

(1961) 07 BOM CK 0011

Bombay High Court (Nagpur Bench)

Case No: Special Civil Application No. 333 of 1960

Shridhar Damodhar Meghare

APPELLANT

Vs

Commissioner of Nagpur
Division

RESPONDENT

Date of Decision: July 25, 1961

Acts Referred:

- Bombay Village Panchayats Act, 1959 - Section 14

Citation: (1961) 63 BOMLR 943

Hon'ble Judges: Tambe, J; Shikhare, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Tambe, J.

This is a petition under Articles 226 and 227 of the Constitution of India.

2. A Gram Panchayat was established in Mouza Gawandi, Taluq and District Yeotmal under the Central Provinces and Berar Panchayats Act,

1946 (Act I of 1947). To this Panchayat, petitioner was elected a panch some time in the year 1956 prior to the date on which the States

Reorganization Act came into force. Similarly, in due course, he was also elected Sarpanch of that Panchayat. It was then the policy of the

Madhya Pradesh Government to give preference to Sarpanch as in the matter of appointing patels of the Village. In pursuance of this policy the

petitioner was appointed the patel of that village after his election as a Sarpanch. As a result of the States Reorganization Act, Yeotmal district and

some other territories became part of the newly organised State of Bombay, The Legislature of the State of Bombay enacted a law in the year

1959 called the Bombay Village Panchayats Act (Act III of 1959). It was enacted to amend and consolidate the law relating to the constitution

and administration of village panchayats in the State of Bombay and certain other connected matters. It came into force on June 1, 1959,

throughout the State of Bombay.

3. For purposes of this case it would be sufficient to refer to a few sections of the Bombay Village Panchayats Act. Section 14 enumerates the

disqualifications and we are here concerned with Clause (1) of Section 14 read with the Third Explanation. They are in following terms:

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

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

Explanation 3.-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.

Section 16 provides:

(1) If any member of a panchayat,-

(a) who is elected or appointed as such, was subject to any of the disqualifications mentioned in Section 14 at the time of his election or

appointment, or

(b) during the term for which he has been elected or appointed, incurs any of the disqualifications, mentioned in Section 14,

he shall be disabled from continuing to be a member, and his office shall become vacant.

(2) In every case, the authority competent to decide whether a vacancy has arisen shall be the Collector. The Collector may give his decision either

on an application made to him by any person, or on his own motion. Until the Collector decides that the vacancy has arisen, the member shall not

be disabled under Sub-section (1) from continuing to be a member. Any person aggrieved by the decision of the Collector may, within a period of

fifteen days from the date of such decision, appeal to the State Government, and the orders passed by the State Government in such appeal shall

be final:

Provided that no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard.

4. It appears that purporting to act under the aforesaid two provisions of law, the Collector issued a notice to the petitioner to show cause why

vacancies should not be declared in respect of the post of Sarpanch and the post of Panch held by the petitioner in view of the disqualification

incurred by him by holding the post of a patel. It appears soon thereafter the Government changed its mind and informed its officers that Panchas

or Sarpanch as under the Madhya Pradesh Act holding the post of Patel prior to the day the new Act came into force should not be disqualified

from holding the post and should be given an option of resigning either the post of the Panch or the post of the patel. In pursuance of this decision

of the Government, another communication was addressed to the petitioner. The material part reads thus:

According to the notice K 2970-SL d/-12-8-59 of this office, we have informed you to tender the resignation of the office of Sar Panch. But now

we have received fresh orders from the Government that you can tender resignation of one of the posts, either of patel or sarpanch.

Therefore, you should inform us according to your will and tender resignation of any post and thus inform us by return post before 16-8-59.

