

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.A.Nos.1511 to 1518 & 1519 of 2017
andCMP Nos.19931, 19933, 19935, 19937,
19939, 19941, 19943, 19945 & 19958 of 2017

W.A.No.1511 of 2017

1 THE STATE OF TAMIL NADU Appellant in WA No.1511 of 2017
REPRESENTED BY THE SECRETARY DEPARTMENT OF
PROHIBITION AND EXCISE SECRETARIAT FORT ST.
GEORGE CHENNAI-9.

2 THE COLLECTOR
KANCHEEPURAM DIST KANCHEEPURAM.

3 THE COMMISSIONER
PROHIBITION & EXCISE DEPARTMENT EZHILAGAM
CHEPAUK CHENNAI-5.

4 THE ASSISTANT COMMISSIONER
(EXCISE) KANCHEEPURAM.

1 THE STATE OF TAMIL NADU Appellant in WA No.1512 of 2017
REPRESENTED BY THE SECRETARY DEPARTMENT OF
PROHIBITION AND EXCISE SECRETARIAT FORT ST.
GEORGE CHENNAI-9.

2 THE COLLECTOR
KANCHEEPURAM DIST KANCHEEPURAM.

3 THE COMMISSIONER
PROHIBITION & EXCISE DEPARTMENT EZHILAGAM
CHEPAUK CHENNAI-5.

4 THE ASSISTANT COMMISSIONER
(EXCISE) KANCHEEPURAM.

1 THE STATE OF TAMIL NADU Appellant in WA No.1513 of 2017
REP BY THE SECRETARY DEPARTMENT OF
PROHIBITION AND EXCISE SECRETARIAT FORT ST

GEORGE CHENNAI 600 009

2 THE COLLECTOR
CHENNAI DT CHENNAI

3 THE COMMISSIONER
PROHIBITION AND EXCISE DEPARTMENT EZHILAGAM
CHEPAUK CHENNAI 600 005

4 THE DEPUTY COMMISSIONER
(EXCISE) CHENNAI

1 THE GOVERNMENT OF TAMIL NADU ... Appellant in WA No.1514
of 2017
REP BY ITS SECRETARY HOME PROHIBITION AND
EXCISE DEPARTMENT SECRETARIAT FORT ST GEORGE
CHENNAI 600 009.

2 THE COMMISSIONER
PROHIBITION AND EXCISE DEPARTMENT CHEPAUK
CHENNAI 600 005.

3 THE ASSISTANT COMMISSIONER
(EXCISE) KANCHEEPURAM

1 THE GOVERNMENT OF TAMIL NADU ... Appellant in WA No.1515
of 2017
REP. BY ITS SECRETARY HOME PROHIBITION AND
EXCISE DEPARTMENT SECRETARIAT FORT ST.
GEORGE CHENNAI-9.

2 THE COMMISSIONER OF
PROHIBITION & EXCISE CHEPAUK CHENNAI-5.

3 THE ASSISTANT COMMISSIONER
(EXCISE) COLLECTOR OFFICE KANCHEEPURAM

1 THE GOVERNMENT OF TAMIL NADU ... Appellant in WA No.1516
of 2017
REP. BY ITS SECRETARY HOME PROHIBITION AND
EXCISE DEPARTMENT SECRETARIAT FORT ST.
GEORGE CHENNAI-9.

2 THE COMMISSIONER OF

PROHIBITION & EXCISE CHEPAUK CHENNAI-5.

3 THE ASSISTANT COMMISSIONER
(EXCISE) COLLECTOR OFFICE KANCHEEPURAM

1 THE GOVERNMENT OF TAMIL NADU ... Appellant in WA No.1517
of 2017

REP. BY ITS SECRETARY HOME PROHIBITION AND
EXCISE DEPARTMENT SECRETARIAT FORT ST.
GEORGE CHENNAI-9.

2 THE COMMISSIONER OF
PROHIBITION & EXCISE CHEPAUK CHENNAI-5.

3 THE ASSISTANT COMMISSIONER
(EXCISE) COLLECTOR OFFICE KANCHEEPURAM

1 THE STATE OF TAMIL NADU ... Appellant in WA No.1518 of
2017

REPRESENTED BY THE SECRETARY DEPARTMENT OF
PROHIBITION AND EXCISE SECRETARIAT FORT ST.
GEORGE CHENNAI-9.

2 THE COLLECTOR
KANCHEEPURAM DISTRICT KANCHEEPURAM.

3 THE COMMISSIONER
PROHIBITION & EXCISE DEPARTMENT EZHILAGAM
CHEPAUK CHENNAI-5.

4 THE ASSISTANT COMMISSIONER
(EXCISE) KANCHEEPURAM.

1 THE COMMISSIONER ... Appellant in WA No.1519 of 2017
PROHIBITION AND EXCISE DEPARTMENT
EZHILAGAM CHEPAUK CH-05.

VS

1 HOTEL MOUNT HEERA ... RESPONDENTS in WA No.1511 of 2017
REPRESENTED BY ITS PARTNER J.M.AMANULLAH
287 M.K.N ROAD ST.THOMAS MOUNT CH-16..

