

## APPELLATE CRIMINAL.

*Before Mr. Justice Broomfield and Mr. Justice Wussoodew.*

1936  
July 9

NHANESAHEB AHMEDSAHEB (ORIGINAL COMPLAINANT), PETITIONER v.  
DATTATRAYA JAGANNATH KULKARNI (ORIGINAL ACCUSED), OPPONENT.\*

*Criminal Procedure Code (Act V of 1898), section 197—Chairman of District School Board—Public servant—Sanction of local Government necessary for prosecution—Indian Penal Code (Act XLV of 1860), section 21 (10)—Bombay Primary Education Act (Bom. Act IV of 1923)—Bombay Primary Education Rules, 1924, Rules 13 (a), 23, 141, 142, 143.*

A chairman of a District School Board is a "public servant" within the meaning of section 21 clause (10) of the Indian Penal Code, 1860. He is not removable from his office save by or with the sanction of the Local Government, so that he cannot be prosecuted for any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty without the previous sanction of the Local Government under section 197 of the Criminal Procedure Code, 1898.

CRIMINAL REVISION APPLICATION against the order passed by N. R. Gundil, Sessions Judge of Ratnagiri, confirming the order passed by J. K. Sawant, Sub-Divisional Magistrate, First Class, S. D., Ratnagiri.

The following facts are taken from the judgment of Broomfield J. :—

The question in this case is whether the Chairman of a District School Board is a public servant not removable from office save by or with the sanction of Government, so that he cannot be prosecuted for any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty without the previous sanction of the Local Government under section 197 of the Criminal Procedure Code.

The facts may be very briefly stated. The petitioner is a member and the respondent is the Chairman of the District Local Board, Ratnagiri, constituted under the Bombay Primary Education Act IV of 1923. There was a meeting of the Board on February 22, 1935, at which certain business

\*Criminal Revision Application No. 113 of 1936.

was transacted, and the minutes were recorded in the minute book and signed by the Chairman. The petitioner lodged a complaint against the Chairman, charging him with having forged the minutes and thereby committing an offence under section 465 of the Indian Penal Code. An objection was taken that the prosecution was barred by section 197, the sanction of Government not having been obtained. This objection was upheld by the trial Magistrate, who discharged the accused. There was then a revision application to the Sessions Judge. He pointed out that the Magistrate ought not to have discharged the accused, and that his order must be deemed to be a dismissal of the complaint for want of sanction. But on the merits he agreed with the Magistrate that the sanction of Government was required, and he rejected the application. That led to the present application to this Court.

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The petitioner applied in revision to the High Court.

*A. A. Adarkar*, for the applicant.

*G. B. Chitale*, for the opponent.

BROOMFIELD J. [After stating the facts as set out above the learned Judge continued :]

Two points arise under section 197 of the Criminal Procedure Code,—whether the Chairman of the School Board is a public servant as defined in section 21, clause (10), of the Indian Penal Code, and whether, if so, he is not removable from his office save by or with the sanction of the local Government. The definition of a “public servant” in section 21, clause (10), is :—

“Every officer whose duty it is, as such officer, to take, receive, keep or expend any property . . . for any secular common purpose of any village, town or district.”

I have omitted those parts of the definition which are not necessary for our purposes.

Now, the learned advocate, who appears for the petitioner, has conceded that the School Board is authorised to spend

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money on educational purposes, and that the Board itself will satisfy the requirements of the definition save in this particular that it is not an officer. This admission makes it unnecessary to deal with a considerable part of the very careful discussion of the provisions of the relevant enactments in the judgment of the learned Sessions Judge. The only question before us is whether the Chairman of the Board as such and as an individual member of the Board has the duty to take, receive, keep or expend any property for the secular common purposes of the town or district.

The provisions of the Bombay Primary Education Rules, 1924, to which our attention has mainly been directed, are these :—Rule 141 provides that a Primary Education Fund shall be maintained by the School Board of each local authority, the fund to be kept in the local branch of the Imperial Bank of India, or in such other Bank or Co-operative Society as may be approved by the Government, or in the Government Treasury. The School Board is also authorised by the same rule to deposit part of the fund in the Post Office Savings Bank or to invest it in Post Office Cash Certificates or in Government Securities. Rule 142 is important, and is as follows :—

“ No payment shall be made from a bank or from the Government Treasury out of the Primary Education Fund except upon 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. In the absence of the School Board Administrative Officer or where there is no School Board Administrative Officer, such cheque shall be signed by the Vice-Chairman and countersigned by the Chairman, or in his absence by any member of the School Board other than the Vice-Chairman to whom the power of countersigning has been delegated by the Chairman. Due intimation of the delegation of such power shall be given by the Chairman to the Bank or Government Treasury in which the Primary Education Fund is kept.”

