SUPREME COURT OF INDIA

Bipinchandra Parshottamdas Patel (Vakil)

Versus

State of Gujarat and ors.

14.4.2003

(S. Rajendra Babu, S.B. Sinha and AR. Lakshmanan)

Special Leave Petition (C) No. 689 of 2002.

JUDGMENT

S.B. Sinha, J. - Leave granted.

2. A short but an interesting question as regard interpretatin of the provisions of Section 40 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as `the Act' for the sake of brevity) falls for consideration in this appeal which arises out of a judgment and order dated 24.12.2001 passed by a Division Bench of the Gujarat High Court in Letters Patent Appeal No. 900 of 2001 in Special Civil Application No. 4932 of 2001 affirming a judgment and order dated 28.8.2001 of a learned Single Judge of the said High Court in Special Civil Application No. 4832 of 2001.

3. The basic fact of the matter is not in dispute.

4. The appellant herein was elected as a President of Anand Municipality. His term of office was to expire on 30.6.2002. The 6th respondent herein lodged two First Information Reports before the Anand Town Police Station which were marked as C.R. No. 257 of 2001 and C.R. No. 254 of 2001 for commission of 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.

5. In connection with investigation of said matters, the Appellant herein was arrested and detained in judicial custody from 13.6.2001 to 6.7.2001. The Director of Municipalities purported to act as an authorised officer in exercise of the power conferred upon him under Section 40 of the Act, directed that the petitioner be placed under suspension from his office in view of pendency of the said cases by an Order dated 21.6.2001 where against an appeal was preferred by him. Before the Appellate Authority a contention was raised by the appellant to the effect that as no charge sheet was submitted in the said case, the question of pendency of any trial thereof would not arise and in that view of the matter the 3rd respondent herein must be held to have acted illegally and without jurisdiction in passing the said order of suspension. The Appellate Authority, however, dismissed the said appeal by an Order dated 30.6.2001. Questioning the legality or validity of the said order, a writ petition was filed by the appellant herein in the High Court of Gujarat. The writ petition filed by the petitioner was marked as Special Civil Application No. 4832 of 2001. Dismissing the said writ petition, the learned Single Judge *inter alia* held that the expression "detention in jail during trial" will include detention in judicial custody during pre-trial as also post trial. It was further held

that the said expression must be interpreted as "detention in jail during the process of trial". On an appeal preferred by the appellant thereagainst, the Division Bench held :

"So far as the detention in judicial custody is concerned, in our opinion, the word "trial" which is not expressly defined in Cr. P.C. should not be given a restricted meaning to include only proceedings after the accused is actually arraigned before the competent court for framing and facing the charge.

Detention in judicial custody is a step or prelude to criminal trial and there is no reason why this `detention' cannot be held to be covered within the expression `detained in prison during trial'. We do not find ourselves in complete agreement with the reasoning of the learned Single Judge that the expression `detained in prison during trial' would include even pre-trial detention. But we find sufficient force in the reasoning of the learned Single Judge that the expression `detention in prison during trial' should include any detention *during the process of trial* meaning thereby that if before committing the case to the Sessions Courts for trial an accused is in judicial custody, the said period of detention would also be *in the process of trial* and therefore would be held to be "during trial". This *contextual* meaning has to be given to the expression detention in jail during trial to fulfil the object of the provision to keep under suspension holders of elected offices in the local bodies who are incapacitated legally and morally from continuing in office because of their detention on accusation of an offence for which trial is under way."

Aggrieved, the appellant is before us.

6. Mr. Jaspal Singh, learned senior counsel appearing on behalf of the appellant would *inter alia* submit that both the learned Single Judge as also the Division Bench of the High Court committed a manifest error in arriving at the aforementioned conclusion in so far as they failed to take into consideration the fact that as the offence alleged to have been committed by the appellant herein was triable by a Court of Sessions, the trial thereof in contradistinction to the term `investigation' or `inquiry' would commence from the stage of Section 228 of the Code of Criminal Procedure, 1973. An investigation and/or an inquiry, the learned senior counsel would contend, cannot be said to be a `trial' within the meaning of Section 40 of the Act. Strong reliance in support of the said contention has been placed on ***Raj Kishore Prasad v. State of Bihar and anr. [1996(4) SCC 495]*** and ***State of Uttar Pradesh v. Lakshmi Brahman & anr. [1983(2) SCC 372].***

7. Mr. Singh would urge that having regard to the fact that the appellant was detained in judicial custody at the stage of investigation in terms of Section 167 of the Code of Criminal Procedure, the same by no stretch of imagination can be termed as a `detention during trial'. The learned counsel would argue that the interpretation of Section 40 of the Act must be made keeping in view the fact that even after completion of investigation an accused may either be not sent for trial or not committed to the Court of Sessions therefor or even be discharged.

