Satya Dev Bushahri

Vs

Padam Dev and Others

Civil Appeal No. 52 of 1954

(B.K. Mukherjea, Vivian Bose, T.L. Venkatarama Ayyar JJ)

25.05.1954

JUDGMENT

VENKATARAMA AYYAR J. -

This is an appeal against the order of the Election Tribunal, Himachal Pradesh, dismissing Election Petition No. 14 of 1952. On 12th October, 1951, five candidates (respondents 1 to 5 herein) were duly nominated for election to the Legislative Assembly of State of Himachal Pradesh for the Rohru Constituency in Mahasu District. The polling took place on 23rd November, 1951, and on 30th November, 1951, the first respondent was declared elected, he having secured the largest number of votes. The result was published in the Official Gazette on 20th December, 1951. On 14th February, 1952, one of the unsuccessful candidates, Gyan Singh, (fifth respondent herein) filed Election Petition No. 14 of 1952 challenging the validity of the election of the first respondent. On 4th August, 1952, he applied to withdraw from the petition, and that was permitted by an order of the Tribunal dated 20th September, 1952. The appellant, who is one of the electors in the Rohru Constituency, then applied to be brought on record as the petitioner, and that was ordered on 21st November, 1952. The petition was then heard on the merits.

Though a number of charges were passed at the trial, only two of them are material for the purpose of the present appeal : (1) that Sri Padam Dev was interested in contracts for the supply of Ayurvedic medicines to the Government, and was therefore disqualified for being chosen to the Assembly under section 7(d) of Act No. XLIII of 1951; and (2) that he had procured the assistance of Government servants for the furtherance of his election prospects, and had thereby contravened section 123(8) of that Act. The facts giving rise to this contention were that one Daulataram had subscribed in the nomination paper of Sri Padam Dev as proposer and one Motiram as seconder, both of them being Government servants employed in the post office, and that one Sital Singh, an extra-departmental agent, was appointed by Sri Padam Dev as one of his polling agents at a booth are Arhal.

By its judgment dated 25th September, 1953, the Election Tribunal held firstly that section 7(d) of Act No. XLIII of 1951 had not been made applicable to elections in Part C States, and that further there was no proof that on 12th October, 1951, the date of nomination, there were contracts subsisting between Sri Padam Dev and the Government. With reference to the charge under section 123(8), the Tribunal held by a majority that the section did not prohibit Government servants from merely proposing or seconding nomination papers, and that it had not been proved that Daulataram and Motiram did anything beyond that. As regards Sital Singh, while two of the members took the view that section 123(8) did not prohibit the appointment of a Government servant as polling agent, the third member was of a different opinion. But all of them concurred in holding that this point was

not open to the petitioner, as it had not been specifically raised in the petition. In the result, the petition was dismissed. It is against this judgment that the present appeal has been brought by special leave.

The first question that arises for determination is whether Sri Padam Dev was disqualified for being chosen to the Legislative Assembly by reason of his having held at the material dates contracts for the supply of Ayurvedic medicines to the Himachal Pradesh State Government. The answer to it must depend on the interpretation of the relevant provisions of Act No. XLIX of 1951, which governs election to the Legislative Assemblies on Part C States. Section 17 which deals with disqualifications runs as follows :

> "A person shall disqualified for being chosen as, and for being, a member of the Legislative Assembly of a State, if he is for the time being disqualified for being chosen as, and for being, a member of either House of Parliament under any of the provisions of article 102."
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> Article 102 of the Constitution which becomes incorporated in the section by reference is as follows :
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> 102. (1) "A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament -
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> (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
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> (b) if he is of unsound mind and stands so declared by a competent court;
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> (c) if he is an undischarged insolvent;
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> (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;
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> (e) if he is so disqualified by or under any law made by Parliament."

We are concerned in this appeal only with article 102(1)(e). The contention of the appellant is that Act No. XLIII of 1951 being a law made by Parliament, the disqualifications laid down under section 7 therein would fall within article 102(1)(e), and would under section 17 of Act No. XLIX of 1951 be attracted to elections held under that Act.

The respondent attempted several answers to this contention. He firstly contended that as Act No. XLIII of 1951 did not proprio vigore apply to elections in Part C States, he was not a person disqualified by or under the terms of that law as required by article 102(1)(e), and that therefore he was not hit by section 17. Though this contention might, at first thought, sound plausible, a closer examination of the language of section 17 shows that this is not its true import. The section does not enact that persons who are disqualified under a law made by Parliament shall be disqualified to be chosen under the Act. What it does enact is that if a person would be disqualified to be chosen to either House under an Act of Parliament, he would be disqualified to be chosen for the State Assembly. In other words, what would be a disqualification for a candidate being chosen to either

House would be a disqualification to be chosen to the State Legislature. In this view, it is of no consequence that the candidate was not disqualified under section 7(d) by its own force.

