Section 39
Wild Animals, etc., to be Government Property

Definition of Ivory

What has been banned is ivory. There is complete prohibition of trade in ivory. Such a complete prohibition is a reasonable restriction within the meaning of Clause (6) of Article 19 of the Constitution of India. The impugned Act being not unreasonable does not also attract the wrath of Article 14 of the Constitution of India.

Balram Kumawat
Vs.
Union of India & Ors.
CJI, S.B. Sinha & Arun Kumar.
CASE NO.:
Appeal (civil) 7536 of 1997
Appeal (civil) 7537 of 1997 in the Supreme Court of India

DATE OF JUDGMENT: 27/08/2003

JUDGMENT:

S.B. SINHA, J :

QUESTION:

Whether 'mammoth ivory' imported in India answers the description of the words 'ivory imported in India' contained in Wild Life (Protection) Act, 1972 (hereinafter referred to as 'the said Act') as amended by Act No. 44 of 1991 is the question involved in these appeals which arise out of a common judgment and order dated 20.3.1997 passed by a Division Bench of the Delhi High Court.

FACTUAL BACKGROUND:
The appellants M/s Unigems had imported mammoth fossil said to be of an extinct species in the year 1987. The stock of mammoth fossil held by the appellants is said to be periodically checked by the statutory authorities. The appellant in the other case Balram Kumawat is a carver.

Mammoth is said to be pre-historic animal which disappeared due to climatic conditions prevailing in Alaska and Siberia. According to the appellants the distinction between mammoth and elephant ivory is that whereas mammoth belongs to an extinct species, the ivory of elephant is of an extant living animal. The appellants state that mammoth ivory is distinguishable by visual and non-destructive means vis-à-vis elephant ivory and even in Convention on International Trade in Endangered Species (CITES) their distinguishing features have been pointed out.

SUBMISSIONS:
Mr. Sanghi and Mr. Parikh, the learned counsel would contend that trade in mammoth fossil ivory is not banned either under the said Act or under the CITES and, thus, the impugned judgment of the High Court cannot be sustained.

The learned counsel would take us through the history of CITES as mentioned in the impugned judgment of the High Court and would urge that the purport and object of the Act cannot be sub-served by placing a ban on trade in mammoth ivory. Taking us to the provisions of the said Act, the learned counsel would argue that as mammoth

ivory does not answer the description of 'wild animal', the provisions contained in Chapter VA of the said Act would not be attracted.

As Mammoth is an extinct species and as what is being used for carving is its fossil which is called ivory because it has white and hard dentine substance which is also available in other animals, namely, Whale, Walrus, Hippos and Warthog; it was urged, they cannot be included in the term 'ivory' within the meaning of the provisions of the said Act.

It was contended that the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration that mammoth ivory being deceptively similar to elephant ivory to the naked eye, the impugned Act would be applicable in relation thereto also. The learned counsel would contend that if this is taken to its logical conclusion, then even trade in plastic articles which would be deceptively similar to elephant ivory may also be held to have been banned. It was argued that the intention of the Legislature cannot be to ban any article irrespective of the purport and object it seeks to achieve only on the ground that the same is deceptively similar to the banned item. There exists scientific procedure, it was urged, whereby and whereunder mammoth ivory can be distinguished from elephant ivory and with a view to buttress the said argument, a large number of literature had been placed before us.

The preamble of the Act as also the 'Headings', the learned counsel would contend, should be taken into consideration for the purpose interpreting the provisions of the said Act.

FINDINGS :
In the connected matter in Indian Handicrafts Emporium & Ors.Vs. Union of India & Ors. (Civil Appeal No. 7533 of 1997) disposed of this date, this Court upheld the constitutional validity of the provisions of the said Act. **This Court held that in terms of Sub-Section (7) of Section 49-C of the Act all persons in general and traders in particular have become disentitled from keeping in their control any animal article including ivory imported in India.**

This Court further held that as a logical corollary to the said finding, the statutory authorities would be entitled to take possession of such ivory in terms thereof; the purport and object of the Act being to impose a complete ban on trade in ivory. A complete prohibition has been imposed in the trade of ivory (whether imported in India or extracted by killing Indian elephants) for the purpose of protecting the endangered species. Trade in ivory imported in India has been prohibited further with a view to give effect to the provisions contained in Article 48A as also Article 51A(g) of the Constitution of India.

