

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.Nos.4077 & 4078 of 2019

W.P.No.4077 of 2019

Saba.Rajendran ... Petitioner

vs.

1. Government of Tamil Nadu,
Rep. by its Secretary,
Industries Department,
Secretariat, Chennai-9.

2. Cuddalore District Mineral Foundation Trust,
Rep. by its Chairperson / District Collector,
Cuddalore.

3. Managing Committee,
Rep. by its Chairperson,
Cuddalore District Mineral Foundation,
Cuddalore.

4. Neyveli Lignite Corporation (NLC) India Ltd.,
Rep. by its Chairman cum Managing Director,
Registered Office:
First Floor, No.8, Mayor Sathyamurthy Road,
FSD, Egmore Complex of
Food Corporation of India,
Chetpet, Chennai - 31.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondents 2 and 3 to allocate adequate funds to the areas of Neyveli Assembly Constituency on equal basis on par with other constituencies in Cuddalore District from and out of District Mineral Foundation Trust Fund without any discrimination among the Assembly Constituencies in the District.

W.P.No.4078 of 2019

V.Ganesan

... Petitioner

vs.

1. Government of Tamil Nadu,
Rep. by its Secretary,
Industries Department,
Secretariat, Chennai-9.

2. Cuddalore District Mineral Foundation Trust,
Rep. by its Chairperson / District Collector,
Cuddalore.

3. Managing Committee,
Rep. by its Chairperson,
Cuddalore District Mineral Foundation,
Cuddalore.

4. Neyveli Lignite Corporation (NLC) India Ltd.,
Rep. by its Chairman cum Managing Director,
Registered Office:
First Floor, No.8, Mayor Sathyamurthy Road,
FSD, Egmore Complex of
Food Corporation of India,
Chetpet, Chennai - 31.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondents 2 and 3 to allocate adequate funds to the areas of Thittakudi Assembly Constituency on equal basis on par with other constituencies in Cuddalore District from and out of District Mineral Foundation Trust Fund without any discrimination among the Assembly Constituencies in the District.

For Petitioner : Mr.R.Neelakandan
in both WPs.

For Respondents : Mr.E.Manoharan (for R1 to R3)
in both WPs. Additional Government Pleader

Mr.N.Nithyanandam (for R4)

COMMON ORDER

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

W.P.No.4077 of 2019, is filed by Mr.Saba.Rajendran, Member of Legislative Assembly of Neyveli Assembly Constituency in Cuddalore District, for a mandamus, directing the respondents 2 and 3 to allocate adequate funds to the areas of Neyveli Assembly Constituency on equal basis on par with other constituencies in Cuddalore District from and out of District Mineral Foundation Trust Fund without any discrimination among the Assembly Constituencies in the District.

2. W.P.No.4078 of 2019, is filed by Mr.V.Ganesan, a Member of Legislative Assembly of Thittakudi Assembly Constituency in Cuddalore District, for a mandamus, directing the respondents 2 and 3 to allocate adequate funds to the areas of Thittakudi Assembly Constituency on equal basis on par with other constituencies in Cuddalore District from and out of District Mineral Foundation Trust Fund without any discrimination among the Assembly Constituencies in the District.

3. As both the writ petitions are for a similar prayer, with averments to the effect that both Neyveli and Thittakudi constituencies fall within Cuddalore District, and having regard to the contention that the petitioners represent opposition parties, there is a total discrimination in allocation of the District Mineral Foundation Trust Fund to the constituencies, though many people in the said constituencies have been affected by mining related operations, they are taken up together and disposed of by a common order.

4. Petitioners have contended that a sum of Rs.89 Crores have been contributed by Neyveli Lignite Corporation (NLC) India Limited, represented by its Chairman cum Managing Director, Chennai, the 4th respondent herein to the Cuddalore District Mineral Foundation, represented by the Chairperson /District Collector, Cuddalore, the 2nd respondent herein.

5. It is the further case of Mr.Saba.Rajendran, petitioner in WP.No.4077 of 2019, Member of the Legislative Assembly, Neyveli, that he made a representations dated 18.08.2018, 03.10.2018 and 22.10.2018 to the Government of Tamil Nadu and the District Collector, Cuddalore District, requesting them to allocate funds proportionately and equally to his Assembly Constituency viz. Neyveli, from the District Mineral Foundation Trust Fund, enabling implementation of the welfare and infrastructural development projects in the mining area. Similar representation has been sent to the District Collector, by Mr.V.Ganesan, petitioner in W.P.No.4078 of 2019, Member of

Legislative Assembly of Thittakudi Constituency on 10.09.2018.

6. It is the further case of the petitioners that allocation of District Mineral Foundation Trust Fund should be equal to all the constituencies in the entire District of Cuddalore and it cannot be on the whims and fancies of the Secretary to the Government of Tamilnadu, Industries Department, Chennai, Cuddalore District Mineral Foundation, represented by the Chairperson /District Collector, Cuddalore and Managing Committee, Cuddalore District Mineral Foundation, represented by the Chairperson, Cuddalore, respondents 1 to 3 respectively. Contending inter alia that they are elected representatives of the Assembly Constituencies, petitioners have sought for mandamus, stated supra.

7. On the above averments, Mr.R.Neelakandan, learned counsel for the petitioners made submissions. Yet another contention made by the petitioners is that there is no transparency in allocation of funds. Attention of this Court was also invited to Rules 3, 13, 14 and 21 of the Tamil Nadu District Mineral Foundation Rules, 2017.

8. Heard Mr.R.Neelakandan, learned counsel for the petitioners and perused the materials available on record.

9. Before advertng to the submissions of the learned counsel for the petitioners, we deem it fit to have a cursory look on the statutory provisions of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (10 of 2015).

10. In exercise of the powers conferred under sub clause 4 to Section 15 of the Mines and Minerals (Development and Regulation) Act 1957 (Central Act 67 of 1957), Tamil Nadu District Mineral Foundation Rules, 2017, have been framed.

11. As per Rule 2(ii), "affected people" means, means the persons living in directly affected areas and indirectly affected areas and such other peoples as may be identified by the District Collector including the people who have legal and occupational rights over the land being mined, and also those with usufruct and traditional rights.

