

1934

Present : Poyser J.

RODRIGO v. PEIRIS.

683—P. C. Badulla-Haldummulla, 3,124.

Urban District Council—Member interested in work executed—Supply of firewood under plague regulations—Order by Chairman of U. D. C. as proper authority—Ordinance No. 11 of 1920, s. 237.

Where the member of an Urban District Council supplied firewood for the use of the residents in an area declared to be a diseased locality under the Quarantine and Prevention of Diseases Ordinance, 1897, at the request of the Chairman of the Council, as "proper authority" under the Ordinance,—

Held, that the member was not interested in any work executed for the Council within the meaning of section 237 of the Local Government Ordinance, No. 11 of 1920.

A PPEAL from a conviction by the Police Magistrate of Badulla-Haldummulla.

H. V. Perera (with him *Ranawake* and *D. W. Fernando*), for appellants.

N. E. Weerasoria (with him *Gratiaen* and *Batuwantudawa*), for respondent.

January 22, 1934. POYSER J.—

The appellants, a member of the Urban District Council of Bandarawela, has been convicted under section 237 of the Local Government Ordinance, No. 11 of 1920, of having directly or indirectly interested himself in work executed for the said Council, viz., the supply of firewood.

The circumstances under which the firewood in question was supplied are as follows:—In March, 1933, there was an outbreak of plague in Bandarawela, and by a declaration dated March 9, the Chairman, Urban District Council, Bandarawela, as "proper authority" under the Quarantine and Prevention of Diseases Ordinance, 1897, declared a certain area to be a "diseased locality" within the meaning of the said Ordinance.

This declaration was confirmed by the Governor in a Proclamation dated March 16, 1933.

The accused owns a firewood store and at the request of the Chairman of the Urban District Council, the "proper authority", supplied firewood for the use of the residents in the area declared to be a "diseased locality".

The accused's version of this transaction is set out in a letter, dated April 18, 1933, he sent to the Chairman, and has been accepted by the Police Magistrate as a correct account of what took place. The following is the material part of this letter :—

"At the outbreak of plague and when certain residents were segregated, you requested me on the 11th of March to supply four yards of firewood for the use of the residents so segregated. I asked you whether it was for payment and you said it was and gave an order. Accordingly I supplied it. Again on the 12th you asked me to supply another four yards and gave an order. I supplied. On the 15th you asked me two yards, but I had only one. You went away saying it was not enough but later you sent your inspector Mr. Fernando for the one yard. Mr. Fernando gave an order, and the yard was accordingly supplied. After the plague situation was over, I was requested by the Acting Secretary, Mr. Seneviratne, to send the orders for payment. Accordingly I sent them through my man Podi Singho."

The accused on March 30 received Rs. 27 for the firewood he supplied, he was paid from Council funds, a money vote for plague expenses being passed on March 20, and the voucher authorizing payment set out that the firewood was supplied for the use of plague contacts.

On these facts the Magistrate has held that the accused has directly concerned himself in a contract with the Council. I am unable to agree with this finding. I think the contract the accused entered into was with the "proper authority," and the fact that the "proper authority" in this case happened to be the Chairman of the Urban District Council is, in my view, immaterial, for such person is not necessarily the Chairman of the Urban District Council.

The definition of "proper authority" is contained in Regulation 1 of the Regulations made under the Quarantine and Prevention of Diseases Ordinance, 1897, published in the *Supplement to the Government Gazette* of August 28, 1925.

The material part of this Regulation is as follows :—

1 (b) "Wherever there shall be established a District Council under Ordinance No. 11 of 1920 or a Local Board, the Chairman of the District Council, or the Chairman of the Local Board, or the Principal Civil Medical Officer, or the Assistant Principal Civil Medical Officer, or the Sanitary Commissioner, or the Assistant Sanitary Commissioner, or the Sanitary Officers, or the Government Agent of the Province, or the Assistant Government Agent of the District, or the District Judge, or the Police Magistrate, or the Provincial Surgeon of the Province, or the Senior Medical Officer resident within the District Council or Local Board limits, or any officer appointed by the Governor to perform the duties of the proper authority."

The "proper authority" is given wide powers under these regulations.

He may employ any person to assist him in the execution of his duties (Regulation 40). He may establish hospitals and places of observation

(Regulation 42); he may take possession of lands or impress the use of carts (Regulation 77). For the purposes of these regulations it would obviously be necessary for him to enter into contracts, and any such contract would necessarily be a contract with the "proper authority," even if the latter happens to be the Chairman of a District Council.

The fact that payment for this firewood was made from Council funds is, in my view, immaterial. It appears from a Government Circular set out in an appendix to the above regulations that the expenses for the arrangements for isolation and segregation within Municipal, Urban District, or Local Board limits are met partly by the Government and partly by the Local Boards.

Expenses for the provision of firewood would, according to this appendix, appear to be payable by the Local Board.

For these reasons I consider the accused was not interested in any work executed for the Urban District Council of Bandarawela.

The appeal is allowed and the conviction set aside.

Set aside.

