

*Before S.J. Vazifdar, CJ. & Arun Palli, J.*

**M/S HARCHAND SINGH GIAN SINGH** — *Petitioner*

*versus*

**STATE OF PUNJAB AND OTHERS** — *Respondents*

**CWP No. 15928 of 2014**

May 20, 2016

*A. Constitution of India, 1950 — Arts. 14, 19 & 226 — Punjab State Agricultural Marketing Board (Sale and Transfer of Plots) Rules, 1999 — R.3(iii) Proviso — Prior to the Explanation being added w.e.f. 17.1.2014 — One of the eligibility criteria for allotment — Licensee should have transacted business of an amount not less than Rs. 5 lakhs per annum during last three years — Proviso did not stipulate the location from which such business had been transacted — Business transacted from an authorised i.e. notified sub-market yard etc. would fall within the ambit of the proviso — In determining the volume of an applicant's business, transactions at a notified sub-yard or a purchase centre or any additional yard could be clubbed with transactions in the old market yard from where the applicant operated under a valid licence prior to its de-notification.*

*Held*, that the proviso to Rule 3(iii) stipulates that only those licensees shall be eligible for allotment who had transacted business for an amount not less than rs.5 lacs per annum during the last three year It did not stipulate the location from which such business had been transacted. The business transacted from an authorised, to wit, a notified submarket yard, etc., would fall within the ambit of the proviso to Rule 3(iii). A view to the contrary would require the proviso to be re-written by adding to it the words “from the principal market” after the words “Provided only those licensees shall be eligible for allotment of plots, who have transacted the business of sale and purchase of agricultural produce ..... .” The purpose of Rule 3 was to re-locate and accommodate the licensees of the old de-notified grain market in the new grain market on account of the old grain market being de-notified. The sub-yards, etc. have not been denotified. The petitioner would, therefore, be entitled to continue to operate from the notified sub-yards. They would, however, cease operating from the de-notified principal market yard in any event upon being allotted premises in the new market yard.

In the circumstances, prior to the amendment of Rule 3(iii) by the insertion of the Explanation thereto, in determining the volume of an applicant's business, the value of the transactions at a notified sub-yard or a purchase centre or any additional yard could be clubbed with transactions in the old market yard from where the applicant operated under a valid licence prior to its de-notification.

(Paras 22 and 23)

***B. Constitution of India, 1950 - Art. 226 — Punjab State Agricultural Marketing Board (Sale and Transfer of Plots) Rules, 1999 — R.3(iii) — Explanation (w.e.f. 17.1.2014) — If an explanation can expand a definition, it can equally restrict it — Explanation restricted the eligibility criteria of licensees of de-notified markets entitled to premises in the new market — Not expressly made retrospective — Nothing in its plain language that makes it retrospective — No reason to hold that it is retrospective by necessary intendment — Explanation is prospective and not retrospective.***

*Held*, that if an explanation can expand a definition, it can equally restrict it. In the case before us, the explanation has restricted the eligibility criteria. Further, if it can expand a definition, it can also expand any other aspect of the definition. It would follow again that if it can expand any other aspect of the enactment, it can equally restrict it. This is what has been done by the Explanation in Rule 3(iii) of the said 1999 rules. The explanation has restricted the eligibility criteria of licensees of de-notified markets being entitled to premises in the new market.

(Para 37)

*Further held*, that the main provision read by itself did not exclude the business undertaken by a licenced firm in a sub-yard, etc. The explanation, however, in terms excludes the same while determining the eligibility of an-applicant to be allotted premises in the new grain market. This was a substantive enactment contrary to the original-provision. The explanation is not expressly made retrospective. There is nothing in its plain language that-makes it retrospective. Nor do we find any reason to hold that-it is retrospective by necessary intendment. Our attention has not been invited to any material in this regard on behalf of-the respondents.

(Para 44)

*Further held*, that the explanation to Rule 3(iii) of the said 1999 rules is prospective and not retrospective. The petitioner is entitled to

have its rights determined in accordance with Rule 3(iii) as it stood prior to the amendment, to wit, without reference to the Explanation.

