2013 SCC OnLine Gau 558 : (2014) 3 Gau LR 379

In the High Court of Gauhati

(BEFORE A.K. GOEL, C.J. AND A.K. GOSWAMI, J.)

Registrar General of Gauhati High Court ... Petitioner;

Versus

Union of India and Ors. ... Respondents.

WP(C) No. 5873 of 2006 [Taken up] with WP(C) No. 373 of 2006 [Taken up] with WP(C) No. 4489 of 2007 [Taken up] with WP(C) No. 4273 of 2007 [Taken up] with WP(C)No. 6424 of 2011 [Taken up]

Decided on September 16, 2013

Bengal, Agra and Assam Civil Courts Act, 1887 — Civil Procedure Code, 1908 — Criminal Procedure Code, 1973 — Bengal, Agra and Assam Civil Courts Act applicable to the district of Dima Hasao and Karbi Anglong in the State of Assam and the State of Arunachal Pradesh and Nagaland — Administration of Justice Rules applicable in the State of Nagaland and the North East Frontier (Administration and Justice) Regulation, 1945 applicable in the State of Arunachal Pradesh will give way to the provisions of Civil Courts Act to the extent of inconsistency in relation to functioning of the courts manned by the members of cadre of judicial service — Provisions of Civil Procedure Code and Criminal Procedure Code held

to be applicable to regularly constituted civil and criminal courts without in any manner affecting the operation of article 371A or the functioning of village, customary or any other courts other than the regularly constituted civil and criminal courts in the State of Nagaland manned by members of judicial service

[Paras 32 and 33]

Advocates who appeared in the case:

Mr. D.K. Mishra, Mr. B. Prasad, Mr. S.S. Dey, for the petitioner.

Mr. B.J. Talukdar, Mr. A.K. Sarma, Mr. A.M. Buzarbaruah and Mr. T. Ao, for the respondents.

Cases referred: Chronological

Union of India v. *Hansoli Devi*, (2002) 7 SCC 273.

Rakesh Wadhawan v. *Jagdamba Industrial Corpn.*, (2002) 5 SCC 440.

Surjit Singh Kalra v. *Union of India*, (1991) 2 SCC 87.

Goodyear India Ltd. v. *Stateof Haryana*, (1990) 2 SCC 71.

Hameedia Hardware Stores v. *B. Mohan Lal Sowcar*, (1988) 2 SCC 513.

U.P. Bhoodan Yagna Samiti, U.P. v. *Braj Kishore*, (1988) 4 SCC 274.

Chief Justice of A.P. v. *L.V.A. Dixitulu*, (1979) 2 SCC 34.

Kesavananda Bharati v. *State of Kerala*, (1973) 4 SCC 225 : AIR 1973 SC 1461.

State of Meghalaya v. *KaBrhyien Kurkalang*, (1972) 1 SCC 148.

State of Nagaland v. *Ratan Singh*, AIR 1967 SC 212:

State of Orissa v. *M.A. Tulloch & Co.*, AIR 1964 SC 1284.

JUDGMENT AND ORDER

1. This order is in continuation of order dated 20.8.2013 on the issue of separation of Judiciary from the Executive wherever such separation has still not been achieved, in the jurisdiction of this court, as per the mandate of article 50 of the Constitution of India, as interpreted by full Bench of this court in *Subhasis Chakraborty* v. *State of Meghalaya*, 2002 (1) GLT 227. In the said judgment this court noted that in certain areas in the jurisdiction of this court administration of justice was entrusted to Deputy Commissioners, their Assistants and other village functionaries under Rules applicable for administration of justice. Whatever be the historical reasons for judicial function not being entrusted to the courts, it was a mandate of the Constitution that "administration of justice be entrusted to judicial officers under the control of the High Court in accordance with the provisions of Criminal Procedure Code and Civil Procedure Code". It was observed that doing so was necessary to preserve the rule of law and for protection of liberty of citizens. The rule of law and independence of judiciary are the basic features of the Coristitution.