8. The learned counsel appearing on behalf of the respondents, on the other hand, would submit that the term `trial' having no fixed meaning, the question must be examined having regard to the purport and object which the Act seeks to achieve. The learned counsel would contend that as the object of the statute is that an elected representative of the people may not hold an office during pendency of a case, the term `trial' should be given a broad meaning.

9. Before considering the rival contentions, we may notice the provisions of Section 40 of the said Act which is as under :

"40. Suspension of President or Vice President

(1) The State Government or any officer authorised by it, may suspend from office a president or vice president against whom any criminal proceedings in respect of any offence alleged to have been committed by him under the Prevention of Corruption Act, 1947 (2 of 1947) or the Bombay Prohibition Act, 1949, (Bom XXV of 1949) or while acting or purporting to act in the discharge of his duties under this Act have been instituted or who has been detained in a prison during trial under the provisions of any law for the time being in force.

(2) Should a president or vice-president be suspended under sub-section (1), a counsellor shall be elected to perform all the duties and exercise all the powers of a president or, as the case may be, vice president during the period for which such suspension continues.

(3) An appeal shall lie to the State Government against an order passed by the authorised officer under sub-section (1). Such appeal shall be made within a period of thirty days from the date of the order."

10. The said provision postulates that an order of suspension against the President or Vice-President of the Municipal Council, as the case may be, may be passed, in two different situations, that is : (a) when a criminal case has been instituted for offences committed under : (i) Prevention of Corruption Act, 1947; or (ii) Bombay Prohibition Act, 1949; or (iii) while acting or purporting to act or discharge of his duties under the Gujarat Municipalities Act; and (b) when the holder of the office has been detained in prison during trial under the provisions of any law for the time being in force.

11. The legislature advisedly has used two different terms as regards different offences for achieving the same object. Whereas, the President or Vice-President of a Municipal Council may be placed under suspension upon institution of a case under Prevention of Corruption Act, 1947, the Bombay Prohibition Act, 1949 the said Act; but in relation to other cases order of suspension can be passed only when he has been detained in a prison during trial.

12. The expression `trial' although has not been defined in the Code of Criminal Procedure, 1973 must be construed in the light of the expression `inquiry' or `investigation' as contained in Sections 2(g) and 2(h) of the Code of Criminal Procedure which read thus :

"2(g) "inquiry" means every inquiry, other *than a trial* conducted under this Code by a Magistrate or Court;

2(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf."

Right : (Emphasis supplied)

13. The very fact that an inquiry or investigation will not be `trial' is a clear pointer to the fact that so long as an investigation or an inquiry does not come to an end, a trial does not commence.

14. Thus, whereas in an inquiry or investigation evidence is collected, the same is adduced during trial. Evidence may be collected behind the back of the accused, but the same has to be adduced only in his presence.

15. In Ferdico's - Criminal Law and Justice Dictionary, "trial" has been defined as : "The examination in court of issues of fact and law in a case for the purpose of reaching a judgment. A trial begins when the jury has been selected in a jury trial, or when the first witness is sworn or the first evidence introduced in a non-jury trial."

16. Detention of an accused either in a police custody or a judicial custody, in our views, is not a matter of much relevance for the purpose of interpretation of Section 40 of the Act. A detention is a detention whether an accused remains in the custody of the police or in judicial custody.

17. The question which arises for consideration must be answered having regard to the well-known principle of interpretation of statute.

18. A statute is to be construed according to the intention of the legislature. The golden rule of interpretation of a statute is that it has to be given its literal and natural meaning. The intention of the legislature must be found out from the language employed in the statute itself. The question is not what is supposed to have been intended but what has been said. [See ***Dayal Singh v. Union of India [(2003)2 SCC 593].***

19. It is well settled that when the Legislature has employed a plain and unambiguous language, the Court is not concerned with the consequences arising therefrom. Recourse to interpretation of statutes may be resorted only when the meaning of the statute is obscure. The Court is not concerned with the reason as to why the Legislature thought it fit to lay emphasis on one category of offences than the rest.