(Para 43)

R.S. Rangpuri, Advocate, *for the petitioner.*

Rajinder Goyal, Addl. A.G., Punjab.

Anish Batra, Advocate, for respondent No. 2 to 4.

### **S.J. VAZIFDAR, ACTING CHIEF JUSTICE**

(1) One Gian Singh carries on business in the firm name and style of the petitioner and as the sole proprietor thereof.

(2) The petitioner has sought a writ of certiorari to quash an order dated 28.04.2014 passed by respondent No.1, an order dated 30.04.2013 and an order dated 18.10.2011 passed by respondent No.3 whereby its claim for the allotment of a plot/shop site in the New Grain Market on a preferential basis has been rejected. The petitioner has also sought a writ of certiorari to quash a notification dated 17.01.2014 by which an explanation to Rule 3(iii) of the Punjab State Agricultural Marketing Board (Sale and Transfer of Plots) Rules, 1999 (hereinafter to be referred to as "the 1999 rules") has been 1 of inserted. The petitioner has sought a consequential order directing the respondents to allot in his favour a shop in the New Grain Market. The petitioner claims to be entitled to a plot/shop in the New Grain Market on the basis of his having been a licensee in the old grain market.

(3) The case in brief is this. The petitioner was a licensee in the old grain market, which was de-notified. He also carried on his business from a notified sub-yard. Upon de-notification of the principal market yard, the petitioner claims to be entitled, under a policy of the State of Punjab, to be allotted premises in the New Grain Market. One of the conditions of eligibility for allotment of premises in the New Grain Market was that the licensee should have transacted business of sale and purchase of agricultural produce for an amount not less than Rs.5 lacs per annum during the last three years. The petitioner would be eligible only if his business in the de-notified principal market yard is clubbed with the business transacted at the notified sub-yard. The respondents, however, contend that such clubbing is not permissible while determining the volume of business transacted by the licensee.

(4) The first question, therefore, is whether the main part of Rule-3 of the 1999 rules permitted clubbing. We have come to the conclusion that Rule-3 permitted such clubbing.

(5) By an amendment, an explanation was inserted which did not permit clubbing. The second question, therefore, is whether the explanation is retrospective or only prospective. We have come to the conclusion that the explanation is prospective for it affects the substantive rights of parties.

(6) A licence dated 09.12.2002 was issued in favour of the petitioner which was valid till 31.03.2005. It was renewed lastly up to 31.03.2011. The licence was issued in respect of several trades including as a merchant, Kacha Arhtia, Arhtia, godown keeper, processor and for sale and purchase. The licence stipulated Shop No.1723, Grain Market, Gidderbaha, as the place of trade.

(7) On 10.01.2008, respondent No.2-Punjab State Marketing Board (Punjab Mandi Board) invited applications from licensees of the Old Grain Market for allotment of plot/shop sites in the New Grain Market in accordance with the provisions of the said 1999 rules as amended up to 2008. The petitioner applied for the same. Respondent No.2, by a letter dated 23.05.2011, stated that the petitioner did not fulfil several conditions. The petitioner was afforded an opportunity of replying to this notice which he did by his letter dated 04.06.2011.

(8) By an order dated 18.10.2011, passed by respondent No.3-Estate Officer, Punjab Mandi Board, the petitioner was declared ineligible for the allotment of a plot on the ground that the petitioner had not carried on the business of Kacha Arhtia at the Old Grain Market from 10.01.2005 to 09.01.2008 and that the petitioner's claim of having transacted business of Rs.5 lacs per year during the previous three years at the old market did not tally with the record of the Market Committee. It was held, therefore, that the petitioner did not fulfil the condition of having transacted business of at least Rs.5 lacs per annum for the period of three years preceding the date of the demand of applications i.e. 10.01.2008. The application was, therefore, rejected on the ground that the petitioner did not fulfil the criteria stipulated in Rule 3(iii) of the said 1999 rules.

