REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5539 OF 2008
(Arising out of SLP (C) No. 25514 of 2004)

Union of India & Ors. ..Appellants

Versus

Priyankan Sharan and Anr. ...Respondents

With

CIVIL APPEAL No. 5540 of 2008
(Arising out of SLP (C) 580 of 2005)

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. The core question is whether the respondent's prayer for discharge of bond executed to serve the nation for a period of five years on the ground of medical disability has been rightly accepted by the High Court?

3. The High Court by the impugned order held that in each case the respondents were required to deposit of rupees one lakh and on such deposit there was no further liability.

4. Factual position is almost undisputed.

5. In each case the appellant sought to invoke the bond agreement executed. The two respondents in Civil Appeal arising out of SLP (C) No. 580 of 2005 and the respondents in other Civil Appeal arising out of SLP (C) No. 25514/2004 had taken admission to the MBBS Degree Course of Armed Forces Medical College, Pune. At the time of admission they being minors their guardians had executed the bonds to the effect that after completion of MBBS course, the students in question shall serve the nation by working in the Armed Force

for a specific period of time. Clause 4 of the agreement dealt with a situation when a cadet shall be declared to have become Non Service Liability (in short 'NSL') in the event of any of the three categories. It is provided that in such event Clauses 5 and 6 will be applicable. However, he or she can be permitted at the discretion of DGAFMS to continue her studies on payment of normal tuition fee at the rate in force at the time but the students have to move out of the hostel premises. Clause 5 of the agreement states that in the event of a student being removed from the service liability for any reason, shall be liable to pay the amount calculated at a particular rate per annum from the date of admission to the College till the date of NSL subject to maximum together with interest on the said amount at rates in force then. Clause 6 provided that student who is removed from service liability under Clause 4(a) shall be required to pay in cash an amount calculated at the rate of rupees one and a half lakh per year or part thereof from the date of admission to the college till the date of becoming a NSL limited to maximum of seven and half lakh together with interest calculated on the same basis stated in Clause 5. This

was the position in 1999. The High Court in each case observed that the candidate was suffering from ailment and was removed from service liability. After removal the present appellants tried to enforce the bonds on the purported ground of failure on the part of the cadet to serve the nation in accordance with the terms and conditions of the bond. In appeal relating to Kiran Kumar and Another, the High Court in the impugned judgment in paras 3 and 4 noted that in the earlier cases orders were passed that on payment of rupees one lakh when the bond amount was rupees three lakhs, there shall be total liquidation of liability on the bond.

6. According to learned counsel for the appellants till 1998 the bond amount which covered the cost of free education, ration and other facility during the entire period of four and a half years was rupees three lakhs. The bond amount was revised w.e.f. July, 1999. Guidelines were also issued on 18.2.2002 for deciding the cases relating to waiver of bond money in respect of medical cadet declared NSL on medical grounds. It is not in dispute that in each case the cadet was

declared NSL. Thereafter, the appellants were of the view that cadets were required to pay the bond money as demanded.

7. Learned counsel for the respondent-cadet in each case submitted that the proviso of Clause 4(a) has been lost sight of by the appellants while raising the demand. Relevant clauses 4, 5 and 6 read as follows:

> "4. The medical cadet will be declared to have become Non Service Liability in the event of any of the following:
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> (a) Being rendered medically unfit for commission due to any disease/disability detected at any time during the course or prior to commissioning; or
>
> (b) Failing in attendance below 50% in any two consecutive terms for reasons other than medical; or
>
> (c) Fails to qualify final MBBS examinations within a period of seven years from the date of entry into college;
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> shall be treated as a Non Service Liability, where after clause 5 and 6 below as applicable shall be, applied to such cadet. However, he/she can be permitted at the discretion of the DGAFMS to continue his/her studies on the payment of normal tuition fees at the rate in force at the time but the student shall be removed from the hostel premises.

Provided that the student under Clause (a) above may be allowed to continue his/her stay in the hostel on payment of the normal expenses of education including tuition fees and fees for boarding and lodging facilities as applicable from time to time if he/she has contracted the disease/disability in the circumstances over which he/she has no control on which the decision of the DGAFMS shall be final and for which he/she has not refused treatment and further in such eventuality he/she may not be required to refund any amount to the Govt. as specified in clause 6 below.

5. In the event of any contingency in clauses 1,2,3 and 4 above, except in clause 4(a), the party of the FIRST part shall jointly and severally be liable to pay forthwith to the Govt. in cash an amount calculated at the rate of rupees three lacs per year or part thereof; for the period from the date or admission to the college to the date of becoming a Non Service Liability or removal from the college rolls, limited to a maximum limit or Rupees Fifteen lacs together with interest on the said money, calculated at the rates in force then. The interest will be levied if the payment is delayed beyond 90 days from the date of such removal/withdrawal from the college. In case of removal from the college all dues will be settled before leaving the college. The medical cadet will be deemed to become a Non Service Liability 30 days after the date of letter issued by the college authorities declaring him/her to be so. Provided however that amount stated above may be revised upward in respect or which the decision of the Govt. shall be final and binding on the parties of the first part.

