CASE NO.:
Appeal (civil) 8574-8577 of 2001

PETITIONER:
High Court of Gujarat & Anr.

RESPONDENT:
Gujarat Kishan Mazdoor Panchayat & Ors.

DATE OF JUDGMENT: 10/03/2003

BENCH:
S.B. Sinha

JUDGMENT:

J U D G M E N T

S.B. SINHA, J :

Although I agree with the conclusions arrived at by my learned Brother, having regard to the importance of the question involved, I would like to assign additional reasons therefor.

The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of writ of certiorari. [See R.K. Jain Vs. Union of India and Others reported in (1993) 4 SCC 119 para 74]

A writ of quo warranto can only be issued when the appellant is contrary to statutory rules. [See Mor Modern Cooperative Transport Society Ltd. Vs. Financial Commissioner & Secretary to Govt. of Haryana and Another (2002) 6 SCC 269]

When questioned, Mr. R. Venkataramani, learned senior counsel on behalf of the respondents fairly stated that in this case the High Court was concerned with the question as to whether a writ of quo warranto can be issued or not. Thus, with a view to find out as to whether a case has been made out for issuance of quo warranto, the only question which was required to be considered was as to whether Shri N.A. Acharya fulfilled the qualifications laid down under sub-section (4) of Section 10 of the Bombay Industrial Relations Act 1946 or not. The Full Bench of the High Court has mainly proceeded on the basis that the Industrial Court was required to have three or more members, one of whom shall be President as specified in sub-section (2) of Section 10 and, thus, a person before he is appointed as the President must necessarily be appointed as a Member. In my opinion, while arriving at the said finding what the High Court has failed to take into consideration was that sub-section (2) of Section 10 did not impose any restriction on the power of the State to appoint a Member or a President. The said provision merely speaks of the composition of the Court of Industrial Arbitration. The expression 'shall consist of three or more Members' is important. Sub-section (2) of Section 10 provides for the composition of the Tribunal and nothing else. By necessary implication a President of the Court of Industrial Arbitration would also have to be a Member and precisely that was the reason why no separate qualification for the appointment of a qualification has been laid down in the Act. Sub-section (4) of Section 10 of the Act lays down the eligibility criteria of a Member only. It is, therefore, significant that for the purpose of

appointment of a Member as also the President of the Court of Industrial Arbitration the eligibility criteria remain the same.

The legitimate expectation of a Member to be promoted to the Post of the Chairman as has been submitted by Mr. Venkataramani will, thus, have no relevance as nobody has a vested right to be promoted.

It may be true that reference has been made by the High Court while making the recommendations to the draft rules known as Draft Recruitment Rules but it appears from the records that the said draft rules, purported to have been framed by the High Court for replacing the Recruitment Rules for the Post of President as contained at Item 34 in the Handbook of Guidelines on Recruitment Rules of Officers under Labour and Employment Department, Government of Gujarat, Gandhinagar, December, 1990, were published in the year 1992.

It is now trite that draft rules which are made to lie in a nascent state for a long time cannot be the basis for making appointment or recommendation. Rules even in their draft stage can be acted upon provided there is a clear intention on the part of the Government to enforce those rules in the near future. (See Vimal Kumari Vs. State of Haryana and Others reported in (1998) 4 SCC 114)

Sub-section (4) of Section 10 of the Act states that a Member of the Industrial Court shall be a person who is or has been a Judge of High Court or is eligible for being appointed a Judge of such Court. Article 217 of the Constitution of India inter alia lays down the qualification to be possessed by a citizen for his appointment as a High Court Judge. It has not been and could not be disputed that Shri N.A. Acharya has the requisite qualification. The other and further qualifications for appointment of a member have been laid down in the provisos appended thereto. The qualifications specified in the said provisos are meant for those who do not satisfy the requirements of main provision. First and Second provisos appended to sub-section (4) of Section 10 are exceptions to the main provision. Once it is held that sitting judicial officers can be appointed either as Member or President of the Court of Industrial Arbitration, indisputably the High Court is required to be consulted therefor. It is for the High Court and High Court alone to nominate a person of its choice. Such a practice is followed by all the High Courts of the country and although the ultimate authority is the State, the recommendations made by the High Court is normally accepted.

