves were held to be not vegetable. The term ‘vegetables’ is to be understood as commonly understood denoting those classes of vegetable matter which are grown in kitchen gardens and are used for the table. In **Porritts & Spencer (Asia) Ltd. v. State of Haryana** [(1979) 1 SCR 545], this Court held that ‘Dryer felts’ are not textiles. In that context the principle of understanding the meaning of the word in common parlance was adopted. In **Indo International Industries v. CST** [(1981) 3 SCR 294, 297], this Court held:

“It is well-settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances resort should be had not to *the scientific and technical* meaning of the terms or expression used but to their *popular meaning*, that is to say, *the meaning attached to them by those dealing in them*. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted.”

In that case the clinical syringes manufactured and sold by the assessee were not considered as ‘glassware’ falling within Entry 39 of the First Schedule of the Act. In commercial sense glassware would never comprise of articles like clinical syringes etc., or specialised significance and utility.

6. In **Shri Bharuch Coconut Trading Co. v. Municipal Corpn. of the City of Ahmedabad** [1992 Supp (1) SCC 298], this Court applied the test as “would a householder when asked to bring some fresh fruits or some vegetables for evening meal, bring coconut too as vegetable? Obviously the answer is in the negative”. Again when a person goes to a commercial market ask for coconuts, “no one will consider brown coconut to be vegetable or fresh fruit, no householder would purchase it as a fruit. Therefore, the meaning of the word brown coconut, whether it is a green fruit has to be understood in its ordinary commercial parlance”. Accordingly it was held that brown coconut was not green fruit. In interpreting the statute the individual appraisal of the wisdom or unwisdom of a particular course consciously selected by the legislature is to be put aside. In **Hansraj Gordhandas v. H.H. Dave, Asstt. Collector of Central Excise & Customs** [AIR 1970 SC 755], this Court held that the operation of the statutory notification had to be judged not by the object which authority had in mind but by the words it had employed to effectuate the legislative interest. The question whether the cotton textiles manufactured by handlooms are entitled to exemption, this Court held in the positive. It may be noted that marketability of the product is an essential facet to attract dutiability of the goods under the Act. The general purpose or common use of the product though may not be conclusive but may be relevant to classify it in a tariff entry when it was not specifically enumerated in a particular entry or sub-entry. The construction of the word must yield in favour of promoting and effectuating the object and purpose of the Act. In **Dunlop India Ltd. v. Union of India** [(1976) 2 SCR 98], this Court found the entry not in residuary but placed in the parentage and relieved it from orphanage. In **Anant B. Timbodia**

v. Union of India [(1992) 1 SCALE 527], this Court was to consider whether imported cloves fell within Item 169 in List 8 of Appendix 6 or para 167 of Chapter 8 of Import and Export Policy 1990-93. Para 167 of Chapter 8 of Import Policy clearly provided the heading - Import of Spices includes cloves, cinnamon/cassia, nutmeg and mace. Therefore, it was held that import permit is necessary. The doctrine of popular sense or trade or its use in making medicine as crude drug was not accepted. Dictionary meaning or meaning given in Indian Pharmaceutical Codex was not accepted as given in view of specific enumeration. In **Superintendent of Central Excise, Surat v. Vac Metal Corpn. Ltd.** [AIR 1986 SC 1167], when the Revenue contended that metallised yarn fell within general tariff Entry 18 “yarn and synthetic fibres”, this Court held that Entry 15-A(2), First Schedule of Central Excises and Salt Act’s specific entry relating to articles made of plastics of “all sorts” and metallised yarn was exigible to lesser tariff duty.

7. The contention of the Revenue which finds favour with the Tribunal that the legislative history and memorandum appended to the Finance Bill would furnish aid to the construction of the word “household” soap is not apposite to the fact situation. When there is ambiguity in the word, statement of objects, the legislative history, the memorandum appended to the Bill and the speech of the mover of the Bill are relevant material to discover the intention of the legislature. In **Shashikant Laxman Kale v. Union of India** [(1990) 4 SCC 366, 376], this Court held that “for determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was made, the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady can be used for the limited purpose of appreciating the background and the antecedent state of affairs leading to the legislation. The memorandum explaining the provisions in the Finance Bill which were not part of the ‘notes on clauses’ appended to the Statement of Objects and Reasons of the Bill cannot be used to draw support therefrom as it is not an accurate guide of the final Act. **Ajoy Kumar Banerjee v. Union of India** [(1984) 3 SCC 127] relied on by Shri Ganguli in this behalf renders no assistance to the Revenue. Therein the question was the object of delegated legislation. Therein the memorandum appended to the Bill incorporating Section 16 of the General Insurance Business (Nationalisation) Act, 1972 was considered in the context of fixation of the pay scales of the employees. The doctrine of reading down, placing reliance on **Utkal Contractors and Joinery Pvt. Ltd. v. State of Orissa** [(1987) 3 SCC 279], also is of no assistance to the Revenue. The doctrine of reading down has been applied only to sustain the constitutionality of the statute which question is not before us. There is no quarrel with the proposition that in ascertaining the meaning of the word or a clause or sentence in the statute in its interpretation, everything which is logically relevant should be admissible. It is no doubt true that the doctrine of *noscitur a sociis*, meaning thereby, that it is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them i.e. when two or more words which are susceptible of analogous meaning are clubbed together, they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general is restricted to a sense analogous to a less general. The philosophy behind it is that the meaning of the doubtful words may be ascertained by reference to the meaning of words associated with it. This doctrine is broader

than the doctrine of *ejusdem generis*. This doctrine was accepted by this Court in a catena of cases but its application is to be made to the context and the setting in which the words came to be used or associated in the statute or the statutory rule. Equally the doctrine of *contemporanea expositio* is also being invoked to cull out the intendment by removing ambiguity in its understanding of the statute by the executive. This Court in a latest case **Indian Metals & Ferro Alloys Ltd. v. Collector of Central Excise** [1991 Supp (1) SCC 125], cited all the decisions up to date and applied the doctrine to the understanding by the Revenue of the provisions in Income Tax Act. In **Desh Bandhu Gupta & Co. v. Delhi Stock Exchange Assn. Ltd.** [(1979) 3 SCR 373], this Court held that this principle can be invoked, though the same will not always be decisive on the question of construction. But the contemporaneous construction placed by administrative or executive officers charged with executing the statute, although not controlling, is nevertheless entitled to considerable weight as highly persuasive. We may also add that if the interpretation is erroneous, court would without hesitation refuse to follow such construction. This Court also equally expressed the view that its application was in restricted sense to ancient legislation in **J.K. Cotton Spinning and Weaving Mills Ltd. v. Union of India** [1987 Supp SCC 350] and in **Doypack Systems Pvt. Ltd. Case [Doypack Systems (P) Ltd. v. Union of India** (1988) 2 SCR 962, 1000]. In **State of M.P. v. G.S. Dall and Flour Mills** [1992 Supp (1) SCC 150, 153], this Court doubted the application of the doctrine of *contemporanea expositio* as given to the construction or its applicability to a recent statute that too in the first few years of its enforcement. In this case also the question whether toilet soap is a household soap had arisen within a short period after the Amendment Act, 1964 came into force. Therefore, the understanding by the executive and its interpretation in bringing toilet soap in sub-item (2) “other sorts” instead of item (1) “household” being of formative period of statutory operation the doctrine became inapplicable.

8. The ratio in **Indian Metal** case therefore, is inapplicable. As rightly contended by Shri Ganguli that the doctrine of placement of a particular goods in a particular tariff item or residuary i.e. parentage or orphanage i.e. in placement of toilet soaps in either sub-items is not attracted to the facts as it is not a case of residuary items but of sub-classification within the same item.

9. Thus considered in the legal setting and commercial parlance we are of the considered view that “toilet soap” being of everyday household use for the purpose of the bath and having removed its separate identity which it enjoyed preceding amendment and having been not specifically included in “other sorts”, it took its shelter in commercial parlance under “household”. As stated if anybody goes to the market and asks for toilet soap he must ask only for household bathing purpose and not for industrial or other sorts. Even the people dealing with it would supply it only for household purpose. It may be true that household consists of soap used for cleaning utensils, laundry used for cleaning soiled clothes and soap toilet is used for bathing but household is compendiously used, toilet soap is used only by the family for bathing purpose. Individual preference or choice or taste of a particular soap for bath is not relevant. The soap “toilet” would, therefore fall within the meaning of the word “household” in sub-item (1) of Item 15 of the Schedule. The classification shall accordingly be adopted. The appeals are accordingly allowed. The cases are remitted to the primary

authority to deal with the matters accordingly. We do not propose to go into the question of refund as it is a matter to be dealt with by the authorities concerned in accordance with the law. The appellants shall have to apply for refund and the authorities shall be required to deal with it in accordance with law. It is for the authority, therefore, to decide the question as per law.

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Biswambhar Singh v. State of Orissa

1954 SCR 842 : AIR 1954 SC 139

S.R. DAS, J. - These three appeals which have been heard together raise the same or similar questions. Appeal No. 167 of 1953 relates to Hemgir of which the appellant Shri Biswambhar Singh is the proprietor. It comprises an area of about 360 square miles out of which 145 square miles are covered by forests. Appeal No. 168 of 1953 is by the appellant Shri Janardhan Singh who is the proprietor of Sarapgarh comprising an area of about 45 square miles. Appeal No. 169 of 1953 relates to Nagra the proprietor whereof is the appellant Shri Sibnarayan Singh Mahapatra. It comprises an area of 545 square miles including 109 square miles of forests.

2. All these proprietors are the descendants of Bhuiyan Chiefs and they claim that their ancestors were independent ruling chiefs of their respective principalities. There is no dispute that in course of time they became subordinate vassals of the Raja of Gangpur. It appears from *Connolly's Report*, *Mukherjee's Report* and *Ramdhyani's Report* that neither the Raja of Gangpur nor any of these proprietors was anxious to have their respective rights defined specifically and so the settlement officers made no attempt to do so with the result that their status vis-a-vis the Raja of Gangpur remains undertermined. There is no evidence on record that the ancestors of the proprietors of Hemgir and Sarapgarh ever received or accepted any Sanad or grant from the Raja of Gangpur. There is, however, evidence that the ancestors of the proprietor of Nagra had executed an Ekrarnama in favour of the Raja of Gangpur as to which more will be said hereafter. There is no dispute that the ancestors of each of these proprietors paid every year to the Raja of Gangpur what has been called "Takoli" and the present appellants are continuing this annual payment. This payment has sometimes been called a tribute and sometimes even rent as in the order dated 9th August, 1878, of A.C. Mangles, the Commissioner of Chota Nagpur. These considerable properties are and have been heritable and the rule of primogeniture prevails.

3. By a certain process beginning with Agreement of Integration made in December 1947 and ending with the States' Merger (Governor's Province) order made on the 27th July, 1949 by the then Governor-General of India in exercise of the powers conferred on him by Section 290-A of the Government of India Act as amended by the Indian Independence Act, 1947 all the feudatory States of Orissa merged into and became part of the State of Orissa. In consequence of such merger the area comprised in Hemgir, Sarapgarh and Nagra as parts of the merged territories became parts of the State of Orissa.

