

(2001) 01 GUJ CK 0006
In the Gujarat High Court

Case No : Special Civil Application No. 10979 of 1995 (with Special Civil Application No's. 10192 of 1995, 6415 and 8216 of 1996, 1994 of 1997 and CA No. 547 of 1996)

Nasirkhan Nivaskhan Pathan

APPELLANT

Vs

District Development Officer

RESPONDENT

Date of Decision : 10-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 310
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2001) 21 GLH 133 : (2002) 1 RCR(Civil) 386

Hon'ble Judges : Y.B. Bhatt, J;M.R. Calla, J;J.N. Bhatt, J

Bench : Full Bench

Advocate : Y.N. Ravani in Special Civil application No. 10979 of 1995, Mr. Y.N. Ravani for petitioner No. 1, Mr. Tushar Mehta in SCA No. 6415 of 1996, Mr. Y.N. Ravani in SCA No. 8216 of 1996 and Mr. Hardik C. Raval in SCA No. 1994 of 1997 and Mr. B.C. Dave in CA No. 547 of 1996, for the Appellant; Harin P. Raval for respondent No. 1 and Ms. Harsha Devani for respondent Nos. 2 and 3 in Special Civil Application No. 10979 of 1995, Mr. Harin P. Raval for respondent No. 1, Ms. Harsha Devani for respondent Nos. 2 and 3 and Mr. Y.N. Oza for respondent No. 4, Mr. H.S. Munshaw for respondent No. 1 and Ms. Harsha Devani for respondent No. 2 in SCA No. 6415 of 1996, Ms. Harsha Devani for respondent No. 1 in SCA No. 8216 of 1996 and Mr. Y.N. Ravani in CA No. 547 of 1996, for the Respondent

Judgement

J.N. Bhatt, J.—Whether, the holder of the public office by election can be suspended for any pending criminal proceedings, which were initiated prior to election and was not a disqualification for being elected to the office, is the heart and substratum of this referential consideration and adjudication emanated out of the order dated March 21, 1996 by the learned single Judge (Coram: Rajesh Balia, J.) in Special Civil Application No. 10979 of 1995, in whose opinion, in view of the divergent views and discordant opinions between two orders of this Court and since the matter is of general public importance, it was directed to be placed for constituting a Large Bench and, that is the reason why the Hon'ble Chief

Justice has constituted this Larger Bench for the resolution of the aforesaid question. In course of hearing of Special Civil Application No. 10979 of 1995 under Article 226 of the Constitution of India, rival contentions were raised on behalf of the petitioner. Reliance was placed on the observations made by a Division Bench of this Court in Special Civil Application No. 2722 of 1991, decided, on April 23, 1991, while making an interim order, and it was contended that the respondent No. 1-District Development Officer of District Panchayat, Bharuch, was not competent and had no jurisdiction to initiate proceedings for suspension of the petitioner, who was, elected as Sarpanch of village Palej, Taluka and District Bharuch, on October 17, 1995, on the ground of pendency of a criminal complaint against the petitioner which was filed on 23-3-91. In that, it was further contended that notwithstanding, the pending criminal proceedings, after the election of the petitioner, respondent No. 1 issued a show-cause notice to the petitioner for the intended action have been pending against him. It was pleaded on behalf of the petitioner that what is not a disqualification for contesting the election for holding the office, at the time of contesting the election, cannot be, subsequently, made a ground for suspension, else, it would nullify the very provisions of the Gujarat Panchayats Act, 1993 (Act) regarding qualifications and disqualifications of a candidate and also an electoral popular mandate.

2. On behalf of the petitioner, reliance was placed on the observations made by this Court in an interim order recorded, on April 23, 1991, in Special Civil Application No. 2722 of 1991, as stated above. At the stage of admission, the Division Bench of this Court in that petition had passed interim order, in terms of Para 12(B) of the said petition. Para 12(B) of the petition read as under:

"Pending admission and final disposal of this petition, this Hon"ble Court may be pleased to issue ad interim injunction suspending the operation and implementation of the order passed by the respondent No. 2 dated 9-4-91, and restrain the respondents, their agents or servants or any other person preventing the petitioner from discharging his duties as President of the Junagadh Municipality. "

3. In Special Civil Application No. 2722 of 1991, in which the aforesaid interim order was granted, the petitioner had challenged the order of his suspension from the office of the President of the Junagadh Municipality. In that case, the petitioner came to be suspended by the respondent authority, by invocation of power u/s 40 of the Gujarat Municipalities Act, 1963. The suspension order was based on an incident which had taken place on December 10, 1987. The election of the Municipality, in that case, was held, some time in May/June 1989. The petitioner came to be elected as President for the term of two years on June 27, 1989. Section 11 of the Gujarat Municipalities Act, 1963, does not provide that pendency of a criminal prosecution shall be a disqualification to become councillors, as observed in the interim order. It was further observed that Section 31 of the said Act, inter alia, provides that election to the post of President will

be from amongst the councillors and Section 38 provides disability to continue as a councillor. This Court, after reading all three sections together, in that petition, observed that pendency of a criminal prosecution prior to commencement, of the term as President and even at the time of election of the President is not a ground on which a person can be denied to hold the office of President. Section 40 of the Gujarat Municipalities Act would be attracted in case of criminal prosecution initiated after he becomes councillor, in that case, it was noticed that the incident which was relied on for suspension was prior to the date of the election. Therefore, this Court found, in that case, that on this short ground, the petitioner had made strong prima facie case and the aforesaid interim relief was granted in favour of the petitioner of that petition. It is, however, expedient to observe that, that- petition awaits final adjudication on merits in view of report of the Registrar.

