

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 13.03.2019	Delivered on 26.04.2019
---------------------------	----------------------------

CORAM:

The Honourable Mr.Justice M.M.SUNDRESH
and
The Honourable Mr.Justice C.SARAVANAN

Original Side Appeal Nos.29 and 30 of 2019
& C.M.P.Nos.1884 and 1904 of 2019

Original Side Appeal Nos.29 of 2019

Viji Joseph Appellant

Vs.

- 1.P.Chander
- 2.Eswaran Annamalai
- 3.The Presidency Club,
Rep., by its Hony. Secretary,
No.51, Ethiraj Salai,
Egmore, Chennai-600 008.
- 4.M/s P.Sriram & Associates,
Company Secretaries,
Rep., by its Partner Mr.P.Sriram,
No.10/17, Anandan Colony,
South Canal Bank Road,
Chennai-600 028.
- 5.M/s NSDL Limited,
6A, 6th Floor, Kences Towers,
1, Ramakrishna Street, North Usman Road,
T.Nagar, Chennai-600 017.8
- 6.Integrate Registry Management Services Pvt. Ltd.,
2nd Floor, Kences Towers,
1, Ramakrishna Street, North Usman Road,
T.Nagar, Chennai-600 017.
- 7.Tarun Kumar Bagga
- 8.K.Gopal
- 9.T.K.Srinivasan
- 10.Sankaraiah
- 11.Chirag Batavia
- 12.Chari Ramesh

13.Sanjai Shankar
14.Dr.S.Ramachandran
15.Ramesh Jagtiani

... Respondents

Original Side Appeal Nos.30 of 2019

The Presidency Club,
Rep., by its Hony. Secretary,
No.51, Ethiraj Salai,
Egmore, Chennai-600 008.

.. Appellant

Vs.

1.P.Chander
2.Eswaran Annamalai

... Respondents

Original Side Appeals are filed under Order XXXVI Rule I of the Original Side Rules read with Clause 15 of the Letters Patent against the common order dated 11.01.2019 passed in Application Nos.9568 and 9205 of 2018 in C.S.No.713 of 2018 respectively.

Prayer in Application Nos 9568 and 9205/2018:

Praying to reject the Plaint in CS No.713 of 2018 filed by the Respondents/Plaintiffs.

Prayer in CS No.713 of 2018:

i)praying to Declare that the impugned consolidated report of the 2nd defendant dated 16/9/2018 regarding the election results of the election of the 1st defendant for the term 2018-20 held through e-voting between 11/9/2018 and up to 5 P.M t 14.09.2018 and manual voting from 6.30 P.M to 9 P.M on 15/09/2018 in the 88th Annual General Body of the Ist Defendant as illegal fraudulent manipulated void and unenforceable ii) Mandatory injunction, directing the first defendant to conduct the electoral process of the first defendant club for the posts of (1) President (2) Vice-President (3) Hony. Secretary (4) Hony.treasurer and (5) five managing committee members of the first defendant for the term 2018-2020 under the supervision of a former Judge of this Court or Advocate Commissioner by strictly following the Articles of Association and the Rules, Viz., Companies (management & Administration) Rules 2015 within a time to be fixed by this Hon'ble Court.

For Appellant: Mr.P.H.Aravind Pandian, S.C., for
in OSA.29/2019 Mr.P.J.George and
Mr.Najeep Usman Khan

For Appellant : Mr.P.H.Aravind Pandian, S.C., for
in OSA.30/2019 and Mr.S.A.Rajan
3rd respondent in
OSA.29/2019

For Respondents : Mr.S.Thankasivan
1 and 2 in both appeals

COMMON JUDGMENT

M.M.SUNDRESH, J.

Whether an election dispute of a company involving voting through electronic means done under Section 20 of the Companies (Management and Administration) Rules 2014 to the Board of Directors would be amenable to the jurisdiction of the National Company Law Tribunal is the issue for consideration before this Court.

2. Respondents 1 and 2/plaintiffs, who were holding the post of Vice President and Honourable Secretary of the appellant in O.S.A.No.30 of 2019 for the term 2016-2018, but lost the election for the year 2018-2020 through the same procedure adopted by means of electronic voting, filed the suit inter alia alleging that there was a connivance between the elected office bearers/defendants and the scrutinizer. The following are the relevant averments made in the suit along with the relief sought for.

"15. The plaintiffs further submit that the entire e-voting and manual voting conducted in the 1st defendant club for the term 2018-20 is vitiated by fraud and illegal manipulation by the scrutinizer viz., 2nd defendant and defendants 4 to 13. The office of the 1st defendant club is now forcibly and illegally occupied by the defendants 4 to 13. Further the 14th defendant has been made as a defendant as he was the Chairman of the AGM and he has obviously acted in support of the defendants 4 to 13 either due to

collusion or due to coercion and he is guilty of not ensuring a fair procedure even after realizing the huge fraud. The reports of the 2nd defendant is totally manipulated and self-contradictory. There are serious errors in the impugned report also."