2. The districts of Dima Hasao (earlier North Cachar Hills) and Karbi Angiong (earlier Mikir Hills) in the State of Assam, are tribal areas

governed by Sixth Schedule to the Constitution and are not having separation of judiciary from the executive. Administration of Justice Rules contain provisions for administration of justice by executive officers. After the judgment in *Subhasis Chakraborty* (supra), certain steps have been taken in the said two districts for separation of judiciary but courts have still not been set up for want of infrastructure.

Steps have also been taken in the States of Nagaland, Arunachal Pradesh and Mizoram towards this end. Courts have been set up but certain legal issues have cropped up which need to be addressed. In the order passed on the last date, i.e., 20.8.2013, the issue taken up for consideration was whether after enactment of the "Assam Administration of Justice in the Karbi Anglong District Act, 2009" and the "Assam Administration of Justice in North-Cachar Hills District Act, 2009", courts can start functioning without any further legislation. In para 9, it was observed:

> "Question which arises for consideration is whether after the above enactments, a court can start functioning in the tribal areas without the requirement of any further legislation, without affecting the jurisdiction of autonomous council to set up courts for trial of matters arising out of laws framed under para 3 and where both the parties are concerned tribes."

3. The difficulty expressed by learned Advocate General was that in view of para 4 of the Sixth Schedule to the Constitution and inapplicability of the Bengal, Agra and Assam Civil Court Act, 1887 (Civil Courts Act), setting up of courts may not be permissible. On the other hand, learned amicus curiae had submitted that no constitutional amendment was required as para 4 of the Sixth Schedule envisaged village councils/courts in respect of laws enacted under para 3 and when both the parties were Scheduled Tribes in the said area. Setting up of courts for all other matters was not inconsistent with para 4 of the Sixth Schedule. Reference in this connection was also made to the Constituent Assembly Debates. It was further pointed out that after the judgment in *Subhasis Chakraborty* (supra), even village councils/courts were subject to superintendence and control of this court under article 235 of the Constitution. It was submitted that after the said judgment applicability of the Civil Courts Act was not excluded. Since the Civil Courts Act in terms, extended to the territories then administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Assam, bar against applicability of the Federal legislation to the "excluded area" under section 92 of the Government of India Act, 1935 was not applicable. Section 1(2) of the Civil Courts Act reads as follows:

> "(2) It extends to the territories (which were on the 11th March,

1887) respectively administered by the Lieutenant-Governor of the North Western Provinces and the Chief Commissioner of Assam except such portions of those territories as for the time being are not subject to the ordinary civil jurisdiction of the High Court."

(emphasis added)

4. It is clear that the Civil Courts Act; though a pre-constitution federal law, itself provided that the same will apply to the area in question except the area which was not subject to jurisdiction of this court. Since admittedly this court has jurisdiction even over territories where regular courts had not been set up, there is no area covered by the exception where Civil Courts Act may not apply once regular courts are set up. In this view of the matter, rule that only post-constitution central laws applied to the Sixth Schedule area laid down in *State of Meghalaya* v. *Kabrhyien Kurkalang*, (1972) 1 SCC 148 was not applicable. On consideration of the above, we concluded:

"(14) We are prima facie of the view that there is no hurdle in settingup of courts in the two districts. The fact that District Council has jurisdiction under para 4 of Sixth Schedule to set up Village Council/Court for administering laws framed by it under para 3 in respect of cases where both parties are Scheduled Tribes does not in any manner affect setting up of Courts not falling within the purview of para 4. In view of Bengal, Agra and Assam Civil Court's Act, 1887 enabling setting up of courts (which are not within the purview of para 4), no further legislation is necessary, nor amendment to the Constitution is required for this purpose. If it is to be held that in respect of administration of justice not coveredby paras 3 and 4 of the Schedule, Courts cannot be set up, the situation will become unworkable. Rules of Administration of Justice stand repealed by the aboye two Acts. CPC and Cr.PC. stand extended to the area. However, as suggested, we give time to learned advocate General and learned amicus curiae to consider further course of action."

