

(1975) 12 BOM CK 0029

Bombay High Court (Nagpur Bench)

Case No: Civil Application No. 1609 of 1975

Bhaskar Atmaram Joshi

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision: Dec. 16, 1975

Acts Referred:

- City of Nagpur Corporation Act, 1948 - Section 36

Citation: AIR 1976 Bom 206 : (1976) MhLj 229

Hon'ble Judges: Lalit, J; Dharmadhikari, J

Bench: Division Bench

Advocate: A.P. Deshpande and V.N. Patrikar, for the Appellant; R.V. Patil, authorised by A.G.P. and M.L. Vaidya, for the Respondent

Judgement

Dharmadhikari, J.

Petitioner Bhaskar Atmaram Joshi in this case was elected as a Municipal Councillor of the Nagpur Municipal Corporation. Besides being a Councillor, he was elected as a member of the Standing Committee of the Corporation in February 1975. On 26th June, 1975, he was detained under Maintenance of Internal Security Act, referred to hereinafter as the MISA, by an order of the Police Commissioner, Nagpur. By a notice dated 30th October 1975 signed by the Deputy Municipal Commissioner, Nagpur Municipal Corporation, the petitioner was informed that as he failed to attend all the meetings of the Standing Committee since July 1975 his membership of the Standing Committee automatically came to an end as per Section 36 of the City of Nagpur Corporation Act. It is this notice and the action taken by the Deputy Municipal Commissioner which are challenged in this writ petition.

2. In the return filed on behalf of the Municipal Commissioner, Nagpur, the Municipal Commissioner submitted that the petitioner attended the meetings held on 8-7-1975, 17-7-1975, 8-8-1975, 22-8-1975 and 19-8-1975. According to this respondent, the petitioner ceases to be a member of the Standing Committee by

virtue of the provisions of Section 36 of the City of Nagpur Corporation Act, 1948, referred to hereinafter as the Act. It was further submitted that the petitioner has incurred a disqualification as he absented himself from attending the meeting either voluntarily or otherwise, and therefore, the notice dated 30-10-1975 given by the Deputy Municipal Commissioner is perfectly legal and valid.

3. For properly understanding these rival contentions it will be useful if a reference is made to Section 36 of the Act. Section 36 reads as under:-

"Any member of the Standing Committee who absents himself from all meetings of the Standing Committee during two consecutive months shall cease to be a member of the Standing Committee, and his office as such member shall be vacant, and he shall not be eligible for re-election to the Committee during the unexpired term of the Corporation."

Therefore, the only question which is required to be decided in this writ petition is to find out as to whether the petitioner, who is a member of the Standing Committee has absented himself from all the meetings of the Standing Committee during two consecutive months. The expression used is not "absent" or "remained absent", but the Legislature has used the words "absents himself".

4. This phraseology used in this very section came for consideration before the Nagpur High Court in *Wamanrao v. The Corporation of the City of Nagpur*, (Misc. Petn. No. 322 of 1955, decided on 2-1-1956) (Nag). In that case the petitioner attended all the meetings of the Standing Committee till 16-6-1955 except those held on 18-4-1955, 16-5-1955 and 16-6-1955. It was also an admitted position that no notices of the meetings held on 18-4-1955 and 16-5-1955 were served on him. He had also no knowledge of the meetings convened on these dates. In this context, while construing the phrase "absented himself" in Section 36 of the Act, the Nagpur High Court observed as under:

"Absented himself" means kept him-self away or stayed away. Could it be said that mere non-presence, from whatever cause arising, would be "absenting himself?" Could it be the intention of the Legislature to penalise an honest member-corporate who is prevented from being present in a meeting for no fault of his when he had no knowledge of the meeting? It is not a case where meetings are held on particular days every month, and hence the member-corporate could be fixed with constructive notice of the dates of the meetings. There is no attempt on the part of the non-applicants to mix knowledge of the meetings on the applicant and hence in the absence of any counter-affidavit on this point, the averment of the petitioner that he had no notice and knowledge of the meetings held on 18-4-1955 and 18-5-1955 must be accepted.

In our opinion, the expression "absented himself" cannot be quoted with "remained absent" or "was not present". "Absenting himself" connotes deliberation, something positive in the attitude of the person whose conduct in not being present is the

subject of consideration. There is no such evidence here and under the circumstance of the case, we cannot hold that the petitioner "absented himself" from all the meetings of the Standing Committee during two consecutive months."

