

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/6/2019

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.16647 of 2019

P. Pugalenthir

... Petitioner

Vs

1. Union of India
rep. By the Secretary
Ministry of Home Affairs
Department of Home
North Block, Central Secretariat
New Delhi 110 001.

2. State of Tamil Nadu
rep. By the Principal Secretary to Government
Home Department, Secretariat
Chennai 600 009.

3. The Director General of Police
Mylapore
Chennai 600 004.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a writ of mandamus directing the respondents 1 and 2 to implement the provisions of the Lotteries (Regulation) Act, 1998 in the State of Tamil Nadu effectively in respect of the transport and sale of lottery tickets of other States in the State of Tamil Nadu.

For Petitioner ... Mr.M.Radhakrishnan

For Respondents... Mr.E.Manoharan
Additional Government Pleader
for R.R.2 and 3.

O R D E R
(Order of this Court was made by S.MANIKUMAR, J.)

Mr.P.Pugalthi, a practising Advocate in the Madras High Court, has filed the instant writ petition, for a writ of mandamus, directing the respondents 1 and 2, to implement the provisions of the Lotteries (Regulation) Act, 1998, in the State of Tamil Nadu effectively, in respect of the transport and sale of lottery tickets of other States, in the State of Tamil Nadu.

2. Supporting the prayer sought for, petitioner has contended that Section 5 of the Lotteries (Regulation) Act, 1998, provides that State Government may, within the State, prohibit the sale of tickets of a lottery organized, conducted or promoted by every other State. State of Tamil Nadu, Home Department, Chennai, second respondent, herein, in exercise of its power, under Section 5 of the Act, issued G.O.Ms.No.20, Home Department, dated 8/1/2003, whereunder, sale of lottery tickets has been prohibited. Despite the said prohibition, the tickets of lottery organised, conducted or promoted by other States in the Country are being sold in various part of Tamil Nadu and hundreds of persons are being arrested and tried for the offences punishable under the Act. The very arrest and the consequential prosecution of hundreds of persons every year, under the Act shows that the provisions of the Act have not been enforced effectively by the second respondent.

3. Petitioner has further contended that under Section 6 of the said Act, Union of India, Ministry of Home Affairs, New Delhi, first respondent, herein, is empowered to prohibit a lottery organised, conducted or promoted, in contravention of the provisions of Section 4 or where tickets of such lottery are sold in contravention of the provisions of Section 5 of the Act. First respondent is aware of the arrest and prosecution of hundreds of persons under the provisions of the Act. It is the duty of the first respondent, to take appropriate steps, to find out how the tickets of lottery of other States are brought to the State of Tamil Nadu and from where they come and through whom the tickets are being transported, leading to the ultimate sale of tickets, in Tamil Nadu. Since the first respondent has not so far taken any steps, under Section 6 of the Act, the provisions of Section 6 of the Act have become virtually non-existent.

4. It is also the contention of the petitioner that persons, who are being prosecuted are those who sell lottery tickets. The real violators of the law are not those, who sell the lottery tickets. According to the petitioner, the violators of the law to be prosecuted and punished are those enabling

transport of lottery tickets from various States to the State of Tamil Nadu. It is incumbent upon the second respondent to investigate whether these tickets are printed within the State of Tamil Nadu and sold to the gullible people. Respondents 1 and 2 turn a blind eye to the fact that thousands of families live in penury only because of the circulation of the lottery tickets of other States - both fake and real. Instead of prosecuting the real offenders who help transport of lottery tickets of other States to the State of Tamil Nadu and who help printing of such tickets, within the State of Tamil Nadu, enforcing authorities of second respondent, mechanically prosecute the poor persons, who sell the tickets for their livelihood. Unless a joint programme is initiated by the respondents 1 and 2, to stop the transport of lottery tickets, from various States to the State of Tamil Nadu, the poor and gullible people, who purchase the lottery tickets will continue to suffer and their hard earned money would enrich the violators of the law.