20. A statute, it is trite, must be read in its entirety for the purpose of finding out the purport and object thereof. The Court, in the event of its coming to the conclusion that a literal meaning is possible to be rendered, would not embark upon the exercise of judicial interpretation thereof and nothing is to be added or taken from a statute unless it is held that the same would lead to an absurdity or manifest injustice.

21. It is also a well settled principle of law that when two different expressions are used by the legislature, the same must be held to have intended to convey two different meanings. Section 40, as noticed herein-before, uses the term `instituted' in relation to offences under the statutes specified therein; whereas in relation to the others, the term `during the trial' has been used.'

22. In this case the Court has to proceed on the presumption that according to the Legislature, institution of a criminal case against the holder of office under one category of offences must have been thought of to be so derogatory that he may not continue to hold the same; whereas in the cases of offences under other category which although may be more heinous and serious, some sort of investigation or inquiry leading to issuance of charge-sheet and acceptance thereof by the Court was necessary.

23. Detention of an accused when a case is instituted and during trial is provided in different Chapters of the Code of Criminal Procedure. An accused may be detained in custody during investigation in terms of Section 167 of the Code of Criminal Procedure whereas, he has to be detained after receipt of the charge-sheet and during inquiry or trial in terms of Section 309 thereof.

24. What is imperative for the purpose of commencement of trial is that cognizance of the offence has been taken. Cognizance of the offence in a police case can be taken in terms of Section 190 of the Code of Criminal Procedure only upon receiving the report of investigating officer upon

completion of investigation, as provided for under Section 173 of the Code of Criminal Procedure, 1973.

25. So far as the Sessions trial is concerned, indisputably the same begins upon framing of charge as provided for under Chapter of XVIII of the Code of Criminal Procedure, 1973.

In Lakshmi Brahman and anr. (supra), it has been held :

"Section 167 envisages a stage when a suspect is arrested and the investigation is not completed within the prescribed period. The investigation would come to an end the moment charge-sheet is submitted as required under Section 170 unless the Magistrate directs further investigation."

26. In Raj Kishore Prasad (supra), this Court held that a prosecution under Section 319(1) of the Code of Criminal Procedure is not a trial proceeding and stated that :

"...Sub-section (1) of Section 319 makes it clear that it operates in an ongoing inquiry into, or trial of, an offence. In order to apply Section 319, it is thus essential that the need to proceed against the person other than the accused, appearing to be guilty of offence, arises only on evidence recorded in the course of any inquiry or trial. Proceedings before a Magistrate under Section 209 Cr. P.C. are patently not trial proceedings and were never considered so at any point of time historically. There has never been any doubt on the account. Before the amendment of the Code of Criminal Procedure in the present form, commitment proceedings had the essential attributes of an inquiry and were termed as such. How do they continue to be so is the core question to determine and spell out the powers of the Magistrate under Section 209 Cr. P.C. If proceedings under Section 209 Cr. P.C. continue to be an inquiry, Section 319 Cr. P.C. would be obviously attracted, subject of course to deciding whether the material put forth by the investigation could be termed as `evidence', as otherwise no evidence is recordable by a Magistrate in such proceedings.

While enacting the Code of Criminal Procedure, 1973, the prefatory note before Parliament containing "Objects and Reasons" gave out the changes proposed to be made with a view to speed up the disposal of criminal cases. Item (a) specifically provided.

"the preliminary inquiry which precedes the trial by a Court of Sessions, otherwise known as committal proceeding, is being abolished as it does not serve any useful purpose and has been the cause of considerable delay in the trial of offences."

