Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL JURISDICTION

Civil Appeal No. 3123 of 2020

Dr. Jaishri Laxmanrao Patil .... Appellant (s)

Versus

The Chief Minister & Anr. .... Respondent(s)

With

Civil Appeal No. 3124 of 2020
Civil Appeal No.3133 of 2020
Civil Appeal No.3134 of 2020
Civil Appeal No.3131 of 2020
Civil Appeal No.3129 of 2020
W.P.(C) No.915 of 2020
W.P.(C) No.504 of 2020
W.P.(C) No.914 of 2020
Civil Appeal No.3127 of 2020
Civil Appeal No.3126 of 2020
Civil Appeal No.3125 of 2020
Civil Appeal No.3128 of 2020
Civil Appeal No.3130 of 2020
W.P.(C) No.938 of 2020

J U D G M E N T

L. NAGESWARA RAO, J.

1. I have carefully gone through the erudite and scholarly opinions of Justice Ashok Bhushan and Justice S. Ravindra Bhat. So far as the question Nos.1, 2 and 3 are concerned, they are in unison. There is a difference of opinion in relation to question Nos. 4, 5

and 6. I am in agreement with the opinion of Justice Ashok Bhushan in respect of question Nos.1, 2 and 3. As these issues have been dealt with exhaustively by Justice Ashok Bhushan, I do not have anything further to add.

2. Question Nos.4, 5 and 6 pertain to the interpretation of Article 342 A of the Constitution of India. On these questions, I am unable to persuade myself to accept the conclusion reached by Justice Ashok Bhushan. I agree with the denouement of the judgment of Justice S. Ravindra Bhat on issue Nos.4, 5 and 6.

3. In view of the cleavage of opinion on the interpretation of Article 342 A of the Constitution, it is my duty to give reasons for my views in accord with the judgment of Justice S. Ravindra Bhat. In proceeding to do so, I am not delving into those aspects which have been dealt with by him.

4. Article 342 A which falls for interpretation is as follows: -

> ***342 A. Socially and educationally backward classes.*** *— (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally*

backward classes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

5. Article 366 (26 C) which is also relevant is as under: -

366. Definitions. Unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

xx xx xx xx xx

[(26C) —socially and educationally backward classes means such backward classes as are so deemed under article 342 A for the purposes of this Constitution;]

6. Before embarking upon the exercise of construing the above Articles, it is necessary to refer to the cardinal principles of interpretation of the Constitution. Constitution is intended to endure for ages to come, and, consequently to be adapted to the various crises of human affairs. We must not forget that it is the Constitution we are expounding[1]. The Constitution is a living and organic document which requires to be construed broadly and liberally. I am reminded of

1 McCulloch v. Maryland, 17 U.S. 316 (1819)

the word of caution by Benjamin Cardozo who said that "a Judge is not a knight errant roaming at will in pursuit of his own ideal of beauty or of goodness. Judge is not to innovate at pleasure".[2] Rules which are applied to the interpretation of other statutes, apply to the interpretation of the Constitution[3]. It may be desirable to give a broad and generous construction to the constitutional provisions, but while doing so the rule of "plain meaning" or "literal" interpretation, which remains "the primary rule", has also to be kept in mind. In fact, the rule of "literal construction" is the safe rule even while interpreting the Constitution unless the language used is contradictory, ambiguous, or leads really to absurd results[4]. The duty of the judicature is to act upon the true intention of the legislature, the *mens* or *sententia legis*. (See: ***G. Narayanaswami v. G. Pannerselvam[5], South Asia Industries Private Ltd v. S. Sarup Singh and others[6], Institute of Chartered Accountants of India v. Price Waterhouse[7] and J.P. Bansal v. State of Rajasthan[8])***. The first and primary rule

2 Benjamin Cardozo, *the Nature of Judicial Process,* (New Haven: Yale University Press, 13th Edn., 1946), 141.
3 Re the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938
4 Kuldip Nayar v. Union of India, (2006) 7 SCC 1
5 (1972) 3 SCC 717
6 1965 SCR (3) 829
7 (1997) 6 SCC 312
8 (2003) 5 SCC 134

of construction is that the intention of the legislature must be found in the words used by the legislature itself[9]. Oliver Wendell Holmes Jr. has famously said in a letter, "I do not care what their intention was. I only want to know what the words mean."[10] If the language of the meaning of the statute is plain, there is no need for construction as legislative intention is revealed by the apparent meaning[11]. Legislative intent must be primarily ascertained from the language used in statute itself.[12]