Why despite passage of time the trade in stock could not be disposed of within a period of four years has not been disclosed by the appellants. It is not in dispute that even in terms of Act 44 of 1991, six months' time was granted for disposing the stock of ivory.

For the reasons stated hereinafter, it may not be necessary for us to go into the question as to whether scientifically mammoth ivory can be deciphered from elephant ivory.

What has been banned is ivory. There is complete prohibition of trade in ivory. Such a complete prohibition is a reasonable restriction within the meaning of Clause (6) of Article 19 of the Constitution of India. The impugned Act being not unreasonable does not also attract the wrath of Article 14 of the Constitution of India.

For the purpose of determination of the question, we need to consider only the dictionary meaning of the term 'ivory'. Commercial meaning or technical meaning of an object or article is required to be taken recourse to when the same is necessary for the purpose of meeting the requirements of law. The law in no uncertain terms says that no person shall trade in ivory. It does not say that what is prohibited is trade in elephant ivory or other types of ivory. The purport and object of the Act, as noticed in the judgment in Indian Handicrafts Emporium (supra), is that nobody can carry on business activity in imported ivory so that while doing so, trade in ivory procured by way of poaching of elephants may be facilitated. The Parliament, therefore, advisedly used the word 'ivory' instead of elephant ivory. The intention of the Parliament in this behalf, in our opinion, is absolutely clear and unambiguous. We cannot assume that the Parliament was not aware of existence of different types of ivory. If the intention of the Parliament was to confine the subject matter of ban under Act 44 of 1991 to elephant ivory, it would have said so explicitly.

As noticed hereinbefore, the object of the Parliament was not only to ban trade in imported elephant ivory but ivory of every description so that poaching of elephant can be effectively restricted. An article made of plastic would by no means resemble ivory.

In the Shorter Oxford Dictionary, the meaning of 'ivory' is stated as under:

(i) The hard, white, elastic and fine grain substance (being dentine of exceptional hardness) composing the main part of the tusks of the elephant, mammoth (fossil)...

(ii) A substance resembling ivory or made in imitation of it.

In Collins English Dictionary, 'ivory' has been defined as:

(i) A hard smooth creamy white variety of dentine that makes up a major part of the tusks of elephants, walruses, and similar animals.

(ii) A tusk made of ivory.

(iii) A yellowish-white colour; cream

(iv) A substance resembling elephant tusk.

(Emphasis supplied)

'Ivory', therefore, even as per dictionary meaning is not confined to elephant ivory.

At this stage, we are not concerned with a criminal trial. The appellants are not being proceeded against in a criminal case. Their civil rights, if any, are only required to be dealt with. The appellants in these matters complain of civil injuries only.

Contextual reading is a well-known proposition of interpretation of statute. The clauses of a statute should be construed with reference to the context vis-à-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.

In State of West Bengal vs. Union of India [AIR 1963 SC 1241 at p. 1265], the learned Chief Justice stated the law thus:

"The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs."

The said principle has been reiterated in R.S. Raghunath vs.State of Karnataka and another [AIR 1992 SC 81 at p. 89].

Furthermore, even in relation to a penal statute any narrow and pedantic, literal and lexical construction may not always be given effect to. The law would have to be interpreted having regard to the subject matter of the offence and the object of the law it seeks to achieve. The purpose of the law is not to allow the offender to sneak out of the meshes of law. Criminal Jurisprudence does not say so.