2 THE MANAGING DIRECTOR
TAMIL NADU STATE MARKETING CORPORATION LTD
GANDHI IRWIN BRIDGE EGMORE CH-08.

1 GREEN COCONUT RESORT ... RESPONDENTS in WA No.1512 of
2017
REPRESENTED BY ITS PARTNER J.M.AMANULLAH
58/1 EAST COAST ROAD MUTHUKKADU
KANCHEEPURAM DISTRICT-603116.

2 THE MANAGING DIRECTOR
TAMIL NADU STATE MARKETING CORPORATION LTD
GANDHI IRWIN BRIDGE EGMORE CH-08.

1 THE PRIDE HOTEL ... RESPONDENTS in WA No.1513 of 2017
REP BY ITS GENERAL MANAGER JAIDEEP PASAD NO.
216 EVR PERIYAR SALAI POONAMALLEE HIGH ROAD
KILPAUK CHENNAI DT

2 THE MANAGING DIRECTOR
TAMIL NADU STATE MARKETING CORPORATION LTD
GANDHI IRWIN BRIDGE EGMORE CHENNAI 600 008.

1 THE RETREAT ... RESPONDENTS in WA No.1514 of 2017
REP BY ITS DIRECTOR K. PRITHIVI KUMAR NO.
208 A VELACHARY MAIN ROAD CAMP ROAD JUNCTION
SELAIYUR CHENNAI 600 073

1 HOTEL KENSINGTON PRIVATE ... RESPONDENTS in WA No.1515
of 2017
LIMITED REP BY ITS DIRECTOR K.PRITHIVI
KUMAR NO. 3/80 RAJIV GANDHI SALAI
SEMMENCHERY CHENNAI-119

1 HOTEL MILESTONNEZ INDIA ... RESPONDENTS in WA No.1516
of 2017
PVT LIMITED REP BY ITS DIRECTOR
RAJAMANICKAM SANTHA VELUR VIA
SUNGUVARCHATRAM PO SRIPERUMBUDUR TK

1 SRI KUMARAN HOTELS ... RESPONDENTS in WA No.1517 of 2017

REP. BY ITS PROPRIETOR MR.P.PONLINGAM NO.13
CHIKANNA CHETTY STREET TIRUPPUR.

1 TVL. DRIZZLE ... RESPONDENTS in WA No.1518 of 2017
REPRESENTED BY ITS PROPRIETOR S.PRAKASH NO.
2/632 SULTHAN AHAMED STREET NEELANKARAI
VILLAGE SHOLINGANALLUR TALUK KANCHEEPURAM
DISTRICT.

2 THE MANAGING DIRECTOR
TAMIL NADU STATE MARKETING CORPORATION LTD.
GANDHI IRWIN BRIDGE EGMORE CHENNAI-8.

1 V.R.RADHAKRISHNAN ... RESPONDENTS in WA No.1519 of 2017
SRINIVASA HOTEL AND LODGE UDAYARPALAYAM
THAMMAMPATTI GANGAVALLI TALUK SALEM
DISTRICT

PRAYER IN WRIT APPEALS: Petitions filed under clause 15 of the
Letter patent Act

WA No.1511 of 2017
To set aside the order dt.10/06/2016 made in WP.No.34214/2015.

WA No.1512 of 2017
To set aside the order dt.10/06/2016 made in WP.No.34215/2015.

WA No.1513 of 2017
To set aside the order dt.10/06/2016 made in WP.No.34328/2015.

WA No.1514 of 2017
To set aside the order dt.10/06/2016 made in WP.No.34347/2015.

WA No.1515 of 2017
To set aside the order dt.10/06/2016 made in WP.No.34348/2015.

WA No.1516 of 2017
To set aside the order dt.10/06/2016 made in WP.No.34349/2015.

WA No.1517 of 2017
To set aside the order dt.10/06/2016 made in WP.No.34350/2015.

WA No.1518 of 2017
To set aside the order dated 10/06/2016 made in WP.No.34492/2015.

WA No.1519 of 2017
To set aside the order dt.30/08/2016 made in WP.No.35254/2015 .

PRAYER IN WRIT PETITIONS:

Writ petitions filed under Article 226 of the Constitution of India praying for a writ of Certiorarified mandamus.

WP No.34214 of 2015
To call for the records of the 3rd respondent Rc.No. P&E2(2)/5610/2015 dated 16.10.2015 and quash the same as illegal, invalid and non-est in the eyes of law and thereby direct the 3rd respondent to consider the renewal application submitted by the petitioner on 24.4.2015 and the amount therefor was remitted on 6.4.2015 viz., payment of Rs.4,50,000/-, Rs.10,000/-, Rs.3,000/- and Rs.2,500/- remitted in the State Bank of India, Mount Road, Chennai in accordance with the order passed by this Honourable Court in W.P.No.31354 of 2015 dated 12.10.2015 and in accordance with Rules 21 and 22 of the Tamil Nadu (Licence & Permit) Rules 1981