7. In his book *Purposive Interpretation in Law*,[13] Aharon Barak says that constitutional language like the language of any legal text plays a dual role. On the one hand, it sets the limits of interpretation. The language of the Constitution is not clay in the hands of the interpreter, to be molded as he or she sees fit. A Constitution is neither a metaphor nor a non-binding recommendation. On the other hand, the language of the Constitution is a source for its purpose. There are other sources, to be sure, but constitutional language is an important and highly credible source of information. The fact

9 Kanai Lal Sur v. Paramnidhi Sadhukhan, 1958 (1) SCR 360
10 Cited in Felix Frankfurter, *Some Reflections on the Reading of Statutes,* Columbia Law Review, Vol. 47, No. 4, 527-546 (1947), 538.
11 Adams Express Company v. Commonwealth of Kentucky, 238 US 190 (1915)
12 United States v. Goldenberg, 168 US 95 (1897)
13 Aharon Barak, *Purposive Interpretation in Law,* (Sari Bashi transl.), (Princeton: Princeton University Press, 2005).

that we may learn the purpose of a Constitution from sources external to it does not mean that we can give a Constitution a meaning that is inconsistent with its explicit or implicit language. Interpretation cannot create a new constitutional text. Talk of Judges amending the Constitution through their interpretation of the Constitution is just a metaphor. The claim that a constitutional text limits but does not command is true only for the limited number of cases in which, after exhausting all interpretive tools, we can still extract more than one legal meaning from the constitutional language and must therefore leave the final decision to judicial discretion. In these exceptional cases, language provides a general direction but does not draw a precise map of how to reach the destination. Usually, however, constitutional language sets not only the limits of interpretation, but also its specific content.[14] _

8. It is a cardinal principle applicable to all kinds of statutes that you may not for any reason attach to a statutory provision a meaning which the words of that provision cannot reasonably bear. If they are capable of more than one meaning, then you can choose between these

14 Id, 374-375.

meanings, but beyond that the Court must not go.[15] Lord Parker, CJ observed in ***R. v. Oakes***[16] there is no ground for reading in words according to what may be 'the supposed intention of Parliament'.

9. Justice Ashok Bhushan in his opinion at para 346 rightly held that the elementary principle of interpreting the Constitution or a statute is to look into the words used in the statute and when the language is clear, the intention of the legislature is to be gathered from the language used. He further opined that aid to interpretation is resorted to only when there is some ambiguity in words or expression used in the statute. Justice Bhushan in ***State (NCT of Delhi) v. Union of India***[17] held that the constitutional interpretation has to be purposive taking into consideration the need of the times and constitutional principles. The intent of framers of the Constitution and object and purpose of constitutional amendment always throw light on the constitutional provisions but for interpreting a particular constitutional provision, the constitutional scheme and the express language employed cannot be given a go-by. He further held that the purpose and intent of the constitutional provisions

15 Jones v D.P.P. [1962] AC. 635
16 [1959] 2 Q.B. 350
17 (2018) 8 SCC 501

have to be found from the very constitutional provisions which are up for interpretation.

10. In the 183rd Report of the Law Commission of India, Justice M. Jagannadha Rao observed that a statute is a will of legislature conveyed in the form of text. It is well settled principle of law that as a statute is an edict of the legislature, the conventional way of interpreting or construing the statute is to see the intent of the legislature. The intention of legislature assimilates two aspects. One aspect carries the concept of 'meaning' i.e. what the word means and another aspect conveys the concept of 'purpose' and 'object' or 'reason' or 'approach' pervading through the statute. The process of construction, therefore, combines both liberal and purposive approaches. However, necessity of interpretation would arise only where a language of the statutory provision is ambiguous, not clear or where two views are possible or where the provision gives a different meaning defeating the object of the statute. He supported his view by referring to two judgments of this Court in ***R.S. Nayak v. A.R. Antulay***[18] and ***Grasim Industries Ltd. v. Collector of Customs, Bombay***[19]***.*** It was held in ***R.S. Nayak*** (supra) that the

18 (1984) 2 SCC 183
19 (2002) 4 SCC 297

plainest duty of the Court is to give effect to the natural meaning of the words used in the provision if the words of the statute are clear and unambiguous.