G.P. Singh in his celebrated treatise 'Principles of Statutory Interpretation' distinguished between strict construction of penal statutes which deals with crimes of aggravated nature vis-à-vis the nature of the activities of the accused which can be checked under the ordinary criminal law stating :

"In Joint Commercial Tax Officer, Madras v. YMA, Madras, SHAH, J. observed: "In a Criminal trial or a quasi-criminal proceeding, the court is entitled to consider the substance of the transaction and determine the liability of the offender. But in a taxing statute the strict legal position as disclosed by the form and not the substance of the transaction is determinative of its taxability." With great respect the distinction drawn by SHAH, J. does not exist

in law. Even in construing and applying criminal statutes any reasoning based on the substance of the transaction is discarded.

But the application of the rule does not permit the court in restraining comprehensive language used by the Legislature, the wide meaning of which is in accord with the object of the statute. The principle was neatly formulated by LORD JUSTICE JAMES who speaking for the Privy Council stated : "No doubt all penal statutes are to be construed strictly, that is to say, the court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip; that there has been a casus omissus; that the thing is so clearly within the mischief that it must have been included if thought of. On the other hand, the person charged has a right to say that the thing charged although within the words, is not within the spirit of the enactment. But where the thing is brought within the words, and within the spirit, there a penal enactment is to be construed, like any other instrument, according to fair commonsense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other enactment." The above formulation has been cited with approval by the House of Lords and the Supreme Court. In the last-mentioned case, SUBBARAO, J., referring to the Prevention of Corruption Act, 1947, observed : "The Act was brought in to purify public administration.

When the Legislature used comprehensive terminology - to achieve the said purpose, it would be appropriate not to limit the content by construction when particularly the spirit of the statute is in accord with the words used there." Similarly, the Supreme Court has deprecated a narrow and pedantic construction of the Prevention of Food Adulteration Act, 1954 likely to leave loopholes for the adulterator to escape. And on the same principle the court has disapproved of a narrow construction of section 135 of the Customs Act, 1962, Section 489A of the Penal Code, Section 12(2) of the Foreign Exchange Regulation Act, 1947, section 630(1)(b) of the Companies Act, 1956, section 52A of the Copy Right Act, 1957, and section 138 of the Negotiable Instruments Act, 1881. So, language permitting a penal statute may also be construed to avoid a lacuna and to suppress the mischief and advance the remedy in the light of the rule in Heydon's case. Further, a commonsense approach for solving a question of applicability of a penal enactment is not ruled out by the rule of strict construction. In State of Andhra Pradesh v. Bathu Prakasa Rao, rice and broken rice were distinguished by applying the commonsense test that at least 50% must be broken in order to constitute what could pass off as marketable 'broken rice' and any grain less than 3/4th of the whole length is to be taken as broken.

The rule of strict construction does not also prevent the court in interpreting a statute according to its current meaning and applying the language to cover developments in science and technology not known at the time of passing of the statute. Thus psychiatric injury caused by silent telephone calls was held to amount to 'assault' and 'bodily harm' under sections 20 and 47 of the Offence Against the Person Act, 1861 in the light of the current scientific appreciation of the link between the body and psychiatric injury."

(See also Lalita Jalan & Anr. Vs. Bombay Gas Co. Ltd. & Ors. reported in 2003 (4) SCALE 52).
A statute must be construed as a workable instrument. Ut res magis valeat quam pereat is a well-known principle of law. In Tinsukhia Electric Supply Co. Ltd. vs. State of Assam [AIR 1990 SC 123], this Court stated the law thus

"The courts strongly lean against any construction which tends to reduce a statute to a futility. The provision of a statute must be so construed as to make it effective and operative, on the principle "ut res magis valeat quam pereat". It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it. In Manchester Ship Canal Co. v. Manchester Racecourse Co. ((1900) 2 Ch 352, Farwell J. said : (pp. 360-61)

"Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty."