4. On 17th January, 1950, a bill which eventually became the Orissa Estates Abolition Act was introduced in the Orissa Legislature. The Constitution of India came into operation on 26th January, 1950. The bill having been passed by the Orissa Legislature on 28th September, 1951, the Governor of Orissa reserved the same for the consideration of the President. On 23rd January, 1952, the bill received the assent of the President and became law as Orissa Act, 1 of 1952. An Act called the Orissa Estates Abolition (Amendment) Act 1952 was passed on 5th July, 1952 and was assented to by the President on 27th August, 1952.

5. The long title of the Act is as follows:

“An Act to provide for the abolition of all the rights, title and interest in land of intermediaries by whatever name known, including the mortgagees and lessees of such interests, between the *raiyat* and the State of Orissa, for vesting in the said State of the said rights, title and interest and to make provision for other matters connected therewith.”

There are two preambles to the Act which recite:

“Whereas in pursuance of the directive principles of State policy laid down by the Constitution of India it is incumbent on the State to secure economic justice for all and to that end to secure the ownership and control of all material resources of the community so that they may best subserve the common good, and to prevent the concentration of wealth and means of production to the common detriment;

And whereas in order to enable the State to discharge the above obligation, it is expedient to provide for the abolition of all the rights, title and interest in land of intermediaries by whatever name known, including the mortgagees and lessees of such interest, between the *raiyat* and the State of Orissa, for vesting in the said State of the said rights, title and interest and to make provision for other matters connected therewith;”

The material parts of the definitions of “Estate” and “Intermediaries” set forth in Section 2 are as follows:

“(g) ‘estate’ ... in relation to merged territories means any collection of Mahals or villages held by the same intermediary which has been or is liable to be assessed as one unit to land revenue whether such land revenue be payable or has been released or compounded for or redeemed in whole or in part.

(h) ‘Intermediary’ ... with reference to the merged territories means a *maufidar* including the Ruler of an Indian State merged with the State of Orissa, a Zamindar, Ilaquedar, Khorposhdar or Jagirdar within the meaning of the *Wajib-ul-arz*, or any sanad, deed or other instrument, and a gaontia or a thikadar of a village in respect of which by or under the provisions contained in the *Wajib-ul-arz* applicable to such village the *maufidar*, gaontia or the thikadar, as the case may be, has a hereditary right to recover rent or revenue from persons holding land in such village”.

Section 3(1) runs thus:

“3. (1) The State Government may, from time to time by notification, declare that the Estate specified in the notification has passed to and become vested in the State free from all encumbrances.”

6. As was to be expected the constitutionality of the Act was challenged in a number of petitions under Article 226 of the Constitution, but the Orissa High Court pronounced in favour of the validity of the Act. That decision has since been upheld by this Court in Civil Appeal No. 71 of 1953. During the pendency of the writ petitions before the High Court, the State Government on 27th November, 1952 issued a number of notifications under Section 3 covering a large number of estates including those of the three appellants before us and called upon them to deliver up possession. These appellants thereupon filed three separate writ petitions praying in each case for a writ in the nature of a writ of mandamus directing the

State of Orissa and the Collector of Sundargarh not to interfere with their possession of their respective estate or to intermeddle with it or to give effect to the provisions of the Act. These applications were opposed by the State of Orissa.

7. The several grounds taken in support of the petitions were, very broadly speaking, (a) that they were not intermediaries, (b) that their properties were not estates, (c) that the forest areas within their properties were not estates, (d) that the Act did not come under Article 31-A of the Constitution and was not entitled to its protection, (e) that the Act was discriminatory and offended against the provisions of Article 14. The then Chief Justice of Orissa, again very broadly speaking, decided each of these issues against the appellants and was of opinion that the petitions should be dismissed. Narasimham, J., agreed with the Chief Justice that the appellants were intermediaries and that immovable properties of the petitioners were estates, that the forest areas were included in their estates but he took a different view on two important questions. In his view the Act was not covered by Article 31-A and was not entitled to its protection and Section 3 of the Act contravened Article 14 of the Constitution and as it was the key section to the whole Act the entire Act was invalid in its application to the immovable properties of the appellants although it was valid in its application to other estates which come with Article 31-A(2)(a). The learned Judge was accordingly of the opinion that the appellants were entitled to the reliefs prayed for by them. In view of this difference of opinion the applications were directed to be posted before a third Judge for hearing on fresh argument. Mahapatra, J., before whom the applications were re-argued agreed substantially with the learned Chief Justice that the Act was protected by Article 31-A and that in any case it did not violate the equal protection clause of the Constitution. In the result the applications were dismissed. Hence the present appeals.

8. Section 3(1) authorises the State Government to issue a notification declaring that the Estate specified therein has passed to the State. The State Government has no power to issue a notification in respect of any property unless such property is an “estate” as defined in Section 2(g). A perusal of the relevant part of that definition which has been quoted above will at once show that in order to be an “estate” the collection of *mahals* or villages must, amongst other things, be held by the same “Intermediary”. An “Intermediary”, according to the definition in Section 2(h), must be, amongst other things, “a Zamindar, Ilaquedar, Khorposhdar, or Jagirdar within the meaning of the Wajib-ul-arz or any Sanad, deed or other instrument”. The point to note is that in order to be an “intermediary” within the definition, it is not enough, if the person is a Zamindar, Ilaquedar, Khorposhdar or Jagirdar simpliciter but he must fall within one or other of the categories “within the meaning of the Wajib-ul-arz or any Sanad, deed or other instrument”. Accordingly, the first head of argument advanced before us by learned counsel for the appellants is that the State Government had no authority to issue the notification because they are not intermediaries and, therefore, their properties are not estates. This argument obviously proceeds on the footing that the Act is intra vires the Constitution and if it succeeds then no question of constitutionality will arise.

9. We have had the advantage of perusing the judgment prepared by our learned brother Bose and we agree, substantially for reasons stated therein, that the appellants Shri Biswambhar Singh and Shri Janardhan Singh are not intermediaries as defined in Section 2(h) and their respective properties, namely, Hemgir and Sarapgarh are not “estates” within the

meaning of Section 2(g) and that that being so the State Government had no jurisdiction or authority to issue any notification under Section 3 with respect to their properties. In this view of the matter no constitutional questions need be considered in Appeals Nos. 167 and 168 of 1953, which will, therefore, have to be allowed.

10. Appeal No. 169 of 1953 filed by the appellant Shri Sibnarayan Singh Mahapatra of Nagra appears to us to stand on a different footing. In para 13 of the counter-affidavit filed by the State in opposition to this appellant's petition specific reference was made to the Rubakari in the Court of JFK Hewitt, Commissioner of Chota Nagpur, dated 10th March, 1879. At the hearing of the petition that Rubakari was filed in court without any objection. It is Document No. 6(g). Evidently the Commissioner sent for both the Raja of Gangpur and Balki Mahapatra of Nagra and after referring to the then outstanding disputes between the then Raja of Gangpur and Baiki Mahapatra, the predecessor-in-title of the appellant Shri Sibnarayan Singh Mahapatra this Rubakari records that "it was agreed upon that from future Baiki Mahapatra would be paying to the Raja of Gangpur Rs 700 as yearly rent from the year 1935 and thereafter instead of Rs 425 which he used to pay. This amount of Rs 700 is the fixed rent". The words *rent* and *fixed rent* are significant. It further appears that Rubakari decided that "Balki Mahapatra and his heirs and successors should ever "hold" possession over this Nagra State Zamindari on the aforesaid fixed annual rent and nothing more would be demanded from him except marriage Pancha and Dashra Panch which according to local custom and usage he can pay.... The claim of the Raja about Rs 200 as Raja Bijoy should be discontinued and the Raja should stop granting *patta* to the Gauntias of Nagra". The Rubakari then concluded thus:

"This Ekrarnama being signed by them by their own pen was filed before me and they agreed to abide by the terms mentioned in the Ekrarnama. So it has been ordered that copy of it may be sent to the Raja of Gangpur and Balki Mahapatra of Nagra for information and guidance."

It is thus quite clear from the above Rubakari that as far back as 1879 an Ekrarnama had been executed both by the then Raja of Gangpur and Balki Mahapatra of Nagra recording the terms on which the latter would "hold" possession of the Nagra Zamindari, namely, that he must pay a fixed annual rent besides certain customary dues.

11. Years later, to wit on 29th March, 1943 the Dewan of Gangpur State wrote a letter to the Zamindar of Nagra Estate calling upon him to show cause why the *takoli* should not be enhanced. This letter is Document No. 6(r-2). The Zamindar of Nagra to whom this letter was addressed was no other than the appellant Shri Sibnarayan Singh Mahapatra. On 19th July, 1943, a long reply was sent by the latter. In the heading of this reply after the name of the appellant is added the description "Zamindar of Nagra". In para 3(XV) reference is made to the fact that *takoli* had been fixed in perpetuity and had been finally settled in the year 1879. The whole of Rubakari of J.F.K. Hewitt is set out in extenso in para 14 of this reply. Para 15 states:

"That from the Rubakari proceeding of Mr Hewitt it will appear that the then Raja Raghunath Sekhar Deo of Gangpur and Babu Balki Mahapatra, Zamindar, Nagra, duly signed a deed of compromise in which it has been, clearly and in

unequivocal terms, embodied that Gangpur Raja and his successors will be bound by that term and Nagra should only pay Rs 700 as Takoli every year and nothing more and this Takoli should remain fixed for ever.”

Reference is then made in para 17 to the proceedings of 29th June, 1891 before W.H. Grimley, the then Commissioner, which is marked as Document No. 6(L). This also refers to the settlement made by J.F.K. Hewitt in 1879. There is, therefore, no getting away from the fact that an Ekrarnama had been executed by the Raja of Gangpur and Balki Mahapatra, the predecessor-in-title of this appellant, under which Balki Mahapatra “held” the estate of Nagra upon terms of payment of an annual *rent*. Indeed, the appellant Shri Sibnarayan Singh Mahapatra firmly takes his stand on the Ekrarnama and its terms.

12. A question has been raised that the original Ekrarnama of 1879 has not been filed and as no evidence was led to explain the reason for its non-production, secondary evidence of its contents is inadmissible. We see no force in this belated contention. The Rubakari and the other documents referred to above were filed without any objection as to their admissibility on the ground that they are merely secondary evidence of the contents of the Ekrarnama. Indeed, in the matter of production and proof of documents the parties undoubtedly proceeded a little informally. The following extract from the judgment of the learned Chief Justice will make the position clear:

“As regards some of them, neither the originals, nor the authenticated copies have been filed before us, but typed paper- books containing unauthenticated copies, have been filed by both sides and have been treated as evidence, with the mutual consent of the parties. Those typed paper-books have accordingly been placed on the record. Some annual administration reports of the Gangpur State as well as certain working plans for the reserved forests of Hemgir, Nagra and other Zamindaris as also the Forest Act of Gangpur State have been filed and received without any objection from either side. Quite a number of further documents have been produced on behalf of the State as per the list of documents filed along with two affidavits dated 9th and 10th February, 1953, and certain annexures have been filed on behalf of the petitioners along with an affidavit dated 11th February, 1953. All these have been without objection, treated as part of the record excepting one document to be presently noticed. The only document whose reception has been objected to is what is referred to as the Mukherjee’s Settlement Report, Item 18 in the list of documents filed on behalf of the State.”