5. Based on the above averments, and the representation of the petitioner, dated 5/6/2017, Mr.M.Radhakrishnan, learned counsel for the petitioner submitted that it is incumbent upon the Central and State Governments, to initiate a joint action programme, for the purpose of investigating the crime of transport of lottery tickets to the State of Tamil Nadu from various parts of the Country and prohibit entry of those tickets in State of Tamil Nadu. It is also incumbent upon the State of Tamil Nadu to investigate whether these tickets are printed within the State of Tamil Nadu and sold to the gullible people. The authorities forgotten that the State of Tamil Nadu have prohibited the lotteries of all States, including Tamil Nadu. Instead of prosecuting the real offenders, who help transport of lottery tickets of other States to the State of Tamil Nadu and who help printing of such tickets, within the region of the State of Tamil Nadu, Tamil Nadu Police, mechanically prosecute the poor persons, who sell the tickets for their livelihood.

6. Referring to Section 7 (3) of the Lotteries (Regulation) Act, 1998, learned counsel for the petitioner submitted that though action is taken against persons, who sell lottery tickets, in Tamil Nadu, no action is taken against the persons, who print lottery tickets of other States, transport the same, outside Tamil Nadu. According to him, if any person, acts as an agent or promoter or trader, in any lottery organised, conducted or promoted, in contravention of the provisions thereof, the provision of sub-Section 3 of Section 7 of the Act should be interpreted in a manner so as to include the persons, who print lottery tickets of other States in Tamil

Nadu, so that the State can achieve the object of the Lotteries (Regulation) Act, 1998.

7. Heard Mr.M.Radhakrishnan, learned counsel for the petitioner and perused the materials available on record.

8. The Lotteries (Regulation) Act, 1998 (Act No.17 of 1998), is an Act to regulate the lotteries and to provide for matters connected therewith and incidental thereto. The said Act, extends to the whole of India. Section 3 of the said Act, speaks about Prohibition of lotteries, which reads thus:-

"Save as otherwise provided in Section 4, no State Government shall organise, conduct or promote any lottery."

9. Section 4 speaks about the conditions subject to which lotteries may be organised, etc., which reads thus:-

A State Government may organise, conduct or promote a lottery subject to the following conditions, namely -

(a) prizes shall not be offered on any pre-announced number or on the basis of a single digit;

(b). the State Government shall print the lottery tickets bearing the imprint and logo of the State in such manner that the authenticity of the lottery ticket is ensured;

(c). the State Government shall sell the tickets either itself or through distributors or selling agents;

(d). the proceeds of the sale of lottery tickets shall be credited into the public account of the State;

(e). the State Government itself shall conduct the draws of all the lotteries;

(f). the prize money unclaimed within such time as may be prescribed by the State Government or not otherwise distributed, shall become the property of that Government;

(g). the place of draw shall be located within the State concerned;

(h). no lottery shall have more than one draw in a week;

(i). the draws of all kinds of lotteries shall be conducted between such period of the day as may be prescribed by the State Government;

(j). the number of bumper draws of a lottery shall not be more than six in a calendar year;

(k). such other conditions as may be

prescribed by the Central Government.

10. Sections 5 and 6 deal with Prohibition of sale of tickets in a State and Prohibition of organisation, etc., of lottery, which read thus:-

"5. A state Government may, within the State, prohibit the sale of tickets of a lottery organised, conducted or promoted by every other State.

6. The Central Government may, by order published in the Official Gazette, prohibit a lottery organised, conducted or promoted in contravention of the provisions of Section 4 or where tickets of such lottery are sold in contravention of the provisions of Section 5."

11. Section 7 of the Act specifies the penalty for the contravention of the Act, which reads thus:-

(1). Where a lottery is organised, conducted or promoted after the date on which this Act receives the assent of the President, in contravention of the provisions of this Act, by any Department of the State Government, the Head of the Department, shall be punishable with rigorous imprisonment for a term which may extend to two years or with fine or with both:

Provided that nothing contained in this Section shall render such Head of the Department liable to any punishment if he proves that the contravention was committed without his knowledge or that he exercised all due diligence to prevent the commission of such contravention.

(2). Notwithstanding anything contained in sub-Section (1), where a contravention under this Act has been committed by a Department of Government and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly.

(3). If any person acts as an agent or promoted or trader in any lottery organised, conducted or promoted in contravention of the provisions of this Act or sells, distributes or purchases the ticket of such lottery, he shall be punishable with rigorous imprisonment for a term which may extend to two years or with fine or with both."