It was next contended that whatever interpretation section 17 might be susceptible of if it had stood alone, read in conjunction with section 8 of Act No. XLIX of 1951 it must be constructed as excluding section 7(d) of Act No. XLIII of 1951. Section 8 of Act No. XLIX of 1951 enacts that Parts I and III to XI of Act No. XLIII of 1951 and the rules made thereunder apply to all elections under the Act, subject to such modifications as the President might direct. Section 7 occurs in Part II of Act No. XLIII of 1951, and that is not one of the parts extended under section 8. The argument is that section 7 having been omitted by design from the sections made applicable, the Legislature must be taken to have intended that it should not apply to elections held under the Act, and that section 17 should accordingly be so constructed as not to defeat that intention. Reliance was placed on the well-known rules of construction that the provisions of a statue should be read in such manner as to give effect to all of them, and so as to avoid inconsistency and repugnancy. Both the sections can be given their full effect, it was argued, by holding that by reason of the non-inclusion of Part II under section 8, section 7 of Act No. XLIII of 1951 was inapplicable, and that, subject to that, the other provisions enacted by Parliament would apply under section 17. But this argument fails to take into account the scheme underlying Act No. XLIX of 1951. The framers of that Act wanted to enact a comprehensive code of election law for Part C States. They had before them Act No. XLIII of 1951, and they had to decide how mush of it they would adopt. Part I of Act No. XLIII of 1951 consists only of short title and the interpretation section, and that was adopted in Act No. XLIX of 1951. Part II of Act. No. XLIII of 1951 deals with qualifications and disqualifications for membership. That subject is dealt with in sections 7 and 17 of Act No. XLIX of 1951. Section 7 sets out the qualifications and section 17, the disqualifications. It may also be noted that while disqualification for being chose to either House of Parliament is laid down as a disqualification under section 17, the electoral roll for Parliament is to be taken under section 6 as the electoral roll for election to the State Assembly for the concerned area. These provisions cover the very ground covered by Part II, and therefore there was no need to extend and portion of it under section 8. Parts III to XI deal with the actual election from the commencement of the notification through all its stages and matters connected therewith, and they have been adopted en bloc in Act No. XLIX of 1951. That being the general scheme, it is not possible to read into the omission of Part II under section 8, an intention that the disqualifications mentioned in section 7 should not apply to elections held under the Act. Nor is there any inconsistency between section 8 which passively omits Part II, and section 17 which positively enacts that what would be a disqualification under article 102 would be a disqualification for the purpose of this Act.

A good deal of argument was addressed to us based on the substantial identity of the language of section 17 with that of section 11 of Act No. XLIII of 1951, which also occurs in Part II, which contains section 7. The contention is that if section 7 of Act No. XLIII of 1951 could be construed as comprised in section 17 of Act No. XLIX of 1951, it should also be held to have been comprised in section 11 of Act No. XLIII of 1951, in which case, there was no need to enact two provisions in the same Act, one overlapping the other. The simpler thing, it was argued, would have been to include section 11, in section 7 or vice versa. All this difficulty could be avoided, according to the respondent, if the reference to article 102 in section 11 is interpreted as limited to article 102(1) clause (a) to (d) and not as including article 102(1)(e), in which case the same construction should logically be adopted for section 17. But this reasoning is inconclusive, because the scope of section 7 and that of article 102 which is incorporated by reference in section 11 are different. It must further be noted that section 11 occurs in a Chapter which deals exclusively with qualifications and disqualifications for membership to electoral college in Part C States. It is therefore not possible to

draw any inference from the non-inclusion of section 7 in section 11 or vice versa. On the other hand, the construction contended for by the respondent would give no meaning to the words "disqualified for being chosen as a member of either House of Parliament" in section 17. The result is that the qualifications laid down in section 7 of Act No. XLIII of 1951 must be held to be comprised within section 17 of the Act.