11. The words of a statute, when there is a doubt about their meaning, are to be understood in the sense in which they best harmonise between the subject of the enactment and the object which the legislature has used. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained.[20]

12. It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the legislature[21]. However, the object-oriented approach cannot be carried to the extent of doing violence to the plain language used by re-writing the section or structure words in place of the actual words used by the legislature[22]. The logical corollary that flows from the judicial pronouncements and opinion of

20 Workmen of Dimakuchi Tea Estate v Managenment of Dimakuchi Tea Estate, 1958 SCR 1156
21 M/s New India Sugar Mills Ltd v. Commissioner of Sales Tax, Bihar 1963 SCR Supl. (2) 459
22 C. I. T v. N. C. Budharaja and Co. 1994 SCC Supl. (1) 280

reputed authors is that the primary rule of construction is literal construction. If there is no ambiguity in the provision which is being construed there is no need to look beyond. Legislative intent which is crucial for understanding the object and purpose of a provision should be gathered from the language. The purpose can be gathered from external sources but any meaning inconsistent with the explicit or implicit language cannot be given.

13. In ***Aron Soloman v. Soloman & Co.***[23] the House of Lords observed that the intention of legislature is a 'slippery phrase'. What the legislature intended can be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication. A construction which furthers the purpose or object of an enactment is described as purposive construction. 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 or (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.[24] If that is the case,

23 1897 AC 22
24 Bennion on Statutory Interpretation, Fifth Edition Pg. 944

there is no gainsaying that purposive interpretation based on the literal meaning of the enactment must be preferred.

14. In case of ambiguity this Court has adopted purposive interpretation of statutory provisions by applying rule of purposive construction. In the instant case, the deliberations before the Select Committee and its report and Parliamentary Debates were relied upon by the Respondents in their support to asseverate that the object of Article 342 A is to the effect that the power of the State legislature to identify socially and educationally backward classes is not taken away. Ergo, Article 342 A requires to be interpreted accordingly.

15. The exclusionary rule by which the historical facts of legislation were not taken into account for the purpose of interpreting a legislation was given a decent burial by the House of Lords in ***Pepper (Inspector of Taxes) v Hart***[25]***.*** In ***Kalpana Mehta and Ors. v. Union of India and Ors.***[26]***,*** a five Judge Bench of this Court held that the Parliamentary Standing Committee report can be taken as an aid of for the purpose of interpretation of a statutory provision. Wherever the reliance on such reports is necessary, they can be used for assisting the court in gathering historical facts. In accord

25 1993 AC 593
26 (2018) 7 SCC 1

with the said judgment, the deliberations of the report of the Select Committee can be utilised as an extrinsic aid for interpretation of Article 342 A, in case there is any ambiguity in the provision.

16. In ***R v. DPP ex-parte Duckenfield***[27]**,** Laws, CJ, cautioned about the great dangers in treating government pronouncements, however, helpful, as an aid to statutory construction. In ***Black-Clawson International Ltd.***[28] taking the opinion of a minister, or an official or a committee, as to the intended meaning in particular application of a clause or a phrase was held to be stunting of the law and not a healthy development. The crucial consideration when dealing with enacting historical materials is the possibility that Parliament changed its mind, or for some reason departed from it[29]. In ***Letang v. Cooper***[30] it was held that enacting history must be inspected with great care and caution. As an indication of legislative intention, it is very far behind the actual words of the Act. While setting out the relevant portions of the report of the Select Committee, Justice Bhat pointed out that the report reflected the opinions of both sides before concluding

27 [1999] 2 All ER 873
28 1975 AC 591
29 Assam Railways and Trading Co Ltd v. Inland Revenue, 1935 AC 445
30 [1965] 1 QB 232

that the concern of the States will be considered in accordance with the procedure under Article 341 & Article 342. There is no doubt that the Minister was assuaging the concerns of the Members by stating that the power of the States to identify backward classes is not being disturbed. I am convinced that there is no reason to depart from the text which is in clear terms and rely upon the legislative history to construe Article 342 A contrary to the language. I am not persuaded to agree with the submissions of the learned Attorney General and the other counsel for the States that Article 342 A has to be interpreted in light of the Select Committee report and discussion in the Parliament, especially when the legislative language is clear and unambiguous.