In Fawcett Properties Ltd. v. Buckingham County Council ((1960) 3 All ER 503) Lord Denning approving the dictum of Farwell, J. said :

"But when a Statute has some meaning, even though it is obscure, or several meanings, even though it is little to choose between them, the courts have to say what meaning the statute to bear rather than reject it as a nullity." It is, therefore, the court's duty to make what it can of the statute, knowing that the statutes are meant to be operative and not inept and that nothing short of impossibility should allow a court to declare a statute unworkable. In Whitney v. Inland Revenue Commissioners (1926 AC 37) Lord Dunedin said:

"A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable."

The Courts will therefore reject that construction which will defeat the plain intention of the Legislature even though there may be some inexactitude in the language used. [See Salmon vs. Duncombe [(1886) 11 AC 627 at 634]. Reducing the legislation futility shall be avoided and in a case where the intention of the Legislature cannot be given effect to, the Courts would accept the bolder construction for the purpose of bringing about an effective result. The Courts, when rule of purposive construction is gaining momentum, should be very reluctant to hold that the Parliament has achieved nothing by the language it used when it is tolerably plain what it seeks to achieve. (See BBC Enterprises Vs. Hi-Tech Xtravision Ltd., (1990) 2 All ER 118 at 122-3
)
In Mohan Kumar Singhania and Others vs. Union of India and Others [AIR 1992 SC 1], the law is stated thus :' "We think, it is not necessary to proliferate this judgment by citing all the judgments and extracting the textual passages from the various textbooks on the principles of Interpretation of Statutes. However, it will suffice to say that while interpreting a statute the consideration of inconvenience and hardships should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, we are bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules as the case may be, so far as possible, to make a consistent enactment of the whole statute or series of statutes/rules/regulations relating to the subject matter. Added to this, in construing a statute, the Court has to ascertain the intention of the law making authority in the backdrop of the dominant purpose and the underlying intendment of the said statute and that every statute is to be interpreted without any violence to its language and applied as far as its explicit language admits consistent with the established rule of interpretation."

In Murlidhar Meghraj Loya Vs. State of Maharashtra [(1976) 3 SCC 684] while dealing with the provisions of Food Adulteration Act it was stated:

"5. It is trite that the social mission of food laws should inform the interpretative process so that the legal blow may fall on every adulterator. Any narrow and pedantic, literal and lexical construction likely to leave loopholes for this dangerous criminal tribe to sneak out of the meshes of the law should be discouraged. For the new criminal jurisprudence must depart from the old canons, which make indulgent presumptions and favoured constructions benefiting accused persons and defeating criminal statutes calculated to protect the public health and the nation's wealth."

In State of U.P. vs. Chandrika [(1999) 8 SCC 638], this Court held that in matters involving economic crime, food offence and other cases, the doctrine of plea bargaining should not be applied. While holding so it referred with approval Madanlal Ramchandra Daga vs. State of Maharashtra [AIR 1968 SC 1267 = (1968) 3 SCR 34], Murlidhar Meghraj Loya (supra), Ganeshmal Jashraj vs. Government of Gujarat [(1980) 1 SCC 363], Thippaswamy vs. State of Karnataka [(1983) 1 SCC 194] and Kasambhai Abdulrehmanbhai Sheikh vs. State of Gujarat [(1980) 3 SCC 120].

Yet again in Superintendent and Remembrancer of Legal Affairs to Govt. of West Bengal Vs. Abani Maity [AIR 1979 SC 1029: (1979) 4 SCC 85] the law is stated in the following terms:

"19. Exposition ex visceribus actus is a long recognized rule of construction. Words in a statute often take their meaning from the context of the statute as a whole. They are therefore, not to be construed in isolation.