27. We are not oblivious of the fact that the word trial, may in different situations be interpreted differently, having regard to text and context thereof, as was the case in ***The State of Bihar v. Ram Naresh Pandey [1957 SCR 279];*** wherein having regard to omission of the definition of the word `trial' in Code of Criminal Procedure, 1898 it was held that the power of the public persecutor to withdraw a case in terms of Section 494 of Code of Criminal Procedure, 1898 may be held to be applicable both at the stage of inquiry or trial. In ***Omparkash Shivprakash v. K.I. Kuriakose and ors. [(1999)8 SCC 633]*** interpreting the provisions of Prevention of Food Adulteration Act, 1954, it was held that a trial begins when under Section 251 the Magistrate asks the accused as to whether he pleads guilty or not and thus the provisions of Section 20-A of the Prevention of Food Adulteration Act, 1954 can be invoked only after reaching the stage envisaged under Section 254(1) of the Code. This Court observed :

"We will examine the relevant provisions to ascertain as to when the trial in a case involving offences under the Act would commence. Section 16-A of the Act empowers a Judicial Magistrate

of the First Class to try the offence under Section 16(1) of the Act in a summary way. Chapter XXI of the Code deals with summary trials of which Section 262 says that the procedure specified for trial of summons cases shall be followed for summary trial subject to some variations. Chapter XX is titled "Trial of Summons Cases by Magistrate". Section 251 of the Code is the commencing provision of that chapter. It requires that when the accused appears or is brought before the Magistrate the particulars of offence shall be stated to him and he shall be asked whether he pleads guilty or not. Section 254(1) of the Code says that if the Magistrate does not convict the accused he shall proceed to hear the prosecution and "take all such evidence".

The above scrutiny of the relevant provisions reveals that the trial of offences under the Act begins when the Magistrate asks the accused whether he pleads guilty or not as envisaged in Section 251 of the Code, if the Magistrate opts to hold summary trial. Hence, evidence in a trial under the Act can be adduced only after recording the plea of the accused as envisaged in the said section. Thus, it is clear that a Magistrate can implied any person under Section 20-A of the Act only after reaching the stage envisaged in Section 254(1) of the Code."

28. There is another aspect of the matter which cannot be lost sight of Section 40 of the Act provides for a disqualification to hold an elected office. Had the intention of the legislature been that mere institution of a criminal case against the holder of an electorate office may lead to an order of suspension, it could have stated so in clear terms. The legislature, in fact, has stated so in such terms in respect of an offence specified therein in the first part of Section 40. A strict construction of the second part of Section 40 in the aforementioned situation is, therefore, called for, having regard to the fact that the act of suspension from holding an office would be quasi-criminal in nature.

29. It is trite that a law leading to disqualification to hold an office should be clear and unambiguous like a penal law. In the event a statute is not clear, recourse to strict interpretation must be made for construction thereof. In his classic work `*The Interpretation and Application of Statutes'* Read Dickerson states :

"(1) The Court will not extend the law beyond its meaning to take care of a broader legislative purpose. Here "strict" means merely that *the Court will refrain from exercising its creative function to apply the rule announced in the statute to situations not covered by it, even though such an extension would help to advance the manifest ulterior purpose of the statute.* Here, strictness relates not to the meaning of the statute but to using the statute as a basic for judicial law making by analogy with it.

(2) The Court will resolve an evenly balanced uncertainty of meaning in favour of a criminal defendant, the common law, the "common right", a tax payer, or sovereignty.

(3) The Court will so resolve a significant uncertainty of meaning even against the weight of probability.

(4) The Court will adhere closely to the literal meaning of the statute and infer nothing that would extend its reach.

(5) Where the manifest purpose of the statute, as collaterally revealed, is narrower than its express meaning, the Court will restrict application of the statute its narrower purpose. This differs from the Riggs situation in that the narrow purpose is revealed by sources outside the statute and its proper context."

30. In Section 263 of the *Francis Bennion's Statutory Interpretation* it is stated :

"A principle of statutory interpretation embodies the policy of the law, which is in turn based on public policy. The Court presumes, unless the contrary intention appears, *that the legislator intended to conform to this legal policy.* A principle of statutory interpretation can therefore be described as a principle of legal policy formulated as a guide to legislative intention."

Maxwell in The Interpretation of Statutes (12th Edn) says :

"The strict construction of penal statutes seems to manifest itself in four ways : in the requirement of express language for the creation of an offence; in interpreting strictly words setting out the elements of an offence; in requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction."

