IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 29TH DAY OF JANUARY 2021 / 9TH MAGHA, 1942

WP(C). No. 19429 OF 2014(S)

PETITIONERS:

1 DR. T. N. PARAMESWARA KURUP,
S/O. NARAYANA PILLAI, MINI BHAVAN,
POOVANTHURUTH P.O, KOTTAYAM - 686 012.

2 DR. SHRUTI KAVIEKAR, SECRETARY [GOA BRANCH]
SOCIETY OF ADVANCED HOMEOPATHIC SCIENCES [S.A.H.A.S] TF-1,
CANDIDA ENCLAVE, OPPOSITE FISH MARKET,
CURCHOREM, GOA - 403 706.

BY ADVS. SRI. S. SANAL KUMAR
SMT. BHAVANA VELAYUDHAN
SMT. T. J. SEEMA

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
THIRUVANANTHAPURAM-695 001.

2 THE DRUGS CONTROLLER, THIRUVANANTHAPURAM-695 035.

3 THE UNION OF INDIA,
REPRESENTED BY THE MINISTRY OF HEALTH AND FAMILY WELFARE,
DEPARTMENT OF AYUSH, NEW DELHI - 110 001.

* 4 THE INSTITUTION OF HOMOEOPATHS KERALA,
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER,
IHK BHAVAN, INCHACKAL, THIRUVANANTHAPURAM-695024.

* IS IMPLEADED AS ADDLITIONAL 4TH RESPONDENT AS PER ORDER DATED 29.01.2021 IN I.A. NO.1 OF 2021 IN W.P.(C) NO.19429 OF 2014

R1 BY ADV. SRI. SURIN GEORGE IPE, SENIOR GOVERNMENT PLEADER
R3 BY ADV. SRI. P. VIJAYAKUMAR, ASG OF INDIA
R4 BY ADV. SRI. JACOB SEBASTIAN, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-01-2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING

"C.R."

JUDGMENT

Dated this the 29th day of January, 2021

S. Manikumar, CJ

Petitioners have sought for a mandamus directing the respondents to take effective measures through its mechanisms, to seize the plastic containers from the manufacturers of homeopathic medicines and from the clinics in the State of Kerala, by conducting a special drive for seizure and prosecute the offenders for violation of the provisions of Drugs and Cosmetics Act, 1940.

2. Petitioners have also sought for a mandamus directing the respondents to educate citizens, by way of advertisement in newspapers, through Public Relations Department and in other visual media, about the adverse effect of using plastic containers for storing homeopathic medicines.

3. Having heard the submissions of the learned counsel for the parties, on 22.01.2021, we ordered thus:

> "3. Inviting the attention of this Court to Rule 85-E (2) of the Drugs and Cosmetics (Amendment) Rules, 2006 read with Schedule M1, Mr. Surin George Ipe, learned Senior Government Pleader submitted that, it is for the manufacturers of Homeopathic medicines, not to use plastic containers, and that the said condition cannot be extended to the end users. Referring to Exts. P4 to P6, learned Senior Government Pleader further submitted

that instructions issued were only to the Homeopathic manufacturers, to use glass containers, instead of plastic containers, for making medicine and not for the end users.

4. However, Ext. P5 dated 28.09.2012, letter of the Principal Secretary to the Government, Health & Family Welfare (J) Department, Thiruvananthapuram, addressed to Dr. Shruthi Algundgi, Reg. No. H-440/2009, D-2, Gulmohar co-op. Hsg. Society, Khadpabandh, Ponda, Goa, shows that, instruction has already been given to the Director of Homeopathy and Managing Director, Kerala State Homeopathic Co-operative Pharmacy Ltd., to use glass containers, instead of plastic containers, for keeping Homeo medicines, by Government letter dated 18.02.2012.

Mr. Surin George Ipe, learned Senior Government Pleader, is directed to ascertain as to whether the Kerala State Homeopathic Co-operative Pharmacy Ltd. is a manufacturer of Homeopathy medicines. He is also directed to get a copy of the letter dated 21.08.2018, referred to in Ext. P5."

4. On this day, when the matter came up for further hearing, referring to the certificate of renewal of licence to manufactures for sale of homeopathic medicines, issued by the Drugs Controller and Licensing Authorities, Government of Kerala, respondent No.2, Mr. Surin George Ipe, learned Senior Government Pleader, submitted that the Kerala State Homeopathic Co-operative Pharmacy Limited is a manufacturer of homeopathic medicines, and that, having regard to the instructions issued earlier, the said manufacturer has been directed to use glass containers, instead of plastic containers, in the process of manufacture.

5. Inviting the attention of this Court to the name of the 2nd writ petitioner - Dr. Shruti Kavlekar, and the name mentioned in Exhibit-P2 document, learned Senior Government Pleader submitted that the note enclosed as Exhibit-P2, suggesting use of glass containers, instead of plastic containers, was written by none other than the 2nd petitioner, namely, Dr. Shruti Kavlekar, who is a manufacturer of glass containers, in the name and style "Shruti Pharmapacs, Ponda, Goa".

6. Learned Senior Government Pleader also submitted that the 2nd petitioner, who is promoting the manufacturing of glass containers, with a personal interest, has joined, along with the 1st petitioner, in this matter, to file the writ petition, styled as a 'Public Interest Litigation', and according to him, instant writ petition is not a Public Interest Litigation, but a personal interest litigation.

7. Inviting the attention of this Court also to the definition of 'manufacture' in Section 3(f) of the Drugs and Cosmetics Act, 1940, learned Senior Government Pleader further submitted that manufacture is different from dispensing of drug and there is no prohibition in the Drugs (Control) Act, 1950 or directions issued, for use of plastic containers in the clinics in State of Kerala. Therefore, according to him, prayer sought for to seize the plastic containers from the clinics in the State of Kerala, by conducting a special drive for seizure and to

prosecute the alleged offenders for violation of the provisions of Drugs and Cosmetics Act, 1940, insofar as clinics are concerned, is liable to be rejected.

8. The relief sought for by the petitioners, for a direction to the respondents to educate citizens, by way of advertisement in newspapers, through Public Relations Department and in other visual media, about the adverse effect of using plastic containers in storing homeopathic medicines, is not maintainable as against the State, insofar as the sale of homeopathic medicines, either in pharmacies or storage in clinics, in the State of Kerala.

9. Mr. Jacob Sebastian, learned counsel appearing for the additional 4th respondent, submitted that Mr. Rajeev Kavlekar is the father of Dr. Shruti Kavlekar, the 2nd writ petitioner. Shruti Pharmapacs, a glass container manufacturing unit, being run by Dr. Shruti Kavlekar. In Exhibit-P5 communication dated 28.09.2012, Government of Kerala, Health and Family Welfare (J) Department, Thiruvananthapuram, has directed Dr. Shruti Algundgi, Reg. No. H-440/2009, Ponda, Goa, the manufacturer, to use glass containers, instead of plastic containers, for keeping homoeo medicines.

10. Heard the learned counsel for the parties and perused the material on record.

11. Section 3(f) of the Drugs and Cosmetics Act, 1940 defines what 'manufacture' is, and the same is reproduced:

> "(f) "manufacture" in relation to any drug or cosmetic includes any process or part of a process for making, altering, ornamenting, finishing, packing, labeling, breaking up or otherwise treating or adopting any drug or cosmetic with a view to its sale or distribution but does not include the compounding or dispensing of any drug, or the packing of any drug or cosmetic, in the ordinary course of retail business; and "to manufacture" shall be construed accordingly"

12. Rule 85E(2) of the Drugs and Cosmetics (Amendment) Rules, 2006, is extracted hereunder:

> "(2) The factory premises shall comply with the requirements and conditions specified in Schedule M-1:
>
> PROVIDED that where the Licensing Authority considers it necessary or expedient so to do, it may having regard to the nature of extent of manufacturing operations, relax or suitable alter the said requirements or conditions in any particular case for reasons to be recorded in writing."

