

Loknath Padhan

Vs.

Birendra Kumar Sahu

Civil Appeal No. 644 of 1972

(P. N. Bhagwati, P. K. Goswami JJ)

15.01.1974

JUDGMENT

BHAGWATI, J. –

1. This appeal is preferred under Section 116A of the Representation of the People Act, 1951 (hereinafter referred to as the Act) against the judgment of the Orissa High Court dismissing an election petition filed by the appellant challenging the election of the respondent to the Orissa Legislative Assembly from Melchhamunda constituency in Sambhalpur district of the State of Orissa.
2. The facts giving rise to the appeal may be briefly stated as follows : There were general elections to the Orissa Legislative Assembly sometime in the beginning of March, 1971. The last date for filing nomination papers was fixed on February 7, 1971 and on or before that date the appellant and he respondent both filed their respective nomination papers for the seat from Melchhamunda constituency. On February 9, 1971, which was the date fixed for scrutiny of the nomination papers, the appellant raised an objection against the nomination of the respondent on the ground that he was disqualified under Section 9A of the Act. Section 9A provides inter alia that a person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the execution of an works undertaken by that Government. There is an explanation to this Section which says that 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. The allegation of the appellant was that the respondent had entered into five contracts with the Government of Orissa for the execution of works undertaken by that Government and these contracts were still subsisting and the respondent was, therefore, disqualified from contesting the election under Section 9A. This objection raised on behalf of the appellant was overruled by the Returning Officer and the nomination of the respondent was accepted. The pooling thereafter took place on March 5, 1971 and the respondent was declared elected on March 11, 1971. The appellant thereupon filed an election petition in the High Court of Orissa calling in question the election of the respondent on the ground that he was disqualified from being elected on March 11, 1971. The appellant thereupon filed an election petition in the High Court of Orissa calling in question the election of the respondent on the ground that he was disqualified from being elected as a member by reason of Section 9A. The case of the appellant, as laid down in the election petition, was that, at the date of nomination five contracts were subsisting between the respondent and the Government of Orissa in respect of the following works entrusted through Gaisilet Panchayat Samiti : (1) construction of the Mahila Samiti building at Borumunda, (2) construction of the community recreation centre at Borumunda, (3) construction of the village

level lady worker's quarter at Borumunda, (4) construction of a package village level worker's quarter at Gaisilet, and (5) construction of the Borumunda canal, and on account of the subsistence of these five contracts the disqualification under Section 9A was attracted. Though the appellant relied on subsistence of these five contracts in the election petition, he conceded at the time of the arguments that contracts (4) and (5) may not be taken into account and rested his case solely on the ground that contracts (1) to (3) were subsisting between the respondent and the Government of Orissa. The respondent denied that he had entered into any of these contracts with the Government of Orissa in the course of his trade or business or that any such contract was subsisting between him and the Government of Orissa at the date of nomination. The respondent alleged that the works undertaken by him under contracts (1) to (3) were part of the Second Five Year Plan and they were to be carried out by the Gram Panchayat on the basis of 50 per cent subsidy from the Government and 50 per cent contribution by the people in terms of money or labour and it was as leader of the people and Naib Sarpanch that he had undertaken these works on behalf of the Gram Panchayat and not in his individual capacity in course of his trade or business. The contention of the respondent, therefore, was that Section 9A had no application in his case. It was also urged by the respondent that in any event these contracts had been fully performed by him before the date of nomination and his case was, therefore, covered by the Explanation to Section 9A. The respondent also contended in the alternative that even if the stand taken by the Block Development Officer on behalf of the failed to carry out his obligations under these contracts and the Government or the Gaisilet Panchayat Samiti had, therefore, become entitled to recover the amounts advanced to the respondent and for that purpose issued the requisitions for certificates of recovery on January 8, 1967, the case of the respondent was outside Section 9A because in that event the contracts were discharged by breach prior to January 8, 1967 and were no longer subsisting at the date of nomination. The High Court trying the election petition took the view that the contracts in question were not undertaken by the respondent in his individual capacity in course of his trade or business, but they were undertaken on behalf of the Gram Panchayat in terms of the schemes envisaged in the Second Five Year Plan as the respondent was the leader of the people and Naib Sarpanch of the Gram Panchayat, and the disqualification under Section 9A was, therefore, applicable and that took the case of the respondent out of the inhibition of Section 9A. The view taken by the High Court thus was that the respondent was not disqualified from contesting the election under Section 9A and on this view the High Court dismissed the election petition. Hence the present appeal under Section 116A of the Act.