4. The learned Counsel appearing for the respondents contended that whether the petitioner is disqualified or not to contest the election is, not necessarily, important for the purpose of exercising statutory powers to suspend the holder of the public office when criminal proceedings have been pending involving moral turpitude even prior to election. In support of this contention, reliance has been placed on the decision of learned single Judge of this Court in Special Civil Application No. 9234/95 (Coram: R.K. Abichandani, J.) decided, on 16-1-95.

5. The learned single Judge has observed in his order dated 21-3-96, that having closely considered the rival contentions, he was of the opinion that there was apparent discordant opinions between the two orders of this Court and the matter is of general public importance. He was, therefore, prompted to make a reference for constituting a Larger Bench for resolution of the aforesaid important issue and legal question for consideration and adjudication.

6. It appears that, thereafter, four other petitions came to be clubbed for reference to the Larger Bench during the pendency of the referential adjudication. It is in this context, a skeleton projection of factual profile of each petition needs to be highlighted so as to appreciate the merits and the challenge against the aforesaid main issue in focus and referred to this Larger Bench.

7. 1. Special Civil Application No. 10979 of 1995:

In this petition, the petitioner was elected as Sarpanch of village Palej, Taluka and District Bharuch, on October 17, 1995. Criminal complaint against him was filed on 23-3-91. The respondent No. 1 issued show-cause Notice dated 13-11-95 and 20-12-95, u/s 59(1) of the Gujarat Panchayats Act, 1993, for suspension of the petitioner from the office of Sarpanch on the ground of criminal proceedings which took place before the election to the post of Sarpanch. The criminal proceedings pending before the election are regarding alleged offences which occurred on 20-3-91. The term of the petitioner as Sarpanch began on 17-10-95,

8. 2. Special Civil Application No. 10192 of 1995:

The petitioner, in this petition, has sought direction to initiate action u/s 87 of the Gujarat Panchayats Act, 1993, against respondent No. 4 Mr.M.D. Parmar for removing him from the post of Vice-President and the Chairman of Education Committee of the Bharuch District Panchayat, in view of the criminal proceedings in respect of the offences involving moral turpitude. The petition lodged complaint under Sections 302 and 307 of IPC, etc. before Vagara Police Station being Cr.I. 31/95. The petition is filed seeking direction against respondent No. 1, DDO, Bharuch, to suspend the respondent No. 4 from his post of Vice-President of District Panchayat and from the post of Chairman of Education Committee.

9. 3. Special Civil Application No. 6415 of 1995:

In this petition, the petitioner Mr. R.S. Patel, has questioned the show-cause notice issued against him on the basis of three criminal complaints filed against him in the year 1984, 1985 and 1986 by the respondent-authority, exercising powers u/s 73(1) of the Gujarat Panchayats Act, 1993. The petitioner was elected as Member of the Talukas Panchayat, Nadiad from BJP.

10. 4. Special Civil Application No. 8216 of 1996:

The petitioner has questioned his suspension from the post of Sarpanch. Offence was registered against the petitioner, on 28-8-92. He was suspended from the office of Sarpanch of village by respondent No. 1 by exercising his powers u/s 59(1) of the Gujarat Panchayats Act, 1993. The petitioner, in this case, has also, questioned the order of suspension by respondent No. 2 passed on 15-10-96 in Revision Application No. 11/96 confirmed suspension order passed by respondent No. 1. The petitioner's case has been that he was elected for the post of Sarpanch of village Karched in June 1995. He was served with show-cause notice u/s 59 by the respondent No. 1 on 14-8-95 and, thereafter, impugned orders followed.

11. 5. Special Civil Application No. 1994 of 1997:

The challenge in this petition, at the instance of the petitioner, is against the show-cause notice issued u/s 73(1) dated 31-1-97. The petitioner got elected as Member of Mandvi Taluka Panchayat from Koday village constituency. Subsequently, he got also elected as the President of the Taluka Panchayat. In the year 1992, a FIR was lodged against the petitioner. By filing the petition, the petitioner has questioned the legality and validity of the issuance of show-cause notice dated 31-1-97.

12. 6. Civil Application No. 547 of 1996:

This is an application by which the applicant has sought to be impleaded as party in Special Civil Application No. 10979 of 1995.

Learned Counsel appearing for the petitioners has canvassed before us, the following propositions:

(1) That the authority is not competent and has no jurisdiction to suspend the

elected public office holder under the Panchayats Act, on the ground of criminal proceedings initiated prior to the election, which was not a disqualification for being elected to the office.

(2) That the action of the respondent authority in issuing the show-cause notice for suspension or for passing suspension order is illegal and, therefore, such impugned orders are required to be quashed.