13. As rightly pointed out by the learned Senior Government Pleader, statute excludes dispensing of any drug or packing of any drug or cosmetics in the ordinary course of retail business. Schedule M-1, framed in terms of Rule 85E(2) speaks only about good manufacturing practices and requirements of the premises, plant and equipment for homeopathic medicines.

14. Clause (h) of Schedule M-1 is reproduced:

> "(h) Container management.- Proper arrangements shall be made for receiving containers, closures and packing materials in secluded areas and for dedusting the same, removal of wastes, washing, cleaning and drying. Suitable equipment shall be provided as may be needed, considering the nature of work involved. Where soaps and detergents are used to wash containers and closures used for primary packing, suitable procedure shall be prescribed and adopted for total removal of such materials from the containers and closures. Plastic containers which are likely to absorb active principles of which are likely to contaminate the contents may not be used."

15. Going through the statutory provisions, Section 3(f) of the Drugs and Cosmetics Act, 1940, Schedule M-1, framed in terms of Rule 85E(2), probably on the premise that the provisions relating to manufacture and use of materials, equally apply to dispensation of medicines or cosmetics, and that the maxim "*ejusdem generis*" can also be made applicable to the clinics in the State of Kerala, instant writ petition seems to have been filed. At this juncture, we need to understand, as to what is '*ejusdem generis*', as under:

A. The term "*ejusdem generis*" has been defined in Black's Law Dictionary, 9th Edn. as under:

> "A canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed."

B. In P. Ramanatha Aiyar's Advanced Law Lexicon, 4th Edition, the term "*ejusdem generis*" has been defined, as under:

> "***Ejusdem generis.*** Where particular things named (in a document) have same common characteristic which constitutes them a genus and the general words (following an enumeration of specific things or classes of things) can be properly regarded as in the nature of a sweeping clause designed to guard against accidental omissions, then the rule of *ejusdem generis* will apply, and the general words will be restricted to things of the same nature as those which have been already mentioned; but the absence of a common genus between the enumerated words will not necessarily prevent a restricted construction of the general words if justified by the context. The *ejusdem generis* construction will be assisted if the general scope or language of the deed, or the particular clause, indicates that the general words should receive a limited construction will produce some unforeseen loss to the grantor. HALSBURY 4th Edn., Vol. 12. para 1526, p. 651.
>
> The *ejusdem generis* rule is one to be applied with caution and not pushed too far, as in the case of many decisions. Which treat it as automatically applicable, and not as being, what it is, a mere presumption, in the absence of other indications of the intention of the legislature. To invoke the application of the '*ejusdem generis*' rule there must be a distinct genus or category [Craies on Statute Law (Seventh Edition. Para 181, as referred in **Manglore Electric Supply Co. v. CIT** (1978) 3 SCC 248, 254, para 9)]
>
> The general word which follows the particular and specific words of the same nature as itself takes its meaning from them and it is presumed to be restricted to the same *genus* as those words. (Maxwell, op. cit p. 297).
>
> A rule of construction : general words (as in a statute) that follow specific words in a list must be construed as referring only to the types of things identified by the specific words. (Merriam Webster)
>
> Of the same kind or nature. Where a list of specific items is followed by general concluding clause, this is deemed

to be limited to things of the same kind as those specified.

Of the same nature. A rule of construction whereby general terms following particular ones are taken to apply to persons and things which are of the same nature as those comprehended in the particular terms.

(Lat.) "Of the same kind or species." A well known maxim of construction. The phrase "*ejusdem generis*" means "of the same kind" and is more restricted than the word "analogous." 5 Rang 675: 107 IC 161: AIR 1928 Rang. 31. For an application of the rule in the construction of Statutes [See (1882) AWN 102: AIR 1928 Rang 31]

> "By the application of the maxim ejusdem generis which is only an illustration or specific application of the broader maxim *noscuntu ra socios g*eneral and specific words which are capable of an analogous, meaning being associated together, take color from each other se that the general words are restricted to a sense, analogous, to the less general" (**Mirch v. Russell** 12 LRA 125; 7 IC 161; AIR 1928 R. 31)

The *ejusdem generis* rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when,-

(i) the statute contains an enumeration of specific words:

(ii) the subject of enumeration constitute a class or category:

(iii) that class or category is not exhausted by the enumeration;

(iv) the general term follows the enumeration:

(v) there is no indication of a different legislative intent (**Amar Chandra Chakraborthy v. Collector of Excise** (AIR 1972 SC 1863, para 9); **ACCE v. Ramdev Tobacco Co.** [1991 (51) ELT 631 (SC)].

In **Siddeshwari Cotton Mills (P) Ltd. v. Union of India (UOI) and Ors.** (AIR 1989 SC 1019), the Hon'ble Apex Court considered the provisions of the Central

Excises and Salt Act, and the principle of *ejusdem generis* was made applicable to interpret the term "process". At paras 7 and 8, it was observed thus:

> "7. The expression *ejus-dem-generis*...' of the same kind or nature'...signifies a principle of construction whereby words in a statute which are otherwise wide but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of the same class or genus as preceding them. If a list or string or family of genus-describing terms are followed by wider or residuary or sweeping-up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words.
>
> 8. The preceding words in the statutory provision which, under this particular rule of construction, control and limit the meaning of the subsequent words must represent a genus or a family which admits a number of species or members. If there is only one species it cannot supply the idea of a genus." (See also **Indira B. Gokhale v. Union of India** [AIR 1990 Bom 98. 103]; **Garware Plastics & Polyester Ltd. v. Municipal Corpn. Aurangabad,** (AIR 1999 Bom 431, 434 (p 434)).

'Ejusdem generis' is a Latin expression which means 'of the same kind'. It means words of similar class. It is a canon of statutory construction that where general words follow the enumeration of particular classes of things. The general words will be construed as applying only to things of the some general clause as those enumerated: [**Parakh Foods Limited v. State of AP** (2008) 4 SCC 584, 586-587, para 9]

The principle underlying '*ejusdem generis*' is applied when the statutory provision concerned contains an

> enumeration of specific words, the subject of the enumeration thereby constituting a class or category but which class or category is not exhausted at the same time by the enumeration and the general term follows the enumeration with no specific indication of any different legislative intention. This rule which normally envisages words of general nature following specific and particular words to be construed as limited to things which are of the same nature as those specified, also required to be applied with great caution and not pushed too far so as to unduly or unnecessarily limit general and comprehensive words to dwarf size. (**Municipal Corpn. Of Greater Bombay v. Bharat Petroleum Corpn. Ltd.**, (2002) 4 SCC 219, 225-26. para 7]

C. In Judicial Interpretation of Words and Phrases, the term "*ejusdem generis*" has been defined, as under:

> **"Ejusdem generis rule"**
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> According to that rule a general word which follows particular and specific words of the same nature as itself takes its meaning from them and is presumed to be restricted to the same genus as those words. If the doctrine of ejusdem generis be applied by taking the word "become permanently useless" as a general word and the word "died" as a particular and specific word, then, the general word "permanently useless" has to be construed as a word belonging to the genus to which particular word "died" belongs. It is upon this construction that a suggestion was made that the expression "permanently useless" must partake of the meaning of the word "died" to some extent. .....In my opinion, this construction is based upon a completely wrong understanding of the ejusdem generis doctrine". (see Maxwell at page 337). To put the general expression "permanently useless" under genus and then to give it a meaning borrowed from the genus, it is necessary that there must be more than one particular word preceding the general word which would indicate the genus. One