Further and strictly speaking the appellant Shri Sibnarayan Singh Mahapatra having in his own letter dated 19th July, 1943 referred to above admitted the existence and contents of the Ekrarnama, secondary evidence is, strictly speaking, admissible under Section 65(b) of the Indian Evidence Act. It may also be mentioned here that in the grounds of appeal set forth in the petition for leave to this Court no grievance was made that secondary evidence of the contents of the Ekrarnama had been wrongly let in. In the circumstances, this appellant cannot now be heard to complain of admission of inadmissible evidence as to the terms of the Ekrarnama. Apart from this, the recital of the Ekrarnama and its terms in an ancient public document like the Rubakari whose authenticity has not been, nor indeed could be, doubted

furnishes strong evidence of the existence and genuineness of the settlement arrived at by the parties.

13. Proceeding, then, on the footing that Balki Mahapatra and his descendants including the present proprietor held the Nagra Zamindari estate under the Ekrarnama on the terms of payment of a fixed annual rent there can arise no question as to the real status of the proprietor of Nagra vis-a-vis the Raja of Gangpur since 1879, whatever the position may have been prior thereto. It is, therefore, quite clear that the proprietors of Nagra are Zamindars within the meaning of the Ekrarnama, call it a "deed" or "other instrument" as one likes. In this view of the matter the appellant Shri Sibnarayan Singh Mahapatra is an intermediary as defined in Section 2(h) of the Act and his estate is an "estate" within the meaning of Section 2(g) and consequently there is no escape from the conclusion that the State Government had ample jurisdiction or authority to issue a notification under Section 3 of the Act.

14. For the above reasons and those set out in the judgment of the learned Chief Justice we are of the opinion that the forest lands are included within the estate held by the Zamindar of Nagra under the Raja of Gangpur.

15. In the view that the Zamindar of Nagra is an intermediary and his territories are an estate it must follow that the appellant Shri Sibnarayan Singh Mahapatra cannot get any relief if the Act is valid. Learned counsel appearing in support of his Appeal No. 169 of 1953 then falls back on the question of the constitutionality of the Act. Here he has a preliminary hurdle to get over, for if the Act is covered and protected by Article 31-A then the Act cannot be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by any provision of Part III of the Constitution. It has, therefore, been the endeavour of learned counsel for the appellant before us, as it was before the High Court, that Nagra was not an "estate" as defined in Article 31-A(2)(a). The learned Chief Justice took the view that Nagra was an estate as defined and consequently the Act was within the protection of Article 31-A but Narasihmam, J., took the opposite view. The third Judge Mahapatra, J., agreed with the learned Chief Justice. In the view we take on the question of the alleged violation of the provisions of Article 14 it is not necessary for us, for the purpose of disposing of this appeal, to enter into a long discussion on the applicability of Article 31-A to the impugned Act.

16. On the assumption, then, that Article 31-A is out of the way the Act in question becomes liable to attack both under Article 31(2) and Article 14. Learned counsel appearing before us did not call in aid Article 31(2) but confined himself to Article 14. In the High Court Article 14 was invoked in two ways, namely, (1) that the provision for assessing and fixing the amount of compensation is discriminatory, and (2) that Section 3 which gives an unfettered discretion to the State Government to issue or not to issue notification with respect to an estate is discriminatory in that it enables the State Government to issue notification with respect to those zamindars who opposed the ruling party in the election and to refrain from doing so with respect to others who were loyal to that party.

The objection as to discrimination founded on the manner of assessment of the compensation has not been pressed before us and learned counsel confined his arguments to the second ground. Here again the learned Chief Justice held that there was no violation of

Article 14 while Narasimham, J., took the opposite view. Mr Justice Mahapatra, however, agreed with the Chief Justice. We find ourselves in agreement with the majority view.

17. The long title of the Act and the two preambles which have been quoted above clearly indicate that the object and purpose of the Act is to abolish *all* the rights, title and interest in land of intermediaries by whatever name known. This is a clear enunciation of the policy which is sought to be implemented by the operative provisions of the Act. Whatever discretion has been vested in the State Government under Section 3 or Section 4 must be exercised in the light of this policy and, therefore, it cannot be said to be an absolute or unfettered discretion, for sooner or later *all* estates must perforce be abolished. From the very nature of things a certain amount of discretionary latitude had to be given to the State Government. It would have been a colossal task if the State Government had to take over all the estates at one and the same time. It would have broken down the entire administrative machinery. It could not be possible to collect sufficient staff to take over and discharge the responsibilities. It would be difficult to arrange for the requisite finance all at once. It was, therefore, imperative to confer some discretion on the State Government. It has not been suggested or shown that in practice any discrimination has been made. If any notification or order is made, not in furtherance of the policy of the Act but in bad faith and as and by way of discrimination such notification or order, which by virtue of Article 13(3) comes within the definition of "Law", will itself be void under Article 13(2). Learned counsel appearing for the appellant has not shown, by advancing any cogent and convincing argument, how and why the reasonings adopted by the majority of the learned Judges below are faulty or untenable. In the premises, it is not necessary for us to pursue this matter further beyond saying that we find ourselves in agreement with the conclusions of the majority of the learned Judges of the High Court.

18. Learned counsel for the appellant referred to another point, namely, that the amending Act altering the definition of the date of vesting was invalid as there was no public purpose for taking away the vested right that the original definition of that expression in the Act had given to the persons whose estates had been notified. Learned counsel, however, did not seriously press this objection and nothing further need be said about it.

19. The result, therefore, is that Appeals Nos. 167 and 168 of 1953 are allowed with costs and Appeal No. 169 of 1953 is dismissed with costs.

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M/s. Hiralal Rattanlal v. State of U.P.

(1973) 1 SCC 216

K.S. HEGDE, J. - 2. The facts of the case lie within a narrow compass. The appellants are dealers in foodgrains including cereals and pulses especially split or processed foodgrains and dal. The dispute in this case centres round the question whether the Government is competent to levy sales-tax on the purchases made by the appellants of split or processed foodgrains and dal under the provisions of the United Provinces Sales Tax Act, 1948 as amended by the Uttar Pradesh Sales Tax (Amendment and Validation) Act, 1970.

3. Under the Sales Tax Act as it originally stood (which will hereinafter be referred to as the principal Act), the purchases of split or processed foodgrains and dal by dealers were sought to be brought to tax under Section 3-D of the principal Act read with the notification issued. The validity of the levy was challenged by Tilock Ghand Prasan Kumar, the appellant in Civil Appeal No. 1625 of 1971 in respect of the assessment made on him for the assessment year 1966-67 by assessment order, dated June 30, 1968 by means of a writ petition under Article 226 of the Constitution. The High Court of Allahabad struck down the levy holding that the dal purchased by the petitioner before it could not be said to be a commodity essentially different from the arhar dal purchased by the dal mills and accordingly the purchases effected by the petitioner could not be regarded as the first purchases. This decision is reported in 25 STC 118. Thereafter the Governor of U. P. issued an ordinance known as Uttar Pradesh Sales Tax (Amendment and Validation) Ordinance, 1970 (U. P. Ordinance No. 2 of 1970) adding inter alia Explanation II, to Section 3-D as well as Section 7 to the principal Act. This ordinance was later on enacted as an Act to which we have already made reference. The provisions of the Amending Act are identical with the provisions in the Ordinance. Though at the time of the institution of the writ petitions from which these appeals arise, the Ordinance had not yet been made into the Act, the Amending Act came into force during the pendency of the writ petitions. Hence we shall refer to the provisions of the Amending Act.

4. Under the principal Act a dealer is defined in Section 2(c) as:

“ ‘Dealer’ means any person or association of persons carrying on the business of buying or selling goods in Uttar Pradesh, whether for commission, remuneration or otherwise, and includes any firm or Hindu Joint family and any society, club or association which sells goods to its members and also includes any department of the State Government or the Central Government which carries on such business and any undertaking engaged in the generation or distribution of electrical energy or any other form of power.”

5. Section 3 of the Act provides for the levy of multi-point tax. The section of that section which is material for our present purpose reads:

“Subject to the provisions of this Act, every dealer shall, for each assessment year, pay a tax at the rate of two naye paise per ruppee on his turnover of such year, which shall be determined in such manner as may be prescribed.....”

6. Section 3-A provides for a single point taxation in respect of sale of certain foods. At present we are only concerned with Section 3-D (1). It provides:

“Except as provided in sub-section (2), there shall be levied and paid, for each assessment year or part thereof, a tax on the turnover, to be determined in such manner as may be prescribed, of first purchases made by a dealer or through a dealer, acting as a purchasing agent in respect of such goods or class of goods, and at such rates, not exceeding two paise per rupee in the case of foodgrains, including cereals and pulses, and five paise per rupee in the case of other goods and with effect from such date, as may, from time to time, be notified by the State Government in this behalf.”

7. The notification issued under Section 3-D of the principal Act on October 1, 1964 (Notification No. S- T. 7122/X) provided that with effect from October 1, 1964, the turn-over of purchases in respect of goods mentioned therein shall be liable to tax under Section 3D at the rate mentioned:

“Foodgrains	1.5 paise per rupee on first purchases.”
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8. On the basis of Section 3-D read with the notification, as mentioned earlier, the authorities under the Act sought to bring to tax under the principal Act the first purchases of processed or split foodgrains including dal on the ground that they constituted a separate item of foodgrains quite independent of the unprocessed or unsplit foodgrains. This view, as seen above, was negated by the High Court. After the decision of the High Court, the principal Act was amended. Under the Amending Act one more Explanation viz. Explanation II was added to Section 3-D.

“For the purposes of this sub-section, split or processed food-grains, such as in the form of dal shall be deemed to be different from unsplit or unprocessed foodgrains, and accordingly, nothing in this sub-section shall be construed to prevent the imposition, levy or collection of the tax in respect of the first purchases of split or processed foodgrains merely because tax had been imposed levied or collected earlier in respect of the first purchases of those foodgrains in their unsplit or unprocessed form.”

9. The Amending Act also added a validating provision to the principal Act viz. Section 7. That section reads:

“Notwithstanding any judgment, decree or order of any court or tribunal to the contrary, every notification issued or purporting to have been issued under Section 3-A or Section 3-D of the principal Act before the commencement of this Act shall be deemed to have been issued under that section as amended by this Act and shall be so interpreted and be deemed to be and always to have been as valid as if the provisions of this Act were in force at all material time; and accordingly anything done or any action taken (including any order made, proceeding taken, jurisdiction exercised, assessment made, or tax levied, collected or paid purporting to have been done or taken in pursuance of any such notification) shall be deemed to be, and always to have been, validly and lawfully done or taken.”