(9) Rule 3(iii) of the said 1999 rules, as it stood prior to the amendment which introduced the explanation, read as under:-

“3.Sale of plots.-[Sections 43 and 18 of Punjab Act 23 of 1961] All plots in the markets developed by the Board or

committee shall be disposed of by way of open auction or allotment in accordance with the provisions of these rules.

Provided that not more than fifty per cent of the available plots shall be disposed of by way of allotment and the process of allotment shall be completed before conducting the sale by auction.

Provided further that the plots will be allowed to the licensed dealers of old market which are de-notified resulting in displacement of such licensed dealers on free-hold basis for conducting business of purchase of (sic) sale of agricultural produce in the new markets on the following terms and conditions, namely:-

(i). ....

(ii) . ....

(iii) Only those licensees shall be eligible for allotment of plots on the price, specified in clauses (i) and (ii), who have been granted licenses in the old de-notified markets for a minimum period of three years before the date of allotment. Such licenses must have submitted returns in Form M appended to the Punjab Agricultural Produce Markets (General) Rules, 1962 for all three years or such licensee shall have to furnish adequate proof of working in the de-notified old markets. In accordance with the provisions of Form 'H' and Form 'J' as specified in the Punjab Agricultural Produce Markets (General) Rules, 1962 read with the provisions of Form "F", as specified in the bye-laws of the Market Committee for the aforesaid period of three years. The period of three years referred to above shall be counted with effect from the date of notice inviting applications for allotment.

Provided that only those licensees shall be eligible for allotment of plots, who have transacted the business of sale and purchase of agricultural produce for an amount, not less than five lacs rupees per annum during the last three years."

(10) The petitioner's appeal against the order was disposed of by an order of the appellate authority dated 24.07.2012. The matter was remanded to the Estate Officer with a direction to pass a speaking order afresh. The order also stated that the appeal was disposed of in terms of

an order dated 24.07.2012 passed in another appeal in the case of M/s Kisan Pesticides, Gidderbaha, stating that the case was identical to the present case.

(11) The order in M/s Kisan Pesticide's appeal has been furnished. It appears that in that case the allegations were made that through collusion the figures of the extent of business were manipulated in connivance with certain officers. There was a direction, therefore, for a proper investigation to be carried out.

(12) In the present writ petition, the respondents have not contended that the figures have been manipulated. It has only been contended that the business carried on in the sub- market yard, etc. cannot be clubbed with the business carried out in the principal market.

(13) Upon remand, the Estate Officer, respondent No.3 once again rejected the petitioner's application on the ground that the petitioner had not fulfilled the condition of having business transactions of Rs.5 lacs per annum from 10.01.2005 to 09.01.2008. It was observed that a Committee was constituted to examine the facts of the cases remanded by the appellate authority and that the report of the Committee in the petitioner's case tallied with the record of the Market Committee. It was also observed that the petitioner's business transactions during the relevant period were of the Purchase Centre of Lalbai of the Market Committee and not of the Principal Market Yard of the Committee and that the transactions at the two locations could not be clubbed in order to ascertain whether the petitioner fulfilled the eligibility criteria under Rule 3 of the 1999 rules. The petitioner's application was accordingly rejected.

(14) The applications of the other applicants, who were also licensees in the old market, seeking similar benefits under the same rules, were rejected. They challenged this rejection by filing CWP No.20236 of 2011 titled as M/s Parkash Chand Mehar Chand vs. State of Punjab and others and CWP No.6127 of 2011 titled: ***M/s Brar Trading Company versus State of Punjab and others***, which were disposed of by an order and judgment of the Division Bench dated 14.02.2013. The question that fell for consideration was whether the value of the business carried on by the petitioners therein in the Sub-Market Yard can be added to the total value of the business for the relevant years to determine their eligibility for allotment of plots at a concessional rate in the new market. The petitioners therein contended that a sub-yard is an integral part of the principal market and both the businesses are liable to be clubbed together.