The reliefs sought for in the suit.

"In the above circumstances, the plaintiff respectfully prays for a decree and judgment.

- (i) Declaring that the impugned consolidated report of the 2nd defendant dated 16.09.2018 regarding the election results of the election of the 1st defendant for the term 2018-20 held through e-voting between 11.09.2018 and upto 5pm on 15.09.2018 in the 88th Annual General Body of the 1st defendant, as illegal, fraudulent manipulated, void and unenforceable;
- (ii) Mandatory injunction directing the 1st defendant to conduct the electoral process of the 1st defendant club for the posts of (1) President (2) Vice-President (3) Hony. Secretary (4) Hony. Treasurer (5) and five Managing Committee Members of the 1st defendant for the term 2018-20 under the supervision of a former Judge of this Hon'ble Court or Advocate Commissioner by strictly following the Articles of Association and the rules viz., Companies (Management & Administration) Rules 2015 within a time to be fixed by this Hon'ble Court
- (iii) and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.
- (iv) To pay the cost of the suit."

3. An application was filed by the appellant in O.S.A.No.29 of 2019, who was arrayed as defendant No.5 in the suit having been elected as a President invoking the existence of the bar under Section 430 of the Companies Act, 2013, which prohibits Civil Courts from entertaining any suit, which the Tribunal is empowered to determine under the Act. The learned single Judge has dismissed the application inter alia holding that the proceedings before the Tribunal are summary in nature and complex issues and an election dispute cannot be adjudicated before it as the process involves complex questions of fact.

Seeking to assail the aforesaid order, both the appeals are before us.

4. As the issue is only on the question of law simplicitor, we are not willing to traverse beyond it.

5. Heard the learned Senior Counsel appearing for the appellant in both the appeals and the learned counsel for the respondents 1 and 2.

6. The learned Senior Counsel appearing for the appellant in both the appeals would contend that the suit is not maintainable in view of the express bar under Section 430 of the Companies Act, 2013. The dispute sought to be raised certainly would come within the purview of Sections 241 to 244 of the Companies Act, 2013 (hereinafter referred to as "the Act"). The decisions governing were not taken note of by the learned single Judge. The proceedings are not summary in nature, especially, in the light of Sections 424 to 429 of the Act. Therefore, the order of the learned single Judge would require interference as the only option that is left open to the plaintiffs/ respondents 1 and 2 is to approach the Company Law Tribunal, if so advised. The submissions made are sought to be supported through the following decisions.

- 1.N.Ramji Vs. Ashwath Narayan Ramji and others (MANU/TN/1660/2017);
- 2.B.K.Educational Services Private Limited Vs. Parag Gupta and Associates (MANU/SC/1160/2018);
- 3.The Premier Automobiles Ltd., Vs. Kamlekar Shantaram Wadke of Bombay and others (MANU/SC/0369/1975);
- 4.S.Natarajan V. S.V.Global Mills Ltd., and Others (MANU/TN/2733/2015);
- 5.Dinekar Rai D.Desai and Others Vs. R.P.Bhasin and Others;
- 6.Shanti Prasad Jain Vs. Kalinga Tubes Ltd., (MANU/SC/0368/1965 dated 14.01.1965); and
- 7.Christopher Gnanasekara Baburao Vs. Madras Christian College Association.
- 8.Chiranjeevi Rathnam and Others Vs. Ramesh and others (MANU/TN/2216/2017).

7. The learned counsel appearing for the respondents 1 and 2/plaintiffs made an endeavour to support and sustain the order of the learned single Judge. It is his case that the dispute of this nature would not be amenable before the Tribunal as against the order of the Civil Court. When once it is held that a dispute is not amenable, the jurisdiction of the Tribunal cannot be exercised. Thus, the embargo stipulated under Section 430 of the Act would not apply. To buttress his submissions,

the learned counsel has placed reliance upon the decisions mentioned hereunder.

1. K.Leela Kumar/M.Subbiah Vs. The Government of India, Ministry of Law Justice ((1997) 2 Law Weekly 832);
- 2.K.Ravinder Reddy Vs. Alliance Business School (2016) (198) Comp. Case 481);
- 3.Jai Mahal Hotels Private Limited Vs. Devraj Singh and others ((2016) 1 Supreme Court Cases 423),
- 4.Bakshi Faiz Ahmad Vs. Bakshi Farooq Ahmed and Others (Manu/JK/0305/2018)
- 5.Jai Kumar Arya and others Vs. Chhaya Devi and another (FAO(OS) 253/2017 & CM.No.33724/2017 dated 7.11.2017;
- 6.M/s Laina Power Engineering Vs. M/s Sokeo Power Private Ltd.,

8. PROVISIONS:-

8.1. Section 241 of the Act comes under Chapter XVI which in general deals with prevention of oppression and mismanagement. This Chapter deals with an oppression made in the mismanagement done already while endeavour to prevent such activities. Therefore it is remedial as well as preventive. Invocation can be done by any member by way of a complaint. It is thus, a right conferred under the Act.

