

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 21st November, 2012

Date of Pronouncement: 19th December, 2012.

+ W.P.(C) 2942/2012

RAM GOPAL SINGH SISODIA Petitioner

Through: Mr.R.K. Kapoor, Adv. with
Ms.Shweta Kapoor, Adv.

versus

UNION OF INDIA THROUGH: ITS SECRETARY & ORS.

..... Respondents

Through: Mr.Rajeeve Mehra, ASG with
Mr.Neeraj Chaudhari, CGSC, Mr.Ashish Virmani,
Mr.Aditya Malhotra, Mr.Ravjyot, Adv. for UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

: **D.MURUGESAN, CHIEF JUSTICE**

1. This writ petition in the form of pro bono publico petition has been filed by one Sh.Ram Gopal Singh Sisodia seeking for a direction to issue a writ of *quo warranto* quashing the nomination of Sh.Sachin Tendulkar as a member of Rajya Sabha (Council of States) as made by the President of India. The petitioner is the Editor-in-Chief of Jan Chetna, a National Weekly Newspaper. He is Ex-Member of Metropolitan Council/Ex-Member of Legislative Assembly, Delhi.

2. The petitioner alleges that he came to know from the newspaper reports, widely published that Sh.Sachin Tendulkar, the respondent No.3 herein has been nominated to Rajya Sabha as one of the members under

Article 80 of the Constitution of India. The grievance is that under Clause (1)(a) of Clause (3) of Article 80 of the Constitution of India, Sh.Sachin Tendulkar cannot be nominated as a member of Rajya Sabha as Cricket cannot be brought under anyone of the categories enumerated under the said Article. Therefore, the nomination of Sh.Sachin Tendulkar is invalid and unconstitutional.

3. Article 80 of the Constitution of India relating to the nomination of a person to be a member to the Council of States, reads as under:-

“80. **Composition of the Council of States** – [The Council of States] shall consist of—

- (a) twelve members to be nominated by the President in accordance with the provisions of clause (3); and
- (b) not more than two hundred and thirty-eight representatives of the States [and of the Union territories.]

(2) The allocation of seats in the Council of States to be filled by representatives of the States [and of the Union territories] shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

(3) The members to be nominated by the President under sub-clause (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:-

Literature, science, art and social service.

(4) The representatives of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

(5) The representatives of the [Union territories] in the Council of States shall be chosen in such manner as Parliament may by law prescribe.”

4. A similar provision of Article 171 relating to the composition of the Legislative Councils reads as under:-

“171. **Composition of the Legislative Councils:-**(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed [one-third] of the total number of members in the Legislative Assembly of that State: Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferrable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely: Literature, science, art, co-operative movement and social service.”

5. As we are presently concerned about the nomination in terms of Clause (3) of Article 80, we are inclined to consider the scope of the said Article. By the Article 80(1)(a), the Council of States shall consist of 12 members to be nominated by the President in accordance with the provisions of Clause (3). Clause (3) of Article 80 empowers the President to nominate the 12 members having special knowledge or practical experience in respect of such matters as the following, namely, Literature, science, art, co-operative movement and social service. It is the case of the respondent-State that the nomination was in terms of Clause (3) of Article 80 as Sh.Sachin Tendulkar is a person having special knowledge and practical experience in ‘Art’. The issue depends upon as to how the expression ‘Art’ used in Clause

(3) of Article 80 should be understood. For that purpose the Court should necessarily perform the functions of interpretation which is permissible.

6. The general rule of interpretation quoted by Law Commission of India, in its 183 rd Report is a well-settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous known as 'Plain Meaning Rule'. Interpretation of a statute is the art of finding out the true sense of any form of words, the sense which their author intends to convey. The process involved is such that one source speaks something and another source picks it up, discovers its meaning and applies it to do justice between others. It is not a science but an art to find out the meaning of words in the context of a given situation. Also stated in *Padmasundara Rao vs. State of T.N.* AIR 2002 SC 1334 'A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent.' The general rule of interpretation remains that whenever the language of a statute is clear the intention of the Legislature is to be gathered from the language used.

7. The process of construction combines both the literal and purposive approaches. However, necessity of interpretation arises only where the language of a statutory provision is ambiguous, not clear or where two views are possible or where the provision gives a different meaning defeating the object of the statute.

