CASE NO.:
Appeal (civil) 8737 of 2003

PETITIONER:
Sangeeta Singh

RESPONDENT:
Union of India and Ors.

DATE OF JUDGMENT: 23/08/2005

BENCH:
ARIJIT PASAYAT & H.K. SEMA

JUDGMENT:
J U D G M E N T
[With C.A. Nos. 8739/2003, 8740/2003, 8741/2003 and 8742/2003]

ARIJIT PASAYAT, J.

Civil Appeal nos. 8739/2003 and 8740/2003 relate to civil writ petition no.24966/2001 disposed of by a Division Bench of Allahabad High Court, while, Civil Appeal nos. 8742/2003, 8741/2003, 8737/2003 relate to civil writ petition no. 18104/2002, which was disposed of following the view expressed in the other writ petition. The dispute relates to eligibility of appellants to be selected for dealership in petroleum products.

Factual controversy lies in a narrow compass and is as follows:

In both writ petitions challenge was to the selection of the appellants in Civil Appeal nos.8737/2003 and 8739/2003 for retail dealership of Indian Oil Corporation Limited (in short 'IOC') at different places. The appellants and writ-petitioners in the writ petitions before the High Court were applicants for dealership and distributionship of various petroleum products. Challenge to the selection was on the ground that the selected persons were not eligible for selection on several grounds. One of the grounds highlighted was that their relatives already hold letters of intent for dealership or distributionship of MS/HSD/Kerosene/LDO/LPG of another or same public sector oil company. So far as appellant in Civil Appeal no. 8739/2003 is concerned, it was pointed out that the selected person's father-in-law was already holding dealership. In the case of appellant in civil appeal no.8737/2003 similar plea was raised. Successful persons took the stand that the person who was already holding dealership did not come within the enumerated prohibited category and, therefore, there was no illegality in the selection. The High Court, however, held that no doubt the terms and conditions of grant of dealership mention that if daughter-in-law holds dealership then the father-in-law is disqualified. A literal or narrow meaning should not be given and if the father-in-law holds a dealership, daughter-in-law is also disqualified. A literal interpretation need not be given to the requirement, but the intention has to be seen. It was observed that the intention of the prohibition criteria for awarding of dealership was that if a close relative is already holding a dealership, relatives of such persons should not be granted a

dealership. If father-in-law is a close relation to the daughter-in-law reverse is also true and, therefore, the daughter-in-law is ineligible if the father-in-law had already a dealership. IOC and the selected persons have challenged the correctness of the judgments rendered by the High Court. Writ petitioner in Civil Misc. petition No.24966/2003 has questioned correctness of High Court's order in Civil Appeal no.8742/ 2003 on the ground that it had raised several other points to contend that the selected person was ineligible but the High Court did not refer to them. Originally, selected persons and IOC are appellants in other Civil Appeals.

Learned counsel for the appellants submitted that the view of the High Court is clearly untenable. In clear and unambiguous terms the advertisement indicated persons who are covered. It was not permissible for the High Court to add persons to the list of the relatives. The writ-petitioners before the High Court, the respondents herein supported the judgment of the High Court. Their stand is that intentions have to be seen, monopoly has to be discouraged and while dealing with State or public sector undertakings largesse a narrow meaning should not be given. It is a clear case of casus omissus, an unintentional omission, which is to be ignored as the intention is clear. IOC's stand is similar to that of originally selected candidates. It does not subscribe to the stand that it is a case of casus omissus. It is to be noted at this juncture that the eligibility criteria so far as relatives are concerned are different from 1997 onwards. Pre 1997 the relatives enumerated are as follows:

I Spouse
II Father/Mother
III Brother/Sister
IV Son/Daughter
V Daughter-in-law/Son-in-law
VI Parent-in-law

After 1997, the list reads as follows:

I Spouse
II Father/Mother (not applicable to daughter)
III Brother/Brother's wife (Not applicable for women applicants)
IV Son/Daughter in law.

It is well settled principle in law that the Court cannot read anything into a statutory provision or a stipulated condition 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. Similar is the position for conditions stipulated in advertisements.

Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See Institute of Chartered Accountants of India v. M/s Price Waterhouse and Anr. (AIR 1998 SC 74). The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which

results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner (1846 (6) Moore PC 1), Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See The State of Gujarat and Ors. v. Dilipbhai Nathjibhai Patel and Anr. (JT 1998 (2) SC 253). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See Stock v. Frank Jones (Tiptan) Ltd. (1978 1 All ER 948 (HL). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans (1910) AC 445 (HL), quoted in Jamma Masjid, Mercara v. Kodimaniandra Deviah and Ors.(AIR 1962 SC 847).

The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547). The view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981).

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

While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain (2000 (5) SCC 511). The legislative casus omissus cannot be supplied by judicial interpretative process.

Two principles of construction \026 one relating to casus omissus and the other in regard to reading the statute as a whole \026 appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danackwerts, L.J. in Artemiou v. Procopiou (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply

words literally would "defeat the obvious intention of the legislature and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. IRC (1963 AC 557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".

It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt." "But," on the other hand, "it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See Fenton v. Hampton (1858) XI Moore, P.C. 347. A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit proetereunt legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute - Casus omissus et oblivioni datus dispositioni communis juris relinquitur; "a casus omissus," observed Buller, J. in Jones v. Smart (1 T.R. 52), "can in no case be supplied by a court of law, for that would be to make laws." The principles were examined in detail in Maulavi Hussein Haji Abraham Umarji v. State of Gujarat and Anr. (JT 2004(6) SC 227).

The golden rule for construing all written instruments has been thus stated: "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further" (See Grey v. Pearson (1857 (6) H.L. Cas. 61). The latter part of this "golden rule" must, however, be applied with much caution. "if," remarked Jervis, C.J., "the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" (See Abley v. Dale 11, C.B. 378).

In the aforesaid background the High Court’s judgment cannot be maintained and is set aside. However, writ petitioner in writ petition no.24966/2000 has taken the plea that other grounds were highlighted in the writ petition to show as to how the selected person was ineligible. The High Court has not dealt with any other issue and has disposed of only on the ground that the father-in-law was holding dealership, thereby rendering daughter-in-law ineligible.

We, therefore, remit the matter to the High Court for consideration of other issues raised. We make it clear that we have not expressed any opinion on any other issue then

those indicated above. So, far as writ petition 18104/2002 is concerned, it is not the case that any other point was raised. Therefore, only writ petition no.24966 of 2003 remitted to the High Court to consider if the other pleas raised are tenable. Parties shall be permitted to place material in support of their respective stand, and not on the issue of relationship.

The appeals are accordingly allowed to the aforesaid extent with no order as to costs.