

(1962) 01 BOM CK 0015

Bombay High Court (Nagpur Bench)

Case No: Special Civil Application No. 297 of 1961

Laxman Narayan Pokale

APPELLANT

Vs

Block Development Officer

RESPONDENT

Date of Decision: Jan. 9, 1962

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (1962) 64 BOMLR 587

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

Bench: Division Bench

Final Decision: Dismissed

Judgement

Kotval, J.

The petitioner Laxman Narayan Pokale was a candidate for election to the Gram Pauchayat of Mouza Hmgni from ward No. 3. The Gram Panchayat was to consist of thirteen members out of which two seats were reserved for women candidates. The programme announced for the election was as follows:-

- (i) The last date for filing nominations was ... 22-9-1961
- (ii) Scrutiny of the nominations was to take place on ... 23-9-1961
- (iii) The last date for the withdrawal of nominations was ... 4-10-1961 &
- (iv) The election was scheduled to be held on ... 18-10-1961.

2. The petitioner and respondents Nos. 3 to 10 had filed their nominations; but by an order passed on September 23, 1961, respondent No. 2, who was the Returning Officer for the election rejected the nomination, of the petitioner. An appeal was preferred before respondent No. 1, the Block Development Officer, but it was also rejected on September 27, 1961, with the result that the petitioner's nomination stood rejected. It is against these orders rejecting his nomination that the petitioner

applies to this Court under Articles 226 and 227 of the Constitution.

3. The ground of rejection of the petitioner's nomination was that he was a Patel appointed by Government and as such he was disqualified by virtue of the provisions of Section 14 (i) of the Bombay Village Panchayats Act, 1958 (No. III of 1959) under which the election was to be held. The view which the authorities below have taken is that revenue Patels and police Patels are not eligible to stand as candidates for election in view of the provisions of Section 14(i) of the Act as they are Government servants.

4. Section 14(1) of the Bombay Village Panchayats Act runs as follows:-

14. No person shall be a member of a panchayat, or continue as such, who-...

(i) is a servant of the Government or a servant of any local authority;

5. Thus, the short question, though an important one, that falls for determination in this special civil application is whether a Patel holding office under the provisions of the Madhya Pradesh Land Revenue Code, 1954 (II of 1955) is a Government servant. Two authorities were cited by Mr. C. S. Dharmadhikari in support of his contention that the Patel is not a Government servant. They are [Yeshwanta Mahadeo Dhirde Vs. Nandkishore Ghanashyamal Jaiswal](#), and Shridhar v. Commr. of Nagpur Division (1961) 68 Bom. L.R. 918 : [1961] N.L.J. 565. The first mentioned decision is a single Bench decision of my learned Brother. In that decision what was urged before my learned Brother is to be found mentioned in para. 25 et seq of the judgment at p. 248 of the journal. The point that was really argued before my learned Brother was whether in that case the candidate Nandkishore was a servant of the Government remunerated, by salary. The facts there were that the candidate was appointed a Patel u/s 50 of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (I of 1951) and the question that fell for determination before my learned Brother was, whether having regard to the provisions of Section 50 the candidate could be said to be a servant of the Government remunerated by salary. One argument that was advanced before my learned Brother was also that, salary must be distinguished from commission or fees which the Patel was then receiving u/s 50 of the Abolition of Proprietary Rights Act. None of these, questions arise in the instant case because here the Patel has been appointed under the provisions of Section 205 of the Madhya Pradesh Land Revenue Code read with Sections 206 to 211 thereof. The provisions of Section 50 of the Abolition of Proprietary Rights Act have now been repealed by Section 288 of the Madhya Pradesh Land Revenue Code read with Schedule III thereof. Thus, no question of the petitioner continuing under the repealed provision of law can arise.

6. The other decision relied upon, namely, Shridhar v. Commr. of Nagpur Division was not a case where the applicability of Section 14(i) of the Bombay Village Panchayats Act was considered. In that case, Mr. Justice Tambe, who delivered the judgment on behalf of the Division Bench, held that the case fell under Explanation

3 to Section 14 of the Act and therefore the other question whether he was a servant of the Government did not survive for consideration. Explanation 3 to Section 14 runs as follows:-

For the purpose of clause (i), an officiating revenue or police Patel or revenue or police Patel who is an officiator under the Bombay Hereditary Offices Act, 1874, shall be deemed to be a servant of the Government.

It was urged in that case that the candidate fell under Explanation 3 as being "an officiating revenue or police Patel or revenue or police Patel who is an officiator under the Bombay Hereditary Offices Act." The Division Bench held that the candidate in that case had been appointed long before the provisions of Section 14 of the Bombay Village Panchayats Act had come into force and that, therefore, Explanation 3 to Section 14 would not apply. No other point was argued before the Division Bench, nor appears to have been dealt with in the decision cited before us. It was certainly not urged in that case that the candidate was otherwise also by virtue of his office and the duties attached to it a Government servant. Thus, the two authorities relied upon do not assist us in determining the question before us, which will have to be determined upon a consideration of the relevant provisions of law.

