

Ranjeet Singh

Vs

Harmohinder Singh Pradhan

Civil Appeal No. 2008 of 1998

(CJI Dr. A. S. Anand, M. Jagannadha Rao J)

06.05.1999

JUDGMENT

Dr. A.S. Anand, CJI.

1. This appeal calls in question the judgment and order of the High Court of Punjab and Haryana in Election Petition No. 7 of 1997 decided on 29th September, 1997. The appeal arises in the following circumstances.

2. The appellant contested the election to 54 Raikot Assembly Constituency in the general elections to the Punjab Legislative Assembly held on 7th February, 1997. The respondent, a candidate of the Indian National Congress, was declared elected. After the declaration of the result of the elections on 10th February, 1997, the appellant filed an election petition in the High Court alleging that the respondent was disqualified from contesting the election to the Punjab Legislative Assembly under Section 9-A of the Representation of People Act, 1951 (hereinafter referred to as "the Act") as on the date of the filing of the nomination paper as well as on the date of the scrutiny of the nomination paper, the respondent had a subsisting contract, for the sale of liquor, with the Punjab Government, which he had obtained in partnership with others at the auction held for the year 1996-97. The petition was resisted by the respondent who in the written statement denied the allegations concerning his disqualification. A preliminary objection was raised that the election petition was not maintainable as the same did not disclose any factual basis to establish violation of Section 9-A of the Act. It was asserted that the election petition did not contain any allegation to the effect that the respondent had entered into a contract with the Government either for 'the supply of goods or for the execution of the works undertaken by the Government' and as such the respondent could not be said to have incurred any disqualification under Section 9-A of the Act. The respondent further pleaded that the contract for sale of liquor was not such a contract to which the provisions of Section 9-A of the Act could be attracted. Replication was filed and from the pleadings of the parties, the following issues were raised :

"1. Whether the respondent had subsisting contract for the sale of the liquor from the Punjab Government obtained in partnership for the year 1996-97 at the time of the filing of the nomination papers and on the date of the scrutiny of the nomination papers as alleged in Para No. 3 of the election petition, and if so, to what effect ?  
OPP

2. Whether the election petition is not maintainable in view of the objections raised in Para Nos. 1 and 2 of the preliminary objections ? OPR.

3. Whether the election of the respondent to the Punjab Assembly from 54-Raikot Assembly Constituency is valid for the reasons stated in the petition ? OPP.

4. Relief."

3. The parties led evidence and after hearing their arguments, the High Court dismissed the election petition.

4. Since, the challenge in the election petition to the election of the respondent, as canvassed before the High Court and before us, is based on section 9-A of the Act, it would be desirable to first notice the provisions of that Section. Section 9-A reads :

*"9-A. Disqualification for Government contracts, etc.*

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 supply of goods to, or for the execution of any works undertaken by, that Government.

*Explanation :-* For the purposes 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."

5. On its plain reading, Section 9-A of the Act requires (i) that there must be a subsisting contract which has been entered into by the person whose candidature is sought to be disqualified with the Government; (ii) that contract is for the supply of goods to the Government; or (iii) that the contract is for the execution of any works undertaken by the Government.

6. The High Court held that Section 9-A of the Act was not attracted in the fact situation of the case. In taking this view, the High Court relied upon a judgment given by the Andhra Pradesh High Court in *B. Lakshmi Kantha Rao v. D. Chinna Mallaiiah*, AIR 1979 AP 132, which has been approved by this Court in *Dewan Joynal Abedin v. Abdul Wazed alias Abdul Wazad Miah and others*, 1988 (Suppl.) SCC 580. According to both these judgments, merely becoming a licensee with the State Government, cannot amount to either supplying the goods to the Government or engaging in execution of any work undertaken by the Government. Learned Counsel for the appellant fairly conceded that it was not a case of 'supply of goods to the Government' but maintained that the subsisting contract between the respondent and the Government amounted to 'execution of any work undertaken by the Government'.

7. In *Dewan Joynal* (supra), this Court interpreted the word 'works' as used in Section 9-A of the Act and opined :

".....The word 'works' in the expression in 'execution of any works' appearing in Section 9-A of the Act is used in the sense of 'projects', 'schemes', 'plants', such as building works, irrigation works, defence works etc. Respondent No. 1 in this case had not undertaken to carry on any such work. According to the Shorter Oxford Dictionary the expression 'work' means a structure or apparatus of some kind; an architectural or engineering structure, a building edifice. When it is used in plural,

i.e., as 'works' it means 'architectural or engineering operations; a fortified building; a defensive structure, fortification; any of the several parts of such structure'. The word 'works' used in entry 35 of list II of the Seventh Schedule of the Constitution of India which reads as "works, lands and buildings vested in or in the possession of the State" is used in the same sense. The running of boats across in land waterways is a topic which falls under entry 32 of List III of the Seventh Schedule which reads thus : "Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways". It is, therefore, difficult to hold that when a person acquires the right to collect toll at a public ferry under Section 8 of the Ferries Act he is performing a contract of execution of works undertaken by the Government. It may have been perhaps different if the words 'in performance of any services' which were present in Section 7(d) of the Act, as it stood prior to its amendment in 1958 had been there in Section 9-A of the Act."

8. We find ourselves unable to agree with the learned counsel for the appellant that keeping in view the purpose for which Section 9-A of the Act was enacted, namely, to avoid any conflict between private interest and public duty, a broad interpretation should be placed on Section 9-A.

9. Section 9-A is a statutory provision which imposes a disqualification on a citizen. It would, therefore, be unreasonable to take a general or broad view, ignoring the essentials of the Section and the intention of the legislature. Purposive interpretation is necessary. In Dewan Joynal's case (supra), Section 9-A of the Act has been correctly interpreted in the following words :

"An analysis of Section 9-A of the Act shows that only in two cases a person would be disqualified if he has entered into a contract with the appropriate government in the course of his trade or business which is subsisting on the date of scrutiny of nomination. They are (i) when the contract is one for supply of goods to the appropriate government, and (ii) where the contract is for the execution of any works undertaken by that government.....

.....

..... The Andhra Pradesh High Court held that since the contracts entered into by the successful candidate with the State Government to sell arrack and toddy did not come within the mischief of Section 9-A of the Act as they were neither for supply of goods to the government nor for the execution of any works undertaken he did not suffer from any disqualification for being chosen as a member of the Legislative Assembly. We have gone through the above decision carefully. We are of the view that the High Court was right in the said case in holding that the returned candidate had not suffered from any disqualification by reason of the fact that he was an excise contractor."

We agree with the aforesaid view. No other point has been urged.

10. For what we have said above, we find that there is no merit in this appeal. It is, accordingly, dismissed, but without any order as to costs.

Appeal dismissed.