WP No.34215 of 2015
To call for the records of the 3rd respondent Rc.No. P&E 2(2)/5150/2015 dated 16.10.2015 and quash the same as illegal, invalid and non-est in the eyes of law and thereby direct the 3rd respondent to consider the renewal application submitted by the petitioner on 10.4.2015 and the amount therefor was remitted on 9.4.2015 viz., payment of Rs.3,00,000/-, Rs.2,500/-, Rs.3,000/- and Rs.10,000/- remitted in the State Bank of India, Mount Road, Chennai in accordance with the order passed by this Honourable Court in W.P.No.31355 of 2015 dated 12.10.2015 and in accordance with Rules 21 and 22 of the Tamil Nadu (Licence & Permit) Rules 1981

WP No.34328 of 2015
to call for the records of the 3rd respondent Rc. No.P&E2(2)/5157/2015 dated 14.10.2015 and quash the same as illegal, invalid and nonest in the eyes of law and thereby direct the 3rd respondent to consider the renewal application submitted on 10.4.2015 and the amount therefor was remitted on 10.4.2015 viz., payment of Rs. 6,00,000/-, Rs.5,000/-, Rs.1,000/-, Rs.47,123/- and Rs.1,250/- remitted in the State Bank of India, Mount Road, Chennai in accordance with the order passed by this Honourable Court in W.P. No. 33776 of 2015 dt 16.10.2015 and in

accordance with Rules 21 and 22 of the Tamil Nadu (Licence & Permit) Rules 1981

WP No.34347 of 2015

Calling for the entire records pertaining to the order of 2nd respondent in RC No.P&E2/(2) 5050/2015 dated 16.10.2015 and quash the same and consequently direct the 2nd respondent to renew the licence of the petitioner

WP No.34348 of 2015

Calling for the entire records pertaining to the order of 2nd respondent in RC No.P&E2/(2) 5051/2015 dated 16.10.2015 and quash the same and consequently direct the 2nd respondent to renew the licence of the petitioner

WP No.34349 of 2015

Calling for the entire records pertaining to the order of 2nd respondent in RC No.P&E2/(2) 4603/2015 dated 20.10.2015 and quash the same and consequently direct the 2nd respondent to renew the licence of the petitioner

WP No.34350 of 2015

Calling for the entire records pertaining to the order of 2nd respondent in RC No.P&E2/(1) 5787/2015 dated 20.10.2015 and quash the same and consequently direct the 2nd respondent to renew the licence of the petitioner

WP No.34492 of 2015

To call for the records of the 3rd respondent Rc.No. P&E2(2)/5374/2015 dated 20.10.2015 and quash the same as illegal, invalid and non-est in the eyes of law and thereby direct the 3rd respondent to consider the renewal application submitted by the petitioner on 16.4.2015 and the amount therefor was remitted on 16.4.2015 viz., payment of Rs.6,00,000/-, Rs.2,500/-, Rs.3,000/- and Rs.10,000/- which was remitted in the State Bank of India, Mount Road, Chennai in accordance with the order passed by this Honourable Court in W.P.No.30707 of 2015 dated 12.10.2015 and in accordance with Rules 21 and 22 of the Tamil Nadu (Licence & Permit) Rules 1981

WP No.35254 of 2015

calling for the entire records relating to the proceedings in R.C.No. P & E 2(2) /5151/2015 dated 14.10.2015 on the file of the respondent quash the same and direct the respondent to forthwith renew FL3 licence of the petitioner herein bearing NO.35/ 2000-2001 for the year 2014-15 up to 31.12.2015 by adjusting the fees already paid on 10.4.2015 for the period 2015-16 and then renew the licence for the remaining period of the year 2015-16 commencing from 1.1.2016 to 31.3.2016

For Appellants in all WAs. : Mr.M.Elumalai
Government Advocate

For Respondents : Mr.R.Thiagarajan (for R1)
in WA Nos.1511 to 1513/17

COMMON JUDGMENT

(Order of the Court was delivered by S.MANIKUMAR, J.)

While considering the correctness of the orders of rejection of the applications, submitted for renewal of FL.3 licence for year 2015-16, with reference to Rule 21 of the Tamil Nadu (Licence & Permit) Rules, 1981 and the objection of the Department of Prohibition and Excise, Chennai, that belated applications submitted for renewal of FL.3 licence cannot be considered, vide common order in W.P.Nos.34214 of 2015 etc., batch of writ petitions dated 10.06.2016, writ Court, at paragraph Nos.5 to 7, has ordered, as hereunder.

"5. At this stage, it has to be pointed out that rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. No person is going to benefit by belatedly filing application for grant or renewal of license. Only in cases where the delay is on account of malafide reasons, and when delay has not been explained satisfactorily, the authorities would be justifying in holding that the delay cannot be condoned. However, in the instant cases, no such observation or averment has been made in the impugned orders. That apart, the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, has not fixed any outer time limit as found in other tax statutes like Tamil Nadu Value Added Tax, Customs Act or Central Excise Act. Therefore the authority viz., the Commissioner of Prohibition and Excise is empowered to condone the delay by examining the facts.

6. I have carefully examined the facts of each case and found that in no case there is any mala fide intention on the part of the petitioner to belatedly file the application and all of them have been granted license more than ten years ago and it has been periodically renewed. It is also brought to my notice that application fee for renewal of license has been paid well within the stipulated time and there is no delay. Therefore, this Court is of the view that renewal application has to be considered on merits and should not be rejected on the ground of delay.

