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Present : Schneider J.

THE KING v. SELLIAH et al.

26—D. C. Kandy, 3,375.

Secretary, Local Board, ordered to issue permits to purchase rice during food control—Charge of accepting illegal gratification—Penal Code, ss. 19 and 158—Public servant.

The accused was charged under section 158 of the Penal Code with having in his capacity as a public servant, to wit, Secretary of the Local Board, Matale, accepted illegal gratification. As secretary he was entrusted during the food control period by the Chairman of the Board (who was also Deputy Food Controller) with the duty of issuing permits to retail dealers to enable them to purchase rice from wholesale dealers and to perform other duties connected with food control, for which he was not paid anything extra. The charge was in connection with these duties.

Held, that the duties assigned to the accused came within the functions of a Local Board, and that the Chairman had the right to instruct him to do the work assigned to him, and that the accused, as Secretary of the Local Board, was a public servant within the meaning of section 19 of the Penal Code.

Apart from his official status as Secretary, the accused was not a public servant.

THE facts appear from the judgment.

H. J. C. Pereira, K.C. (with him *Hayley* and *S. Rajaratnam*), for the first accused, appellant.

Akbar, A.S.-G. (with him *Dias, C.C.*), for the respondents.

July 13, 1922. SCHNEIDER J.—

The first accused in this case was convicted under three separate counts of having in his capacity "as a public servant, to wit, Secretary of the Local Board of Matale," accepted on three several occasions three sums of money as illegal gratifications, being offences punishable under section 158 of the Penal Code. The second accused was convicted of having abetted the first accused in the commission of the said offences. The first accused was sentenced to undergo one year's and the second accused to nine months' rigorous imprisonment in respect of each count, the sentences to run concurrently.

Both accused have appealed. On appeal there was no appearance for the second accused, but the facts are such that if the charge against the first accused fails, it must fail as against the second accused also.

The appeals raise two questions. The one is this: Assuming that the first accused did accept the sums alleged as gratifications, did he do so in the capacity of a "public servant"? The other is: Did he, in fact, accept these sums?

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At my suggestion the argument was confined to the first question, because the second question would not arise if it were held that the first accused was not a public servant. To decide the question of law whether the first accused was acting as a public servant, it is necessary that certain facts should be first ascertained. These I shall now proceed to ascertain.

In 1919, owing to a scarcity in the supply of rice, the Government of this Colony was compelled to adopt measures for the control of foodstuffs. The measures adopted are matters of public history, and may be gathered from the *Government Gazettes* of the day. Under the Defence of the Colony Regulations, 1919, a Food Controller was appointed. He in turn appointed his deputies at various centres. The rice allotted to a particular area by the Food Controller was distributed by these deputies, with the help of persons or societies selected by themselves.

The several Assistant Government Agents were among those appointed deputies for the various areas.

In connection with this control large powers were given to the Food Controller and to Government Agents, such as entering upon and taking possession of lands compulsorily, with a view to their cultivation in food products; power to enter private houses and premises and take possession of rice and paddy, and also to compel persons to disclose their holdings of foodstuffs; to forbid the transport of foodstuffs from one area to another; and to regulate by license and permits the distribution of foodstuffs.*

Looking at these facts, it is not possible to conclude that the duties of the persons entrusted with those powers were other than of a public nature, and that the powers were entrusted generally to persons who would be called public servants in the common acceptance of that term. I shall later proceed to discuss the question whether they were public servants within the meaning of the term in section 19 of the Penal Code.

Mr. Millington being the Assistant Government Agent at Matale took up the duties of the Deputy Food Controller for his district. He was also *ex officio* Chairman of the Local Board of Matale. He tells in his evidence in this case what he did for a start. He sent for the Chief Clerk of his Kachcheri and for the Secretary of the Local Board, that is, the first accused, and entrusted to the Chief Clerk the financial part, and to the Secretary the distribution part of the work in town as regards rice. He appointed the Ratemahatmaya of Matale to look after the distribution of rice outside the limits of

* *Gazette* No. 7,023 of June 21, 1919; and *Gazette* No. 7,028 of June 13, 1919, to mention two amongst others.

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the town. He issued an order in writing to the Chief Clerk on June 2, 1919. It is as follows:—

“ Food Control.

