MANU/DE/2564/2007

Equivalent Citation: 2007(122)ECC7, 2007(148)ECR7(Delhi), 2009(235)ELT60(Del.)

IN THE HIGH COURT OF DELHI

WP (Crl) No. 71/1997 and Crl. M. No. 10870/2006

Decided On: 03.09.2007

Appellants: **Cottage Industries Exposition Ltd. and Anr.**
Vs.
Respondent: **Union of India (UOI) and Ors.**

Hon'ble Judges/Coram:
Mukul Mudgal and P.K. Bhasin, JJ.

Counsels:
For Appellant/Petitioner/plaintiff: P.V. Kapur, Sr. Adv., Malvika Rajkotia, Adv., Sanjay Parikh, Sr. Adv., Saurabh Sharma and Jitin Sahni, Advs

For Respondents/Defendant: Altaf H. Nayak, Adv. Generala and Anis Suhrawardy, Adv., Mukta Gupta, Standing Counsel and Rajat Katyal, Adv., Raj Panjwani, Adv. for Wildlife Society of India, Anil Nag, Adv. for UOI and Dalip Mehra, Adv.

Case Note:
Customs - Trading of - Prohibited Item - Sections 2 (1) and Section 2 (2) read with Section 49 A (a), Section 49A(b) of Wild Life Protection Act, 1972 - M/s Istihaq & Co. supplied some shawls to Petitioner - Petitioner No.2 made arrangement for export of consignment containing shawls, scarf and kimonos - Custom Authorities on inspection of the export material objected on export of some shawls suspecting them to be Shahtoosh shawls following refusal on export Authorities detained the shawls - Respondent contended that trading in Shahtoosh Shawls was prohibited - Hence present petition - Petitioner contended that the shawls were made by the hair of animal "Chiru" which did not form or part of animal article - Whether the phrase "animal article" excludes animal hair - Held, as per provisions of Act, 'hair' form a part of the animal 'Chiru' - Any person found to be carrying on trade or dealing in Shahtoosh was liable to be proceeded under the Act as Shahtoosh is made from 'hair' which is a derivative of animal Chiru, which falls under the definition of "scheduled animal article" - Accordingly, petition dismissed

Facts: M/s. Istihaq & Co. supplied various types of shawls to the Petitioner company. The Petitioner no. 2 made arrangement for the export of the consignment containing some shawls, scarfs and kimonos (export material). The export material was inspected by the Customs Authorities and objected to the export of some of the shawls suspecting them to be shahtoosh shawls and refused their export and detained the shawls. According to the Customs Authorities, trading in shahtoosh wool was strictly prohibited as it falls in Schedule I of the Wildlife (Protection) Act. Hence, the present petition was filed for challenging the criminal proceedings initiated by the Customs and Wildlife Department and seizure of shawls, suspected to be made of 'Shahtoosh wool'. The Petitioner

contended that shawls were made by 'hair' of the animal Chiru, which did not form, or part of an animal article.

Held: [1] A bare perusal of Section 2 (1) and Section 2 (2) read with Section 49A(a), Section 49A(b) of the Act clearly defines 'hair' as a part of the animal 'Chiru'. Merely by mentioning 'hair' in the definition of trophy does not and cannot lead to the conclusion that there was any intention of the legislature to include it specifically in the definition of 'animal trophy' only, and exclude it from the definition of animal article. Such a contention is opposed to the dictionary meaning of the word 'article' and would run counter to the explicit legislative intent.

[2] The product derived from "scheduled animal" has only been defined under 'scheduled animal article' under Section 49A (b) as to be made from any captive or wild animal and includes an article or object in which the whole or any part of such animal has been used and specifically excludes tail feather of peacock and snake venom or its derivatives. Since no other exclusion has been specified by the legislature except the tail feather of peacock and its derivatives and the derivatives of snake venom, it is not open to this Court to add 'animal hair' to such excluded categories in Section 49-A (b) merely on the basis of what is termed by the Petitioner to be the inclusive definition of Trophy.

[3] 'Hair' has thus, not been excluded from the definition of 'animal articles' and 'scheduled animal articles' and was intended to be included by the legislature in the definition of 'animal articles' as per Section 2 (2) and of 'Scheduled animal articles' as per Section 49A(b) of the Act.

[4] The purpose of mentioning 'hair' in the definition of 'trophy' is totally different and it cannot be construed by any means that 'hair' has been specifically left out of the definition of 'animal articles' merely because it is mentioned in the definition of "trophy". Over emphasis on inclusion of the word 'hair' in the definition of the trophy would defeat the very object of the Act. The raw wool of Chiru after treating and processing would in fact fall within the meaning of the trophy. In our view, the definitions of 'uncured trophy', 'trophy' and 'Scheduled animal article' are not separate, distinct and exclusive compartments but are complementary to one another. Any other construction would defeat the object of the Act and the intention of the legislature.

[5] Secondly, the raw 'hair' under the wool of chiru after treatment and processing would admittedly fall within the meaning of 'trophy'. The thread made from such processed wool including the shawl woven from such thread would be covered by the definition of 'animal article' as defined in Section 49A(b) in as much as both the thread and the shawl are articles which have been made by use of hair (wool) of a scheduled wild animal.

[6] In our view, any person who is found to be carrying on trade or dealing in Shahtoosh is liable to be proceeded under the Act as Shahtoosh is made from 'hair' which is a derivative of animal Chiru, which falls under the definition of "scheduled animal article". The wild animal 'Chiru' falls in Part I Schedule I of the Act, trading in which is strictly prohibited under Section

49B of the Act.

JUDGMENT

Mukul Mudgal, J.

1. This writ petition challenges the criminal proceedings initiated by the officers of the Customs under the provisions of the Customs Act, 1962 and by the officers of the Wildlife Department under the provisions of Wildlife Protection Act, 1972 (hereinafter referred to as the Act) and seizure of 12 pieces of shawls, suspected to be made of 'Shahtoosh wool'. The main question raised in this petition is whether the phrase 'animal article' excludes 'animal hair'. The petitioner No. 1 Cottage Industries Exposition Ltd., is an incorporated company under the provisions of the Companies Act, 1956, which trades in value added handicrafts, carpets and other items in natural and artificial fiber. The petitioner No. 2 Mr. Rajender Kumar Mehta is in charge of the exports of the petitioner No. 1. The respondent No. 1 is Union of India through the Secretary to the Government, Ministry of Environment and Forest. The respondent No. 2 is the Collector of Customs, Indira Gandhi International Airport. The respondent No. 3 is the State of Jammu & Kashmir through its Chief Secretary. The respondent No. 4 is the Government of National Capital Territory of Delhi. The respondent No. 5 is the Director, Wildlife Preservations, Ministry of Environment and Forest.