> word standing by itself does not indicate a genus clearly enough to colour the interpretation of the more general word or term following it. [Union Drug Co. Ltd. v. CIT, (1974) 93 ITR 94 to 96]"

D. In Wharton's Law Lexicon, the term "*ejusdem generis*" has been defined, as under:

> "Ejusdem generis (of the same kind or nature).
>
> This term is chiefly used in cases where general words have a meaning attributed to them less comprehensive than they would otherwise bear, by reason of particular words preceding them: e.g. the Sunday Observance Act, 1677 (24 Car. 2 c. 7) enacts that no tradesman, artificer, workman, labourer, or 'other person whatsoever', shall follow his ordinary calling on Sunday; here (see Sandiman v. Breach, (1827) 7 B & C. 96) the word "person" is confined to those of callings of the same kind as those specified by the preceding words so as not to include a farmer. The ejusdem generis rule, as it is called, is one of the rules of construction applied by the Court in construing documents of all kinds, whether statutes, deeds, wills, mercantile documents, or others. For a discussion of the rule, see Tillmanns & Co. v. S.S. Knutsford, Ltd, 1908, 2 K. B. 385, affirmed, 1908, A.C. 406. For instances of the application of the rule, see Maxwell or Hardcastle on Statutes Leake on Contracts 5 Theobald on Wills."

E. In Halsbury's Laws of England, fifth edition, the term "*ejusdem generis*" has been defined, as under:

> "**252. Ejusdem generis rule**. The *ejusdem generis* rule as to the meaning of general words following a series of specific descriptions applies to wills as to 'other instruments, and applies to descriptions of persons and things as well as to descriptions of property. The rule readily gives way to any context showing a contrary intention, and may be overridden by the presumption against intestacy, so that, where the general words occur in a clause of the nature of a residuary gift, the ordinary, wider meaning of the words is adhered to. This consideration does not, however, assist where the general words would in their wider meaning carry a residuary estate which is dealt with by another clause of the will."

(i) In **Amar Chandra Chakraborty v. The Collector of Excise, Government of Tripura and Ors.** [(1972) 2 SCC 442], the Hon'ble Supreme Court observed thus:

> "9.....The ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration and (v) there is no indication of a different legislative intent. In the present case it is not easy to construe the various clauses of Section 42 as constituting one category or class. But that apart, the very language of the two sections and the objects intended respectively to be achieved by them also negative any intention of the legislature to attract the rule of *ejusdem generis*."

(ii) In **Rajasthan State Electricity Board, Jaipur v. Mohan Lal and Others** reported in AIR 1967 SC 1857, at paragraph 4, the Hon'ble Apex Court held as follows:

> "4. In our opinion, the High Courts fell into an error in applying the principle of *ejusdem generis* when interpreting the expression "other authorities" in Art. 12 of the Constitution, as they overlooked the basic principle of interpretation that, to invoke the application of *ejusdem generis* rule, there must be a distinct genus-or-category running through the bodies already named. Craies on, Statute Law summarises the principle as follows:-
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> > "The *ejusdem generis* rule is one to be applied with caution and not pushed too far ..... To invoke the application of the *ejusdem generis* rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply, but the mention of a single species does not constitute a genus."*
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> *Craies on Statute Law, 6th Edn., p. 181.

> Maxwell in his book on 'Interpretation of Statutes' explained the principle by saying: "But the general word which follows particular and specific words of the same nature as itself takes its meaning from them, and is presumed to be restricted to the same genus as those words .... Unless there is a genus or category, there is no room for the application of the *ejusdem generis* doctrines."

**Maxwell on Interpretation of Statutes, 11th Edn. pp. 326, 327.

> In United Towns Electric Co. Ltd. v. Attorney-General for Newfoundland, the Privy Council held that, in their opinion, there is no room for the application of the principle of *ejusdem generis* in the absence of any mention of a genus, since the mention of a single species-for example, water rates-does not constitute a genus. In Art. 12 of the Constitution, the bodies specifically named are the Executive Governments of the Union and the States, the Legislatures of the Union and the States, and local authorities. We are unable to find any common genus running through these named bodies, nor can these bodies be placed in one single category on any rational basis. The doctrine of *ejusdem generis* could not, therefore, be, applied to the interpretation of the expression "other authorities" in this article."

(iii) It is well settled that rule of *ejusdem generis* applies when statute enumerates the specific words, subjects of enumeration constitute a class or category, that class or category is not exhausted by the enumeration, the general terms follow the enumeration and when there is no indication of a different legislative intent. (see the decision of the Hon'ble Apex Court in **Grasim Industries Limited v. Collector of Customs, Bombay** [2002) 4 SCC 297])

(iv) In **the Principal Secretary, Department of Labour and Ors. v. Om Dayal Educational & Research Society and Ors.** [2020 (1) LLN 83

(Cal)], at paragraph 16, a Hon'ble Division Bench of the Calcutta High Court held as under:

> "16. As would be gleaned from these learned authorities, the rule of *ejusdem generis* is not to be applied inflexibly and invariably. It is a rule that operates only to give us a rebuttable presumption that the words of the statute are restricted in application to a certain 'genus' of things because the statute is not able to exhaustively provide all the elements that would conceivably fall within that genus. In other words, the rule of *ejusdem generis* restricts interpretation only when the words of a statute are categorical in their application and it is cumbersome, impossible, unnecessary or imprudent to seek to enumerate all the constituents of the category to which the statute is made applicable. Even then, the application of the rule must be appreciative of the context of the genus and the enumeration of the specie. The rule of *ejusdem generis* does not apply when the words of a statute seek not to provide a category to which it will apply but merely provide a non-exhaustive list of the things to which the statute will apply. That apart, the rule of *ejusdem generis* cannot contradict legislative intent and must either give way to a purposive interpretation if such an interpretation is found to run contrary to the rule or be applied in consonance with the purposive interpretation of the statute. ....."

(v) In **Maharashtra University of Health Sciences and Ors. v. Satchikitsa Prasarak Mandal and Ors.** [(2010) 3 SCC 786], the Hon'ble Supreme Court observed as under:

> "27. The Latin expression "ejusdem generis" which means "of the same kind or nature" is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of restricted words. This is a principle which arises "from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context." It

may be regarded as an instance of ellipsis, or reliance on implication. This principle is presumed to apply unless there is some contrary indication

(See Glanville Williams, 'The Origins and Logical Implications of the ejusdem generis Rule' 7 Conv (NS) 119).

28. This *ejusdem generis* principle is a facet of the principle of *Noscitur a sociis*. The Latin maxim *Noscitur a sociis* contemplates that a statutory term is recognised by its associated words. The Latin word '*sociis*' means '*society*'. Therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation. Their colour and their contents are to be derived from their context See similar observations of **Viscount Simonds in Attorney General v. Prince Ernest Augustus of Hanover** (1957) AC 436 at 461 of the report.

29. But like all other linguistic canons of construction, the *ejusdem generis* principle applies only when a contrary intention does not appear. In instant case, a contrary intention is clearly indicated inasmuch as the definition of `teachers' under Section 2(35) of the said Act, as pointed out above, is in two parts. The first part deals with enumerated categories but the second part which begins by the expression "and other" envisages a different category of persons. Here 'and' is disjunctive. So, while construing such a definition the principle of *ejusdem generis* cannot be applied.

30. In this context, we should do well to remember the caution sounded by Lord Scarman in **Quazi v. Quazi** (1979) 3 All-ER 897. At page 916 of the report, the learned Law Lord made this pertinent observation:

> "If the legislative purpose of a statute is such that a statutory series should be read *ejusdem generis*, so be it; the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfill the purpose of the statute. The rule, like many other rules

> of statutory interpretation, is a useful servant but a bad master."