8.2. The word oppression is to be given a wider interpretation. It has not been specifically defined under the Act. What constitutes an oppression in a given case is for the Tribunal to decide.

8.3. In this connection, it is appropriate to refer the celebrated judgment of the Apex Court in Shanti Prasad Jain Vs. Kalinga Tubes Ltd., (MANU/SC/0368/1965 dated 14.01.1965), wherein it has been held as under.

15. It gives a right to members of a company who comply with the conditions of S. 399 to apply to the court for relief under s. 402 of the Act or such other reliefs as may be suitable in the circumstances of the case, if the affairs of a company are being conducted in a manner oppressive to any member or members including any one or more of those applying. The court then has power to make such orders under s. 397 read with s. 402 as it thinks fit, if it comes to the conclusion that the affairs of the company are being conducted in a manner oppressive to any member or members and that wind up the company would unfairly prejudice such member or members, but

that otherwise the facts might justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up. The law however has not defined what is oppression for purposes of this section, and it is left to courts to decide on the facts of each case whether there is such oppression. as calls for action under this section.

16. We may in this connection refer to four cases where the new s. 210 of the English Act came up for consideration, namely, (1) Elder v. Elder and Watson, (1), (2) George Meyer v. Scottish Cooperative Wholesale Society Ltd. (2), (3) Scottish Co-operative Wholesale Society Ltd. v. Meyer and another (3), which was an appeal from Meyer's case (2), and (4) Re. H. R. Harmer Limited. Among the important considerations which have to be kept in view in determining the scope of s. 210, the following matters were stressed in Elder's case (1) as summarised at p. 394 in Meyer's case (2) :-

"(1) The oppression of which a petitioner complains must relate to the manner in which the affairs of the company concerned are being conducted; and the conduct complained of must be such as to oppress a minority of the members (including the petitioners) qua shareholders.

(2) It follows that the oppression complained of must be shown to be brought about by a majority of members exercising as shareholders a predominant voting power in the conduct of the company's affairs.

(3) Although the facts relied on by the petitioner may appear to furnish grounds for the making of a winding up order under the 'just and equitable' rules, those facts must be relevant to disclose also that the making of a winding up order would unfairly prejudice the minority members qua shareholders.

(4) Although the word 'oppressive' is not defined, it is possible, by way of illustration, to figure a situation in which majority shareholders, by an abuse of their predominant voting power, are 'treating the company and its affairs as if they were their own property' to the prejudice of the minority shareholders- and in which just and equitable grounds would exist for the making of a winding up order.... but in which the 'alternative' remedy provided by S. 210 by way of an appropriate order might well be open to the minority shareholders with a view to bringing to an end the oppressive conduct of the majority.

(5) The power conferred on the Court to grant a remedy in an appropriate case appears to envisage a reasonably wide discretion vested in the Court in relation to the order sought by a complainant as the appropriate equitable alternative to a winding-up order."

19. In Harmer's case(1), it was held that "the word 'oppressive' meant burdensome, harsh and wrongful". It was also held that "the section does not purport to apply to every case in which the facts would justify the making of a winding up order under the 'just and equitable' rule, but only to those cases of that character which have in them the requisite element of oppression". It was also held that "the result of applications under s. 210 in different cases must depend on the particular facts of each case, the circumstances in which oppression may arise being so infinitely various that it is impossible to define them with precision". The circumstances must be such as to warrant the inference that "there had been, at least, an unfair abuse of powers and an impairment of confidence in the probity with which the company's affairs are being conducted, as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy". The phrase "oppressive to some part of the members" suggests that the

conduct complained of "should at the lowest involve a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely. ... But, apart from this, the question of absence of mutual confidence per se between partners or between two sets of shareholders, however relevant to a winding up seems to have no direct relevance to the remedy granted by S. 210. It is oppression of some part of the shareholders by the manner in which the affairs of the company are being conducted that must be averred and proved. Mere loss of confidence or pure deadlock does not come within s. 210. It is not lack of confidence between shareholders per se that brings s. 210 into play, but lack of confidence springing from oppression of a minority by a majority in the management of the company's affairs, and oppression involves at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder."

20. These observations from the four cases referred to above apply to s. 397 also which is almost in the same words as s. 210 of the English Act, and the question in each case is whether the conduct of the affairs of a company by the majority shareholders was oppressive to the minority shareholders and that depends upon the facts proved in a particular case. As has already been indicated, it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application of s. 397. It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the

majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. It is in the light of these principles that we have to consider the facts in this case with reference to s. 397.