(3) That the power to suspend can only be exercised in appropriate cases if criminal proceedings have been initiated or instituted after the election and during the tenure of the office of the elected public office holders.

(4) That the decision of the learned single Judge in K.B. Patel v. Development Commissioner, 36 (2) GLR 1502 is not applicable, OR, in the alternative, it does not lay down the correct proposition of law.

(5) That the observations made in the interim order of the Division Bench of this Court in Special Civil Application No. 722/ 91, dated April 23, 1991, are relevant and they support his plea.

13. The learned Advocates appearing for the respondents advanced the following contentions:

(1) That the power to suspend the elected Sarpanch can be exercised even on the ground of pending criminal proceedings initiated prior to the election. In support of this contention, reliance has been placed on the decision of the learned single Judge in K.B. Patel's (supra) case.

(2) That the purpose and design of the provisions of Section 59 is to invest the District Development Officer with power to suspend from the office of Sarpanch or Up-Sarpanch of a village Panchayat against whom any criminal proceedings in respect of offence involving moral turpitude have been instituted.

(3) That the expression "have been instituted" would include any criminal proceedings in respect of an offence involving moral turpitude even prior to the election.

We have, dispassionately, heard the learned Advocates appearing for the parties. They have taken us, also, through the case-law relied on by them in course of their submissions before us, to which reference will be made by us, as and when, required at an appropriate stage, hereinafter. We have also, closely, examined, scanned, and evaluated the relevant provisions of law, the design and desideratum, text and context, content and colour thereof.

14. In absence of any statutory definition of the expression "suspension ", we have to resort to the Dictionary meaning. Dictionary meaning of expression "suspend" is to debar, usually for a time, from any privilege from the execution of an office or from the enjoyment of such a position or status and resultant benefit of the office. In short, it is a temporary deprivation of office and its privileges. It is true that by reason of suspension, the person suspended does not lose his

office, nor his status or position. He does not suffer any degradation in one sense. However, he ceases to exercise the powers and to discharge his duties of the office temporarily. His powers, functions and privileges remain in abeyance.

15. The word "suspension" according to latest Oxford Dictionary means, "action of debarring or state of being debarred, especially, for a time, from a function or privilege; temporary deprivation of one's office or position, or again, state of being temporarily kept from doing or deprived of something. The meaning of the word "suspend", therefore, as per the Dictionary meaning would mean "debar usually for a time from the exercise of function or enjoyment of privilege, specially to deprive temporarily of one's office or again to interdict. The object of suspension is to remove any person holding the elected office or public office temporarily from his sphere of enjoyment of status, position, power and privilege. However, it must be noted that suspension brings to bear on the elected person or holder of the public office by election, serious consequences, sometimes more severe penalties prescribed and at times disastrous impact on fair name and good reputation obtained and acquired in course of public life. An elected person enjoying his office on the strength of the verdict of the public in his constituency, obviously, would require serious and strict consideration and interpretation. The authority empowered to suspend is obliged to exercise the power of suspension of a public office holder by election, after full application of mind and within the permissible legal parameters or statutory ambit. We are taken through the provisions of Section 59 of the Gujarat Panchayats Act, 1993. We have, also, closely, examined and scrutinised the provisions of Section 59. It empowers the District Development Officer to suspend from office the Sarpanch or Up-Sarpanch of a, village Panchayat against whom any criminal proceedings in respect of an offence involving moral turpitude have been instituted. Prima facie, the use of expression "have been instituted" in literal sense may mean to, before or after the election of the holder of the public office. Nonetheless, this prima facie, literal interpretation relied on by the learned Advocate for the respondents is required to be, seriously, examined, analysed and construed in the context of the legislative intent, the concept of functioning of a holder of public office by election, in a democratic set up and in the background of the conceptual and philosophical institutionalised democratic set-up and pattern and with the help of principle of text-contextualised interpretation.

16. In this connection, be it mentioned that there is no dispute about the fact the pendency of the criminal proceedings initiated prior to election of a holder of public office, has not been a disqualification for being elected to the office. The question, therefore, which requires serious consideration and adjudication is, as to whether the holder of the public office by election could be suspended for any pending criminal proceedings, which were initiated prior to his election and which have not been a disqualification for the purpose of election to such office. It is in this context, the interpretation is required to be made so that the legislative intent could be ascertained.