10. It will be necessary later on to consider what was the vice that the Legislature intended to cure by the Amending Act. The sequence of events itself discloses the purpose of the Ordinance as well as the Amending Act. That apart, the statement of objects and reasons which can be usefully looked into for the purpose of finding the vice that the Legislature was trying to provide against reads thus:

“Sections 3-A and 3-D of the U. P. Sales Tax Act, 1948 provide for single point taxation. Under the former section the tax is levied on the turnover of sales, while under the latter the tax is levied on the turnover of first purchases. Plain and ornamented glass bangles are subject to tax separately under Section 3-A. Similarly, unsplit and split pulses are separately subject to tax under Section 3-D. It has been held by the High Court in one case that tax cannot be levied separately on plain and ornamented glass bangles under Section 3-A and in another that tax cannot be levied separately on unsplit and split pulses under Section 3-D because in their opinion plain glass bangles are not a commodity different from ornamented glass bangles and similarly unsplit pulses and split pulses are also not two different commodities. These judgments have created legal difficulties in the assessment and collection of tax on the aforesaid commodities. Besides, the dealers have started applying for the refund of tax already collected on these commodities. This will have serious repercussions on the State’s revenue. Accordingly, it is proposed to amend Sections 3-A and 3-D to provide for the levy of tax on the aforesaid commodities as separate items. It is also proposed to validate the past levy, assessment and collection of tax on the above commodities.....”

11. The appellants challenged the validity of Explanation II of Section 3-D as well as Section 7 introduced by the Amending Act before the High Court of Allahabad in petitions under Article 226 of the Constitution. They further took the plea that the amendments incorporated were not effective enough to bring to tax the first purchases of split or processed foodgrains and pulses. The High Court rejected these contentions, and dismissed the writ petitions. Thereafter these appeals have been brought after obtaining certificates from the High Court.

12. The validity of the levy in question was challenged on the following grounds:

- (1) That no fresh levy can be imposed by a retrospective legislation;
- (2) That the Legislature cannot in case of legislation of the nature with which we are concerned, separate into independent commodities split and unsplit pulses or processed or unprocessed pulses and on that footing seek to impose tax twice over on the same commodity in respect of the goods liable to be taxed at a single point;
- (3) That the newly added Explanation to Section 3-D read with Section 7 of the Amending Act amounts to an unlawful usurpation of judicial power by the Legislature;
- (4) The newly added Explanation II to Section 3-D is violative of Article 14 of the Constitution. There is no rational basis for separating split or processed pulses from unsplit or unprocessed pulses;
- (5) On a true construction of Explanation II to Section 3-D no fresh charge can be held to have been imposed;

(6) No levy of purchase tax can be made without a fresh Notification under Section 3-D read with Explanation II showing therein separately foodgrains unsplit or unprocessed as well as food-grains split or processed; and

(7) That the power conferred on the Government under Section 3-D amounts to an excessive delegation of legislative power and consequently void.

13. The source of the legislative power to levy sales or purchase tax on goods is Entry 54 of the List II of the Constitution. It is well settled that subject to constitutional restrictions a power to legislate includes a power to legislate prospectively as well as retrospectively. In this regard legislative power to impose tax also includes within itself the power to tax retrospectively. In the last mentioned case it was specifically decided that where the Legislature can make a valid law, it can provide not only for the prospective operation of the material provisions of the said law but it can also provide for the retrospective operation of the said provisions.

14. We see no force in the second contention advanced on behalf of the appellants. As seen earlier the general rule as enunciated in Section 3 is multi-point tax—sales tax or purchase tax; but power is conferred on the Government to select any transaction in respect of such goods or class of goods as the Government may choose to levy a single-point sales tax or purchase tax. It is open to the Legislature to define the nature of the goods, the sale or purchase of which should be brought to tax. Legislature was not incompetent to separate the processed or split pulses from the unsplit or unprocessed pulses and treat the two as separate and independent goods.

15. In *Jagannath v. Union of India* [AIR 1962 SC 148], a question arose for decision whether it was open to the Legislature to impose separate excise duty on tobacco leaf as well as on broken leaf of tobacco. This Court overruled the contention that such a levy was invalid. It held that it was open for the Legislature to separate the two items. We see no basis for the contention that the Legislature cannot for the purpose of tax under the Act separate the split or processed pulses from the unsplit or unprocessed. The power of the Legislature to specify the nature of the goods the sale or purchase of which, it will bring to tax is very wide.

16. Now coming to point No. 3, there is no justification for the contention that the Legislature has usurped any judicial power. The Legislature has not purported either directly or by necessary implication to overrule the decision of the Allahabad High Court in *Tilock Chand Prasan Kumar* case. On the other hand it has accepted that decision as correct; but has sought to remove the basis of that decision by retrospectively changing the law. This Court has pointed out in several cases the distinction between the encroachment on the judicial power and the nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the Legislature but the latter is within its permissible limits. From the statement of objects and reasons, it appears that in the principal Act, the legislative intent was not clearly brought out. By means of the Amending Act the Legislature wanted to make clear its intent.

17. The fourth contention also appears to be without any basis. It is true that the taxing statutes are not outside the scope of Article 14 of the Constitution. But the Legislature has wide powers of classification in the case of taxing statutes.

18. In *Jagamtath* case, this Court ruled that there was no unconstitutional discrimination in the imposition of the excise duty on tobacco in the broken leaf form. Therein it was observed that tobacco in the broken leaf form was capable of being used in the manufacture of biris while tobacco in the whole leaf form could not be so used economically; the two forms of tobacco were different by the test of capability of user; the tariff is not based either wholly or even primarily by reference to the use of tobacco and there was a clear and unambiguous distinction between tobacco in the whole leaf form covered by Item 5 and tobacco in the broken leaf form covered by Item 6 which had a reasonable relation to the object intended by the imposition of the tariff.

19. In *Khandige Sham Bhat v. The Agricultural Income Tax Officer* [AIR 1963 SC 591], this Court laid down the tests to find out whether there are discriminatory provisions in a taxing statute. Therein this Court observed that in order to judge whether a law was discriminatory what had primarily to be looked into was not its phraseology but its real effect. If there was equality and uniformity within each group, the law could not be discriminatory, though due to fortuitous circumstances in a peculiar situation some included in a class might get some advantage over others, so long as they were not sought out for special treatment. Although taxation laws could be no exception to this rule, the courts would, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of classification so long as there was no transgression of the fundamental principles underlying the doctrine of classification. The power of the Legislature to classify must necessarily be wide and flexible so as to enable it to adjust its system of taxation in all proper and reasonable ways.

20. It must be noticed that generally speaking the primary purpose of the levy of all taxes is to raise funds for public good. Which person should be taxed, what transaction should be taxed or what goods should be taxed, depends upon social, economic and administrative considerations. In a democratic set up it is for the Legislature to decide what economic or social policy it should pursue or what administrative considerations it should bear in mind. The classification between the processed or split pulses and unprocessed or unsplit pulses is a reasonable classification. It is based on the use to which those goods can be put. Hence, in our opinion, the impugned classification is not violative of Article 14.

21. A feeble attempt was made to show that the retrospective levy made under the Act is violative of Article 19(1)(f) and (g). But we see no substance in that contention. As seen earlier, the amendment of the Act was necessitated because of the Legislature's failure to bring out clearly in the principal Act its intention to separate the processed or split pulses from the unsplit or unprocessed pulses. Further the retrospective amendment became necessary as otherwise the State would have to refund large sums of money. The contention that the retrospective levy did not afford any opportunity to the dealers to pass on the tax payable to the consumers, has not much validity. The tax is levied on the dealer; the fact that he is allowed to pass on the tax to the consumers or he is generally in a position to pass on the same to the consumer has no relevance when we consider the legislative competence.

22. It was next urged that on a true construction of Explanation II to Section 3-D, no charge can be said to have been created on the purchases of split or processed pulses. It was firstly contended that an Explanation cannot extend the scope of the main section, it can only

explain that section. In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear. Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so-called proviso has substantially altered the main section.

23. In *State of Rajasthan v. Leela Jain* [AIR 1965 SC 1296], this Court observed:

“The primary purpose of the proviso now under consideration is, it is apparent, to provide a substitute or an alternative remedy to that which is prohibited by the main part of Section 4(1). There is, therefore, no question of the proviso carving out any portion out of the area covered by the main part and leaving the other part unaffected. What we have stated earlier should suffice to establish that the proviso now before us is really not a proviso in the accepted sense but an independent legislative provision by which to a remedy which is prohibited by the main part of the section, an alternative is provided. It is further obvious to us that the proviso is not co-extensive with but covers a field wider than the main part of Section 4(1).”

24. In *Bihta Co-operative Development Cane Marketing Union Ltd. v. Bank of Bihar*, [AIR 1967 SC 389], this Court was called upon to consider the Explanation to Section 48(1) of the Bihar and Orissa Co-operative Societies Act, 1935. Therein this Court observed:

“The question then arises whether the first Explanation to the section widens the scope of sub-section (1) of Section 48 so as to include claims by registered societies, against non-members even if the same are not covered by clause (c).”

25. On the basis of the language of the Explanation this Court held that it did not widen the scope of clause (c). But from what has been said in the case, it is clear that if on a true reading of an Explanation it appears that it has widened the scope of the main section, effect be given to legislative intent notwithstanding the fact that the Legislature named that provision as an Explanation. In all these matters the courts have to find out the true intention of the Legislature.

26. We are unable to accept the contention that Explanation II to Section 3-D did not widen the scope of Section 3-D. Section 3-D as it originally stood dealt with foodgrains and pulses. It did not treat the unprocessed or unsplit foodgrains and pulses as a separate item but because of Explanation II, we have now to read the expression “foodgrains” in Section 3-D as containing two separate items viz. (1) foodgrains unprocessed or unsplit and (2) foodgrains processed or split. It is true that *Explanation II* is not very happily worded but the intention of the Legislature is clear and unambiguous. The newly added Explanation brings to tax with retrospective effect the split or processed foodgrains as well.

27. We next come to the contention that no levy of purchase tax can be made on split or unprocessed pulses without a fresh notification under Section 3-D read with Explanation II, showing therein separately foodgrains unsplit or unprocessed as well as foodgrains split or

processed. As seen earlier that the notification issued merely refers to foodgrains. That notification does not classify foodgrains into two separate categories - processed or split and unprocessed or unsplit. Therefore we were told that no tax can be levied on processed or split foodgrains on the basis of that notification. This contention cannot be accepted as correct. The notification in question was issued under Section 3-D. Section 3-D refers to foodgrains but because of Explanation II, to that section, we have now to read the expression "foodgrains" as containing two different items, processed or split foodgrains and unprocessed or unsplit foodgrains. Consequently while reading the expression "foodgrains" in the notification also, we must adopt the same approach. This conclusion is also obvious from Section 7. If the Legislature had not retrospectively validated the assessments made on the first purchases of split or processed foodgrains, what did Section 7 seek to achieve? That section says in plain words that notwithstanding any judgment, decree or order of any court or tribunal to the contrary, every notification issued or purporting to have been issued under Section 3-D of the principal Act, before the commencement of the Amending Act shall be deemed to have been issued under that section as amended by the Amending Act and shall be so interpreted and be deemed to be and always to have been as valid as if the provisions of the amending Act were in force at all material times and accordingly, anything done or any action taken (including any order made, proceedings taken, jurisdiction exercised, assessment made, or tax levied, collected or paid, purporting to have been done or taken in pursuance of any such notification) shall be deemed to be, and always to have been validly and lawfully done or taken.