12. Rule 2(iii) defines, "directly affected areas", and the same is reproduced.

"directly affected areas" means the areas where direct mining related operations such as excavation, mining, blasting, beneficiation and waste disposal (over burden dumps, tailing ponds, transport corridors, etc.), etc., are located"

13. Rule 2(viii) defines, "indirectly affected areas", which means, those areas where local population is adversely affected on account of economic, social and environmental consequences due to mining related operations.

14. Rule 3 speaks about the composition of District Mineral Foundation Trust. Rule 5 speaks about Governing Council and Managing Committee of the District Mineral Foundation. Rule 6 sets out the powers and functions of the Governing Council. Rule 7 deals with powers and functions of the Managing Committee.

15. How Contribution to the Trust Fund is done, is explained in Rule 8, and the same is extracted.

"Every holder of a mining lease or a prospecting-cum-mining lease or quarry lease shall, of minor minerals in addition to the seigniorage fee, as the case may be, to be paid under the Tamil Nadu Minor Mineral Concession Rules, 1959, pay to the District Mineral Foundation of the District in which mining or quarry operations are carried on, an amount at the rate of ten per cent of royalty or seigniorage fee to be paid under the Tamil Nadu Minor Mineral Concession Rules, 1959 in respect of mining or quarry leases, as the case may be, or prospecting-cum-mining leases granted before the 12th January 2015 and thirty per cent in respect of mining or quarry leases, as the case may be or prospecting-cum-mining leases granted on or after the 12th January 2015."

16. The collection and monitoring of the amount payable to the Trust is detailed in Rule 9, and the same is reproduced.

"(1) All payments of royalty/ seigniorage fee, as case may be, shall be collected with the District Mineral Foundation Trust Fund component at the rate specified in rule 8 of these rules and also the amount of payment to be made under sub-sections (5) and (6) of section 9B of the Act with effect from 12.1.2015, i.e. the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (Central Act 10 of 2015) and no royalty/seigniorage fee shall be accepted without mandatory contribution towards the Trust Fund.

(2) Every Officer who is authorised to collect the royalty or seigniorage fee, as the case may be, shall direct the lessee to pay the contribution to the Trust Fund to the credit of such bank as may be specified by the Trust.

(3) Every Officer who is authorised to collect the royalty or seigniorage fee, as the case may be, shall maintain a register of the amount payable as well as

paid by the lessee and furnish monthly consolidated statement thereof, to the Member Secretary of the Managing Committee by 15th day of each succeeding month."

17. How the fund has to be operated is set out in Rule 12 of the said Rules, which is extracted.

"The Trust Fund shall be deposited in any Nationalized Bank only in the name of the Trust and all accounts shall be operated under the joint signatures of the Chairperson and any one other member of the Managing Committee nominated by the Chairperson. The Trust shall maintain the books of accounts of the Fund."

18. The main rule is the expenditure from, and of the Trust Fund, is dealt with in Rule 13, which states as under.

(1) The Funds available with the Trust shall be used for undertaking activities for the interest and benefit of persons and overall development of the areas affected by mining related operations in the District, in accordance with the Annual Plan prepared by the trustees of the Foundation for the purpose, subject to such guidelines as may be issued by the Government, from the time to time;

(2) The Fund may be utilized for, but not limited to, the activities for the creation of local infrastructure for socioeconomic purposes; for providing, maintaining or upgrading of community assets and services for local population in the area affected by mining related operations; for organising or conducting training programmes for skill development and capacity building for creating employment and self-employment capabilities in such a way as provided and in the manner specified in sub-rules (3) and (4).

(3) Not less than Sixty per cent of the Trust Fund shall be utilized for high priority objects including the following heads:

(i) Welfare of mine affected People

(a) Drinking water supply: centralized purification systems, water treatment plants, permanent/temporary water distribution network including standalone facilities for drinking water; laying of piped water supply system;

(b) Health care: creation of primary / secondary health care facilities in the affected areas with special infrastructures designed to take care of mining related illnesses and diseases possibly with the help

of National Institute of Miners' Health; providing necessary staffing, equipment and supplies required making such facilities effective to supplement and work in convergence with the existing health care infrastructure of the Local Bodies, State and Central Government; Providing endowment for medical treatment for diseases caused by mining/ quarrying activities for the poor or aged or underprivileged people; Group Insurance Scheme for health care;

(c) Education: construction of school buildings, additional class rooms, laboratories, Libraries, art and crafts room, toilet blocks, drinking water provisions; residential hostels for students/teachers in remote areas, sports infrastructure, engagement of teachers/other supporting staff, e-learning setup, other arrangement of transport facilities (bus/van/cycles/ rickshaws/etc.), awarding scholarships to deserving students at various levels of education and nutrition related programs;

(d) Welfare of women and children: special programmes for addressing problems of maternal and child health, malnutrition, infectious diseases;

(e) Welfare of aged and disabled people: special programme for welfare of aged and disabled people, endowment fund for providing sustainable livelihood of aged and disabled people;

(f) Skill development: skill development for livelihood support, income generation and economic activities for local eligible persons. The projects / schemes may include training, development of skill development center, self employment schemes, support to Self Help Groups and provision of forward and backward linkages for such self employment economic activities.

(ii) Welfare of mine affected area

(a) Physical infrastructure: for providing required physical infrastructure viz. road, bridges, railways and waterways projects; maintenance and damage repair of the existing physical infrastructure viz. road, bridges, railways and waterways under the control of the Local Bodies, State and Central Government caused by mining or quarrying activities in the nearby area;

(b) Environment preservation and pollution control measures: for controlling air, water, surface and dust pollution caused by mining operations and mine dumps in the nearby areas; mine pollution prevention and control technologies or measures that could be adopted by the affected people, safety measures for abandoned mines;

(c) and for any other purposes/activities for the

interest and benefit of the affected persons and areas, as may be decided by the Government, time to time, by notification.