17. However, we are unable to resist the temptation of mentioning following significant observations in *Kamlaben v. Addl. Development Commissioner*, 2000 (2) GLR 1174 by one of us (M.R. Calla, J.):

"For the purpose of removing a Sarpanch from holding the elective office, the officers who are charged with the statutory duties under the Act cannot act in such a cursory manner with casual approach so as to curtail or truncate the tenure of the holder of an elective office. The elected representatives for the purpose of removal cannot be treated like Govt. servants whose services are controlled at the pleasure of the President or Governor under Article 310 of the Constitution. The officer charged with the power for removal u/s 57 does not enjoy any such pleasure. The pleasure doctrine is alien in case of elected representatives. If the elected persons are allowed to be removed on such jejune grounds, it would simply mean throttling down the principles of democracy in the local self-bodies and the elected representatives of the people like the petitioner would be made to lose their tenure at the altar of the arbitrary exercise of powers by the officers who have been charged with the duty under the Act to at least address themselves to the real object behind such provision besides the grounds and procedure. While such powers are given to the functionaries in the State under the State, the officers are charged with a very important duty of determining the rights of the elected persons and such rights cannot be lightly interfered with.... "

18. It cannot be gainsaid that the order of the competent authority to suspend or to remove a holder of elective office in a democratic set up can only be set at naught after, strictly, interpreting and observing the relevant provisions. We may, therefore, highlight following significant and substantial, relevant and permissible chronicles and contours:

(1) The order or a decision of a competent authority in such a situation would tantamount to veto or jettison the popular public mandate on the basis of which a person is holding the public office. Therefore, it not only expedient, but an incumbency upon the competent authority while exercising its statutory power to suspend an office holder of public functionary who has enjoyed or occupying it upon a popular electoral mandate, seriously and with full application of mind after describing true and correct legislative purport and intention.

(2) He is obliged to scrupulously interpret the provision and observe the statutory intention, guidelines and comply in letter and spirit, such an empowering provision, considering the content, context and tenor of the empowering provision and surrounding legislative expressions.

(3) The question formulated for the purpose of our interpretation and adjudication, since doubt has been raised as to whether the expression "any pending criminal proceedings" would include or not, which were initiated prior to the election of the holder of the public officer. For this purpose, evaluation of the Legislative intent and the context of the entire provisions would be, obviously,

necessary, and that would lead us to the examination, evaluation of the important areas of interpretation of statutes.

19. The following are the important principles and guidelines have emerged, evaluated by host of judicial pronouncements in the realm of jurisprudence of interpretation of statutes and in search for real statutory meaning:

- (1) The intention of the Legislature.
- (2) If meaning is plain, effect has to be given to it irrespective of consequences.
- (3) The statute has to be construed to make it effective and workable.
- (4) It has to be interpreted to make it purposive and harmonious.
- (5) The consideration of subject and object of the Act or the enactment.
- (6) Internal and external aid to the construction.
- (7) Subsidiary rules operation of statute.
- (8) The doctrine of "noscitur a sociis" and "ejusdem generis" principle, which means interpretation with the help of associate words and textual and contextual background.

20. The Parliament or the Legislature concerned attempts to achieve in its enactments for order, but not always with success. The legislative drafting is an important armoury in the administration of justice. Undoubtedly, it requires special skill, ability and thorough and rich experience. We are reminded, at this stage, about the observations made by Lord Hailsham of St. Marylebone LC. He has observed that nine out of ten cases reaching the House of Lords turn on the statutory interpretation. In *Johnson v. Mortem* (1980) AC 37 page 53, Lord Hailsham, has, also, broadened and had further lucidly explained this striking stroke more by saying that nine out of ten cases of appeal before the Court of Appeal or the House of Lords either turn upon or involved the meaning of the words contained in enactments or primary or secondary legislation.

21. It would be, also, interesting to refer to the observations made by Prof. Robert S. Summers, Co-Editor of 1991, *Comparative study of Statutory Interpretation* used by numerous authors. He remarked of decisions involving statutory interpretation in his book *Interpreting Statutes: Comparative Study*, (1991) page 1-4:

"The published decisions appearing in the opinions of the higher courts in Western legal systems comprise what is perhaps the greatest repository of recorded practical reasoning known to human kind. We remind the reader also of the absolutely central importance of statute law in modern legal system; and thus of the equal importance of statutory interpretation.... In our view, scholars have traditionally underestimated the demands of the subject. "

22. The natural and reasonable aspiration that enactments should be, easily,

understood, at times is doomed to disappointment. Thwarted, it shifts to an equally natural and reasonable desire for efficient and useful tools of interpretation. Obviously, if statutes must be obscure, we shall have to adopt simple device to elucidate them. Law consists of statements and elucidation of statements. Elucidation, often but not, always, by the courts has the function of alleviating this, but needs to be conducted according to known and coherent system and accepted and permissible principles and parameters.

23. A golden rule would be best to unlock all mysteries. But who could dispute that there is no such find of easy and cosy acceptable consensual golden rule. It cannot be denied that a mischief rule, a literal rule, or any other cure-all rule of thumb, and as a matter of fact there are variety of facets and aspects of laws of interpretative criteria. True is the fact that not all these present themselves in a given case at a time. Nonetheless, those that do yield factors that the interpreter must figuratively weigh and balance, as and when required in a given situation. That is the nearest we can get to a golden rule and it is not very near. At times, Acts of Parliament or enactments of the State or local legislatures are made in haste without consideration of the jurisprudential significance and unscientifically. There are complex and multiple reasons for this which we do not propose to meticulously fathom or articulate, at this stage, in this referential adjudication.