7. In the result, all the Writ Petitions are allowed and the delay in filing the application for

renewal is condoned. The third respondent is directed to consider the petitioners' application for renewal of FL3 License, in accordance with law, and pass orders within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P.Nos.1 to 3 of 2015 are closed."

2. Following the above order, made in W.P.No.34214 of 2015 etc., dated 10.06.2016, similar writ petition in W.P.No.35254 of 2015, has been allowed on 30.08.2016, on the same lines.

3. Correctness of the orders made in the batch of writ petitions, has been assailed in W.A.Nos.1511 and 1518 of 2017. Similarly, on the same grounds, order made in W.P.No.35254 of 2015, dated 30.08.2016, is challenged in W.A.No.1519 of 2017.

4. As facts, submissions and grounds of challenge made in the above writ appeals are common, they are taken up together and disposed of by this common order.

5. Emphasis has been made by Mr.M.Elumalai, learned Government Advocate, on the sentence but, in no case, after the expiry of the licence, the licencing authority can admit an application' and that the licencing authority, has no authority, to entertain an application submitted, after the expiry of the date on which, the licence, expires. He submitted that an application for renewal, has to be made within 30 days, before the expiry of the licence and the power to condone delay can be exercised, if only an application is submitted, within 30 days, from the last date, on which, an application of FL3 licence, has to be filed, till the date of expiry of licence and not beyond that date. In nutshell, applications filed between 1st March to 31st March of every year alone, can be entertained, provided good and sufficient cause is shown.

6. Submissions have been made that when Rule 21 of the Tamil Nadu Liquor (Licence & Permit) Rules, 1981 mandates that, in no case, after the expiry of licence, no application should be admitted, submission of applications for renewal of FL.3 licence, cannot be sought for, as a matter of right, after the period prescribed and that therefore, rejection of applications filed for renewal of FL.3 licence, submitted beyond the period stated therefor, is valid, and that the writ Court, ought to have sustained the orders of rejection of the said applications, and ought not to have directed Commissioner, Prohibition & Excise Department, Chennai, to consider the applications, submitted for renewal of FL.3 licence in accordance with law.

Heard Mr.M.Elumalai, learned Government Advocate and perused the materials available on record.

7. Before advertng to the above submission, we deem it fit to extract Rule 21 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981, which deals with renewal of licence, as follows:

"A licence holder desiring to renew the licence shall make an application in the prescribed form (the same as for the original grant of the licence) atleast one month before the date of expiry of the licence. The application may be sent to the licensing authority direct. The provisions of rules 18 to 20 shall, as far as may be, apply to an application for renewal of licence as if it were an application for the original grant of a licence, where an application for renewal of the licence has not been made within a period of one month before the expiry as specified herein, but in no case after the expiry of the licence, the licensing authority may admit such application, provided there are good and sufficient reasons for the delay on payment of an additional fee of twenty five per cent of the prescribed licence fee."

8. Let us consider few decisions, as to how, a section and proviso, to be read,

(i) In Jennings and another v. Kelly reported in 1939 All. E.R. 464, Lord Russell of Killowen said thus,

"That is frequently the very function of a proviso- namely, to include within the scope of the preceding words something which prima facie would not fall within it, or to exclude something which prima facie would so fall. Although a proviso may well be incapable of putting upon preceding words a construction which they cannot possibly bear, it may without doubt operate to explain which of two or more possible meanings is the right one to attribute to them..... The words preceding the proviso would prima facie point to the former view. One must, however, read the whole clause before attempting to construe any portion of it, and a perusal of the proviso fixes the meaning of the words which precede it."

In the same judgment, Lord Wright has said thus,

"The section must be construed as a whole. The second part of the section must be taken into account (whether or not it is properly called a proviso) in order to ascertain the true effect of the first part."

(ii) Lord Thankerdon observed in Province Of Bombay vs Hormusji Manekji reported in AIR 1947 PC 200, as follows:

"It is a familiar principle of statutory construction that where you find in the same section

express exceptions from the operative part of the section, it may be assumed, unless it otherwise appears from the language employed, that these exceptions were necessary, as otherwise the subject-matter of the exceptions would have come within the operative provisions of the section. There are four exceptions in the proviso to Section 4, which are clearly general exceptions to the operative provisions of the section."

(iii) In *Curtis v. Maloney* reported in (1950) 2 All. ER 982, the Court of Appeal, considered the views expressed in *Jennings' case* (cited *supra*), as follows:

"Lord Russell of Killowen where he said ([1939] 4 All.ER 471:

"I do not agree with the contention of the appellants, which appears in the second reason in their case: '.... it is not a right method of construction to use a proviso to control or alter the operative effect of the words preceding it.' That is frequently the very function of a proviso- namely, to include within the scope of the preceding words something which *prima facie* would not fall within it, or to exclude something which *prima facie* would fall. Although a proviso may well be incapable of putting upon preceding words a construction which they cannot possibly bear, it may without doubt operate to explain which of two or more possible meanings is the right one to attribute to them."