12. Government of Tamil Nadu, have issued G.O.Ms.No.20, dated 8/1/2003, prohibiting the sale of all lottery tickets, in Tamil Nadu. G.O., reads thus:-

Home (Courts - II) Department

G.O.Ms.No.20

Dated: 8/1/2003

NOTIFICATION

In exercise of the powers conferred by Section 5 of the Lotteries (Regulation) Act, 1998 (Central Act 17 of 1998), the Governor of Tamil Nadu hereby prohibits the sale of tickets within the territory of Tamil Nadu of all lotteries organised, conducted or promoted by every State, including the State of Tamil Nadu.

13. It is the admitted case of the writ petitioner that Government of Tamil Nadu have taken steps to enforce the provisions of Sections 4 and 5 of the Act of the Lotteries (Regulation) Act, 1998. Grievance of the writ petitioner is that as against persons, who print the lottery tickets of other States, and distribute/transport the same to Tamil Nadu, no action is taken. As extracted supra, Government of Tamil Nadu, within the State have prohibited sale of tickets of a lottery organised, conducted or promoted by every other State. In the case on hand, Government have issued G.O.Ms.No.20 dated 8/1/2003, prohibiting sale of tickets of a lottery organised, conducted or promoted by other States. In support of the averment that lottery organised, conducted or promoted by other States in the Country, and tickets sold, in various parts of Tamil Nadu, no material is enclosed, in the typed set of papers. Contention that there is distribution or transportation of such printed lottery tickets from other States to Tamil Nadu, is also not supported by any other material.

14. Before advertng to the prayer sought for, let us consider what are all the requirements of a public interest litigation, and what is the duty of the public interest litigant, when chooses to file a writ petition.

(i). In S.P.Anand v. H.D.Deve Gowda reported in 1996 (6) SCC 734, the Hon'ble Supreme Court, at Paragraph 18, held as follows:

"It is of utmost importance that those who invoke this Court's jurisdiction seeking a waiver of the locus standi rule must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed. Such a litigant must not succumb to spasmodic sentiments and behave like a knight-errant roaming at will in pursuit of issues providing publicity. He must remember that as a person seeking

to espouse a public cause, he owes it to the public as well as to the court that he does not rush to court without undertaking a research, even if he is qualified or competent to raise the issue. Besides, it must be remembered that a good cause can be lost if petitions are filed on half-baked information without proper research or by persons who are not qualified and competent to raise such issues as the rejection of such a petition may affect third party rights. Lastly, it must also be borne in mind that no one has a right to the waiver of the locus standi rule and the court should permit it only when it is satisfied that the carriage of proceedings is in the competent hands of a person who is genuinely concerned in public interest and is not moved by other extraneous considerations. So also the court must be careful to ensure that the process of the Court is not sought to be abused by a person who desires to persist with his point of view, almost carrying it to the point of obstinacy, by filling a series of petitions refusing to accept the Court's earlier decisions as concluding the point. We say this because when we drew the attention of the petitioner to earlier decisions of this Court, he brushed them aside, without so much as showing willingness to deal with them and without giving them a second look, as having become stale and irrelevant by passage of time and challenged their correctness on the specious plea that they needed reconsideration. Except for saying that they needed reconsideration he had no answer to the correctness of the decisions. Such a casual approach to considered decisions of this Court even by a person well-versed in law would not be countenanced. Instead, as pointed out earlier, he referred to decisions having no bearing on the question, like the decisions on cow slaughter cases, freedom of speech and expression, uniform civil code, etc., we need say no more except to point out that indiscriminate of this important lever of public interest litigation would blunt the lever itself."

(ii). In *Balco Employees' Union (Regd.) v. Union of India* reported in 2002 (2) SCC 333, the Hon'ble Supreme Court, held that,

"Public interest litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the

people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz. "litigation in the interest of the public."

(iii). In *Ashok Kumar Pandey v. State of W.B.*, reported in 2004 (3) SCC 349, the Hon'ble Apex Court, after considering few decisions, on the aspect of public interest litigation, observed as follows:

"4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". If not properly regulated and abuse averted it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant or poke ones into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in *The Janta Dal v. H.S. Chowdhary* [1992 (4) SCC 305] and *Kazi Lhendup Dorji vs. Central Bureau of Investigation* (1994 Supp (2) SCC 116). A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any

other writ petitioner but also with a clean heart, clean mind and clean objective. See Ramjas Foundation v. Union of India (AIR 1993 SC 852) and K.R.Srinivas v. R.M.Premchand (1994 (6) SCC 620).