(4) Not more than forty per cent of the Trust Fund may be utilized for other priority areas under the following heads and such other heads as may be decided by the Government:-

(a) Irrigation developing: alternate sources of irrigation, adoption of suitable and advanced irrigation techniques;

(b) Energy and Watershed Development: alternate source of energy (including micro hydel) and rainwater harvesting system, development of orchards, integrated farming and economic forestry and restoration of catchments;

(c) Environment preservation and pollution control measures: prevention of pollution of streams, lakes, ponds, ground water, other water sources in the region; development and maintenance of drainage system for mine or quarry effluents; for establishing effluent treatment plants;

(d) Any other measures for enhancing environmental quality in mining district, or for such other purpose, as may be decided by the governing council:

Provided that an amount not exceeding six per cent of the annual receipts of the Fund, subject to an upper limit fixed by the Government may be utilized for administrative, supervisory and overhead costs or establishment expenses of the Foundation:

Provided further that the Trust may bear an expenditure upto three per cent, from and within the six per cent as provided in the first proviso, of its accrued funds for the services of the personnel appointed from the Government departments or from regular employees of the District Panchayat or such other cadre as may be decided by the Government, for providing administrative and technical assistance to the Trust.

(5) Notwithstanding anything contained in sub-rules (3) and (4), the Trust Fund or any part thereof shall not be used for advancement of any loan or grants in any case to any of the beneficiaries other than the purposes specified therein."

19. The Annual Plan of the Trust should be in the manner as provided for in Rule 14. The Annual budget is dealt with in Rule 15. Both the rules are extracted hereunder:

14. Annual Plan.- (1) The Member - Secretary of the Managing Committee of the Trust shall-

(i) at the beginning of each financial year, cause preparation of plans for short term projects and long term projects proposed to be undertaken by the Trust in relevant financial year, to be referred as annual plan, together with details of activities to be undertaken or completed by the Trust during such time, the expected time for completion of the projects and cost for such projects;

(ii) publish a notice in the District Gazette and in the official website of the Trust and also issue an advertisement, at least in two dailies, one in Tamil and another in English, having wide circulation in the District, every year during the month of January, inviting applications/ suggestions from the Public, Panchayats, Non-governmental organizations and Environmentalists regarding the projects/activities to be included in the annual plan of the Trust for the succeeding financial year. A copy of the notice shall also be sent to all Panchayats and Village Administrative Offices in the District inviting suggestions;

(iii) scrutinize the suggestions thus received and from other sources in the monthly meeting of the Managing Committee, fix priority in the manner as provided under rule 13 of this rule and shortlist the activities that can be taken up in the order of priority in annual plan for next financial year for approval of the Governing Council.

(2) The approved annual plan shall contain all projects, programmes, activities proposed to be undertaken by the trust for achieving its objectives and shall have clearly demarcated milestones;

(3) Notwithstanding anything contained in sub-rule (1), the Governing Council, in its meeting, with the approval of three-fourth of its members can decide to include any other project, that it may find as necessary to be taken up.

15. Annual Budget.- The Member - Secretary of the Managing Committee shall, at the beginning of each financial year, cause preparation of an annual budget containing details of the proposed income and expenditure on activities covered in the annual plan for that particular financial year, including legal, administrative and other costs an expenditure proposed to be incurred by the Trust together with details of funding requirements in this regard, to be referred to as annual budget, for approval of the Governing Council.

20. Approval of annual plan and annual budget is dealt with in Rule 16 and the same is as follows:

"(1) The annual plan and annual budget shall be laid before the Governing Council for its approval.

(2) The Member - Secretary of the Managing Committee shall, on receipt of the copies of duly approved annual plan and related annual budget from the Chairperson of the Governing Council, furnish the same to the Government within a period of thirty days from the date of receipt of approval of the Governing Council.

(3) Without prejudice to the provisions of sub - rule(2), the Trust may undertake expenditure for activities that are not approved in the annual plan, but warrants immediate action, subject to specific approval by the Chairperson of the Governing Council, which shall be laid before the Governing Council in the immediate next meeting."

21. How the work should be executed is dealt with in Rule 17, which is extracted below.

"(1) The activities undertaken by the Trust shall be executed through Government Departments, agencies and Public Sector Undertakings, who are entrusted to, and have specific norms and procurement procedures to, undertake such works, as may be applicable to the implementation of Government projects

(2) Notwithstanding anything contained in sub rule (1), the Managing Committee may, with the approval of the Governing Council, award the execution of those work which otherwise could not be executed through Government Departments, agencies and Public Sector Undertakings, to other agencies, competent and sound in executing the work, through transparent processes like tender-cum-auction. In all such cases, all the terms, conditions and procedures that shall be followed for Government projects, whenever the work is executed through Government Departments, agencies and Public Sector Undertakings, as the case may be, shall be followed.

(3) Technical approval and supervision of the work will be looked after by the officers competent to do so under the administrative delegation of powers as applicable to the Department concerned.

(4) Transfer of fund to all agencies and beneficiaries shall be into their bank account only."

22. How maintenance of accounts and audit has to be done is dealt with in Rule 18 and the same is reproduced.

"(1) The accounts and audit of the Fund shall be in the manner as specified below:-

(i) The accounting of financial year of the Trust shall be from 1st of April to 31st of March.

(ii) The Managing Committee shall maintain or cause to be maintained proper books of accounts, documents and records with respect to the Trust Fund to give a true and fair picture of the affairs of the Trust, in the form, mode and manner as may be decided by the Government.

(iii) The accounts of the Trust shall be audited on the completion of each half year by the qualified auditor/ auditors appointed by the Trust. The auditor/auditors shall submit the half-yearly audit report to the Managing Committee and on receipt, the Managing Committee shall place the report before the Governing Council for approval, in its meeting, by three-fourth of its members.

(iv) The auditor/auditors of the Trust shall be appointed by the Trustees from the list of approved auditors notified by the Accountant General of Tamil Nadu in the meeting of the Governing Council, on such terms and conditions as may be decided by the Trustees.

(v) The Governing Council, in its meeting, with the approval of three-fourth of its members may decide to remove and replace the auditor/auditors of the Trust.

(2) Notwithstanding anything contained in sub-rule (1), the Government may, by notification in the Tamil Nadu Government Gazette, entrust the District Accounts Officer in the District, and also request the Accountant General (Audit) for the audit of the Fund annually on completion of each year.

(3) The Trust shall forward the approved budget and annual plan along with schemes and projects for the next financial year, to the District Panchayat, District Administration and the Government for publication on their respective websites.

