SUPREME COURT OF INDIA

Konappa Rudrappa Nadgouda

Vs.

Vishwanath Reddy

C.A.No.1705 of 1967

(M. Hidayatullah, C.J.I. and G. K. Mitter, J.)

19.07.1968

JUDGEMENT

HIDAYATULLAH, C. J.:-

1. This is an appeal from the judgment and order of the High Court of Mysore, September 15, 1967, in an election matter in which the present appellant was the election petitioner. The election concerned the Yadagiri constituency and was held in February 1967, during the last general elections. To begin with, there were seven candidates. Of these five withdrew leaving the seat to be contested by the appellant and the first respondent here. The first respondent was returned as the successful candidate having obtained 4000 and odd votes in excess of his rival. On March 30, 1967, the defeated candidate preferred an election petition which has given rise to the present appeal. The election petition was dismissed by the High Court and in this appeal, the election petitioner claims that the decision of the High Court was erroneous and that the election of the first respondent was void for reasons to be stated hereafter.

2. The first respondent was a partner in a firm known as the Yadagiri Construction Company,

Yadagiri. This firm held several contracts from the Mysore Government. In this appeal, we are concerned with two contracts only which were the construction of (1) a road known as "Nalwar Sonthi Road" in Gulbarga Division for a distance of four miles and (2) a dispensary building for the Primary Health Centre at Wadagara. The contention of the election petitioner was that these contracts were subsisting on January 20, 1967 when the nominations were filed and the subsistence of the contracts with the Government rendered the election of the first respondent void. The election petitioner claimed that he was entitled to be declared elected after considering that the votes cast in favour of the 1st respondent as thrown away. The High Court in its judgment held that the contracts were not subsisting and that the election was therefore not affected.

3. The matter is one of fact but it is necessary, before we enter into an examination of the facts, to set out the law relating to disqualification of candidates on this ground. Under Sec. 9A of the Representation of the People Act, 1951 it is provided as follows:

"A person shall be disqualified if, and for so long as there subsists a contract entered into by him in course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by that Government.

Explanation: For the purpose of this section where a contract has been fully performed by the person by whom it has been entered into with the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part."

4. It may be mentioned here that previously the section did not contain the Explanation. In Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram, 1954 SCR 817= (AIR 1954 SC 236), the existence of the liability on the part of the Government to pay for a fully executed contract was held to be a disqualification. It appears that Parliament thought that since Government moves slowly and many bills remain outstanding for a long time, this part of the disability may be removed. The amendment, therefore, takes away from the ban of the section the subsistence of one side of the contract, viz., the performance thereof by Government by paying for the goods supplied or the work executed. In other respects, the law remains very much the same as it was when the ruling referred to above was given. We shall have to refer to certain observations in the ruling which in our opinion must be taken into account before reaching the conclusion whether the contract or contracts continued to subsist on the date on which the candidate offered himself for election. We shall now continue our narration of the facts.

5. As has been stated already, there were two contracts one for the construction of a road for a distance of four miles and the other for the construction of a dispensary building. Two separate agreements have been produced which were entered into by the Yadagiri Construction Company with the Government for the execution and performance of these contracts. It was urged in the High Court by the election petitioner that both these contracts remained incomplete and, therefore, they subsisted and that the candidate was under a disqualification and could not stand for the election.

The contract for the construction of the road, entered into by the Yadagiri Construction Company, included twelve items which the firm had to complete. They are conveniently described as items 1 to 7 and 8 to 12. The case of the election petitioner was that although Items 1 to 7 had been completed, Items 8 to 12 remained to be completed. In the Schedule to the contract or the building of the dispensary, a number of items were included in the Schedule. Of course, 8 items were found to be incomplete and, therefore, the same position ensued as in the case of road. The evidence led in the case consisted of documents from the Public Works Department and oral testimony of the engineers who were in charge of these constructions and others. After appraising the evidence, the High Court came to the conclusion that although some of the items from these two contracts might not have been completed, still the contracts as a whole were substantially performed and, therefore, there was no bar to the candidature of the 1st respondent. The High Court also held that although these agreements contained a clause for maintenance and repairs over a period of time after the completion of the work of construction, that did not make the contracts to subsist and, therefore, that too was not a disability.