Rule 143 provides that the School Administrative Officer, who is appointed under section 9 of the Bombay Primary Education Act, IV of 1923, shall be responsible for the scrutiny of vouchers and bills. Rule 144 provides that all

disbursements shall be made by the Administrative Officer. Rule 23 deals with the duties of the Chairman, and provides that he is to—

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“(a) preside at the meetings of the Board ;

(b) watch over the financial and executive administration of the Board ;

(c) in case of emergency perform such acts as may appear to him to be necessary, provided that the Act and the rules framed thereunder are not thereby contravened....”

The argument on behalf of the petitioner is that signing a cheque is not expending money within the meaning of the definition, and even if it is, the Chairman cannot sign cheques by himself. He only countersigns cheques signed by other persons. Therefore it cannot be said that he takes, receives, keeps or expends any property. As regards Rule 23 (b) it is urged, I think rightly, that the duty of watching over the financial and executive administration of the Board would not bring the Chairman within the definition of a public servant. As regards Rule 23 (c) the argument is that this is subject to the Act and rules and would not authorise the expenditure of money. It appears to me, however, that as money cannot be drawn out of the Bank except on a cheque countersigned by the Chairman, it may be said that he takes part in the act of receiving money when the money is withdrawn by cheque for the purpose of disbursement, and that he takes part in the act of expending money in cases where the payment is made directly by cheque. I am further of opinion that the emergency powers given to the Chairman by Rule 23 (c) may reasonably be held to include the power, and therefore the duty, in a proper case, to take charge of money or other property, school furniture, libraries, and so on, belonging to the Board. Without any undue straining of language, therefore, I hold that the Chairman of the Board comes within the definition of a “*public servant*”. That being so, it is immaterial, in my opinion, that there is no express provision in the Primary Education Act corresponding to section 135 of the

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District Local Board Act which gives to every member of the Local Board and every officer and servant maintained by or employed under it the status of a “*public servant*”.

The second point is perhaps a little more difficult, namely, the question whether the Chairman is not removable from his office except by or with the sanction of the Local Government. It is provided in Rule 13 (a) that the Government, if it thinks fit, on the recommendation of the School Board and of the Local Authority, and supported by a resolution passed by at least two-thirds of the whole number of members of each body, may remove any member elected or appointed to the School Board, if such member has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct in performing his duties as a member. Mr. Adarkar for the petitioner urges that the opponent has not been prosecuted *qua* member but *qua* Chairman of the Board. He says, and it is a fact, that there is no provision in the Statutes or in the Rules for removal of the Chairman of the School Board as such; that is to say, there is no provision corresponding to the Bombay Local Board's Act, section 26 (1), and the Bombay Municipal Boroughs Act, section 21. Therefore he says Rule 13 (a) does not stand in his way.

Now, there is, of course, a distinction between the office of Chairman and the office of a member of a Board, and in some cases it may be important. If a man is removable from his office as Chairman without the sanction of Government, you cannot say that section 197 of the Criminal Procedure Code applies because he is also a member of the Board, and as such member cannot be removed. That was the position in the old case, *Venkatesaju Naidu v. Heerman Chetty*.<sup>(1)</sup> But that is not the position here. It is not the case that the opponent can be removed from his office of Chairman without the sanction of Government.

<sup>(1)</sup> (1897) 2 Weir 226.

On the other hand Mr. Adarkar is not correct when he says that he cannot be removed at all. Rule 21 (2) provides as follows :—

“The term of office of the Chairman and Vice-Chairman shall be co-extensive with that of the school Board : provided that, if either of them resigns his office or ceases to be a member of the School Board, a fresh election to fill up the vacancy shall be held ; and provided further that, on the expiry of the term of office of a School Board, the Chairman and Vice-Chairman shall continue to perform the current administrative duties of their offices until such time as a new Chairman and Vice-Chairman shall have been duly elected and have taken charge of their duties.”