2. The brief facts of this case as per the case set up by the petitioner through his Senior counsel Shri Sanjay Parikh as under:

(a) On 6th April 1996, 16th April 1996 and 12th May 1996, M/s Istihaq & Co. supplied various types of shawls to the petitioner company. The supplies included shawls which have been seized by the respondent.

(b) On 7th November, 1996, the petitioner No. 2 made arrangement for the export of the consignment containing some shawls, scarfs and kimonos (hereinafter referred to as the "export material") to England which were deposited at the Cargo Terminal of the Indira Gandhi International Airport, to be air lifted to England.

(c) The export material was inspected by the Customs Authorities at the Airport, who objected to the export of some of the shawls suspecting them to be shahtoosh shawls and refused their export and detained the said shawls.

(d) On 11th November, 1996 two Panches namely Shri Charanjeet Singh Grover and Shri Ram Kumar were called. The proceedings before the Panches are recorded in the Punchnama dated 11th November, 1996. The Punchnama recorded as follows:

(i) The respondents suspecting 12 shawls to be shahtoosh shawls out of the export material allegedly having been manufactured out of shahtoosh wool took the samples for forensic test to the Wildlife Institute of India.

(ii) According to the Customs Authorities, Wildlife officials were also called as trading in shahtoosh wool is strictly prohibited as it falls in Schedule I of the Wildlife (Protection) Act.

(iii) The export of shahtoosh shawls is prohibited as it falls under the 'Negative List' of the export of Exim Policy 1992-97.

(iv) The shawls and the remaining export material were detained and seized pending an enquiry in the matter on the ground that the shawls which are made of shahtoosh wool are liable to be confiscated under the Customs Act, under the Wildlife Act and the remaining export material was used for concealment of the seized shawls and at present are in the custody of the respondents.

3. The learned Counsel for the petitioner No. 1 submitted as follows:

(a) The Wildlife (Protection) Act prohibits dealing with 'Animal Article' or 'Trophy' which are defined as under:

Section 2(2) Animal Article -

Animal Article means an article made from any captive animal or wild animal, other than vermin, and includes an article or object in which the whole or any part of such animal (has been used and ivory imported into India and an article made there from).

Section 2(31) - Trophy

Trophy means the whole or any part of any captive animal or wild animal, other than vermin, which has been kept or preserved by any means, whether artificial or natural, and includes,

(a) rugs, skins, and specimens of such Animals mounted in whole or in part through a process of taxidermy, and

(b) antler, bone carapace, shell, horn, rhinoceros, horn, hair, feather, nail, tooth, musk, eggs, nests and honeycomb.

'Animal Article' does not refer to 'hair' though it makes a specific reference to ivory, whereas 'Trophy' specifically uses the word 'hair' in its original form.

(b) 'Animal Article' requires making and Therefore, involves human skill. In the State of Tamilnadu v. Kay Pee Industrial Chemical Pvt. Ltd. MANU/TN/0402/2005 : AIR2005Mad304 , it was held as under:

29. It may be noted that the expression "animal article" in Section 2(2) of the Act means "an article made from any captive animal or wild animal". In our opinion, the word 'made' used in the definition denotes the process involving human effort.

Thus, it is different from a 'trophy' where animal or part of an animal is kept or preserved by natural or artificial means.

(c) Under the Wildlife (Protection) Act, items made from ivory are banned

which is specifically included in the definition of the 'animal article' and in the definition of 'trophy' where the word bone is mentioned. The meaning of the word Ivory as defined in Shorter Oxford Dictionary is:

> (a) 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)....
>
> (b) A substance resembling ivory or made in imitation of it.

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

> (a) A hard smooth us a major part of the tusks of elephants, walruses and similar animals.
>
> (b) A tusk made of ivory.
>
> (c) a yellowish white colour; cream
>
> (d) A substance resembling elephant tusk.

'Ivory' Therefore, as per the Dictionary meaning is not confined to elephant ivory. Thus, an item needs to be mentioned separately in both the definitions of the 'animal article' and the 'trophy' for it to be treated as either. Therefore, a tusk in natural form preserved as such would be a trophy while items made from the tusk by human endeavor would be an 'animal article'. 'Hair' could have been treated in the same way as 'ivory' if the legislature intended for the shahtoosh shawls to come within the meaning of the 'animal article' Therefore, 'hair' preserved in its natural form or through artificial means could have been called a 'trophy'. However, once woven into a shawl it ceases to be preserved or kept in its natural form it does not find a specific mention in the definition of 'animal article'.

(d) Therefore, 'hair' is not clearly a part of the definition of 'animal article' for the following reasons:

> (i) Since the word 'hair' has specifically been included within the definition of the 'trophy' there would have been no need for the legislature to include it specifically if it was a part of an animal.
>
> (ii) If the legislative intent was only to clarify that 'hair' was part of an animal it would have manifested in the definition of 'animal' and 'part of the animal' in both the definitions of 'animal article' under Section 2(2) of the Wildlife (Protection) Act and the definition of 'trophy' under Section 2(31) of the Wildlife (Protection) Act.
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> (iii) Where the word 'mean' is employed it implies a restriction. In Feroz N. Dotivala v. PM Wadhwani MANU/SC/1082/2002 : (2003)1SCC433 , the following position of law was laid down by the Hon'ble Supreme Court:
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>> **13.** It can also restrict the meaning of a word by defining it in that manner. Generally, when the definition of a word beings with "means" it is indicative of the fact that the meaning of the word has been restricted; that is to say, it

> would not mean anything else but what has been indicated in the definition itself. There can also be extensive definitions when the definition starts with "includes".
>
> **14.** Generally, ordinary meaning is to be assigned to any word or phrase used or defined in a statute. Therefore, unless there is any vagueness or ambiguity, no occasion will arise to interpret the term in a manner which may add something to the meaning of the word which ordinarily does not so mean by the definition itself, more particularly, where it is a restrictive definition.