(15) The respondents, on the other hand, denied this contention and submitted that proof of requisite business is to be determined on the basis of returns in Form-M, J-Form, I and H-Register which are issued separately for the principal market and sub-market yard. The Division Bench noted that as per Rule 17(5) of the Punjab Agricultural Produce Market (General) Rules, 1962 (for short, "the 1962 rules"), a separate licence was required for establishing and continuing the business at more than one place. It necessarily meant that a separate licence was required for a sub-yard. It was further noted that Rule 17(5) was omitted by a notification dated 30.03.1993 by the Punjab Government. After the notification, the licence used for the principal market yard is valid to carry on business in a sub-yard also. The Division Bench disposed of the writ petition in the following terms:-

"In the absence of an express exclusion clause in the Rules for not taking into account the business undertaken by a licenced firm in a sub-yard under the same licence which is granted for the old denotified grain market, we are of the considered view that the question of eligibility of firms like the petitioner requires re-determination by the rule making Authority, namely, the State Government in active consultation with the Punjab Mandi Board. Consequently and for the afore-stated purpose, these writ petitions are allowed to the extent that the order dated 15.2.2010 (Annexure P-9) passed by the State Government in exercise of its revisional powers under the Act is set aside and the matter is remitted to the Principal Secretary to Government of Punjab, Department of Agriculture, to take a uniform policy decision in prior consultation with the Punjab Mandi Board and then determine the eligibility of the petitioner or other similarly placed firms. The needful shall be done as early as possible preferably within a period of four months from the date of receipt of certified copy of this order."

(16) Subsequently, the Government of Punjab issued a notification dated 17.01.2014 in exercise of powers under Section 43 read with Section 18 of the Punjab Agricultural Produce Markets Act, 1961 ((hereinafter to be referred to as "the 1961 Act"), whereby the Governor of Punjab made rules further to amend the 1999 rules by the Punjab State Agricultural Marketing Board (Sale and Transfer of Plots) (Amendment) Rules, 2014, which came into force with

immediate effect i.e. 17.01.2014. In Rule 3(iii), after the proviso, the following explanation was inserted.

"Explanation: The transactions made by a licensee in a notified sub-yard or a purchase centre or any additional yard, as the case may be, shall not be clubbed with any transaction in a de-notified old market yard, for the purpose of computing the above amount, to determine the eligibility for allotment of a plot under these rules."

(17) If the explanation is applicable, the petitioner would not be eligible to be allotted a plot in the New Grain Market. Two questions, therefore, arise. The first is, whether Rule 3(iii), as it stood prior to its amendment by the insertion of the Explanation, permitted the clubbing of the business at a notified sub-yard, etc. and the business carried on in the de-notified old market yard. If the answer to this question is in the negative, the petition is liable to be dismissed for the petitioner would then admittedly be ineligible to be allotted a plot under the said 1999 rules. If, however, the question is answered in the affirmative, the next question would be whether the explanation has retrospective effect? If the explanation has retrospective effect, the petitioner would certainly be ineligible. If not, the petitioner would be eligible.

(18) The petitioner must, therefore, succeed in establishing that Rule 3(iii) prior to the amendment permitted the transactions at notified sub-yards etc. to be clubbed with the transactions at the de-notified old market yard and that the Explanation has only prospective and not retrospective effect.

(19) The first question, therefore, is whether Rule 3(iii) prior to its amendment permitted the licensees transactions in a notified sub-yard or a purchase centre or any additional yard to be clubbed with the transactions in a de-notified old market yard for the purpose of computing the volume of business referred to in Rule 3(iii).

(20) Sections 2(n) and 7 of the 1961 Act read as under:-

“2. Definitions.- In this Act, unless the context otherwise requires,-

(a) to (m) ..... ..

(n) “principal market yard” and “sub-market” yard means an enclosure, building or locality declared to be a principal market yard and sub-market yard under section 7;



.....

7. Declaration of market yards.- (1) For each notified market area, there shall be one principal market yard, one or more sub-market yards and one or more private market yards as may be necessary.