The petitioner promptly responded to this communication and resigned the post of a Patel held by him. Thereafter on June 4, 1960, another notice

was served on him by the Collector u/s 16(2) together with Section 14(7) of the new Act. The petitioner appeared and showed cause. The

Collector took the view that u/s 14(7) read with the Third Explanation the petitioner had incurred a disqualification, that disqualification existed on

June 1, 1959, the resignation tendered by him in August 1959 when that disqualification was brought to his notice cannot have the effect of

removing the disqualification. The petitioner being disqualified to hold the post of a Panch and Sarpanch, vacancies had occurred by operation of

law and the posts of the Panch and Sarpanch had fallen vacant. He made an order accordingly on September 28, 1960. Against this order the

petitioner took an appeal which was heard by the Commissioner to whom the powers of the State Government have been delegated. The

Commissioner agreed with the view of the Collector and the appeal was dismissed. The petitioner by this petition has, therefore, come to this

Court, wherein he prayed that the aforesaid two adverse orders of the Collector and the Commissioner be quashed.

5. Mr. Wakhare, the learned Counsel for the petitioner, contends that both the authorities were in error in holding that the petitioner's case fell

under the Third Explanation, It is the argument of Mr. Wakhare that the Third Explanation governs only the persons appointed as Patels under the

Bombay Hereditary Offices Act of 1874 and not Patel appointed under any other enactment. The petitioner has been appointed a Patel u/s 214 of

the M.P. Land Revenue Code and, therefore, the Third Explanation has no application to his case. The authorities were, therefore, in error in

holding that by virtue of the Third Explanation the petitioner's case fell within the mischief of Clause (1) of Section 14 of the new Act. The

contention of Mr. Wakhare, in our opinion, is well-founded. The learned Collector in construing the Third Explanation has observed :

This is clear as the explanation 3, contains two distinct clauses as detailed below:-

(i) An officiating Revenue or Police Patel, shall be deemed to be a servant of the Government.

(ii) 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.

In our opinion, such a construction is not possible in view of the provisions of the Bombay Hereditary Offices Act, 1874. When those provisions

are kept in view, it is clear that the clause ""under the Bombay Hereditary Offices Act, 1874"" governs not only the clause ""Police Patel who is an

officiator"" but also the clause ""officiating revenue or Policy Patel"". To hold otherwise would mean that a person who is an officiating revenue or

police patel under the Bombay Hereditary Offices Act, 1874, who enjoys the watan would not be hit by the Explanation but a revenue or police

patel who is an officiator under the Bombay Hereditary Offices Act, 1874, alone would be hit by the Explanation. Section 42 of that Act provided

that:

Every representative watandar whose duty is to officiate shall, if a fit and proper person, perform the duties of the hereditary office himself on being so required by the Collector, but may be permitted by the Collector to appoint a deputy.

It would thus be seen that it was the primary duty of the watandar-patel to perform the duties of the patel when he was called upon to do so. He

could perform that duty by a deputy only when the Collector permitted him to do so. Section 4, which is the interpretation clause, defined

Officiator"" in following terms:-

"Officiator" means the person actually performing the duties of an hereditary office for the time being, whether he be a representative watandar or a

deputy or a substitute appointed under any of the provisions of this Act.

It would thus be seen that the Act itself made a distinction between an officiating revenue or police patel and revenue or police patel who is an

officiator, the officiator being the person actually performing the duties of the patel, the officiating person being the person entitled to the watan of

the patelki. It is to bring in both these classes within the mischief of the section that Explanation 3 to that section has been enacted. In our opinion,

therefore, the learned Collector and the Commissioner were in error in holding that the petitioner's case fell within the mischief of the Third

Explanation to Section 14 of the Bombay Village Panchayats Act, 1958.

6. Even assuming that it is possible to construe the Explanation in the manner it has been construed by the Collector, in our opinion, the view taken

by the authorities that a vacancy has occurred on account of the disqualification incurred by the petitioner u/s 14(i) of the Bombay Village

Panchayats Act, 1958, is not correct. It is a fundamental rule of construction that no statute shall be construed so as to have a retrospective

operation, unless its language is such as plainly to require such a construction. Every statute is presumed to have prospective operation. To accept

the view taken by the authorities would amount to giving a retrospective operation to the new Act. On the facts stated above, it is clear that since

the new Act has come into force on June 1, 1959, the petitioner had not incurred any disqualification. He had not been appointed Patel on a date

subsequent to June 1, 1959. He had been appointed Patel some time in the year 1956, and that was not a disqualification then but, on the other hand, it was the Government's policy to appoint the Sarpanch as a Patel. The petitioner was accordingly appointed Patel not because he wanted it but because it was the Government's policy to do so. The petitioner was duly elected representative of the constituency in the Panchayat. Not only that but the petitioner was also a duly elected Sarpanch of the Panchayat. The petitioner, therefore, had a right to hold that post and that right cannot be destroyed by giving retrospective operation to the new Act unless we find anything in the language of the Act to require such a construction,