5. We have heard Sri D-K. Mishra, learned senior advocate as amicus, Sri B.J. Talukdar, learned Government Advocate, Assam, Sri A.K Sarma learned Addl. Advocate General, Mizoram, Sri A.M. Buzarbaruah, learned Govt. Advocate, Arunachal Pradesh and Sri T. Ao, learned Government Advocate, Nagaland.

6. Learned Amicus has reiterated the submissions made earlier. Learned Addl. Advocate General, Mizoram and learned Government Advocates for the States of Assam, Arunachal Pradesh and Nagaland have also not disputed the legal position as noted in the earlier order of this court, quoted hereinabove. Accordingly, the prima facie conclusionwhich was reached in the earlier order of this court has to be made absolute. While

doing so, we may also proceed to discuss the issue in the context of States of Arunachal Pradesh and Nagaland. As regards the State of Mizoram, a separate Civil Courts Act has already been enacted. CPC and Cr.PC have also been made applicable. In respect of the said State, no further discussion is necessary at this stage.

7. We have already noted the enactments of the Assam Administration of Justice in the Karbi Anglong District Act, 2009 and the Assam Administration of Justice in North-Cachar Hills District Act, 2009 in the State of Assam. The Preamble to the Assam Administration of Justice in the Karbi Anglong District Act, 2009 reads as follows:

> "Whereas it is expedient to provide for the administration of justice both - Civil and criminal in the Karbi-Anglong District in the State of Assam to facilitate the trials of suits and cases by regular civil and criminal courts in order to effect the Constitutional mandate of separation of Judiciary from Executive pursuant to the directive of the Apex Court subject to provisions of the Sixth Schedule to the Constitution of India and the matters connected therewith or incidental thereto.
>
> Whereas it is expedient for bringing the Judiciary separated from the Executive to take away the existing system of Administration of Justice by the Deputy Commissioner or his assistants within the scope and ambit of the Sixth Schedule to the Constitution of India and to set up regular civil and criminal courts for discharge of Judicial functions. The Karbi Anglong Areas being the Tribal areas contemplated under article 244 of the Constitution is covered by the Sixth Schedule to the Constitution. Therefore, the regular civil and criminal courts shall be made functional subject to provisions of paras 4 and 5 of the Sixth Schedule to the Constitution."

8. Section 2 of the Act expressly extends the provisions of CPC and Cr.PC and section 3 repeals the Administration of Justice Rules to that extent. The said provisions are as follows:

> "2.(1) On and from such date as the State Government may notify in this behalf in the Official Gazette under the proviso to sub-section (3) of section 1 of the Code of Civil Procedure, 1908 and under the proviso to sub-section (2) of section 1 of the Code of Criminal Procedure, 1973 respectively, the provisions of the Code of Civil Procedure, 1908 and the Criminal Procedure Code, 1973 shall apply in the whole of the Karbi Anglong District for Administration of Justice-both Civil and Criminal subject to provisions of the Sixth Schedule to the Constitution of India.

(2) The provisions of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973 shall apply mutatis mutandis to all proceedings, enquiry, investigation, trial and other incidental matters connected with

the conduct of civil and criminal cases subject to provisions of the Sixth Schedule.

(3) The powers and functions of the police under the existing system which have been prevailing in the Karbi Angiong District so far the suits and cases covered by this Act shall be exercised by the State Polite authorities in exercise of the powers conferred and functions assigned to them under the relevant provisions of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973.

3.(1) The provisions of the Rules for the Administration of Justice and police in the Sibsagar, Nowgaong and Mikir Hills Tracts framed by the Governor under the powers vested in him by section 6 of the Scheduled District Act, 1874 (ACT XIV of 1874), hereinafter called as the Rules, insofar they are inconsistent with the provisions of this Act, shall stand repealed.

