

(2024) 08 MP CK 0025

In the Madhya Pradesh High Court

Case No : Writ Petition No. 18471 of 2024

Jitendra Patwari

APPELLANT

Vs

The State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 06-08-2024

Acts Referred:

Indian Penal Code 1860 — Section 509

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(1)(r)

Hyderabad District Municipalities Act, 1956 — 34

Code of Criminal Procedure 1973 — Section 482

Citation : (2024) 08 MP CK 0025

Hon'ble Judges : G.S. Ahluwalia, J

Advocate : Vibhor Khandelwal, Anubhav Jain

Judgement

G.S. Ahluwalia, J

An office objection has been raised by the office, with regard to territorial jurisdiction of this Court.

2. The Petitioner is a former M.L.A. An FIR has been lodged against him in crime No.355/2024 at police station Dabra, Distt. Gwalior for offence under Section 509 of IPC and under Section 3(1)(r) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The undisputed fact is that when the alleged offence was committed, the petitioner was not the sitting M.L.A. and even today, he is not the sitting M.L.A. The only question which arises in the present case is that what is the meaning of word "former M.L.A./M.P."

4. The Supreme Court in the case of Ashwini Kumar Upadhyay and Others Vs. Union of India and Others reported in (2021) 20 SCC 613 has held as under :

"14. One of the main objectives behind issuing notice in the present writ petition, and the various orders that have been passed time to time by this Court, was to

ensure that criminal prosecutions against elected representatives (MPs and MLAs) are concluded expeditiously. The Court was of the opinion that such special consideration was required not only because of the rising wave of criminalisation that was occurring in the politics in the country, but also due to the power that elected representatives (sitting or former) wield, to influence or hamper effective prosecution. Additionally, as legislators are the repositories of the faith and trust of their electorate, there is a necessity to be aware of the antecedents of the person that is/was elected. Ensuring the purity of democratically elected institutions is thus the hallmark of the present proceedings.”

5. In the light of various orders passed by the Supreme Court in the case of Ashwini Kumar Upadhyay and Others Vs. Union of India and Others in W.P. (Civil) No. 699 of 2016, Special Courts have been established in State of M.P. to conduct the Trials of sitting as well as former M.L.A.s and M.P.s. The purpose behind establishing the Special Courts is to expedite the hearing of the cases registered by or against the sitting and former M.L.A.s and M.P.s. The object behind establishing the Special Court has already been clarified by the Supreme Court in its order dated 16-9-2020 (which has been quoted above), is due to the power that elected representatives (sitting or former) wield, to influence or hamper effective prosecution.

6. It is well established principle of law that “Purposive Interpretation” is the most proper way of interpretation.

7. The Supreme Court in the case of Vivek Narayan Sharma and Others (Demonetisation Case-5 J.) v. Union of India and Others reported in (2023) 3 SCC 1 has held as under :

“Purposive interpretation

133. We find that for deciding the present issue, it will also be necessary to refer an important principle of interpretation of statutes i.e. of purposive interpretation.

134. “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”, Columbia LR at p. 538].” This is how Justice Frankfurter succinctly propounds the principle of purposive interpretation.

135. It is thus necessary to cull out the legislative policy from various factors like the words in the statute, the Preamble to the Act, the Statement of Objects and Reasons, and in a given case, even the attendant circumstances. After the legislative policy is found, then the words used in the statute must be so interpreted such that it advances the purpose of the statute and does not defeat it.

136. Francis Bennion in his treatise *Statutory Interpretation*, at p. 810 described purposive construction in an equally eloquent manner as under:

"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)."

137. A statute must be construed having regard to the legislative intent. It has to be meaningful. A construction which leads to manifest absurdity must not be preferred to a construction which would fulfil the object and purport of the legislative intent.

138. Aharon Barak, the former President of the Supreme Court of Israel, whose exposition of "doctrine of proportionality" has found approval by the Constitution Bench of this Court in *Modern Dental College & Research Centre*, to which we will refer to in the forthcoming paragraphs, in his commentary on "Purposive Interpretation in Law", has summarised "the goal of interpretation in law" as under:

"At some point, we need to find an Archimedean foothold, external to the text, from which to answer that question. My answer is this : The goal of interpretation in law is to achieve the objective—in other words, the purpose—of law. The role of a system of interpretation in law is to choose, from among the semantic options for a given text, the meaning that best achieves the purpose of the text. Each legal text—will, contract, statute, and constitution—was chosen to achieve a social objective. Achieving this objective, achieving this purpose, is the goal of interpretation. The system of interpretation is the device and the means. It is a tool through which law achieves self-realisation. In interpreting a given text, which is, after all, what interpretation in law does, a system of interpretation must guarantee that the purpose of the norm trapped in the—in our terminology, the purpose of the text—will be achieved in the best way. Hence the requirement that the system of interpretation be a rational activity. A coin toss will not do. This is also the rationale—which is at the core of my own views—for the belief that purposive interpretation is the most proper system of interpretation. This system is proper because it guarantees the achievement of the purpose of law. There is social, jurisprudential, hermeneutical, and constitutional support for my claim that the proper criterion for interpretation is the search for law's purpose, and that purposive interpretation best fulfils that criterion. A comparative look at the law supports it, as well. I will discuss each element of that support below."