24. When Lord Goddard, CJ, remarked that a Court, obviously, cannot make addition or subtraction of words into a statute or read words into it that are not there, he probably, echoed, in his statement, what many Judges have said in case-law or jurists in their writings. Nonetheless, the stark reality is that the express words of every enactment have the shadowy accompaniment of a host of implicit statements. Either these statements are taken to be implied by law or they arise from the words of the enactment or its context. In number or cases of doubtful interpretation and construction the real issue often not perceived, then problem is whether the manifold implications include, one that settles the doubt and if so, which it is ?

25. At times, therefore, between the grammatical meaning and the overall forensic meaning, we have to draw a conceptual and contextual distinction. No doubt, the two usually correspond, but sometimes there is doubt. Here, concepts are useful. The question is always, does the grammatical meaning truly give effect to Parliament's imputed intention ? If it does not, the legal meaning shall be something else. It is in this context, in search for a legal meaning of doubtful enactment, the Court is obliged to proceed by identifying, determining and weighing various material and relevant aspects, concepts and context. The Court has to determine by reference to these criteria the specific factors that, on the wording of the enactment and the facts of the case on hand, are decisive. It weighs the factors that tell for or against each of the opposing constructions put forward by the parties. Here lies the real trial and test for forensic adjudication in rendering verdict by ascertaining the real interpretation.

26. Obviously, when the import of the statute is doubtful, as in the present case,

associated words can explain and limit the application of each other. In order to reach to the correct interpretation of the question formulated and referred to us, we deem it expedient, at this juncture, that it is necessary to determine its meaning by reference to the associated words provided such reading of it, is not inconsistent or incompatible with the general intent and the scope of the provision or rule in question. Obviously, this would lead us to the examination, analysis and evaluation of an important doctrine of interpretation of statutes "Noscitur a sociis" which is very significant and substantial juristic test and tool for interpretation in the fact situation of the present reference.

27. We may make it clear that we do not intend to be understood to suggest that the character of the expression under consideration should be submerged by its association. If the Legislative intent and the aim and object of the provision in question is plain, simple and clear, the maximum must give way. But when the expression in question or import of the provision is susceptible to more than one interpretation, the associated words can explain and limit the application of each other.

28. The principle of "noscitur a sociis" has a purpose and policy behind it. It means recognition by associated words. A statutory term is, thus, recognised by its associated words. The Latin maxim "noscitur a sociis" states this contextual principle, whereby, a word or phrase is not to be construed, as if it stood alone but in the light of its surroundings. It may, also, be noted that this maxim has, also, generated the particular percepts such as the "ejusdem generis" principle and also to concept of rank principle. In our opinion, those principles are aids to reach to the correct interpretation and in fact, the various linguistic canons of interpretation developed over the centuries to enlighten the meaning generally and not just only in juristic context. The linguistic canons of construction are useful tools and aids to interpretation of specific legislative provisions in the enactments. In case, the linguistic canons of construction, have the effect of elaborating the literal meaning of a word or a phrase, usually by taking the elaborated meaning as having been implied by the maker or the author thereof.

29. The expression or a word or a phrase employed in the statute must, always, be interpreted in the light of the surrounding words in the contextual background. As Viscount Simmonds" said, "words, and particularly general words, cannot be read in isolation: their colour and their content are derived from their context". It may be stated that English words derive colour from those which surround them. Sentence are not mere collection of words to be taken out of the sentence, defined separately by reference to the dictionary or decided cases, and then put back into the sentence with the meaning which you have assigned to them as separate words. For the purpose of resolving an ambiguity or for solving the doubt about the construction of a words, phrase or any sentence in the enactment, reference to a nearby passage is very useful. This is, as such, crystallised in the doctrine of "noscitur a sociis" which has been applied in many cases for the purpose of ascertainment of the real legislative design and

desideratum.

30. The principle or the doctrine of the "ejusdem generis" arises from the linguistic implication by which words having literally a wide meaning or doubtful 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. The draftsman, therefore, must be taken to have inserted general words or certain words, in case, something which ought to have been included among the, specifically, enumerated items had been omitted. We are highlighting this aspect since the expression "pending criminal proceedings" have given more than one interpretation, whether before or after the person elected to the office. That is the reason why, the learned single Judge has chosen it expedient to make a reference to the Larger Bench.

Applying the aforesaid principles of "noscitur a sociis" and doctrine of "ejusdem generis" the correct interpretation is required to be reached. Obviously, when doubt is raised about the intent, content and the colour of the word, phrase or sentence of a provision in the enactment, and aid of colouring agent provides useful guide, helpful aid, in finding out the true legislative intendment. In our opinion, the aforesaid principles in the factual background and the contextual profile should operate as a colouring agent and effective guide. Moreover, since it is an admitted fact that pending criminal proceedings are not a disqualification for being elected to the office.

31. The provision for disqualification of an elected Sarpanch or Up-Sarpanch provided in Section 30 and for President and Vice-President of Taluka Panchayat or for President or Vice-President of the District Panchayat as provided in the Gujarat Panchayat Act, 1993, when conjointly read with the provisions of powers of suspension of such elected public functionaries or holder of public office by election and considering the provision, textually and contextually, pending criminal proceedings which were initiated prior to the election and more so when the same are not operating as disqualification for being elected to office are not referable to the power to suspend such a public functionary, though specific provision has not been made that the phrase "pending criminal proceedings" referred to the proceedings initiated during the tenure of the office.