8.4. There may be different categories of mismanagement or oppression as the case may be. However, an election to the helm of affairs and to the post of office bearers by allegedly using other means would certainly come within the purview of mismanagement. It would become oppression when it goes against the interest of the company and the members including others, who complain. It would also amount to mismanagement as they involve a process of fraud and collusion affecting the management as a whole. Thus, all the decisions emanated from such wrongly elected office bearers would become by-product of such an election.

8.5. Section 242 deals with the powers of the Tribunal. This provision has to be seen contextually and co-existing with Section 241. On a complaint, power is to be exercised towards redressal. Prejudice may either to a member, group of the company or the public at large.

8.6. A complaint touching upon the election conducted to the management of the company would go to the root. Such a challenge is to the very right to manage the affairs. A wrong election would certainly have a cascading effect on the affairs in the form of decisions and functioning of a company. Thus, it cannot be said that Section 241 of the Act would only involve a complaint touching upon the other affairs as against the process of election. As discussed above, the challenge is to the very election itself and therefore, there is no authority available to the office bearers to act and decide on behalf of the company if held bad. Certainly such a challenge would come within the purview of oppression and mismanagement. A technical view contrary to that will make the entire object behind Section 241 of the Act as redundant.

8.7. Section 242(h) of the Act also provides for removal of Managing Director, Manager or any other Directors of the Company. As discussed above, to understand Section 241 of the Act, a little peep into Section 242 of the Act would be

necessary. To put it differently, it can never be accepted that on a complaint involving an act of oppressiveness or mismanagement, a Managing Director, Manager or any other Directors of the company can be removed as against their alleged wrongful entry to function in the said capacity. Can it be ever said that an election dispute of a company would never come within the purview of Section 241 of the Act and therefore, no power can be exercised under Section 242 of the Act. In our considered view, the answer will have to be in the negative. Section 242(h) of the Act cannot be read in isolation. When a power is given to exercise to act, it has to be related to the core section, which provided for such an exercise. In our considered view, the learned single Judge has not considered the scope and object behind Sections 241 and 243 of the Act.

8.8. We may also note that Section 242(k) of the Act also gives a larger power to the Tribunal in appointing such number of persons as Directors. Therefore, the power of the Tribunal in giving effect to an order passed on a complaint under Section 241 of the Act is quite exhaustive, keeping in mind the interest of the company. After all, every provision of a statute has to be given its meaning and therefore, can never be ignored.

8.9. Chapter XXVII deals with National Company Law Tribunal and the Appellate Tribunal. If we have a cursory glance at the provisions governing the qualification and constitution along with the procedure, we can certainly appreciate the role required to be played.

8.10. The President of the Tribunal shall be a person, who is or has been a Judge of the High Court for five years, a very high qualification indeed. It does not stop with the mere eligibility of a High Court Judge, but it adds experience along with it. The judicial member also shall be the Judge of the High Court or District Judge for five years or 10 years as an Advocate. Obviously, higher qualification has been fixed as qualification for the Chairperson and Members of the Appellate Tribunal. Removal of members is to be done only after consultation with the Chief Justice of India on certain contingencies satisfied.

8.11. Section 424 of the Act deals with the procedure to be adopted by the Tribunal and the Appellate Tribunal. The forums are given liberty to go beyond the Code of Civil Procedure by applying principles of natural justice and subject to other provisions governing. Thus, they are not bound by the Code, which is obviously a procedural one. They can also formulate their own procedure.

8.12. Under Sub Clause (2) of 424 of the Act, the Tribunals are vested with the powers of the Civil Court as granted under

the Code of Civil Procedure. Sub Section (3) gives sanctity to an order passed by the Tribunal or the Appellate Tribunal by elevating to it that of a decree. Sub Section 4 makes the position clear by deeming the Tribunal as a Civil Court though for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure.

8.13. The functioning of the Tribunal also has the protection for its action taken in good faith under Section 428 of the Act. The Tribunal can also seek assistance of Chief Metropolitan Magistrate etc., while taking custody of the properties, books of account or other documents of the said company.

8.14. Section 430 of the Act provides for an absolute bar to a Civil Court to entertain any suit or proceedings, which the Tribunal is empowered to do so under the Act. This provision starts with a negative covenant and thus, makes the intention of the legislature very clear. The object is to decide the disputes of the company. This section gives power to the Tribunal to determine, enforce law qua the company for any violation. Law includes any other law also. Therefore, it is certainly a peremptory provision. This provision has to be read along with other provisions in Sections 241, 242 and 424 to 429.