(4) The Trust shall prepare a quarterly progress report in physical and financial terms in respect of the approved schemes and projects within forty-five days of the close of the quarter and forward it to the District Panchayat and District Administration, immediately thereafter for publication on their respective websites.

(5) The Trust shall forward the approved annual report and the approved audit report immediately after their approval by the Governing Council within sixty days of close of financial year to the District Panchayat, District Administration, and to the Government along with audit report for publication on their respective websites."

23. It is the contention of the petitioners that there is no transparency. As regard transparency, Rule 19 states that,

"19. Compliance of transparency.- (1) Every foundation will prepare and maintain a website on which, inter alia, the following information will be hosted and kept updated, namely:-

(i) Details of composition of the bodies of the Foundation.

(ii) List of areas and people affected by mining.

(iii) Quarterly details of all contributions received from lessees and others.

(iv) All meeting agenda, minutes and action taken reports (ATRs) of the Foundation.

(v) Annual Plans and budget work orders, annual report.

(vi) Online status of ongoing works implementation status / progress of all the projects / programmes being undertaken under Pradhan Mantri Khanij Kshetra Kalyan Yojana should be made available on the website, including description of work, details of beneficiaries, estimated cost, name of implementing agencies, expected date of commencement and completion of work, financial and physical progress upto last quarter, etc.,

(vii) List of beneficiaries under various welfare programs.

(viii) Voluntary disclosures under the Right to Information Act, 2005 (Central Act 22 of 2005)."

24. Petitioners claim that they are the representatives of the people of their respective constituencies. Despite the above provision, nowhere in the supporting affidavits filed to the writ petitions, petitioners have contended that they have made any attempt to obtain the details, as to how allocation is made to the Districts. They could have very well obtained information under the Right to Information Act, 2005. District Mineral Foundation Trust Fund is a fund meant for distributing to the districts and had there been an application under the Right to Information Act, 2005 the competent authority would have furnished suitable information. If no information is

given, the petitioners can take up the matter on appeal. Thus, the petitioners are not remediless.

25. General Conditions have been prescribed in Rule 21 about the use of the fund and the same is reproduced.

"21. General conditions for the use of the Fund.-

(1) The development and welfare activities to be taken up under these rules should be, as far as possible, in the nature of complementing the ongoing schemes/projects being funded by the State as well as Central Government. However, without prejudice to the powers of the Foundation, efforts shall be made to achieve convergence with the State and the District Plans, so that the activities taken up by the Foundation supplement the development and welfare activities and are treated as extra budgetary resources for the State Plan.

(2) If the affected area of a mine or quarry, existing in one district, also falls in the jurisdiction of another district, proportionate amount collected from the mine or quarry by the Foundation, as may be decided by the Government in the District Collector, shall be transferred to the Foundation of the other district concerned for taking up the activities in such areas. A project that is for benefit of the affected area/people, but stretches beyond the geographical boundary of the district should be taken up after obtaining prior approval of the Government.

(3) A reasonable sum of the annual receipts should be kept as endowment fund for providing sustainable livelihood."

26. Some of the projects, required to be taken up for the welfare of mine affected people are provided in Rule 13 and the same are extracted supra.

27. Reading of the entire Tamil Nadu District Mineral Foundation Rules, 2017 makes it clear that the funds available with the Trust shall be for undertaking activities for the interest and benefit of persons and overall development of the areas affected by mining related operations in the Districts, in accordance with the annual Plan prepared by the Trustees of the Foundation for the purpose, subject to such guidelines as may be issued by the Government, from time to time.

28. As per 13(2) of the rules, the Fund may be utilized for, but not limited to, the activities for the creation of local infrastructure for socioeconomic purposes; for providing, maintaining or upgrading of community assets and services for local population in the area affected by mining related

operations; for organising or conducting training programmes for skill development and capacity building for creating employment and self-employment capabilities in such a way as provided and in the manner specified in sub-rules (3) and (4).

29. Notwithstanding the activities to be undertaken, for the interest and benefit of persons and overall development of the areas affected by mining related operations in the District, Rule 21 speaks about the general conditions for the use of the Fund.

30. Reading of Rule 21 also makes it clear that without prejudice to the powers of the foundation, efforts shall be made to achieve convergence with State and District Plans, so that the activities taken up by the Foundation supplement the development and welfare activities and are treated as extra budgetary resources for the State Plan.

31. A conjoint reading of both the rules viz., Rules 13 and 21 would make it clear that both the State and the District Plans could be taken up for development and welfare activities in the Districts. Rules do not envisage Constituency wise allocation. Rules mandate that the expenditure and allocation should be for the interest and benefit of persons and overall development of the areas affected by mining related operations in the Districts. Rule 21 supplements Rule 13.

32. When the legislation is clear on district allocation, contention of the petitioners is that the Court should read the same as constituency allocation. At this juncture, let us consider few cases on interpretation of statutes.

(i) In the words of Tindal, C.J., in *Sussex Peerage case* [(1844) 11 Cl & F 85], wherein, he said thus, "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves so alone in such cases best declare the intent of the lawgiver."

(ii) In *Nairin v. University of St. Andrews* reported in 1909 AC 147, the Hon'ble Apex Court held that, "Unless there is any ambiguity it would not be open to the Court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice."

(iii) In Ram Rattan v. Parma Nand reported in AIR 1946 PC 51, the Hon'ble Mr.S.R.Das, held as follows:

"The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. In the present case, the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction."

(iv) In Poppatlal Shah v. State of Madras reported in AIR 1953 SC 274, the Hon'ble Supreme Court held that, "It is settled rule of construction that to ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word, phrase and sentence is to be considered in the light of the general purpose and object of the Act itself."

(v) In Rao Shive Bahadur Singh v. State, reported in AIR 1953 SC 394, the Hon'ble Supreme Court held that, "While, no doubt, it is not permissible to supply a clear and obvious lacuna in a statute, and imply a right of appeal, it is incumbent on the Court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application."

(vi) What is the spirit of law, Hon'ble Mr. Justice S.R.Das in Rananjaya Singh v. Baijnath Singh reported in AIR 1954 SC 749, said that, "The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the Sections of the Act."