31. In *Craies on Statute Law* (7th Edn. At p. 529) it is said that penal statutes must be construed strictly. In ***Tuck v. Priester, [(1887)] 19 QBD 629]*** which is followed in ***London and County Commercial Properties INvestments v. Attn. Gen., [(1953) 1 WLR 312],*** it is stated :

"We must be very careful in construing that section, because it imposes a penalty. *If there is a reasonable interpretation, which will avoid the penalty in any particular case, we must adopt that construction. Unless penalties are imposed in clear they are not enforceable.* Also where various interpretations of a section are admissible it is a strong reason against adopting a particular interpretation if it shall appear that the result would be unreasonable or oppressive."

(Emphasis supplied)

Blackburn, J. in ***Wills v. Thorp said [(1875) LR 10 QB 383]:***

"When the Legislature imposes a penalty, the words imposing it must be clear and distinct."

32. In *Craies on Statute Law* (7th Edn. At p. 530) referring to ***U.S. v. Wiltberger, [(1820) 2 Wheat (US) 76],*** it is observed thus :

"The distinction between a strict construction and a more free one has, no doubt, in modern times almost disappeared, and the question now is, what is the true construction of the statute ? I should say that in a criminal statute you must be quite sure that the offence charged is within the letter of the law. This rule is said to be founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the Legislature, and not in the judicial department, for it is the Legislature, not the Court, which is to define a crime and ordain its punishment."

33. It is also well-known that there exists a principle against doubtful penalisation. In ***Shri Mohd. Ali Khan and others v. The C.W. Tax, New Delhi [JT 1997(3) SC 250] : [(1997) 3 SCC 511],*** it is held

"It is a cardinal principle of construction that the words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary. It has been often held that the intention of the

Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. *As a consequence a construction which requires for its support additional support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided.* Obviously, the aforesaid rules of construction is subject to exceptions, just as it is not permissible to add words or to fill in a gap or lacuna. Similarly it is of universal application that effort should be made to give meaning to each and every word used by the Legislature."

34. *Francis Bennion's Statutory Interpretation* states that the principle of legal policy known as the principle against doubtful penalization, requires strict construction of penal enactments. Although often referred to as though limited to criminal statutes, the principle in fact extends to any form of detriment.

35. It is opined at Section 265 of the said treatise : It is a principle of legal policy that a person should not be penalized except under clear law. The Court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislator intended to observe this principle. It should therefore strive to avoid adopting a construction which penalizes a person where the legislator's intention to do so is doubtful, or penalizes him in a way which was not made clear.

36. It is relevant to note that Service Rules also provide for suspension of a holder of a post and therein it is ordinarily mentioned that holder may be placed under suspension if he is detained in custody either during investigation or trial. Thus, whenever the legislature thinks fit to provide for suspension of a holder of a post when he is in custody, the stages of the case is specifically mentioned.

37. While providing for different standards in the matter of issuance of order of suspension, the legislature must have in mind the impact of institution of cases which, in its opinion, would amount to moral turpitude and other offences. So far as offences under the statutes other than specified in the first part of the statute are concerned, the legislature did not evidently intend that an order of suspension be issued automatically without making an investigation in relation thereto.

38. For the foregoing reasons, I am of the opinion that the judgment of the High Court cannot be sustained. It is set aside accordingly. The civil appeal is allowed. However, having regard to the fact that the term of the petitioner came to an end on 30.6.2002 and the election have been held on 11.7.2002, we do not intend to proceed with the contempt petition. The contempt proceeding its, therefore, dropped.

In the circumstances of this case, parties shall pay and bear their own costs.

Dr. A.R. Lakshmanan, J. -

39. I have had the privilege of perusing the judgments proposed by my learned Brothers Justice S. Rajendra Babu and Justice S.B. Sinha. I respectfully concur with the opinion expressed by Brother Justice S. Rajendra Babu for the reasons stated infra.

