

(1963) 02 BOM CK 0008

In the Bombay High Court

Case No : Special Civil Application No. 186 of 1962

Chandrabhan Nagoji Jichkar

APPELLANT

Vs

Amritrao Harbaji Kotamkar and Others

RESPONDENT

Date of Decision : 21-02-1963

Acts Referred:

Central Provinces and Berar Local Government Act, 1948 — Section 10
Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 16(1)

Citation : AIR 1965 Bom 34 : (1963) MhLj 340

Hon'ble Judges : Chainani, C.J;Kotval, J

Bench : Division Bench

Advocate : V.R. Manohar, for the Appellant; G.R. Mudholkar, Addl. Govt. Pleader and D.N. Belekar, for the Respondent

Judgement

Chainani, C.J.

(1) The petitioner was the Mukadam Patel of villages of Virali and Barwha. He stood as a candidate for election the Zilla Parishad. An objection was raised to his nomination but it was rejected. An appeal against that order was made to the District Judge. He allowed the appeal and set aside the order of the Returning Officer accepting the petitioner's nomination.

(2) Mr. Manohar, who appears on behalf of the petitioner, has contended that if S. 16(1) (h) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, is held to be applicable in this case, then the order made by the District Judge would be correct. He has, however, contended that in view of the provisions of Sections 288 and 290 of the Act read with sub-clause (ii) of clause (c) in paragraph 2 in the Eleventh Schedule to the Act, the question whether the petitioner was qualified to stand as a candidate will have to be decided by reference to the provisions of the C.P. and Berar Local Government Act, 1948. u/ s 10(c) of that Act no person is eligible for election, if " he is a servant of Government and is remunerated by salary or honorarium (which expression shall not include fees or commission)". The petitioner was appointed as a Patel under

the M.P. Land Revenue (Village Patels) Rules, 1957. Sub-rule (1) of Rule 9 deals with remuneration and states that the remuneration payable to a patel shall be at the rate of the percentage specified in column 2 of the table appended to that rule, of the amount of gross revenue of the village concerned. The proviso to this sub-rule states that the annual remuneration shall not be less than Rs. 36/-. Sub-rule (2) of Rule 9 provides that when a patel is appointed temporarily under Rule 7 he shall be paid remuneration at the rate of rupees five per mensem. Mr. Manohar has argued that as the petitioner was being paid a percentage of land revenue the remuneration received by him was a commission and not a salary within the meaning of cl.(c) of Section 10 of the Local Government Act. In support of his argument he has relied on the decision of the Madhya Pradesh High Court in *Jawaharlal Motilal v. Deputy Commr. Amravati* 1955 Nag LJ 183. In that case the question was in regard to a patel appointed under the provisions of the Berar Patels and Patwaris Law. In the judgment it has been observed:

"The nature of the duties of the patel shows that he is primarily an agent for collection of land revenue, though in addition he performs many other duties of village management on behalf of Government."

In the present case the petitioner was not appointed under those rules but under the M.P. Land Revenue (Village Patels) Rules, 1957. These rules provide for the appointment and removal of a patel and other conditions of his service. In view of these rules it is difficult to hold that a patel is an agent of Government. Rule 10 specifies the duties of a patel. He is not only responsible for the collection of land Revenue, but numerous other duties, which have nothing to do with the collection of land revenue, have also been assigned to him. It can, therefore, no longer be said that the patel's principal duties are in regard to the collection of land revenue. The decision in 1955 Nag LJ 183 will, therefore, not apply in this case.

(3) Mr. Manohar has also relied on the decision of Abhyankar, J. in *Yeshwant v. Nandkishore*, 1961 Nag LJ 235. The relevant portion of the judgment shows that the learned Judge himself found considerable force in the contention that the remuneration payable to a patel is a salary. He, however, came to the conclusion that it was not a salary principally for the reasons that the remuneration is made to depend on the total amount of gross revenue of a village. With respect, we are unable to agree with the view taken by Abhyankar J. Under the present rules a patel is appointed by the Deputy Commissioner. He can be punished for misconduct and removed from office for misconduct. He is, therefore, a servant of Government. His duties are also prescribed by the rules and he has to perform several duties apart from that of collection of land revenue. The mere fact that the remuneration paid to him is fixed at a percentage of the revenue would not therefore, be sufficient to indicate that what he receives is commission and not salary. It may be noted that his minimum remuneration cannot be less than Rs. 36/-. Having regard to the facts, which I have just mentioned, it seems to us that the remuneration payable to a patel is a salary within the meaning of clause

(c) of section 10 of the C.P. and Berar Local Government Act.

(4) If, therefore, the petitioner was serving as a patel at the relevant time, he was not eligible to stand for election. Mr. Manohar has also urged that the petitioner had resigned on 3-12-1961, that u/s 5 the period of his office came to an end on 3-3-62 and that consequently he was not a patel on 2-5-1962 on which date the nomination papers had to be filed. The opponent No. 1 has however stated in his affidavit that the petitioner did not hand over charge of his office and was not relieved of his office of the patel before 10th August 1962. The District Judge has also found that the petitioner was working as a patel at least till 7-5-1962. In any case, the question is a disputed question of fact, which cannot be agitated in these proceedings.

(5) We therefore see no reason to interfere in this case. Rule discharged. No order as to costs.

(6) Rule discharged.