There is no means by which he can be removed from his office of Chairman except under rule 13 (a). But the Chairman is a member, and power to remove any member must include power to remove even the member who is the Chairman. If it were necessary therefore to remove the Chairman of the School Board from his office, it would be necessary to have recourse to Rule 13 (a), and there can be no doubt, I think, that he could be removed under that rule. Again, therefore, it can be held without any straining of language that the Chairman of the Board is a public servant, who is not removable from his office save by or with the sanction of the Local Government.

The findings of the lower Court are, therefore, in my opinion, correct, and the Rule should be discharged.

WASSOODEW J. The question in this case is whether the Chairman of the District School Board, Ratnagiri, is a public servant not removable from his office save by or with the sanction of the Local Government, and is therefore protected from prosecution for an offence alleged to have been committed by him while acting or purporting to act in the discharge of his duty. My learned Brother has dealt extensively with the Rules under the Bombay Primary Education Act to show that the duties of the office of the Chairman conform as nearly as possible to the duties required of an officer under section 21 clause (10) of the Indian Penal Code, to bring him within the definition of a “public servant”.

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There is no statutory provision, as in other Acts constituting local authorities, granting immunity to the members of the District Local Board from prosecution by including them within the definition of "public servant". The status of these members and the Chairman will depend, therefore, on the nature of their statutory duties. I need only refer in that connection to the provisions of Rule 23 (c), and Rule 142 of the Rules framed by Government under the Bombay Primary Education Act. It is clear that under the latter rule the Chairman shares the responsibility for drawing cheques on banks for payment out of funds belonging to the Board. Consequently he could be regarded as an officer expending property of the Board for a secular common purpose of the District within the meaning of clause (10) of section 21 of the Indian Penal Code. The emergency powers conferred by Rule 23 (c) also mean nothing else than the performance of acts of an executive character. When it is conceded that the executive officer,—who is described as an administrative officer,—is a public servant within the meaning of section 21 (10), there is no difficulty in bringing the Chairman within that category. In my opinion, it would make no difference to that position because the Act and the Rules specify the duties of the Administrative Officer without reference to the Chairman. On general principles, when the Act itself provides for the election of a Chairman by the Board from amongst its members, there could be no difficulty in treating him as a representative of the Board participating in the functions which the Board has been constituted to perform. Amongst those functions are the functions which an officer is required to perform under clause (10) of section 21 to bring him within the definition of the term "public servant". Therefore I agree with my learned Brother that the Chairman must be regarded as a "public servant".

With regard to his liability for removal from office with the sanction of the Local Government, it is sufficient to say

that, in the absence of any provision for the removal of the Chairman *qua* Chairman either in the body of the Act or in the Rules, the only provision under which his removal can take place is the provision contained in rule 13(a). Therefore the only way in which the Chairman could be removed from his office is by removing him as a member with the sanction of Government under Rule 13 (a). Accordingly the second condition under section 197 of the Criminal Procedure Code has been fulfilled in this case.

I, therefore, agree that the Rule be discharged.

*Rule discharged.*

J. G. R.

ORIGINAL CIVIL.

*Before Mr. Justice Rangnekar.*

BUNDI PORTLAND CEMENT CO. LTD., PLAINTIFFS *v.* ABDUL HUSSEIN  
ESSAJI, DEFENDANT.\*

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December 3,  
4, 5, 6, 9

*Trade-mark—Infringement—Passing-off action—What should plaintiff prove in such action—Colourable imitation by defendant of marks on plaintiff's goods—Fraudulent intention not necessary—Sufficient to prove tendency to deceive the public—Presumption that a person intends the natural and ordinary consequences of his acts—General principles to be observed in dealing with this class of cases—Civil Procedure Code (Act V of 1908), Order XXIX, rule 1, Order VI, rules 14 and 15—Verification of pleadings in case of a Corporation.*

The plaintiffs were a company manufacturing cement in India on a large scale. The cement manufactured by them was placed on the market in bags which had stencilled prominently on them the letters B B B placed between the words "Portland" and "Cement". The defendant who was a merchant dealing in cement manufactured in Japan imported from Japan cement in bags which had a get-up similar to the plaintiffs' bags and which bore prominently on them, *inter alia*, the letters R R R placed between the words "Portland" and "Cement". The plaintiffs filed a suit to restrain the defendant from importing or selling cement in bags with marks and get up similar to the plaintiffs' cement bags. The plaint in the suit was declared by an employee of the Managing Agents of the plaintiff company. The defendant contended that the plaint was not properly declared and that therefore the suit should be dismissed :

\*O. C. J. Suit No. 649 of 1931.