

Ram Padarath Mahto

Vs

Mishri Singh & Anr.

Civil Appeal No. 388 of 1960

(P.B. Gajendragadkar, A.K. Sarkar, K.N. Wanchoo JJ)

17.11.1960

JUDGMENT

GAJENDRAGADKAR, J. -

Is the appellant Ram Padarath Mahto disqualified for membership of the Bihar Legislature under section 7(d) of the Representation of the People Act, 1951 (hereafter called the Act) ? That is the short question which arises for our decision in the present appeal by special leave. The appellant was one of the candidates for the Dalsinghsarai Constituency in the District of Darbhanga in Bihar for the State Legislature. The said Constituency is a Double-Member Constituency; it was required to elect two members, one for the general and the other for the reserved seat for scheduled castes in the Bihar Legislative Assembly. It appears that the said Constituency called upon voters to elect members on January 19, 1957. January 29, 1957 was fixed as the last date for the filing of the nomination papers. The appellant filed his nomination paper on January 28, 1957, and on the next day seven other members filed their nomination papers. On February 1, 1957, the nomination paper filed by the appellant was rejected by the returning officer on two grounds; he held that the appellant being an Inspector of Co-operative Societies was a Government servant at the material time and so was disqualified from standing for election. He also found that the appellant was a member of a joint and undivided Hindu family which carried on the business of Government as stockist of grain under a contract between the Government of Bihar and a firm of the joint family known as Nebi Mahton Bishundayal Mahto. Thereafter the election was duly held, and Mr. Mishri Singh and Mr. Baleshwar Ram, respondents 1 and 2 were declared duly elected to the general and reserved seat respectively. The validity of this election was challenged by the appellant by his Election Petition No. 428 of 1957. To this petition he impleaded the two candidates declared to have been duly elected and five others who had contested in the election. Before the Election Tribunal the appellant urged that he was not in the employ of the Government of Bihar at the material time. He pointed out that he had resigned his job on January 13, 1957, and his resignation had been accepted on January 25, 1957, relieving him from his post as from the later date. He also contended that there was a partition in his family and that he had no share or interest in the contract in question. Alternatively it was argued that even if the appellant had an interest in the said contract it did not fall within the mischief of section 7(d) of the Act. These pleas were traversed by respondents 1 and 2 who contested the appellant's election petition.

The Election Tribunal found that the petitioner was not a Government servant on the day he filed his nomination paper, and so according to it the returning officer was wrong in rejecting his nomination paper on the ground that he was a Government servant at the material time. The Election Tribunal rejected the appellant's case that there was a partition in the family, and held that at the relevant time the appellant continued to be a member of the joint Hindu family which had entered into the

contract in question with the Government of Bihar. However, in its opinion, having regard to the nature of the said contract it was not possible to hold that the appellant was disqualified under section 7(d), and so it came to the conclusion that the returning officer was in error in rejecting the appellant's nomination paper on this ground as well. In the result the Tribunal allowed the election petition, declared that the nomination paper had been improperly rejected, and that the election of the two contesting respondents was void.

Against this decision the two contesting respondents filed two appeals in the High Court at Patna (Election Appeals Nos. 9 and 10 of 1958). The High Court has confirmed the finding of the Tribunal that the appellant was not a Government servant at the material time. It has also agreed with the conclusion of the Tribunal that at the relevant time the appellant was a member of the undivided Hindu family. In the construction of the contract, however, it differed from the view adopted by the Tribunal, and it has held that as a result of the said contract the appellant was disqualified under section 7(d) of the Act. This finding inevitably led to the conclusion that the appellant's nomination paper had been properly rejected. On that view the High Court did not think it necessary to consider whether the Tribunal was right in declaring void the election of not only respondent 1 but of respondent 2 as well. It is against this decision of the High Court that the appellant has come to this Court by special leave; and the only question which is raised on his behalf is that the High Court was in error in coming to the conclusion that he was disqualified under section 7(d). The decision of this question naturally depends primarily on the construction and effect of the contract in question.

Section 7 of the Act provides for disqualification for membership of Parliament or of State Legislatures. Section 7(d), as it stood at the material time and with which we are concerned in the present appeal provides, inter alia, that a person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly of a State, if whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government. On the concurrent findings recorded by the High Court and the Tribunal it cannot now be disputed that the appellant has interest in the contract in question; so that the first part of section 7(d) is satisfied. The High Court has found that the contract attracts the last part of section 7(d) inasmuch as according to the High Court the Government of Bihar had undertaken to discharge the service of supplying grain to the residents of Bihar and the firm of the appellant's family had entered into a contract for the performance of the said services. The last part of section 7(d) postulates that the appropriate Government has undertaken to perform certain specific services, and it is for the performance of such services that the contract had been entered into by a citizen. In other words, if a citizen has entered into a contract with the appropriate Government for the performance of the services undertaken by the said Government he attracts the application of section 7(d). This provision inevitably raises two questions : what are the services undertaken by the appropriate Government ? Has the contract been entered into for the performance of the said services ?