Therefore, the meaning of animal article and trophy are restricted to animal or part of animal. However, the meaning as restricted in both definitions is widened to 'include' certain items with reference to 'trophy'. Thus it has been widened to include items which without the inclusive clause could not have been covered. Thus, hair is not within the meaning of animal or part of animal and the meaning of trophy has been widened to 'include' hair and the definition of animal.

(iv) The word 'include' has been defined in Stroud's Judicial Dictionary, 5th Edition, Vol 3 page 1263 as follows:

> Include is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include.

The said definition supports the plea that the legislature had a specific intention in creating two separate entries, in the form of animal article under Section 2(2) of the Wildlife (Protection) Act and the trophy under Section 2(31) of the Wildlife (Protection) Act. In N.D.P. Namboodripal v. UOI and Ors. MANU/SC/1564/2007 : AIR2007SC1782 , it was held as under:

> Where a word defined is declared to "include" such and such, the definition is prima facie extensive, but the word or expression, may also be construed as equivalent to "mean and include" in which event, it will afford an exhaustive Explanation of the meaning which for the purposes of the Act must invariably be attached to the word or expression. It is, Therefore, evident that the word "includes" can be used interpretation clauses either generally in order to enlarge the meaning of any word or phrase occurring in the body of a statute, or in the normal standard sense, to a mean "compromise of" or "consists of" or means and includes depending on the context.

4. Sh. Dalip Mehra, the learned Counsel appearing for the respondent 1, 2 and 5 in reply to the petitioner's plea submitted as under:

(a) The Central Government by a Notification No. FJ11012/31/36 FRY(WL) dated 5th October, 1977 added "Tibetan Antelope or Chiru (Antelopes hodgsoni)". The Parliament by an amendment to the Wildlife (Protection) Act incorporated Chapter VA by which it imposed a complete prohibition on the trade inter alias in trophies and animal articles derived from Scheduled animals listed in Schedule I and Part II of Schedule II to the said Act on expiry of two months from the date of commencement, i.e., 25th November, 1986. Section 49A(a) defines Scheduled Animals as under:

> 49A(a) an animal specified for the time being in Scheduled -I or Part II of Schedule II.

Scheduled Animal Article has been defined in Section 49A(b) of the Act which reads as follows:

> to mean an article made from any scheduled animal and includes an article or object in which the whole or any part of such animal has been used but does not include tail feather of peacock, an article or trophy made there from and snake venom or its derivative.

Section 2(31) of the Act defines trophy as mentioned earlier.

Section 2(32) of the Act defines uncured trophy as follows:

> uncured trophy' means the whole or any part of any captive animal or wild animal, other than vermin, which has not undergone a process of taxidermy, and includes a (freshly-killed wild animal, ambergris, musk and other animal products)

A harmonious construction of the aforesaid definitions implies that the definition of scheduled animal article would necessarily include a trophy or an uncured trophy because a Scheduled 'Animal Article' as defined under the Wildlife Protection Act can only be derived from a trophy or an uncured trophy. Therefore, the intention of the legislature is unambiguous because when any part of a captive or wild animal which is needed to be treated for preservation has not yet been so treated, it would fall within the meaning of 'uncured trophy'. But when such an uncured part of the animal is treated it would fall within the meaning of the word trophy. Therefore, the uncured part of a wild animal after treating gets converted into a trophy. This implies that once an article is made from a trophy or an uncured trophy, it converts itself into an animal article and would fall within the definition of Scheduled 'animal article'.

The definition of uncured trophy, trophy and Scheduled animal article, depict three stages which a part or whole or an animal undergoes to evolve and fall within the meaning of Scheduled 'animal article'. The definitions are not separate and set in distinct compartments, but are complementary to one and another. Any other construction would defeat the object of the Act. The aforesaid definitions imply that the raw wool of Chiru, whether naturally shed, or otherwise obtained, would fall within the definition of uncured trophy. The words 'and other animal products' in the definition of uncured trophy would include those parts of animals which have been enumerated in Section 2(31)(b) which defines trophy. Further, the raw wool of Chiru after treating and processing would fall within the meaning of trophy. The thread

from such processed wool including the shawls woven from such thread would be covered by the definition of animal article as defined in Section 49A(b) in as much as both the thread and the shawl are the articles which have been made by use of hair, i.e., the wool made of a Scheduled wild animal.

(b) The learned Counsel for the petitioner submitted that since the term hair fell within the inclusive part of definition of 'trophy', it would not fall within the definition of Scheduled animal article unless a similar inclusive provision as provided for in the definition of trophy is incorporated in the definition of Scheduled animal article. The above submission of the petitioner was untenable as it would defeat the object and purpose of the Act, because the animal part enumerated in the inclusive clause of Section 2(31) lists almost all the parts that can be possibly derived from the animal except meat which has been defined separately. Thus, if the contention of the petitioner is accepted then no part of the animal would fall within the meaning of 'Scheduled animal'.

(c) The petitioner has also contended that the words 'and ivory imported into India and an article made there from' as found in the definition of the animal article in Section 2(2) of the Act in the absence of a similar provision for hair, would imply that 'hair' is not included in the definition of animal article. But this submission of the learned Counsel for the petitioner cannot be accepted because the trade in ivory derived from Indian elephant stood prohibited on the expiry of two months from the date of inclusion of Indian elephant in the Schedule I of the Wildlife Protection Act. The words 'ivory imported in India' were added in 1991 to the definition of 'animal article' in order to prohibit trade in ivory derived from animals other than Indian elephants. This was done because the Wildlife Protection Act was applicable only to those species which were found in India. Therefore, the analogy being sought to be relied upon by the petitioner is misplaced.