A statute as is well-known must be interpreted having regard to the purport and object which it seeks to achieve. The object of the Act is to constitute Industrial Arbitration Court for the purpose of adjudication of the disputes between the management and the workmen. Such courts which are normally manned by the judicial officers cannot be kept vacant for a long time. Whenever they are meant to be filled up by the sitting judicial officers, consultation with the High Court is imperative.

Although we do not find any difficulty in interpreting the provisions, even if it be assumed that the provisions of Sub-section (2) and sub-section (4) of Section 10 of the Act render two different meanings, it is trite, that in such an event the rule of purposive construction should be taken recourse to.

In Jt. Registrar of Cooperative Societies, Kerala Vs. T.A. Kuttappan and Others [(2000) 6 SCC 127] while interpreting the provisions dealing with the question as regard the duties and functions of Committee of Management of the Society constituted under Kerala Cooperative Societies Act, 1969 this Court observed:

"The duty of such a committee or an administrator is to set right the default, if any, and to enable the society to carry on its functions as enjoined by law. Thus, the role of an administrator or a committee appointed by the Registrar while the Committee of

Management is under supersession, is, as pointed out by this Court, only to bring on an even keel a ship which was in doldrums. If that is the objective and is borne in mind, the interpretation of these provisions will not be difficult."

In Associated Timber Industries and Others Vs. Central Bank of India and Another [(2000) 7 SCC 93], while considering the provisions of the Bombay Money Lenders Act vis--vis the provisions of other Acts upon a purposive and meaningful interpretation held that the banks do not come under the purview of the Assam Money Lenders Act.

In United Bank of India, Calcutta Vs. Abhijit Tea Co. Pvt. Ltd. and Others [(2000) 7 SCC 357] this Court noticed:

"25. In regard to purposive interpretation, Justice Frankfurter observed as follows:

Legislation has an aim, it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose [Some Reflections on the Reading of Statutes, 47 Columbia LR 527, at p. 538 (1947)].

26. That principle has been applied to this very Act by this Court recently in Allahabad Bank Vs. Canara Bank. If the said principle is applied, it is clear that the provision in Section 31 must be construed in such a manner that, after the Act, no suit by the Bank is decided by the civil court and all such suits are decided by the Tribunal."

In K. Duraisamy and Another Vs. State of T.N. and Others [(2001) 2 SCC 538] it was held:

"The mere use of the word 'reservation' per se does not have the consequence of ipso facto applying the entire mechanism underlying the constitutional concept of a protective reservation specially designed for the advancement of any socially-and-educationally-backward classes of citizens or for the Scheduled Castes and Scheduled Tribes, to enable them to enter and adequately represent in various fields. The meaning, content and purport of the expression will necessarily depend upon the purpose and object with which it is used."

The Court while interpreting the provision of a statute, although, is not entitled to re-write the statute itself, is not debarred from "ironing out the creases". The court should always make an attempt to uphold the rules and interpret the same in such a manner which would make it workable.

It is also a well settled principles of law that an attempt should be made to give effect to each and every word employed in a statute and such interpretation which would render a particular provision redundant or otiose should be avoided.

In Reserve Bank of India vs. Peerless Co. reported in 1987(1) SCC 424, this Court said:-

"Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to any as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation, Statutes have to be construed so that every word has a place and everything is in its place.."

In "The Interpretation and Application of Statutes" by Reed Dickersen, the author at page 135 has discussed the subject while dealing with the importance of context of the statute in the following terms:-

".The essence of the language is to reflect, express, and perhaps even effect the conceptual matrix of established ideas and values that identifies the culture to which it belongs. For this reason, language has been called 'conceptual map of human experience'."

The purport and object of the Statute is to see that a Tribunal becomes functional and as such the endeavors of the Court would be to see that to achieve the same, an interpretation of Section 10 of the Act be made in such a manner so that appointment of a President would be possible even at the initial constitution thereof.

Such a construction is permissible by taking recourse to the doctrine of strained construction, as has been succinctly dealt with by Francis Bennion in his Statutory Interpretation. At Section 304, of the treatise; purposive construction has been described in the following manner:-

"A purposive construction of an enactment is one which gives effect to the legislative purpose by

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction).

