

(2019) 03 DEL CK 0018

In the Delhi High Court

Case No : Civil Writ Petition No. 2199 Of 2019

Mathews J. Nedumpara And Ors

APPELLANT

Vs

Fali S. Nariman And Ors

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

Constitution of India, 1950 — Article 226
Bar Council of India Rules, 1975 — Rule 6

Citation : 2019 AIR (Delhi) 184

Hon'ble Judges : Rajendra Menon, CJ;V. Kameswar Rao, J

Bench : Division Bench

Advocate : Mathews J. Nedumpara, Rajesh Gogna

Final Decision : Dismissed

Judgement

Rajendra Menon, CJ

1. Petitioners have filed this writ petition in public interest and the prayer made in the writ petition reads as under:

"(a) declare that the Explanation to Rule 6 of the Bar Council of India Rules, 1975, CHAPTER - II (STANDARDS OF PROFESSIONAL CONDUCT AND ETIQUETTE), which says that 'Court' means not the entire Court, but the particular Court where the relative of a lawyer is a Presiding Judge, negates absolutely the concept of nemo debet esse judex in propria causa, and allowing the kith and kin of sitting Judges to practice in the very Court where his father or uncle is a Judge cuts the concepts of fairness, independence and impartiality in the administration of justice at their very root, namely, justice should not only be done, but should manifestly and undoubtedly be seen to be done;

(b) declare that Respondent No.1, the living legend, is disqualified from appearing in the Supreme Court where his illustrious son, Hon'ble Mr. Justice Rohinton F. Nariman, is a sitting Judge, for, the Supreme Court means the entire Courts as an institution and the petitions which he (Respondent No.1) vets

captioned as "To The Hon?ble the Chief Justice and his Companion Justices of the Hon?ble Supreme Court of India" come up before his illustrious son, Hon?ble Mr. Justice Rohinton F.Nariman;

(c) issue an appropriate direction to the Collegium Members of the Supreme Court and the Government of India to take appropriate steps to secure transfer of the Judges of High Courts, where their kith and kin practice as lawyers, to some other High Court keeping in mind all concern for the inconvenience and difficulty to the Judge concerned and taking all such steps to mitigate the same;

(d) issue a writ of injunction or any other appropriate writ, order or injunction restraining and prohibiting Respondent No.1 in the Supreme Court;

(e) grant ad-interim injunction in terms of prayer (d) above; and

(f) pass such other order or orders, as this Hon?ble Court may deem fit and proper under the facts and circumstances of the case."

2. Petitioner No.1 who appears in person took us through the provisions of Rule 6 of the Bar Council of India Rules, 1975, explanation thereto and argued that this Court should declare the aforesaid provision and the words used therein "to mean not only the particular Court where the relative of a lawyer is a Presiding Judge but it should extend to the entire Court where the relative is a Judge."

That apart, he has indicated various facts and made a submission to the effect that the Bar Council of India should be mandated to preserve the concept of *nemo debet esse judex in propria causa* in its letter and spirit and should ban such lawyers from practising in any Court.

3. We have heard learned counsel for the parties and we are of the considered view that in a Public Interest Litigation exercising our extraordinary jurisdiction under Article 226 of the Constitution of India, we cannot issue a declaration as prayed for.

4. Chapter - II (Standards of Professional Conduct and Etiquette) has been formulated in the Bar Council of India Rules, 1975 and Rule 6 thereof along with its explanation reads as under:

"6. An Advocate shall not enter appearance, act, plead or practise in any way before a Court, Tribunal or Authority mentioned in Section 30 of the Act, if the sole or any member thereof is related to the Advocate as father, grandfather, son, grand-son, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law or sister-in-law.

For the purposes of this rule, Court shall mean a Court, Bench or Tribunal in which above mentioned relation of the Advocate is a Judge, Member or the Presiding Officer."

5. The explanation and the meaning of the word "Court" clearly stipulate that it

does not mean the entire Court but only refers to a particular Court where relative of a lawyer is a Presiding Judge.

6. According to the petitioner, this explanation indicates the absolute concept of *nemo debet esse judex in propria causa* and therefore the declaration should be given to bring within the ambit of the word "Court" the entire Court where the relative of a lawyer is a Judge.

7. In our considered view, the law does not permit us to do so. The Rule has been formulated by the legislative authorities and we cannot interpret the Rule based on the concept canvassed before us in the manner as submitted by the learned petitioner present before us. It is a cardinal principle of interpretation of statute that the law is to be interpreted in a manner as laid down in the statute book in furtherance to the legislative intent and not to interpret or give it a meaning which runs contrary to the legislative intent. If the provisions of Rule 6 and the explanation contained thereto as appearing in the statutory rules are taken note of, it clearly explains the ambit and import of the word

"Court" used therein and if the contention of the petitioner is to be accepted, we would be re-writing the statute in a manner which would run contrary to the legislative intent and this, in our considered view, is not permissible in law. That being the legal position, we see no reason to make any indulgence into the matter.