It was then contented that even on the footing that section 7 of Act No. XLIII of 1951 was comprised in section 17 of Act No. XLIX of 1951, the respondent was not disqualified because under section 7(d) it would be a disqualification only if the candidate had entered into contracts with the appropriate Government, and under section 9(1)(a) "appropriate Government" would mean, in relation to any disqualification for being chosen to either House of Parliament, "the Central Government," and in relation to any disqualification for being chose to the Legislative Assembly or Legislative Council, "the State Government." It was argued that adopting the test that what would be a qualification for being a member of either House of Parliament under article 102 would under section 17 be a disqualification for being chosen to the State Assembly, to operate as a disqualification the contract must be with the Central Government, that in the present case, the contracts, if any, were with the Himachal Pradesh State Government, and that therefore the respondent was not a person who would be disqualified for being elected to either House, and would in consequence be not disqualified for being elected to the State Legislative Assembly.

The appellant did not dispute the correctness of this position. He contended that, as a matter of law, the contracts of Sri Padam Dev were with the Central Government, and that therefore he would be disqualified under the terms of section 7(d) read with section 9. The basis for this contention is article 239 of the Constitution, which enacts that the States specified in Part C shall be administered by the President through a Chief Commissioner or Lieutenant-Governor to be appointed by him. Reference was also made to article 77, which provides that all executive action of the Government of India shall be expressed to be taken in the name of the President. The argument is that the executive action of the Central Government is vested in the President, that the President is also the executive head of Part C States, and that, therefore, the contracts entered into with Part C States, are, in law, contracts entered into with the Central Government. The fallacy of this reasoning is obvious. The President who is the executive head of the Part C States is not functioning as the executive head of the Central Government, but as the head of the State under powers specifically vested in him under article 239. The authority conferred under article 239 to administer Part C States has not the effect of converting those States into the Central Government. Under article 239, the President occupies in regard to Part C States, a position analogous to that of a Governor in Part A States and of a Rajpramukh in Part B States. Though the Part C States are centrally administered under the provisions of article 239, they do not cease to be States and become merged with the Central Government. Article 240 and 241 provide for Parliament enacting laws for establishing legislative, executive and judicial authorities for those States, and Act No. XLIX of 1951 was itself enacted under the power conferred under article 240. Section 38(2) of that Act provides that all executive action of the State shall be expressed to be taken in the name of the Chief Commissioner. It will be seen that while the executive action of the Central Government is to be taken under article 77 in the name of the President, that of Part C States is to be taken section 38(2), in the name of the Chief Commissioner. Thus, there is no basis for the contention that contracts with Part C States are to be constructed as contracts with the Central Government. Nor has the appellant established as a fact that there were any contracts between Sri Padam Dev and the Central Government. The records only shows that the dealings were with the Chief Commissioner, who was in charge of the administration of the State of Himachal Pradesh. The contention of the appellant that the contracts of Sri Padam Dev were with the Central Government cannot be supported either in law or on facts.

It may seem anomalous that while under sections 7(d) and 9(1) of Act No. XLIII of 1951 a contract with the State would operate as a disqualification for being chosen to the State Legislature and a contract with the Central Government would operate as a disqualification for being chosen to either House of Parliament, the respondent should be held to be not disqualified for election to the State Legislature when he holds a contract with the State Government. But that is because section 7(d) was not in terms extended to elections in Part C States, and came in only with the qualification mentioned in section 17.

In this view, the further question whether Sri Padam Dev held contracts with the Government at the material dates is only of academic interest. Counsel for the appellant argued that the statements of law by the Election Tribunal forming the foundation of its conclusion were in many respects erroneous, and that its finding must therefore be rejected. Thus, it is stated by the Tribunal that a contract could not be held to be subsisting if goods had been delivered thereunder, even though the price therefor remained due and payable. This is opposed to the view taken by this Court since, in Chatturbhuj Vithaldas v. Moreshwar Parashram (A.I.R. 1954 S.C. 236). Then again, the Tribunal proceeds on the view that a candidate would be disqualified only if there was a contract subsisting at the date of the nomination. But it was observed in Chatturbhuj Vithaldas v. Moreshwar Parashram (A.I.R. 1954 S.C. 236) that the disqualifications would apply during the whole of the period commencing with the nomination and ending with the declaration of the election. But these errors have not, in fact, affected the correctness of the conclusions. With reference to the Mandi contract the finding is that goods had been supplied and price received in September, 1951. As regards the Mahasu contract, the Government placed the order with the respondent on 19th November, 1951, and the goods were supplied in December, 1951, and January, 1952. It must be mentioned that the stand taken by the appellant himself before the Tribunal was that the crucial date for determining whether there was a subsisting contract was 12th October, 1951, the date of nomination, and if the evidence is not precise as to when the goods were supplied, it was a situation for which he himself was responsible.