31. This Court while construing the principle of *ejusdem generis* laid down similar principles in the case of **K.K. Kochuni v. State of Madras and Kerala** (AIR 1960 SC 1080). A Constitution Bench of this Court in **Kochuni** (supra) speaking through Justice Subba Rao (as His Lordship then was) at paragraph 50 at page 1103 of the report opined:

> "...The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary."
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> (Emphasis supplied)

32. Again this Court in another Constitution Bench decision in the case of **Amar Chandra Chakraborty v. The Collector of Excise, Govt. of Tripura, Agartala and Ors.** AIR 1972 SC 1863 speaking through Justice Dua, reiterated the same principles in paragraph 9, at page 1868 of the report. On the principle of *ejusdem generis*, the learned Judge observed as follows:

> "9.....The *ejusdem generis* rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration; and (v) there is no indication of a different legislative intent."
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> (Emphasis supplied)

(vi) In **The Mangalore Electric Supply Co. Ltd. v. The Commissioner of Income Tax, West Bengal** [(1978) 3 SCC 248], the Hon'ble Supreme Court observed thus:

> "9. The argument that the word 'transfer' must be construed ejusdem generis with the words sale, exchange or relinquishment has to be rejected because as stated in Craies on Statute Law (7th edition, page 181),
>
> > "the *ejusdem generis* rule is one to be applied with caution and not pushed too far, as in the case of many decisions, which treat it as automatically applicable, and not as being, what it is, a mere presumption, in the absence of other indications of the intention of the legislature. The modern tendency of the law, it was said, is to attenuate the application of the route of *ejusdem generis*. To invoice, the application of the *ejusdem generis* rule there must be a distinct genus or category. The specific words must apply not to different objects of widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply."
>
> Thus, unless you find a category there is no room for the application of *ejusdem generis* doctrine and where the words are clearly wide in their meaning they ought not to be qualified on the ground of their association with other words. (See **Glasgow Corpn. v. Glasgow Tramway Co. 1898 AC 631 In N.A.L.G.O. v. Bolton Corpn., 1943 AC 166**. it was held that "the *ejusdem generis* rule is often useful or convenient, but it is merely a rule of construction, not a rule of law."

(vii) In **Oswal Agro Mills Ltd. and Ors. v. Collector of Central Excise and Ors.** [1993 Supp(3) SCC 716], the Hon'ble Supreme Court observed thus:

> "7.....There is no quarrel with the proposition that in ascertaining the meaning of the word or a clause or

> sentence in the statute in which interpretation, everything which is logically relevant should be admissible. It is no doubt true that the doctrine of *Noscitur A Sociis*, meaning thereby, that it is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them i.e. when two or more words which are susceptible of analogous meaning are clubbed together, they are understood to be used in their cognate sense. They take, as it were, their colour from each other, the meaning of the more general is restricted to a sense analogous to a less general. The philosophy behind it is that the meaning of the doubtful words may be ascertained by reference to the meaning of words associated with it. This doctrine is broader than the doctrine of *ejusdem generis*. This doctrine was accepted by this Court in cantina of cases but its application is to be made to the context and the setting in which the words came to be used or associated in the statute or the statutory rule. Equally the doctrine of *contemporanea expositio* is also being invoked to cull out the intentment by removing ambiguity in its understanding of the statute by the executive."

16. In Section 3(f) of the Drugs and Cosmetics Act, 1940, there is a specific exclusion of dispensation of any drug, or packing of any drug or cosmetic, in the ordinary course of retail business, than the process involved in the manufacture of a drug or cosmetic.

17. On the aspect of **interpretation of statutes**, let us consider a few decisions, as hereunder:

> (i) In the words of Tindal, C.J., in **Sussex Peerage** case [(1844) 11 Cl & F 85], wherein, he said that, "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves so alone in such cases best declare the intent of the lawgiver."

(ii) In **Nairin v. University of St. Andrews** reported in 1909 AC 147, the Hon'ble Court held that, "Unless there is any ambiguity it would not be open to the Court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice."

(iii) In **Ram Rattan** v. **Parma Nand** reported in AIR 1946 PC 51, the Hon'ble Mr. S. R. Das, held as under:

> "The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. In the present case, the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction."

(iv) In **Poppatlal Shah** v. **State of Madras** reported in AIR 1953 SC 274, the Hon'ble Supreme Court held that, "It is settled rule of construction that to ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word, phrase and sentence is to be considered in the light of the general purpose and object of the Act itself."

(v) In **Rao Shive Bahadur Singh** v. **State**, reported in AIR 1953 SC 394, the Hon'ble Supreme Court held that, "While, no doubt, it is not permissible to supply a clear and obvious lacuna in a statute, and imply a right of appeal, it is incumbent on the Court to avoid a construction, if reasonably permissible on the

language, which would render a part of the statute devoid of any meaning or application."

(vi) What is the spirit of law, Hon'ble Mr. Justice S.R.Das in **Rananjaya Singh** v. **Baijnath Singh** [AIR 1954 SC 749], said that, "The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the Sections of the Act."

(vii) In **Hari Prasad Shivashanker Shukla** v. **A.D.Divelkar** reported in AIR 1957 SC 121, the Hon'ble Apex Court held thus:

> "It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended, Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined."

(viii) In **Kanai Lal Sur** v. **Paramnidhi Sadhukhan** reported in AIR 1957 SC 907, the Hon'ble Supreme Court held as under:

> "It must always be borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.
>
> The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of

> the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction.
>
> It is only in such cases that it becomes relevant to consider the mischief and defect which the, Act purports to remedy and correct."

(ix) In **Attorney-General** v. **HRH Prince Ernest Augustus of Hanover** [(1957) 1 All.ER 49], Lord Somervell of Harrow has explained the unambiguous, as "unambiguous in context".

(x) In **State of W.B., v. Union of India** (AIR 1963 SC 1241), the Hon'ble Apex Court held that in considering the expression used by the Legislature, the Court should have regard to the aim, object and scope of the statute to be read in its entirety.

(xi) In **State of Uttar Pradesh** v. **Dr.Vijay Anand Maharaj** reported in AIR 1963 SC 946, the Supreme Court held as under:

> "But it is said, relying upon certain passages in Maxwell on the Interpretation of Statutes, at p, 68, and in Crawford on "Statutory Construction' at p. 492, that it is the duty of the Judge "to make such construction of a statute as shall suppress the mischief and advance the remedy," and for that purpose the more extended meaning could be attributed to the words so as to bring all matters fairly within the scope of such a statute even though outside the letter, if within its spirit or reason. But both Maxwell and Crawford administered a caution in resorting to such a construction. Maxwell says at p.68 of his book:
>
> "The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words."
>
> Crawford says that a liberal construction does not justify an extension of the statute's scope beyond the contemplation of the Legislature.
>
> The fundamental and elementary rule of construction is that the words and phrases used by the Legislature shall be given their ordinary meaning and shall be constructed according to the rules of grammar. When

> the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognized rule of construction that the meaning must be collected from the expressed intention of the Legislature."