Initiation of criminal proceedings prior to the date of election and which would not be a disqualification for being elected to the office cannot be projected for the purpose of suspension order by the competent authority against the holder of the public office by election. Had that been the intention of the Legislature, the expression could have been differently worded in the provisions like Section 59 of the Gujarat Panchayats Act. Again, it operates against the main concept and philosophy of mandate of public" by election when it is not considered to be a disqualification for being elected to such an office.

32. Reading as a whole the text and context and applying the aforesaid principles, it becomes explicit and evident that the competent authority, like the

District Development Officer, as provided in Section 59 of the Gujarat Panchayats Act, 1993, is not competent to pass order of suspension against Sarpanch or Up-Sarpanch of a village Panchayat against whom criminal proceedings came to be initiated prior to election and again which is not considered to be a disqualification for being elected to the said office. Likewise, Section 87 of the Gujarat Panchayats Act, 1993, which provides the Competent Authority to suspend from office the President or Vice-President or Chairman of the Committee, against whom any criminal proceedings in respect of offence involving moral turpitude have been instituted to include the criminal proceedings initiated prior to the date of election which are not a disqualification for being elected to such an office. Similar provision for suspension is, also, made in Section 73 of the Gujarat Panchayats Act, 1993 in case of President or Vice-President of the Taluka Panchayat.

33. In our opinion, the expression, "pending criminal proceedings" does not admit the existence of criminal proceedings initiated prior to the date of election and more so when it is not a disqualification for the purpose of election. The reverse interpretation would lead to many adverse results and far reaching ramifications upon the position, status and the privilege of an elected representative and also contrary to the electoral mandate. If one accepts the contention as propounded on behalf of the respondent-authorities that the expression "pending criminal proceedings " would include the proceedings initiated prior to the date of election, then it may happen that the competent authority would become entitled to issue show-cause notice for suspension immediately after the election on the ground that before his election, criminal proceedings were pending. It would lead to a paralytic impact on the right, status and privileges of elected persons upon the popular mandate of the people and the same would run, diametrically, opposite to the provisions and the promise of the provisions of Sections 59, 73 and 87 of the Gujarat Panchayats Act, 1993.

34. The age-old process of application of enacted law has led to formulation and evolution of multiple rules of interpretation or construction. By interpretation or construction, the process by which the Courts seek to ascertain the legislative meaning, Parliament intendment, through the medium of authoritative forms in which it is expressed. Truly and literally speaking, interpretation differs from construction. In that, the former is an art of finding out the true sense of any form of words, i.e. the sense which the author intended to convey and enabling others to derive from the same idea which the author intended. Construction on the other hand, is drawing of conclusion, respecting subjects that are beyond the direct expression of the text from elements known from and given in the text and conclusion which are in the spirit though not within the letter of law. Of course, it must be noted that such a distinction, however, by passage of time and in view of the case law evolved has been, largely, relegated to the realm of academic discussion.

35. An enactment is an edict of the Legislature and the way of interpreting or

constructing it is to seek the intention of its maker. A legislative provision is to be construed according to intent of author that make it and the duty of the Judicature is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation which represents the correct and true intendment of the Legislature. Obviously, therefore, when the Legislature has made some provision, which has given rise to double interpretation or which is susceptible to more than one meaning, the Judicature has to rise and adjudicate it so as to reach to a correct interpretational destination and the Legislative intendment with the juristic tools and interpretative criteria and employing one or more principles evolved thus far for the purpose of legislative meaning and the intention.

36. The intention of the Legislature assimilated in two aspects. One aspect is that it carries the concept of meaning, like that, what the words mean and another aspect if conveys the concept of purport and object or the rationale and reason, pervading through the statutes, it must, therefore, be remembered that the entire process of interpretation combines both literal and purposive approaches. The Legislative intendment or true and legal meaning of the statute is derived by considering the meaning of the words used in the statute or object which comprehends the mischief and its remedy to which the enactment is aiming at.

37. To accept the interpretation as contended on behalf of the respondent-authority that pending criminal proceedings would include prior proceedings to the election of the petitioners would lead not only to an anomalous situation, but, also, would give a rise to misuse of power by the competent authority as until such prior proceedings are concluded in favour of the elected representative, there will be a constant threat of suspension on the elected representative. It is a matter of common knowledge that at times, criminal proceedings take years together and it may happen that suspension power can be exercised by the competent authority against the holder of the office by an election before the commencement of his tenure until the proceedings are concluded in his favour. Criminal proceedings, some times, take long time and travel through many legal procedural conduit pipe. The competent authority would use prior criminal proceedings to suspend him and it may happen that the elected representative may complete his tenure before the completion of the pending criminal proceedings in his favour. It may, also, happen that he may get elected, again, as it is not a disqualification for being elected to such an office and again the competent authority may, use or exercise the power to suspend against such an elected representative. Therefore, in such a situation, so long as criminal proceedings are not terminated in favour of the elected representative or the holder of the office by election, he could be suspended immediately after his election by observing the procedure prescribed and he would be deprived of his status, right, privilege and position contrary to the popular mandate. On the contrary, the purposive interpretation is that the expression "pending criminal proceedings" would not include proceedings initiated prior to the election more so when it is not a disqualification for the purpose of election to such an office. It

will be more meaningful and purposive interpretation. It would, also, advance the provisions incorporated in the statutes.