7. Mr. Mudholkar, the learned Counsel for the respondent, referred us to Section 186 of the Act (III of 1959) in general and Sub-section (4) of that section in particular. Section 185 enumerates the various enactments which are repealed. The Central Provinces and Berar Panchayats Act, 1946, is one of the Acts repealed. Section 186 provides:

Notwithstanding the repeal of the said laws and the foregoing provisions of this Act-

(1) any local area declared to be a village immediately before the coming into force of this Act shall be deemed to be a village under this Act;

(2) the panchayats constituted under the said Acts immediately before the said date (hereinafter called ""the old panchayats"") shall be deemed to be panchayats of the respective villages (hereinafter called ""the new panchayat"");

(3) the Sarpanch, the Deputy Sarpanch or Upa-Sarpanch and the members or panchas elected or appointed for the old panchayats and holding office immediately before the said date shall respectively be deemed to be the Sarpanch, the Upa-Sarpanch, and the members of the new panchayats;

(4) the said Sarpanch, the Upa-Sarpanch and the members shall hold office as such Sarpanch, the Upa-Sarpanch and members for the period for

which they would have held office under the said Acts, subject however to the provisions relating to disqualification, resignation, removal and vacancy provided in the Act;

Mr. Mudholkar laying emphasis on the last clause in Sub-section (4) of Section 186 of the Bombay Village Panchayats Act, 1958, viz. ""subject

however to the provisions relating to disqualification, resignation, removal and vacancy provided in this Act"" contends that the persons who had

been elected Panchas of a Panchayat under the M. P. Act can continue by virtue of the said provision only if they are not disqualified to hold the

post under the new Act; this clause, therefore, shows that the intention of the Legislature was to give retrospective operation to Section 14 of the

Act. It is not possible for us to accept this contention. The first three sub-sections create three legal fictions. Villages declared under old Act are

deemed to be villages under the new Act, Panchayats constituted under the old Act are deemed to be Panchayats constituted under the new Act,

and persons holding offices of Sarpanch, Upa-Sarpanch and panch immediately before the coming into force of the new Act are deemed to be the

persons holding their respective offices under the new Act. Sub-section (3) which relates to the constitution of the new Panchayats is unqualified in

terms. It can be safely assumed that the Legislature must have been well aware that under the old Act to hold the office of a patel was not a

disqualification, but, on the other hand, it was the policy of the Government to appoint panchas and Sarpanch as as Patels. Even then the

Legislature has in terms stated that the persons who had been already elected panchas., Sarpanch as or Upa- Sarpanch as would be the Panchas,

Sarpanch as or Upa- Sarpanch as of the new Panchayats. It shows that the Legislature had not the intension of disqualifying those persons, if any

of them suffered this disqualification u/s 14. Had the intention of the Legislature been such, the clause ""subject however to the provisions relating to

disqualification etc."" would have occurred in Sub-section (3) and not in Sub-section (4). Sub-section (4) provides for the tenure of office of those

who by virtue of Sub-section (3) become panchas, Sarpanch as or Upa- Sarpanch as of the new Panchayats and that leads to the conclusion that

unless and until these persons incurred disqualifications under the new Act subsequently to the date on which the new Act has come into force,

their seats cannot be declared vacant. In other words, we do not find anything in Section 186 which would lead us to hold that it was the intention

of the Legislature to give retrospective operation to Section 14 of the Act.

8. In the result the application is allowed and the aforesaid orders of the Collector of date September 28, 1960, and of the Commissioner of date October 15, 1960, are set aside. The rule is made absolute. The respondent shall pay the petitioner's costs.