(vii) In Hari Prasad Shivashanker Shukla v. A.D.Divelkar reported in AIR 1957 SC 121, the Hon'ble Apex Court held that, "It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptance of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended, Where, within the framework of the ordinary acceptance of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined."

(viii) In Kanai Lal Sur v. Paramnidhi Sadhukhan reported in

AIR 1957 SC 907, the Hon'ble Supreme Court held that,

"it must always be borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.

The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction.

It is only in such cases that it becomes relevant to consider the mischief and defect which the, Act purports to remedy and correct."

(ix) In *State of W.B., v. Union of India* reported in AIR 1963 SC 1241, the Hon'ble Apex Court held that in considering the expression used by the Legislature, the Court should have regard to the aim, object and scope of the statute to be read in its entirety.

(x) In *State of Uttar Pradesh v. Dr. Vijay Anand Maharaj* reported in AIR 1963 SC 946, the Hon'ble Supreme Court held as follows:

"But it is said, relying upon certain passages in Maxwell on the Interpretation of Statutes, at p. 68, and in Crawford on 'Statutory Construction' at p. 492, that it is the duty of the Judge "to make such construction of a statute as shall suppress the mischief and advance the remedy," and for that purpose the more extended meaning could be attributed to the words so as to bring all matters fairly within the scope of such a statute even though outside the letter, if within its spirit or reason. But both Maxwell and Crawford administered a caution in resorting to such a construction. Maxwell says at p.68

of his book:

"The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words."

Crawford says that a liberal construction does not justify an extension of the statute's scope beyond the contemplation of the Legislature.

The fundamental and elementary rule of construction is that the words and phrases used by the Legislature shall be given their ordinary meaning and shall be constructed according to the rules of grammar. When the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognized rule of construction that the meaning must be collected from the expressed intention of the Legislature."

(xi) In *Namamal v. Radhey Shyam* reported in AIR 1970 Rajasthan 26, the Court held as follows:

"It was observed by Pollock C. B. in *Waugh v. Middleton*, 1853-8 Ex 352 (356):-- "It must, however, be conceded that where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail, unless there be some strong and obvious reason to the contrary. But the rule adverted to is subject to this condition, that however plain the apparent grammatical construction of a sentence may be, if it be properly clear from the contents of the same document that the apparent grammatical construction cannot be the true one, then that which, upon the whole, is the true meaning shall prevail, in spite of the grammatical construction of a particular part of it." And substantially the same opinion is expressed by Lord Selborne in *Caledonian Ry, v. North British Ry.* (1881) 6 AC 114 (222):-- "The mere literal construction of a statute ought not to prevail if it is opposed to the intentions of the legislature as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which, that intention can be better effectuated." Again Lord Fitzgerald in *Bradlaugh v. Clarke*, (1883) 8 AC 354 at p. 384 observed as follows:-- "I apprehend it is a rule in the construction of statutes that in the first instance the grammatical sense of the words is to be adhered to. If that is contrary to, or inconsistent with, any expressed intention or declared purpose of the statutes, or if it would involve any absurdity, repugnance, or inconsistency, the grammatical sense

must then be modified, extended, or abridged, so far as to avoid such an inconvenience, but no further." 11. Maxwell in his book on Interpretation of Statutes (11th Edition) at page 226 observes thus:--

"The rule of strict construction, however, whenever invoked, comes attended with qualifications and other rules no less important, and it is by the light which each contributes that the meaning must be determined. Among them is the rule that that sense of the words is to be adopted which best

harmonises with the context and promotes in the fullest manner the policy and object of the legislature. The paramount object, in construing penal as well as other statutes, is to ascertain the legislative intent and the rule of strict construction is not violated by permitting the words to have their full meaning, or the more extensive of two meanings, when best effectuating the intention. They are indeed frequently taken in the widest sense, sometimes even in a sense more wide than etymologically belongs or is popularly attached to them, in order to carry out effectually the legislative intent, or, to use Sir Edward Cole's words, to suppress the mischief and advance the remedy."

(xii) In *Inland Revenue Commissioner v. Joiner* reported in (1975) 3 All. ER 1050, it has been held that normally a statutory provision consists of a general description of some factual situation and the legal consequences ensuing from it. Whether the general description is wide or narrow, it will have some limits. The question before a court of law in dealing with a statute is whether the factual situation proved before it falls within the general description given in the statute. A real difficulty in determining the right answer can be said to arise from an "ambiguity" in the statute. It is in this sense that the words, "ambiguity" and "ambiguous" are widely used in judgments.

(xiii) In *Commissioner of Sales Tax v. M/s. Mangal Sen Shyamlal* reported in 1975 (4) SCC 35 = AIR 1975 SC 1106, the Hon'ble Apex Court held that, "A statute is supposed to be an authentic repository of the legislative will and the function of a court is to interpret it "according to the intent of them that made it". From that function the court is not to resile. It has to abide by the maxim, "ut res magis valiat quam pereat", lest the intention of the legislature may go in vain or be left to evaporate into thin air."

(xiv) In *C.I.T., Madras v. T. Sundram Iyengar (P) Ltd.*,

reported in 1976 (1) SCC 77, the Hon'ble Supreme Court held that, if the language of the statute is clear and unambiguous and if two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used, in order to meet a possible injustice.

(xv) If the words are precise and unambiguous, then it should be accepted, as declaring the express intention of the legislature. In *Ku.Sonia Bhatia v. State of U.P.*, and others reported in 1981 (2) SCC 585 = AIR 1981 SC 1274, the Hon'ble Supreme Court held that a legislature does not waste words, without any intention and every word that is used by the legislature must be given its due import and significance.

(xvi) In *Philips India Ltd., v. Labour Court* reported in 1985 (3) SCC 103, the Hon'ble Apex Court, at Paragraph 15, held as follows:

"(15) No cannon of statutory construction is more firmly, established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction *ex visceribus actus*. This rule of statutory construction is so firmly established that it is variously styled as 'elementary rule' (See *Attorney General v. Bastow* [(1957) 1 All.ER 497]) and as a 'settled rule' (See *Poppatlal Shall v. State of - Madras* [1953 SCR 667 : AIR 1953 SC 274]). The only recognised exception to this well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lord Coke laid down that: 'it is the most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expresseth meaning of the makers' (Quoted with approval in *Punjab Beverages Pvt. Ltd. v. Suresh Chand* [(1978) 3 SCR 370 : (1978) 2 SCC 144 : 1978 SCC (L&S) 165])."