(xii) In **Namamal** v. **Radhey Shyam** reported in AIR 1970 Rajasthan 26, the Hon'ble Apex Court held as under:

> "It was observed by Pollock C. B. in Waugh v. Middleton, 1853-8 Ex 352 (356):-- "It must, however, be conceded that where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail, unless there be some strong and obvious reason to the contrary. But the rule adverted to is subject to this condition, that however plain the apparent grammatical construction of a sentence may be, if it be properly clear from the contents of the same document that the apparent grammatical construction cannot be the true one, then that which, upon the whole, is the true meaning shall prevail, in spite of the grammatical construction of a particular part of it." And substantially the same opinion is expressed by Lord Selborne in ***Caledonian Ry, v. North British Ry.*** (1881) 6 AC 114 (222):-- "The mere literal construction of a statute ought not to prevail if it is opposed to the intentions of the legislature as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which, that intention can be better effectuated." Again Lord Fitzgerald in ***Bradlaugh v. Clarke,*** (1883) 8 AC 354 at p. 384 observed as follows:-- "I apprehend it is a rule in the construction of statutes that in the first instance the grammatical sense of the words is to be adhered to. If that is contrary to, or inconsistent with, any expressed intention or declared purpose of the statutes, or if it would involve any absurdity, repugnance, or inconsistency, the grammatical sense must then be modified, extended, or abridged, so far as to avoid such an inconvenience, but no further." 11. Maxwell in his book on Interpretation of Statutes (11th Edition) at page 226 observes thus:--

> "The rule of strict construction, however, whenever invoked, comes attended with qualifications and other rules no less important, and it is by the light which each contributes that the meaning must be determined. Among them is the rule that that sense of the words is to be adopted which best harmonises with the context and promotes in the fullest manner the policy and object of the legislature. The paramount object, in construing penal as well us other statutes, is to ascertain the legislative intent and the rule of strict construction is not violated by permitting the words to have their full meaning, or the more extensive of two meanings, when best effectuating the intention. They are indeed frequently taken in the widest sense, sometimes even in a sense more wide than etymologically belongs or is popularly attached to them, in order to carry out effectually the legislative intent, or, to use Sir Edward Cole's words, to suppress the mischief and advance the remedy."

(xiii) In **Inland Revenue Commissioner** v. **Joiner** [(1975) 3 All. ER 1050], it has been held that normally a statutory provision consists of a general description of some factual situation and the legal consequences ensuing from it. Whether the general description is wide or narrow, it will have some limits. The question before a court of law in dealing with a statute is whether the factual situation proved before it falls within the general description given in the statute. A real difficulty in determining the right answer can be said to arise from an "ambiguity" in the statute. It is in this sense that the words, "ambiguity" and "ambiguous" are widely used in judgments.

(xiv) In **Commissioner of Sales Tax** v. **M/s. Mangal Sen Shyamlal** reported in [AIR 1975 SC 1106], the Hon'ble Apex Court held as under:

> "A statute is supposed to be an authentic repository of the legislative will and the function of a court is to interpret it "according to the intent of them that made

> it". From that function the court is. not to resile. It has to abide by the maxim, "*ut res magis valiat quam pereat*", lest the intention of the legislature may go in vain or be left to evaporate into thin air."

(xv) In **C.I.T., Madras** v. **T.Sundram Iyengar (P) Ltd.**, reported in (1976) 1 SCC 77, the Hon'ble Supreme Court held that, if the language of the statute is clear and unambiguous and if two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used, in order to meet a possible injustice.

(xvi) If the words are precise and unambiguous, then it should be accepted, as declaring the express intention of the legislature. In **Ku.Sonia Bhatia** v. **State of U.P.**, and others reported in 1981 (2) SCC 585 : AIR 1981 SC 1274, the Hon'ble Supreme Court held that a legislature does not waste words, without any intention and every word that is used by the legislature must be given its due import and significance.

(xvii) In **LT.-Col. Prithi Pal Singh Bedi** v. **Union of India** reported in (1983) 3 SCC 140, at Paragraph 8, the Hon'ble Supreme Court held as follows:

> "8. The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognised canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the Court should adopt literal construction if it does not lead to an absurdity. .....If the literal construction leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary first to ascertain the juxtaposition in which the rule is placed, the purpose for which it is enacted and the object which it is required to subserve and the authority by which the rule is framed. This necessitates examination of the broad features of the Act."

(xviii) In **Philips India Ltd.** v. **Labour Court** [(1985) 3 SCC 103], the Hon'ble Apex Court, at paragraph 15, held as under:

> "(15) No cannon of statutory construction is more firmly, established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction ex visceribus actus. This rule of statutory construction is so firmly established that it is variously styled as 'elementary rule' (See *Attorney General v. Bastow* [(1957) 1 All.ER 497]) and as a 'settled rule' (See *Poppatlal Shall v. State of Madras* [1953 SCR 667 : AIR 1953 SC 274]). The only recognised exception to this well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lord Coke laid down that: 'it is the most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expresseth meaning of the makers' (Quoted with approval in *Punjab Breverages Pvt. Ltd. v. Suresh Chand* [(1978) 3 SCR 370 : (1978) 2 SCC 144 : 1978 SCC (L&S) 165])."

(xix) In **Nyadar Singh** v. **Union of India** reported in AIR 1988 SC 1979, the Hon'ble Apex Court observed that ambiguity need not necessarily be a grammatical ambiguity, but one of the appropriateness of the meaning in a particular context.

(xx) It is a well settled law of interpretation that "when the words of the statute are clear, plain or unambiguous, ie., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. Reference can be made to the decision of the Hon'ble Apex Court in **Nelson Motis** v. **Union of India** (AIR 1992 SC 1981)."

(xxi) In **M/s. Oswal Agro Mills Ltd.** v. **Collector of Central Excise and others** (AIR 1993 SC 2288), the Hon'ble Apex Court held as under:

> "where the words of the statute are plain and clear, there is no room for applying any of the principles of

> interpretation, which are merely presumptions in cases of ambiguity in the statute. The Court would interpret them as they stand."

(xxii) In **Nasiruddin** v. **Sita Ram Agarwal** reported in (2003) 2 SCC 577, the Hon'ble Supreme Court held as under:

> "35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom....
>
> 37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. .....But the intention of the legislature must be found out from the scheme of the Act."

(xxiii) In **Narendra H. Khzurana** v. **Commissioner of Police** reported in 2004 (2) Mh.L.R. 72, it was held that, it must be noted the proper course in interpreting a statute in the first instance is to examine its language and then ask what is the natural meaning uninfluenced by the considerations derived from previous state of law and then assume that it was property intended to leave unaltered. It is settled legal position, therefore, that the Courts must try to discover the real intent by keeping the direction of the statute intact.

(xxiv) In **Indian Dental Association, Kerala** v. **Union of India** [2004 (1) Kant. LJ 282], the Court held thus:

> "The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. The object of all interpretation is to discover the intention of Parliament, "but the intention of Parliament must be deduced from the language used", for it is well-accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. Where the language of an Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature. Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. The decision in a case calls for a full and fair application of particular statutory language to particular facts as found. It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express. A construction which would leave without effect any part of the language of a statute will normally be rejected."

(xxv) In **Nathi Devi** v. **Radha Devi Gupta** reported in AIR 2005 SC 648, the Hon'ble Apex Court held that,-

> "The interpretation function of the Court is to discover the true legislative intent, it is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admits of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that

> such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional."

In ***Nathi Devi's*** case, it was further held that,

> "It is equally well-settled that in interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors."

(xxvi) In Justice G.P. Singh's Principles of Statutory Interpretation (11th Edn., 2008), the learned author while referring to judgments of different Courts states (at page 134) that procedural laws regulating proceedings in court are to be construed as to render justice wherever reasonably possible and to avoid injustice from a mistake of court. He further states (at pages 135 and 136) that: "Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. "The argument ab inconvenienti", said LORD MOULTON, "is one which requires to be used with great caution".

(xxvii) In **State of Jharkhand** v. **Govind Singh** reported in (2005) 10 SCC 437, the Hon'ble Supreme Court held as under:

> "12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature.
>
> 13. Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. The

task is not easy as the "language" is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the legislature cannot be approached as the legislature, after enacting a law or Act, becomes functus officio so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the legislature retains the power to amend or repeal the law so made and can also declare its meaning, but that can be done only by making another law or statute after undertaking the whole process of law-making.