6. Mr. Chagla in arguing the appeal tries to establish that both the conclusions of the High Court are erroneous. The evidence in the case, as is usual, is widely discrepant between the parties. They both held certificates issued by the Public Works Department, one set showing that the work had been completed and a subsequently issued set showing that something remained to be done and that the contracts were still subsisting. We shall refer to these documents now.

7. The contract in relation to the road was entered into on December 17, 1962 and is evidenced by Ex. P-10. The Schedule to the contract showed that the construction had to be completed according to it. The contract went on to provide by Clause 20 as follows:

". . . . . The contractor is to maintain the reconstructed portion of the road for a period of three months after the Executive Engineer has certified the same to be completed to his satisfaction".

The Schedule to his contract provided for surfacing of the road, collection of Sahabad soling stones, collection of muram for earth work, spreading muram over soling and metal etc. In addition to the proper construction of the road, it was the duty of the contractor to supply and fix mile and hectometer stones and to fix the road boundaries and demarcation stones etc. This work represents Items 8 to 12. Those relating to the road proper are Items 1-7 to which also reference has been made earlier.

8. Now it is agreed on both sides that Items 1-7 were duly completed. The dispute is with regard to Items 8 to 12. Nomination to the Assembly had to be filed on 20th January, 1967 at the latest. 21st January was fixed for scrutiny of the nomination papers and the election was to follow in the month of February. On 18th January, 1967, the first respondent obtained a certificate (Ex. P-1) that his contracts had been fully performed. He approached the Executive Engineer on the 19th. The

Executive Engineer was busy throughout the day. The respondent therefore asked his Personal Assistant (who incidentally is a gazetted officer of the rank of an Assistant Engineer) to give him the necessary certificate. The Personal Assistant telephoned to the Assistant Engineers in charge and on their statement that the work had been physically completed, he granted the certificates to that effect. It appears that the election petitioner was also busy in his turn. He obtained cancellation of these certificates from the Executive Engineer on the following day. The Executive Engineer asked the Assistant Engineers to state whether the work had been completed and the Assistant Engineers thereupon gave the certificate that Items 8-12 of the first contract were not complete. We have so far described the contract dealing with the road.

9. The contract for the construction of the dispensary was executed on February 23, 1966. The schedule to that contract contained a description of 27 items which had to be completed. In addition, there was the requirement that the entire premises would be cleaned and put in habitable state and then handed over. Here also the dispute is whether the entire contract had been completed or not. It is the case of the election petitioner that 9 items were left incomplete including the construction of a compound wall 30 ft. long for the quadrangular open yard, supplying welded mesh for the front waiting room and to the rear opening, whitewashing of one room, paint work, floors etc. This also was certified at first to be completed but later the certificate was revised and it was stated that the work was not complete. It is between these two rival certificates and the evidence relating to them that the matter has to be decided.

10. In respect of the road, the Assistant Engineer in charge of the work gave a notice on December 20, 1966, saying that certain work was not complete. Items 8-12 were, however, not mentioned there. The High Court was of the opinion that this omission completely demonstrated that that portion of the work which is now stated to be incomplete must have been completed. In answer to this, Mr. Chagla has contended that he had asked for the issue of a Commission in the High Court for the inspection of the spot (which petition he has repeated here) and he stated that even today, this part of the work has not been completed. However we do not go by such petitions nor are we inclined to issue a Commission which has been asked for in this Court. We consider the evidence, such as it is, and we find the correct situation to be this. P. W. 3, the Assistant Engineers no doubt stated in his notice that the "balance items" were only three. He had really mentioned 4 items, but had struck out Item No.2. That, however, did not show that no other work remained to be done. The certificates are there. That in favour of the completion of the work were given by the Personal Assistant to the Executive Engineer on the day the Executive Engineer was absent. No doubt the Personal Assistant worked as the head of the office in the absence of the Executive Engineer, but it is on record and duly proved that he had no authority to issue the completion certificates which he did. The Personal Assistant explained that he had issued the certificates because they were urgently required for election purposes and because the Assistant Engineer under whose supervision the construction of the road was taking place had reported completion of the work. The Executive Engineer, however, verified this again from the Assistant Engineer and found that Item 8-12 remained to be completed. Mr. Narasaraju complains of the conduct of the Executive Engineer by saying that he did not visit the spot to see for himself whether the completion had been made or not. He states that in Ex. P-11 in which the completion was reported on 18th January, 1967, there in no mention of Items 8-12 and it is different in language from Ex. C-1 in which Items 8-12 are shown not to have been completed. We do not think that anything turns on that. The Officers of the Public