8. But, no act conveys expressly the fullness of its intended legal effect. Intend of a small proportion of this can be conveyed by the express words of the Act. For the rest, Legislature assumes that interpretations will be drawn for necessary inferences by the interpreters. The interpretation is permissible in such an event. The function of the court is to interpret the

law and legislate in accordance. The interpretative process is a highly creative function as the law is not static and should be developed. This interpretation in such an event lies on the judges. Undoubtedly, the limits of judges are narrower as they have to legislate and fill the gaps in law.

9. It was held in *Steel Authority of India Ltd. and ors. etc. vs. National Union Water Front and ors.*; 2001 SC 3527 that the paramount object of interpretation is to discuss what the legislature intends. The intention is prominent to be ascertaining from the text by enactment in function. The present matter relates to the interpretation of a constitutional provision. Constitution outlines the basic structure of our government. It is not just a document in solemn form, but is a live outset for the government of the people and the democratic spirit being carried out in lieu of the Constitution.

10. In the matter of *Indira Nehru Gandhi, vs. Raj Narain* AIR 1975 SC 2299, The Supreme Court held that ‘The basis of our Constitution is a well planned legal order, the presuppositions of which are accepted by the people as determining the methods by which the functions of the government will be discharged and the power of the state shall be used’. ‘Interpretation of the Constitution is a continual process. The institutions created thereunder, the concepts propounded by the framers and the words, which are the beads in the constitutional rosary, may keep on changing their hue in the process of trial and error, with the passage of time. Constitutional interpretation is as much a process of certain as one of discovery; (Held by The Supreme Court in *Supreme Court Advocates on Record Association and Anr. Vs. Union Of India*; AIR 1994 SC 268).

11. In a famous article ‘*Alive and kicking: why no one truly believes in a dead constitution*’; it is quoted ‘our constitution is a living constitution

whose text must be applied to today's circumstances.' And so, the statute is usually interpreted in the light of the legal system as it exists today. Although not in all matters shall this rule apply but exceptions always exist. In the interpretation of a constitutional document, 'words are but the framework of concepts and concepts may change more than words themselves'. The significance of the change of the concepts themselves is vital and the constitutional issues are not solved by a mere appeal to the meaning of the words without an acceptance of the line for their growth.

The Constitution of India is a living document. It has to be flexible and dynamic so that it adapts itself to the changing conditions of the country to achieve goals for national development. Many provisions of the Constitution are drafted in general terms that creates the possibility of alternative interpretations judges have any right to exercise discretion in such events. Reading is not a form of deduction; understanding requires a consideration of consequences. The broader principle, which applies to the Constitution as much as to a spoken utterance, is that if one possible interpretation of an ambiguous statement would entail an absurd or terrible result that is a good reason to reject it.

12. Held by Supreme court in *Synthetics and Chemical Ltd. Etc. vs. State of U.P. and others*, AIR 1990 SC 1927, 'the court should endeavor to interpret the entries and the powers in the Constitution in such a way that it helps to the attainment of undisputed national goals, as permitted by the Constitution'. In deciding the constitutionality of a provision, although the plain and clear meaning should be the only consideration but its effect on the rights of the parties, not merely to what the statute says but to what it does cannot be avoided in all circumstances. The interpretation is therefore

permissible in such an event. This interpretation is seen to enhance democratic ideals.

13. The word ‘Art’ has not been defined in the Constitution. In the absence of a definition under the Constitution, the only course for this Court to adopt to find out the real meaning of ‘Art’ is to look into the meaning of ‘Art’ in common parlance and in the dictionary apart from how certain experts and jurists have considered the said term in their articles.

14. Art in common parlance can be defined as the expression or application of human creative skill and imagination, typically in a visual such as painting or sculpture, producing works to be appreciated primarily for their beauty or emotional power or works produced by human creative skill and imagination.

15. In Black’s Law Dictionary, ‘Art’ has been explained as follows:-

“**Art.** Systematic application of knowledge or skill in effecting a desired result; also an employment, occupation or business requiring such knowledge or skill, a craft, as industrial arts.

In the law of patents, this term means a useful art or manufacture which is beneficial and which is described with exactness in its mode of operation. Such an art can be protected only in the mode and to the extent thus described. It is synonymous with process or method when used to produce a useful result, and may be either a force applied, a mode of application, or the specific treatment of a specific object, and must produce physical effects. *Emmett V. Metals Processing Corporation, C.C.A.Ariz., 118 F.2d 796, 798.*

16. In P.Ramanatha Aiyar’s Advanced Law Lexicon, ‘Art’ and ‘Art:Science’ has been explained as follows:-

“**Art.** Human skill; application of skill to subjects of taste, as

poetry, music etc.; skill as the result of knowledge and practice; certain branches of learning, which are of the nature of instruments for more advanced studies or for the work of life. [S.45, Indian Evidence Act (1 of 1972) and Art.80(3), Const.]