For instance, the use of the word "may" would normally indicate that the provision was not mandatory. But in the context of a particular statute, this word may connote a legislative imperative, particularly when its construction in a permissive sense would relegate it to the unenviable position, as it were, "of an ineffectual angel beating its wings in a luminous void in vain". "If the choice is between two interpretations", said Viscount Simon L. C. in Nokes v. Doncaster Amalgamated Collieries, Ltd. ((1940) AC 1014, 1022) "the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation

to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

This decision was followed in State of Karnataka and Others vs. Saveen Kumar Shetty [(2002) 3 SCC 426].
In State of Himachal Pradesh vs. Pirthi Chand and Another [(1996) 2 SCC 37], this Court while dealing with a case of contraband article following amongst others in Abani Maity (supra) stated:

"It would be seen that the organized traffic in contraband generates deleterious effect on the national economy affecting the vitals of the economic life of the community. It is settled law that illegality committed in investigation does not render the evidence obtained during that investigation inadmissible. In spite of illegal search property seized, on the basis of said search, it still would form basis for further investigation and prosecution against the accused. The manner in which the contraband is discovered may affect the factum of discovery but if the factum of discovery is otherwise proved then the manner becomes immaterial."

The said principle has been reiterated in Khet Singh vs. Union of India [(2002) 4 SCC 380] stating:

"Law on the point is very clear that even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the court would consider all the circumstances and find out whether any serious prejudice had been caused to the accused."

In State of Maharashtra Vs. Natwarlal Damodardas Soni [AIR 1980 SC 593: (1980) 4 SCC 669] this Court was concerned with search and seizure of gold under the Customs Act and the Defence of India Rules.

The Court was dealing with smuggling of gold into India affecting the public economy and financial stability of the country and in that context the Court applied the Mischief Rule. While interpreting the words 'acquires possession' or 'keeping' in Clause (b) of Section 135(1) of the Customs Act, this Court observed that they are not to be restricted to 'possession' or 'keeping' acquired as an owner or a purchaser of the goods observing:

"Such a narrow construction - which has been erroneously adopted by the High Court - in our opinion, would defeat the object of these provisions and undermine their efficacy as instruments for suppression of the mischief which the legislature had in view. Construed in consonance with the scheme of the statute, the purpose of these provisions and the context, the expression "acquires possession" is of very wide amplitude and will certainly include the acquisition of possession by a person in a capacity other than as owner or purchaser. This expression takes its colour from the succeeding phrase commencing with the word "or", which is so widely worded that even the temporary control or custody of a carrier, remover, depositor, harbourer, keeper or dealer of any goods which he knows or has reason to believe to be smuggled goods or prohibited goods (liable to confiscation under Section 111), cannot escape the tentacles of clause (b). The expressions "keeping" and "concealing in the second phrase of clause (b) also cover the present case."

This Court while setting aside a judgment of acquittal passed in favour of the Respondents therein on the basis of the interpretation of the Customs Rules observed:

"The High Court has held that those rules do not apply because the accused-respondent had not acquired possession of these gold biscuits by purchase or otherwise within the meaning of these rules. Such a narrow construction of this expression, in our opinion, will emasculate these provisions and render them ineffective as a weapon for combating gold smuggling. As was pointed out by this Court in Balkrishna Chhaganlal v. State of West Bengal (AIR 1974 SC 120), Rule 126-P(2)(ii) penalises a person who has in his possession or under his control any quantity of gold in contravention of any provision of this Part, and the court cannot cut back on the width of the language used, bearing in mind the purpose of plenary control the State wanted to impose on gold, and exempt smuggled gold from the expression "any quantity of gold" in that sub-rule. These provisions have, therefore, to be specially construed in a manner which will suppress the mischief and advance the object which the legislature had in view. The High Court was in error in adopting too narrow a construction which tends to stultify the law. The second charge thus had been fully established against the respondent."

These decisions are authorities for the proposition that the rule of strict construction of a regulatory/penal statute may not be adhered to, if thereby the plain intention of the Parliament to combat crimes of special nature would be defeated.

We are, however, not oblivious of the fact that potential public mischief cannot be a ground to invoke the court's interpretative role to make a new offence. Making of legislation is not the job of the judiciary. Making of a penal legislation by the Judiciary is strictly out of its bound. However, when the law working in the field is clear then what is necessary for it is to find out as to whether any offence has been created or not. Once it is held that the subject matter comes within the purview of the law, the Court may not go further and say by interpretive reasonings that the same is not so created.

