

APPELLATE CIVIL.

Before Mr. Justice Patkar and Mr. Justice Barlee.

1932
April 22

THE DISTRICT SCHOOL BOARD, BIJAPUR (ORIGINAL DEFENDANT),
APPELLANT v. BHAGWAN VASUDEV MARATHI (ORIGINAL
PLAINTIFF), RESPONDENT.*

Bombay Local Boards Act (Bom. Act VI of 1923), section 47—School Board—Corporate body—Liability to be sued as corporate body—Primary Education Act (Bom. Act IV of 1923), section 3.

A School Board is a creation of the Primary Education Act, 1923, and has a separate and independent existence apart from the District Local Board. It is not a branch of the District Local Board. It is a corporate body and is liable to be sued as such.

APPEAL from order against the decision of K. B. Wassoodew, District Judge of Bijapur, reversing the decree passed by M. B. Honavar, Subordinate Judge of Bijapur.

The facts material for the purposes of this report are stated in the judgment of Patkar J.

A. G. Desai, for the appellant.

Y. N. Nadkarni, with *M. N. Oka* and *R. A. Jahagirdar*, for the respondent.

PATKAR J. These are nine appeals from orders arising out of suits instituted by the plaintiffs, who are teachers, serving in the District School Board of Bijapur, constituted under the Bombay Primary Education Act, IV of 1923, as amended by Act XV of 1927, for damages for degradation and punishments inflicted by the District School Board, and for an injunction restraining the Board from giving effect to its resolutions, dated July 16, 1928, and May 22, 1928.

The learned Subordinate Judge held that the School Board is not a corporation, and therefore such a body, although it may have been given certain powers, has not been saddled with the liability of being sued in the same manner as the District Local Board incorporated under section 47

* Appeal from Order No. 19 of 1931.

of the Bombay Local Boards Act (VI of 1923), and if a power to sue or be sued was intended to be conferred on the School Board, provision ought to have been made either in the Bombay Primary Education Act or in the rules made under that Act.

On appeal, the learned District Judge held, firstly, that the School Board was empowered to act in respect of certain matters reserved under the Bombay Primary Education Act and the rules made thereunder, and therefore the Board was a corporation, and that if not a corporation, it was a quasi-corporate body so far as the powers entrusted to it were concerned ; and, secondly, that the School Board, if it is guilty of tort, is liable to be sued, and the suit ought not to have been dismissed under Order I, rule 9, Civil Procedure Code.

We think that Order I, rule 9, Civil Procedure Code, is not quite pertinent to the essential point under consideration and relates only to a matter of procedure.

The only question is whether the defendant School Board is a corporate body and is liable to be sued as such. It is contended that the School Board is not a corporate body and the suits ought to have been filed against the District Local Board because a School Board has not a separate existence, it is only a branch of the parent body, and the School Board is not a corporation.

It appears to us that the School Board has a separate and independent existence. The School Board is a creation of the Bombay Primary Education Act by section 3, clause 1, of Bombay Act IV of 1923. Though the powers given to the School Board are subject to the general control of the District Local Board, it appears that the School Board has a fund of its own. One-third is contributed by the District Local Board and two-thirds is contributed by Government according to section 80 of the Bombay Local Boards Act, VI of 1923, and rules 141 to 146 of the rules under the

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Bombay Primary Education Act. Under rule 141 the primary education fund at the disposal of the School Board consists of several items, principally, the grant made by the local authority which is the District Local Board, and the grant payable by Government on account of primary education, and other items. Under rule 142 the payment is to be made by a cheque signed by the School Board Administrative Officer and countersigned by the Chairman of the School Board, or in his absence, by the Vice-Chairman or other member of the School Board to whom the power of countersigning cheques has been delegated by the Chairman. All disbursements shall be made by the School Board Administrative Officer under rule 144, and accounts of receipts and expenditure of the School Board of a local authority are to be kept in such forms as are prescribed by Government under rule 145. Rules have been framed by Government under rule 145 of the Bombay Primary Education Rules by a notification No. 3631 dated June 16, 1930. The seal of the School Board is referred to in rule 2, sub-clause (3). Under rule 23 all buildings vesting in the School Board shall be entered in a register. Under rule 24 the whole of the School Board's property as recorded in the register of moveable property and the register of immoveable property shall be verified annually by the Administrative Officer. Under rule 26 a record of all investments shall be maintained in a register of investments. It appears clear from these rules that the School Board has and can hold property. There is no provision contained in the Bombay Local Boards Act or in the Bombay Primary Education Act giving power to the District Local Boards to revise or veto a decision of the School Board in the exercise of the powers committed to its care. Under rule 35 (b) it has power to prescribe the curriculum to be followed. It has also power of initiating a scheme for free and compulsory education under rule 33. Under sections 20 and 21 (1) of the Bombay Primary Education Act it has power of

issuing an attendance order and prosecuting the parent in the case of default of attendance of a child at any approved or recognised school. It has also power of appointing all members of the administrative, supervising and inspecting staff and all members of the teaching staff under rule 34 (a), and to punish and for serious misconduct or gross inefficiency to dismiss under rule 34, clause (c). These powers are under the Bombay Primary Education Act and under the rules framed under the Bombay Primary Education Act. It is clear, therefore, that the School Board is a creature of the legislature, and has a separate and independent existence, apart from the District Local Board.