(xvii) In the case of *Reserve Bank of India v. Peerless G.F., & Co., Ltd.*, AIR 1987 SC 1023, the Hon'ble Apex Court held :

"Interpretation must depend on the text and the context. They are the bases 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 in its place."

(xviii) It is a well settled law of interpretation that "when the words of the statute are clear, plain or unambiguous, ie., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. Reference can be made to the decision of the Hon'ble Apex Court in *Nelson Motis v. Union of India* reported in AIR 1992 SC 1981.

(xvix) In *M/s.Oswal Agro Mills Ltd., v. Collector of Central Excise and others* reported in 1993 Supp (3) SCC 716 = AIR 1993 SC 2288, the Hon'ble Apex Court held that, where the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation, which are merely presumption in cases of ambiguity in the statute. The Court would interpret them as they stand.

(xx) In *Nasiruddin v. Sita Ram Agarwal* reported in (2003) 2 SCC 577, the Hon'ble Supreme Court held as follows:

"35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom....

37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language

used.But the intention of the legislature must be found out from the scheme of the Act."

(xxi) In *Balram Kumawat v. Union of India* reported in 2003 (7) SCC 628, the Hon'ble Supreme Court held that, "Contextual reading is a well-known proposition of interpretation of statute. The classes of a statute should be construed with reference to the context vis-a-vis the other provisions so as to make a consistent enactment of the whole statute relating to the subject-matter. The rule of "ex visceribus actus" should be resorted to in a situation of this nature."

(xxii) In *State of Gujarat v. Salimbhai Abdulgaffar Shaikh* reported in 2003 (8) SCC 50, the Hon'ble Supreme Court held that,

".....It is well settled principle that the intention of the legislature must be found by reading the Statute as a whole. Every clause of Statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole Statute. It is also the duty of the Court to find out the true intention of the legislature and to ascertain the purpose of Statute and give full meaning to the same. The different provisions in the Statute should not be interpreted in abstract but should be construed keeping in mind the whole enactment and the dominant purpose that it may express."

(xxiii) In *Indian Dental Association, Kerala v. Union of India* reported in 2004 (1) Kant. LJ 282, the Court held that, "The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. The object of all interpretation is to discover the intention of Parliament, "but the intention of Parliament must be deduced from the language used", for it is well-accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. Where the language of an Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature. Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. The decision in a case calls for a full and fair application of particular statutory language to particular facts as found. It is a corollary to the general rule of literal construction that

nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express. A construction which would leave without effect any part of the language of a statute will normally be rejected."

(xxiv) In *State of Jharkhand v. Govind Singh* reported in (2005) 10 SCC 437, the Hon'ble Supreme Court held that,

"12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature.

13. Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. The task is not easy as the "language" is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the legislature cannot be approached as the legislature, after enacting a law or Act, becomes *functus officio* so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the legislature retains the power to amend or repeal the law so made and can also declare its meaning, but that can be done only by making another law or statute after undertaking the whole process of law-making.

14. Statute being an edict of the legislature, it is necessary that it is expressed in clear and unambiguous language.....

15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by "an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so".

(See Frankfurter: "Some Reflections on the Reading of Statutes" in Essays on Jurisprudence, Columbia Law Review, p. 51.)"

(xxv) In Vemareddy Kumaraswamy Reddy v. State of A.P., reported in (2006) 2 SCC 670, the Hon'ble Supreme Court held that,

"12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous."

(xxvi) In A.N.Roy Commissioner of Police v. Suresh Sham Singh reported in AIR 2006 SC 2677, the Hon'ble Apex Court held that,

"It is now well settled principle of law that, the Court cannot change the scope of legislation or intention, when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the Court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions."

(xxvii) In Adamji Lookmanji & Co. v. State of Maharashtra reported in AIR 2007 Bom. 56, the Bombay High Court held that, when the words of status are clear, plain or unambiguous, and reasonably susceptible to only meaning, Courts are bound to give effect to that meaning irrespective of the consequences. The intention of the legislature is primarily to be gathered from the language used. Attention should be paid to what has been said in the statute, as also to what has not been said.

(xxviii) In State of Haryana v. Suresh reported in 2007 (3) KLT 213, the Hon'ble Supreme Court held that, "One of the basic principles of Interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary, to or inconsistent with any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the

grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity."

(xxix) In Visitor Amu v. K.S.Misra reported in 2007 (8) SCC 594, the Hon'ble Supreme Court held that, "It is well settled principle of interpretation of the statute that it is incumbent upon the Court to avoid a construction, if reasonably permissible on the language, which will render a part of the statute devoid of any meaning or application. The Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being in apposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute."

(xxx) In T.N.State Electricity Board v. Central Electricity Regulatory Commission reported in 2007 (7) SCC 636, the Hon'ble Supreme Court held that, "Resort can be had to the legislative intent for the purpose of interpreting a provision of law, when the language employed by the legislature is doubtful or susceptible of meanings more than one. However, when the language is plain and explicit and does not admit of any doubtful interpretation, the Hon'ble Supreme Court cannot, by reference to an assumed legislative intent expand the meaning of an expression employed by the legislature and therein include such category of persons as the legislature has not chosen to do."

(xxxi) In Ansal Properties & Industries Ltd. v. State of Haryana, reported in (2009) 3 SCC 553, the Hon'ble Supreme Court held that,

"It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is determinative factor of legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute."

40. In Ganga Prasad Verma (Dr.) v. State of Bihar [1995 Supp (1) SCC 192], it has been held that: (SCC p. 195, para 5)

"5. Where the language of the Act is clear and explicit, the court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature."

(xxxii) In Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., reported in (2008) 4 SCC 755, the Hon'ble Supreme Court, at Paragraphs 52, 54, 55 and 56, held as follows:

"52. No doubt ordinarily the literal rule of interpretation should be followed, and hence the court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain existing words in a statute of all meaning, or some part of the statute may become absurd."