3. Whilst the appeal was pending in this Court, the Orissa Legislative Assembly was dissolved by the Government on March 3, 1973 under Art. 174(2) (b) of the Constitution. The respondent, therefore, raised a preliminary objection at the hearing of the appeal before us that in view of the dissolution of the Orissa Legislative Assembly, it was academic to decide whether or not the respondent was disqualified from being a candidate under Section 9A and we should accordingly decline to hear the appeal on merits. The argument of the respondent was that unless there is a living issue between the parties the Court would not proceed to decide it : it would not occupy its time by deciding what is purely an academic question which has no sequitur so far as the position of the parties is concerned. Here, contended the respondent, even if the appellant was able to satisfy the Court that on the date of the nomination, the respondent was disqualified under Section 9A, it would be a futile exercise, because the Orissa Legislative Assembly being dissolved, the setting aside of the election of the respondent would have no meaning or consequence and hence the Court should refuse to embark on a discussion of the merits of the question arising in the appeal. We think there is great force in this preliminary contention urged on behalf of the respondent. It is a well settled practice recognised and followed in India as well as England that a court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that

its decision one way or the other would have no impact on the position of the parties, it would be waste of public time and indeed not proper exercise of authority for the Court to engage itself in deciding it. Speaking of the House of Lords, Viscount Simon, L.C., said in the course of his speech in *sun Life Assurance Co. of Canada v. Jervis*, "I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way", and added : "..... it is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties to a matter in actual controversy which the House undertakes to decide as a living issue". This statement must apply equally in case of exercise of appellate jurisdiction by this Court. It would be clearly futile and meaningless for the Court to decide an academic question, the answer to which would not affect the position of one party or the other. The Court would not engage in a fruitless exercise. It would refuse to decide a question, unless it has a bearing on some right or liability in controversy between the parties. If the decision of a question would be wholly ineffectual so far as the parties are concerned, it would be not only unnecessary and pointless but also inexpedient to decide it and the Court would properly decline to do so. In the present case, the Orissa Legislative Assembly being dissolved, it has become academic to consider whether on the date when the nomination was filed, the respondent was disqualified under Section 9A. Even if it is found that he was so disqualified, it would have no practical consequence, because the invalidation of his election after the dissolution of the Orissa Legislative Assembly would be meaningless and ineffectual. It would not hurt him. The disqualification would only mean that he was not entitled to contest the election on the date when he filed his nomination. It would have no consequences operating in future. It is possible that the respondent had a subsisting contract with the Government of Orissa at the date of nomination, but that contract may not be subsisting now. The finding that the respondent was disqualified would be based on the facts existing at the date of nomination and it would have no relevance so far as the position at a future point of time may be concerned, and therefore, in view of the dissolution of the Orissa Legislative Assembly, it would have no practical interest for either of the parties. Neither would it benefit the appellant nor would it affect the respondent in any practical sense and it would be wholly academic to consider whether the respondent was disqualified on the date of nomination.

4. The position might be different if the allegation against the respondent were of corrupt practice. Then it would not be academic to consider whether or not the respondent was guilty of the corrupt practice charged against him, because a finding of corrupt practice has serious consequences. If the respondent is found guilty of corrupt practice during the election, not only his election would be declared void, but he would also incur certain electoral disqualifications. Section 8A provides that a person found guilty of a corrupt practice by an order under Section 99 shall be disqualified for a period of six years from the date on which that order takes effect. The purity of elections is of utmost importance in a democratic set up and the law has, therefore, taken serious note of corrupt practice in elections and laid down a disqualification for a period of six years on an order being made by the High Court recording a finding of corrupt practice at the time of disposing of the election petition. It is, therefore, obvious that when a corrupt practice is charged against the respondent in an election petition, the trial of the election petition must proceed to its logical end and it should be determined whether the corrupt practice was committed by the respondent or not. As pointed out by this Court in *Sheodhan Singh v. Mohan Lal* :

"no one can be allowed to corrupt the course of an election and get away with it either by resigning his membership or because of the fortuitous circumstance of the assembly having been dissolved. The public are interested in seeing that those who had corrupted the course of an election are dealt which in accordance with law."