The next question is, whether the School Board is a branch of the District Local Board. There is nothing to warrant that inference from the provisions of the Bombay Primary Education Act and the Bombay Local Boards Act. It is not a committee of the District Local Board, because the members of the School Board need not necessarily be the members of the District Local Board according to section 3, clause (1), of the Bombay Primary Education Act (IV of 1923). The School Board exists during the interregnum the District Local Board ceases to exist after the term of its existence and the new District Local Board is formed. During the interregnum the president and vice-president of the Local Board can carry on the current administrative duties of their office until the election of the new president and vice-president under section 27 of the Bombay Local Boards Act. According to sub-section (3) of section 3 of the Bombay Primary Education Act the term of the School Board shall be co-extensive with the term of the local authority; and at the end of such term the members of the School Board shall vacate office, provided that they shall continue in office till a new School Board is appointed. Further, under section 39 (3) (a) of the Bombay Local Boards Act, the president or vice-president, if appointed a member of any committee, shall be ex-officio chairman thereof. In

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the case of School Board they have power to elect their own chairman from amongst the members of the Board under section 4, clause (5). The School Board is, therefore, not a committee of the District Local Board or a branch of the parent body, the District Local Board.

The last question is whether the School Board is a corporation liable to be sued. According to Halsbury's Laws of England, Volume VIII, paragraph 706, five things appear to be essential to the creation of a corporation, namely, (1) lawful authority of incorporation; (2) the person or persons to be incorporated; (3) a corporate name; (4) a domicile; (5) words sufficient in law, but not restrained to any certain legal and prescript form of words. The learned District Judge has discussed the question in paragraph 12 of his judgment and held that "the school board has originated from the lawful authority of the Legislature. It has a name and place and certain quantum of designation of persons. It has certain statutory powers and duties beyond those which ordinary persons possess and can exercise." It is contended on behalf of the appellant that there is no seal of the School Board. It is urged on behalf of the respondent that the seal is referred to in the rules framed by Government under rule 145 of the Bombay Primary Education Rules, 1924. It is not necessary to go into that question, for possession of a common seal is not essential for a corporation. The point has been covered by the decision in the case of *The Cantonment Committee, Poona v. Banjorji Bamanji*,⁽¹⁾ where it was observed as follows (p. 289):—

"This committee we find to originate in a lawful authority, i.e., of the Legislature. It has a name and a place and a certain quantum of designation of persons. It has statutory powers beyond those of the common law. The absence of specification of a seal or a name in which to sue or be sued is indifferent if it be a corporation, as such incidents annex *tacite*."

In that case reference was made to the judgment of Bayley J. in *The Conservators of the River Tone v. Ash*,⁽²⁾ and it was

⁽¹⁾ (1889) 14 Bom. 286.

⁽²⁾ (1829) 10 B. & C. 349.

observed that the cantonment committee in that case were to execute certain public purposes and they had no private purposes of their own to answer. It was further observed (290) :—

“ For the purposes of the Civil Procedure Code, the opposite view would, we think, be highly inconvenient : the person contracting with the committee or its officer would then have to ascertain the name and circumstances of the members with whom he contracts, and to keep an eye on their retirement from the Board.”

There is no provision either in the Bombay Local Boards Act or the Bombay Primary Education Act making the District Local Board liable for the acts of the School Board. The definition of a corporation given in Halsbury's Laws of England, Volume VIII, paragraph 683 is as follows :—

“ A corporation aggregate has been defined as a collection of many individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, . . . ”

See also the definition of Grant in his Law of Corporation in the foot-note (b). It appears from the general scheme of the Bombay Primary Education Act that the members of the School Board cannot act individually, and have to act collectively, that the School Board has a perpetual succession and capacity to act as an individual. As the allegation of the plaintiffs is that the School Board committed the tort complained of, I think the School Board is liable to be sued, as, in my opinion, it is a corporate body. I, therefore, think that the view taken by the learned District Judge that the School Board is a corporation is correct.

I would, therefore, dismiss the appeals with costs.

BARLEE J. The definition of “ corporation ” given in Halsbury, Volume VIII, page 301, runs as follows :—

“ A corporation aggregate has been defined as a collection of many individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, . . . ”

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The body set up by the legislature called the School Board answers to this description, and it is immaterial that they are controlled in many respects by the District Local Board, the parent body. It is also immaterial that their powers are very limited. If they are corporate bodies and act as a corporation then the fact that they are not called a corporation in the Act also seems to me to be immaterial. We must look to the substance of the Act and find out what the legislature really meant and not to the description or rather want of description as in this case. It has been argued that this corporation, though they have powers, cannot be sued for their liabilities inasmuch as the legislature has neglected to insert in the Bombay Primary Education Act any provision of the nature of the provisions made in the Bombay Local Boards Act under section 47, which provides that a District or Taluka Local Board may sue and be sued in its corporate name. But, when the legislature gave these corporate bodies of their creation rights and duties, they gave them powers which might be used and also be abused, and if they abuse their powers given them, it is a part of the general law that they may be liable to be sued whether in contract or tort. I do not know whether it is possible for a local legislature to create a body and give it powers and to provide that it shall not be liable to be sued for abuse of such powers. But certainly it cannot be presumed that the bodies set up by the local legislatures are free from the jurisdiction of the Courts. It is quite clear that the legislature in this case has made no attempt to free the School Board from the jurisdiction of the Courts. I agree with my learned brother that the decision of the learned District Judge in all these cases was correct, that the suits against the School Board were maintainable, and that the appeals must be dismissed with costs.

Appeals dismissed.

J. G. R.