Lord Wright (*ibid.*, 477) said thus:

"It is said that, where there is a proviso, the former part, which is described as the enacting part, must be construed without reference to the proviso. No doubt there may be cases in which the first part is so clear and unambiguous as not to admit in regard to the matters which are there clear any reference to any other part of the section. The proviso may simply be an exception out of what is clearly defined in the first part, or it may be some qualification not inconsistent with what is expressed in the first part. In the present case, however, not only is the first part of the section deficient in express definition, but also the second part is complementary and necessary in order to ascertain the full intention of the legislature. The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light, if need be, on the rest. I do not think that there is any other rule, even in the case of a proviso in the strictest or narrowest

sense, and still less where, as here, the introduction of the second part by the word 'provided' is, in a strict sense, inapt."

(iv) In *Ram Narain Sons Ltd., v. Assistant Commissioner of Sales Tax* reported in AIR 1955 SC 765, the Hon'ble Supreme Court has held that,

"that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other."

(v) In *Commissioner of Income-Tax v. Indo Mercantile Bank Ltd.*, reported in AIR 1959 SC 713, the Hon'ble Supreme Court, held as follows:

"The proper function of a proviso is that it qualifies the generality of the main enactment, by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment. " It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as proviso ". Therefore it is to be construed harmoniously with the main enactment (Per Das, C. J.) in *Abdul Jabar Butt v. State of Jammu & Kashmir* ([1957] S.C.R. 51). Bhagwati, J., in *Ram Narain Sons Ltd., v. Assistant Commissioner of Sales Tax* ([1955] 2 S.C.R. 483) said:

" It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other ".

(10) Lord Macmillan in *Madras & Southern Mahratta Railway Co. v. Bezwada Municipality* [(1944) L.R. 71 I.A. 113] laid down the sphere of a proviso as follows :-

" The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main

enactment, so as to exclude from it by implication what clearly falls within its express terms ".

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect. (Vide also *Corporation of The City of Toronto v. Attorney-General for Canada* [1946 AC 32])."

(vi) In *S.B.K.Oil Mills v. Subhash Chandra* reported in AIR 1961 SC 1596, a Hon'ble Full Bench of the Supreme Court, held as follows:

"....Craies on Statute Law, 5th Edn., pp. 201-202, states that:

"The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect."

.....

9. The law with regard to provisos is well-settled and well-understood. 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. But, provisos are often added not as exceptions or qualifications to the main enactment but as savings clauses, in which cases they will not be construed as controlled by the section."

(vii) In *Hindustan Ideal Insurance Co. Ltd., v. Life Insurance Corporation of India* reported in AIR 1963 SC 1083, the Hon'ble Supreme Court held as follows:

"28. There is no doubt that where the main provision is clear its effect cannot be cut down by the proviso. But where it is not clear the proviso, which cannot be presumed to be a surplusage, can properly be looked into to ascertain the meaning and scope of the main provision. By 'looking at the proviso for this purpose the rule of Constiuction referred to by learned counsel will not be infringed.'

29. In the *West Derby Union v. Metropolitan Life*

Assurance Co.. [(1897) A.C. 641, 652], Lord Watson observed:

"..... I perfectly admit that there may be and are any cases which the terms of ail intelligible proviso may throw considerable light on the ambiguous import of the statutory words."

(viii) In Kedarnath Jute Manufacturing Co. Ltd., v. The Commercial Tax Officer reported in AIR 1966 SC 12, the Hon'ble Supreme Court held as follows:

"It is well settled that "the effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it": see "Craies on Statute Law", 6th Edn., p. 217. If the intention of the Legislature was to give exemption if the terms of the substantive part of sub-cl. (ii) alone are complied' with, the proviso becomes redundant and otiose. To accept the argument of the learned counsel for the appellant is to ignore the proviso altogether, for if his contention be correct it will lead to the position that if the declaration form is furnished, well and good; but, if not furnished, other evidence can be produced. That is to rewrite the clause and to omit the proviso. That will defeat the express intention of the Legislature."

(ix) In Dwarka Prasad v. Dwarka Das Saraf reported in AIR 1975 SC 1758, the Hon'ble Supreme Court held as follows:

"While rulings and text books bearing on statutory construction have assigned many functions for provisos, we have to be selective, having regard to the text and context of a statute....

.... If the rule of construction is that prima facie a proviso should be limited in its operation to the subject matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.

"The proper course is to apply the broad general rule of construction which is that a section or enactment must be construed as a whole each portion throwing light if need be on the rest.

The true principle undoubtedly is, that the sound

interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail."

(x) In *S.Sundaram Pillai v. Pattabiraman* reported in 1985 (1) SCC 591, the Hon'ble Supreme Court, held as follows:

"27. The next question that arises for consideration is as to what is the scope of a proviso and what is the ambit of an Explanation either to a proviso or to any other statutory provision. We shall first take up the question of the nature, scope and extent of a proviso. The well established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment.

28. Craies in his book 'Statute Law' (7th Edn.) while explaining the purpose and import of a proviso states at page 218 thus:

"The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it...The natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso."

29. Odgers in 'Construction of Deeds and Statutes' (Fifth Edn.) while referring to the scope of a proviso mentioned the following ingredients:

P. 317 "Provisos-These are clauses of exception or qualification in an Act, excepting something out of, or qualifying something in, the enactment which, but for the proviso, would be within it."

