LETTERS PATENT APPEAL

Before Bhandari, C. J. and Chopra, J.

DEWA SINGH,—*Appellant*

versus

LAL SINGH AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 13(P) of 1951.

1958

April, 28th

Pepsu Judicature Ordinance (X of 2005 BK)—Section 52—Decision of a single Judge made in the exercise of revisional jurisdiction—Appeal from—Whether competent—Interpretation of statutes—Language of statute vague and contrary to the apparent purpose of the enactment—Rule of construction as to, stated.

Held, that an appeal under section 52 of Pepsu Ordinance No. X of 2005 Bk., against the decision of a single Judge passed in the exercise of the revisional jurisdiction of the High Court is not competent.

Held also, that where the language of statute in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammer, by giving an unusual meaning to particular words, by altering their collocation or by rejecting them altogether, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessary or the absolute intractability of the language used.

Tirath Singh v. *Bachittar Singh* (1), relied upon.

(1) A.I.R. 1955 S.C. 830.

Letters Patent Appeal under section 52 of Ordinance No. X of 2005, against the judgment of Hon'ble Mr. Justice Gurnam Singh of the Pepsu High Court, dated the 11th May, 1951, reversing that of Shri Daulat Ram Jain, District Judge, Barnala, dated the 24th February, 2006, whereby the decree of the Court of Shri Roshan Lal Narola, Sub-Judge, 2nd Class, Dhuri, dated 19th November, 2004, was affirmed, and dismissing the suit.

R. K. D. BHANDARI, for Appellant.

D. S. NEHRA, for Respondents.

JUDGMENT

Chopra, J.

CHOPRA, J.—These eight Letters Patent Appeals (13(P)/51, 9(P)/54, 40(P)/54, 9(P)/55, 27(P)/55, 57(P)/55, 58(P)/55 and 61(P)/56) were filed in the erstwhile High Court of Pepsu against orders passed by a learned Single Judge in exercise of the powers of civil revisional jurisdiction of that Court. An identical preliminary objection raised in these appeals is regarding their competency.

It is common ground between the parties that the matter in question is to be decided according to the law which, before its merger into the State of Punjab, obtained in Pepsu at the time the appeals were filed. Section 52 of the Pepsu Judicature Ordinance, 2005 (Ordinance No. X of 2005), which admittedly applies, reads :—

> "Subject to any other provision of law, an appeal shall lie to the High Court from a judgment, decree or order of one judge of the High Court and shall be heard by a Bench consisting of two judges of the High Court:
>
> Provided that no such appeal shall lie to the High Court unless the judge who decides the case or in his absence the Chief

Justice certifies that the case is a fit one for appeal:

Provided, further that no such appeal shall lie in respect of a judgment, decree or order made in the exercise of criminal appellate jurisdiction of the High Court or against a sentence or order passed or made in the exercise of the powers of superintendence over the subordinate judiciary and ministerial officers vested in the High Court."

The section, as it was printed and published in the Official Gazette, dated 10th Katik, 2005 Bk. (October 25, 1948), provides for an appeal to a Division Bench against a judgment, decree or order of one Judge of the High Court, on a certificate granted by the Judge or in his absence by the Chief Justice, except where the judgment, decree or order is made in exercise of criminal appellate jurisdiction or in exercise of the powers of superintendence vested in the High Court. The section, as it stands, does not make any exception in case of judgment, decree or order made in exercise of the civil or criminal revisional jurisdiction of the High Court. *Prima facie,* therefore, an appeal under this section would lie against the judgment, decree or order made by one Judge of the said High Court in the exercise of civil or criminal revisional jurisdiction of the Court.

On behalf of the respondents, it is contended that there must have been some mistake somewhere in the drafting or printing of the second proviso to the section, otherwise it would never have been the intention of the Legislature to provide for an appeal against an order made by a Single Judge in exercise of the criminal or civil revisional jurisdiction of the High Court. That would mean a

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departure from the powers under the Letters Patent of all other High Courts in India, for which there was no possible reason. In my view, the contention is not without force and it has to be accepted. A simple reading of the second proviso to section 52 gives the impression of there being something missing, without the insertion of which the proviso fails to convey the complete sense. No decree can ever be passed in the exercise of the criminal appellate jurisdiction of the High Court; use of the term 'decree' in conjunction with 'judgment' or 'order' is un-understandable. It does not stand to reason that while excluding the right of appeal against a criminal appellate order, the section would provide for an appeal against an order passed by the Single Judge on a criminal revision. Again, a sentence or order passed or made in the exercise of the powers of superintendence would not be open to appeal, but an order made in a petition for revision would be appealable. A brief history of the legislation will make it abundantly clear that this manifest contradiction or any departure from the powers under the Letters Patent of other High Courts in India was never intended, and that it is a case of an inadvertent error of the draftsman or the printer.

On the formation of the State of Pepsu on 20th August, 1948, with a view to bring about uniformity of laws in the territories of the said State, all Laws, Ordinances, Rules, etc., then in force in Patiala State were made applicable to the newly formed State. This was laid down by section 3 of the Pepsu Administration Ordinance, No. 1 of 2005 Bk. In Patiala State, the law on the subject was contained in Patiala Judicature Farman, 1999, and its section 44 lays down—

> "Subject to the other provisions of law, an appeal shall lie to the High Court from

the judgment, decree or order of one Judge of the said High Court and shall be heard by a Bench consisting of two Judges of the High Court ;

Provided that no appeal shall lie to the High Court if such judgment, decree or order has been made in exercise of civil appellate jurisdiction in respect of a judgment, decree or order made by a Court subject to the superintendence of the said High Court unless the Chief Justice or the Judge who decides the case declares that the case is a fit one for appeal ;

Provided further that no such appeal shall lie in respect of a judgment, decree or order made in the exercise of the revisional jurisdiction or in exercise of criminal appellate jurisdiction of the said High Court or against a sentence or order passed or made in the exercise of the powers of superintendence over the subordinate Judiciary and Ministerial officers vested in the said High Court."