40. The present petition raises a short and interesting question of law as regards the true and correct interpretation of Section 40 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Act") which provides for the suspension of the President or Vice President of the Municipal Council. Since Section 40 of the Act has already been set out in the other judgments, I do not

propose to reproduce the same. I have also gone through the judgment rendered by the learned single Judge of the High Court of Gujarat and the judgment dated 24.12.2001 of the Division Bench of the High Court of Gujarat and other relevant records. In my opinion, the provisions of Section 40 of the Act require the purposive interpretation. The object of the provisions is to keep criminal elements away from local bodies and to allow public offices to be held by persons with apparent integrity and moral conduct. The main controversy involved between the parties is to the meaning of the word "trial" in last part of sub-section (1) of Section 40 of the Act. A close scrutiny of Section 40 of the Act would show that the first and second part of sub-section (1) of Section of the Act is disjunctive as indicated by putting word *or* in the first and second parts of the Section is not attracted to the facts of this case, because the appellant is not facing any criminal proceedings under the two enactments mentioned in the first part and the offence alleged against him is not one which has been committed while acting or purporting to act in discharge of his duties under the Act. Therefore, the petitioner's case is to be considered for applicability of the last part of the Section following the disjunctive word or in the context of the Section. The Division Bench of the High Court of Gujarat was of the view that the object of Section 40 of the Act is also apparent that where the criminal proceedings of the nature described in Section 40 of the Act are pending or a person is detained in prison, he is sometimes practically and morally disabled from discharging his duties of the elected office. He is held as disqualified from continuing to hold the office on legal and moral grounds. Thus the object behind the Section in amply clear that persons in the elective offices facing criminal proceedings of the nature mention din Section 40 of the Act are to be kept away from the elected office until they are cleared of the charge. The last paragraph of Section 40 of the Act uses the expression "under the provisions of *any law* for the time being in force" makes the legislative intent manifest that the provision is intended to cover detention in prison during trial under provisions of any law including the criminal procedure code. As rightly pointed out by the Division Bench of the High Court, the word "trial" cannot be given a fixed meaning as is to be understood from the Criminal Procedure Code and the word "trial" has to be given the meaning as is to be understood from the law applicable to the trial in question during which the holder of the elected office has been detained.

41. This apart, the word "trial" has not been expressly defined in Criminal Procedure Code. The word, in my view, should not be given a restrictive meaning to include only proceedings after the accused is actually arraigned before the competent Court for framing and facing the charge. In arriving at the said conclusion, the High Court has placed reliance on many judgments cited before it.

42. The High Court has rightly held that the "detention in jail during trial" as mentioned in second part of Section 40(1) of the Act should be interpreted as "detention in jail during the process of trial" which period shall include from the date of filing of the FIR till the end of the trial and the detention of the President or Vice President in any time during the period in jail shall attract second part of Section 40(1) of the Act and the authority is competent to take a decision whether such President or Vice President who has been detained in connection with the alleged criminal offence should be suspended or not. The High Court, in my opinion, has not committed any error of law in the interpretation of the word "trial" used in Section 40(1) of the Act and the word "trial" has been interpreted by the High Court in common parlance. The word "trial" should be interpreted to achieve the object of the Act.

43. Considering the gravity of the situation that the person was in judicial custody and still insisting to hold the office as an officer of the Municipality is impermissible. Likewise, the general principle for the public office is that by any act or omission, if person or officer is being imprisoned or in

judicial custody, the person should be suspended from the post.

44. I, therefore, agree with interpretation of Section 40 of the Act given by my learned Brother S. Rajendra Babu. The learned Judge has also pointed out that the meaning of the words should be inperfect tune with the spirit of Section 40 of Act, otherwise, the purpose of the Section 40 of the Act will be defeated and the word "trial" used in the expression "detained in prison during trial" cannot be singled out and cannot be accorded with a restricted meaning and that the meaning will have to promote the reason and spirit of Section 40 of the Act.

45. For the foregoing reasons, with great respect, I disagree with the judgment of my learned Brother S.B. Sinha, J. which assigns the restrictive meaning of the word "trial" in Section 40 of the Act. The conclusion arrived at by the High Court, in my opinion, does not call for any interference and, therefore, the S.L.P. stands dismissed.

Contempt Petition(c) No. 452/2002

46. Having regard to the fact that the term of the petitioner came to an end on 30.6.2002 and fresh election has been held on 11.7.2002, the contempt proceedings need not be proceeded further.

Rajendra Babu, J. -

47. 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.

48. 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 purpose to reiterate them. The petition in hand calls for interpretation of Section 40 of the Gujarat Municipalities Act, 1963 (for short `the Act').

49. 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.

50. 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 1 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 councillor 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 1 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 1 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.

51. 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.

52. 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 these 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'.

53. 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.

54. 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.

55. 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 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.

56. 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.

57. 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.

Order accordingly.