8.15. The powers of the Tribunal cannot be termed as summary per se. A summary proceedings would come into place when a Court acts upon a common law principle as against a different procedure authorised by law. However, a proceeding cannot be termed as a summary when further procedural strengthening was done by the enactment along with the common law principles. As discussed above, common law principles are not given a go-by in the proceedings of the Tribunal, but it can go beyond. Once this position is made clear, then it is very easy to understand the scope and ambit of Section 241. The intendment of the legislature is to redress the disputes, more particularly, internal ones of a company within the four walls of the Tribunal. Therefore, the contention that complex or disputed issues to be adjudicated upon only through the Civil Court would never arise at all. Though, summary proceeding may be required by the Tribunal in a given case, the Tribunal is not meant to follow it in all cases. Such a leverage and flexibility is conferred on the Tribunal either act as a regular or a special Court depending upon the nature of the complaint behind it.

9. We accordingly conclude that Sections 241 and 242 on the one hand and along with Sections 424 to 430 of the Act on the other hand, an election dispute would not lie before the Civil Court, but only before the Tribunal.

10. Ejusdem generis :

10.1. The principle of "ejusdem generis" has to be applied with caution. It cannot be invoked against the intendment of a legislature. It primarily involves words but not different sentences or clauses. Unless the genus is identified a specie is not to be searched for. When a provision provides for many things among others, they cannot be compared with each other by using the principle of ejusdem generis. We may fruitfully refer the decision of the Division Bench of this Court in D.Sivakumar and another Vs. Government of Tamil Nadu, Rep., by its Secretary to Government, Industries Department, Chennai and others ((2009) 5 MLJ 958), in which, one of us is a party (M.M.Sundresh, J.). The following paragraph would be apposite.

"15. Principle of Ejusdem Generis: Ejusdem Generis is a Latin Expression which means "of the same kind". In other words, it means words of similar class.

In so far as the principle of ejusdem generis is concerned, we are of the opinion that the said rule applies only when the subjects of enumeration constitute a class or category, statute enumerates the specific words, the general terms follow the enumeration and there is no indication of a different legislative intent. The principle of ejusdem generis would therefore apply only when there is an ambiguity while interpreting any statute. The said rule is applicable when particular words pertaining to class, category or genus are followed by general words. In this Connection, the Hon'ble Supreme Court in (2002) 1 147 ELJ 593 (GRASIM INDUSTRIES LTD., v. COLLECTOR OF CUSTOMS, BOMBAY) has held that the said principle will have to be applied with care and caution. The Hon'ble Supreme Court has also held that the plain meaning will have to be given by the Court.

We are also of the opinion that the Court cannot read anything into a statutory provision. A construction which requires for its support, an addition or substitution of words will have to be avoided. In the present case, the learned senior counsel for petitioner wants the Court to read the words "transport and storage" as illegal transport and illegal storage. We are afraid such an interpretation cannot be given and the same is impermissible in law. In this connection, it is

useful to refer the recent judgment of the Hon'ble Supreme Court in (2008) 306 ITR 277 (UNION OF INDIA v. DHARMENDRA TEXTILES PROCESSORS), the Hon'ble Supreme Court in paragraph 52 has stated as follows:

"52...It is a well-settled principle in law that the Court cannot read anything into a statutory provision or a stipulated condition 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. Similar is the position for conditions stipulated in advertisements.

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. Price Waterhouse (1997) 6 SCC 312). 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 Moo PC 1, the courts cannot aid the Legislature's defective phrasing of an Act, they cannot add or mend, and by construction make up deficiencies which are left there. (See State of Gujarat v. Dilipbhai Nathjibhai Patel (1998) 3 SCC 234). 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 (Tipton) Ltd. (1978) 1 All ER 948 (HL)). Rules of interpretation do not permit the courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. The 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)".

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 reiterated in *Union of India v. Filip Tiago de Gama of Vedem Vasco de Gama* (1990) 1 SCC 277 (SCC page 284, paragraph 16).

In *D.R.Venkatachalam v. Deputy Transport Commissioner* (1977) 2 SCC 273, it was observed that the courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of the 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.

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 v. Popular Trading Co.* (2000) 5 SCC 511). The legislative casus omissus cannot be supplied by judicial interpretative process...."

In this connection, it is useful to refer a recent judgment of the Hon'ble High Court in W.A.NOS.4150 AND 4151 OF 2004 DATED 19.08.2008 (*STATE OF TAMIL NADU v. K.SELVARAJ AND ANOTHER*) wherein one of us was a party (Justice K.Ravi Raja Pandian) in which the Division Bench of this Court has considered the application of the Principles of "ejusdem generis" in detail. In paragraph 5, 6 and 20 of the said judgment the Hon'ble Bench has stated as follows:

"5.We are not able to concur with the reasoning given by the Writ Court for setting aside the notification. The principle of interpretation of the statute or a provision of a statute has been

the subject matter for decision before the Apex Court in a plethora of cases. In all those cases, the Apex Court ruled that the elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case.