5. However, it is contended by Shri Vaidya, the learned counsel appearing for respondent No. 5, the Municipal Commissioner, that in the said case the Nagpur High Court was concerned with a situation where the petitioner-Councillor in that case could have attended the meetings if he had a notice of the same. In the present case, in view of the detention of the petitioner under the MISA, even if a notice was given to him, it was not physically possible for him to have attended the meetings. He further contended that an attempt made by the petitioner to get himself released on parole u/s 15 of the MISA also failed. Therefore, this is a case where the petitioner could not have attended the meetings at the activities of the petitioner, he was detained under the MISA by the competent authority. The activities of the petitioner were responsible for his detention. Therefore, in substance his detention being the result of his own conduct, in the present case it will have to be held that the petitioner absented himself from attending the meetings. In support of this proposition Shri Vaidya has relied upon the decisions of the Supreme Court in [K. Anandan Nambiar and Another Vs. Chief Secretary, Government of Madras and Others](#), and [Burn and Co., Calcutta Vs. Their Employees](#), . In our opinion, there is no substance in these contentions.

6. The Division Bench of the Nagpur High Court in *Wamanrao v. The Corporation of the City of Nagpur*, M. P. No. 322 of 1955, D/- 2-1-1956 (Nag) (cit. supra) had construed the provision of Section 36 itself including the expression used therein, namely, "absents himself". The Division Bench then held that phrase "absented himself" cannot be equated with "remained absent" or "was not present". The Division Bench further clarified the position by holding that "absenting himself" connotes deliberation, something positive in the attitude of the person whose conduct in not being present is the subject of consideration. Therefore, it is obvious that the expression used in Section 36 of the Act, namely, "absents himself" cannot be equated with mere absence. In Stroud's Judicial Dictionary the meaning assigned to the words "absent himself" is as under:

"To "absent himself" from his service within Section 3 Masters and Servants Act meant absent himself without lawful excuse and knowing he had no such excuse."

In *Words and Phrases Judicially Defined* by Roland Burrows, the meaning assigned to the words "absents himself" is as under:

"In the construction of an article like Clause 97 of the articles of this bank it has been held that the expression "absents himself" means something more than the expression "is absent"."

Therefore, in our opinion, the Division Bench of the Nagpur High Court was right in coming to the conclusion that "absenting himself" connotes deliberation, something

positive in the attitude of the person whose conduct in not being present is the subject of consideration. In the present case there is no evidence before us to indicate that the notices of the meetings were served upon the petitioner himself or he had knowledge of the meetings. Further it is an admitted position that the petitioner is under detention since 26th June, 1975. Therefore, he could not attend the meeting of the Standing Committee of the Municipal Corporation because he was prevented from attending the same by the order passed by the Police Commissioner under the MISA. This is not a case where it could be said that there was any lapse on his part in attending the meetings, or he had no intention to attend the meetings in spite of the knowledge or the notice. The decision on which reliance is placed by Shri Vaidya dealing with the scope and the nature of the preventive detention has no application to the facts and the circumstances of the present case. In [Burn and Co., Calcutta Vs. Their Employees](#), (cit. supra) the Supreme Court was dealing with a controversy which arose because of the continued absence of the employee and his inability to work. In that context the Supreme Court has held that it is difficult to see what purpose would be served by formal charge being delivered to him and what conceivable answer he could give thereto. These observations obviously will have to be read in their own context. In this case we are not concerned with such a question. In [K. Anandan Nambiar and Another Vs. Chief Secretary, Government of Madras and Others](#), the Supreme Court had an occasion to consider the question as to whether a member of the Parliament or the legislature has a right to participate in the business of the Legislature to which he belongs, even if he is convicted and sentenced or is detained. In this context the Supreme Court observed that in such a case he foregoes his right to participate in the business of the Legislature. Such is not the question before us. The petitioner is not claiming a fundamental or a legal right to participate in the business of the Corporation or the Standing Committee. His contention is that he had not absented himself from any of the meetings of the Standing Committee, and therefore, he has not incurred any disqualification. According to the learned counsel for the petitioner, mere absence from the meetings is not enough. It should be further shown that the petitioner remained absent because of the own volition or some act or omission on his part. Unless it is shown that the petitioner has remained absent by his own conduct it cannot be held that he has absented himself from any of the meetings of the Standing Committee. In our opinion there is much substance in this contention raised on behalf of the petitioner. It is well settled that the detention under the MISA, or under the Preventive Detention Act is preventive in nature and not punitive. It does not partake in any manner the nature of punishment. The action under the MISA is taken by way of precaution, and therefore, to some extent it must necessarily proceed on suspicion or anticipation as distinguished from proof. The preventive detention is largely precautionary and based on suspicion.