At this stage it is necessary to consider the material terms of the contract. This contract was made on February 8, 1956, between the Governor of Bihar who is described as the first party and the firm which is described as the second party. The preamble to the contract shows that the first party had to stock and store foodgrains in Darbhanga District for sale in pursuance of the Grain Supply Scheme of the Government for which a proper custodian and bailee for reward was necessary. It also recites that the second party had applied to become such custodian and bailee of such stock of foodgrains as the first party shall deliver to the second party in one lump or from time to time on terms and in the

manner expressly specified under the contract, or as may be necessarily implied. Clause 1 of the contract provides that the second party shall, at the direction of the first party, take over foodgrains from the railway wagons or from any place as directed by the first party; thereafter the second party had to cause the grains to be stored in his godown at Dalsinghsarai and had to redeliver the same to the first party after weighing either at the second party's godown approved by the first party or at any other place as directed by the first party. The movement of the grain had to be done by the second party himself or by a transport contractor appointed by the first party. Clause 2 imposed on the second party the liability to maintain a register and keep accounts as prescribed thereunder. Under cl. 3 the second party undertook to keep such stocks and establishments as may be necessary at his own expense. Clause 4 imposed upon the second party the obligation to protect the stock of foodgrains or to make good the losses except as thereafter provided. Clauses 5 to 8 are not material for our purpose. Clause 9 provides that the second party shall deposit the sum of Rs. 5,000 in a Savings Bank account which has been pledged to the District Magistrate, Darbhanga, and comply with the other conditions specified in the clause. Clause 10 deals with the remuneration of the second party. It provides that the first party shall be liable to pay to the second party remuneration for the undertaking in this agreement at the rate of Re. 1 per cent on the value of the stocks moved or taken over from his custody under the orders or directions of the first party or his agent calculated at the rate fixed by the Government from time to time for wholesale sales of grain. The clause adds that no remuneration shall be payable to the second party if the first party takes over the whole of the balance stock lying with the second party for reasons of the termination of the agreement. The rest of the clauses need not be recited.

It would thus be seen that the agreement in terms is one of bailment. The State Government wanted to entrust the work of stocking and storing foodgrains to a custodian or bailee. In that behalf the appellant's firm made an application and ultimately was appointed a bailee. There is no doubt that by this contract the firm has undertaken to do the work of stocking and storing foodgrains belonging to the State Government; and if it can be reasonably held that the service undertaken by the State Government in the present case was that of stocking the foodgrains the contract in question would obviously attract the provisions of section 7(d). Mr. Varma, however, contends that the service undertaken by the State Government is the sale of foodgrains under its Grain Supply Scheme; and he argues that unless the contract shows that it was for sale of the said goods it cannot attract the provisions of section 7(d). Unfortunately the scheme adopted by the State Government for the supply of grain has not been produced before the Election Tribunal, and so the precise nature and extent of the services undertaken by the State Government fall to be determined solely by reference to the contract in question. It is true that the contract relates to the stocking and storing of foodgrains which the State Government wanted to sell to the residents of Bihar; but can it be said that stocking and storing of foodgrains was such an integral or essential part of the selling of goods that a contract for stocking and storing foodgrains should necessarily be regarded as a contract for their sale? In our opinion, it is difficult to accept the argument that stocking and storing of foodgrains is shown to be such an essential and integral part of the supply scheme adopted by the State Government.

Theoretically speaking stocking and storing foodgrains cannot be said to be essential for the purpose of carrying out the scheme of sale of foodgrains, because it would conceivably be possible for the State Government to adopt a scheme whereby goods may be supplied without the State Government having to store them; and so the work of stocking and storing of foodgrains may in some cases be conceivably incidental to the scheme and not its essential part. It is significant that sale of goods under the contract was never to take place at the godown of the firm. It had always to take place at other selling centres or shops; and thus, between the stocking and storing of goods and their sale

there is an element of time lag. The only obligation that was imposed on the firm by this contract was to be a custodian or bailee of the goods, keep them in good order and deliver them after weighing as directed by the first party. It cannot be denied that the remuneration for the bailee has been fixed at the rate of Re. 1 per cent on the value of the stocks moved or taken over from his custody; but that only shows the mode or method adopted by the contract for determining the remuneration including rent of the godowns; it cannot possibly show the relationship of the contract with the sale of goods even indirectly. Can it be said that the contract entered into by the State Government for purchasing foodgrains from agriculturists who grow them or for transporting them after purchase to the godowns are contracts for the sale or supply of goods? Purchase of goods and their transport are no doubt preparatory to the carrying out of the scheme of selling them or supplying them, and yet it would be difficult to hold that contracts entered into by the State Government with the agriculturists or the transport agency is a contract for the sale of goods. We have carefully considered the material terms of this contract, and on the record as it stands we are unable to accept the conclusion of the High Court that a contract of bailment which imposed on the bailee the obligation to stock and store the foodgrains in his godown can be said to be a contract for the purpose of the service of sale of grain which the State Government had undertaken within the meaning of section 7(d).