6.The Apex Court further ruled that no words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. (See: Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests, Palghat and Another, ((1990) Supp SCC 785); Union of India v. Deoki Nandan Aggarwal, ((1992) Supp (1) SCC 323); Institute of Chartered Accountants of India v. Price Waterhouse, ((1997) 6 SCC 312), Harbhajan Singh v. Press Council of India and others ((2002) 3 SCC 722) and Grasim Industries Limited v. Collector of Customs, Bombay ((2002) 4 SCC 297)).

20.The exposition of law as to the applicability of the rule of ejusdem generis is classically expressed by the Apex Court in the case of Siddeshwari Cotton Mills (P) Ltd. v. Union of India, (1989) 2 SCC 458, as follows:

12. The expression ejus-dem-generis "of the same kind or nature" signifies a principle of construction whereby words in a statute which are otherwise wide but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of the same class or genus as preceding them. If a list or string or family of genus-describing terms are followed by wider or residuary or sweeping-up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words.

13. In Statutory Interpretation Rupert Cross (p.116) says:

"The draftsman must be taken to have inserted the general words in case something which ought to have been included among the specifically enumerated items had been omitted..."

14. The principle underlying this approach to statutory construction is that the subsequent general words were only intended to guard against some accidental omission in the objects of the kind mentioned earlier and were not intended to extend to objects of a wholly different kind. This is a presumption and operates unless there is some contrary indication. But the preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. If no class can be found, ejusdem generis rule is not attracted and such broad construction as the subsequent words may admit will be favoured. As a learned author puts it :

"...if a class can be found, but the specific words exhaust the class, then rejection of the rule may be favoured because its adoption would make the general words unnecessary; if, however, the specific words do not exhaust the class, then adoption of the rule may be favoured because its rejection would make the specific words unnecessary. (See Construction of Statutes by E.A.Driedger p.95 quoted by Francis Bennion in his Statutory Construction page 829 and 830)."

15. Francis Bennion in his *Statutory Construction* (pp.830-31) observed:

"For the *ejusdem generis* principle to apply there must be a sufficient indication of a category that can properly be described as a class or genus, even though not specified as such in the enactment. Furthermore the genus must be narrower than the words it is said to regulate. The nature of the genus is gathered by implication from the express words which suggest it...

It is necessary to be able to formulate the genus; for if it cannot be formulated it does not exist. 'Unless you can find a category', said Farwell L.J., 'there is no room for the application of the *ejusdem generis* doctrine'."

In *S.S. Magnhild v. McIntyre Bros. & Co.* (1920 (3) KB 321), McCardie, J. said : (KB p.330) : "So far as I can see the only test seems to be whether the specified things which precede the general words can be placed under some common category. By this I understand that the specified things must possess some common and dominant feature."

17. In *Tribhuban Parkash Nayyar v. Union of India*, ((1970) 2 SCR 732) the Court said : (SCC p.106, para 13: SCR p.740)

"... The rule reflects an attempt to reconcile incompatibility between the specific and general words, in view of the other rules of interpretation, that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous..."

18. In *UPSEB v. Hari Shankar* (AIR 1979 SC 65) it was observed : (SCC p.30, para 15 : AIR p.73) "

... The true scope of the rule of '*ejusdem generis*' is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified. But the rule is one which has to be 'applied with caution and not pushed too far'..."

19. The preceding words in the statutory provision which, under this particular rule of construction, control and limit the meaning of the subsequent words must represent a genus or a family which admits of a number of species or members. If there is only one species it cannot supply the idea of a genus."

Therefore, on a consideration of the various judgments of the Hon'ble Supreme Court and the Hon'ble High Court and after going through Section 23-C of the Act, we are of the opinion that the principle of Ejusdem Generis would not apply to the present case."

10.2. An useful reference can be made to the judgment of the Apex Court in Maharashtra University of Health Sciences and others Vs. Satchikitsa Prasarak Mandal and others ((2010) 3 Supreme Court Cases 786), wherein in paragraphs 27 to 34 it has been held as apposite.

27. The Latin expression "ejusdem generis" which means "of the same kind or nature" is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of restricted words. This is a principle which arises "from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context." It may be regarded as an instance of ellipsis, or reliance on implication. This principle is presumed to apply unless there is some contrary indication (See Glanville Williams, 'The Origins and Logical Implications of the Ejusdem Generis Rule' 7 Conv (NS) 119).