(xxxiii) In Phool Patti v. Ram Singh reported in (2009) 13 SCC 22, the Hon'ble Supreme Court held that,

"9. It is a well-settled principle of interpretation that the court cannot add words to the statute or change its language, particularly when on a plain reading the meaning seems to be clear."

(xxxiv) In Mohd. Shahabuddin v. State of Bihar, reported in (2010) 4 SCC 653, the Hon'ble Supreme Court held that,

"179. Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to a recent decision of this Court in Ansal Properties & Industries Ltd. v. State of Haryana [2009 (3) SCC 553]

180. Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which

can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the legislature also intended the condition to be applied at some other place in that provision."

(xxxv) In *Satheedevi v. Prasanna* reported in (2010) 5 SCC 622, the Hon'ble Supreme Court held as follows:

"12. Before proceeding further, we may notice two well-recognised rules of interpretation of statutes. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise—*Kanai Lal Sur v. Paramnidhi Sadhukhan* [AIR 1957 SC 907]

13. The other important rule of interpretation is that the court cannot rewrite, recast or reframe the legislation because it has no power to do so. The court cannot add words to a statute or read words which are not there in it. Even if there is a defect or an omission in the statute, the court cannot correct the defect or supply the omission - *Union of India v. Deoki Nandan Aggarwal* [1992 Supp (1) SCC 323] and *Shyam Kishori Devi v. Patna Municipal Corpn.* [AIR 1966 SC 1678]"

(xxxvi) In *Sri Jeyaram Educational Trust & Ors., v. A.G.Syed Mohideen & Ors.* reported in 2010 CIJ 273 SC (1), it is held that,

"6. It is now well settled that a provision of a statute should have to be read as it is, in a natural manner, plain and straight, without adding, substituting or omitting any words. While doing so, the words used in the provision should be assigned and ascribed their natural, ordinary or popular meaning. Only when such plain and straight reading, or ascribing the natural and normal meaning to the words

on such reading, leads to ambiguity, vagueness, uncertainty, or absurdity which were not obviously intended by the Legislature or the Lawmaker, a court should open its interpretation tool kit containing the settled rules of construction and interpretation, to arrive at the true meaning of the provision. While using the tools of interpretation, the court should remember that it is not the author of the Statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A court as an interpreter cannot alter or amend the law. It can only interpret the provision, to make it meaningful and workable so as to achieve the legislative object, when there is vagueness, ambiguity or absurdity. The purpose of interpretation is not to make a provision what the Judge thinks it should be, but to make it what the legislature intended it to be."

(xxxvii) In *Delhi Airtech Services (P) Ltd. v. State of U.P.*, reported in (2011) 9 SCC 354, the Hon'ble Supreme Court, while dealing with a provision under Section 17(3-A) of the Act, held that,

"55. It is well settled as a canon of construction that a statute has to be read as a whole and in its context. In *Attorney General v. Prince Ernest Augustus of Hanover* [1957 AC 436], Lord Viscount Simonds very elegantly stated the principle that it is the duty of court to examine every word of a statute in its context. The learned Law Lord further said that in understanding the meaning of the provision, the Court must take into consideration "not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in *pari materia*, and the mischief which I can, by those and other legitimate means, discern that the statute was intended to remedy." (All ER p. 53 I)

57. These principles have been followed by this Court in its Constitution Bench decision in *Union of India v. Sankalchand Himatlal Sheth* [1977 (4) SCC 193]. At SCC p. 240, Bhagwati, J. as His Lordship then was, in a concurring opinion held that words in a statute cannot be read in isolation, their colour and content are derived from their context and every word in a statute is to be examined in its context. His Lordship explained that the word context has to be taken in its widest sense and expressly quoted the formulations of Lord Viscount Simonds, set out above."

33. Let us consider, as to whether, the Courts can add or delete or substitute any word to a statute or section.

(i) In CIT v. Badhraj and Company reported in 1994 Supp (1) SCC 280, the Hon'ble Apex Court held that an object oriented approach, however, cannot be carried to the extent of doing violence to the plain meaning of the Section used by rewriting the Section or substituting the words in the place of actual words used by the legislature.

(ii) In Dadi Jagannadham v. Jammulu Ramulu reported in (2001) 7 SCC 71, the Hon'ble Supreme Court held that,

"13. We have considered the submissions made by the parties. The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there."

(iii) In Institute of C.A. of India v. Ajit Kumar Iddya reported in AIR 2003 Kant. 187, the Karnataka High Court held that, "So far as the cardinal law of interpretation is concerned, it is settled that if the language is simple and unambiguous, it is to be read with the clear intention of the legislation. Otherwise also, any addition/subtraction of a word is not permissible. In other words, it is not proper to use a sense, which is different from what the word used ordinarily conveys. The duty of the Court is not to fill up the gap by stretching a word used. It is also settled that a provision is to be read as a whole and while interpreting, the intention and object of the legislation have to be looked upon. However, each case depends upon the facts of its own."

(iv) In Sanjay Singh v. U.P. Public Service Commission reported in (2007) 3 SCC 720, the Hon'ble Supreme Court held that,

"It is well settled that courts will not add words to a statute or read into the statute words not in it. Even if the courts come to the conclusion that there is any omission in the words used, it cannot

make up the deficiency, where the wording as it exists is clear and unambiguous. While the courts can adopt a construction which will carry out the obvious intention of the legislative or the rule-making authority, it cannot set at naught the legislative intent clearly expressed in a statute or the rules."

34. Prayer of the petitioners for allocation of funds to the areas Neyveli and Thittakudi Constituencies, on equal basis on par with other Constituencies in Cuddalore District from and out of District Mineral Foundation Trust Fund, without any discrimination among the Assembly constituencies, in the District, is contrary to the provisions / rules which envisage only District allocation.

(a) From the reading of the Rules, it is clear that when Constituency Assembly allocation is not the intention of the Legislative Assembly, petitioners have no right to seek for the same, and more over, when the requirement of a Constituency falling within the same District, affected by mining activity, may be different and therefore the prayer to allocate funds to Neyveli and Thittakudi Assembly Constituencies, on equal basis, on par with other constituencies in Cuddalore District, also cannot be maintained. Request of the petitioners is contrary to the very intention of the legislature in providing allocation on District basis. If such a request is permitted, then, every member of the Assembly representing his/her constituency would claim equal share in the money credited in the Foundation Trust irrespective of the fact that the money has to be spent in the District, for the purposes as intended in the legislation.