(2) The State Government may, by notification, declare any enclosure, building or locality in any notified market area to be principal market yard for the area and other enclosures, buildings or localities to be one or more sub-market yards or one or more private market yards for the area.

(3) Every person or company or co-operative society, as the case may be, desiring to obtain a licence for private market yard, shall apply to such authority, in such manner and with such fee, as may be prescribed."

(21) We referred earlier to Rule 17(5) of the 1962 rules and that, with effect from 30.03.1999, the requirement of a separate licence to operate from a sub-market yard, etc. was done away with. The first requirement under Rule 3(iii) of the 1999 rules, to be eligible for allotment of a plot in the new market, is that a licensee had been granted a licence in the old de-notified market. That the petitioner had. With effect from 30.03.1999, it was not necessary for a person to obtain a separate licence for operating from a notified sub-market yard, etc. A licence in respect of the principal market yard entitled a person to operate from a sub-market yard, etc. as well.

(22) The proviso to Rule 3(iii) stipulates that only those licensees shall be eligible for allotment who had transacted business for an amount not less than Rs.5 lacs per annum during the last three years. It did not stipulate the location from which such business had been transacted. The business transacted from an authorised, to wit a notified sub- market yard, etc., would fall within the ambit of the proviso to Rule 3(iii). A view to the contrary would require the proviso to be re-written by adding to it the words "from the principal market" after the words "Provided only those licensees shall be eligible for allotment of plots, who have transacted the business of sale and purchase of agricultural produce ..... .... ." The purpose of Rule 3 was to re-locate and accommodate the licensees of the old de-notified grain market in the new grain market on account of the old grain market being de-notified. The sub-yards, etc. have not been de- notified. The petitioner

would, therefore, be entitled to continue to operate from the notified sub-yards. They would, however, cease operating from the de-notified principal market yard in any event upon being allotted premises in the new market yard.

(23) In the circumstances, prior to the amendment of Rule 3(iii) by the insertion of the Explanation thereto, in determining the volume of an applicant's business, the value of the transactions at a notified sub-yard or a purchase centre or any additional yard could be clubbed with transactions in the old market yard from where the applicant operated under a valid licence prior to its de-notification.

(24) This brings us to the question as to whether the Explanation is retrospective or only prospective.

(25) There is a presumption against retrospective operation of a statute. A statute which affects substantive rights is presumed to be prospective in operation unless it is made retrospective expressly or by necessary intendment. Further, if the enactment is capable of either interpretation, it ought to be construed as being prospective and not retrospective. It is sufficient, in this regard, to merely note the judgment of a Constitution Bench of the Supreme Court in *Shyam Sunder and another versus Ram Kumar and another*<sup>1</sup>.

(26) We do not find the explanation to be retrospective. It is certainly not made retrospective expressly. The plain language does not suggest that it is retrospective. Nor do we find it to be retrospective by necessary intendment. The language of the explanation does not indicate it to be clarificatory of the Rule as it stood. Nor does the explanation remove the basis for the interpretation of the section.

(27) Mr. Goyal relied upon the following observations of the Constitution Bench of the Supreme Court in Shyam Sunder's case (supra) to contend that the explanation introduced by an amendment must always and of necessity be considered to have retrospective effect:-

"42. G.P. Singh on Principles of Statutory Interpretation quoting Craies stated thus:

"For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts

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<sup>1</sup> (2001)8 SCC 24

are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word "declared" as well as the word "enacted". But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form.

If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended."

43. *In Keshavlal Jethalal Shah* versus *Mohanlal Bhagwandas* 1969 R.C.R. (Rent) 123: 1968(3) SCR 623, this Court while interpreting Section 29(2) of the amending Act, held thus:

"An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. Section 29(2) before it was enacted was precise in its implication as well as in its expression; the meaning of the words used was not in doubt, and there was no omission in its phraseology which was required to be supplied by the amendment."