Art: Science. The essential difference between an art and science is in aim. “Science and Art may be said to be investigations of truth, but science inquires for the sake of knowledge, art for the sake of production.” (*Karlsruhe*). Hence, they differ somewhat in that with which they are concerned. “An art directly and immediately concerns itself with a faculty. It fastens upon that, and keeps it ever in its view as it teaches how that may be developed, trained and gained. A science, on the other hand, regards rather the product of faculty, and, keeping its view directly upon that, proceeds to unfold its nature and proper characteristics” (*H.N. Day, Art of Discourse, I*)”

17. In his famous article ‘What is Art’ by Leo Tolstoy, it has been described as follows:-

“Art is not, as the metaphysicians say, the manifestation of some mysterious idea of beauty or God; it is not, as the aesthetical physiologists say, a game in which man lets off his excess of stored-up energy; it is not the expression of man’s emotions by external signs; it is not the production of pleasing objects; and, above all, it is not pleasure; but it is a means of union among men, joining them together in the same feelings, and indispensable for the life and progress toward well-being of individuals and of humanity.”

18. ‘Art’ cannot be brought under a concise meaning, though various dictionaries give meaning of this word. However, it could be observed that ‘Art’ could be also defined as skill acquired by experience, study, or observation; the conscious use of skill and creative imagination especially in the production of aesthetic objects; an occupation requiring knowledge or

skill. The word 'Art' has been defined in new shorter Oxford English dictionary as 'skill- skill as the result of knowledge and practice, technical or professional skill, human skill. According to the Britannica dictionary, 'Art' is defined as, *“the use of skill and imagination in the creation of aesthetic objects, environments, or experiences, that can be shared with others.”*

19. 'Skill' in any form means the abilities one possesses. A skill is a capability for a smooth sequence of coordinated behaviour that is effectively relative to its objectives, given the context in which it occurs. Black's Law dictionary defines skill as *'any ability, proficiency especially the practical and familiar knowledge of the principles and processes of an art, science, or trade, combined with the ability to apply them appropriately, with readiness and dexterity.'*

20. The question is whether the ability to serve the cricket ball well is within a skill and can be considered to be an ability to bring it under the expression 'Art'. In this context, it may be added that a skill can be a natural talent like singing or painting or dancing or it can be something you have been taught and you have a great deal of experience in the field one practices.

21. Coming to sports, Art has always been related to beauty and certainly we cannot deny that sport has beauty and attracts millions of people. Sport attracts a large number of amateurs and professionals. It attracts people due to its general atmosphere as well as the level of skill needed to play, many spectators go to watch all forms of sports every year and thoroughly enjoy themselves.

22. Cricket is associated with emotions of masses. It is not only enjoyed by all kinds of people but also we see people praying for their favourite

respective team to win every ball. In an article, 'The Beauty Of Cricket', the author quotes *"Nowadays people from many different countries and cultures are united by their love of cricket. This sport is inspiring people from all walks of life in all sorts of places, despite its sometimes stereotyped image. It is no wonder that this sport has caught on, despite its differences to other extremely popular sports such as football and rugby, it has the key elements that make a game great. These are of course skill, suspense and there is an art to playing that creates great beauty to the observer."*

23. In India, cricket is a sport of great importance, emotions and joy. Every match is a die for match for all Indians. Cricket definitely needs skill that is accomplished by mere practice and experience. People who are fond of Cricket think it is the best sport to play and watch, they often point out the difference in atmosphere and attitude between players and spectators of cricket than of other sports such as football or rugby. Here, when we speak of cricket in India, Tendulkar's contribution to cricket is worth the mention.

24. One can easily describe and discuss the aesthetic pleasure of watching Sachin Tendulkar bat on the field. Every single individual watching any sport gets associated with it with emotions and with every single four, six, a goal, a foul can pump everyone's heart out. To take cricket as an example, when we are watching a match and Sachin Tendulkar turn his wrists at the very last moment, flicking the blade of the bat towards the onside just as the ball arrives under his eyes, we experience the beauty of his art or skill for that matter: not just poise and grace but also concision and completeness. If we can say within its own terms, it cannot be improved upon.

