

1934

*Present : Poyser J.*KARUNARATNE *v.* ABDUL RAZAK.680—*P. C. Hatton, 711.*

Urban District Council—Contract with firm—Nominated member a paid manager of firm—Not concerned or interested in contract—Ordinance No. 11 of 1920, s. 237 (1).

Where a nominated member of an Urban District Council was the paid manager of a firm, which tendered into a contract with the Council, and took no part in negotiating the contract,—

Held, that the member cannot be said to be concerned or interested in the contract within the meaning of section 237 of the Local Government Ordinance.

A PPEAL from an acquittal by the Police Magistrate of Hatton.

C. V. Ranawake (with him *Kariapper*), for appellant.

H. V. Perera (with him *D. W. Fernando*), for respondent.

January 29, 1934. POYSER J.—

The respondent, a nominated member of the Hatton-Dikoya Urban District Council, was charged under section 237 of the Local Government Ordinance, No. 11 of 1920, with being concerned or interested in certain contracts with the said Council, and was acquitted.

The complainant, having obtained the necessary sanction under section 336 of the Criminal Procedure Code, appeals against this acquittal.

The accused is the son-in-law of one Jainul Abdeen, the owner of a business known as K. Jainul Abdeen Saibo and Company. He is the manager of this business and holds, together with another person, a general power of attorney from his father-in-law to manage the business, whether the owner is absent or not.

Jainul Abdeen was the sole owner of the business up to December 19, 1932, on which date he admitted the accused and other persons into partnership.

On December 23, 1932, the accused was nominated to the Council; he was in India on this date and returned to Ceylon on December 30.

On January 23, 1933, the partnership was dissolved and Jaimal Abdeen became once again the sole owner of the firm, and the accused became once again the manager of the firm on a salary of Rs. 150 per month.

The partnership was admittedly dissolved on account of the accused's nomination to the Urban District Council, as Jainul Abdeen had during 1932 supplied goods to the Council and both he and the accused realized that, if the latter was a partner in the firm, they could no longer enter into contracts with the Council.

There were two charges against the accused. The first was in regard to the tendering for and the obtaining of a meat stall in the Council's Market. The Magistrate acquitted the accused on this charge on the grounds that the provisions of section 229 of the Local Government Ordinance had not been complied with as the prosecution was instituted more than three months after the commission of the offence.

I think the Magistrate was correct in coming to this conclusion. It is however unnecessary to consider the evidence in regard to this charge in detail, as counsel for the appellant conceded that the principal question arising on this appeal could be more suitably considered in connection with the second charge.

The second charge against the accused was "that he did tender for and enter into a contract in March, 1933, with the said Council for the supply of cement for which he was paid Rs. 600."

The facts in regard to this charge are as follows:—In February, 1933, the Council called for tenders for fifty barrels of cement. The lowest tender was sent in by the firm of K. Jainul Abdeen Saibo and Company, and they were awarded the contract and have been paid a sum of Rs. 600 for the cement they supplied.

On these facts the Magistrate held that this charge could not be maintained. He points out that the accused was only a paid manager of the firm at the time the contract was entered into, and that he did not appear to have had any share in negotiating the contract, that the proprietor of the firm made a quotation for the supply of the cement and the Chairman of the Council accepted it. He also held that the cancellation of the accused's partnership had no ulterior motive behind it, but was genuinely intended to rectify an irregularity.

A number of authorities were cited in the course of the argument. The latest English decisions on a similar enactment are the cases of *Lapish v. Braithwaite*¹ and *Everett v. Griffiths*².

The former was a case under section 12 (1) (c) of the Municipal Corporation Act of 1882, the material words of which are:—"has directly or indirectly by himself or his partner any share or interest in any contract with or on behalf of the Council."

The facts in the case were that the defendant was the Managing Director, on a fixed salary of £ 2,400 a year, of a Company which had a large

¹ (1925) 1 K. B. Law Rep. p. 474.

² (1924) 1 K. B. Law Rep. p. 941.

contract with the Corporation of Leeds, of which he was alderman. The only evidence in reference to his taking any part in the making of the contract consisted in the fact that he was one of the Directors of the Company who signed the document as witnesses to the affixing of the Company's seal. The correspondence which led up to the contract was conducted by the Secretary of the Company. The Court of Appeal, following the principle in *Everett v. Griffiths (supra)*, held that the defendant had no interest in the contract.

Everett v. Griffiths (supra) was a case under section 46 (1) of the Local Government Act, 1894, the material words of which are :—"concerned in any bargain or contract entered into with the Council or Board or participate in the profits of any such bargain or of any work done under the authority of the Council or Board."

In that case the defendant, who was a member of a board of guardians, was employed as manager of their wheelwright's shop by a dairy company which had a considerable contract with the board for the supply of milk. The defendant wielded a powerful influence on the board, and when several tenders were opened, including one from this company, which was not the lowest, he moved a resolution, which was carried, that amended tenders be called for, and the tender of this company was then accepted. He received no bonus from the company, or any sum in respect of the contract in question.

The defendant's membership of the board stabilized his position with his employers (the company), and gave him indirectly many possible advantages, but it was held that he was not concerned in the contract. It was said that a man was "concerned" in a contract if he was in any way a party to it, whether as sole contractor or as a partner or as an undisclosed principal.

These and other English cases have been considered in a local case (*Weerasuriya v. Seneviratne*), and Driberg J. after considering the authorities holds that "the concern or interest must be in the contract itself and not merely an interest in the contractor or his business such as an employee would have," and in this connection quotes the following passage from the judgment of Scrutton L.J. in *Lapish v. Braithwaite (supra)* :—"A man may be interested in a thing without having an interest in it. But in any event, I cannot think that the relation of an employee, paid by fixed salary, to his company involves an interest, even indirect, in the contracts made by his company within the meaning of a penal statute, even if he takes part in negotiating or performing those contracts."

In this case the accused had no interest in the contract itself, nor did he take any part in negotiating it.

The Magistrate has found that he was a salaried employee of the firm that entered into the contract with the Council. There was ample evidence to support his finding, and having regard to the cases above cited, I think the Magistrate was right in acquitting the accused on the second charge.

The appeal is dismissed.

Appeal dismissed.