(28) It is important to note that in both the paragraphs, the Supreme Court held that retrospectivity is to be attributed in such cases "generally". We do not consider the Supreme Court as having held that an explanation is always clarificatory, curative or merely declaratory of the previous law and, therefore, retrospective operation must always be given to an explanation introduced to legislation by an amendment.

(29) Mr. Goyal's reliance upon the judgment of three learned Judges of the Supreme Court in the case of *Zile Singh versus State of*

**Haryana**<sup>2</sup>, does not support his contention either. He relied upon paragraph-13 which reads as under:-

"13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only -- "nova constitutio futuris formam imponere debet non praeteritis" -- a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid., p. 440)."

(30) There is no doubt that the presumption against retrospectivity may be rebutted by necessary implication. The question is whether the explanation in the case before us can be said to be retrospective by necessary implication.

(31) The judgments, we will now refer to, were not cited at the bar. We, therefore, invited the attention of the Counsel to these judgments and invited their submissions in respect thereof.

(32) **In Sedco Forex International Drill Inc. and others versus Commissioner of Income Tax, Dehradun and another**<sup>3</sup>, Section 9(1)(ii) of the Income Tax Act, 1961, fell for consideration. Section 9 of the Income Tax Act defined income "deemed to accrue or arise in India". Section 9(1)(ii) provided that income which falls under the head "salary", if it is earned in India, is included in such income. To overcome a decision of the Gujarat High Court in **CIT versus S.G. Pgnatale**<sup>4</sup>, section 9(1)(ii) was amended by inserting the following explanation:-

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<sup>2</sup> 2004(8) SCC 1

<sup>3</sup> (2005) 12 SCC 717

<sup>4</sup> (1980) 124 ITR 391 (Guj)

"Explanation.--For the removal of doubts, it is hereby declared that income of the nature referred to in this clause payable for service rendered in India shall be regarded as income earned in India."

(33) It is important to note that the explanation opened with the words "For the removal of doubts .... .....". In the case before us, these words are absent. Despite the same, the Supreme Court held that the explanation could not apply to the previous assessment years. It was held as follows:-

"10. In our view the 1999 Explanation could not apply to assessment years for the simple reason that it had not come into effect then. Prior to introducing the 1999 Explanation, the decision in *CIT* versus *S.G. Pgnatale* [(1980) 124 ITR 391 (Guj)] was followed in 1989 by a Division Bench of the Gauhati High Court in *CIT* versus *Goslino Mario* [(2000) 241 ITR 314 (Gau)] . It found that the 1983 Explanation had been given effect from 1-4-1979 whereas the year in question in that case was 1976-77 and said: (ITR p. 318)

"[I]t is settled law that assessment has to be made with reference to the law which is in existence at the relevant time. The mere fact that the assessments in question has (sic) somehow remained pending on 1-4-1979, cannot be cogent reason to make the Explanation applicable to the cases of the present assesseees. This fortuitous circumstance cannot take away the vested rights of the assesseees at hand."

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18. There was and is no ambiguity in the main provision of Section 9(1)(ii). It includes salaries in the total income of an assessee if the assessee has earned it in India. The word "earned" had been judicially defined in *S.G. Pgnatale* [(1980) 124 ITR 391 (Guj)] by the High Court of Gujarat, in our view, correctly, to mean as income "arising or accruing in India". The amendment to the section by way of an Explanation in 1983 effected a change in the scope of that judicial definition so as to include with effect from 1979, "income payable for service rendered in India".

19. When the Explanation seeks to give an artificial meaning to "earned in India" and brings about a change effectively in the existing law and in addition is stated to

come into force with effect from a future date, there is no principle of interpretation which would justify reading the Explanation as operating retrospectively."

(emphasis supplied)

(34) This judgment clearly militates against Mr. Goyal's extreme proposition that an explanation always has a retrospective effect. It also militates against his submission that an explanation introduced by an amendment always and of necessity only explains or clarifies what the main section always meant.