38. Reliance on the decision of the learned single Judge of this Court in *K.B. Patel v. Development Commissioner (supra)* by the learned Counsel appearing for the respondent in support of the plea that a Sarpanch can be removed from his office for an act or commission or omission done by him during his earlier tenure as Sarpanch of the village, is, in our opinion, misplaced. On the other hand, the learned Advocate for the petitioner has placed reliance on a Division Bench of this Court in *Chhanalal A. Patel v. State of Gujarat, 1960 (1) GLR 260*. We may mention that we have gone through both the decisions dispassionately. Learned single Judge in *K.B. Patel's case (supra)* has distinguished the decision of the Division Bench of this Court in *Chhanalal's (supra) case*.

39. In *Chhanalal's case (supra)*, a show-cause notice came to be issued by the State on the President of the District Local Board u/s 26(1) of the Bombay Local Board Act, 1923 calling upon him to show cause as to why he should not be removed from the office. The allegation made in the show-cause notice was of a period prior to 16th June 1958, the date on which the Board was reconstituted and the petitioner, in that case, was elected as its President. The contention of the petitioner in the writ petition against the show-cause notice issued by the State Government was that the alleged misconduct did not take place during the term of office of the petitioner as the President of the reconstituted Board and that the show-cause notice was wholly out of the purview of Section 26 of the Bombay Local Board Act, 1923 and without any authority and jurisdiction. The said contention was accepted by the Division Bench of this Court (Coram: S.T. Desai, C.J. and P.N. Bhagwati, J. as they were) and it was held that:

(1) Even though the office of the President of the District Local Board continues till the expiry of the term of office, he may nevertheless be removed from his office, as such President by the State Government for misconduct or neglect of duty or incapacity to perform his duty u/s 26 of the Board Local Boards Act, 1923. The removal from office is to be confined in point of time only to the reminder of the term of the Local Board.

(2) The misconduct of which Section 26 of said Act speaks is misconduct during the term of the office and not at any point or period of time beyond or before the term of the office.

(3) That when the import of the statute is doubtful, associated words can explain and limit the application of each other.

40. There is no dispute about the fact that pendency of criminal proceedings is not a disqualification for being elected to the office. It, also, lends material support for the view we take on this question that there are matters which are regarded by the Legislature as resulting in general disqualification and they are of serious nature. If pendency of criminal proceedings do not constitute any impediment or hurdle for the purpose of election to the office, how could it be

characterised or treated as a valid ground for the purpose of suspension after his election. An elective representative after having received popular mandate of the electorate could not be suspended on the ground of pendency of criminal proceedings prior to the date of his election and, more so, when it is also not considered as a disqualification for being elected to such an office.

41. It would be interesting to refer to Section 30 of the Gujarat Panchayats Act, 1993 which prescribes disqualification. After close scrutiny and consideration of this provision, it becomes explicit that no member of a Panchayat could be disqualified merely on the ground that criminal proceedings have been instituted. There are several other serious misconducts and aspects which are considered sufficient for disqualification of a member of the Panchayat. Section 59(1) of the Act provides suspension of Sarpanch or Upsarpanch. Section 73 provides for suspension of President or Vice-President of Taluka Panchayat against whom any criminal proceedings in respect of offence involving moral turpitude have been instituted, whereas, Section 87 (1), provides for suspension of President or Vice-President or Chairman of the Education Committee of the District Panchayat by the competent authority from such office, against whom any criminal proceedings in respect of offence involving moral turpitude have been instituted.

42. In any one of the aforesaid sections, providing for suspension power, the Legislative text or context does not refer pendency of such criminal proceedings prior to the date of election to such an office. Had that been the intention, the Legislature would have, definitely, added those words and qualified it. To interpret and hold that pendency of criminal proceedings prior to the date of election would include for exercise of power of suspension against the elective representative would mean, rewriting the legislative provision. On the contrary, a conjoint reading of texture and context would lead to only one conclusion that the expression "pendency of criminal proceedings" had not been the intention of the Legislature. Again, this view is fortified by the fact that the pendency of criminal proceedings prior to the date of election has not been statutorily considered as disqualification. Otherwise, it may happen that immediately after the election to such an office, the competent authority would start proceedings of suspension. Such an intention of the Legislature can never be envisaged. This can further be stretched to stress and emphasise this point. Suppose a person is elected to such an office and he is suspended on the ground the criminal proceedings had been initiated and his term expires and the criminal proceedings are still pending, he would be competent authority may again start suspension proceedings against him on the same ground that criminal proceedings pending prior to the date of his election have yet not terminated in favour of the holder of the public office by election.