It was on the Sirmur contract that the appellant laid the greatest emphasis. In this case, the order was placed by the Government on 25th September, 1951, and the goods were actually supplied on 1st December, 1951. The appellant relied on certain letters and a telegram which were sent on behalf of the respondent on 31st October, 1951, 27th November, 1951, and 30th November, 1951, as amounting to an acceptance of the contract. But no such point was taken before the Tribunal where it was admitted that the material date was 12th October, 1951. As the question is one of fact, the appellant cannot be permitted at this stage to start a new and inconsistent case, and contend that there was an acceptance of the contract in October or November, 1951. It was further argued that even on the footing that there was acceptance of the contract when the goods were despatched on 1st December, 1951, that was sufficient to disqualify the respondent, as the terminus ad quo of the period during which the disqualification was operative was not the date of declaration which was 30th November, 1951, but the date of the publication thereof in the Gazette, which was 20th December, 1951. It may be conceded in favour of the appellant that the observation of this Court in Chatturbhuj Vithaldas v. Moreshwar Parashram (A.I.R. 1954 S.C. 236) that the material period starts with the nomination and ends with the announcement was not a decision on the point, as it proceeded on an agreed statement of counsel on both sides. But as the appellant conceded before the Tribunal that the material date was the date of nomination and the entire trial proceeded on that basis, it is too late for him now to change his front and contend that the material date is 20th December, 1951.

It remains to consider the contention that Sri Padam Dev had procured the assistance of Government

servants, and had hereby brought himself within the mischief of section 123(8). The main objection before the Tribunal under this heading related to the subscribing of the nomination paper by Daulataram as proposer and Motiram as seconder. This question has since been decided adversely to the appellant in a recent decision of this Court reported in Raj Krushna Bose v. Binod Kanungo (1954 S.C. J. 286), where it was held that section 33(2) conferred the privilege of proposing or seconding a candidate on any person who was registered in the electoral roll, and that section 123(8) could not be constructed as taking away that privilege. This objection must, therefore, be overruled.

Then there in the question whether the appointment of Sital Singh as polling agent contravened section 123(8). The majority of the Tribunal was of the opinion that the appointment of a Government servant as polling agent was not by itself objectionable, but the third member thought otherwise. They, however, agreed in deciding the point against the appellant on the ground that it had not been expressly raised in the petition. It was argued for the appellant that as it was admitted at the trial that Sital Singh was appointed polling agent, the point was open to him as it was a pure question of law. As the facts are admitted, and the question itself has been considered by the Tribunal, and as the point is one of considerable practical importance, we have heard arguments on it.

Section 46 of Act No. XLIII of 1951 empowers a candidate to "appoint in the prescribed manner such number of agents and relief agents as may be prescribed to act as polling agents of such candidate at each polling station". Rule 12 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, prescribes the formalities to be observed in the appointment of such agents, and Form 6 framed thereunder provides for the polling agent signing a declaration that he would do nothing forbidden by section 128. That section enjoins that every agent shall maintain and aid in maintaining the secrecy of the voting. Thus, there is nothing in the Act or in the rules barring the appointment of a Government servant as a polling agent. And on the reasoning adopted in Raj Krushna Bose v. Binod Kanungo (1954 S.C. J. 286) with reference to section 33(2), the conclusion must follow that such appointment does not per se contravene section 123(8). Nor is there anything in the nature of the duties of a polling agent, which necessarily brings him within the prohibition enacted in that section. The duty of a polling agent is merely to identify the voter, and that could not by itself and without more, be said to further the election prospects of the candidate. So long as the polling agent confines himself to his work as such agent of merely identifying the voters, it cannot be said that section 123(8) has, in any manner, been infringed.

It is argued for the appellant that leaving aside the world of theories and entering into the realm of practical politics, the appointment of a Government servant as polling agent by one of the candidates must result in the dice being loaded heavily against the other candidate, and that situations might be conceived in which the presence of a Government servant of rank and importance as polling agent of one of the candidates might prove to be a source of unfair election practices. But if that is established, and if it made out that the candidate or his agent had abused the right to appoint a Government servant as polling agent by exploiting the situation for furthering his election prospects, then the matter can be dealt with as an infringement of section 123(8). But the question which we have got to decide is whether as an abstract proposition of law the mere appointment of a Government servant as a polling agent is in itself and without more an infringement of section 123(8). Our answer is in the negative. In the present case, the finding is that beyond acting as polling agent Sital Singh did nothing. Nor is there any finding that the respondent in any manner availed himself of his presence at the polling booth to further his own election prospects. Thus there are no grounds for holding that section 123(8) had been contravended.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

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