25. Art has no satisfactory definition. Authors have accordingly and time upon time varied the definition of art. Art as a common man would

understand is something related to a qualification in a specific skill, for that matter it might be his profession/ occupation. Therefore, sport is a skill and there are masters of it.

26. Quoted in an article, “Sports fulfil some major artistic roles. In the classical world, the arts had a defined religious purpose. For the Greeks, watching a play was a communal act of piety, a form of shared worship. Modern sport achieves something similar. What do we feel when we walk among the masses to a vast sports stadium? We are part of the crowd, we share a purpose and sense of hope with the thousands around us - we belong to a broader congregation. That religious language follows naturally.”

27. Aesthetics is a part-principle of art, and for sure sports too follow aesthetic elements. Sports falls under the category of culture and the appreciation of culture is a branch of aesthetics as well. So the appreciation of a style of play could be considered aesthetic appreciation. For example, every play--a goal in hockey or soccer, a pass in football, a double play in baseball, a flick of the bat for a four or a six, has the same objective value. An out is an out, a point is a point.

28. The playing of sports has an aesthetic element and this element is generally appreciated by sports fans, but no, in the sports with objective scoring, the aesthetic value doesn't matter as much as the objective outcome. According to the above discussion, Sport can be said to be a form of art.

29. Samuel Johnson's Dictionary of the English Language (3d. ed. 1768) defines “art” as the power of doing something not taught by nature or instinct; a science, a trade, a skill, dexterity. It can thus safely be assumed that the word “art” was understood even at the time of framing of the Indian Constitution, in this context.

30. As far as sports are concerned, the Supreme Court recently in *Krishan Lal Gera v. State of Haryana* (2011) 10 SCC 529 accepted that it promotes not only health but also spirit of competition and social integration and gave sports the status of human resource development in the country. Further, the secret of a good sportsperson, it has now been established by sports psychologists and admitted by sportspersons, lies not in his brawn but his brain. Valeriy Borzov, 1972 Munich Olympics gold medalist in 100m and 200m when asked about the recipe for a champion stated, “First talent, second work and third control of mind. The modern athlete should be intellectual.” Mental skills that make a champion demand as much of attention and training as physical technique. It is for this reason that sportspersons are being recognized also as good administrators with leadership qualities. Sport teaches us discipline, teamwork, leadership and perseverance and there can be no denying of the contribution which a person possessing these qualities can make in the debates in the Council of States.

31. Once we get over the aforesaid issue, whether sportspersons can be nominated under Article 80, there is no challenge to the name Sachin Tendulkar. He alongwith the incumbent Prime Minister and the likes of economists like Mr. Amartya Sen has been included in the list drawn up by Time Magazine in the year 2010 of the world’s 100 most influential people.

32. We may also state that the use in Article 80(3) of the words “in respect of such matters as the following”, is also indicative of the matters mentioned thereafter viz. literature, science, art and social service being illustrative and not exhaustive. The Supreme Court in *Laxman Balwant Bhopatkar v. Charity Commissioner, Bombay* AIR 1962 SC 1589, *Royal Hatcheries Pvt. Ltd. v. State of A.P.* 1994 Supp (1) SCC 429, *Good Year*

India Ltd v. Collector of Customs (1997) 2 SCC 582, *Central Bank of India v. Ravindra* AIR 2001 SC 3095, *Ombalika Das v. Hulisa Shaw* (2002) 4 SCC 539 and *Sanaboina Satyanarayana v. Government of Andhra Pradesh* (2003) 10 SCC 78 has held that the words “such as” indicate that what are mentioned thereafter are only illustrative and not exhaustive.

33. We are further of the opinion that the framers of the Constitution of India, by adopting the principle of nomination in Rajya Sabha, ensured that the nation receives the services of the most distinguished persons of the country who have earned distinction in their field of activity. By nominating them to the Rajya Sabha, the State enables them to enrich the debates by their expertise and knowledge that they have in different areas.

34. Whichsoever way we may look, we are unable to find any error requiring judicial interference, the scope whereof in any case is very limited, in the nomination to the Rajya Sabha of Shri Sachin Tendulkar and resultantly dismiss the petition.

35. No costs.

CHIEF JUSTICE

(RAJIV SAHAI ENDLAW)
Judge

DECEMBER 19, 2012
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