

CASE NO.:
Special Leave Petition (civil) 689 of 2002

PETITIONER:
Bipinchandra Parshottamdas Patel (Vakil)

RESPONDENT:
State of Gujarat & Ors.

DATE OF JUDGMENT: 14/04/2003

BENCH:
S. RAJENDRA BABU

JUDGMENT:

J U D G M E N T

[With Contempt Petition (Civil) No.452 of 2002]

RAJENDRA BABU, J. :

I have had the privilege of perusing the judgment proposed by my learned brother S.B.Sinha, J. However, with respect, I express my inability to concur with the same and I propose to deliver a separate judgment in the following terms.

As facts and provisions of the relevant law have been set out in the judgment of my learned brother S.B.Sinha, J. I do not propose to reiterate them. The petition in hand calls for interpretation of Section 40 of the Gujarat Municipalities Act, 1963 (for short 'the Act').

Section 40(1) is disjunctive in nature. First part of this sub-Section says that a President or Vice-President of a municipality can be suspended if any criminal proceeding has been instituted against him/her in respect of any offence alleged to have been committed under the Prevention of Corruption Act or the Bombay Prohibition Act or while acting or purporting to act in discharge of his/her duties under the Act. Whereas, the second part deals with the suspension of a President or Vice-President who has been detained in a prison during trial under the provisions of any law. The present petition falls under the second part. Here the appellant was suspended from the President's office of Anand Municipality owing to his detention in judicial custody for alleged offences under Sections 307, 143, 147, 148 and 149 of the Indian Penal Code read with Section 25 (c) of the Arms Act and under Section 135 of the Bombay Police Act. To the appellant, his suspension is bad in law since his detention was not 'during trial' as contemplated in Section 40(1) of the Act. It is also his case that the words 'during trial' should be given a strict meaning so as to cover detention only after commencement of trial of a case as envisaged in the Code of Criminal Procedure.

The manifest intention and obvious purpose of Section 40 is to ensure the proper functioning of the Office of the President or Vice-President of the Municipalities by keeping the public confidence. A person, who is detained in prison, will not be able to effectively discharge his public duties. So the Act aims to keep those persons, against whom serious criminal proceedings are initiated or who are detained in prisons, away from the public office of the President or Vice-President of the Municipalities until they are cleared of the charge. Actual conviction for the alleged offence is not a necessary pre-condition for any suspension under Section 40. For the purpose of suspension under part I of Section 40(1), initiation of criminal proceeding in respect of any offence alleged to have been committed by him/her is sufficient. Section 40 (2) deals about the stopgap arrangement that has to be made in the eventuality of a suspension

under sub-Section (1). This sub-Section provides for electing a councilor to perform the functions of a President or Vice-President as the case may be. And sub-Section (3) provides for the appeal from a decision of suspension under sub-Section (1). Reading of sub-Sections (2) and (3) along with part I of sub-Section (1) go on to show that immediately after the initiation of any criminal proceeding, a President or Vice President could be suspended from office. At the same time they could re-occupy the office immediately after clearing the charges against them. By virtue of Section 40, a person who is alleged to have committed an offence under part I of sub-Section (1) will have to be kept away from office. The cardinal dictum that the legislature laid down vide Section 40 is to allow only those persons, against whom there are no criminal proceedings, to man the office of the Municipal President or Vice-President.

The proper meaning of words "detained in prison during trial" in part II of sub-Section 40(1) could only be deciphered in the above contextual backdrop. The meaning of these words should be in perfect tune with the spirit of Section 40. Otherwise, the purpose of section will be defeated. Therefore, word "trial" used in the expression "detained in prison during trial" cannot be singled out and cannot be accorded with a restricted meaning. The meaning will have to promote the reason and spirit of Section 40 of the Act.

Now the entire issue boils down to the exercise of finding the true meaning of the word 'trial' as portrayed in the broad canvass of Section 40 of the Act.

In State of Bihar v. Ram Naresh Pandey 1957 SCR 279 at 289 this Court observed:

" The words 'tried' and 'trial' appear to have no fixed or universal meaning. No doubt, in quite a number of sections in the Code to which our attention has been drawn the words 'tried' and 'trial' have been used in the sense of reference to a stage after the inquiry. That meaning attaches to the words in those sections having regard to the context in which they are used. There is no reason why where these words are used in another context in the Code, they should necessarily be limited in their connotation and significance. They are words which must be considered with regard to the particular context in which they are used and with regard to the scheme and purpose of the provision under consideration."