5. It is necessary to take note of the meaning of expression 'public interest litigation'. In Strouds Judicial Dictionary, Volume 4 (IV Edition), 'Public Interest' is defined thus:

"Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."

6. In Black's Law Dictionary (Sixth Edition), "public interest" is defined as follows :

"Public Interest something in which the public, or some interest by which their legal rights or liabilities are affected. It does not mean anything the particular localities, which may be affected by the matters in question. Interest shared by national government...."

7. In Janata Dal case (supra) this Court considered the scope of public interest litigation. In para 52 of the said judgment, after considering what is public interest, has laid down as follows :

"The expression 'litigation' means a legal action including all proceedings therein initiated in a Court of law for the enforcement of right or seeking a remedy. Therefore, lexically the expression "PIL" means the legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

8. In paras 60, 61 and 62 of the said judgment, it was pointed out as follows:

"Be that as it may, it is needless to emphasis that the requirement of locus standi of a party to a litigation is mandatory, because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."

9. In para 96 of the said judgment, it has further been pointed out as follows:

"While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red

alert and a note of severe warning that Courts should not allow its process to be abused by a mere busy body or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."

10. In subsequent paras of the said judgment, it was observed as follows:

"109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have as locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly a vexatious petition under the colour of PIL, brought before the Court for vindicating any personal grievance, deserves rejection at the threshold".

11. It is depressing to note that on account of such trumped up proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and

get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they loose faith in the administration of our judicial system.

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

13. The Council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows:

"Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

14. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c)

the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

15. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See *State of Maharashtra v. Prabhu* [(1994) (2) SCC 481]) and *Andhra Pradesh State Financial Corporation v. M/s. GAR Re-Rolling Mills and Another* [AIR 1994 SC 2151]. No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. [See *Buddhi Kota Subbarao (Dr.) v. K. Parasaran*, (1996) 7 JT 265]. Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise

utilized for disposal of genuine cases. Though in Dr.Duryodhan Sahu and Ors., v. Jitendra Kumar Mishra and Ors., (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so- called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

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18. In S.P.Gupta v. Union of India [1981 Supp. SCC 87], it was emphatically pointed out that the relaxation of the rule of locus standi in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the Court under the guise of a public interest litigant. He has also left the following note of caution: (SCC p.219, para 24)

"But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective."

19. In State of H.P. vs. A Parent of a Student of Medical College, Simla and Ors. (1985 (3) SCC 169), it has been said that public interest litigation is a weapon which has to be used with great care and circumspection.

20. Khalid, J. in his separate supplementing judgment in Sachidanand Pandey vs. State of W.B., (1987 (2) SCC 295, 331) said:

"Today public spirited litigants rush to courts to file cases in profusion under this attractive name. They must inspire confidence in courts and among the

public. They must be above suspicion. (SCC p. 331, para 46)

* * *

Public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions. (SCC p.334, para 59)

* * *

I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants." (SCC p.335, para 61)

21. Sabyasachi Mukharji, J. (as he then was) speaking for the Bench in *ramsharan Autyanuprasi v. Union of India* (1989 Supp (1) SCC 251), was in full agreement with the view expressed by Khalid, J. in *Sachidanand Pandey's case* (supra) and added that 'public interest litigation' is an instrument of the administration of justice to be used properly in proper cases. [See also separate judgment by Pathak, J. (as he then was) in *Bandhua Mukti Morcha v. Union of India* (1984 (3) SCC 161).

22. Sarkaria, J. in *Jasbhai Motibhai Desai v. Roshan Kumar* (1976 (1) SCC 671) expressed his view that the application of the busybody should be rejected at the threshold in the following terms: (SCC p. 683, para 37)

"It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories : (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives.

Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than speaking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold."

23. Krishna Iyer, J. in *Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India* (1981 (1) SCC 568) in stronger terms stated: (SCC p.589, para 48)

"48. If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him."

24. In *Chhetriya Pardushan Mukti Sangharash Samiti v. State of U.P.*, (1990 (4) SCC 449), Sabyasachi Mukharji, C.J. observed: (SCC p.452, para 8)

"While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental rights being considered by the court."