(d) The intention of the Parliament while enacting the provisions contained in the Chapter 5A was to impose a complete prohibition on manufacture and trade in Scheduled animal articles. If the intention of the Parliament would have been to exclude naturally shed animal parts such as hair it would have specifically excluded such parts from the definition of uncured trophy, trophy or scheduled animal article. The Parliament not having done so clearly implies that the legislative intent was that an article made from the 'hair' of a Scheduled animal fell within the meaning of the 'Scheduled animal article' as defined in Section 49A(b) of the Wildlife Protection Act and the manufacture or trading of such an article is completely prohibited under Section 49B. In Indian Handicrafts Emporium and Ors. v. Union of India and Ors. MANU/SC/0640/2003 : AIR2003SC3240 , the Hon'ble Supreme Court held as follows:

> **102.** In District Mining Officer v. Tata Iron and Steel Co MANU/SC/0412/2001 : (2001)7SCC358 , this Court stated: A statute is an edict of the legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it, and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court

has to choose that interpretation which represents the true intention of the legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully in the varied situations arising in future in which the application of the legislation in hand may be called for and words chosen to communicate such indefinite referents are bound to be in many cases, lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed.

104. In High Court of Gujarat and Anr. v. Gujarat Kishan Mazdoor Panchayat and Ors. MANU/SC/0214/2003 : [2003]2SCR799 this Court noticed:

In Reserve Bank of India v. Peerless Co. reported in MANU/SC/0073/1987 : [1987]2SCR1 this Court said:

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

place and everything is in its place....

In "The Interpretation and Application of Statutes" by Reed Dickersen, the author at page 135 has discussed the subject while dealing with the importance of context of the statute in the following terms:

...The essence of the language is to reflect, express, and perhaps even effect the conceptual matrix of established ideas and values that identifies the culture to which it belongs. For this reason, language has been called 'conceptual map of human experience'."

The purport and object of the Statute is to see that a Tribunal becomes functional and as such the endeavors of the Court would be to see that to achieve the same, an interpretation of Section 10 of the Act be made in such a manner so that appointment of a President would be possible even at the initial constitution thereof.

Such a construction is permissible by taking recourse to the doctrine of strained construction, as has been succinctly dealt with by Francis Bennion in his Statutory Interpretation. At Section 304, of the treatise; purposive construction has been described in the following manner:

A purposive construction of an enactment is one which gives effect to the legislative purpose by -

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction)

In Balram Kumawat v. Union of India and Ors. MANU/SC/0628/2003 : AIR2003SC3268 , the Hon'ble Supreme Court held as under:

25. 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. v. State of Assam MANU/SC/0027/1990 : AIR1990SC123 , 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 rest 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 1928 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.

26. 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 v. Duncombe (1886) 11 AC 827 . 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 v. Hi-Tech extravision Ltd. (1990) 2 All ER 118

37. 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.

38. 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 India 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.
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> **39.** 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 v. Garware Nylons Ltd. AIR 1396 SC 3509 and Unwin v. Hanson 1331 (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.
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> **40.** 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 there from, poaching of Indian elephants and resultant illegal trade by extracting their tusks may not continue.

The petitioner has relied upon the judgment of the Madras High Court in Kay Pee Industrial Chemical's (supra) but the said judgment is not applicable to the facts of the present case as the said judgment pertains to the Coelenterates, i.e., corals listed in Scheduled I Part IV A of the Wildlife Protection Act. The Madras High Court in paragraph 30 had also held that the definition of animal in Section 2(1) of the Act includes only living organisms. The coral reef fragments being a calcareous substance cannot be included in the definition of wild life or Wild Animal by any stretch of imagination. In the present case it is not the stand of the petitioner that the Tibetan Antelope is not a living animal. Further, the definition of trophy and uncured trophy was not brought to the attention of the Madras High Court. It is also submitted that the decision of the Hon'ble Supreme Court in Balram Kumawat's case (supra) was not noticed by the Madras High Court which held that trade in ivory derived from mammoth which is a prehistoric extinct animal species which disappeared due to climatic conditions prevailing in Alaska and Siberia, is prohibited under the provision of Chapter V of the Wildlife Protection Act.

(e) Section 49B(1)(a)(i) & (ii) state that after the specified date, no person shall commence or carry on the business as a manufacturer of, or as dealer in 'scheduled animal articles', or as a dealer in trophy or uncured trophy derived from any 'scheduled animal'. Section 2(11) defines 'dealer' to mean in relation to any captive animal, animal article, trophy, uncured trophy, meat or specified plant, means a person, who carried on the business of buying or selling any such animal or article, and includes a person who

undertakes business in any single transaction.

Section 49C(7) defines that no person, other than a person who has been issued a certificate of ownership under Sub-section (3) shall, on and after the specified date, keep under his control, sell or offer for sale or transfer to any person any scheduled animal, or a scheduled animal article, or a scheduled animal article or ivory import into India or any article made there from." The contravention of Section 49C(7) is an offence under Section 51(A) which is punishable with imprisonment for a term not less than three years but which may extend to seven years and fine not less than ten thousand rupees. Section 57 further shifts the burden of proof on the person in possession of such animal article by providing that "it shall be presumed, until the contrary is proved, the burden of proving which shall lie on the accused, that such person is in unlawful possession, custody or control of such captive animal animal article, meat, trophy uncured trophy, specified plant, or part or derivative thereof." The petitioner has admitted that it carries on the trade/business in shawls and Therefore is a dealer under the Wildlife Protection Act. Therefore, the petitioner/dealer admittedly possessing such shawls that contain hair of the scheduled animal article for the purpose of trade has prima facie contravened the provisions of Chapter V A of the Wildlife Protection Act.

(f) In India, the international trade in animal article is regulated by the Import and Export Policy framed under Import and Export (Control) Act, 1947. Paragraph 10 and 11 of Chapter IV read with Para 158 of the Import and Export Policy for the period between 1st April 1994 to 31st March 1997 provides the negative list of goods, the export of which is totally prohibited. The said policy in para 158 prohibits the export of all forms of Wildlife including their parts and products. The said paragraph reads as follows:

```
Chapter XVI
Negative List of Exports
Part I
158.      Prohibited Items
S.No.     Description of items
1.        All forms of wild life including their parts and products.
2.        ...
3.        ...
4.        ...
5.        ...
6.        ...
7.        ...
8.        ...
9.        ...
10.      ...
```

5. In our view, the main issue involved in this writ petition arises from a plea of the petitioner that the 'hair' of the animal Chiru does not form or part of an animal article as defined in Section 2(2) of the Act and hence the user of such 'hair' in producing the Shahtoosh shawls was not hit by the bar prescribed under Section 49(B) of the Act. The principal plea of the learned Counsel for the petitioner that 'hair' is not part of the definition of animal article, is postulated on the premise that the fact that 'hair' has been included within the definition of 'trophy' clearly shows that it was not intended by the legislature to be included in the definition of animal article.