(2) *Notwithstanding such repeal.* - (i) anything done or any action taken or any casie already disposed of under the Rules shall be deemed to have been done or disposed of as of this court has not come into force.

(ii) suits, cases, appeal, application, proceedings or other business relating to both Civil and Criminal Justice pending before the Court of Deputy Commissioner or the Assistants to Deputy Commissioner shall stand transferred to the competent civil and criminal courts of the appropriate jurisdiction to be established under the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973, as the case may be, with effect from such date as may be notified by the State Government.

(iii)(a) In the trial of suites and cases arising out of any law in force in the Karbi Angiong District, the Civil Courts of competent jurisaiction shall be governed by the provisions of the Code of Civil Procedure, 1908 as amended.

(b) In the trial of criminal cases in respect of offences punishable with death, transportation for life, or imprisonment for a term of not less than 5 years under the Penal Code, 1860 dr under any other, laws for the time being in force, the courts of competent jurisdiction Shall be governed by the Code of Criminal Procedure, 1973 as

amended."

9. We may note that the State of Assam has also issued a Notification dated 21.9.2012 to the following effect:

"*N.JDJ.(E)260/2010124:* On the recommendation of the hon'ble Gauhati High Court, Guwahati, the Governor of Assam is pleased to establish the following courts in the Karbi Angiong district of Assam, for trial of Civil and Criminal cases within their respective local limits with effect from the date of taking over charge by the Presiding Officers of these Courts.

1. Court of District and Sessions Judge
2. Court of Civil Judge (Senior Division).
3. Court of Munsiff.
4. Court of Chief Judicial Magistrate,
5. Court of Additional Chief Judicial Magistrate.
6. Court of Sub-Divisional Judicial Magistrate.
7. Court of Judicial Magistrate First Class.
8. Court of Judicial Magistrate Second Class.".

10. Further notifications have been issued sanctioning the supporting staff.

11. In view of above, we do not see any difficulty in setting up of the Courts in the Districts of Dima Hasao and Karbi Anglong without any further enactment or Civil Courts Act or amendment of the Constitution.

12. We now take up the issue in relation to the State of Arunachal Pradesh.

13. The Arunachal Pradesh Judicial Service Rules, 2006 have been promulgated by the State of Arunachal Pradesh constituting judicial service. Selection, appointment and posting of officers has taken place against almost all the sanctioned posts. Courts have been duly constituted and are functioning. Vide Central Laws (Extension to Arunachal Pradesh) Act, 2007, CPC has been made applicable to the State of Arunachal Pradesh. Vide notification dated 24.10.2011, Cr.PC has been made applicable to the State of Arunachal Pradesh.

14. Question for consideration is whether Civil Courts Act or the North East Frontier (Administration and Justice) Regulations, 1945 (the Regulations) would apply in relation to matters dealt with by the regular courts manned by the members of Arunachal Pradesh Judicial Service or such courts have to be taken to have been constituted under

the Civil Courts Act.

15. Admittedly, the State of Arunachal Pradesh is in no manner different from the districts of Dima Hasao and Karbi Anglong in the State of Assam except that Administration of Justice Act on the pattern of 2009 Acts mentioned in para 3 above have not been enacted. Nonetheless, after setting up of courts, it is not possible to hold that the regulations still hold the field even to the extent of conferment of jurisdiction on courts merely because the Regulations to that extent have not been expressly repealed. Once Civil Courts Act is held applicable, as we have held in respect of tribal districts of Assam, the Regulations will cease to operate to that extent.

16. Thus, administration of justice by regularly constituted courts manned by judicial officers of the cadre will function as per the Civil Courts Act and to thiat extent the North East Frontier (Administration and Justice) Regulations, 1945 conferring jtidicfal powers on the executive will cease to operate. The doctrine of iinplied repeal will apply.