7. It is not necessary to deal with this aspect in detail in view of the decision aspect in detail in view of the decision of the Supreme Court in [Khudiram Das Vs. The State](#)

[of West Bengal and Others](#), and the [Calcutta Dock Labour Board Vs. Jaffar Imam and Others](#), A reference could usefully be made to the following observations of the Supreme Court in the Calcutta Dock Labour Board's case in paragraph 12 of the judgment:

"But the question which we have to consider in the present appeals is of a different character. A citizen may suffer loss of liberty if he is detained validly under the Act; even so, does it follow that the detention order which deprived the citizen of his liberty should also serve indirectly but effectively the purpose of depriving the said citizen of his livelihood? If the view taken by the appellant's officers who tried the disciplinary proceedings is accepted, it would follow that if a citizen is detained and his detention is confirmed by the State Government, his service would be terminated merely and solely by reason of such detention. In our opinion, such a position is obviously and demonstrably inconsistent with elementary concept of the rule of law on which our Constitution is founded. When a citizen is detained, he may not succeed in challenging the order of detention passed against him, unless he is able to adduce grounds permissible under the Act. But we are unable to agree with Mr. Sen's argument that after such a citizen is released from detention, an employer, like the appellant, can immediately start disciplinary proceedings against him and tell him in substance that he was detained for prejudicial activities which amount to misconduct and that the detention order was confirmed by the State Government after consultation with the Advisory Board, and so, he is liable to be dismissed from his employment. It is obvious that the Advisory Board does not try the question about the propriety or validity of the citizen's detention as a Court of law would; indeed, its function is limited to consider the relevant material placed before it and the representation received from the detenu, and then submit its report to the State Government within the time specified by Section 10(1) of the Act. It is not disputed that the Advisory Board considers evidence against the detenu which has not been tested in the normal way by cross-examination; its decision is essentially different in character from a judicial or quasi-judicial decision. In some cases a detenu may be given a hearing, but such a hearing is often, if not always, likely to be ineffective, because the detenu is deprived of an opportunity to cross-examine the evidence on which the detaining authorities rely and may not be able to adduce evidence before the Advisory Board to rebut the allegations made against him. Having regard to the nature of the enquiry which the Advisory Board is authorised or permitted to hold before expressing its approval to the detention of a detenu, it would, we think, be entirely erroneous and wholly unsafe to treat the opinion expressed by the Advisory Board as amounting to a judgment of a Criminal Court."

From these observations of the Supreme Court it is quite clear that merely because a Councillor is detained and is deprived of his liberty it does not necessarily follow that he should also lose his other offices, including his membership of the Standing Committee only because he could not attend the meetings for the reasons beyond

his control.

8. It was also contended by Shri Vaidya that if the provisions of Section 36 of the Act are compared with the language and phraseology used in Section 19 of the Act, it is quite clear that it was the intention of the Legislature that a Councillor who could not take part in the meetings of the Standing Committee should cease to be the member of the said Committee. He further contended that the Standing Committee is invested with several powers under the Act. A day to day working of the Corporation will be difficult if the Standing Committee will not meet for its business at regular intervals. A decision in that behalf could be taken by the Standing Committee will not meet for its business at regular intervals. A decision in that behalf could be taken by the Standing Committee only in a meeting. Therefore, a member of the Standing Committee is expected to attend all the meetings and if he fails to attend such meetings then the Legislature has drawn an inference that he is not a fit person to continue as a member of the Standing Committee. His absence from the meetings may be for any reasons whatsoever. Therefore, in substance it is the contention of Shri Vaidya that by mere absence from all the meetings of the Standing Committee during two consecutive months, a member ceases to be a member of the Standing Committee and in support of this proposition, as already observed, he drew support from the language and phraseology used in Section 19 of the Act. Section 19 of the Act reads as under:

"19. If any person having been elected a Councillor-

- (a) subsequently becomes subject to any of the disqualifications specified in Section 15 and such disqualification is removable or being removable is not removed, or
- (b) absents himself during three consecutive months from the meetings of the Corporation, except from temporary illness or for any other cause which the Corporation may consider sufficient to justify such absence, or
- (c) is retained or employed in any professional capacity in connection with any matter to which the Corporation is a party, or
- (d) absents himself during six consecutive months from the meetings of the Corporation, or
- (e) fails to pay any arrears of any kind due from him to the Corporation within three months after a special notice in this behalf has been served upon him by the Commissioner.

such person shall cease to be a Councillor and the State Government shall, by notification, declare his seat to be vacant." So far as clause (b) of the said section is concerned, if the member absents himself during 3 consecutive months from the meetings of the Corporation, except from temporary illness or for any other cause which the Corporation may consider sufficient to justify such absence, he incurs a disability. This clause contemplates that if a person is absent because of temporary

illness or for any other sufficient cause, then he will not incur such a disability or disqualification. However, sub-section (d) of Section 19 is in absolute terms and it lays down that if a person absents himself during six consecutive months from the meetings of the Corporation, then he shall cease to be the Councillor. According to Shri Vaidya, whenever the Legislature intended that the absence of the person should be condoned for a sufficient cause, a specific provision in that behalf has been made by the legislature. In Section 36 such a provision has not been made. Therefore, according to the learned counsel, the intention of the Legislature was that as soon as a member absents from all the meetings of the Standing Committee during 2 consecutive months he must cease to be the member of the Standing Committee. In substance, therefore, his contention is that the reasons for absence of a member are irrelevant and the consequences contemplated by Section 36 must follow even if a Councillor is prevented from attending the meetings for the reasons beyond his control. It is not possible for us to put up such a construction on the provisions of Section 36 of the Act.

