

(1956) 12 BOM CK 0021
In the Bombay High Court
Case No : Misc. Petition No. 502 of 1955

Janardan Bhawaniji

APPELLANT

Vs

Deputy Commissioner, Amravati and Others

RESPONDENT

Date of Decision : 19-12-1956

Acts Referred:

Central Provinces and Berar General Clauses Act, 1914 — Section 2(29)
Central Provinces and Berar Panchayats Act, 1946 — Section 14
Contract Act, 1872 — Section 182

Citation : AIR 1957 Bom 238 : (1957) 59 BOMLR 267

Hon'ble Judges : Mudholkar, J;Kotval, J

Bench : Division Bench

Advocate : N.L. Belekar, for the Appellant; W.K. Sheorey, for the Respondent

Judgement

Kotval, J.—This is a petition by Janardan son of Bhawani Taralkar who had filed his nomination paper for election, as a member of the Gram Panchayat at Virul, taluq Chandur. The nomination paper was rejected by the Supervising Officer u/s 14 of the C. P. and Berar Panchayats Act, 1946.

2. Section- 14 (b-I) of the Act runs as follows :

"14. A person shall be disqualified for election, nomination or appointment as a Panch, Deputy Sar Fanch or Sarpanch If such person--

(b.1) is servant of any local authority; *****

The points that have been raised in this petition are (a) whether he was a servant of the local authority.

3. The petitioner was a cattle pound mohar. rir of the cattle pound at Virur which is under the management of the Janapada Sabba at Chandur. He was not paid a monthly salary but was remunerated by payment of commission. This is the ground on which he claims that he cannot be deemed to be a servant of that local authority.

4. It is admitted that the petitioner was appointed under the resolution annexure 6, in terms of which he accepted service. The resolution or the Finance Standing Committee states.

". . . . And similarly, the servants to be paid commission instead of pay, at the rate of six per cent.""

5. The petitioner was therefore prima facie appointed as a servant of the Janapada Sabha. hE now contends that he was merely a commission agent. In our opinion, a person is said to be a servant where by agreement, express or Implied, he places himself under the control of another-- the master. A person is under the control of another if he is bound to obey the orders of that other not only as to the work which he shall execute but also as to the details of the work and the manner of its execution. As a cattle pound Moharrir. it was admitted the petitioner has to attend at stated hours and be present whenever called upon to attend. He is not, to put it broadly, the master of himself in the discharge of his duties. We are of opinion that his duties have all the attributes of service and that he Is not a com-mission agent, in the circumstances.

6. It was then contended that the Janapada Sabha is not a local authority, and reference was made to the definition of local authority, in the C. P. and Berar Local Government Art, 1948. In the C. P. and Berar Panchayats Act, 1946, there is no definition of local authority, and we are primarily governed in the present case by that provision of law in interpreting the words "local authority". We cannot import into the Panchayats Act the specialised definition of "local authority" in other law which was made for the purposes of that law.

7. In our opinion, the words "local authority" would fall to be interpreted by the application of Section 2, Sub-section. (29), of the C. P. and Berar General Clauses Act, 1914, where "local authority"" is defined as follows :

" "Local authority" shall mean a municipal committee, district council or other authority legally entitled to, or entrused by the Government with, the control or management of a municipal or local fund."

In that definition a Janapada Sabha would be included because the Janapada Sabha has "the control or management of a municipal or local fund." The petitioner would therefore be a servant af such a "local authority."

8. For these reasons, we are of opinion that the orders impugned were correct. The petition is dismissed with costs. Counsel"s fee Rs. 50.

9. Petition dismissed.