It appears that before the High Court it was not disputed by the appellant that the service whose performance had been undertaken by the State Government consisted in the supply of grain to the people of the State of Bihar; and the High Court thought that from this concession it inevitably followed that the firm had a share and was interested in the contract for the performance of the service undertaken by the Government of Bihar. It seems to us that the concession made by the appellant does not inevitably or necessarily lead to the inference drawn by the High Court. If the service undertaken by the State Government is one of supplying grain how does it necessarily follow that a contract by which the bailee undertook to store the grain was a contract for the supply of grain? It may sound technical, but in dealing with a statutory provision which imposes a disqualification on a citizen it would be unreasonable to take merely a broad and general view and ignore the essential points of distinction on the ground that they are technical. The narrow question is: if the State Government undertook the work of supplying the grain, is the contract one for the supply of grain?; in our opinion, the answer to this question must be in the negative; that is why we think the High Court did not correctly appreciate the effect of the contract when it held that the said contract brought the appellant's case within the mischief of section 7(d).

In coming to its conclusion the High Court thought that its view was supported by a decision of this Court in *N. Satyanathan v. K. Subramanyan* ([1955] 2 S.C.R. 83.). In that case the appellant who was a contractor had entered into an agreement with the Central Government whereby he had offered to contract with the Governor-General for the provision of a motor vehicle service for the transit and conveyance of all postal articles for the period specified in the contract, and the Governor-General had accepted the offer. As a consideration for the same the Government had agreed to pay to the contractor Rs. 200 per month during the subsistence of the agreement "as his remuneration for the service to be rendered by him". It appears that on this contract two questions were raised before this Court. First it was urged that it could not be said that the Central Government had undertaken any service within the meaning of section 7(d) of the Act when it made arrangements for the carriage of mailbags and postal articles through the contractor. This contention was rejected on the ground that though the Government was not bound in the discharge of its duties as a sovereign State to make provision for postal mail service, it had in fact undertaken to do so under the Indian Post Offices Act for the convenience of the public. "It cannot be gainsaid", observed Sinha, J., as he then was, "that the postal department is rendering a very useful service,

and that the appellant has by his contract with the Government undertaken to render that kind of service on a specified route"; and he added, "the present case is a straightforward illustration of the kind of contract contemplated under section 7(d) of the Act". This straightforward illustration, in our opinion, clearly brings out the class and type of contracts which fall within section 7(d) of the Act. Government must undertake to render a specified service or specified services and the contract must be for the rendering of the said service or services. That was precisely what the contract in the case of N. Satyanathan ([1955] 2 S.C.R.) purported to do. It is difficult to see how this case can be said to support the conclusion of the High Court that the contract for stocking and storing of goods is a contract for rendering the service of supplying and selling the same to the residents of the place.

In this connection Mr. Jha, for the respondents, has drawn our attention to a decision of the Madras High Court in V. V. Ramaswamy v. Election Tribunal, Tirunelveli ((1933) 8 E.L.R. 233.). In that case the Court was concerned with four contracts by which the contracting party agreed "to hold the reserve grain stock belonging to the Government of Madras, safely store it, and dispose of it according to the directions of the Government". In other words, it was a contract not only for the stocking and storing of foodgrains but also of disposing of it, and that naturally meant that the contract was for service which the State Government had undertaken to perform. This decision cannot assist the respondents in the present appeal.

In the result we hold that the High Court was not justified in reversing the finding of the Tribunal that the contract in question did not attract the provisions of section 7(d) of the Act. The appeal must, therefore, be allowed and the order passed by the High Court set aside. We cannot finally dispose of the matter, because one question still remains to be considered, and that is whether the conclusion that the appellant's nomination paper had been improperly rejected would lead to the decision that the election of not only respondent 1 but also respondent 2 should be declared to be void. The Election Tribunal has declared the whole election to be void, and in their respective appeals filed before the High Court both the respondents have challenged the correctness of that finding. The High Court, however, thought that since in its opinion the nomination paper of the appellant had been properly rejected it was unnecessary to deal with the other point. The point will now have to be considered by the High Court. We would, therefore, set aside the order passed by the High Court and remand the proceedings to it in order that it may deal with the other question and dispose of the appeals expeditiously in accordance with law. In the circumstances of this case we direct that the parties should bear their own costs in this Court. Costs in the High Court will be costs in the appeal before it.

Appeal allowed.

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