(35) *In Government of Andhra Pradesh and another versus Corporation Bank*<sup>5</sup>, the Supreme Court held:-

"12. In construing a statutory provision, the first and foremost rule of construction is the literal construction. If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction. The other rules of construction are invoked when the legislative intent is not clear. *In Bihta Co-op. Development and Cane Marketing Union Ltd. v. Bank of Bihar* [AIR 1967 SC 389] this Court was called upon to consider Explanation to Section 48(1) of the Bihar and Orissa Cooperative Societies Act, 1935. This Court observed that the Court should not go only by the label. The Court observed that an explanation must be read ordinarily to clear up any ambiguity in the main section and it cannot be construed to widen the ambit of the section. However, if on a true reading of an Explanation it appears to the Court in a given case that the effect of the Explanation is to widen the scope of the main section then effect must be given to the legislative intent. It was held that in all such cases the Court has to find out the true intention of the legislature. Therefore, there is no single yardstick to decide whether an Explanation is enacted to clarify the ambiguity or whether it is enacted to widen the scope of the main section. On the facts it was held that before the 1948 Amendment to the Bihar and Orissa Cooperative Societies Act, 1935, there was an Explanation on the statute-book and the subsequent Explanation was only to clarify the earlier Explanation and, therefore, the Court held that the purpose of the subsequent

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<sup>5</sup> (2007) 9 SCC 55

Explanation was not to enlarge the scope of Section 48(1)(e) in the Bihar and Orissa Cooperative Societies Act, 1935. In the present case prior to amending Act 27 of 1996, there was no Explanation covering banks, LICs, etc. As stated above, Explanation IV was added for the first time by the said amending Act 27 of 1996. The definition of the word "dealer" thus stands expanded by the said amending Act 27 of 1996. In our view, therefore, Explanation IV was not to clear any doubt or ambiguity. It has been enacted in order to expand the definition of the word "dealer" in Section 2(1)(e) of the 1957 Act." (emphasis supplied)

(36) An explanation is not necessarily or always to clear a doubt or ambiguity. It can alter the scope and ambit of the main section substantially. When, therefore, by an amendment an explanation is added it would be necessary to examine whether it affects the main section.

(37) In our view, if an explanation can expand a definition, it can equally restrict it. In the case before us, the explanation has restricted the eligibility criteria. Further, if it can expand a definition, it can also expand any other aspect of the definition. It would follow again that if it can expand any other aspect of the enactment, it can equally restrict it. This is what has been done by the Explanation in Rule 3(iii) of the said 1999 rules. The explanation has restricted the eligibility criteria of licensees of de-notified markets being entitled to premises in the new market.

(38) Our view is supported by a judgment of the Supreme Court in *S. Sundaram Pillai versus V.R. Pattabiraman*<sup>6</sup>. The Supreme Court referred to an earlier judgment of the Supreme Court in *Hiralal Rattanlal versus State of U.P.*<sup>7</sup> where it was held:-

"On the basis of the language of the Explanation this Court held that it did not widen the scope of clause (c). But from what has been said in the case, it is clear that if on a true reading of an Explanation it appears that it has widened the scope of the main section, effect be given to legislative intent notwithstanding the fact that the Legislature named that provision as an Explanation."

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<sup>6</sup> 1985(1) SCC 591

<sup>7</sup> (1973) 1 SCC 216

(39) The Supreme Court, therefore, recognized that an explanation can widen the scope of the main section and in that event effect must be given to the legislative intent, even though the provision is termed as explanation. This judgment was cited by Mr. Goyal, but it does not support his submissions in respect of the ambit of an explanation introduced by an amendment.

(40) The judgment of the Supreme Court in *Sulochana Amma versus Narayanan Nair*<sup>8</sup>, cited by Mr. Goyal, also supports the view taken by us and not his submissions in respect of an explanation. In paragraph 8, the Supreme Court held:-

"8. It is settled law that explanation to a section is not a substantive provision by itself. It is entitled to explain the meaning of the words contained in the section or clarify certain ambiguities or clear them up. It becomes a part and parcel of the enactment. Its meaning must depend upon its terms. Sometimes it would be added to include something within it or to exclude from the ambit of the main provision or some condition or words occurring in it. Therefore, the explanation normally should be so read as to harmonise with and to clear up any ambiguity in the same section." (emphasis supplied)

(41) *In Union of India and others versus Martin Lottery Agencies Limited*<sup>9</sup>, the Supreme Court expressly held, in paragraph-50, that a substantive law may be introduced by an explanation and, in that event, it would not have retrospective effect.