43. This will lead to not only a paradoxical situation, but would run diametrically counter to the spirit and purpose of the provisions and the electoral mandate. Therefore, while ascertaining the rule, intention of the Legislature, the interpretative judicial effort must be illuminated by the goal though guided by

the word. For ascertaining the purpose of enactment, one is not restricted to internal aid furnished by the statute itself, although, the text of the statute taken as a whole is the most important material for ascertaining both the aspects of intention. Different words, phrase or sentences have to be interpreted in the light of the general purpose of the provisions of the Act itself.

44. The meaning of the expression "intention of the Legislature" is explained from different angle by Lord Watson in an often quoted passage, wherein, he said "in a court of law or equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact either in express words or by reasonable and necessary implications. Obviously, what has been enacted "by necessary implication" can rarely determine without keeping in mind the purpose or object of the statute. This formulation, therefore, does not in effect reject the concept of "purpose", but contains the same within the imports of the phrase "necessary implication".

45. Undoubtedly, a mere mechanical interpretation of words and application of legislative intent, bereft of concept of purpose and intent will reduce the most of the remedial and beneficial legislation to futility and frustrated stature To be literal in meaning is to see the scheme and miss the soul. The juristic key to construction is the composite view and perception and both the aspects of the provision. It is true that courts are not entitled to usurp legislative function under the guise of interpretation. It is, also, equally true in dealing with the legislation enacted to give effect to policies and when provision is susceptible to more than one interpretation, there may be room for difference of opinion as to what is just and what is more justifiable. But it is Legislature's opinion on this matters, that is paramount. In other words, the Court cannot interpret statutes in the light of its views as to policy, but it can adopt a purposive interpretation of court can find in the statute, read as a whole in the material to which they are permitted by law to refer as the base to the interpretation and expression of Legislatures purpose or policy.

46. Rules of interpretation are, also, not rules of law and are not to be applied like the rules enacted by the Parliament in an interpretation act. They serve as guides and such of them which serve no useful purpose could be rejected by courts and new rules could be evolved in their places. They are our servants and not masters. Again, in performing the task of construction of a provision and applying it, Judges have to be conscious that in the end, the statute is the master and not the servant.

47. The learned Advocate for the respondent authority placed reliance on a decision of the Hon''ble Apex Court rendered in the Secretary, Regional Transport Authority, Bangalore and Another Vs. D.P. Sharma and Others, . We have given our anxious consideration to this case law. We have, dispassionately, examined the ratio. This decision is relied on in support of the contention that words and phrases "have been" would go to show that it includes also the pending criminal proceedings prior to the date of election. Prima facie, this submission may

appear to be alluring, but not acceptable, subtle but not sound after full consideration of the textual and contextual background of the provisions. The said decision is not helpful to the respondent authorities. The words "has been" occurring in Section 3 (g) of the Karnataka Contract Carriages (Acquisition) Act (21 of 1976) contains a provision about the special permit for public service vehicle. There was a question of interpretation of the words "has been" occurring in Section 3 (g) of the said Act. In the facts of that case, and considering the provisions, it was held that the words "has been" occurring in Section 3(g) contemplate the issuance of special permit or a temporary permit as referred to in clauses (i) and (ii) of Section 3 (g) of the Act after the enactment of the Act which was clear from the exclusion clause (ii) of Section 3 (g) which excludes stage carriage from the definition of "contract carriage" if special permits issued u/s 62(1) or Section 63(6) of the Motor Vehicles Act were in force on January 30, 1976. In our opinion, the said decision does not take the contention of the respondent authority any further. The said decision is not helpful to the respondent authority. On the contrary, in Paras 15 and 16, observations have been made that whether the expression "has been" occurring in a provision of a statutes denotes transaction prior to the enactment of the statute in question or a transaction after the coming into force of the statute will depend upon the intention of the Legislature to be gathered from the provision in which the said expression occurs or from the other provisions of the statute. It, clearly, goes to show that the words and expressions employed in a provision of an enactment are required to be interpreted upon the intention of the Legislature to gather from the provisions in which such expression occurs or from the other provisions of the statute.

48. As observed by us hereinabove, in the present case, the legislative intentment is not to include the pendency of criminal proceedings prior to the date of election as a ground for suspension of holder of public office by election. Therefore, the learned Advocate for the respondent is unable to make any capital out of the said case law. After having taken into consideration the facts and circumstances, the text and context of the provisions and the fact that pendency of criminal proceedings prior to the date of election not being a disqualification, we are of the explicit opinion that the same cannot be employed or used by the competent authority for the exercise of statutory power to suspend an elected representative. We are, therefore, left with no alternative but to answer the question formulated and referred by the learned single Judge in this referential consideration and adjudication in the negative. Our clear and explicit opinion on the said question is placed in the following tabular form for the purpose of convenience and clarity:

Question

Answer

Whether the holder of the public office by election can be suspended for any pending criminal proceedings which were initiated prior to election and was not a

disqualification for being elected to office ?

No. Suspension cannot be resorted to against the holder of public office on ground of any pre-election pending criminal proceedings which was not a disqualification for being elected to office.

Consequently, this reference shall stand disposed of accordingly. The Registry is, now, directed to place this group of matters before the concerned Bench of learned single Judge for disposal on merits.

(RRP) Reference disposed of accordingly.