“ The work in above connection will be done in the English department. The Chief Clerk will be responsible for the correctness of all orders submitted to me for signature. ”

He states that the Kachcheri and Local Board are in the same building ; that the appointment of persons to carry out the work of food control was left entirely to him and to his discretion ; that he could have chosen whomsoever he pleased, and that no one was “ paid anything extra for the work ” ; and that he “ chose people with whom (he) came naturally in contact. ”

Speaking of the duties which fell to the Chief Clerk and Secretary, he says that all moneys paid to him as Deputy Food Controller for rice were paid into the hands of the Chief Clerk ; that it was the duty of the Secretary to ascertain the minimum quantity of rice required for the town, to recommend traders to him, to issue permits to the retail dealers to enable them to purchase rice from the wholesale dealers, to convey his orders to the dealers, and generally that the Secretary had all the distribution work of the rice in the town.

He states that the “ first accused was not entitled to levy any fee ” for issuing permits, that he was not paid anything extra, and that “ all this was done as the Secretary of the Local Board. ”

He produced the document marked P 15 initialled by him and dated 2/10, that is, October 2, 1919, in which he gives the forms of permits to be issued to wholesale and retail dealers. As regards the forms of permit for wholesale dealers, it authorizes them to sell to *bona fide* traders “ within Matale town only on production of a permit from the Secretary, Local Board, Matale ” ; to those outside only upon production of a permit from the Ratamahatmaya of the division ; that the trader should not sell to any person other than the holder of the permit from the “ Ratamahatmaya or Secretary, Local Board ” ; that the trader must attach these permits to the daily statements which he had to furnish to the “ D. C. F., Matale ” (that is “ Deputy Food Controller ”).

Just below this form of permit is a direction to put up a notice in the Local Board Office ordering retail dealers to do a certain act under penalty of permits to purchase rice for retail sale not being issued if the order were not complied with. The form of the retail permit is that it has to be signed by “ Ratamahatmaya or Secretary, Local Board. ”

Two permits issued by the first accused P 15 dated October 8 and P 15a dated October 13 show that a number of forms of permits must have been lithographed, leaving room for the insertion of the name of the person, the quantity of rice, the date, and the signature of the person granting the permit. This last is described as

" Secretary, Local Board, Matale." These permits are signed by the first accused. Again, Mr. Millington speaks of a conference with the traders for the selection of a number of them as wholesale dealers. The minutes of the meeting are that there were present " Assistant Government Agent; Mr. C. Ariyanayagam; P. M. South; Secretary, Local Board." Mr. Millington says that Mr. Ariyanayagam was present as a prominent member of the Local Board. At the end of these minutes there is this direction: " Secretary, Local Board, will attend at railway goods shed to supervise issues (i.e., of licenses) to these dealers."

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Eighteen documents marked DD dated between December, 1919, and January, 1920, and addressed to the Assistant Government Agent requesting allowances of rice, have been endorsed " Secretary, Local Board," by Mr. Millington, and have been dealt with by the first accused, by either allowing or refusing the applications. In the same series are four documents, one addressed to the Secretary of the Local Board and the other three to the Assistant Government Agent, which bear no endorsement, but appear to have been dealt with by the first accused by allowing or refusing the application for permits for the purchase of rice.

In his Administration Report of the Matale District, as Assistant Government Agent, Mr. Millington (NPS 1 B 17), referring to food control, says: " Retail traders of Matale town and outlying parts of the district obtained their rice from these wholesale traders on permits from the Secretary, Local Board, and the Ratemahatmaya, respectively," and in his reports as Chairman of the Local Board of Matale (NPS 1 B 23) he writes: " 15. Rice.—Control and distribution was in my hands as Assistant Government Agent, and the subject is dealt with in my report in that capacity. I am much indebted to Mr. C. Ariyanayagam and the Matale Social Service League for the valuable advice and assistance which they have always so readily placed at my disposal in connection with distribution in the town. A house-to-house census of town residents was taken by the League, and the whole of the arduous work of writing up and distributing the rice ticket books was most efficiently carried out by the members. I also wish to place on record my appreciation of the work done by Mr. M. P. Selliah, the Secretary to this Board. He has throughout the period of control been charged by me with the immediate supervision of all the rice dealers, both wholesale and retail, in the town. A very large amount of additional work has thus been thrust upon his shoulders, and he has throughout discharged it with commendable zeal and efficiency and minute attention to detail."

Mr. Millington's evidence is that the first accused carried out the duties he entrusted to him. The first accused has given evidence admitting the execution by him of the several duties assigned to him in connection with the control of food. His conduct as disclosed by the documents to which I have already referred unmistakably

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shows that he regarded these duties as having been entrusted to him as part of his duties as Secretary of the Local Board. In his evidence he nowhere says that he did not regard them as such; on the contrary, the effect of his evidence is that he did regard them as such. He says: "Mr. Millington knew all I did (that is, in connection with food control), as I reported everything to him in my official capacity." And again: "I did not exceed my duties, the Assistant Government Agent looked into all matters of importance."