17. In *State of Orissa* v. *M.A. Tulloch & Co.*, AIR 1964 SC 1284, the hon'ble Supreme Court, in para 37, observed:

> "A repeal may be brought about by repugnant legislation, without even any reference to the Act intended to be repealed, for once legislative competence to effect a repeal is posited, it matters little whether this is done expressly or inferentially or by the enactment of repugnant legislation.".

18. We noiw take up the case of *Nagaland*. The Nagaland Judicial Service Rules, 2006 have been promulgated almost simultaneously with the Arunachal Pradesh Judicial Service Rules and judicial officers halve since been appointed to main the courts. The Civil Courts Act has to be held applicable to the State of Nagaland also on the same analogy.

19. Only further question which survives for consideration is whether in trial of cases by the courts manned by the members of Nagaland Judicial Service, Cr.PC and CPC will apply though the said Codes have not been expressly extended as has been done under the 2009 Acts in the State of Assam and under notification dated 24.10.2011 in the State of Arunachal Pradesh and by a separate enactment in the State of Mizoram. Proviso to section 1(2) of the Cr.PC reads as follows:

"Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply—

(a) to the State of Nagaland,

(b) to the tribal areas.

but the concerned State Government may, by notification, apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modificatitiris, as may be specified in the notification."

20. Proviso to section 1(3) of the CPC reads as follows:

"Provided that the State Government concerned may, by notification in the Official Gazette, extend the provisions of this Code or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be with such supplemental, incidental or consequential modifications as may be specified in the notification."

21. Learned Amicus submitted that exclusion of Cr.PC from the State

of Nagaland and other tribalareas under proviso to section 1(2) and of CPC under proviso to section 1(3) thereof is only applicable to village councils/courts or the customary courts or authorities exercising judicial powers urider the administration of justice rules and not regular courts manned by members of Nagaland Judicial Service taken to have been constituted under the Civil Courts Act. The 2009 Acts expressly clarify what is otherwise implicit. He submitted that the above provisos have to be given purposive interpretation and not literal interpretation, to avoid absurdity. Since two interpretations are possible-one to read the proviso as applicable only to customary courts or courts presided over by executive officers under the administration of justice rules as weil as to regular courts rrianned by judicial officers and the other as applicable only to the customaiy courts and courts presided by executive officers. Interpretation which promotes the intentipn of the Legislature and policy of law has to be preferred. The purpose of the proviso lias to be ascertained in the historical background of the laws applicable, to the State of Nagaland and other tribal areas. In *State of Nagaland* v. *Ratan Singh*, AIR 1967 SC 212, the History of administration of justice in the State of Nagaland has been noticed. It was observed that the courts set up under the Administration of Justice Rules were rrianned by executive officers and such courts constituted a separate class not being at par with regular courts. Therefore, there was no violation of articles 14 and

21 in Cr.PC not being applicable to the courts manned by executive officers. The legal position has undergone sea change after, the said judgmerit Separation of judiciary which is a directive principle under article 50 of the Constitution has acquired the force of a mandate after the decision in *Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225 : AIR 1973 SC 1461, as held by the Full Bench of this court in *Subhasis Chakraborty* (supra). Accordingly, judicial services have been created and regular courts have been set up. It will be absurd to attribute intention of excluding Cr.PC and CPC from proceedings before reguliar courts in these circumstances. By such-interpretation; the purpose of law will be defeated and administration of justice by regular courts will be hampered. There will be no uniformity in the procedure followed in regular courts in the State of Nagaland and other States without there being any difference in the circumstances of functioning of these courts and other courts. Purpose of law will, thus, be advanced if the bar is taken to operate only to customary or village courts other than regular courts.

22. Learned Government Advocate for the of Nagaland is unable to show any difficulty in the interpretation suggested by learned amicus. He, however, reserves leave to approach this court for any further clarification before the next date, if so advised. The State of Nagaland

is at liberty to issue formal notification on the pattern of State of Arunachal Pradesh and other tribal States/areas noted above or enactment on the pattern of the 2009 Act in tribal districts of Assam though legal position remains the same on due interpretation of provisos referred to above.