Works Department have come to the witness box and have maintained that these items were in fact not completed before the election took place. We are satisfied that although the construction of the road was complete, the additional items which are described as "miscellaneous" in the contract still remained to be completed. What bearing this will have upon the election of the first respondent is something which we shall consider after we have analysed the evidence with regard to the hospital.

11. In respect of the hospital also, the first respondent obtained the certificate from the Personal Assistant to the Executive Engineer that the work had been completed. This is Ex.P-1. Here again the Assistant Engineer was consulted and the certificate showed that there were physical completion of the work. Later this certificate was also contradicted by the issuance of another certificate by the Executive Engineer that the work remained incomplete. This information was given by the Executive Engineer to the Returning Officer by Ex. P-13 because it was an important matter connected with the election. Mr. Narasaraju hinted that some outside influence was at work in the cancellation of the earlier certificate inasmuch as the Minister for the Public Works Department was present at Yadagiri and had also camped at Gulbarga on the following day. He pointed out that the Chief Engineer and the Executive Engineer were also presnet. The insinuation is that this was done under the pressure of the Minister, because the Congress had been consistently losing the seat at Yadagiri and it was intended that the first respondent should be knocked out to ensure Congress victory. We do not find any evidence which shows that the Minister took any interest in this matter although his presence may give rise to some suspicion. We cannot go on suspicion alone. It is obvious that both sides were straining every nerve to get some documentary evidence in their hands to prove, one that the work was incomplete and the other, that the work was completed. The later certificates clearly show that certain parts of the work remained to be completed and they certainly were overlooked when the first certificate was given. That they were minor items is not much to the purpose. The contracts as such were not fully performed. Although we were hesitating whether to apply the de minimis rule to this case we think that there are other considerations why we should refrain from applying that rule. We make our position clear. If the work is completed, it would not mean that the contract is subsisting. if, say, a glass pane is found broken or a tower bolt or a drop bolt or a handle has not been fixed where it should have been. The law is not so strict as all that and a sensible view of the section will have to be taken. The right of a person to stand for an election is a valuable right just as a right of a person to vote was considered a valuable right in the leading case of Ashby v. White, (1703) 2 Ld Raym 938. But if the contract subsists in such manner that it cannot be said to have been substantially completed, the law must take its own course. It is of the essence of the law of Elections that candidates must be free to perform their duties without any personal motives being attributed to them. A contractor who is still holding a contract with Government is considered disqualified, because he is in a position after successful election to get concession for himself in the performance of his contract. That he may not do so is not relevant. The possibility being there, the law regards it necessary to keep him out of the elections altogether. But as we stated, this will be only where the contract has not been fully performed, although what is full performance of a contract of completion, is a matter on which we do not wish to express a final opinion in this case, because it depends on the circumstances of each case and more particularly because there is here another condition to which we have referred.

12. In both the contracts, there was a condition that for a period of three months in one and for a period of one year in the other, the contractor would make due repairs to all the defective parts in

the execution of the contract. The question is whether the contract can be said to be subsisting in view of this clause. Both sides referred us to Hudson's Building and Engineering Contracts. In one passage, Hudson regarded such a clause as in the nature of a 'repair clause'. But Hudson was not dealing with the law of election when he was discussing a clause such as we have in this case. We have to interpret this clause in the context of election law. Now the contract must be said to subsist if a portion of it is required to be performed at any time, because so long as the contract has not been discharged, by full performance, it must be taken to subsist. Mr. Narasaraju contends that the phrase "contract for the execution of the work" shows that it is the execution of the original work which is contemplated and not any condition of guarantee for repair. In our opinion, this argument, however ingenious, is not acceptable because a similar point arose in the case to which we referred earlier. In Chaturbhuj Vithaldas Jasani's case 1954 SCR 817= (AIR 1954 SC 236) (cit. sup.), Bose, J., dealt with a similar point in the following words:

"It was argued that assuming that to be the case, then there were no longer any contracts for the "supply of goods" in existence but only an obligation arising under "the guarantee clause". We are unable to accept such a narrow construction. This term of the contract, whatever the parties may have chosen to call it, was a term in a contract for the supply of goods. When a contract consists of a number of terms and conditions each condition does not form a separate contract but is an item in the one contract of which it is a part. The consideration for each condition in a case like this is the consideration for the contract taken as a whole. It is not split up into several considerations apportioned between each term separately. But quite apart from that, the obligation, even under this term, was to supply fresh stocks for these three depots in exchange for the stocks which were returned and so even when regarded from that narrow angle it would be a contract for the supply of goods. It is true they are replacements but a contract to replace goods is still one for the supply of the goods which are sent as replacements."

Applying these observations in the context of construction of buildings and roads, it is obvious that if some part is found defective and has to be done again, the contract of execution as such is still to be fully performed. It is possible to describe the action taken as one to repair the defect, but in essence it is a part of the contract of execution, because no execution can be said to be proper or complete till it is properly executed. Taking the fact that some portion of the original contracts remained to be performed with the fact that under the contracts the contractor was required not only to complete the original work but to repair defects or re-do something which he had not properly done, we think this matter must fall within Section 9A of the Representation of the People Act. This is not a case like the supply of a refrigerator which after giving service for some time goes out of order and something has to be done to replace a part which is defective. The analogy is not quite apposite. Here the building was completed very recently and the flooring had to be re-done and various other things were left unfinished and these had to be completed by the contractor. Similarly in relation to the road, although the surface was prepared and the road was in actual use, under the contract, mile and hectometer stones had to be fixed and certain other stones fixed at curves and boundaries. This was not done. The two contracts therefore were not fully performed and under clause 20 of the agreement, it was incumbent upon the contractor to complete this part of his obligation. In our opinion, the High Court was in error in holding that the contracts had been fully performed and therefore Section 9A did not apply.

13. Mr. Narasaraju raises three legal points. The first is that under Article 299, the contract had to be signed by the Secretary to the Government whereas the contract was signed by the Executive Engineer. This point was also considered in Jasani's case, 1954 SCR 817= (AIR 1954 SC 236) (cit sup.) and it was held that it did not go to save the bar of the election law to the candidature. Next it is argued that the section is applicable to a person whereas the contract was with a firm and therefore the first respondent was not barred from standing for the election. In our opinion, the High Court has taken the right view of the matter. The law requires that a candidate should not have any interest in any contract with Government and even a partner has an interest sufficient to attract the provisions of Section 9A. Lastly it is argued that the partnership itself had been dissolved. That would have no effect upon the relations between the first respondent and the Government. The first respondent could not by a private dissolution of the partnership escape his liability under the contract to the Government, and there was here no novation, because notice of the dissolution was not given to Government and the 'Government had not accepted Hampanna to whom the business was transferred in place of the firm. We view the transfer of the entire contracts to Hampanna with some suspicion. It appears that on the eve of the election, the first respondent who wished to contest the seat from Yadagiri, hurried through his contracts, manage to get a completion certificate which was not quite accurate, dissolved the partnership with a view to clear himself from all connections with the contracts so that he could stand for the election. In this effort, he has distinctly failed.

14. We are satisfied that this appeal must succeed and the appeal is therefore allowed, the election of the first respondent is declared void. In this view of the matter, the votes cast in favour of the first respondent must be treated as thrown away. As there was no other contesting candidate we declare the appellant (election petitioner) elected to the seat from the Yadagiri constituency. The first respondent shall bear the costs of the appellant throughout.

Appeal allowed.