6. It has been contended that as laid down by the Hon'ble Supreme Court in Feroz N. Dotivala's case (supra), whenever the word 'mean' is used it indicates that meaning

of the word has been restricted. Thus in essence, the petitioner wants this Court to hold that 'hair' is not a part of the animal Chiru. In our view to construe the above Section, it is necessary to look at the preamble of the Act which provides for protection of wild animal, birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country. The statement of objects and reasons of the Act is instructive and reads as follows:

> Statement of Objects and Reasons - The rapid decline of India's wild animals and birds, one of the richest and most varied in the world, has been a cause of grave concern. Some wild animals and birds have already become extinct in this country and others are in the danger of being so. Areas which were once teeming with wild life have become devoid of it and even in Sanctuaries and National Parks the protection afforded to wild life needs to be improved. The Wild Birds and Animals Protection Act, 1912 (8 of 1912), has become completely outmoded. The existing State laws are not only out-dated but provide punishments which are not commensurate with the offence and the financial benefits which accrue from poaching and trade in wild life produce. Further, such laws mainly relate to the decline of India's wild life, namely, taxidermy and trade in wild life and products derived there from.
>
> **2.** Having considered the relevant local provisions existing in the State, the Government came to the conclusion that these are neither adequate nor satisfactory. There is Therefore, an urgent need for introducing a comprehensive legislation, which would provide for the protection of wild animals and birds and for all matters connected therewith or ancillary and incidental thereto.
>
> **3.** Legislation in respect of the aforesaid subject-matters relatable to entry 20 of the State list in the Seventh Schedule to the Constitution ,namely, protection of wild animals and birds and Parliament has no power to make a law in this regard applicable to the State (apart from the provisions of articles 249 and 250 of the Constitution) unless the Legislatures of two or more States pass a resolution in pursuance of article 252 of the Constitution empowering Parliament to pass the necessary legislation on the subject. The Legislatures of the States of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh and West Bengal have passed such resolutions.
>
> **4.** The Bill seeks to-
>
> > (a) constitute a Wild Life Advisory Board for each State;
> >
> > (b) regulate hunting of wild animals and birds;
> >
> > (c) lay down the procedure for declaring areas as Sanctuaries, National Parks, etc.;
> >
> > (d) regulate possession, acquisition or transfer of, or trade in wild animals, animals articles and trophies and taxidermy thereof;
> >
> > (e) Provide penalties for contravention of the Act.

This Act was further amended several times in the years 1982, 1986, 1991, 1993,

2003 and 2006 and the amendment in 1986 has a direct bearing on the issue involved in the present writ petition and reads as follows:

> Amendment Act 28 of 1986 - Statement of objects and Reasons - The Wild Life (Protection) Act 28 of 1972 provides for the protection of wild animals and birds and for matters connected therewith or ancillary thereto.
>
> **2.** Under the scheme of the Act, trade or commerce in wild animals, animal articles and trophies within the country is permissible and is regulated under Chapter V. Since there is hardly any market within the country for wild animals or articles and derivatives thereof, the stocks acquired for trade within the country are smuggled out to meet the demand in foreign markets. This clandestine trade is abetted by illegal practices of poaching which have taken a heavy toll of our wild animals and birds. The stocks declared by the traders at the commencement of the Wild Life (Protection) Act, 1972 are still used as a cover for such illicit trade. Attempts to acquire the declared stocks of skins of some wild species have also not met with the desired success, mainly because most traders are not inclined to part with their stocks and thereby loose the ploy for illegal activities. It is, Therefore, necessary to suitably amend the Act to prohibit trade in certain specified wild animals or their derivatives. It is, Therefore, proposed to provide that no one will be permitted to trade in wild animals specified in Schedule I or Part II of Schedule II of the Act or in any derivatives there from after a period of two months from the commencement of the amending Act or two months from the date on which a wild animals is included in Schedule I or Part II of Schedule II by notification issued under the provisions of the Act. All existing licenses for internal trade would be invalid thereafter. Further, no fresh licenses would be granted for internal trade on such wild animals or their derivatives in future. An exemption is being given to notified Government of India undertakings, who can purchase stocks from licensees during the specified period of two months for manufacturing articles from them exclusively for export. The exemption at present available to dealers in ivory under the second proviso to Section 44(1) is also being removed so as to enforce a total ban in dealing in Indian ivory and simultaneously to provide for some regulation over the manufacture and trade of articles made out of imported ivory.

The Wild Life (Protection) Amendment Bill, 2002, proposes :

> (i) to highlight the ecological and environmental objective in the long title of the Wild Life Act.
>
> (ii) to add new definitions in view of the amendments proposed in the Wild Life Act;
>
> (iii) to give statutory status to the National Board for Wild Life and restructuring of State Wild Life Advisory Boards giving wider representation to all concerned;
>
> (iv) to provide certain safeguards to stop killing of animals on the pretext of being dangerous to human life and property;
>
> (v) to rationalize and expedite the process of final notification of sanctuaries and national parks and safeguard the decline of bio-diversity during the

intervening period between the first and final notification;

(vi) to provide that any alteration in the boundaries of national parks and sanctuaries shall be made only on the basis of the recommendations of the National Board for Wild Life;

(vii) to ban commercial sale of forest produce removed from national parks and sanctuaries for better management of Wild Life;

(viii) to provide that no construction of commercial tourist lodges, hotels, zoos and safari parks shall be allowed inside the national parks and sanctuaries except with the prior approval of the National Board for Wild Life;

(ix) to empower the officer to evict encroachment from the national parks and sanctuaries;

(x) to provide for the creation and management of community reserves as well as conservation reserves;

(xi) that zoos shall not acquire, or dispose of any wild or captive animals to any organization other than a recognized zoo;

(xii) to provide that captive animals and wild animals included in Schedule I and part II of Schedule II of the Wild Life Act and their parts and products can be acquired only by way of inheritance;

(xiii) to enhance and rationalize penalties prescribed under the Act including the making of suitable provisions on the lines of the provisions of Chapter V-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 in cases of offences pertaining to wild animals included in Schedule I and Part II of Schedule II of the Act.