28. We asked the learned counsel appearing for the appellants to let us know the field in which Section 7 can be said to operate. Their answer was that though the Legislature intended to validate the assessments made on the first purchases of the split or processed dal, it failed to achieve that object because of the defective phraseology employed in Explanation II to Section 3-D and Section 7 of the Amending Act. In other words their submission was that Section 7 has become otiose. It was urged on behalf of the appellants that a taxing provision will have to be strictly interpreted and in finding out the intention of the Legislature in the matter of imposing tax, we cannot travel beyond the words of the section.

29. There is no doubt that a taxing provision has to be strictly interpreted. If a Legislature intend to impose any tax, that intention must be made clear by the language employed in the statute; but that does not mean that the provision in a taxing statute should not be read reasonably. The contention that we should ignore Section 7 of the Amending Act is a contention difficult of acceptance. Dealing with a similar contention Venkatarama Ayyar, J., speaking for the Court in *J. K. Jute Mills'* case observed at p. 435:

"The object of the legislation as stated in the long title and in the preamble to the Act was to validate the impugned notification in relation to the amended section. Schedule B to the Act expressly mentions that notification. And if we are now to accede to the contention of the petitioner, we must hold that though the Legislature set about avowedly to validate the notification, dated March 31, 1956, it failed to achieve that object. A construction which will lead to such a result must, if that is possible, be avoided."

30. We have earlier come to the conclusion that because *Explanation II* to Section 3-D the expression “foodgrains including pulses” in Section 3-D should be read as including two different items i. e. (1) unsplit or unprocessed foodgrains including pulses and (2) split or processed food-grains including pulses. Consequently the expression “foodgrains” in the notification will also have to be read in the same manner. This, in our opinion, is the reasonable way of reading the notification in the light of Section 3-D, *Explanation II* to that section and Section 7 of the Act.

31. The only remaining contention is that the delegation made to the executive under Section 3-D is an excessive delegation. It is true that the Legislature cannot delegate its legislative functions to any other body. But subject to that qualification, it is permissible for the legislature to delegate the power to select the persons on whom the tax is to be levied or the goods or the transactions on which the tax is to be levied. In the Act, under Section 3 the Legislature has sought to impose multi-point tax on all sales and purchases. After having done that it has given power to the executive, a high authority and which is presumed to command the majority support in the Legislature, to select for special treatment dealings in certain class of goods. In the very nature of things, it is impossible for the Legislature to enumerate goods, dealings in which sales tax or purchase tax should be imposed. It is also impossible for the Legislature to select the goods which should be subjected to a single-point sales or purchase tax. Before making such selections several aspects such as the impact of the levy on the society, economic consequences and the administrative convenience will have to be considered. These factors may change from time to time. Hence in the very nature of things, these details have got to be left to the executive.

32. In *Pt. Banarsi Das Bhanot v. State of Madhya Pradesh* [AIR 1958 SC 909], the question arose whether it was permissible for the Legislature to empower the executive to amend the Schedule relating to exemptions. This Court by majority answered that question in the affirmative. It further held that it is not unconstitutional for the Legislature to leave it to the executive to determine the details relating to the working of the taxation laws, such as the selection of the persons on whom the tax is to be levied, the rates at which it is to be charged in respect of different classes of goods and the like.

33. We have not found any substance in any of the contentions advanced on behalf of the appellants. Hence these appeals fail and they are dismissed.

* * * * *

Manohar Lal v. State of Punjab

(1961) 2 SCR 343 : AIR 1961 SC 418

N.R. AYYANGAR, J. - This appeal on a certificate under Articles 132 and 134(1) of the Constitution granted by the High Court of Punjab raises for consideration the constitutionality of Section 7(1) of the Punjab Trade Employees Act, 1940.

2. The appellant - Manohar Lal - has a shop at Ferozepore Cantt. in which business is carried on under the name and style of "Imperial Book Depot". Section 7 of the Punjab Trade Employees Act, 1940 ("the Act"), enacts:

"7. (1) Save as otherwise provided by this Act, every shop or commercial establishment shall remain closed on a close day.

(2)(i). The choice of a close day shall rest with the occupier of a shop or commercial establishment and shall be intimated to the prescribed authority within two months of the date on which this Act comes into force."

to extract the provision relevant to this appeal. The appellant had chosen Friday as "the close day" i.e. the day of the week on which his shop would remain closed. The Inspector of Shops and Commercial Establishments, Ferozepore Circle, visited the appellant's shop on Friday, the 29th of January, 1954, and found the shop open and the appellant's son selling articles. Obviously, if Section 7(1) were valid, the appellant was guilty of a contravention of its terms and he was accordingly prosecuted in the Court of Additional District Magistrate, Ferozepore, for an offence under Section 16 of the Act which ran:

"Subject to the other provisions of this Act, whoever contravenes any of the provisions of this Act ... shall be liable on conviction to a fine not exceeding twenty-five rupees for the first offence and one hundred rupees for every subsequent offence."

The appellant admitted the facts but he pleaded that the Act would not apply to his shop or establishment for the reason that he had engaged no strangers as employees but that the entire work in the shop was being done by himself and by the members of his family, and that to hold that Section 7(1) of the Act would apply to his shop would be unconstitutional as violative of the fundamental rights guaranteed by Articles 14, 19(1)(f) and (g) of the Constitution. The additional District Magistrate rejected the plea raised by the appellant regarding the constitutionality of Section 7(1) in its application to shops where no "employees" were engaged and sentenced him to a fine of Rs 100 and simple imprisonment in default of payment of the fine (since the appellant had been convicted once before). The appellant applied to the High Court of Punjab to revise this order, but the Revision was dismissed. The learned Judges, however, granted a certificate of fitness which has enabled the appellant to file the appeal to this Court.

3. Though the validity of Section 7(1) of the Act was challenged in the High Court on various grounds, learned Counsel who appeared before us rested his attack on one point. He urged that the provision violated the appellant's right to carry on his trade or business guaranteed by Article 19(1)(g) and that the restriction imposed was not reasonable within Article 19(6) because it was not in the interest of the general public. Learned Counsel drew

our attention to the long title of the Act reading “An Act to limit the hours of work of Shop Assistants and Commercial Employees and to make certain regulations concerning their holidays, wages and terms of service “and pointed out that the insistence on the appellant to close his shop, in which there were no “employees “, was really outside the purview of the legislation and could not be said to subserve the purposes for which the Act was enacted. In short, the submission of the learned Counsel was that the provision for the compulsory closure of his shop for one day in the week served no interests of the general public and that it was unduly and unnecessarily restrictive of his freedom to carry on a lawful trade or business, otherwise in accordance with law, as he thought best and in a manner or mode most convenient or profitable.

4. We are clearly of the opinion that the submissions of the learned Counsel should be repelled. The long title of the Act extracted earlier and on which learned Counsel placed considerable reliance as a guide for the determination of the scope of the Act and the policy underlying the legislation, no doubt, indicates the main purposes of the enactment but cannot, obviously, control the express operative provisions of the Act, such as for example the terms of Section 7(1). Nor is the learned counsel right in his argument that the terms of Section 7(1) are irrelevant to secure the purposes or to subserve the underlying policy of the Act. The ratio of the legislation is social interest in the health of the worker who forms an essential part of the community and in whose welfare, therefore, the community is vitally interested. It is in the light of this purpose that the provisions of the Act have to be scrutinized. Thus, Section 3 which lays down the restrictions subject to which alone “I young persons”, defined as those under the age of 14, could be employed in any shop or commercial establishment, is obviously with a view to ensuring the health of the rising generation of citizens. Section 4 is concerned with imposing restrictions regarding the hours of work which might be extracted from workers other than “young persons”. Section 4(1) enacts:

“Subject to the provisions of this Act, no person shall be employed about the business of a shop or commercial establishment for more than the normal maximum working hours, that is to say, fifty-four hours in any one week and ten hours in any one day.”

bringing the law in India as respects maximum working hours in line with the norms suggested by the International Labour Convention. Sub-clauses (4) and (5) of this section are of some relevance to the matter now under consideration:

“(4) No person who has to the knowledge of the occupier of a shop or commercial establishment been previously employed on any day in a factory shall be employed on that day about the business of the shop or commercial establishment for a longer period than will, together with the time during which he has been previously employed on that day in the factory, complete the number of hours permitted by this Act.

(5) No person shall work about the business of a shop or commercial establishment or two or more shops or commercial establishments or a shop or commercial establishment and a factory in excess of the period during which he may be lawfully employed under this Act.”

5. It will be seen that while under sub-clause (4) employers are injuncted from employing persons who had already worked for the maximum number of permitted hours in another establishment, sub-clause (5) lays an embargo on the worker himself from injuring his health by overwork in an endeavour to earn more. From this it would be apparent that the Act is concerned-and properly concerned-with the welfare of the worker and seeks to prevent injury to it, not merely from the action of the employer but from his own. In other words, the worker is prevented from attempting to earn more wages by working longer hours than is good for him. If such a condition is necessary or proper in the case of a worker, there does not seem to be anything unreasonable in applying the same or similar principles to the employer who works on his own business. The learned Judges of the High Court have rested their decision on this part of the case on the reasoning that the terms of the impugned section might be justified on the ground that it is designed in the interest of the owner of the shop or establishment himself and that his health and welfare is a matter of interest not only to himself but to the general public. The legislation is in effect the exercise of social control over the manner in which business should be carried on-regulated in the interests of the health and welfare not merely of those employed in it but of all those engaged in it. A restriction imposed with a view to secure this purpose would, in our opinion, be clearly saved by Article 19(6).

6. Apart from this, the constitutionality of the impugned provision might be sustained on another ground also viz. with a view to avoid evasion of provisions specifically designed for the protection of workmen employed. It may be pointed out that acts innocent in themselves may be prohibited and the restrictions in that regard would be reasonable, if the same were necessary to secure the efficient enforcement of valid provisions. The inclusion of a reasonable margin to ensure effective enforcement will not stamp a law otherwise valid as within legislative competence with the character of unconstitutionality as being unreasonable. The provisions could, therefore, be justified as for securing administrative convenience and for the proper enforcement of it without evasion. As pointed out by this Court in *Manohar Lal v. State* [(1951) SCR 671, 675]:

“The legislature may have felt it necessary, in order to reduce the possibilities of evasion to a minimum, to encroach upon the liberties of those who would not otherwise have been affected.... To require a shopkeeper, who employs one or two men, to close and permit his rival, who employs perhaps a dozen members of his family, to remain open, clearly places the former at a grave commercial disadvantage. To permit such a distinction might well engender discontent and in the end react upon the relations between employer and employed.”

7. We have, therefore, no hesitation in repelling the attack on the constitutionality of Section 7(1) of the Act. The appeal fails and is dismissed.