"27. This ejusdem generis principle is a facet of the principle of Noscitur a sociis. The Latin maxim Noscitur a sociis contemplates that a statutory term is recognised by its associated words. The Latin word 'sociis' means 'society'. Therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation. Their colour and their contents are to be derived from their context [See similar observations of Viscount Simonds in Attorney General v. Prince Ernest Augustus of Hanover, (1957) AC 436 at 461 of

the report]

28. But like all other linguistic canons of construction, the ejusdem generis principle applies only when a contrary intention does not appear. In instant case, a contrary intention is clearly indicated inasmuch as the definition of 'teachers' under Section 2(35) of the said Act, as pointed out above, is in two parts. The first part deals with enumerated categories but the second part which begins by the expression "and other" envisages a different category of persons. Here 'and' is disjunctive. So, while construing such a definition the principle of ejusdem generis cannot be applied.

29. In this context, we should do well to remember the caution sounded by Lord Scarman in *Quazi v. Quazi* - [(1979) 3 All-England Reports 897]. At page 916 of the report, the learned Law Lord made this pertinent observation:-

"If the legislative purpose of a statute is such that a statutory series should be read ejusdem generis, so be it; the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfil the purpose of the statute. The rule, like many other rules of statutory interpretation, is a useful servant but a bad master."

30. This Court while construing the principle of ejusdem generis laid down similar principles in the case of *K.K. Kochuni v. State of Madras and Kerala*, [AIR 1960 SC 1080]. A Constitution Bench of this Court in *Kochuni* (supra) speaking through Justice Subba Rao (as His Lordship then was) at paragraph 50 at page 1103 of the report opined:-

"50...The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary."

(Emphasis supplied)

31. Again this Court in another Constitution Bench decision in the case of Amar Chandra Chakraborty v. The Collector of Excise, Govt. of Tripura, Agartala and others, AIR 1972 SC 1863, speaking through Justice Dua, reiterated the same principles in paragraph 9, at page 1868 of the report. On the principle of ejusdem generis, the learned Judge observed as follows:-

"...The ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration; and (v) there is no indication of a different legislative intent."

(Emphasis supplied)

32. As noted above, in the instant case, there is a statutory indication to the contrary. Therefore, where there is statutory indication to the contrary the definition of teacher under Section 2(35) cannot be read on the basis of ejusdem generis nor can the definition be confined to only approved teachers. If that is done, then a substantial part of the definition under Section 2(35) would become redundant. That is against the very essence of the doctrine of ejusdem generis. The purpose of this doctrine is to reconcile any incompatibility between specific and general words so that all words in a Statute can be given effect and no word becomes superfluous (See Sutherland: Statutory Construction, 5th Edition, page 189, Volume 2A).

33. It is also one of the cardinal canons of construction that no Statute can be interpreted in such a way as to render a part of it otiose.

34. It is, therefore, clear where there is a different legislative intent, as in this case, the principle of ejusdem generis cannot be applied to make a part of the definition

completely redundant.

35. By giving such a narrow and truncated interpretation of 'teachers' under Section 2 (35), High court has not only ignored a part of Section 2(35) but it has also unfortunately given an interpretation which is incompatible with the avowed purpose of Section 53 of the Act."

Hence, in our opinion, the abovesaid principle has no place in interpreting Section 242(h) of the Act.

11. As various decisions have been relied upon by both sides, we need to consider them as well.

12. In Jai Mahal Hotels Private Limited Vs. Devraj Singh and others ((2016) 1 Supreme Court Cases 423), the Apex Court was dealing with the scope of rectification and jurisdiction of the Company Law Board. Thus, it was dealing with Section 111(7) read with Section 155 of the Companies Act, 1956. While doing so, the Apex Court took note of the earlier decision rendered in Ammonia Supplies Corporation (P) Ltd., Vs. Modern Plastic Containers (P) Ltd., ((1998) 7 Supreme Court Cases 105). We may note that the facts involved are totally different along with the scope of power that is required to be exercised. Thus we find no reason for the application of the abovesaid decision to hold that all the proceedings of the Tribunal are summary.

13. In Bakshi Faiz Ahmad Vs. Bakshi Farooq Ahmed and Others (Manu/JK/0305/2018) the learned single Judge of High Court of Jammu and Kashmir at Srinagar was dealing with the order emanating from an interlocutory application filed. We also find that the said judgment will not help the case of the respondent. The Court was dealing with the exercise of the discretionary power under Order XXXIX Rule 1 of the Code of Civil Procedure. In any case, the discussion made earlier would be sufficient enough to hold that the rigor of section 430 of the Act would certainly apply.

14. Reliance has been made on the Division Bench judgment of the Delhi High Court in Jai Kumar Arya and others Vs. Chhaya Devi and another (FAO (OS) 253/2017 & CM No.33724/2017 dated 07/11/2017), we have already discussed the application of principle of Ejusdem Generis. In the light of Section 430 of the Act, which has been dealt with by the Apex Court in Shanti Prasad Jain Vs. Kalinga Tubes Ltd., (MANU/SC/0368/1965 dated 14.01.1965) coupled with the fact that there also the appeal is filed as against the order made in interlocutory application filed under Order XXXIX Rules 1 and 3 of the Code of Civil

Procedure, we accordingly hold that the said decision will not help the case of the respondents.