6. In the event of a medical cadet being removed from service liability under clause 4(a) above the parties of the First part shall jointly and severally pay forthwith to the Govt. in cash an amount calculated at the rate of Rupees one and a half lac per year or part thereof for the period from the date of admission to the college till the date or becoming a Non Service Liability limited to a maximum of Rupees seven and half lac together with interest calculated on the same basis as stated in clause 5 above."

8. A bare reading of Clause 4(a) makes the position clear that the same is subject to Clause 6. The proviso to Clause 4 (a) makes the position clear that Clause 4(a) and Clause 6 operate in different footings.

9. In the case of Priyankan Sharan and others the appellant and its functionaries proceeded on the basis as if the respondent No.1 refused to undergo surgery. From the statement made in the petition itself it is clear that there was prayer for postponement till examinations are over.

10. Stand of the appellants before the High Court was that in a large number of cases students are being reported as medically unfit and seeking discharge from the bond on the ground that there is no deliberate unwillingness to serve the nation in accordance with the bond. High Court perused the medical reports and came to the conclusion that the writ petitioners' case was a genuine one. There were various medical reports including those of All India Institute of Medical Sciences. Since he had deposited Rupees One Lakh and "No Objection Certificate" had been issued, the impugned order was passed in the writ petition. In the other case also similar view was taken and the prayer of the present appellants to increase the amount to Rupees 3.5 lakhs was rejected.

11. For the first time at the time of hearing, learned counsel for the appellant tried to bring the case under Clause (6). The same has to be tested in the background of proviso to Clause 4(a).

12. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in Mullins v. Treasurer of Survey [1880 (5) QBD 170, (referred to in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha (AIR 1961 SC 1596) and Calcutta Tramways Co. Ltd. v. Corporation of Calcutta (AIR 1965 SC 1728); when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the

provisions which are said to occur in it you cannot derive these provisions by implication from a proviso." Said Lord Watson in West Derby Union v. Metropolitan Life Assurance Co. (1897 AC 647)(HL). Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (See A.N. Sehgal and Ors. v. Raje Ram Sheoram and Ors. (AIR 1991 SC 1406), Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal and Ors. (AIR 1991 SC 1538) and Kerala State Housing Board and Ors. v. Ramapriya Hotels (P)Ltd. and Ors. (1994 (5) SCC 672).

13. "This word (proviso) hath divers operations. Sometime it worketh a qualification or limitation; sometime a condition; and sometime a covenant" (Coke upon Littleton 18th Edition, 146).

14. "If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant, and the

earlier clause prevails....But if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole" (per Lord Wrenbury in Forbes v. Git [1922] 1 A.C. 256).

15. A statutory proviso "is something engrafted on a preceding enactment" (R. v. Taunton, St James, 9 B. & C. 836).

16. "The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances" (per Lord Esher in Re Barker, 25 Q.B.D. 285).

17. A proviso to a section cannot be used to import into the enacting part something which is not there, but where the enacting part is susceptible to several possible meanings it may be controlled by the proviso (See Jennings v. Kelly [1940] A.C. 206).

18. The above position was noted in Ali M.K. & Ors. v. State of Kerala and Ors. (2003 (4) SCALE 197).

19. It is 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.

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

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

21. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand

said, “but words must be construed with some imagination of the purposes which lie behind them”. (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547). The view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981).

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

23. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Commissioner of Sales Tax, M.P. v. Popular Trading

Company, Ujjain (2000 (5) SCC 515). The legislative casus omissus cannot be supplied by judicial interpretative process.

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

if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislature and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. IRC (1966 AC 557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".

25. It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt." "But," on the other hand, "it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See Fenton v. Hampton 11 Moore, P.C. 345). A casus omissus ought not to be created by interpretation, save in some case of strong

necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit proetereunt legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute - Casus omissus et oblivioni datus dispositioni communis juris relinquitur; "a casus omissus," observed Buller, J. in Jones v. Smart (1 T.R. 52), "can in no case be supplied by a court of law, for that would be to make laws."

26. The golden rule for construing wills, statutes, and, in fact, all written instruments has been thus stated: "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further" (See Grey v. Pearson 6 H.L. Cas. 61). The latter part of this "golden rule" must, however,

be applied with much caution. “if,” remarked Jervis, C.J., “the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning” (See Abley v. Dale 11, C.B. 378).

27. At this juncture, it would be necessary to take note of a maxim “Ad ea quae frequentius accidunt jura adaptantur” (The laws are adapted to those cases which more frequently occur).

28. The above position was highlighted in Maulavi Hussein Haji Abraham Umarji v. State of Gujarat (2004 (6) SCC 672).

29. As noted above, Clause 4(a) is subject to Clause 6 and the proviso appended to Clause 4 is in the nature of exception. The High Court's view is a rational one on the facts of each case. These are not the cases where any interference is called for. The appeals are dismissed but without any order as to costs.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(S.H. KAPADIA)

New Delhi,
September 8, 2008