(xiv) to enhance the amount of rewards payable to persons rendering assistance in detection of offences and apprehension of offenders;

(xv) to increase the amount that can be realized as compensation from Rs. 2,000/- to Rs. 2500/-.

(xvi) to provide that the vehicles, weapons and tools, etc., used in committing compoundable offences are not be returned to the offenders.

7. A perusal of the above statement of objects and reasons clearly demonstrates that the legislature has been conscious of the acute need to curb trading, poaching of animal articles and products and each of the amendments noted above clearly reiterates the legislative concern for preserving wild life to all extent possible under the Act. Particularly instructive is the legislative intent which prohibits trading in wild animals specified in Schedule I Part I of the Act, and any derivative derived there from. Thus when the legislative intent is clearly discernible and indicates that trading in wild animals specified in aforesaid schedule or any derivative from such animals were to be forbidden from being traded, it cannot be contended logically that 'hair' is not a derivative from such animal. It is also not in dispute that wild animal 'Chiru' falls in Part I Schedule I of the Act and thus it is clear that legislature clearly intended that trading in wild animals and derivatives there from is clearly prohibited.

It is also clearly stated in the Statement of Objects and Reasons that even the commercial sale of forest produce removed form natural park and sanctuaries is banned.

8. The petitioner contended that the legislature had a specific intention in creating two separate entries, in the form of 'animal article' under Section 2(2) of the Act and the 'trophy' under Section 2(31) of the Act. Further, if the legislative intent was to clarify that 'hair' was part of an animal article, it would have manifested it in the definition of 'animal article' under the Act.

In our view, we cannot accept the plea raised by the petitioner, as it leads to anomalies and absurdities in the construction of the phrase 'animal article' as compared to its plain grammatical meaning. In Principles of Statutory Interpretation (page 128, 9th Edition, 2004) Justice G.P. Singh referred to the principle of 'absurdity' as:

> Absurdity" according to WILLES, J, should be understood 'in the same sense as repugnance that is to say something which would be so absurd with reference to the other words of the statute as to amount to a repugnance." "Absurdity", said LORD GREENE, M.R., "like public policy, is a very unruly horse.

In Mohd. Ali Khan v. CWT(1997) 3 SCC 51, the Hon'ble Supreme Court held as under:

> It is a cardinal principle of construction that the words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary. It has been often held that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. Obviously the aforesaid rule of construction is subject to exceptions. Just as it is not permissible to add words or to fill in a gap or lacuna, similarly it is of universal application that effort should be made to give meaning to each and every word used the legislature.

The Hon'ble Supreme Court laid down the following position of law in Bhag Nak v. Ch. Prabhu Ram MANU/SC/0154/1984 : [1985]1SCR1099 :

> A statutory provision must be so construed, if it is possible, that absurdity and mischief may be avoided. Where the plain and literal interpretation of a statutory provision produces a manifestly absurd and unjust result, the Court might modify the language used by the Legislature or even do some violence to it so as to achieve the obvious intention of the Legislature and produce a rational construction and just result.

We find nothing in the Statement of Objects and Reasons and the list of the Act to indicate that 'animal article' should not be given its plain grammatical meaning. In fact, the acceptance of the plea of the petitioner to the effect that the definition of 'animal article' would exclude 'hair' merely because of the definition of 'trophy'

including 'hair' within its sweep would lead to an absurd result proscribed by the above judgments of the Hon'ble Supreme Court.

In Girdhari Lal and Sons v. Balbir Nath Mathur MANU/SC/0544/1986 : [1986]1SCR383 , the following position of law was laid down by the Hon'ble Supreme Court:

> Ascertainment of legislative intent is a basic rule of statutory construction. A rule of construction should be preferred which advances the purpose and object of a legislation. Though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities.
>
> The golden rule of construction is that where the words of statutes are plain and unambiguous effect must be given to them. The real basis of this rule is that since the words must have spoken as clearly to legislators as to judges, it may be safely presumed that the legislature intended what the words plainly say. Even where the words of statutes appears to be prima facie clear and unambiguous it may sometimes be possible that the plain meaning of the words does not convey and may even defeat the intention of the legislature; in such cases the true intention of the legislature, if it can be determined clearly by other means, should be given effect.

In Indian Administrative Service (S.C.S.) Assn. v. Union of India MANU/SC/0643/1993 : 1992(3)SCALE126 it was reiterated by the Hon'ble Supreme Court that:

> Every word, phrase or sentence in the statute and all the provisions read together shall be given full force and effect and no provision shall be rendered surplusage or nugatory. Where the intention of statutory amendment is clear and expressive, words cannot be interpolated. In the first place they are not, in this case, needed. If they should be added, the statute would more than likely fail to carry out the legislative intent. The words are the skin of the language which the Legislature intended to convey. Where the meaning of the statute is clear and sensible, either with or without omitting the words or adding one, interpolation is improper, since the primary purpose of the legislative intent is what the statute says to be so. If the language is plain, clear and explicit, it must be given effect to and the question of interpretation does not arise. The mere fact that the result of a statute may be unjust, does not entitle the court to refuse to give effect t it. However, if two reasonable interpretations are possible, the court would adopt that construction which is just, reasonable or sensible. Courts cannot substitute the words or phrases or supply casus omissus. The court could in an appropriate case iron out the creases to remove ambiguity to give full force and effect to the legislative intention. An wrong order or defective legislation cannot be righted merely because it is wrong. At best the court can quash it, if it violates the fundamental rights or is ultra virus the power or manifestly illegal vitiated by fundamental laws or gross miscarriage of justice. But the intention must be gathered by putting up fair construction of all the provisions reading together. This endeavor would be to avoid absurdity or unintended unjust results by applying the doctrine of purposive construction.

It is aptly clear from the above judgments of the Supreme Court that statutory provision must be so construed, so that not only absurdity and mischief is avoided but the words used by the legislature are given their plain and grammatical meaning. A rule of construction should be preferred which advances the purpose and object of legislation. Though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities.