25. In *Union Carbide Corporation v. Union of India* (1991 (4) SCC 584, 610), Ranganath Mishra, C.J. in his separate judgment while concurring with the conclusions of the majority judgment has said thus: (SCC p.610, para 21)

"I am prepared to assume, nay, concede, that public activists should also be permitted to espouse the cause of the poor citizens but there must be a limit set to such activity and nothing perhaps should be done which would affect the dignity of the Court and bring down the serviceability of the institution to the people at large. Those who are acquainted with jurisprudence and enjoy social privilege as men educated in law owe an obligation to the community of educating it properly and allowing the judicial process to continue unsoiled."

26. In *Subhash Kumar v. State of Bihar*, (1991 (1) SCC 598) it was observed as follows:

"Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest cannot be enforced through the process of this Court

under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is the duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation".

27. In the words of Bhagwati, J. (as he then was) "the courts must be careful in entertaining public interest litigations" or in the words of Sarkaria, J. "the applications of the busybodies should be rejected at the threshold itself" and as Krishna Iyer, J. has pointed out, "the doors of the courts should not be ajar for such vexatious litigants".

(iv). In *Vikas Vashishth v. Allahabad High Court* reported in 2004 (13) SCC 485, the Hon'ble Supreme Court held as follows:

"At the very outset, we put it to the petitioner that a bare perusal of the petition shows that it is based entirely on newspaper reports and asked him whether before filing the petition he has taken care to verify the facts personally. His answer is in the negative. In the writ petition all the 21 High Courts have been included as respondents and Union of India has also been impleaded as the 22nd respondent. We asked the petitioner what has provoked him to implead all the High Courts as respondents and he states that it is his apprehension that similar incidents may occur in other High Courts though there is no factual foundation for such appreciation.

5. After affording the full opportunity of hearing, we are satisfied that what purports to have been filed as a public interest litigation is nothing more than a "publicity interest litigation". It is writ large that it has been filed without any effort at verifying the facts by the petitioner personally."

(v). In *R & M.Trust v. Koramangala Residents Vigilance*

Group reported in 2005 (3) SCC 91, the Hon'ble Supreme Court, at Paragraphs 23 and 24, observed as follows:

"23. Next question is whether such Public Interest Litigation should at all be entertained & laches thereon. This sacrosanct jurisdiction of Public Interest Litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends.

24. Public Interest Litigation is no doubt a very useful handle for redressing the grievances of the people but unfortunately lately it has been abused by some interested persons and it has brought very bad name. Courts should be very very slow in entertaining petitions involving public interest in a very rare cases where public at large stand to suffer. This jurisdiction is meant for the purpose of coming to the rescue of the down trodden and not for the purpose of serving private ends. It has now become common for unscrupulous people to serve their private ends and jeopardize the rights of innocent people so as to wreak vengeance for their personal ends. This has become very handy to the developers and in matters of public contracts. In order to serve their professional rivalry they utilize the service of the innocent people or organization in filing public interest litigation. The Courts are sometimes persuaded to issue certain directions without understanding implication and giving a handle in the hands of the authorities to misuse it. Therefore, the courts should not exercise this jurisdiction lightly but should exercise in a very rare and few cases involving public interest of large number of people who cannot afford litigation and are made to suffer at the hands of the authorities."

(vi). In *Gurpal Singh v. State of Punjab* reported in 2005 (5) SCC 136, the Hon'ble Apex Court, while considering the scope of a petition styled as a public interest litigation, held as follows:

"5. The scope of entertaining a petition styled as a public interest litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this court in various cases. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be

allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

6.

7. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, High Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors.* (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

8.

9. It is depressing to note that on account of such trumped up proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and substantial rights and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to loose but trying to gain for nothing and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants. सत्यमेव जयते

10. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated

above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

(vii). In *Common Cause (A Regd. Society) v. Union of India* reported in 2008 (5) SCC 511, Hon'ble Mr. Justice Markandey Katju, held as follows:

"59. Unfortunately, the truth is that PILs are being entertained by many courts as a routine and the result is that the dockets of most of the superior courts are flooded with PILs, most of which are frivolous or for which the judiciary has no remedy. As stated in *Dattaraj Nathuji Thaware v. State of Maharashtra* reported in AIR 2005 SC 540, public interest litigation has nowadays largely become 'publicity interest litigation', 'private interest litigation', or 'politics interest litigation' or the latest trend 'paise income litigation'. Much of P.I.L. is really blackmail.