The evidence accordingly leads to one conclusion only, viz., that Mr. Millington and the first accused both regarded the duties entrusted to the first accused as those pertaining to his office of Secretary of the Local Board of Matale.

Mr. Millington appears to have been asked what generally were the duties of the first accused as Secretary, and to have replied that it was to see that all Local Board rules were enforced. This obviously is but a partial statement. The Local Boards Ordinance, 1898, in section 59, contemplates the Secretary as one of the chief executive officers. It classes the Secretary with such other officers as are "necessary for carrying out the purposes of the Ordinance." Local Boards are "Boards of Health and Improvement." Their powers, duties, and functions are dealt with in chapter IX. of the Ordinance. The power given to them to make by-laws is a fair indication of the extensive scope of their functions. The duties entrusted to the first accused in connection with the control of food are quite akin to those which would have devolved upon him in ordinary times. The control of rice was an emergency measure. But it seems to me that ascertaining what was the minimum quantity of food which would be required for their town, and taking measures for procuring it and distributing it justly, might well be regarded as coming within the functions of a Local Board, apart from any question of its by-laws. They are measures for the comfort and convenience of the people of the town. They fall within the duties of an officer of the Board, just the same as the execution of measures taken for the protection of the people of a town during a sudden outbreak of plague, which the first accused states in his evidence were carried out by him in his official capacity when there was such an outbreak and the sanitary authorities took action.

At one stage of the argument I was inclined to think that the duties of the first accused in connection with the control of food should have been assigned to him by the Local Board, but that clearly was a wrong view. The Chairman is the chief executive officer of the Board. It is within his competence to instruct this accused to do certain things as part of his duties as Secretary, provided they are not foreign to the functions of a Local Board. I would, therefore, hold that the duties imposed upon and performed by the first accused in connection with food control were imposed upon and performed by him in his capacity of Secretary of the Local Board.

There then arises the question whether as such he is a public servant under section 19 of the Penal Code. In my opinion, he is such a public servant. There can be no question that the duties of a Local Board are public duties, because they are duties which they are under obligation in regard to the public within the Local Board town. Now, a Local Board has an office, owns property movable and immovable, levies rates and taxes, and the Ordinance expressly requires that it should keep a book containing a list of persons liable to be taxed, together with other particulars (section 39). The Secretary must be presumed to be the person in charge of the office and of the books and records kept there. Under section 106 of the Ordinance all acts and notices which the Board or members are empowered to do or give by the Ordinance or any other Ordinance may be done or given by the Secretary if he is authorized thereto by the Board. The Secretary of the Local Board is paid a salary for the performance of his duties, which are public, in the same sense as the duties of the Board are public. The Secretary of a Local Board is, therefore, a public servant within the meaning of section 19, in that he is an officer whose duty it is as such officer to take, receive, or keep the books of the Board, which are the property of the Board, also, presumably, the movable property of the Board (section 19, eleventh). The duties of the first accused connected with the office of the Local Board are public, in that the public have the right to the services of the first accused in obtaining from the first accused such information as they are entitled to receive, and also to the inspection of the book of persons to be taxed.

It was argued that he is a public servant, in that he comes within section 19, tenth. But I am unable to agree with that contention, because, in my opinion, that clause refers solely to officers connected with Government. There was also an argument that he came under section 19, ninth, in view of explanation 1. With this argument, too, I cannot agree, because the facts do not permit the first accused being regarded as an "officer of Government," which is essential before he can be brought under that clause. Those words indicate that the person must hold some office under Government, even though he be not paid. I cannot regard explanation 1 as obviating that requirement.

Although the duties performed by the first accused were for the benefit of the public, and even granting that it was the duty of the first accused "to protect the public health, safety, or convenience in the performance of his duties in assisting the Deputy Food Controller, apart from his official status as Secretary of the Local Board, I am unable to understand how it can be maintained that he was an "officer." He held no office, any more than any member of the Social Service League or other voluntary helper, through whose assistance the Deputy Food Control carried out his duties.

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I am, therefore, unable to hold that, apart from his duties as Secretary of the Local Board, the first accused was a public servant within the meaning of section 19 of the Penal Code. My holding on the first question which has been argued is that if the first accused accepted the payment of the sums of money in question, he did so as illegal gratifications in his capacity as a public servant, viz., as the Secretary of the Local Board.

The appeals must now be argued in regard to the question whether he accepted such payments and was abetted by the second accused.

[The case was listed for argument on the facts, and the appeal was dismissed.]

Appeal dismissed.