15. In K.Ravindra Reddy Vs. Alliance Business School (2016 (137) SCL 314), Karnataka High Court was dealing with the scope of Section 111(7) of the Companies Act, 1956, read with Section 58 of the Companies Act, 2013. We find that the aforesaid judgment also has no bearing to the case on hand.

16. The learned counsel has also made reliance on the decision of the Division Bench of this Court in K.Leela Kumar/M.Subbiah Vs. The Government of India, Ministry of Law Justice ((1997) 2 Law Weekly 832). The said judgment has been delivered on a writ filed. The Division Bench was pleased to hold that the policy behind the bye-laws of a private club cannot be a matter for consideration under Article 226 of the Constitution of India. Thus, the said decision also cannot be pressed into service by the respondents.

17. The learned single Judge of this Court has with an element of clarity under Sections 241, 242 and 430 of the Act, held in Chiranjeevi Rathnam and Others Vs. Ramesh and others (MANU/TN/2216/2017) as follows:

"19. The word employed in Section 430 of the Act is matter, which Tribunal or Appellate Tribunal is empowered to determine by or under this Act. Thus, it is "matter" in dispute to be taken into consideration and not the "men" in dispute. Therefore, to decide whether the ouster clause applies or not, one has to unmask the plaintiffs and find out the matter in dispute. Obviously, the matter in dispute is regarding affairs of the company alleged to be conducted prejudicial to the interest of the company, there is a matter which the Tribunal is empowered to determine. The subject matter squarely falls within the ambit of Section 242 and 242(2)(c)(h) of the Companies Act, 2013.

25. In the light of the facts and circumstances of this case, this Court is of the opinion that the word "member" employed in Section 241 of the Act cannot be given a restricted meaning. If restricted meaning is given, it may lead to abuse of the process law, as it is found in this case. Hence, it is essential to apply the doctrine of reading down to make the provisions under Chapter XVI of the Act purposeful. The golden Rule of statutory construction is that the words and

phrases or sentences should be interpreted according to the intent of the legislature that passed the Act. Section 241 and 242 should be read together. If the words of the statutes raises doubt, it is inevitable to call in aid the ground and cause of making the statute and the mischiefs, which the Act intends to redress. Under the new Companies Act, 2013, the intention of the legislature is to vest the power of adjudication the matters referred in Section 242 to the Tribunal."

We find that the position of law has been rightly captured by the learned single Judge.

18. On the effect of Section 430 of the Act, the Apex Court in Shashi Prakash Khemka and Others Vs. NEPC Micon Ltd., and others (Manu/ SC/0187/2019), after having noted all the earlier decisions, held as follows:

" 5. The effect of the aforesaid provision is that in matters in respect of which power has been conferred on the NCLT, the jurisdiction of the civil court is completely barred.

6. It is not in dispute that were a dispute to arise today, the civil suit remedy would be completely barred and CA 1965-66/20143the power would be vested with the National Company Law Tribunal (NCLT) under Section 39 of the said Act. We are conscious of the fact that in the present case, the cause of action has arisen at a stage prior to this enactment. However, we are of the view that relegating the parties to civil suit now would not be the appropriate remedy, especially considering the manner in which Section 430 of the Act is widely worded.

7. We are thus of the opinion that in view of the subsequent developments, the appropriate course of action would be to relegate the appellants to remedy before the NCLT under the Companies Act, 2013. In view of the lapse of time, we permit the appellants to file a fresh petition within a maximum period of two months from today."

The decision of the Apex Court referred above clearly spells out the scope of Section 430.

19. In the light of the above discussion, we have no hesitation in holding that the learned single Judge has not taken note of the relevant provisions involved. Incidentally, the learned single Judge wrongly held that the proper remedy is by an adjudication before the Civil Court as complex issues are involved. Accordingly, we set aside the order passed by the learned single Judge. These original side appeals are allowed. No costs. As respondents 1 and 2/plaintiffs wrongly approached this Court, we deem it appropriate to give liberty for them to approach the Tribunal within a period of four weeks from the date of receipt of a copy of this order. On such filing, the National Company Law Tribunal shall decide the application on its own merit and in accordance with law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

raa

The Sub Assistant Registrar,
Original side,
High Court, Madras.

+2cc to M/S.S.Thangasivan, Advocate Sr.40305, 40304
+1cc to M/S.S.A.Rajan, Advocate Sr.40238

O.S.A.Nos.29 & 30 of 2019

rk[co]
srg 10/06/2019

WEB COPY