In DPP vs. Schildkamp (1971) AC 1, it was held that severance may be effected even where the 'blue pencil' technique is impracticable.

In Jones vs. Wrotham Park Settled Estates (1980) AC 74 at page 105, the law is stated in the following terms:-

"I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it. Kammins Ballrooms Co. Ltd. vs. Zenith Investments (Torquay) Ltd. (1971 AC 850) provides an instance of this; but in that case the three conditions that must be fulfilled in order to justify this course were satisfied. First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it was the purpose of the Act to remedy; secondly, it was apparent that the draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with an eventuality that required to be dealt with if the purpose of the Act was to be achieved; and thirdly, it was possible to state with certainty what were the additional words that would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed into law. Unless this third condition is fulfilled any attempt by a court of justice to repair the omission in the Act cannot be justified as an exercise of its jurisdiction to determine what is the meaning of a written law which Parliament has passed."

In Principles of Statutory Interpretation of Justice G.P. Singh, 5th Edition, 1992, it is stated:

"The Supreme Court in Bangalore Water Supply vs. A. Rajappa (AIR 1978 SC 548) approved the rule of construction stated by DENNING, L.J. while dealing with the definition of 'Industry in the Industrial Disputes Act, 1947. The definition is so general and ambiguous that BEG, C.J. said that the situation called for "some judicial heroics to cope with the difficulties raised". K. IYER, J., who delivered the leading majority judgment in that case referred with approbation the passage extracted above from the judgment of DENNING,L.J. in Seaford Court Estates Ltd. vs. Asher. But in the same continuation he also cited a passage from the speech of LORD SIMONDS in the case of Magor & St. Mellons R.D.C. vs. Newport Corporation, 1951(2) All ER 839 as if it also found a part of the judgment of DENNING, L.J. This passage reads: "The duty of the court is to interpret the words that the legislature has used. Those words may be ambiguous, but, even if they are, the power and duty of the Court to travel outside them on a voyage of discovery are strictly limited." As earlier noticed LORD SIMONDS and other Law Lords in Magor and St. Mellon's case were highly critical of the views of DENNING, L.J. However, as submitted above, the criticism is more because of the unconventional manner in which the rule of construction was stated by him. In this connection it is pertinent to remember that although a court cannot supply a real casus omissus it is equally clear that it should not so interpret a statute as to create a casus omissus when there is really none."

In Hameedia Hardware Stores vs. B. Mohan Lal Sowcar reported in (1988) 2 SCC 513 at 524 the rule of addition of word had been held to be permissible in the following words:-

"We are of the view that having regard to the pattern in which clause (a) of sub-section (3) of Section 10 of the Act is enacted and also the context, the words 'if the landlord required it for his own use or for the use of any member of his family' which are found in sub-clause (ii) of Section 10(3)(a) of the Act have to be read also into sub-clause (iii) of Section 10(3)(a) of the Act. Sub-clauses (ii) and (iii) both deal with the non-residential buildings. They could have been enacted as one sub-clauses by adding a conjunction 'and' between the said two sub-clauses, in which event the clause would have read thus : 'in case it is a non-residential building which is used for the purpose of keeping a vehicle or adapted for such use if the landlord required it for his own use or for the use of any member of his family and if he or any member of his family is not occupying any such building in the city, town or village concerned which is his own; and in case it is any other non-residential building, if the landlord or member of his family is carrying on, a non-residential building in the city, town or village concerned which is his own'. If the two sub-clauses are not so read, it would lead to an absurd result.