P. 318 "Though framed as a proviso, such a clause may exceptionally have the effect of a substantive enactment."

30. Sarathi in 'Interpretation of Statutes' at pages 294-295 has collected the following principles in regard to a proviso:-

(a) 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.

(b) A proviso must be construed with reference to the preceding parts of the clause to which it is

appended.

(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the later intention of the makers.

(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation; but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

(e) The proviso is subordinate to the main section.

(f) A proviso does not enlarge an enactment except for compelling reasons.

(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.

(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision."

31. In the case of *Local Government Board v. South Stoneham Union* [(1909) A.C. 57] Lord Macnaghten made the following observation:

"I think the proviso is a qualification of the preceding enactment, which is expressed in terms too general to be quite accurate."

32. In *Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai* [(1966) 1 SCR 367], it was held that the main object of a proviso is merely to qualify the main enactment. In *Madras and Southern Maharashtra Railway Co. Ltd., v. Bezwada Municipality* [ATR 1944 P.C. 71] Lord Macmillan observed thus:

"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."

33. The above case was approved by this Court in *Commissioner Of Income Tax, Mysore, etc. v. Indo Mercantile Bank Ltd.*, [[1959] 2 supp. SCR 256], where Kapur, J. held that the proper function of a proviso was merely to qualify the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment a portion which, but for the proviso, would fall within the main enactment. In *Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subhash Chandra Yograj Sinha* [[1962] 2 SCR 159],

Hidayatullah, J, as he then was, very aptly and succinctly indicated the parametres of a proviso thus:

"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."

34. In *West Derby v. Metropolitan Life Assurance Co.* ([1897] AC 647), while guarding against the danger of interpretation of a proviso, Lord Watson observed thus:

"a very dangerous and certainly unusual course to import legislation from a proviso wholesale into the body of the statute."

35. A very apt description and extent of a proviso was given by Lord Oreburn in *Rhodda Urban District Council v. Taff Vale Railway Co.* ([1909] AC 253.), where it was pointed out that insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before.

36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

38. Apart from the authorities referred to above, this Court has in a long course of decisions explained and adumbrated the various shades; aspects and elements of a proviso. In *State of Rajasthan v. Leela Jain* ([1965] 1 S C.R. 276) the following observations were made:

"So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part."

39. In the case of *Sales Tax Officer, Circle 1, Jabalpur v. Hanuman Prasad* ([1967] 1 S.C.R. 831), Bhargava, J. Observed thus:

"It is well-recognised that a proviso is added to a principle clause primarily with the object of taking out of the scope of that principal clause what is

included in it and what the legislature desires should be excluded."

40. In Commissioner of Commercial Taxes and Ors. v. R.S. Jhaver and Ors., ([1968]1 S.C.R. 148), this Court made the following observations:

"Generally speaking, it is true that the proviso is an exception to the main part of the section; but it is recognised that in exceptional cases a proviso may be a substantive provision itself"

41. In Dwarka Prasad v. Dwarka Das Saraf ([1976]1 S.C.R. 128), Krishan Iyer, J. speaking for the Court observed thus:

"There is some validity in submission but if, on a fair construction, the principal provision is clear, a proviso can not expand or limit it. Sometimes a proviso is engrafted by an apprehensive draftsman to remove possible doubts, to make matters plain, to light up ambiguous edges. Here, such is the case.

If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction."

42. In Hiralal Rattanlal etc. v. State of U.P. and Anr. ([1973] 1 S.C.C.216), this Court made the following observations:

"Ordinarily, a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which this Court has held that despite the fact that a provision is called proviso, it is really a separate provision and the so-called proviso has substantially altered the main section."

43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment;

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain

mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.

44. These seem to be by and large the main purport and parameters of a proviso.

(xi) In *State of Punjab v. Kailash Nath* reported in 1989 (1) SCC 321, the Hon'ble Supreme Court held as follows:

"...The scope of a proviso is well settled. In *M/s. Ram Narain Sons Ltd., v. Asst. Commissioner of Sales Tax and others*, [1955] 2 SCR 483, it was held:

"It is a cardinal rule of interpretation that a proviso to a particular provision of statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other."

10. The same view was reiterated in *Abdul Jabbar Butt v. State of Jammu & Kashmir*, [1957] SCR 51, where it was held that a proviso must be considered with relation to the principle matter to which it stands as a proviso."

(xii) In *Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal* reported in 1991 (3) SCC 442, the Hon'ble Supreme Court, held as follows:

"6. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field, which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in

the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect."

(xiii) In *A.N. Sehgal v. Raje Ram Sheoran* reported in 1992 Supp (1) SCC 304, the Hon'ble Supreme Court held as follows:

"14. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a cause which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms.

15. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect."

(xiv) In *Kerala State Housing Board v. Ramapriya Hotels (P) Ltd.*, reported in 1994 (5) SCC 672, the Hon'ble Supreme Court, held as follows:

"6. In *Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal* [1991 (3) SCC 442], this Court held that the proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to be confined to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it

excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says, nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect."