9. It cannot be forgotten that Section 36 of the Act deals with the disqualification. Normally a Councillor is entitled to continue as a member of the Standing Committee for a term for which he is elected. The said term is cut short because of his absence from the meetings. A further consequence of this absence is that he is not even eligible for re-election to the Standing Committee during the unexpired term of the Corporation. Therefore, the consequences of his absence are penal in nature. It is well settled that such a provision must be construed strictly. If the Legislature in its wisdom has used the phraseology, namely, "absents himself" and not "remained absent" or "was not present", then, in our opinion, a construction cannot be put on these words to mean that mere absence of a member from the meetings should mean that he has absented himself from the meetings. The phraseology used clearly indicates that a Councillor should absent himself from the meetings in spite of the fact that he had an opportunity to attend the meetings. This contemplates that after due notice the Councillor was in a position to attend the meeting and has failed to attend the same because of his own conduct or volition. In our opinion unless it is shown that there was some sort of willful act on the part of the Councillor or at least a culpable negligence in keeping himself away from the meeting could be attributed to him, it cannot be said that he has "absented himself" from the meeting. In our opinion the phrase "absented himself" will normally come into play when a member is in a position to take some decision and either wilfully or due to his own conduct or negligence does not exercise his volition in favour of attending the meeting. As observed by the Nagpur High Court in *Wamanrao v. Corporation of the City of Nagpur* Misc. Petn. No. 322 of 1955 D/- 2-1-1956 (nag) (cit. supra) the phraseology "absented himself" cannot be equated with "remained absent" or "was not present". If the Legislature wanted that mere absence or non-presence should amount to disqualification, then, it could have used such a phraseology. If the construction as put up by the learned counsel for the Municipal

Commissioner is accepted, the word "himself" will become redundant. According to the settled rules of interpretation, it must be presumed that every word used in the Act has been inserted by the Legislature with some purpose behind it. The Court cannot reduce statutory words to nothing or to surplusage. In any case as far as possible a construction rendering any part of the section redundant should be avoided, unless it leads to ambiguity or manifest injustice. Effect must be given to all the words used in the statutory provision, for Legislature is deemed not to waste its words or to say something in vain. As observed by the Supreme Court in [Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another](#), "it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the Statute."

10. Further it must be remembered that in dealing with a provision relating to disqualification, in a sense, we are dealing with a penal provision. In these circumstances it would not be proper to extend the scope of the provision by reading into the words something which is not there or by treating a word redundant and thereby widen the scope of the provision. It is also equally well settled that for ascertaining the meaning of a section it is not permissible to omit any part of it. The section must be read as a whole and together. If, therefore, the words used, namely, - "absents himself" are read together, then, it is obvious that mere absence from the meetings is not enough, but it should be further shown that a Councillor has remained absent from the meetings though it was humanly possible for him to attend the meetings. In the present case because of the detention of the petitioner under the MISA it was not possible for him to attend the meetings, though he had a desire to attend the said meetings. The petitioner has done everything within his power. He went to the extent of filing an application u/s 15 of the MISA making a request to the detaining authority as well as the Government to permit him to attend the meetings of the Standing Committee. However, it is clear from the record that the respondents did not send any reply to his registered letter or the telegrams sent in this behalf. In this view of the matter, it is not possible for us to accept this contention of Shri Vaidya.

11. From the record it is quite clear that no notice of the meeting was received by the petitioner personally, nor he had a knowledge of the meetings. Assuming that he had a knowledge of the meetings and the notice were served upon him, he was prevented from attending the meetings because of his detention under the MISA. The absence from the meetings was not the result of his own conduct, but he was prevented from attending the meetings for the reasons beyond his control. If this is so, in our opinion, it cannot be said that the petitioner had "absented himself" from all the meetings of the Standing Committee during two consecutive months. In this view of the matter, in our opinion, the notice issued by the Deputy Commissioner of Nagpur Municipal Corporation is liable to be quashed being illegal.

12. In the result, therefore, the petition is allowed with costs. The notice date 30th October, 1975, issued by the Deputy Municipal Commissioner, Nagpur Municipal Corporation is quashed and set aside. The petitioner will be entitled to get his costs of the petition from the respondent No. 5, the Municipal Commissioner, Nagpur Municipal Corporation Nagpur.

13. Petition Allowed.