* * * * *

Shashikant Laxman Kale v. Union of India

(1990) 4 SCC 366 : AIR 1990 SC 2114

J.S. VERMA, J. - This petition under Article 32 of the Constitution challenges the constitutional validity of clause (10-C) inserted in Section 10 of the Indian Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Finance Act, 1987 with effect from April 4, 1987. Section 10 deals with incomes not included in total income for the purpose of taxation under the Act. The effect of clause (10-C) so inserted in Section 10 of the Act is that any payment received by an employee of a public sector company at the time of his voluntary retirement in accordance with any scheme which the Central Government may, having regard to the economic viability of such company and other relevant circumstances, approve in this behalf, is not included in the total income of such employee resulting in grant of tax exemption to that extent to him. The petitioners contend that the denial of this benefit to an employee of a private sector company at the time of his voluntary retirement amounts to an invidious distinction between public sector employees and private sector employees in the matter of taxation and is arbitrary and unintelligible amounting to hostile discrimination.

2. The initial submission on behalf of the petitioners was that the aforesaid clause (10-C) of Section 10 of the Act is constitutionally invalid for this reason. However, during the course of arguments the stand of the petitioners was modified to contend that the provision must be so construed as to apply to all employees equally, whether of the public or private sector, in order to uphold its validity. The question, therefore, is whether there is any such hostile discrimination as alleged by the petitioners and if so, is it possible to construe the provision in the manner suggested on behalf of the petitioners to apply it equally to all employees of the public as well as private sectors?

3. Petitioner 1 is an employee of respondent 2 - Peico Electronic and Electricals Limited, a private sector company - and petitioner 2 is a registered trade union representing the employees of respondent 2-company. Counsel for the respondent 2-company sought to support the petitioners' case. Counsel for respondent 1 supporting the validity of the provision indicated that employees of the public sector constituted a distinct class for the purpose of taxation so that there was no discrimination between employees of the same class if the real object of the provision is borne in mind. We shall refer to the arguments of the two sides in some detail later.

4. Chapter III of the Indian Income Tax Act, 1961 relates to "incomes which do not form part of the total income". Section 10 in Chapter III deals with "incomes not included in total income". It provides that in computing the total income of a previous year of any person, any income falling within any of the clauses therein shall not be included. The several clauses in Section 10 specify different incomes which would ordinarily be included in the total income of the assessee for the purpose of taxation but for such a provision. Clause (10-C) of Section 10 is as under:

"(10-C) any payment received by an employee of a public sector company at the time of his voluntary retirement in accordance with any scheme which the Central Government may, having regard to the economic viability of such company and other relevant circumstances, approve in this behalf."

5. We may now summarise the arguments advanced before us. Shri Shetye for the petitioners first contended that the reason given for enacting clause (10-C) as indicated in the memorandum explaining provisions of the Finance Bill, 1987 is that the tax benefit is given as a welfare measure. He argued, if so, all employees whether of private or of public sector are in the same class and are entitled equally to the benefit of a welfare measure for employees. His next contention is that, if that be the only stated basis of the classification, it has no rational nexus with the object of the provision and it violates Article 14 of the Constitution. Learned counsel for the petitioners referred to certain other clauses in Section 10 of the Act which apply equally to all employees irrespective of the category of their employer, to suggest that all such measures being for benefit of employees, no further classification of the employees is permissible with reference to the category of their employer. It was further urged that consequently the exclusion of non-public sector employees is not only discriminatory but also arbitrary. On this basis it was contended that instead of striking down the provision as invalid which while denying the benefit to the public sector employees would not also serve any useful purpose for the private sector employees, the court should adopt a positive and constructive approach and the provision so construed as to extend its benefit to all employees irrespective of the category of their employer to uphold its validity.

6. Shri Dewan for respondent 2, a private sector company, supported learned counsel for the petitioners. He contended that if there be any such discrimination then the question to ask is: whether the Parliament intended to confine the benefit of this welfare measure only to employees of the public sector? He further contended that it is possible to read the provision in such a manner as to extend its benefit to all employees instead of confining it only to the public sector employees.

7. In reply, Dr Gauri Shankar for respondent 1 contended that the employees of public sector constitute a distinct class for this purpose in view of the fact that the public sector undertakings have a distinct character and role in the national economy. He argued that to make the public sector undertakings economically more viable and thereby contribute more to the national economy, it has become necessary to streamline and trim the higher echelons by inducing the unwanted personnel to leave voluntarily with a "golden handshake" instead of resorting to retrenchment which involves several complications including protracted litigation which is not conducive to the well-being of the public sector undertakings. He argued that this problem does not exist in the private sector where the higher employees can leave or be asked to leave, without corresponding difficulties experienced in the public sector. This provision is meant essentially for employees at the higher levels in the public sector undertakings whose economic status cannot be equated with their counterpart in the private sector. For this reason equating the two sets of employees for the tax benefit was urged to be unjustified, there being an intelligible differentia between them. Dr Gauri Shankar also contended that the real object of the enactment was to streamline the public sector by reducing overstaffing at the higher level and the consequent tax exemption to the retiring employee was merely the effect or fall-out of the real object. The provision was meant to induce the unwanted personnel to seek voluntary retirement and thereby promote the real object of streamlining the ailing public sector. To support his argument, he produced material indicating the historical background

and factual matrix including material to show the great disparity in the emoluments and perquisites, i.e. compensation package of the private sector and the public sector employees particularly at the higher levels.

8. The main question for decision is the discrimination alleged by the petitioners. The principles of valid classification are long settled by a catena of decisions of this Court but their application to a given case is quite often a vexed question. The problem is more vexed in cases falling within the grey zone. The principles are that those grouped together in one class must possess a common characteristic which distinguishes them from those excluded from the group; and this characteristic or intelligible differentia must have a rational nexus with the object sought to be achieved by the enactment. It is sufficient to cite the decision in ***In Re the Special Courts Bill, 1978*** [(1979) 1 SCC 634] and to refer to the propositions quoted at pp. 534-537 therein. Some of the propositions are stated thus:

“(2). The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(3). The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. *The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.*

(4). The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, *and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.*

(6) *The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.*

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

(8) *The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them.* In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon person arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense abovementioned.

(11) Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. *Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.*”

9. It is well settled that the latitude for classification in a taxing statute is much greater; and in order to tax something it is not necessary to tax everything. These basic postulates have to be borne in mind while determining the constitutional validity of a taxing provision challenged on the ground of discrimination.

10. The scope for permissible classification in a taxing statute was once again considered in a recent decision of this Court in **P.H. Ashwathanarayana Setty v. State of Karnataka**, [1989 Supp 1 SCC 696]. After a review of earlier decisions, it was stated therein as under:

“It is for the State to decide what economic and social policy it should pursue and what discriminations advance those social and economic policies. In view of the inherent complexity of these fiscal adjustments, courts give a larger discretion to the legislature in the matter of its preferences of economic and social policies and effectuate the chosen system in all possible and reasonable ways.”

11. In **Federation of Hotel and Restaurant Association of India v. Union of India** [(1989) 3 SCC 634], it was said as under:

“...The test could only be one of palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience.”

“...A reasonable classification is one which includes all who are similarly situated and none who are not. In order to ascertain whether persons are similarly placed, one must look beyond the classification and to the purposes of the law.”

12. This Court has held in **Kerala Hotel and Restaurant Association v. State of Kerala**, [AIR 1990 SC 913] as under:

“The scope for classification permitted in taxation is greater and unless the classification made can be termed to be palpably arbitrary, it must be left to the legislative wisdom to choose the yardstick for classification, in the background of the fiscal policy of the State to promote economic equality as well....

Thus, it is clear that the *test applicable* for striking down a taxing provision on this ground is *one of ‘palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience’*; and the courts should not

interfere with the legislative wisdom of making the classification unless the classification is found to be invalid by this test.”

13. It is useful to refer also to the decision of this Court in *ITO v. N. Tatin Roy Rymbai* [(1976) 1 SCC 916] wherein a similar question relating to validity of classification in another clause of Section 10 of the Income Tax Act, 1961 arose for consideration. This Court while upholding the validity of the classification summarised the principles applied, as under:

(It must be remembered that the State has, in view of the intrinsic complexity of fiscal adjustments of diverse elements, *a considerably wide discretion in the matter of classification for taxation purposes*. Given legislative competence, the legislature has ample freedom to select and classify persons, districts, goods, properties, incomes and objects which it would tax, and which it would not tax. *So long as the classification made within this wide and flexible range by a taxing statute does not transgress the fundamental principles underlying the doctrine of equality, it is not vulnerable on the ground of discrimination merely because it taxes or exempts from tax some incomes or objects and not others*. Nor the mere fact that a tax falls more heavily on some in the same category, is by itself a ground to render the law invalid. It is only when within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classification, that there would be a violation of Article 14.

14. We must, therefore, look beyond the ostensible classification and to the purpose of the law and apply the test of ‘palpable arbitrariness’ in the context of the felt needs of the times and societal exigencies informed by experience to determine reasonableness of the classification. It is clear that the role of public sector in the sphere of promoting the national economy and the context of felt needs of the times and societal exigencies informed by experience gained from its functioning till the enactment are of significance. There is no dispute that the impugned provision includes all employees of the public sector and none not in the public sector. The question is whether those left out are similarly situated for the purpose of the enactment to render the classification palpably arbitrary. It is only if this test of palpable arbitrariness applied in this manner is satisfied, that the provision can be faulted as discriminatory but not otherwise. Unless such a defect can be found, the further question of construing the provision in such a manner as to include all employees and not merely employees of public sector companies, does not arise.

15. It is first necessary to discern the true purpose or object of the impugned enactment because it is only with reference to the true object of the enactment that the existence of a rational nexus of the differentia on which the classification is based, with the object sought to be achieved by the enactment, can be examined to test the validity of the classification. In *Francis Bennion’s Statutory Interpretation* (1984 edn.), the distinction between the legislative intention and the purpose or object of the legislation has been succinctly summarised at p. 237 as under:

“The distinction between the purpose or object of an enactment and the legislative intention governing it is that the former relates to the mischief to which

the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment.”

16. There is thus a clear distinction between the two. While the purpose or object of the legislation is to provide a remedy for the malady, the legislative intention relates to the meaning or exposition of the remedy as enacted. While dealing with the validity of a classification, the rational nexus of the differentia on which the classification is based has to exist with the purpose or object of the legislation, so determined. The question next is of the manner in which the purpose or object of the enactment has to be determined and the material which can be used for this exercise.

17. For determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady. In *A. Thangal Kunju Musaliar v. M. Venkitachalam Potti* [AIR 1956 SC 246], the Statement of Objects and Reasons was used for judging the reasonableness of a classification made in an enactment to see if it infringed or was contrary to the Constitution. In that decision for determining the question, even affidavit on behalf of the State of “the circumstances which prevailed at the time when the law there under consideration had been passed and which necessitated the passing of that law” was relied on. It was reiterated in *State of West Bengal v. Union of India* [AIR 1963 SC 1241], that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, can be used for ‘the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation’. Similarly, in *Pannalal Binjraj v. Union of India* [AIR 1957 SC 397], a challenge to the validity of classification was repelled placing reliance on an affidavit filed on behalf of the Central Board of Revenue disclosing the true object of enacting the impugned provision in the Income Tax Act.