23. We are conscious that under article 371A of the Constitution, no Act of the Parliament is to apply to (i) religious or social practices of the Nagas, (ii) Naga customary law and procedure, (iii) administration of civil and criminal justice involving decisions according to Naga customary law, (iv) ownership and transfer of land and its resources. However, we do not see any conflict in applicability of CPC and Cr.PC to proceedings in respect of matters to be tried by regular courts manned by members of judicial service.

24. In *Ratan Singh* (supra), even after holding that the spirit and not letter of Cr.PC was applicable to the proceedings under Administration of Justice Rules by executive officers, it was observed:

> "(36) We may, however, say that it would be better if, as soon as it is found to be expedient, all Rules are cancelled and one uniform

set of Rules is made for the whole of this area."

25. The above observation supports the submission of learned amicus in the changed scenario when regular courts manned by judicial officers have taken over. Unless departure becomes necessary, it is desirable that a uniform set of procedure is applicable in all the courts in similar adjoining areas, manned by trained judicial officers. This principle will also be consistent with articles 14 and 21 of the Constitution.

26. We may now refer to some decisions which support the proposition that on courts being set up and being governed by Civil Courts Act the bar against applicability of CPC, Cr.PC in tribal areas cannot be read to refer to regular courts but only to other customary courts.

27. In *Hameedia Hardware Stores* v. *B. Mohan Lal Sowcar*, (1988) 2 SCC 513, it was observed:

> 'It is no doubt true that the court while construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful.
>
> 11. In *Seaford Court Estates Ltd.* v. *Asher*, (1949) 2 All ER 155, 164, Lord Denning, LJ said:
>
> "[W]hen 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, they should 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."

28. In *U.P. Bhoodan Yagna Samiti, U.P.* v. *Braj Kishore*, (1988) 4 SCC 274, the hon'ble Supreme Court had observed:

> "15. When we are dealing with the phrase "landless persons" these words are from English language and, therefore, I am reminded of what Lord Denning said about it. Lord Denning in "*The*

Discipline of Law" at p. 12 observed as under:

> "Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himselfto be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this, or that, or have been guilty Of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, 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..."

16. And it is clear that when one has to look to the intention of the Legislature, one has to look to the circumstances under which the law was enacted. The preamble of the law, the mischief which was intended to be remedied by the enactment of the statute and in this context, Lord Denning, in the same book at p. 10, observed as under:

> "At one time the Judges used to limit themselves to the bare reading of the statute itself - to go simply by the words, giving them their grammatical meaning, and that was all. That view was prevalent in the 19th century and still has some supporters today. But it is wrong in principle. The meaning for which we should seek is the meaning of the statute as it appears to those who have to obey it - and to those who have to advise them what to do about it; in short, to lawyers like yourselves. Now the statute does not come to such folk as if they were eccentrics cut off from all that is happening around them. The statute comes to them as men of affairs - who have their own feeling for the meaning of the words and know the reason why the Act was passed - just

as if it had been fully set out in a preamble. So it has been held very rightly that you can inquire into the mischief which gave rise ito the statute - to see what was the evil which it was sought to remedy."