7. The provisions governing the appointment of Patels under the Madhya Pradesh Land Revenue Code are to be found in Sections 205 to 211 of the Code. Section 205 says that the Deputy Commissioner shall appoint for each village or group of villages out: or more Patels, and in case there are more than one Patel appointed, he has the power to distribute the duties subject to rules to be framed u/s 237 of the Code. u/s 206 the remuneration payable to Patel is to be fixed by the Deputy Commissioner "in accordance with rules made by the State Government". The section shows, therefore, that the remuneration comes from the State Government and is fixed by the Deputy Commissioner on behalf of the State Government. Section 207 lays down the duties of every Patel, and his principal duty as stated in Clause (a) is to collect and pay into the Government treasury land revenue and cesses payable through him and such other Government dues as are ordered to be collected by him. He has also to furnish reports regarding the state of his villages at such places and times as the Deputy Commissioner may fix in this behalf, to prevent encroachments on waste land, public paths and road-ways in the villages and to such stations and boundary marks erected in his village by surveyors in the service of Government as may be made over to his care. His other duties are to prevent unauthorised cutting of wood or unauthorised removal of any minerals or "other properties belonging to the State Government." Section 209 makes the Patel subject to the control of the Deputy Commissioner because it provides that the Deputy Commissioner may remove any Patel from office subject to the rules to be framed u/s 237. A perusal of Section 237 indicates that the power to make the rules thereunder is solely that of the State Government. Thus by making the rules the State Government can prescribe any duty for the Patel as also make any rule for the

regulation of his conduct and for control over him. All these provisions of law indicating the duties of the patel and giving to the State Government the power to lay down those duties show that the patel appointed under the Madhya Pradesh Land Revenue Code is a person wholly under the control of the State Government through the Deputy Commissioner. His duties are prescribed by the State Government, his remuneration is paid by the State Government, and the conditions upon which he can be removed from office are laid down by the State Government. The Deputy Commissioner in all these matters merely acts as a subordinate or an agent of the State Government. It seems to us difficult to hold that notwithstanding that this is the position of the patel vis-a-vis the State Government, he still cannot be held to be their servant.

8. Diamond in his Law of Master and Servant defines the relationship of master and servant in the following words:

Article 2.-The relation of master and servant exists between two persons where by agreement between them, express or implied, the one (called "the servant") is under the control of the other (called "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.

In Article 3 of his book the same author points out:

Control may exist between two persons, although the one-

- (1) did not appoint the other;
- (2) does not pay the remuneration;
- (3) has no power to dismiss;
- (4) has not the exclusive control.

9. In this case we have already set forth the nature of the relationship between the patel and the State Government and their agent the Deputy Commissioner. It is clear that it is the State Government through the Deputy Commissioner who appoints the patel, who pay his remuneration and who have the power to remove him and that the patel is under their exclusive control. Thus all the indicia of the relationship of master and servant are present when we consider the relationship of the patel vis-a-vis the State Government. In our opinion, the conclusion upon these circumstances is irresistible that the patel is a servant of the State Government. If so, he will clearly fall within the terms of Clause (t) of Section 14 of the Bombay Village Panchayats Act. In that view, it seems to us that the petitioner who was a patel would be disqualified from standing for election as a member of the Gram Panchayat.

10. It was urged on behalf of the petitioner by Mr. Dharmadhikari that the petitioner's appointment was prior to the coming into" force of Section 237, or for that matter, of the entire Madhya Pradesh Land Revenue Code, No. doubt, in para. 7 of the petition it has been alleged that the petitioner was an elected Patel in 1951 and is still continuing as such. But it was never pointedly mentioned in the petition that Section 14(i) of the Bombay Village Panchayats Act would not apply for that reason. What was urged was that he was neither a servant of the Government nor a servant of any local authority, that is to say, that the petitioner's case did not fall under the terms of Section 14 (i).

11. Even assuming that the contention had been raised, we do not think that the contention is well-founded. Assuming that the petitioner took office as a Patel in 1951 and was continuously in office since then till the date of the petition, we do not see what difference it can make to his present position. Under the Abolition of Proprietary Rights Act, rules were made for the appointment of Patels u/s 50 thereof. Those rules permitted the Deputy Commissioner to make the selection for appointment to the office of Patel but after giving the recorded holders of occupied lands an opportunity to vote for any one or more of the applicants found suitable under the rules. Thus, there was a completely different system by which Patels were selected u/s 50 of the Abolition of Proprietary Rights Act. It was, so to say, a composite procedure combining partly election by the recorded holders and partly selection by the Deputy Commissioner, whereas under the provisions of the Madhya Pradesh Land Revenue Code, the Deputy Commissioner has the sole right to appoint the Patel subject to the rules framed by the State Government.

12. We have pointed out the difference in the procedure for selection of Patels at some length because it serves to emphasise that it could not have been the intention of the Legislature that the Patels selected u/s 50 of the Abolition of Proprietary Rights Act should be deemed to be Patels under the Madhya Pradesh Land Revenue Code. After the Madhya Pradesh Land Revenue Code came into force, all the Patels appointed under the earlier provisions were re-appointed by the State Government under the Madhya Pradesh Land Revenue Code, and we are, therefore, unable to see how the petitioner can be held to be continuing as a Patel under the provisions of the Abolition of Proprietary Rights Act. At any rate, as we have pointed out, this point was not taken in the petition.

13. In our opinion, the view taken by respondents Nos. 1 and 2 was correct. The petitioner was disqualified from standing for election to the Gram Panchayat of village Hiugni because he was the Patel of the village and as such a servant of the Government. The petition is dismissed. Since there was no appearance on behalf of the respondents, there shall be no order as to costs.