17. Where the Court is unable to find out the purpose of an enactment, or is doubtful as to its purposes, the Court is unlikely to depart from the literal meaning[31]. There is no dispute that the statement of objects and reasons do not indicate the purpose for which Article 342 A was inserted. During the course of the detailed hearing of these matters, we repeatedly probed from counsel representing both sides about the purpose for inserting Article 342 A in the Constitution. No satisfactory answer was forthcoming. In

31 Section 309, Bennion on Statutory Interpretation, 5th Edition.

spite of our best efforts, we could not unearth the reason for introduction of Article 342 A. As the purpose is not clear, literal construction of Article 342 A should be resorted to.

18. Craies culled out the following principles of interpretation of legislation: -

1. Legislation is always to be understood first in accordance with its plain meaning.
2. Where the plain meaning is in doubt, the Courts will start the process of construction by attempting to discover, from the provisions enacted, to the broad purpose of the legislation.
3. Where a particular reading would advance the purpose identified, and would do no violence to the plain meaning of the provisions enacted, the Courts will be prepared to adopt that reading.
4. Where a particular reading would advance the purpose identified but would strain the plain meaning of the provisions enacted, the result will depend on the context and, in particular, on a balance of the clarity of the purpose identified and the degree of strain on the language.

5. Where the Courts concluded that the underlined purpose of the legislation is insufficiently plain, or cannot be advanced without an unacceptable degree of violence to the language used, they will be obligated, however regretfully in the circumstances of the particular case, to leave to the legislature the task of extending or modifying the legislation[32].

19. To ascertain the plain meaning of the legislative language, we proceed to construe Article 342 A of the Constitution of India. Article 342 A was inserted in the Constitution by the Constitution (102nd Amendment) Act, 2017. A plain reading of Article 342 A (1) would disclose that the President shall specify the socially and educationally backward classes by a public notification after consultation with the Governor. Those specified as socially and educationally backward classes in the notification shall be deemed to be socially and educationally backward classes in relation to that State or Union Territory for the purposes of the Constitution. Article 342 A (2) provides that inclusion or exclusion from the list of socially and educationally backward classes specified in the notification under Article 342 A (1)

32 Craies on Legislation, 9th Edition Pg. 643

can be only done by law made by the Parliament. The word 'Central list' used in Article 342 A (1) had given rise to conflicting interpretations. Article 366 deals with definitions. Sub-Article 26 (C) was inserted in Article 366 of the Constitution by the Constitution (102nd Amendment) Act, 2017 according to which, socially and educationally backward classes shall mean such backward classes as are so deemed under Article 342 A for the purposes of the Constitution. The use of words 'means' indicates that the definition is a hard-and-fast definition, and no other meaning can be assigned to the expression that is put down in definition. (See: ***Gough v. Gough, (1891) 2 QB 665, Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court (1990) 3 SCC 682*** and ***P. Kasilingam v. P.S.G. College of Technology, 1995 SCC Supl. (2) 348.)*** When a definition clause is defined to "mean" such and such, the definition is prima facie restrictive and exhaustive.[33]

20. The legislature can define its own language and prescribe rules for its construction which will generally be binding on the Courts[34]. Article 366 (26) (c) makes it clear that, it is only those backward classes as are so deemed

33 Indra Sarma v. V. K. V. Sarma, (2013) 15 SCC 755
34 Collins v. Texas, 223 U.S. 288

under Article 342 A which shall be considered as socially and educationally backward classes for the purposes of the Constitution and none else. No other class can claim to belong to 'socially and educationally backward classes' for the purposes of the Constitution, except those backward classes as are so deemed under Article 342 A of the Constitution.

21. This Court in ***Sudha Rani Garg v. Jagdish Kumar***[35] dealt with the word 'deemed' in the following manner: -

> "The word 'deemed' is sometimes used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be certain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible".

22. Lord Asquith in ***East End Dwellings Co. Ltd v. Finsbury Borough Council***[36] held that, "if one is bidden to treat imaginary state of affairs as real, one must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of

35 (2004) 8 SCC 329
36 [1952] AC 109

affairs had in fact existed, must inevitably have flowed from it or accompanied it. The use of the word 'deemed' in the definition clause as well as in Article 342 A puts it beyond doubt that it is only those backward classes which are specified in the notification that may be issued by the President, who can claim to be socially and educationally backward classes for the purposes of the Constitution.