139. The learned Judge emphasised that purposive interpretation is the most proper system of interpretation. He observed that this system is proper because it guarantees the achievement of the purpose of law. The proper criterion for interpretation is the search for law's purpose, and that purposive interpretation best fulfils that criterion.

140. The principle of purposive interpretation has also been expounded through a catena of judgments of this Court. A Constitution Bench of this Court in *M. Pentiah v. Muddala Veeramallappa* was considering a question, as to whether the term prescribed in Section 34 would apply to a member of a "deemed" committee under the provisions of the Hyderabad District Municipalities Act, 1956. An argument was put forth that, upon a correct interpretation of the provisions of Section 16, the same would be permissible. Rejecting the said argument, K. Subba Rao, J., observed thus : (AIR pp. 1110-11, para 6)

"6. Before we consider this argument in some detail, it will be convenient at this stage to notice some of the well-established rules of construction which would help us to steer clear of the complications created by the Act. Maxwell on the Interpretation of Statutes, 10th Edn., says at p. 7 thus:

'... 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.'

It is said in *Craies on Statute Law*, 5th Edn., at p. 82— 'Manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly to be avoided.' Lord Davey in *Canada Sugar Refining Co. Ltd. v. R.* provides another useful guide of correct perspective to such a problem in the following words : (AC p. 741)

'... Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter.' "

141. A.K. Sarkar, J. in his concurring opinion observed thus : (*M. Pentiah case*, AIR p. 1115, para 27)

"27. There is no doubt that the Act raises some difficulty. It was certainly not intended that the members elected to the Committee under the repealed Act should be given a permanent tenure of office nor that there would be no elections under the new Act. Yet such a result would appear to follow if the language used in the new Act is strictly and literally interpreted. It is however well established that

'Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice,

presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Nevertheless, the courts are very reluctant to substitute words in a statute, or to add words to it, and it has been said that they will only do so where there is a repugnancy to good sense.' : see Maxwell on Statutes (10th Edn.) p. 229.

In *Seaford Court Estates Ltd. v. Asher*, KB at p. 499,

Denning, L.J. said:

'... when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament ... and then he must supplement the written word so as to give "force and life" to the intention of the legislature. ... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A Judge must not alter the material of which [the Act] is woven, but he can and should iron out the creases.'

(emphasis supplied)

142. Another Constitution Bench judgment of this Court in *High Court of A.P. v. L.V.A. Dixitulu* reiterated the position in the following words : (SCC p. 53, para 67)

"67. Where two alternative constructions are possible, the court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment."

143. In *Girdhari Lal & Sons v. Balbir Nath Mathur, O. Chinnappa Reddy, J.* explained the position as under : (SCC p. 243, para 9)

"9. So we see that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary."

144. After referring to various earlier judgments of other jurisdictions, his Lordship observed thus : (BalbirNathMathur case, SCC p. 246, para 16)

"16. Our own court has generally taken the view that ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities, vide K.P. Varghese v. ITO, State Bank of Travancore v. Mohd. M. Khan, SomPrakashRekhi v. Union of India, RavulaSubbaRao v. CIT, GovindlalChhaganlal Patel v. Agricultural Produce Market Committee and BabajiKondajiGarad v. Nasik Merchants Coop. Bank Ltd."

(emphasis supplied)

145. M.N. Venkatachaliah, J. speaking for the Constitution Bench of this Court in Tinsukhia Electric Supply Co. Ltd. v. State of Assam observed thus : (SCC p. 754, paras 118-20)

"118. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle *ut res magis valeat quam pereat*. It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it. In Manchester Ship Canal Co. v. Manchester Racecourse Co. Farwell, J. said : (pp. 360-61)

'... Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning, and not to declare them void for uncertainty.'

119. In Fawcett Properties Ltd. v. Buckingham County Council Lord Denning approving the dictum of Farwell, J., said : (Ch p. 849)

'... But when a statute has some meaning, even though it is obscure, or several meanings, even though there is little to choose between them, the courts have to say what meaning the statute to bear rather than reject it as a nullity.'

120. It is, therefore, the court's duty to make what it can of the statute, knowing that the statutes are meant to be operative and not inept and the nothing short of impossibility should allow a court to declare a statute unworkable. In Whitney v. IRC Lord Dunedin said : (AC p. 52)

'... A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes

that end unattainable.’ ”