60. Thus, Public Interest Litigation which was initially created as a useful judicial tool to help the poor and weaker section of society who could not afford to come to courts, has, in course of time, largely developed into an uncontrollable Frankenstein and a nuisance which is threatening to choke the dockets of the superior courts obstructing the hearing of the genuine and regular cases which have been waiting to be taken up for years together."

In the same judgment, concurring with the view of his Brother Judge, Hon'ble Mr. Justice H.K.Sema (as he then was), further added, as follows:

"69. Therefore, whether to entertain the petition in the form of Public Interest Litigation either represented by public-spirited person; or private interest litigation in the guise of public interest litigation; or publicity interest litigation; or

political interest litigation is to be examined in the facts and circumstances recited in the petition itself. I am also of the view that if there is a buffer zone unoccupied by the legislature or executive which is detrimental to the public interest, judiciary must occupy the field to subserve public interest. Therefore, each case has to be examined on its own facts."

(viii). In *Adarsh Shiksha Mahavidyalaya v. Subhash Rahangdale* reported in 2012 (2) SCC 425, the Hon'ble Supreme Court observed as follows:

"57. In the light of the above, we shall first consider whether the High Court committed an error by entertaining the writ petition filed by Subhash Rahangdale as public interest litigation. This Court has, time and again, laid down guiding principles for entertaining petitions filed in public interest. However, for the purpose of deciding the appellants' objection it is not necessary to advert to the plethora of precedents on the subject because in *State of Uttaranchal v. Balwant Singh Chaufal* (2010) 3 SCC 402, a two-Judge Bench discussed the development of law relating to public interest litigation and reiterated that before entertaining such petitions, the Court must feel satisfied that the petitioner has genuinely come forward to espouse public cause and his litigious venture is not guided by any ulterior motive or is not a publicity gimmick.

58. In paragraphs 96 to 104, the Bench discussed Phase-III of the public interest litigation in the context of transparency and probity in governance, referred to the judgments in *Vineet Narain v. Union of India* (1998) 1 SCC 226, *Centre for Public Interest Litigation v. Union of India* (2003) 7 SCC 532, *Rajiv Ranjan Singh "Lalan" (VIII) v. Union of India* (2006) 6 SCC 613, *M.C. Mehta v. Union of India* (2007) 1 SCC 110, *M.C. Mehta v. Union of India* (2008) 1 SCC 407 and observed:

"These are some of the cases where the Supreme Court and the High Courts broadened the scope of public interest litigation and also entertained petitions to ensure that in governance of the State, there is transparency and no extraneous considerations are taken into consideration except the public

interest. These cases regarding probity in governance or corruption in public life dealt with by the courts can be placed in the third phase of public interest litigation."

59. Reference also deserves to be made to the judgment of the three-Judge Bench in Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi (1987) 1 SCC 227 in which a new dimension was given to the power of the Superior Courts to make investigation into the issues of public importance even though the petitioner may have moved the Court for vindication of a private interest. In that case the High Court had entertained a writ petition filed by Assistant Medical Officer of K.E.M. Hospital, Bombay questioning the assessment of answer sheets of the Post Graduate Medical Examinations held by the Bombay University in October 1985. He alleged malpractices in the evaluation of the answer sheets of the daughter of the appellant who, at the relevant time, was Chief Minister of the State. The learned Single Judge held that altering and tampering of the grade sheets was done by Dr. Rawal at the behest of the Chief Minister. The Division Bench affirmed the order of the learned Single Judge with some modification.

60. While rejecting the objection raised on behalf of the appellant that the writ petition filed by the respondent cannot be treated as a petition filed in public interest, this Court observed:

"The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the Court, it was the duty of the Court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an

enquiry cannot be avoided if it is necessary and essential for the administration of justice." (emphasis supplied)

15. At this juncture, we also wish to state the nature of pleadings and proof required in a writ petition, as compared to that of a civil proceeding. In *Bharat Singh and Others Vs. State of Haryana and Others*, reported in 1988 (4) SCC 534, held as follows:

".... In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

16. Though Mr.M.Radhakrishnan, learned counsel for the petitioner requested this Court to read into the provisions with regard to printing, distribution and transportation of lottery tickets of other States, in sub-Section 3 of Section 7 of the Lotteries (Regulation) Act, 1998, so as to effectively enforce the provisions of Sections 5 and 6 of the said Act, and consequently, direct the respondents herein, to invoke Section 7 of the Act, which deals with penalty, we are not in agreement with the submission of the learned counsel for the petitioner, for the following reasons.