14. Statute being an edict of the legislature, it is necessary that it is expressed in clear and unambiguous language.....

15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so. (See Frankfurter: Some Reflections on the Reading of Statutes in Essays on Jurisprudence, Columbia Law Review, p. 51.)

16. It is true that this Court in interpreting the Constitution enjoys a freedom which is not available in interpreting a statute and, therefore, it will be useful at this stage to reproduce what Lord Diplock said in ***Duport Steels Ltd.*** **v.** ***Sirs*** [(1980 (1) All. ER 529] (All ER at p. 542c-d):

> "It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to

> have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest."

(xxviii) In **Vemareddy Kumaraswamy Reddy** v. **State of A.P.**, reported in (2006) 2 SCC 670, the Hon'ble Supreme Court held as under:

> "12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous."

(xxix) In **A.N.Roy Commissioner of Police** v. **Suresh Sham Singh** [AIR 2006 SC 2677], the Hon'ble Apex Court held thus:

> "It is now well settled principle of law that, the Court cannot change the scope of legislation or intention, when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the Court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions."

(xxx) In **Adamji Lookmanji & Co.** v. **State of Maharashtra** reported in AIR 2007 Bom. 56, the Bombay High Court held that, when the words of status are clear, plain or unambiguous, and reasonably susceptible to only meaning, Courts are bound to give effect to that meaning irrespective of the consequences. The intention of the legislature is primarily to be gathered from the language used. Attention should be paid to what has been said in the statute, as also to what has not been said.

(xxxi) In **State of Haryana** v. **Suresh** reported in 2007 (3) KLT 213, the Hon'ble Supreme Court held thus:

> "One of the basic principles of Interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary, to or inconsistent with any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity."

(xxxii) In **Visitor Amu** v. **K.S.Misra** reported in (2007) 8 SCC 594, the Hon'ble Supreme Court held thus:

> "It is well settled principle of interpretation of the statute that it is incumbent upon the Court to avoid a construction, if reasonably permissible on the language, which will render a part of the statute devoid of any meaning or application. The Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being in apposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute."

(xxxiii) In **Sri. Jeyaram Educational Trust & Ors.** v. **A. G. Syed Mohideen & Ors.** [2010 CIJ 273 SC (1)], the Hon'ble Apex Court held thus:

> "6. It is now well settled that a provision of a statute should have to be read as it is, in a natural manner, plain and straight, without adding, substituting or

> omitting any words. While doing so, the words used in the provision should be assigned and ascribed their natural, ordinary or popular meaning. Only when such plain and straight reading, or ascribing the natural and normal meaning to the words on such reading, leads to ambiguity, vagueness, uncertainty, or absurdity which were not obviously intended by the Legislature or the Lawmaker, a court should open its interpretation tool kit containing the settled rules of construction and interpretation, to arrive at the true meaning of the provision. While using the tools of interpretation, the court should remember that it is not the author of the Statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A court as an interpreter cannot alter or amend the law. It can only interpret the provision, to make it meaningful and workable so as to achieve the legislative object, when there is vagueness, ambiguity or absurdity. The purpose of interpretation is not to make a provision what the Judge thinks it should be, but to make it what the legislature intended it to be."

(xxxiv) In **Delhi Airtech Services (P) Ltd.** v. **State of U.P.**, [(2011) 9 SCC 354], while dealing with Section 17(3-A) of the Act, the Hon'ble Supreme Court held as under:

> "Therefore, the provision of Section 17(3-A) cannot be viewed in isolation as it is an intrinsic and mandatory step in exercising special powers in cases of emergency. Sections 17(1) and 17(2) and 17(3-A) must be read together. Sections 17(1) and 17(2) cannot be worked out in isolation.
>
> 55. It is well settled as a canon of construction that a statute has to be read as a whole and in its context. In *Attorney General v. Prince Ernest Augustus of Hanover* [1957 AC 436], Lord Viscount Simonds very elegantly stated the principle that it is the duty of court to examine every word of a statute in its context. The learned Law Lord further said that in understanding the meaning of the provision, the Court must take into consideration "not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate

> means, discern that the statute was intended to remedy." (All ER p. 53 I)
>
> 57. These principles have been followed by this Court in its Constitution Bench decision in **Union of India v. Sankalchand Himatlal Sheth** [1977 (4) SCC 193]. At SCC p. 240, Bhagwati, J. as His Lordship then was, in a concurring opinion held that words in a statute cannot be read in isolation, their colour and content are derived from their context and every word in a statute is to be examined in its context. His Lordship explained that the word context has to be taken in its widest sense and expressly quoted the formulations of Lord Viscount Simonds, set out above."

(xxxv) In **Noida Entrepreneurs Association** v. **Noida** reported in (2011) 6 SCC 508, at paragraphs 23 & 24, the Hon'ble Supreme Court held as under:

> "22. It is a settled proposition of law that whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance on the principle of "*quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud*", which means" "whenever a thing is prohibited, it is prohibited whether done directly or indirectly". [See: *Swantraj & Ors. v. State of Maharashtra*, AIR 1974 SC 517; *Commissioner of Central Excise, Pondicherry v. ACER India Ltd.*, (2004) 8 SCC 173; and *Sant Lal Gupta & Ors., v. Modern Co-operative Group Housing Society Ltd., & Ors.*, (2010) 13 SCC 336)].
>
> "23. In *Jagir Singh v. Ranbir Singh & Anr.* (AIR 1979 SC 381), this Court has observed that an authority cannot be permitted to evade a law by "shift or contrivance." While deciding the said case, the Court placed reliance on the judgment in *Fox v. Bishop of Chester*, (1824) 2 B &C 635, wherein it was observed as under:-
>
> > "To carry out effectually the object of a statute, it must be construed as to defeat all attempts to do, or avoid doing in an indirect or circuitous manner that which it has prohibited or enjoined."

(xxxvi) In **Mukund Dewangan v. Oriental Insurance Company Ltd.**, reported in (2017) 14 SCC 663, the Hon'ble

Supreme Court has observed that the principle that statute must be read as a whole is equally applicable to different parts of same section. Paras 35, 36 & 38 of the said decision are quoted below:

> "35. The conclusion that the language used by the legislature is plain or ambiguous can only be arrived at by studying the statute as a whole. Every word and expression which the legislature uses has to be given its proper and effective meaning, as the legislature uses no expression without purpose and meaning. The principle that the statute must be read as a whole is equally applicable to different parts of the same section. The section must be construed as a whole whether or not one of the parts is a saving clause or a proviso, it is not permissible to omit any part of it, the whole section should be read together as held in State of **Bihar v. Hira Lal Kejriwal** [AIR 1960 SC 1107].
>
> 36. The author has further observed that the courts strongly lean against a construction which reduces the statutes to a futility as held in **M. Pentiah v. Muddala Veeramallappa** (AIR 1961 SC 1107) and **Tinsukhia Electric Supply Co. Ltd. v. State of Assam**, [(1989) 3 SCC 709]. When the words of a statute are clear or unambiguous i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of the consequences as held in **Nelson Motis v. Union of India** [(1992) 4 SCC 711], **Gurudevdatta VKSSS Maryadit v. State of Maharashtra** [(2001) 4 SCC 534] and **Nathi Devi v. Radha Devi Gupta** [(2005) 2 SCC 271]. It is also a settled proposition of law that when the language is plain and unambiguous and admits of only one meaning no question of construction of a statute arises for the Act speaks for itself as held in **State of U.P. v. Vijay Anand Maharaj** [AIR 1963 SC 946].
>
> 38. The words cannot be read into an Act, unless the clear reason for it is to be found within the four corners of the Act itself. It is one of the principles of

> statutory interpretation that may matter which should have been, but has not been provided for in a statute, cannot be supplied by courts, as to do so will be legislation and not construction as held in Hansraj Gupta v. Dehra Dun-Mussoorie Electric Tramway Co. Ltd. AIR 1933 PC 63, Kamalaranjan Roy v. Secy., of State AIR 1938 PC 281 and Karnataka State Financial Corporation v. N. Narasimahaiah [2008 5 SCC 176]. The Court cannot supply casus omissus."

