

SUPREME COURT OF INDIA

Mahendra Kumar

and

Vidyavati

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

18.10.1954

JUDGEMENT

VENKATARAMA AYYAR, J. :

1. This is an appeal by special leave against the decision of the Election Tribunal, Nowgong, setting aside the election of the appellant to the Legislative Assembly, Vindhya Pradesh, from Laundi Constituency, on the ground firstly that he had employed Government servants as polling agents, and thereby committed a major corrupt practice under S. 123(8) of Act 43 of 1951, and secondly, that there were at the material period, contracts subsisting between the appellant and the Vindhya Pradesh Government for printing electoral rolls, and that he was therefore, disqualified under S. 17 of Act 49 of 1951.

2. As regards the first point, we have held in - 'Satya Dev Busheri v. Padam Dev', AIR 1954 SC 587 (A) and in - 'Satya Dev Busheri v. Padam Dev, (S) AIR 1955 SC 5 (B) that the appointment of a Government servant as polling agent does not per se fall within the mischief of S. 123(8). Mr. Chatterjee for the respondent referred us to the evidence of P. W. 5 which, if accepted, would show that the polling agent did also canvassing work for the appellant.

If this evidence is to be accepted, then there was undoubtedly corrupt practice falling within S. 123(8). But there is no finding of the Tribunal on this aspect of the matter, and its decision rests merely on the appointment by the appellant of Government servants as polling agents. Following the decisions already mentioned, we hold that there has been no contravention of S. 123(8) by the appellant.

3. With reference to the second question, we have held in the decisions already referred to, that contracts with the Chief Commissioner in Part C States would operate as a disqualification for election to the State Legislatures under S. 17 of Act 49 of 1951 read along with S. 7(d) of Act 43 of 1951.

Mr. Veda Vyas for the appellant argues that the contract for the printing of electoral rolls must be held to have been entered in to with the Election Commission and not with the State Government or the Union Government, and in support of this contention relies on Art. 324 of the Constitution, which provides that the superintendence, direction and control of the preparation of the electoral rolls shall be vested in the Election Commission, and that the President or the Governor or the Rajpramukh of a State shall, when so requested by the Election Commission, make available to the Election Commission such staff as may be necessary for the discharge of the functions conferred on the Election Commission.

Apart from the fact that preparation of electoral rolls is not the same thing as printing thereof, it does not follow from these provisions that the Election Commission has itself to enter into contracts for the printing of electoral rolls. The finding of the Tribunal is that it was the Vindhya Pradesh Government that got the electoral rolls printed.

Exhibit A-4 is a copy of a letter sent by the appellant to the Secretary to the Chief Commissioner, Vindhya Pradesh, and that clearly shows that it was the Vindhya Pradesh Government that settled the terms of the contract and made payments thereunder. We accept the finding of the Tribunal that the appellant held contracts with the Vindhya Pradesh Government at the material dates. He was therefore disqualified under S. 17 from being chosen to the Legislative Assembly.

4. The decision of the Election Tribunal setting aside the election must be affirmed on this ground, and the appeal dismissed. There will be order as to costs.

Appeal dismissed.

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