29. In *Goodyear India Ltd.* v. *State of Haryana*, (1990) 2 SCC 71, it

was observed:—

> "11. In my opinion, the High Court correctly noted in the said decision that the provisions of constitutional change have to be construed, and such problems should not be viewed in narrow isolationism but on a much wider spectrum the principles laid down in *Heydon case*] (1584) 3 Co Rep 7a are instructive. Hence, in a situation of this nature, it was just and proper to see what was the position, before the Forty-sixth Amendment of the Constitution, and find out what was the mischief that was sought to be remedied and then discover the true rationale for such a remedy. In *Black-Clawson International Ltd.* v. *Papierwerke Waldhof-Aschaffenburg Ag.*, (1975) 1 All ER 810; Lord Reid-observed as follows: (All ER p. 814)
>
> "One must first read the words in the context of the Act as a whole, but one is entitled to go beyond that. The general rule in construing any document is that one should put oneself 'in the shoes' of the maker or makers and take into account relevant facts known to them when the document was made. The same must apply to Acts of Parliament subject to one qualification. An Act is addressed to all the lieges and it would seem wrong to take into account anything that was not public knowledge at the time. That may be common knowledge at the time or it may be spme published information which Parliament can be presumed to have had in mind.
>
> It has always been said to be important to consider the 'mischief' Which the Act was apparently intended to remedy. The word 'mischief' is traditional. I would expand it in this way. In addition to reading the Act you look at the facts presinned to be known to Parliament when the Bill which became the Act in question was before it, and you consider whether there is disclosed some unsatisfactory state of affairs which Parliament can properly be supposed to have intended to remedy by the Act."

30. In *Surjit Singh Kalra* v. *Union of India*, (1991) 2 SCC 87, it was observed:

> "19. True it is not permissible to read Words in a statute which are not there, but "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words" (*Craies Statute Law*, 7th edn., p. 109). Similar are the observations in *Hameedia Hardwdre, Stores* v. *B. Mohan Lal Sowcar*, (1988) 2 SCC 513 where it was observed that the court construing a provision should not easily read into it

words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute - See : *Sirajul Haq Khan* v. *Sunni Central Board of Waqf*, AIR 1959 SC 198"

31. In *Union of India* v. *Hansoli Devi*, (2002) 7 SCC 273, it was held:

"9. The rule stated by Tindal, CJ in *Sussex Peerage case*, (1844) 11 Cl&Fin 85 still holds the field.

The aforesaid rule is to the effect; (ER p. 1057)

"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver."

It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In *Kirkness* v. *John Hudson & Co. Ltd.*, (1955) 2 All ER 345, Lord Reid pointed out as to what is the meaning of "ambiguous" and held that: (All ER p. 366 C-D)

"A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more them one meaning."

It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, CJ in the case of *Aswini Kumar Ghose* v. *Arabinda Bose*, (1952) 2 SCC 237 : AIR 1952 SC 369 had held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In *Quebec Railway, Light Heat & Power Co. Ltd.* v. *Vandry*, AIR 1920 PC 181 it had been observed that the Legislature is deemed not to waste its words or to say anything in vain and a construction which, attributes

redundancy to the Legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the

statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would havejbeen inserted by the draftsman and approved by the Legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the Legislature is found to be clear but the uriskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the cpurt to reject the surplus words, so as to make the statute effective:"

32. In *Chief Justice of A.P.* v. *L.V.A. Dixitulu*, (1979) 2 SCC 34, the hon'ble Supreme Court held:

"66. The primary principle of interpretation is that a constitutional or statutory provision should be construed "according to the intent of they that made it" (Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology-employed by the legislation is precise and plain and thus by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to regardless Of the consequences that may follow. But if the words usedin the provision are imprecise, protean, or eyocative or can reasonably bear meanings more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative, infent. In such a case, in order to ascertain the the meaning of the terms and phrasfcs-emplbyed, it is legitimate for the court to go beyond the and literal confines of the provision and to call in aid other well recognised rules of construction, such as its legislative/history, the basic scheme and framework of the statute as a whole, each portiomthrowing light onsthe rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.

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/These canons of construction apply to the interpretation of our Constitution with greater force, because the Constitution is a living, integrated organism having a soul and consciousness of its own. The pulse beats emanating from the spinal cord of its basic framework can be felt all over its body, even in the extremities of its limbs. Constitutional exposition is not mere literary garniture, nor a mere exercise in grammar. As one of us (Chandrachud, J as he then was) put it in *Kesavananda Bharati case* : [(1973) 4 SCC 225, 969 (para 2017)]

"While interpreting words in a solemn document like the Constitution,

one must look at them not in a school-masterly fashion, not with the cold eye of a lexicographer, but with the realization that they occur in "a single complex instrument in which one part may throw light on the other" so that the construction must hold a balance between all its parts."