18. When there is a specific exclusion in the statute, whether the Court can add or delete the same, by giving a different meaning to the definition. On the said aspect, let us consider a few decisions.

(i) In **CIT** v. **Badhraja and Company** reported in 1994 Supp (1) SCC 280, the Hon'ble Apex Court held that an object oriented approach, however, cannot be carried to the extent of doing violence to the plain meaning of the Section used by rewriting the Section or substituting the words in the place of actual words used by the legislature.

(ii) In **Dadi Jagannadham** v. **Jammulu Ramulu** reported in (2001) 7 SCC 71, the Hon'ble Supreme Court held as under:

> "13. We have considered the submissions made by the parties. The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there."

(iii) In **Institute of C.A. of India** v. **Ajit Kumar Iddya** reported in AIR 2003 Kant. 187, the Karnataka High Court held as under:

> "So far as the cardinal law of interpretation is concerned, it is settled that if the language is simple and unambiguous, it is to be read with the clear intention of the legislation. Otherwise also, any addition/subtraction of a word is not permissible. In other words, it is not proper to use a sense, which is different from what the word used ordinarily conveys. The duty of the Court is not to fill up the gap by stretching a word used. It is also settled that a provision is to be read as a whole and while interpreting, the intention and object of the legislation have to be looked upon. However, each case depends upon the facts of its own."

(iv) In **Sanjay Singh** v. **U.P. Public Service Commission** [(2007) 3 SCC 720], the Hon'ble Supreme Court held as under:

> "It is well settled that courts will not add words to a statute or read into the statute words not in it. Even if the courts come to the conclusion that there is any omission in the words used, it cannot make up the deficiency, where the wording as it exists is clear and unambiguous. While the courts can adopt a construction which will carry out the obvious intention of the legislative or the rule-making authority, it cannot set at naught the legislative intent clearly expressed in a statute or the rules."

(v) In **Gujarat Urja Vikas Nigam Ltd.** v. **Essar Power Ltd.,** [(2008) 4 SCC 755], the Hon'ble Apex Court held as under:

> "52. No doubt ordinarily the literal rule of interpretation should be followed, and hence the court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain existing words in a statute of all meaning, or some part of the statute may become absurd."

(vi) In **Phool Patti** v. **Ram Singh** reported in (2009) 13 SCC 22, the Hon'ble Supreme Court held as under:

> "9. It is a well-settled principle of interpretation that the court cannot add words to the statute or change its language, particularly when on a plain reading the meaning seems to be clear."

(vii) In **Mohd. Shahabuddin** v. **State of Bihar**, reported in (2010) 4 SCC 653, the Hon'ble Supreme Court held thus:

> "179. Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to a recent decision of this Court in *Ansal Properties & Industries Ltd. v. State of Haryana* [(2009) 3 SCC 553].
>
> 180. Further, it is a well-established principle of statutory interpretation that the legislature is specially precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the legislature also intended the condition to be applied at some other place in that provision."

(viii) In **Satheedevi** v. **Prasanna** reported in (2010) 5 SCC 622, the Hon'ble Supreme Court held as follows:

> "12. Before proceeding further, we may notice two well-recognised rules of interpretation of statutes. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more

> consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise--*Kanai Lal Sur v. Paramnidhi Sadhukhan* [AIR 1957 SC 907].
>
> 13. The other important rule of interpretation is that the court cannot rewrite, recast or reframe the legislation because it has no power to do so. The court cannot add words to a statute or read words which are not there in it. Even if there is a defect or an omission in the statute, the court cannot correct the defect or supply the omission - *Union of India v. Deoki Nandan Aggarwal* [1992 Supp (1) SCC 323] and *Shyam Kishori Devi v. Patna Municipal Corpn.* [AIR 1966 SC 1678]"

19. In the light of the statutory provision, Section 3(f) of the Drugs and Cosmetics Act, 1940, Rule 85(E) of the Drugs and Cosmetics (Amendment) Rules, 2006, read with Schedule M-1, we are of the view that there is a specific exclusion, insofar as dispensation of drugs or cosmetics, in the course of business in pharmacies, and clinics, in the State of Kerala.

20. Dispensation of drugs or cosmetics, in the ordinary course of retail business or in the clinics, in the State of Kerala, cannot, at any stretch of imagination, be said as manufacture. Doctrine of *ejusdem generis*, cannot be applied to the dispensation of drugs or cosmetics.

21. Schedule to a statutory provision in the Act or the rules framed thereunder, should not be read in isolation. It should be read, understood, and given the literal meaning, as to what the Legislature has

intended to give effect to the statutory provision, as to what the delegated authority can frame rules, and in the case on hand, thus framed the rules. On the said aspect, let us consider a few decisions.

(i) How a schedule to an Act is to be interpreted has been laid down by various authorities which the Court proposes to consider now. One of the earliest authorities on this point was the Judgment delivered by Lord Justice Brett in **Attorney General v. Lamplough**, reported in **1879 (3) Exd. 214**, wherein, it was observed thus:

> "A schedule in an Act is a mere question of drafting, a mere question of words. The schedule is as much a part of the statute and is as much an enactment as any other part."

(ii) The Schedule may be used in construing the provisions in the body of the Act. It is as much an act of legislature as the Act itself and it must be read together with the Act for all purposes of construction. Expressions in the Schedule cannot control or prevail against the express enactment and in case of any inconsistency between the Schedule and the enactment, the enactment is to prevail and if any part of the Schedule cannot be made to correspond it must yield to the Act. Lord Sterndale, in **IRC v. Gittus** [(1920) 1 KB 563 said : (at 576)]:

> "It seems to me there are two principles or rules of interpretation which ought to be applied to the combination of Act and Schedule. If the Act says that the Schedule is to be used for a certain purpose and the heading of the part of the Schedule in question shows that it is prima facie at any rate devoted to that purpose, then you must read the Act and the Schedule as though the Schedule were operating for that purpose, and if you can satisfy the language of the section without extending it beyond that purpose you ought to do it. But if in spite of that you find in the language of the Schedule words and terms that go clearly outside that purpose, then you must give effect to them and you must not

> consider them as limited by the heading of that part of the Schedule or by the purpose mentioned in the Act for which the Schedule is prima facie to be used. You cannot refuse to give effect to clear words simply because prima facie they seem to be limited by the heading of the Schedule and the definition of the purpose of the Schedule contained in the Act."

(iii) In **Muneshwara Nand v. State** (AIR 1961 All 24), the High Court of Allahabad opined thus:

> "18. In view of the flaw aforesaid to wit, the existing conflict between Section 345 and Schedule II of the Code, the question arises as to what is the true state of the law. Now, it is well settled that Schedules form a part of the statute and must be read together with it for all purposes of construction. But expressions in the Schedule cannot control or prevail against the express enactment. If there is any appearance of inconsistency between the Schedule and; the enactment, the enactment shall prevail, and if the enacting part and the Schedule cannot be made to correspond, the latter must yield to the former. See "The Interpretation of Indian Statutes" by Jagdish Swarup (1952 Ed.169. It is clear therefore that Section 345 of the Code, as it stands, must take precedence over Schedule II."