146. In *State of Gujarat v. R.A. Meht*¹, this Court held as under : (SCC pp. 47-48, para 98)

“98. The doctrine of purposive construction may be taken recourse to for the purpose of giving full effect to statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept. The courts must refrain from declaring a statute to be unworkable. The rules of interpretation require that construction which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred looking into the text and context of the statute. Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very purpose. ‘The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of the statute must be so construed as to make it effective and operative.’ The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus legislative futility must be ruled out. A statute must be construed in such a manner so as to ensure that the Act itself does not become a dead letter and the obvious intention of the legislature does not stand defeated unless it leads to a case of absolute intractability in use. The court must adopt a construction which suppresses the mischief and advances the remedy and ‘to suppress subtle inventions and evasions for continuance of the mischief, and pro privatocommodo, 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’. The court must give effect to the purpose and object of the Act for the reason that legislature is presumed to have enacted a reasonable statute. (Vide *M. Pentiah v. Muddala Veeramallappa*, *S.P. Jain v. Krishna Mohan Gupta*, *RBI v. Peerless General Finance & Investment Co. Ltd.*, *Tinsukhia Electric Supply Co. Ltd. v. State of Assam*, SCC at p. 754, para 118; *UCO Bank v. Rajinder Lal Capoor* and *Grid Corpn. of Orissa Ltd. v. Eastern Metals & Ferro Alloys*.)”

(emphasis supplied)

147. The principle of purposive construction has been enunciated in various subsequent judgments of this Court. However, we would not like to burden this judgment with a plethora of citations. Suffice it to say, the law on the issue is very well crystallised.

148. It is thus clear that it is a settled principle that the modern approach of interpretation is a pragmatic one, and not pedantic. An interpretation which advances the purpose of the Act and which ensures its smooth and harmonious working must be chosen and the other which leads to absurdity, or confusion, or friction, or contradiction and conflict between its various provisions, or

undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment must be eschewed. The primary and foremost task of the Court in interpreting a statute is to gather the intention of the legislature, actual or imputed. Having ascertained the intention, it is the duty of the Court to strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary, the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment. Ascertainment of legislative intent is the basic rule of statutory construction.

8. In view of some special privileges or powers enjoyed by the sitting and former M.L.A.s and M.P.s, the Supreme Court has directed for establishing Special Courts for expedited hearing of the cases.

9. Now the following situations may arise :

a. A legislator was sitting M.L.A. or M.P. at the time of commission of offence, but at the time of filing of charge sheet or filing of petition under Section 482 of Cr.P.C. he had demitted his office;

b. A legislator was sitting M.L.A. or M.P. at the time of commission of offence and even at the time of challenging the same or trial, he was still sitting M.L.A or M.P.

c. A legislator was not M.L.A. or M.P. at the time of commission of offence but at the time of challenging the same or trial, he was elected as M.L.A. or M.P.

d. A legislator was neither sitting M.L.A. or M.P. at the time of commission of offence nor at the time of challenging the same or trial, but he was elected as M.L.A. or M.P. prior to commission of offence.

10. The present case is covered by situation no. d. The petitioner was earlier elected as M.L.A. but at the time of commission of offence, he was not sitting M.L.A. and even today he is not sitting M.L.A. Therefore, he is a former M.L.A.

11. If the date of commission of offence is considered to be the relevant date to find out as to whether the accused is to be tried by Special Court or not, then in the considered opinion of this Court, the said interpretation would frustrate the very purpose of establishing Special Courts. The status of an accused is not material, but the material aspect is the power which he enjoys which can influence the witnesses or hamper the effective prosecution.

12. The Andhra Pradesh High Court in the case of Kolusu Partha Sarathy Vs. State of A.P. reported in 2021 SCC OnLine AP 4466 has held that the date of commission is important.

13. However, the Manipur High Court in the case of Yengkhom Surchandra Singh v. Mayanglambam Rameshwar Singh reported in 2024 SCC OnLine Mani 32 has

held as under :

"22. Considering the propositions of law as discussed above, this Court is of the view that the Special Courts (MPs/MLAs), Manipur will have jurisdiction to try cases against former and sitting Legislatures (MPs/MLAs), notwithstanding the fact that such offences were committed prior to becoming a legislature; or as a sitting legislature; or after demitting office as legislature. Accordingly, the points raised in Para 11 are answered in affirmative, meaning thereby that the Special Courts have jurisdiction to try all cases against the former and sitting legislatures irrespective of their status at the time of commission of such offences."

14. A Division Bench of this Court in the case of Narsingh Sharma and others Vs. State of M.P. reported in 2019 SCC OnLine MP 2040 has held as under :

"10. While keeping in view these general principles of construction, when we go through the concerns expressed by their Lordships and various directions given by them at the different stages of hearing of the petition, an unambiguous, plain and clear purpose behind the direction or the constitution of the Special Courts is obvious and that is to expedite the trial of the cases pending against the legislators irrespective of their terms or the fact as to whether they are existing or ex legislators."

15. Thus, it is held that date of commission of offence is not material and even if an offence is committed by an ex-legislator, still the matter will have to be heard by Designated Court for M.P./ M.L.A.

16. Therefore, by respectfully disagreeing with the view expressed by Andhra Pradesh High Court in the case of Kolusu Partha Sarathy (Supra), the office objection with regard to territorial jurisdiction is hereby rejected.

17. In the light of the directions issued by Supreme Court in the case of Ashwini Kumar Upadhyay (Supra), the case in hand is to be heard by the Designated Court for sitting and former M.P.s and M.L.A.s.

18. The office is directed to list this case before the Designated Court for sitting or former M.P.s and M.L.A.s.