(b). Judicial notice can also be taken that there is mining activity, across the State, and in terms of rules 2(ii), 2(iii) and 2 (viii) respectively, there would be "affected people", "directly affected areas" and "indirectly affected areas". The extent of area and the number of people affected would vary, in each district. Constituency is not the unit to be taken, but it is the district. Viewing from that angle, even the districts cannot claim parity or equality, in the matter of distribution of funds.

35. Depending upon the welfare of the mining affected people, directly and indirectly affected areas within the district, activities to be undertaken, allocation has to be made to the districts and not to constituencies. When a Writ of Mandamus can be issued. It is worthwhile to consider few decisions.

(i). In State of Kerala v. A.Lakshmi Kutty reported in 1986 (4) SCC 632, the Hon'ble Supreme Court

held that a Writ of Mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of Mandamus.

(ii) In *Raisa Begum v. State of U.P.*, reported in 1995 All.L.J. 534, the Allahabad High Court has held that certain conditions have to be satisfied before a writ of mandamus is issued. The petitioner for a writ of mandamus must show that he has a legal right to compel the respondent to do or abstain from doing something. There must be in the petitioner a right to compel the performance of some duty cast on the respondents. The duty sought to be enforced must have three qualities. It must be a duty of public nature created by the provisions of the Constitution or of a statute or some rule of common law.

(iii) Writ of mandamus cannot be issued merely because, a person is praying for. One must establish the right first and then he must seek for the prayer to enforce the said right. If there is failure of duty by the authorities or inaction, one can approach the Court for a mandamus. The said position is well settled in a series of decisions.

(a) In the decision reported in (1996) 9 SCC 309 (*State of U.P. and Ors. v. Harish Chandra and Ors.*) in paragraph 10, the Apex Court held as follows:

10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....

(b) In the decision reported in (2004) 2 SCC 150 (*Union of India v. S.B. Vohra*) the Supreme Court considered the said issue and held that 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself.

Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.

(c) In the decision reported in (2008) 2 SCC 280 (Oriental Bank of Commerce v. Sunder Lal Jain) in paragraphs 11 and 12 the Supreme Court held thus,

11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of

right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

(iv). When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

"Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to

act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective." (emphasis supplied)

36. Petitioner has no constitutional, statutory or legal right under the Tamil Nadu District Mineral Foundation Rules, 2017 to claim allocation of funds on constituency basis.

37. When the Court expressed the view that the writ petitions are not maintainable as prayed for, Mr.R.Neelakandan, learned counsel for the petitioners sought permission to take instructions from his client for withdrawal. However, this Court is of the view that as the prayer sought for is not maintainable, it requires to be answered and thus, the order.

38. In the result, both the writ petitions are dismissed. No Costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ars/dm

To

1. The Secretary,
Government of Tamil Nadu,
Industries Department,
Secretariat, Chennai-9.

2. Chairperson / District Collector,
Cuddalore District Mineral Foundation Trust,
Cuddalore.

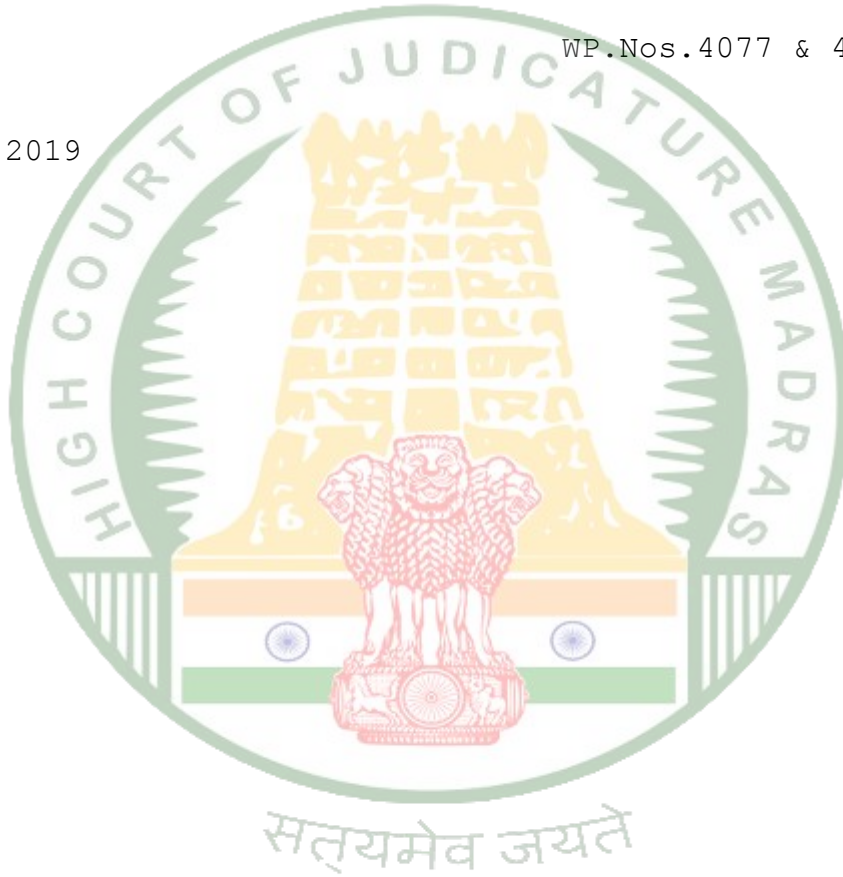
3. Chairperson,
Managing Committee,
Cuddalore District Mineral Foundation,
Cuddalore.

4. Chairman cum Managing Director,
Neyveli Lignite Corporation (NLC) India Ltd.,
Having Registered Office:
First Floor, No.8, Mayor Sathyamurthy Road,
FSD, Egmore Complex of
Food Corporation of India,
Chetpet, Chennai - 31.

+1 cc to Mr.R.Neelakandan, Advocate Sr.No.12955
+1 cc to Mr.Nithianandam, Advocate SR.No.13100

WP.Nos.4077 & 4078 of 2019

KS(CO)
CSL/18.03.2019



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