(xv) In J.K. Industries Ltd., v. Chief Inspector of Factories and Boilers reported in 1996 (6) SCC 665, the Hon'ble Supreme Court held as follows:

"30. In Reserve Bank of India Etc. Etc. Vs. Peerless General Finance And Investment Co. Ltd. & Others Etc. [1987 (1) SCC, 424] dealing with the principles for interpretation of statutes this Court observed:

"Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is its place." (Emphasis supplied)

31. In S. Gopal Reddy Vs. State of Andhra Pradesh [JT 1996 (6) 268], to which one of us (Anand, J.) was a party it was observed:

"It is well known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is

necessary." {Emphasis supplied}

.....

33. A proviso to a provision in a statute has several functions and while interpreting a provision of the statute, the Court is required to carefully scrutinise and find out the real object of the proviso appended to that provision. It is not a proper rule of interpretation of a proviso that the enacting part or the main part of the Section be construed first without reference to the proviso and if the same is found to be ambiguous only then recourse may be had to examine the proviso as has been canvassed before us. On the other hand an accepted rule of interpretation is that a Section and the proviso thereto must be construed as a whole each portion throwing light, if need be, on the rest. A proviso is normally used to remove special cases from the general enactment and provide for them specially.

34. A proviso qualifies the generality of the main enactment by providing an exception and taking out from the main provision, a portion, which, but for the proviso would be a part of the main provision. A proviso must, therefore, be considered in relation to the principal matter to which it stands as a proviso. A proviso should not be read as if providing something by way of addition to the main provision which is foreign to the main provision itself.

35. Indeed, in some cases, a proviso, may be an exception to the main provision though it cannot be inconsistent with what is expressed in the main provision and if it is so, it would be ultra-vires of the main provision and struck down. As a general rule in construing an enactment containing a proviso, it is proper to construe the provisions together without making either of them redundant or otiose. Even where the enacting part is clear, it is desirable to make an effort to give meaning to the proviso with a view to justify its necessity.

36. While dealing with proper function of a proviso, this Court in *The Commissioner of Income-Tax, Mysore & Ors. Vs. The Indo Mercantile Bank Ltd. & Ors.* [AIR 1959 (SC), 713] opined:

"The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to

the main enactment."

(xvi) In *Kush Saigal v. M.C.Mitter* reported in 2000 (4) SCC 526, the Hon'ble Supreme Court held as follows:

"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. (See: *Kedarnath Jute Manufacturing Co. Ltd., v. C.T.O.* AIR 1966 SC 12). Since the natural presumption is that but for the PROVISIO, the enacting part of the section would have included the subject matter of the PROVISIO, the enacting part has to be given such a construction which would make the exceptions carved out by the PROVISIO necessary and a construction which would make the exceptions unnecessary and redundant should be avoided (See: Justice G.P. Singh's "Principles of Statutory Interpretation" Seventh Edition 1999, p-163). This principle has been deduced from the decision of the Privy Council in *Govt. of Province of Bombay v. Hormusji Manekji* AIR 1947 PC 200 as also the decision of this Court in *Durga Datt Sharma v. Navaratna Pharmaceutical Laboratories*, AIR 1965 SC 980."

(xvii) In *Haryana State Cooperative Land Development Bank Ltd., v. Haryana State Cooperative Land Development Banks Employees Union* reported in 2004 (1) SCC 574, the Hon'ble Supreme Court, held that,

"9. 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.*, [1992 Supp. (1) SCC 304], *Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal and Ors.*, [(1991) 3 SCC 442] and *Kerala State Housing Board and Ors. v. Ramapriya Hotels (P) Ltd. and Ors.* [(1994) 5 SCC 672],

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

"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).

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

"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).

10. 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).

11. The above position was noted in *Ali M.K. and Ors., v. State of Kerala and Ors.*, (2003 (4) SCALE 197)."

(xviii) In *Maulavi Hussein Haji Abraham Umarji v. State of Gujarat* reported in AIR 2004 SC 3947, the Hon'ble Supreme Court held as follows:

"18. 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.

19. 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).

20. 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.

21. 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.

22. 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.

23. 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".

24. 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, I.T.R. 52, "can in no case be supplied by a court of law, for that would be to make laws."

25. 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).

26. 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)."

(xix) The abovesaid position is reiterated by the Hon'ble Supreme Court in Nagar Palika Nigam v. Krishi Upaj Mandi Samiti reported in AIR 2009 SC 187.

9. Though Mr.M.Elumalai, learned Government Advocate has emphasised on one portion of the Rule 21 of Tamil Nadu Liquor (Licence & Permit) Rules, 1981, we are of the view that the latter portion of the rule, enables submission of an application, for renewal, even after the period of expiry of licence.

10. Letter dated 20.04.2017 sent by the Commissioner of

Prohibition and Excise (i/c), Chennai to the Additional Chief Secretary to the Government, Home, Prohibition and Excise (VIII) Department, Chennai, produced today, is extracted hereunder.

Lr.No.P&E.2(2)/6840/2015

dated :

20.04.2017

Sir,

Sub: Prohibition and Excise Department - Tamil Nadu Liquor (Licence and Permit) Rules, 1981 - Virudhunagar District - Tvl.Harshini Recreation Club - Renewal of FL2 Licence for the year 2015-2016 - Renewal application not received in time - licence cancelled - W.P.No.18941/2015 filed by the petitioner - High Court order received - Based on the High Court Order Suspension order revoked - Supply of liquor to the licensee - Renewal of the FL2 licence for the year 2015-2016 - Opinion called for - Opinion received - Amendment proposal sent - after vetting by Advocate General - Regarding.