9. A bare perusal of Section 2(1) and Section 2(2) read with Section 49 A(a), Section 49A(b) of the Act clearly defines 'hair' as a part of the animal 'Chiru'. Merely by mentioning 'hair' in the definition of trophy does not and cannot lead to the conclusion that there was any intention of the legislature to include it specifically in the definition of 'animal trophy' only, and exclude it from the definition of animal article. Such a contention is opposed to the dictionary meaning of the word 'article' and would run counter to the explicit legislative intent.

10. The petitioner has strongly urged that since the word 'hair' has been not been specifically mentioned in the definition of 'animal article', any product derived from hair cannot be said to be an "animal article". If this contention of the petitioner is accepted it would defeat the very object of the Act. It would also be doing violence to, the plain grammatical meaning of the phrase 'animal article' which is clearly contrary to the well settled principle of law enunciated in Indian Handicraft Emporium's case (supra).

11. The writ petition is based on the premise that 'Shahtoosh' derived from the fallen hair of Chiru once woven into a shawl ceased to be preserved or kept in its natural form and also does not find a specific mention in the definition of "animal article". Therefore such a shawl does not fall within the ambit of the prohibition under the Act extended to "animal articles". The petitioner contented that as the term "hair" falls within the "inclusive" part of the definition of 'trophy', it would not fall within the definition of the term "Scheduled animal article', unless a similar inclusive provision as provided for in the definition of 'trophy' is incorporated in the definition of 'scheduled animal article'.

12. The petitioner further in support of his contention relied upon the words "...and ivory imported into India and an article made there from" as found in the definition of 'animal article' in Section 2(2) of the Act to contend that in the absence of a similar provision of 'hair', it would imply that 'hair' is not included in the definition of "animal article".

13. In our view, this contention is totally misplaced as trade in ivory derived from Indian Elephant stood prohibited upon the expiry of two months from the date of inclusion of Indian Elephant in the Schedule-I of the said Act. Indian elephant was included at Entry No. 12-B of Schedule-I on 24th November 1986 and the trade stood prohibited with effect from 23rd January 1987. The words "ivory imported in India..." were added in 1991 to the definition of 'animal article' in order to prohibit trade in ivory derived from animals other than Indian elephants. This was necessitated as the Wildlife (Protection) Act was applicable only to those species which are found in India. Tibetan Antelope is an inhabitant animal species of India and has been specifically included in Schedule I of the Act. Hence, the analogy to ivory being sought to be urged by the petitioner is misplaced and without merit.

14. Apart from relying upon the clear definition contained in Section 2(2) of the Act,

the learned Counsel for the respondent highlighted the provision of Section 49A(a) which refers to the animals specified in Scheduled-I or Part II of Schedule II and Section 49A(b) which defines article to be an article made from any scheduled article or object and includes the whole or any part of animal but excludes the tail feather of peacock and article or trophy made there from and snake venom or its derivative. This clearly shows that apart from the tail feather of peacock and its derivatives and derivatives of snake venom, any other part of any 'scheduled animal' are proscribed by the Act.

15. The Tibetan Antelope or Chiru (Antelopeshodgsoni) is an animal protected under Schedule I Part I Entry 36-A of the Act vide notification dated 5th October 1977. Section 49A(a) & (b) read with 49-B of the Act read as follows:

-A. Definitions. - In this Chapter, -

(a) "scheduled animal" means an animal specified for the time being in Schedule I or Part II of Schedule II;

(b) "scheduled animal article" means an article made from any scheduled animal and includes an article or object in which the whole or any part of such animal [has been used but does not include tail feather of peacock, an article or trophy made there from and snake venom or its derivative;]

-B. Prohibition of dealings in trophies, animal articles, etc., derived from scheduled animals. -

(1) subject to the other provisions of this section, on and after the specified date, no person shall, -

(a) commence or carry on the business as

(i) a manufacturer of, or dealer in, scheduled animal articles; or

(i-a) a dealer in ivory imported into India or articles made there from or a manufacturer of such articles; or]

(ii) a taxidermist with respect to any scheduled animals or any parts of such animals; or

(iii) a dealer in trophy or uncured trophy derived from any scheduled animal; or

(iv) a dealer in any captive animals being scheduled animals; or

(v) a dealer in any captive derived from any scheduled animal; or

(b) cook or serve meat derived from any scheduled animal in any eating-house.

A perusal of the above provisions demonstrates without doubt that the Act prohibits trade or commerce in trophies, animal articles derived from certain animals which leads to the following inevitable conclusion:

Prohibition on Trade and Commerce of-

(i) Articles made from any scheduled animal;

(ii) Includes an article or object in which the whole or any part of such animal has been used.

(iii) What has been specifically excluded from the ambit of this Section includes:

(a) a tail feather of peacock or an article, trophy made there from and;

(b) snake venom or its derivatives.

Thus, there is no intention of the legislature to exclude animal hair from the definition and scope of 'animal article' as only certain articles specified in Sub-section (a) and (b) above have been specifically excluded from the definition of "animal articles" and not animal hair.

16. Further, the US Fish and Wildlife Service (USFWS) has listed the Tibetan Antelope or Chiru, as an endangered species under the authority of Endangered Species Act. The said Endangered Species Act prohibits the international commercial sale of any parts or products of these species. The Tibetan Antelope has also been provided the highest protection under the convention on international trade in endangered species, under Appendix I of the said convention. China has also provided the highest measure of protection under its laws to Tibetan Antelope or Chiru and has completely banned sale or purchase of any products or parts of this species. Thus, any intention to exclude the products derived from the said animal or any part of the said animal from the definition of 'animal article' would not only defeat the purpose and intent of the legislature but would run contrary to the international concern expressed through the international legislation on the aforesaid subject.

17. The product derived from "scheduled animal" has only been defined under 'scheduled animal article' under Section 49A(b) as to be made from any captive or wild animal and includes an article or object in which the whole or any part of such animal has been used and specifically excludes tail feather of peacock and snake venom or its derivatives. Since no other exclusion has been specified by the legislature except the tail feather of peacock and its derivatives and the derivatives of snake venom, it is not open to this Court to add 'animal hair' to such excluded categories in Section 49A(b) merely on the basis of what is termed by the petitioner to be the inclusive definition of Trophy.