We do not think that in a case of this nature where the principles of law as enunciated hereinbefore as also the doctrine of purposive construction, which have been discussed in details in Indian Handicraft Emporium (supra), any useful purpose would be served by referring to a large number of decisions relied upon by Mr. Parikh as regards efficacy of referring to the preamble of a statute or its heading, in view of the well-settled principles of law that where plain and dictionary meaning can be given, reference to preamble or a heading may not be of much use. The submission of Mr. Parikh that in a case of this nature a restrictive meaning should be attributed to the word 'ivory' cannot be acceded to inasmuch as, in our opinion, the dictionary meaning should be adhered to for the purpose of giving effect to the purport and object of the Act.

It is no doubt true that normally a technical meaning should be attributed rather than a common meaning to a word if the same relates to a particular trade, business or profession, art or science or words having a special meaning as has been held in Union of India vs. Garware Nylons Ltd. [AIR 1996 SC 3509 and Unwin vs. Hanson [1891 (2) QB 115].

But we are not dealing with an ordinary/taxing statute. We are dealing with a law which has been enacted in larger public interest and in consonance with Articles 48A and 51A (g) of the Constitution of India as also International Treaties and Conventions.

As pointed out hereinbefore, the Parliament has enacted the Amending Acts of 1986, 1991 and 2003 not only for the purpose of banning a trade in elephant ivory but with a view to create a blockade of the activities of poachers and others so that a complete prohibition in trade in ivory is achieved. By reason of the Amending Acts, the Parliament was anxious to plug the loop-holes and impose a ban on trade in ivory so that while purporting to trade in imported ivory and carvings therefrom, poaching of Indian elephants and resultant illegal trade by extracting their tusks may not continue.

The submission of Mr. Parikh that the doctrine of proportionality should be applied in a case of this nature cannot also be acceded to.

In Om Kumar and Others vs. Union of India [(2001) 2 SCC 386], to which a pointed reference has been made, this Court made a distinction between the primary and secondary review of administrative orders. As indicated in Indian Handicraft Emporium (supra), this Court while construing the provisions of the Act vis-à-vis restrictions imposed in terms of clause (6) of Article 19 of the Constitution of India has come to the conclusion that the provisions of the Amending Acts satisfy even the strict scrutiny test. In Om Kumar (supra), this Court pointed out that the area of discretion of administrator would vary in different situations stating:

"While the courts' level of scrutiny will be more in case of restrictions on fundamental freedoms, the courts give a large amount of discretion to the administrator in matters of high-level economic and social policy and may be reluctant to interfere : (R. v. Secy of State for the Environment, ex p Nottinghamshire County Council (1986 AC 240 : (1986) 1 All ER 199 : (1986) 2 WLR 1 (HL)); R. v. Secy. of State for Environment, ex p Hammersmith and Fulham London Borough Council ((1991) 1 AC 521: (1990) 3 All ER 589 : (1990) 3 WLR 898) (AC at p. 597). Smith speaks of "variable margin of appreciation". The new Rule 1 of the Civil Procedure Rules, 1999 permits the courts to apply "proportionality" but taking into account the financial issues, complexities of the matter and the special facts of the case."

In Papanasam Labour Union vs. Madura Coats [(1995) 1 SCC 501] whereupon Mr. Parikh has placed reliance, this Court held that while a power has been conferred upon a higher authority, a presumption can be raised that he would be conscious of its duties and obligations and so would act promptly and reasonably.

There is also no quarrel on the proposition of law laid down therein for the purpose of judging the constitutionality of the statutory provisions in the light of Article 19 of the Constitution of India. The impugned acts fulfill the said criteria.

For the reasons aforementioned, we are of the opinion that the impugned judgment cannot be faulted. Accordingly, the appeals are dismissed but without any order as to costs.