17. As per Article 19 (1) (g) of the Constitution of India, all citizens should have the right to practice any profession, or to carry on any occupation, trade or business. Article 301 of the Constitution of India, deals with Freedom of trade, commerce and intercourse which states that subject to the other provisions of this Part, trade, commerce and intercourse throughout the Territory of India, shall be free.

18. A conjoint reading of the fundamental right, under Article 19 (1) (g) and Article 301 of the Constitution of India, dealing with Freedom of trade, commerce and intercourse, and Sections 3, 4, 5, 6 and 7 of the Lotteries (Regulation) Act, 1998, makes it abundantly clear that the Parliament has conspicuously taken note of the rights guaranteed, under Constitution of India and thus, while enacting the Act has prohibited only the sale of tickets of the lottery organised, conducted or promoted by every other State.

19. In the case on hand, Government of Tamil Nadu, have issued G.O.Ms.No.20, dated 8/1/2003, prohibiting sale of tickets, within the territory of Tamil Nadu of all lottery tickets organised, conducted or promoted by every other State, including State of Tamil Nadu. Thus, from the above, it is also made clear that in exercise of the powers, under Section 3 of the Lotteries (Regulation) Act, 1998, Government of Tamil Nadu have taken a decision, not to organise, conduct or promote lottery, within the Territory of Tamil Nadu and also prohibit all lottery organised or promoted by other States also.

20. Contention of the petitioner that there is printing of lottery tickets of others States in Tamil Nadu and thereafter, there is transportation to other States and therefore, the provisions of the Act have not been effectively enforced, and the further contention that printing is done in other States, transported to Tamil Nadu, for sale within the State of Tamil Nadu, cannot be accepted, because the words printing, transportation are conspicuously, absent in the Legislature. Besides, there are no materials to support the said contention. At this juncture, we also deem it fit to consider few decisions as to how a legislation, an enactment and in particular, Section has to be read and incorporated by Courts.

(i) In Justice G.P. Singh's Principles of Statutory Interpretation (11th Edn., 2008), the learned author while referring to judgments of different Courts states (at page 134) that procedural laws regulating proceedings in court are to be construed as to render justice wherever reasonably possible and to avoid injustice from a mistake of court. He further states (at pages 135 and 136) that: "Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. "The argument ab inconvenienti", said LORD MOULTON, "is one which requires to be used with great caution"."

(ii) 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.

(iii) 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."

(iv) 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."

(v) 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."

(vi) 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."

(vii) 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."

(viii) 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 acceptation 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."

(ix) 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."

(x) In *Attorney-General v. HRH Prince Ernest Augustus of Hanover* reported in (1957) 1 All.ER 49, Lord Somervell of Harrow has explained the unambiguous, as "unambiguous in context".

(xi) 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.

(xii) 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."

(xiii) 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."

(xiv) 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.

(xv) 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."

(xvi) 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.

(xvii) 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.

(xviii) 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 canon 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])."

(xix) In *Nyadar Singh v. Union of India* reported in AIR 1988 SC 1979, the Hon'ble Apex Court observed that ambiguity need not necessarily be a grammatical ambiguity, but one of the appropriateness of the meaning in a particular context.

(xx) 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.

(xxi) 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.

(xxii) 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."

(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.)

16. It is true that this Court in interpreting the Constitution enjoys a freedom which is not available in interpreting a statute and, therefore, it will be useful at this stage to reproduce what Lord Diplock said in Duport Steels Ltd. v. Sirs [(1980 (1) All.ER 529] (All ER at p. 542c-d):

"It endangers continued public confidence in the

political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest.

19. In *D.R. Venkatachalam v. Dy. Transport Commr.* [1977 (2) SCC 273] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation."

(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 *Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.*, reported in (2008) 4 SCC 755, the 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."