The decision of the question whether corrupt practice was committed by the respondent or not would not, therefore, be academic and the Court would have to decide it, even if in the meantime the Legislature is dissolved. That was precisely the view taken by this Court in Sheodhan Singh v. Mohan Lal. In that case the election of the respondent to the Uttar Pradesh Legislative Assembly was challenged by the appellant in an election petition on the ground that the respondent was guilty of corrupt practice during the election. The Uttar Pradesh Legislative Assembly was dissolved by the President during the pendency of the election petition before the High Court and a preliminary objection was, therefore, raised on behalf of the respondent that the election petition had ceased to be maintainable on account of the dissolution of the Uttar Pradesh Legislative Assembly. The High Court rejected the preliminary objection but on merits it took the view that corrupt practice was not proved and accordingly dismissed the election petition. The appellant thereupon preferred an appeal to this Court and in the appeal also the same preliminary objection was repeated on behalf of the respondent. This Court negatived the preliminary objection. Hegde, J., speaking on behalf of the Court emphasised that the charge against the respondent was of corrupt practice and pointed out that if the contention of the appellant that the respondent was guilty of corrupt practice was found to be true, then not only his election would be declared void but he would also be liable to incur certain electoral disqualifications, and therefore, in the interest of purity of elections it was necessary that "those who had corrupted the course of an election are dealt with in accordance with law", and this purpose would stand defeated if the election petition were held to become infructuous on the dissolution of the Assembly. The learned Judge then proceeded to consider the relevant Sections of the Act and after referring to them, summarised his conclusion by saying :

"From the above provisions it is seen that in an election petition, the contest is really between the constituency on the one side and the person or persons complained of on the other. Once the machinery of the Act is moved by a candidate or an elector, the carriage of the case does not entirely rest with the petitioner. The reason for the elaborate provisions noticed by us earlier is to ensure to the extent possible that the persons who offend the election law are not allowed to avoid the consequences of their misdeeds."

It will be seen that the emphasis in this decision was on the fact that the charge against the respondent was of corrupt practice and it was in this context that the Court held that where corrupt practice is alleged against the respondent in an election petition, the dissolution of the Legislature during the pendency of the election petition does not render it infructuous. We fail to see how the ratio of this decision can have any application in the present case. Here there is no charge of any corrupt practice against the respondent. The only ground on which the election of the respondent is sought to be invalidated is that he was disqualified at the date of nomination under Section 9A. This disqualification does not involve any act corrupting the course of an election. It has no other consequence than that of making the particular election void. It does not entail any electoral disqualification for the future. There is, therefore, no analogy between the two situations and this decision cannot be called in aid by the appellant.

5. The appellant, however, relied on the following observations in this decision and contended that these observations clearly lay down that an election petition does not become infructuous on the dissolution of the Legislature and the petitioner is entitled to have the decision of the Court upon it, notwithstanding the dissolution of the Legislature :

"The election petitions in this country are solely regulated by statutory provisions. Hence

unless it is shown that some statutory provisions directly or by necessary implication prescribes that the pending election petitions stand abated because of the dissolution of the Assembly, the contention of the respondent cannot be accepted."

"The law relating to withdrawal and abatement of election petitions is exhaustively dealt with in Chapter IV of Part VI of the Act. In deciding whether a petition has abated or not we cannot travel outside the provision providing for the dropping of an election petition for any reason other than those mentioned therein. The act does not provide for the abatement of an election petition either when the returned candidate whose election is challenged resigns or when the assembly is dissolved. As the law relating to abatements and withdrawal is exhaustively dealt with in the Act itself no reliance can be placed on the provisions of the Civil Procedure Code nor did not learned Counsel for the respondent bring to our notice any provision in the Civil Procedure Code under which the election petition can be held to have abated."

We fail to see how these observations can be of any help to the appellant. They deal with a totally different contention than the one advanced before us. It may be noted that in this case the charge against the respondent was of corrupt practice and it could not, therefore, be successfully urged on behalf of the respondent that the decision of the question arising in the appeal had become academic on the dissolution of the Uttar Pradesh Legislative Assembly. The only contention which the respondent was, therefore, left with and which he could possibly advance was that an election petition must be held to abate on the dissolution of the Legislature and it was this contention which was dealt with and negatived in these observations. This Court pointed out that the law relating to abatement of election petitions is exhaustively dealt with in Ch. IV of Part VI of the Act and since there is nothing in the Act which provides for abatement of an election petition when the Legislature is dissolved, it must be held that the dissolution of the Legislature does not result in abatement of the election petition. We express our wholehearted concurrence with this view. But the question before us is not whether the appeal in the present case abated on the dissolution of the Orissa Legislative Assembly. That is not the contention raised on behalf of the respondent. The respondent does not say that the appeal has abated and must, therefore, be dismissed. What the respondent contends is that in view of the dissolution of the Orissa Legislative Assembly, it has become academic to decide the appeal and hence we should decline to hear it. That is a wholly different contention which is not covered by the observations quoted above. We do not, therefore, think this decision throws any light on the contention raised before us. It does not compel us to take a different view from the one we are inclined to take on principle.

6. We are, therefore, of the view that, the Orissa Legislative Assembly being dissolved during the pendency of this appeal, it is now wholly academic to consider whether the respondent was disqualified under Section 9A at the date of nomination and since that is the only ground on which election of the respondent is challenged, we think it would be futile to hear this appeal on merits. We accordingly dismiss the appeal with no orders as to costs all throughout.

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