(Emphasis supplied)

Following this view, this Court in Omprakash Shivaprakash v. K I Kuriakose, (1999) 8 SCC 633 ruled that:

"The term 'trial' cannot be given a fixed meaning to be applied in all cases uniformly."

Therefore, the word 'trial' in Section 40 of the Act cannot be supplanted with a straight jacket meaning so as to cover all situations. No doubt, the word "trial" used in part II of sub-Section 40(1) is capable of two interpretations in the context of the present case. One is the restricted interpretation so as to cover only the period after framing of the charge. This view is what the appellant advances. The second possibility is to assign a liberal meaning so as to cover 'detention at any stage of the case'.

Since the purpose of the Section 40 is to 'ensure the proper functioning of the Office of the President or Vice-President of the Municipalities by keeping the public confidence', the concentration is on the expression "detention in prison". For obvious reasons a person who is detained in prison cannot effectively function as a President or Vice-President of a Municipality. So any person 'detained in prison' cannot be allowed to hold the office. This is the purpose of part II in Section 40(1). The words "during trial" is used so as to exclude the situations like preventive detention or detention in police custody. If the words employed in a provision are capable of two meanings or casts doubts as to the

actual meaning, then it has to be interpreted in the light of the object of the legislation. Word by word interpretation is not a welcome method of interpretation. Words, vehicles of legislative intentions, take colour from the context in which it is used. Hence the interpretation of the words 'during trial' will have to promote the purpose of Section 40. As already pointed out, object of this Section is to keep shady characters away from local bodies and to pave way to persons with high integrity and good moral conduct to hold public offices. This large interest could only be promoted if the word 'trial' is given a broad meaning. This intention is vividly displayed by choosing the expression "under the provisions of any law for the time being in force" in part II of Section 40(1). Which means the provision is designed to cover any 'detention in prison' under provisions of any law. Only by this interpretation, the textual meaning of 'during trial' matches the contextual spirit of Section 40 that aims to ensure the smooth functioning of the office and to keep confidence of people in the institution.

In result, the word 'trial' should not be given a restricted meaning so as to include only proceedings after the accused is actually arraigned before the competent court for framing and facing of charges. Thus, detention in the present case took place during the process of trial. It served as a step in aid for trial.

The distinction between two parts of Section 40(1) of the Act regarding offences under the Prevention of Corruption Act, Bombay Prohibition Act, Gujarat Municipalities Act on the one hand and other enactments on the other is strongly relied upon on behalf of the appellant. Many offences arising under other laws adverted to in the latter part of Section 40(1) of the Act are no less serious than those adverted to in the former part of Section 40(1) of the Act. For that matter they may be far more serious. For example, drunkenness may be an offence under Bombay Prohibition Act, while murder and sedition are offences under the Indian Penal Code. Further, for practical reasons, if a person is kept in prison, whatever may be the nature of the offence whether falling under the first part or the second part of Section 40(1) of the Act, the working of the Act will be put in jeopardy unless he is suspended. While the one who has committed an offence under the Bombay Prohibition Act is liable to be suspended immediately on being accused of such an offence and arrested, while the other who has committed a murder is not so liable. Thus a literal interpretation of the provision would lead to anomalous results as in the categorisation of offences no scientific basis is discernible. The object of Section 40(1) of the Act is to prevent a President/Vice-President of a Municipality from functioning in event of a criminal case being launched and arrested. However, in one set of cases, immediately on arrest such officer bearer can be suspended, while in the other only on detention during trial. Thus two classes are created one more onerous than the other and, therefore, may lead to being irrational and arbitrary so as to violate Article 14 of the Constitution. Such an interpretation can be avoided if we accept the interpretation suggested by the High Court.

For the foregoing reasons, with regret, I cannot agree with the judgment of brother S.B. Sinha, J. that assigns a restricted meaning to the word 'trial' in Section 40 of the Act. Therefore, the conclusion arrived at by the High Court does not call for our interference. The petition shall stand dismissed accordingly.

I agree, with respect, with brother S.B. Sinha, J. that the contempt petition (C) No.452 of 2002 should be dismissed. The appellant's presidential term expired on 30.6.2002. The concerned authorities conducted the election only on 11/7/2002. So they cannot be said to have violated the order of this Court. Notice in contempt petition shall stand discharged and proceedings dropped.