18. Not only this, to sustain the presumption of constitutionality, consideration may be had even to matters of common knowledge; the history of the times; and every conceivable state of facts existing at the time of legislation which can be assumed. Even though for the purpose of construing the meaning of the enacted provision, it is not permissible to use these aids, yet it is permissible to look into the historical facts and surrounding circumstances for ascertaining the evil sought to be remedied. The distinction between the purpose or object of the legislation and the legislative intention, indicated earlier, is significant in this exercise to emphasise the availability of larger material to the court for reliance when determining the purpose or object of the legislation as distinguished from the meaning of the enacted provision.

20. Strong reliance has been placed on behalf of the petitioners on the memorandum explaining the provisions in the Finance Bill, 1987, wherein the explanatory note relating to clause 4(a) of the Bill proposing insertion of clause (10-C) in Section 10 of the Income Tax Act, 1961 appears under the heading ‘Welfare Measures’. It may be mentioned that this heading is only in the explanatory memorandum and not in the ‘Notes on Clauses’ appended to the ‘Statement of Objects and Reasons’ of the Bill. We would presently show that the

petitioners cannot draw support from this heading in the explanatory memorandum. Moreover, an explanatory memorandum is usually 'not an accurate guide of the final Act'

21. It was urged that the impugned provision being described as a welfare measure in the explanatory memorandum, the object of the enactment was the welfare of the employees and, therefore, no further classification of the employees could be made. It was argued that the heading 'welfare measures' is, therefore, decisive of the object of its enactment. In our opinion, this cannot be accepted. The Statement of Objects and Reasons is as under:

"The object of the Bill is to give effect to the financial proposals of the Central Government for the financial year 1987-88. The Notes on Clauses explain the various provisions contained in the Bill."

Thereafter, the Notes on Clauses in the Finance Bill, 1987 are from pp. 119-51. The Note relating to this clause at p.122 is as under:

"Clause 4 seeks to amend Section 10 of the Income Tax Act.

Sub-clause (a) of this clause proposes to insert a new clause (10-C) in this section. Under the proposed amendment, any payment received by an employee of a public sector company at the time of his voluntary retirement in accordance with any scheme which the Central Government may, having regard to the economic viability of the public sector company and other relevant circumstances, approve in this behalf, shall be exempt from tax.

This amendment will take effect from April 1, 1987, and will, accordingly apply in relation to the assessment year 1987-88 and subsequent years."

Nowhere in the 'Notes on Clauses' the proposal in the Bill is described as a welfare measure. It is then in the memorandum explaining the provisions in the Finance Bill, 1987 that the provisions are divided under different heads, one of which is 'welfare measures'. The sub-heading relating to this proposal is mentioned as 'Exemption of compensation received by public sector employees on voluntary retirement'. It is mentioned in paragraph 13 of the explanatory memorandum that a number of public sector undertakings have formulated voluntary retirement schemes for their employees; that under Section 10(10-B) of the Income Tax Act any compensation received by a workman at the time of his retrenchment is exempt up to the specified limit; and that this limit of exemption under Section 10(10-B) is, however, not applicable in respect of compensation received under certain schemes approved by the Central Government. By enacting Section 10(10-C), the proposal obviously was to extend the same benefit to the payment made under these approved schemes as was existing for compensation under approved schemes given by Section 10(10-B). The heading of 'welfare measures' applies also to paragraph 14 in the memorandum relating to modification of provisions relating to deduction in respect of donations to certain funds etc. It is, therefore, clear that in this explanatory memorandum the headings are fairly wide and matters collected under the same heading may be diverse not giving a true indication of the object of the provision.

22. It is also significant that the proposal to amend Section 10 by inserting a new clause (10-C) therein was contained in sub-clause (a) of clause 4 of the Finance Bill, while sub-clause (b) of clause 4 of the Finance Bill proposed to insert a new item in sub-clause (iv) of

clause (15) of Section 10 to provide that interest payable by the public sector companies on certain specified bonds and debentures will not form part of the tax payer's total income subject to the specified conditions.

This was in pursuance of a series of public sector bonds being floated which are intended to yield tax free return to the holders of such bonds. The effect of the amendment so made yielding tax free return to the holders of public sector bonds is similar to the amendment by insertion of a new clause (10-C), the effect of which is to grant tax exemption to employees of the public sector in respect of the amount received under the voluntary retirement scheme approved by the Central Government. Both these proposals relating to the amendment of Section 10 were in sub-clauses (a) and (b) of clause 4 of the Finance Bill. Ordinarily in the memorandum explaining the provisions in the Finance Bill both the sub-clauses of clause 4 should have been, therefore, mentioned under the same heading being of essentially the same nature. It is interesting to note that the proposal in clause 4(b) was mentioned in paragraph 17 of the explanatory memorandum under the heading 'Incentives for growth and modernisation' with the sub-heading 'Measures for raising resources for the public sector'. Admittedly, the effect of this provision was to grant a tax benefit to the holders of the public sector bonds by amending Section 10 in this manner but the real object for giving that benefit to the tax payer was to provide an incentive for growth and modernisation by adopting a measure for raising the resources for the public sector. If the proposal in sub-clause (b) of clause 4 of the Finance Bill fell in this category, there is no reason why the proposal in sub-clause (a) of the same clause of the Bill, both sub-clauses relating to amendment of Section 10, can be treated differently merely because in the explanatory memorandum the two sub-clauses are under different headings. This distribution of the sub-clauses of the same clause in the Finance Bill under different heads in the explanatory memorandum is sufficient to show that no particular significance can be attached to the heading 'welfare measures' under which the proposal to insert clause (10-C) in Section 10 of the Act was placed in that memorandum. We see no reason why insertion of clause (10-C) in Section 10 cannot also be described as incentive for growth and modernisation being a measure for improvement of the public sector. Obviously the incentive given thereby is to the employees of the public sector companies to resort more readily to the voluntary retirement scheme which would enable improvement of public sector by streamlining its staff.

23. A catch phrase possibly used as a populist measure to describe some provisions in the Finance Bill in the explanatory memorandum while introducing the Bill in the Parliament can neither be determinative of, nor can it camouflage the true object of the legislation. It is not unlikely that the phrase 'welfare measures' was used to emphasise more on the effect of the provisions thereunder on the tax payer for populism.

24. In view of the fact that the challenge is based on the initial assumption of equality between all employees of the public sector and the private sector, it will be useful to refer to the nature and role of the public sector undertakings vis-a-vis those of the private sector along with the historical background and surrounding circumstances leading to enactment of the impugned provision. For this purpose, we would first refer to the counter-affidavit of Shri S.K. Abrol, Officer-on-Special-Duty, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, New Delhi, which states the reasons for insertion of clause (10-C) in

Section 10 of the Income Tax Act, 1961. The counter-affidavit states with reference to some other clauses of Section 10 of the Act that the legislature for purposes of exemption from income tax has always differentiated between private sector employees and those in the public sector and government employment. It states further as follows:

“As submitted in the paragraph above, Section 10(10-C) was introduced by the Finance Act, 1987 w.e.f. April 1, 1987 and the legislature in its wisdom sought to restrict these benefits to only the employees in the public sector. The reason for introducing this provision is contained in the Circular of the Central Board of Direct Taxes explaining the Finance Act, 1987, relevant extract from which is reproduced hereunder:

‘15.1 At present under Section 10(10-B) any compensation received by a workman at the time of his retirement is exempted up to the amount calculated in accordance with Section 25-F of the Industrial Disputes Act or Rs 50,000, whichever is less. *The limit is, however, not applicable in respect of compensation received under certain schemes approved by the Central Government.*

15.2 A. *number of public sector undertakings have formulated voluntary retirement schemes for their employees. With a view to extend relief to such employees, the Finance Act, 1987, by introducing new clause (10-C) in Section 10, provides exemption in respect of any payment received by them at the time of their voluntary retirement in accordance with any scheme which the Central Government may approve, having regard to the economic viability of the public sector company and other relevant circumstances. This exemption will be available to any employee whether a workman or an executive.*

15.3 This amendment shall come into force w.e.f. April 1, 1987 and will, accordingly, apply to assessment year 1987-88 and subsequent year.’

“It is submitted that for all purposes, the private sector and the public sector have been treated differently and are known to be different classes. The Industrial Policy Resolution, 1956, which reviewed the earlier Industrial Policy, clearly distinguished industries in the public sector and those in the private sector. The Industrial Policy Resolution mentioned that for adoption of socialist pattern of society as the national objective, the requirement was that industries of basic and strategic importance, or in the nature of public utility service, should be in the public sector. The Industrial Policy Resolution placed the industries in three different categories;Thus, this categorisation of industries into public sector, private sector was on the basis of Articles 38 and 39 of the Constitution of India, as has been mentioned in the Industrial Policy Resolution, 1956.”

“The respondent submits that there were certain basic distinctions between the undertakings in the private sector and in the public sector as has been observed by this Hon’ble Court in the case of **R.D. Shetty v. International Airport Authority of India**. [(1979) 3 SCR 1014]. A public sector undertaking is either established by a statute or incorporated under law. Public sector undertakings are wholly controlled by government not only in their policy making but also in carrying out the functions

entrusted to them by law establishing it or by charter of their incorporation. *As such public sector undertakings are bound by any directions that may be issued by government from time to time in respect of policy matters.* The entire share capital of the public sector undertakings is held by the government and it is *under the direct control and supervision of government.* The pay scales of the employees in the public sector are fixed by the administrative Ministry in consultation with the Bureau of Public Enterprises, who exercise complete control over the actions of public sector undertakings. The public sector undertakings are answerable to the Parliament through their administrative Ministries. *The entire budget of the public sector undertakings is controlled by the administrative Ministries.* The Comptroller and Auditor General audits the accounts of the public sector undertakings and any leakages etc. are brought to the notice of Parliament. *The recruitment and conduct rules of the public sector employees are subject to overall control of government through Bureau of Public Enterprises...*

“Section 10(10-C), while extending the benefit to employees of public sector has, as its basis, exempted incomes received from government through public sector undertakings. The distinction is based on intelligible differentiation and the object of this differentiation is to promote the interests of the employees of public sector undertakings so as to bring this at par with the private sector employees whose emoluments and other conditions of service are not governed by any statute or are not under any control.

“The respondent submits that the legislature is aware of the differentiation between the public sector undertakings and private sector undertakings, and in its wisdom, has chosen to restrict the benefit only to the public sector employees....

“The respondent submits that the extension of the benefit of Section 10(10-C) of the Income Tax Act to the employees of the private sector is likely to be misused by way of frequent payment to the employees in the garb of voluntary retirement benefits and it will not be possible to provide necessary safeguards in law to check such practices. This would defeat the very purpose of the scheme of voluntary retirement, besides leading to large scale revenue loss.” (emphasis supplied)

25. The counter-affidavit filed on behalf of respondent 1 disclosing the reasons which led to the insertion of clause (10-C) in Section 10 of the Act confining the benefit granted thereby only to employees of the public sector indicates that the purposes of the legislation include reduction in the existing gap between the lower compensation package in public sector and the higher compensation package of the counterpart in private sector in addition to preventing misuse of the benefit in private sector which is not subject to the control of administration by government like that in the public sector. It is evident from the material produced before us that the compensation package in the public sector, particularly at the higher levels, is much lower than that in the private sector.