23. There is no equivocacy in the legislative language used in Article 342 A. The ordinary meaning that flows from a simple reading of Article 342 A is that the President after consultation with the Governor of a State or Union Territory may issue a public notification specifying socially and educationally backward classes. It is those socially and educationally backward classes who shall be deemed as socially and educationally backward classes in relation to that State or Union Territory for the purposes of the Constitution. There is no obscurity in Article 342 A (1) and it is crystal clear that there shall be one list of socially and educationally backward classes which may be issued by the President. Restricting the operation of a list to be issued under Article 342 A (1) as not being applicable to States can be done only by reading words which are not there in the provision.

According to Aharon Barak, “the structure of the Constitution can be given implicit meaning to what is written between the lines of the text, but it cannot add lines to the text. To do so would be to fill a gap or lacuna, using interpretative doctrines”.[37] There is no reason for reading Article 342 A (1) in any other manner except, according to the plain legal meaning of the legislative language. The words ‘Central list’ is used in Article 342 A (2) have created some controversy in construing Article 342 A. To find out the exact connotation of a word in a statute, we must look to the context in which it is used[38]. No words have an absolute meaning, no words can be defined in vacuo, or without reference to some context[39]. Finally, the famous words of Justice Oliver Wendell Holmes Jr. “the word is not a crystal transparent and unchanged; it is a skin of a living thought and may vary in colour and content according to the circumstances and the time in which it is used”.[40]

24. Article 342 A (2) provides that inclusion or exclusion from Central list of socially and educationally backward classes specified in a notification issued under Sub-Clause 1

37 Barak *supra,* 374.
38 Nyadar Singh v. Union of India 1988 4 SCC 170
39 Professor HA Smith cited in Union of India v. Sankalchand Himmat Lal Seth [1977) 4 SCC 193
40 *Towne* v. *Eisner,* 245 U.S. 425 (1918)

can be done only by the Parliament. A plain reading of the provision can lead to the following deduction: -

a. There is a notification issued by the President under clause (1).
b. The notification specifies socially and educationally backward classes.
c. Inclusion or exclusion can be done only by law made by the Parliament.
d. Save otherwise, the notification shall not be varied by any subsequent notification.
e. The list notified is referred to as “Central list”.

25. I find it difficult to agree with the submissions made on behalf of the Respondents that the use of words ‘central list’ would restrict the scope and amplitude of the notification to be issued under Article 342 A (1). There is only one list that can be issued by the President specifying the socially and educationally backward classes and only those classes are treated as socially and educationally backward classes for the purposes of the Constitution. Taking cue from the National Commission for Backward Classes Act, 1993, the Respondents argued that the words ‘Central list’ is with reference only to appointments to Central services and admission in Central educational institutions. Reading

‘Central list’ in that manner would be curtailing the width of Article 342 A (1). If so read, the sweep of Sub-Clause (1) shall be minimized. Moreover, to achieve the said meaning, words which are not in Article 342 A (1) have to be read into it. Contextually, the words Central list in Article 342 A (2) can be only with reference to the list contained in the notification which may be issued under Article 342 A (1). It is well settled law that the provisions of the Constitution have to be harmoniously construed and it is apparent from Article 342 A (1) and (2) that there is no scope for any list of socially and educationally backward classes, other than the list to be notified by the President. As the other expressions ‘for the purposes of the Constitution’ and ‘unless the context otherwise requires’ have been dealt with by Justice Bhat, I have nothing more to add to the construction placed by him on the said expressions. To avoid any confusion, I endorse the conclusion of Justice Ashok Bhushan on question Nos. 1, 2 and 3 and the final order proposed in Para No. 444 of his judgment. Insofar as question Nos. 4, 5 and 6 are concerned, I am in agreement with the opinion of Justice S. Ravindra Bhat.

26. A conspectus of the above discussion would be that only those backward classes included in the public

notification under Article 342 A shall be socially and educationally backward classes for the purposes of the Constitution.

.....J.
[L. NAGESWARA RAO]

New Delhi,
May 05, 2021