In Punjab Land Development and Reclamation Corporation Ltd., Chandigarh vs. Presiding Officer, Labour Court, Chandigarh and Ors. reported in (1990) 3 SCC 682, this Court held:
"The court has to interpret a statute and apply it to the facts. Hans Kelsen in his Pure Theory of Law. (p. 355) makes a distinction between interpretation by the science of law or jurisprudence on the one hand and interpretation by a law-applying organ (especially the court) on the other. According to him "jurisprudential interpretation is purely cognitive ascertainment of the meaning of legal norms. In contradistinction to the interpretation by legal organs, jurisprudential interpretation does not create law". "The purely cognitive interpretation by jurisprudence is therefore unable to fill alleged gaps in the law. The filling of a so-called gap in the law is a law-creating function that can only be performed by a law-applying organ; and the function of creating law is not performed by jurisprudence interpreting law. Jurisprudential interpretation can do no more than exhibit all possible meanings of a legal norm. Jurisprudence as cognition of law cannot decide between the possibilities exhibited by it, but must leave the decision to the legal organ who, according to the legal order, is authorised to apply the law". According to the author if law is to be applied by a legal organ, he must determine the meaning of the norms to be applied : he must 'interpret' those norms (p. 348). Interpretation therefore is an intellectual activity which accompanies the process of law application in its advance from a higher level to a lower level. According to him, the law to be applied is a frame. "There are cases of intended or unintended indefiniteness at the lower level and several possibilities are open to the application of law." The traditional theory believes that the statute, applied to a concrete case, can always supply only one correct decision and that the positive-legal 'correctness' of this decision is based on the statute itself. This theory

describes the interpretive procedure as if it consisted merely in an intellectual act of clarifying or understanding; as if the law-applying organ had to use only his reason but not his will, and as if by a purely intellectual activity, among the various existing possibilities only one correct choice could be made in accordance with positive law. According to the author : "The legal act applying a legal norm may be performed in such a way that it conforms (a) with the one or the other of the different meanings of the legal norm, (b) with the will of the norm-creating authority that is to be determined somehow, (c) with the expression which the norm-creating authority has chosen, (d) with the one or the other of the contradictory norms; or (e) the concrete case to which the two contradictory norms refer may be decided under the assumption that the two contradictory norms annul each other. In all these cases, the law to be applied constitutes only a frame within which several applications are possible, whereby every act is legal that stays within the frame."

In S. Gopal Reddy vs. State of Andhra Pradesh reported in (1996) 4 SCC 596 this Court observed : "It is a well-known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary."

In Public Services Tribunal Bar Association Vs. State of U.P. and Another [2003 AIR SCW 653] this Court noticed Section 3 of U.P. Public Services (Tribunal) Act which provided for different qualifications for Chairman, Vice-Chairman (Judicial) and Vice-Chairman (Administration) as also Judicial and Administrative Members of the Service Tribunal. A Bench of this Court of which one of us (Hon'ble the Chief Justice of India) was a member held that as appointment of Chairman, Vice Chairman (Judicial), Vice-Chairman(Administration) and Members are to be made in consultation with the Chief Justice of the High Court, the Act is intra vires.

The said decision is also a pointer to show that whenever a post is to be filled up by the Judicial Member who is eligible to be appointed as a High Court Judge, consultation with the High Court is imperative.

Furthermore, if the interpretation of Section 10 of the Act as propounded by the High Court is accepted, no President can be appointed directly by the State at the time of Constitution of the Court. Such a situation, therefore, would lead to absurdity if it is held that the candidate must first be appointed as a Member and the Post of President can be filled up inter alia by way of promotion or otherwise. When literal interpretation of a provision leads to absurdity or manifest injustice, it is trite, the same must be avoided.

Furthermore, if the legislature intended to lay down different qualifications or eligibility criteria for the President and the Members, it would have expressly stated so. We may in this connection notice the provisions of the Consumer Protection Act.

In absence of an express provision providing either for different qualification or eligibility criteria or the selection process, the same procedure for appointment must be followed.

Both under the existing rules as also the Draft Rules mode and manner of appointment have been laid down. Even in absence of the Draft Rules in

terms of Rule 34 of the Recruitment Rules for the President of Industrial Court appointment can be made by nomination. Thus, appointment to the Post of President could be made by way of nomination also subject to the nominees holding requisite qualifications laid down therefor.

It is further trite that non-mentioning or wrong mentioning of a provision of law would not invalidate an order if a source therefor can be found out either under general law or a statute law.

It is further well-settled that when there are two sources of power, even if one is not applicable, the order will not become invalid if the power of the statutory authority can be traced to another source.

For the reasons aforementioned, taking any view of the matter it cannot be said that the appointment of Shri N.A. Acharya was illegal or invalid. The impugned judgment, therefore, cannot be sustained which is, therefore, set aside. The appeal is allowed.