33. In *Rakesh Wadhawan* v. *Jagdamba Industrial Corpn.*, (2002) 5 SCC 440, it was held:

"24. It is a settled rule of construction that in case of ambiguity, the provision should be so read as would avoid hardship, inconvenience, injustice, absurdity and anomaly. Justice G.P. Singh in his *Statutory Interpretation* (2001 edn.) states (at p. 113):

'In selecting out of different interpretations "the court will adopt that which is just, reasonable and sensible rather than that which is none of those things" as it may be presumed "that the Legislature should have used the word in that interpretation which least offends our sense of justice". If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity, and inconsistency. Similarly, a construction giving rise to anomalies should be avoided."

34. Salmond States in *Jurisprudence* (12th edn., pp. 5-6):

"Suppose the legislator could draft rules that were absolutely clear in application: even so, he could not foresee every possible situation that might arise, and so, he could not anticipate how he, or society, would wish to react to it when it did arise. Too certain a rule would preclude the courts from dealing with an unforeseen situation in the

way they themselves, or society, might think best. As it is, legal uncertainty is counterbalanced by judicial flexibility."

35. We may with advantage quote a passage from Law in the Making by *Sir Allen* (7th edn., 1964, at p. 308):

> "'This court', said Scrutton, LJ, 'sits to administer the law; not to make new law if there are cases not provided for'. 'It may be', said Lord Denning, M.R. in *Attorney-General* v. *Butterworth*, QB at p. 719, 'that there is no authority to be found in the books, but if this be so all I can say is that the sooner we make one the better.' But how did the Master of the Rolls 'make' this authority? By reference to 'many pointers to be found in the books in favour of the view which I have expressed'."

Again at p. 521, the eminent jurist states:

> "There is no doubt that some Judges will "read into" a statute, under the guise of the "implied intention" of the legislator, what justice and convenience require."

36. It is, thus, clear that if legislative intent is to bar applicability of CPC and Cr.PC to customary courts or courts manned by executive

officers, the said bar cannot be held to be applicable to regular courts. This interpretation will be harmonious with the functioning of regular courts under the Civil Courts Act and also customary or executive courts under the Administration of Justice Rules. Accordingly, we hold that the Bengal, Agra and Assam Civil Courts Act, 1887 is applicable to the districts of Dima Hasao and Karbi Anglong in the State of Assam and the States of Arunachal Pradesh and Nagaland. The Administratipn of Justice Rules applicable in the State of Nagaland and the North East Frontier (Administration and Justice) Regulations, 1945 applicable in the State of Arunachal Pradesh will give way to the, provisions Of the Civil Courts Act to the extent of inconsistency in relation to functioning of courts manned by members of cadre of judicial service.

37. We further hold that CPC and Cr.PC are applicable to the regularly constituted civil and criminal courts without in any manner affecting operation of Article 371A or the functioning of village, customary or any other courts other than the regularly constituted civil and criminal courts in the State of Nagaland manned by members of judicial service.

38. We make it clear that this order Will not affect validity of any orders already passed without following the provisions of CPC or Cr.PC on an understanding that CPC and Cr.PC were not applicable to the

State of Nagaland.

39. We also make it clear that the State of Nagaland will be at liberty to approach this court for any clarification, before the next date. This will also not affect the power of the said State under proviso to section 1(2) of the Cr.PC and 1(3) of CPC to issue an appropriate clarificatory notification or enacting its own Civil Courts Act.

40. For any other issues arising in these matters, list again on 12.11.2013, as prayed. A report on the steps taken for improvement of infrastructure in terms of order of this court dated 27.9.2012 may be subriiitted by the State of Assam before the next date.

41. Copies of this order be given to learned counsel for the States of Assam, Nagaland and Arunachal Pradesh.

———