(xxxi) 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."

(xxxii) 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."

(xxxiii) 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]"

(xxxiv) In Sri Jeyaram Educational Trust & Ors., v. A.G.Syed Mohideen & Ors. reported in 2010 CIJ 273 SC (1), the Hon'ble Supreme Court 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."

(xxxv) 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,

"Therefore, the provision of Section 17(3-A) cannot be viewed in isolation as it is an intrinsic and mandatory step in exercising special powers in cases of emergency. Sections 17(1) and 17(2) and 17(3-A) must be read together. Sections 17(1) and 17(2) cannot be worked out in isolation.

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.

21. It is trite law that Courts have no power to either add or delete any words in a statute or rule and if such an exercise is taken up by the Court, it would amount to legislation by the Courts, which is prohibited. Article 50 of the Constitution of India deals with separation of powers of the Executive, Legislature and Judiciary. Though the said Article does not in specific words, explain the role of Courts and State, decisions of the Hon'ble Supreme Court have guided the High Courts, as to how, High Court should not overreach the powers of the legislature. We deem it fit to consider the following decision, on the above said aspect.

22. In *COMMON CAUSE (A REGD. SOCIETY) VS. UNION OF INDIA AND OTHERS*, {2008 (5) SCC - 511}, wherein at paragraph No.40, the Hon'ble Supreme Court, held thus:-

"The justification given for judicial activism is that the executive and legislature have failed in performing their functions. Even if this allegations is true, does it justify the judiciary in taking over the functions of the legislature or executive? In

our opinion it does not: firstly, because that would be in violation of the high constitutional principle of separation of powers between the three organs of the State, and secondly, because the judiciary has neither the expertise nor the resources for this. If the legislature or executive are not functioning properly it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfil their expectations, or by other lawful means e.g., peaceful demonstrations and agitations, but the remedy is surely not by the judiciary in taking over the functions of the other organs."

23. Even though Lotteries (Regulation) Act, 1998, specifies prohibition of sale of tickets in a State and Prohibition of Organisation, etc., of lottery, in terms of Sections 5 and 6 of the said Act, Legislature does not speak about printing of tickets, transportation of the lottery tickets from State of Tamil Nadu to other States. Even taking it for granted, if there are such provisions, it is our considered view that it would be against the fundamental right guaranteed under Section 19 (1) (g) of the Constitution of India and right under Article 301 of the Constitution of India.

24. Firstly, the contention of the writ petitioner that printing and transportation is done, from other States to Tamil Nadu, or printing and transportation of both lottery tickets of other States are done in Tamil Nadu and transported to other States, both are supported by materials.

25. In the light of the above decisions and discussions, prayer sought for by the petitioner, to direct the respondents 1 and 2, to implement the provisions of the Lotteries (Regulation) Act, 1998, in the State of Tamil Nadu, effectively, in respect of transport and sale of lottery tickets of other States, in the State of Tamil Nadu, cannot be granted.

26. Going by the statutory provisions of Lotteries (Regulation) Act, 1988 and G.O.Ms.No.20, Home (Courts - II) Department, dated 8/1/2003, issued by Government of Tamil Nadu, Legislature has made it clear that there shall be prohibition of a sale of tickets of a lottery organised, conducted and promoted by every other State. Though no instances have been pointed by the petitioner that there is printing of other State lottery tickets and distributed, within the State of Tamil Nadu, yet, going by the decisions, on interpretation of statutes, in the

light of Article 19 (1) and 301 of the Constitution of India, there is a conspicuous omission by the legislature to include, printing in a State. As stated, distribution of lottery tickets of other States is not prohibited.

27. In the result, writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

mvs

Sub Assistant Registrar

To

1. The Secretary
Union of India
Ministry of Home Affairs
Department of Home
North Block, Central Secretariat
New Delhi 110 001.
2. The Principal Secretary to Government
State of Tamil Nadu
Home Department, Secretariat
Chennai 600 009.
3. The Director General of Police
Mylapore
Chennai 600 004.

+1 cc to Mr.M.Radhakrishnan, Advocate, Sr.No. 49860

+1 cc to The Government Pleader, Sr.No. 50096

सत्यमेव जयते

W.P.No.16647 of 2019

EV(CO)
CSL/02.08.2019

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