8. Justice G.P. Singh in *Principles of Statutory Interpretation* 14th Edition revised by Justice A.K. Patnaik in the Chapter "Intention of the Legislature" has clearly laid down the principle by saying that a statute is an edict of the legislature and the conventional way of interpreting or construing a statute is to seek the intention of its maker. The author propounds that a statute is to be construed according to the intent of those who make it and the duty in judicial review is to act upon the true intention of the legislature. The author further clarifies that if meanings of a word used or the provisions are plain, effect must be given to it irrespective of their consequence. It is stressed by the learned author that when the words of a statute are clear, plain or unambiguous and can have only one meaning, the Courts are bound to give effect to that meaning irrespective of the consequence. It is emphasized by the author that if the words of a statute are clear, precise and unambiguous, then the natural meaning in the ordinary sense have to be given to the meaning and the provisions of the statute.

9. These principles have been reiterated in a judgment rendered by the Hon'ble Supreme Court in the case of *Raghunath Rai Bareja & Anr. v. Punjab National Bank & Ors.*, (2007) 2 SCC 230 and for the sake of convenience we reproduce hereinunder the principles in detail laid down by the Hon'ble Supreme Court:

"40. It may be mentioned in this connection that the first and the foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words

of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide *Swedish Match AB v. Securities and Exchange Board of India* (2004) 11 SCC 641]. As held in *Prakash Nath Khanna v. CIT* (2004) 9 SCC 686 the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result, vide *Delhi Financial Corpn. v. Rajiv Anand* (2004) 11 SCC 625. Where the legislative intent is clear from the language, the court should give effect to it, vide *Govt. of A.P. v. Road Rollers Owners Welfare Assn.* (2004) 6 SCC 210 and the court should not seek to amend the law in the garb of interpretation.

41. As stated by Justice Frankfurter of the US Supreme Court (see "Of Law & Men : Papers and Addresses of Felix Frankfurter"):

"Even within their area of choice the courts are not at large. They are confined by the nature and scope of the judicial function in its particular exercise in the field of interpretation. They are under the constraints imposed by the judicial function in our democratic society. As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. The great judges have constantly admonished their brethren of the need for discipline in observing the limitations. A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradiction."

42. As observed by Lord Cranworth in *Gundry v. Pinniger* (1852) 21 LJ Ch 405 : 42 ER 647

" ?To adhere as closely as possible to the literal meaning of the words used?, is a cardinal rule from which if we depart we launch into a sea of difficulties which it is not easy to fathom."

43. In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be followed (see G.P. Singh's *Principles of Statutory Interpretations*, 9th Edn., pp.

45-49). Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint in this connection.

44. As the Privy Council observed (per Viscount Simonds, L.C.): (IA p. 71) "Again and again, this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used." (See *King Emperor v. Benoari Lal Sarma* (1944-45) 72 IA 57)

45. As observed by this Court in *CIT v. Keshab Chandra Mandal* AIR 1950 SC 265 :

"Hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is clear on the face of the statute...."

46. The rules of interpretation other than the literal rule would come into play only if there is any doubt with regard to the express language used or if the plain meaning would lead to an absurdity. Where the words are unequivocal, there is no scope for importing any rule of interpretation vide *Pandian Chemicals Ltd. v. CIT* (2003) 5 SCC 590.

47. It is only where the provisions of a statute are ambiguous that the court can depart from a literal or strict construction vide *Nasiruddin v. Sita Ram Agarwal* (2003) 2 SCC 577. Where the words of a statute are plain and unambiguous effect must be given to them vide *Bhaiji v. Sub-Divisional Officer* (2003) 1 SCC 692.

48. No doubt in some exceptional cases departure can be made from the literal rule of the interpretation e.g. by adopting a purposive construction, Heydon's mischief rule, etc. but that should only be done in very exceptional cases. Ordinarily, it is not proper for the court to depart from the literal rule as that would really be amending the law in the garb of interpretation, which is not permissible vide *J.P. Bansal v. State of Rajasthan* (2003) 5 SCC 134, *State of Jharkhand v. Govind Singh* (2005) 10 SCC 437. It is for the legislature to amend the law and not the court vide *State of Jharkhand v. Govind Singh* (2005) 10 SCC 437. In *Jinia Keotin v. Kumar Sitaram Manjhi* (2003) 1 SCC 730 this Court observed (SCC p. 733, para 5) that the court cannot legislate under the garb of interpretation. Hence there should be judicial restraint in this connection, and the temptation to do judicial legislation should be eschewed by the courts. In fact, judicial legislation is an oxymoron.

49. In *Shiv Shakti Coop. Housing Society v. Swaraj Developers* (2003) 6 SCC 659 this Court observed: (SCC p. 669, para 19)

"19. It is a 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."

50. In our opinion, Section 31 is plain and unambiguous and it clearly says that only those suits or proceedings pending before a court shall stand transferred to the Tribunal which were pending on the date when the Tribunal was established."

(emphasis supplied)

10. Once meaning of the word "Court" used in the rule has been explained by the rule maker in a particular manner, its explanation in a manner to give it a totally different meaning would be inconsistent to and contrary to the principles of law and the principles governing interpretation of statutes.

11. That being so, we are not inclined to interfere into the matter. The writ petition is dismissed.