Ref: 1. This Office letter No.P&E2(2)/6840/2015, dated:

17.10.2016

2. Advocate General, High Court of Madras Opinion dated

02.12.2016.

3. This office letter No.P&E2(2)/6840/2015, dated

15.02.2017.

I invite kind attention to the references cited and I wish to state that necessary amendment proposal was sent to Government vide the reference 3rd cited.

2) In this regard, as per the opinion of the Advocate General of Tamil Nadu, revised amendment is as follows:

सत्यमेव जयते

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Existing :	Proposed :
Rule 21: Renewal of licence - A licence holder desiring to renew the licence shall make an application in the prescribed form (the same as for the original grant of the licence) atleast one month before the date of expiry of the licence. The application may be sent to the licensing authority directly. The provisions of Rules 18 to 20 shall, as far as may be, apply to an application for renewal of licence as if it were an application for the original grant of licence, where an application for renewal of the licence has not been made within a period of one month before the expiry as specified herein, but in no case after the expiry of the licence, the licencing authority may admit such application, provided there are good and sufficient reasons for the delay on payment of an additional fee of twenty five per cent of the prescribed licence fee.	Rule 21: Renewal of licence - A licence holder desiring to renew the licence shall make an application in the prescribed form (the same as for the original grant of the licence) along with payment of applicable privilege fees on or before the last day of February of the year in which the licence would expire. The application may be sent to the licensing authority directly. The provisions of Rules 18 to 20 shall, as far as may be, apply to an application for renewal of licence as if it were an application for the original grant of licence, where an application for renewal of the licence has been made after the last day of February of the year in which the licence would expire, but on or before 31st March of the year in which the licence would expire, the licencing authority may admit such application, provided there are good and sufficient reasons for the delay, on payment of an additional fee of twenty five per cent of the prescribed licence fee. However, an application for renewal of licence which is received after the expiry of the licence period i.e. 31st March of the concerned year, will not be considered and the licence already granted will be deemed to be cancelled.

11. Perusal of said letter dated 20.04.2017, shows that having regard to the orders made in W.P.No.18941 of 2015, filed

by Harshini Recreation Club, represented by its Secretary against the Commissioner of Prohibition and Excise, Chennai and another, and after, obtaining opinion from the learned Advocate General, the Commissioner of Prohibition and Excise (i/c), Chennai has sought for necessary amendment, to Rule 21 of the Tamilnadu Liquor (Licence & Permit) Rules, 1981.

12. The proposed amendment intended to be made in Rule 21 is that, an application for renewal of licence, received, after the expiry of the licence period i.e. 31st March of the concerned year, will not be considered and that the licence, already granted will be deemed to be cancelled. In the light of the decisions, the amendment proposed, fortifies our view that, as per the existing rule, belated applications for renewal of licences, can be entertained, subject to the applicant, offering good and sufficient reasons for the delay and on payment of additional fee of 25% of the prescribed licence fee, ie., an application filed even after 31st March, can be considered. Amendment is yet to be made. Existing rule position, as on today, in Tamilnadu Liquor (Licence & Permit) Rules, 1981, has been understood by the department and therefore, amendment has been sought for. Going through the reasons, assigned by the writ Court, we do not find any merit in the instant writ appeals.

13. Hence, the writ appeals are dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

14. Mr.R.Thiyagarajan, learned counsel for the 1st respondent in W.A.Nos.1511 to 1513 of 2017, submitted that due to the pendency of the writ petitions and appeals disposed of today, applications filed by the 1st respondents in the above said appeals, for renewal of FL.3 licence, have not been processed.

15. As the writ appeals have been dismissed, the Commissioner of Prohibition and Excise Department, Chennai, is directed to process the applications in accordance with law, as directed by the writ Court.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

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Sub Assistant Registrar

ars/skm

To

1 THE STATE OF TAMIL NADU,
REP. BY THE SECRETARY, HOME DEPT OF PROHIBITION & EXCISE,
SECRETARIAT FORT ST. GEORGE CHENNAI-9.

2 THE COLLECTOR
KANCHEEPURAM DIST KANCHEEPURAM.

3 THE COMMISSIONER
PROHIBITION & EXCISE DEPARTMENT EZHILAGAM
CHEPAUK CHENNAI-5.

4 THE ASSISTANT COMMISSIONER
(EXCISE) KANCHEEPURAM.

5 THE COLLECTOR
CHENNAI DT CHENNAI

6 THE DEPUTY COMMISSIONER,
(EXCISE), CHENNAI.

7 THE MANAGING DIRECTOR,
TAMIL NADU STATE MARKETING CORPORATION LTD.,
GANDHI IRWIN BRIDGE,
EGMORE, CHENNAI - 600 008.

+1cc to the Government Pleader, S.R.No. 83251

W.A.Nos.1511 to 1518 & 1519 of 2017
and CMP Nos.19931, 19933, 19935, 19937,
19939, 19941, 19943, 19945 & 19958 of 2017

SKV(CO)
TR(20/12/2017)

सत्यमेव जयते

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