18. 'Hair' has thus not been excluded from the definition of 'animal articles' and 'scheduled animal articles' and was intended to be included by the legislature in the definition of 'animal articles' as per Section 2(2) and of 'Scheduled animal articles' as per Section 49A(b) of the Act.

19. The purpose of mentioning 'hair' in the definition of 'trophy' is totally different and it cannot be construed by any means that 'hair' has been specifically left out of the definition of 'animal articles' merely because it is mentioned in the definition of "trophy". Over emphasis on inclusion of the word 'hair' in the definition of the trophy would defeat the very object of the Act. The raw wool of Chiru after treating and processing would in fact fall within the meaning of the trophy. In our view, the definitions of 'uncured trophy', 'trophy' and 'Scheduled animal article' are not

separate, distinct and exclusive compartments but are complementary to one another. Any other construction would defeat the object of the Act and the intention of the legislature.

Secondly, the raw 'hair' under the wool of chiru after treatment and processing would admittedly fall within the meaning of 'trophy'. The thread made from such processed wool including the shawl woven from such thread would be covered by the definition of 'animal article' as defined in Section 49A(b) in as much as both the thread and the shawl are articles which have been made by use of hair (wool) of a scheduled wild animal.

20. We hold that if the legislative intent was to exclude naturally shed animal parts including 'hair', it would have specifically excluded such animal parts from the definition of 'uncured trophy' or 'trophy' or 'scheduled animal article' under the Act. The Parliament having chosen not to exclude 'hair' from the definition of animal article unlike the exclusion of tail feathers of peacock or an article trophy made there from and snake venom or its derivatives, implies that an article made from the hair of a scheduled animal falls within the meaning of "scheduled animal article" as defined in Section 49A(b) of the said Act and the manufacture/trade of such an article is completely prohibited under Section 49B.

21. In our view, it is evident that the petitioner's plea contending that the definition of 'Trophy' includes the term 'hair' and thus excludes it from the definition of "Animal article" would lead to an absurd result and would be contrary to known can one of interpretations and the legislative intent derived from the explicit statutory terms and the statement of objects and reasons. If there was any doubt or ambiguity in Section 2(2) and 2(31), such ambiguity was fully clarified by the legislative intent discernible from Sections 49A(a) and 49A(b) of the Act which shows that the manufacture of scheduled animal articles is completely prohibited under Section 49B of the Act.

22. In our view, any person who is found to be carrying on trade or dealing in Shahtoosh is liable to be proceeded under the Act as Shahtoosh is made from 'hair' which is a derivative of animal Chiru, which falls under the definition of "scheduled animal article". The wild animal 'Chiru' falls in Part I Schedule I of the Act, trading in which is strictly prohibited under Section 49B of the Act.

23. The Hon'ble Supreme Court in SLP (Civil) No. 12434/2003 in Ashok Kumar v. State of J an K and Ors. by its Order dated 22nd November, 2005, directed as under:

> There is a complete prohibition on dealing in trophies, animal articles derived from the scheduled animals (Chiru) under Section 49B of the Act. It was directed that action be taken against those persons who are found to be carrying on trade in Shahtoosh. The Supreme Court is monitoring implementation of its directions. The sum and substance of the judgment of the Supreme Court is that no trade in Scheduled Animal Article of Chiru, commonly known as "Shahtoosh" is permissible. Carrying on trade in Shahtoosh is an offence.
>
> Following observations/findings in the said judgment are important.
>
> CITES in its report prepared on 2nd to 14th October 2004 has also noticed that despite the fact that the State of Jammu and Kashmir had enacted a law, the legislation was not being enforced. This 2004 report had also endorsed an earlier report given by CITES in which it had categorically stated that

though a case had been made out by the State that no animals were being killed as the wool of Chiru which got stuck on bushes was gathered was incredible.

It was said:

Anyone who cared to visit the terrain of the Tibetan Plateau, observe the lack of bushes, view the piles of skinned Carcasses discovered by ant poaching personnel of examine the heaps of skins and bundles of wool seized by Forest Police and Customs in China and India would immediately realize such Explanations to be falsehoods, designed to reassure and dupe potential customs in countries far distant from where the slaughter of the Chiru was taken place.

24. The law laid down by the Hon'ble Supreme Court in Indian Handicraft Emporium's case (supra) is directly relevant on the question involved in this petition and bears reiteration:

The Hon'ble Supreme Court further directed as follows:

102. In District Mining Officer v. Tata Iron and Steel Co MANU/SC/0412/2001 : (2001)7SCC358 , this Court stated:

A statute is an edict of the legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it, and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature.

...It is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully in the varied situations arising in future in which the application of the legislation in hand may be called for and words chosen to communicate such indefinite referents are bound to be in many cases, lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible

purpose or object which comprehends the mischief and its remedy to which the enactment is directed.

104. In High Court of Gujarat and Anr. v. Gujarat Kishan Mazdoor Panchayat and Ors. MANU/SC/0214/2003 : [2003]2SCR799 this Court noticed:

In Reserve Bank of India v. Peerless Co. reported in MANU/SC/0073/1987 : [1987]2SCR1 this Court said:

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

25. We also derive sustenance from the position of law laid down in Balram Kumavat's case (supra) which reads as follows:

The courts strongly lean against any construction, which tends to reduce a statute to a futility....

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.

26. 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 v. Duncombe (1886) 11 AC 827. 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.

38. We do not think that in a case of this nature where the principles of law as enunciated herein before as also the doctrine of purposive construction, which have been discussed in details in India 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.

39. 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 v. Garware Nylons Ltd. AIR 1396 SC 3509 and Unwin v. Hanson 1331 (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.

40. 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 there from, poaching of Indian elephants and resultant illegal trade by extracting their tusks may not continue.

27. The above judgment of the Hon'ble Supreme Court is directly relevant as it deals with the interpretation of the present Wildlife Protection Act, 1972 and leaves us in no manner of doubt that the acceptance of the submission advanced by the learned Counsel for the petitioner would defeat the legislative intent and indeed lead to an untenable result contrary to the clear legislative intent of preservation of wildlife and the position of law summed up by the Hon'ble Supreme Court in its order dated 22nd November, 2005 and Balram Kumawat's judgment (supra). Thus, we find no merit in the pleas advanced by the learned Counsel for the petitioner. The writ petition is dismissed accordingly.

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