(iv) Francis Bennion in his treatise on Statutory Interpretation, 2nd Edition has given some guidance on how to construe a Schedule. According to Bennion, a schedule is an extension of the section, which induces it. Material is put into a schedule because it is too lengthy or detailed to be conveniently accommodated in a section, or because it forms a separate document. [page 490|

(v) In **Ujagar Prints etc. v. Union of India and Ors.** reported in AIR 1989 SC 516, the Hon'ble Supreme Court held thus:

> "29. That apart, Section 4 of Amending Act VI of 1080 has amended the relevant items in the Schedule to the Additional Duties Act. The expressions 'produce' or 'manufacture' in Section 3(1) of the Additional Duties Act

must be read along with the entries in the Schedules. In **Attorney General. v. Lamplough** (1878) 3 Ex. D. 214 it, is observed:

> "A Schedule in an Act is a mere question of drafting, a mere question of words. The schedule in as much a part of the statute, and is as much an enactment, as any other part."

Maxwell says (in Interpretation of Statutes, 11th Edn., p. 156):

> "…if an enactment in a schedule contradicts an earlier clause it prevails against it." Bennion (in Bennion's Statutory Interpretation pp, 568-569) referring to the place of Schedules in statutes observes:
>
> > "The Schedule is an extension of the section which includes it. Material is put into a Schedule because it is too, lengthy or detailed to be conveniently accommodated in a section.
> >
> > A Schedule must be attached to the body of the Act by words in one of the sections (known as inducing words). It was formerly the practice for the inducing words to say that the Schedule was to be constructed and have effect as part of the Act (See, e.g., Ballot Act, 1872, Section 28). This is no longer done, being regarded as unnecessary. If by mischance the inducing words were committed, the Schedule would still form part of the Act if that was the apparent intention.

.....The schedule is an much a part of the statute, and is as much an enactment, as any other part'. (See also to the like effect, Flower Freight Co. Ltd. v. Hammond [(1963) 1 QB 275]; R. v. Legal Aid Committee No. 1 (London) Legal Aid Area Ex. P. Rondel [(1967) 2 QB 482]; Metropolitan Police Commissioner v. Curran [(1976) 1 WLR 7]. What appears, therefore, clear is that what applies to the main levy, applies to the additional duties as well. We find no substance in contention (c) either."

(vi) In **M/s. Aphali Pharmaceuticals Ltd. v. State of Maharashtra** [(1989) 4 SCC 378], the Hon'ble Supreme Court observed thus:

> "A Schedule in an Act of Parliament is a mere question of drafting. It is the legislative intent that is material. An Explanation to the Schedule amounts to an Explanation in the Act itself. As we read in Halsbury's Laws of England, Third Edition, Vol.36, para 551 :
>
> > "To simplify the presentation of statutes, it is the practice for their subject matter to be divided, where appropriate, between sections and schedules, the former setting out matters of principle, and introducing the latter, and the latter containing all matters of detail. This is purely a matter of arrangement, and a schedule is as much a part of the statute, and as much an enactment, as is the section by which it is introduced."
>
> The schedule may be used in construing provisions in the body of the Act. It is as much an act of Legislature as the Act itself and it must be read together with the Act for all purposes of construction. Expressions in the Schedule cannot control or prevail against the express enactment and in case of any inconsistency between the schedule and the enactment the enactment is to prevail and if any part of the schedule cannot be made to correspond it must yield to the Act. Lord Sterndale, in **Inland Revenue Commissioner v. Gittus**, (1920) 1 KB 563 , said:
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> > "It seems to me there are two principles of rules of interpretation which ought to be applied to the combination of Act and Schedule. If the Act says that the Schedule is to be used for a certain purpose and the heading of the part of the Schedule in question shows that it is prima facie at any rate devoted to that purpose, then you must read the Act and the Schedule as though the Schedule were operating for the purpose, and if you can satisfy the language of the section without extending it beyond that purpose you ought to do it. But if in spite of that you find

> in the language of the Schedule words and terms that go clearly outside that purpose, then you must give effect to them and you must not consider them as limited by the heading of that part of the Schedule or by the purpose mentioned in the Act for which the Schedule is prima facie to be used. You cannot refuse to give effect to clear words simply because prima facie they seem to be limited by the heading of the Schedule and the definition of the purpose of the Schedule contained in the Act."

22. Reading of the above makes it clear that Schedule is a part of the Section and the rules framed thereunder, and it must be read, understood, and given effect to, for the purpose of the Act.

23. Giving due consideration to the legislative intent, in enacting Section 3(f), definition of 'manufacture', Rule 85E, and on a scrutiny of Schedule M-1, we are of the view that Schedule M-1 is in accordance with the legislative intent, and in consonance with the statutory provisions and the rules framed thereunder, applicable to a manufacturer.

24. On the submission that there is a personal interest of the 2nd petitioner, joining hands with the 1st petitioner, namely, Dr. T. N. Parameswara Kurup, in preferring the instant writ petition, styled as a 'Public Interest Litigation', in the absence of any clinching evidence, duly supported by documents, we refrain from recording any findings.

25. But, at the same time, going through the statutory provision which defines "manufacture", distinguished from dispensation of drugs

and cosmetics, we have no hesitation to hold that dispensation of drugs and cosmetics for retail business is specifically excluded by the Legislature. What is specifically excluded by the Legislature, should not be added by the Courts, as it would amount to invasion of the legislative powers, contrary to the legislative intent, and would also amount to legislation, which the courts are not incompetent.

26. Giving due consideration to the pleadings, submissions, and material on record, we are of the view that petitioners have not made out a case for issuing any directions to the respondents, to seize plastic containers from the clinics in the State of Kerala, by conducting a special drive for seizure, and to prosecute the offenders for violation of the provisions of Drugs and Cosmetics Act, 1940. There is no need to issue any direction to the respondents to educate the citizens with regard to the use of plastic containers in storing homeopathic medicines, either at home or in the pharmacies or clinics, in the State of Kerala. Provision/ directions issued, can be made applicable only to the manufacturers.

27. It is for the State to take effective measures for enforcement of the statutory provisions and consequential directions, as against the manufacturers, and the State shall do the same forthwith, without fail. Appropriate action should be taken against such manufacturers of homeopathic medicines or drugs, as expeditiously as possible, and a

report to that effect be submitted to this Court, within two months from the date of receipt of a copy of this judgment

Writ petition is disposed of accordingly. For submission of compliance report, Registry shall post this writ petition, after three months from today.

Pending interlocutory applications, if any, shall stand closed.

Sd/-
S. Manikumar
Chief Justice

Sd/-
Shaji P. Chaly
Judge

vpv & krj

APPENDIX

PETITIONERS' EXHIBITS:

EXHIBIT P1	COPY OF THE NOTIFICATION OF THE MINISTRY OF HEALTH AND FAMILY WELFARE DATED 31.10.2006 CONTAINING SCHEDULE M-1.
EXHIBIT P2	COPY OF THE SHORT REPORT PREPARED BY THE 2ND PETITIONER ON HOMEOPATHY AND PLASTICS.
EXHIBIT P3	COPY OF THE COMMUNICATION OF THE LICENSING AUTHORITY, OFFICE OF THE AYUSH, MADHYAPRADESH DATED 24.01.2013.
EXHIBIT P4	COPY OF THE COMMUNICATION OF THE PRINCIPAL SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT DATED 18.02.2012.
EXHIBIT P5	COPY OF THE COMMUNICATION OF THE PRINCIPAL SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT DATED 28.09.2012.
EXHIBIT P6	COPY OF THE COMMUNICATION OF THE DRUGS CONTROLLER DATED 13.02.2012.

RESPONDENTS' EXHIBITS:- NIL

//true copy//

P.A. TO C.J.