Paragraphs-34, 50 and 52 read as under:-

"34. No doubt, the Explanation begins with the words "for removal of doubts". Does it mean that it is conclusive in nature? In law, it is not. It is not a case where by reason of a judgment of a court, the law was found to be vague or ambiguous. There is also nothing to show that it was found to be vague or ambiguous by the executive. In fact, the Board circular shows that invocation of sub-clause (ii) had never been in contemplation of the taxing authorities.

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<sup>8</sup> 1994(2) SCC 14

<sup>9</sup> (2009) 12 SCC 209



50. It is, therefore, evident that by reason of an explanation, a substantive law may also be introduced. If a substantive law is introduced, it will have no retrospective effect. The notice issued to the assessee by the appellant has, thus, rightly been held to be liable to be set aside.

.....

52. As stated hereinbefore, for the aforementioned purpose, the expressions like "for the removal of doubts" are not conclusive. The said expressions appear to have been used under assumption that organizing games of chance would be rendition of service. We are herein not concerned as to whether it was constitutionally permissible for Parliament to do so as we are not called upon to determine the said question but for our purpose, it would suffice to hold that the Explanation is not clarificatory or declaratory in nature."

(42) It is clear beyond doubt, therefore, that an explanation introduced by an amendment is not always retrospective. It may be prospective or retrospective. If it is merely clarificatory of the original enactment or for the removal of doubts as to any misunderstanding of the original enactment, it would be retrospective. Further, as observed in the last sentence in paragraph-33, if by reason of an explanation, the taxing net has been widened, it cannot be held to be retrospective in operation. In our view, conversely, if by reason of an explanation, the original provision is curtailed, it cannot be held to be retrospective in operation. This would be so especially where substantive rights of a party are dealt with.

(43) The Explanation introduced to Rule 3(iii) of the said 1999 rules by the amendment was not necessitated on account of any confusion or doubt about the ambit of the main section. The judgment of the Division Bench did not notice any ambiguity in the provisions of the main section. The Division Bench merely opined that the question of eligibility of firms, such as, the petitioners therein required a re-determination by the rule making authority, namely, the State Government. In fact, the opening part of the sentence which expresses this view stated that in the absence of an express exclusion clause in the rules for not taking into account the business undertaken by a licenced firm in a sub-yard under the same licence, which is granted for the old de-notified grain market, the question of eligibility required re-determination. This would indicate that the Division Bench was of the view that in the absence of an express exclusion, the business

undertaken in the sub-yard cannot be excluded. In any event, the Division Bench required the State Government to re-determine the issue and not to clarify the provision.

(44) We held earlier that the main provision read by itself did not exclude the business undertaken by a licenced firm in a sub-yard, etc. The explanation, however, in terms excludes the same while determining the eligibility of an applicant to be allotted premises in the new grain market. This was a substantive enactment contrary to the original provision. The explanation is not expressly made retrospective. There is nothing in its plain language that makes it retrospective. Nor do we find any reason to hold that it is retrospective by necessary intendment. Our attention has not been invited to any material in this regard on behalf of the respondents.

(45) In the circumstances, it is held that the explanation to Rule 3(iii) of the said 1999 rules is prospective and not retrospective. The petitioner is entitled to have its rights determined in accordance with Rule 3(iii) as it stood prior to the amendment, to wit, without reference to the Explanation. The impugned orders are, therefore, quashed and set aside. The respondents shall determine the petitioner's eligibility accordingly by 31.08.2016.

(46) The writ petition is accordingly disposed of.

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*V. Suri*