It is thus clear that the law in Patiala State which was to be the law for the State of Pepsu, did not provide for an appeal against a judgment, decree or order made by a Single Judge in the exercise of revisional jurisdiction of the High Court.

The High Court of Pepsu was established by another Ordinance (No. II of 2005 Bk.) of the same date, viz., 20th August, 1948. Section 21 of this Ordinance relates to the appellate jurisdiction of the High Court, and subsection (4) of this section is a verbatim copy of section 44 of the Patiala Judicature Farman, 1999, reproduced above.

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The Patiala Judicature Farman, 1999, and the Pepsu High Court Ordinance (No. II of 2005 Bk.) were repealed by section 119 of Ordinance No. X of 2005 Bk., which came into force on 25th October, 1948. It is section 52 of this Ordinance which is now in question. The second proviso of this section is exactly the same as the second proviso of section 44 of the Patiala Judicature Farman, 1999, and that of section 21(4) of the Pepsu High Court Ordinance (No. II of 2005 Bk.), except for the omission of the phrase "in the exercise of the revisional jurisdiction or".

It is a matter of common knowledge that attempt was always made to bring the laws of erstwhile State of Patiala and those of Patiala and the East Punjab States Union in conformity with the laws in force in the Punjab. It may, therefore, be useful to notice that the powers of the High Court in this connection in the earlier enactment of the Patiala State and that of the State of Pepsu were the same as those granted by Clause 10 of the Letters Patent of the Lahore High Court.

Omission of the phrase "in exercise of the revisional jurisdiction or" in the second proviso of section 52 of the Pepsu Judicature Ordinance seemed to us to have been due to some accidental mistake of the draftsman. In order to clarify our doubts we sent for the relevant records from the Law Department. A persual of the same leaves no doubt in my mind that it was purely an accidental omission, occasioned by a typographical mistake. The Law Department discovered this mistake sometimes after the publication of the Ordinance and prepared a bill for rectification of the omission. For certain reasons, the bill could not be enacted till the State of Pepsu merged with the State of Punjab.

The question at once arises, is it competent for this Court to take notice of the mistake and not to apply the law as officially published ? On behalf of the appellants, it is contended that it is not competent to any Court to proceed upon the assumption that Parliament has made a mistake, there being a strong presumption that Parliament does not make mistakes. If blunders are found in legislation, they must be corrected by the Legislature, and it is not the function of the Court to repair them. It is certainly correct that when the language of a statute is not only plain but admits of but one meaning, the task of interpretation can hardly be said to arise. The rule of construction is "to intend the legislature to have meant what they have actually expressed." It matters not, in such a case, what the consequences may be. Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the Legislature, it must be enforced, even though it be absurd or mischievous. But as already observed, the language of the second proviso of section 52 is by no means clear and free from ambiguity ; it is faulty and un-understandable in certain respects. Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammer, by giving an unusual meaning to particular words, by altering their collocation, or by rejecting them altogether, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus

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made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. (Interpretation of Statutes by Maxwell, 10th Edition, P. 229). This well-recognised principle of interpretation of statute received the approval of their Lordships in *Tirath Singh* v. *Bachittar Singh and others* (1). The point for decision in this case was, whether it was obligatory on the part of the Election Tribunal to issue notice to *the parties* to the Election Petition, before recording a finding under section 99(1)(a) of the Representation of the People Act, 1951. It was contended that under section 99(1)(a) the Tribunal has to record the names "of all persons" who are proved to have been guilty of corrupt or illegal practice and that that would include both parties to the petition as well as non-parties. If the language of the enactment is interpreted in its literal and grammatical sense, there could be no escape from the conclusion that parties to the petition are also entitled to notice under the proviso. This was not regarded as the real intention of the Legislature. Venkatarama Ayyar, J., relying upon the general maxims of interpretation of statutes arrived at the following conclusions :—

> "Reading the proviso along with clause (b) thereto, and construing it in its setting in the section, we are of opinion that notwithstanding the wideness of the language used, the proviso contemplates notice only to persons who are not parties to the petition."

(1) A.I.R. 1955 S.C. 830.

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For all these reasons, I am of opinion that an appeal under section 52 of Ordinance No. X of 2005 Bk. against the decision of a Single Judge in the exercise of revisional jurisdiction of the Pepsu High Court would not be competent.

A distinction was sought to be made out by Mr. Dalip Chand, learned counsel for the appellant, in Letters Patent Appeal No. 9 of 1954, on the ground that the matter related to execution, discharge or satisfaction of a decree and since it arose between the parties, an oppeal to the High Court was competent under section 47 of the Code of Civil Procedure. The case was in fact taken to the High Court in revision and the order of the learned Single Judge is also clear that he set aside the order of the District Judge in exercise of his revisional jurisdiction. We cannot at this stage go into the question whether an appeal could or should have been filed.

In the result, the appeals fail and are dismissed Parties are directed to bear their own costs.

Bhandari, C. J.

BHANDARI, C.J.—I agree.