26. Some insight into the existing state of the public sector undertakings and their viability with suggestions for improvement are found in the **First Dr L.K. Jha Memorial Lecture**, delivered on December 6, 1988, by Shri R.N. Malhotra, Governor, Reserve Bank of India, on “Growth and Current Fiscal Challenges”. While giving an overview of the progress

during the last four decades, the speaker referred to the 'performance of the public sector' as under:

"The public sector which now accounts for about half the total national investment has made crucial contributions to the development of the economy by expanding the infrastructure, establishing basic industries and producing goods and services of strategic importance. *The public sector has, however, not been able to generate surpluses commensurate with its share in plan outlays.*"

27. On "planning and resources" and "financing of public sector", he said:

"An analysis of the financing pattern of public sector plan expenditures indicates that over time the shares of balance from current revenues and additional resource mobilisation have been declining while reliance on borrowed funds has been rising..."

28. Thereafter, he referred to the deterioration in the finances with reference to the growing expenditure, as under:

"...Interestingly, about two-thirds of the savings of these enterprises represent provisions for depreciation which are supposed to cover replacement costs. Though several of these enterprises are operating efficiently, *the savings of public sector enterprises as a group are not commensurate with the investment made in them.* According to the public enterprises survey, the capital employed in the Central Public Sector Enterprises amounted to about Rs 52,000 crores at the end of 1986-87. About 100 of these units made losses amounting to Rs 1708 crores and 109 units were making after tax profit of Rs 3478 crores of which Rs 2142 crores came from the oil sector. The rate of return was 6.0 per cent before tax and 3.4 per cent after tax. *If the oil sector which benefits from the oil price policy is excluded, the rate of return would be negative.... There is imperative need for substantial improvement in the working and profitability of public sector undertakings.*"

Referring to the existing state of "public debt", he said:

"The Long Term Fiscal Policy (LTFP) had raised concern about increasing reliance on borrowings to finance the budgetary outlays and had suggested containment of domestic borrowings including those from the Reserve Bank.... In the event, the level of borrowings has been much higher than that envisaged in the Seventh Plan.... This has happened despite the fact that some public sector enterprises, previously dependent on the budget, were allowed to raise resources directly from the capital market through bond floatations of the order of Rs 2000 crores each year from 1986-87.....

Growing levels of borrowing by the government and public sector undertakings raise two major concerns. First, whether the present level of government borrowing is sustainable? Unless there are adequate surpluses in the revenue account which can be utilised for debt servicing, the budgetary deficit would widen. The increased borrowings for debt servicing would create the vicious circle of progressively higher interest burdens and still higher borrowing. The second issue is whether the increasing level of government borrowing coupled with that of public sector

undertakings would result in crowding out of private sector investments. Since the total investment in the economy is shared about equally between the public and private sectors, it is important to ensure that the requirements of the private sector are also adequately met so that the overall growth targets of the national economy are achieved.”

30. The factual matrix and historical background appearing from the above material prove that the public sector needs toning up. One of its afflictions is overmanning or surplus staff, the obvious remedy of which is streamlining, by removing the non-productive and unwanted personnel, if possible, without any complication. Retrenchment is often an unsafe course to adopt since it may lead to protracted litigation and uncertain outcome. We cannot overlook this well known, though unfortunate, fact.

31. A safe mode to relieve the public sector of its unproductive and surplus manpower is to induce those persons to seek voluntary retirement under a scheme providing some incentive or inducement for seeking voluntary retirement. Clause (10-B) of Section 10 of Income Tax Act, 1961, does grant tax exemption in respect of any compensation received at the time of retrenchment up to the prescribed limit. That limit, however, does not apply to compensation received under certain schemes approved by the Central Government. It is, therefore, reasonable that same benefit be also extended in respect of any payment received by an employee of the public sector on his voluntary retirement under a scheme similarly approved by the Central Government.

32. The public sector’s role visualised on advent of freedom was as an ‘instrument of development and national strength’, a ‘key to our self-reliance’, ‘catalyst of social change’ and for attaining ‘commanding heights of the economy’ in keeping with our national aim of Welfare State and a socialist economy. Unfortunately, in spite of a strong rationale for setting up and promoting public sector in the national economy, it has not so far fully justified the legitimate expectation and a large number of the public sector undertakings are losing concerns. A study into the causes which ail the public sector has shown that one of its drawbacks is overstaffing. Streamlining the public sector to get rid of its unproductive and unwanted personnel is, therefore, a felt need. A scheme whereby such unwanted personnel can be induced to leave voluntarily granting some incentive for doing so is, therefore, ultimately beneficial to the health and prosperity of the public sector and consequently to the national economy. These factors alone are sufficient to provide an intelligible differentia between public and private sectors and its rational nexus with the object of improving the performance of public sector, promoting national economy.

33. It is useful to remember that the country having opted for mixed economy, the healthy and vigorous functioning of the public sector undertakings is conducive to the benefit of the private sector as well, in addition to promoting the well-being of the national economy. A point of view emerging currently is that just as public sector undertakings are outside the purview of the Monopolies and Restrictive Trade Practices Act by virtue of the exemption conferred on them, the Income Tax Act should confer similar exemption to it from tax liability by suitable amendment in Section 10 of the Act as is given to local authorities, housing boards, etc. This view is supported on the ground that the exemption from tax liability of public sector undertakings would ultimately benefit the consumers of the products

of the public sector undertakings. This is not an irrelevant circumstance to indicate that according to the general perception, there is a distinction between the public and private sectors. In some earlier decisions of this Court, the public sector has been treated as a distinct class for the purpose of exemption under statutes.

34. In **Hindustan Paper Corporation Ltd. v. Government of Kerala** [(1986) 3 SCC 398], a provision granting exemption to government companies and cooperative societies alone for selling forest produce at less than selling price fixed under the Kerala Forest Produce (Fixation of Selling Price) Act, 1978 was held to be constitutionally valid and not violative of Articles 14 and 19(1)(g) of the Constitution of India. It was held that the government or public sector undertakings formed a distinct class. In this context, it was held as under:

“As far as government undertakings and companies are concerned, it has to be held that they form a class by themselves since any profit that they may make would in the end result in the benefit to the members of the general public. The profit, if any, enriches the public coffer and not the private coffer. The role of industries in the public sector is very sensitive and critical from the point of view of national economy. Their survival very often depends upon the budgetary provision and not upon private resources which are available to the industries in the private sector...”

Similarly, in **M. Jhangir Bhatusha v. Union of India** [JT (1989) 2 SC 465], a concession in import duty granted to the State Trading Corporation was upheld on the ground that public policy can support the differentiation.

35. It is clear that the government or the public sector undertakings have been treated as a distinct class separate from those in the private sector and the fact that the profit earned in the former is for public benefit instead of private benefit, provides an intelligible differentia from the social point of view which is of prime importance for the national economy. Thus, there exists an intelligible differentia between the two categories which has a rational nexus with the main object of promoting the national economic policy or the public policy. This element also appears in the impugned enactment itself wherein ‘economic viability of such company’ is specified as the most relevant circumstance for grant of approval of the scheme by the Central Government. This intrinsic element in the provision itself supports the view that the main object thereof is to promote and improve the health of the public sector companies even though its effect is a benefit to its employees.

36. As already indicated, clause (10-C) of Section 10 of the Act itself mentions economic viability of a public sector company as the most relevant circumstance to attract the provision. The economic status of employees of a public sector company who get the benefit of the provision is also lower as compared to their counterpart in the private sector. If this be the correct perspective as we think it is in the present case, the very foundation of the challenge to the impugned provision on the basis of economic equality of employees in both sectors is non-existent. Once the stage is reached where the differentiation is rightly made between a public sector company and a private sector company and that too essentially on the ground of economic viability of the public sector company and other relevant circumstances, the argument based on equality does not survive. This is independent of the disparity in the compensation package of employees in the private sector and the public sector. The argument

of discrimination is based on initial equality between the two classes alleging bifurcation thereafter between those who stood integrated earlier as one class. This basic assumption being fallacious, the question of any hostile discrimination by granting the benefit only to a few in the same class denying the same to those left out does not arise.

37. We shall now refer to some other clauses of Section 10 of the Act to which reference was made at the hearing in support of the rival contentions. Sub-clause (i) of clause (10) of Section 10 confines the benefit thereunder only to the government servants, defence personnel and employees of a local authority. Sub-clause (i) of clause (10-A) similarly confines the benefit to government servants, defence personnel and employees of a local authority or a corporation established by a statute. Clause (10-A) also makes a distinction between the government employees and other employees. Clause (10-B) also removes the limit in respect of any payment as retrenchment compensation under a scheme approved by the Central Government. Some other clauses in Section 10 of the Act further show that the scheme of Section 10 contemplates a distinction between employees based on the category of their employer. Accordingly, clause (10-C) therein is not a departure from the existing scheme but in conformity with some clauses earlier enacted therein.

38. Once the impugned provision contained in the newly inserted clause (10-C) of Section 10 of the Income Tax Act, 1961 is viewed in the above perspective keeping in mind the true object of the provision, there is no foundation for the argument that it is either discriminatory or arbitrary. There is a definite purpose for its enactment. One of the purposes is streamlining the public sector to cure it of one of its ailments of overstaffing which is realised from experience of almost four decades of its functioning. In view of the role attributed to the public sector in the sphere of national economy, improvement in the functioning thereof must be achieved in all possible ways. A measure adopted to cure it of one of its ailments is undoubtedly a forward step towards promoting the national economy. The provision is an incentive to the unwanted personnel to seek voluntary retirement thereby enabling the public sector to achieve the true object indicated. The personnel seeking voluntary retirement no doubt get a tax benefit but then that is an incentive for seeking voluntary retirement and at any rate that is the effect of the provision or its fall-out and not its true object. It is similar to the incentive given to the tax payers to invest in the public sector bonds by non-inclusion of the interest earned thereon in the tax-payer's total income which promotes the true object of raising the resources of the public sector for its growth and modernisation. The real distinction between the true object of an enactment and the effect thereof, even though appearing to be blurred at times, has to be borne in mind, particularly in a situation like this. With this perspective, keeping in view the true object of the impugned enactment, there is no doubt that employees of the private sector who are left out of the ambit of the impugned provision do not fall in the same class as employees of the public sector and the benefit or the fall-out of the provision being available only to the public sector employees cannot render the classification invalid or arbitrary. This classification cannot, therefore, be faulted.

40. The other submission of the petitioners is to read the provision in a manner which would cover all employees including employees of the private sector within the ambit of the impugned provision. This further question does not arise in view of our conclusion that there is no discrimination made out. We may, however, mention that the Finance Bill, 1987 while

inserting a new clause (10-C) in Section 10 of the Income Tax Act simultaneously inserted a new clause (36-A) in Section 2 of the Act with effect from April 1, 1987 defining 'public sector company', which expression has been used in the newly inserted clause (10-C) of Section 10. In view of the simultaneous definition of 'public sector company' in the Act, there can be no occasion to construe this expression differently without which a private sector company cannot be included in it. It is, therefore, not possible to construe the impugned provision while upholding its validity in such a manner as to include a private sector company also within its ambit. Consequently, the writ petition is dismissed. All the interim orders shall stand vacated.

T H E E N D