

PETITIONER:
SOMNATH RATH

Vs.

RESPONDENT:
BIKRAM K. ARUKH & ORS.

DATE OF JUDGMENT: 14/09/1999

BENCH:
S. RAJENDRA BABU, R.C. LAHOTI.

JUDGMENT:

Aggrieved by the dismissal of his election petition, challenging the election of the returned candidate-respondent No. 1, vide order of the High Court dated 23rd of December, 1999, the appellant has filed this appeal.

For the purpose of this appeal however only a few facts are relevant and necessary to be noticed.

The last date for filing nominations in respect of the Assembly Constituencies in the State of Orissa for the elections held in the year 1995 was 17th of January, 1995. Thirteen persons including the appellant and the respondents filed their nomination papers for 66, Bhanjnagar Assembly Constituency. At the time of scrutiny of the nomination papers on 19th January, 1995, the Returning Officer rejected the nomination papers of respondent Nos. 5, 6 and 7. While the nomination papers of respondent Nos. 5 and 6 were rejected by the Returning Officer on the ground that the same

were found to be defective, the nomination papers of respondent No. 7-Panchanan Das was rejected on the ground that "Candidate is a PDS dealer of Bhanjnagar Ward No. 13. Hence rejected."

After polling, results of the elections were declared and respondent No. 1 was declared successful and elected by a margin of 1567 votes.

An election petition was filed by the appellant on 26th of April, 1995 calling in question the election of respondent No. 1, both on the ground of commission of corrupt practices as also for improper rejection of the nomination papers of respondent Nos. 5, 6 and 7. The election petition was resisted and written statement was filed by respondent No. 1. On the basis of pleadings of the parties, certain issues came to be framed. However, for the purpose of this appeal, the following issues only require our consideration:

"(1) Whether the nomination of any one of the candidates namely Shri Pratap Chandra Swain, Shri Rajendra Kumar Sahu and Shri Panchanan Das has been improperly rejected by the Returning Officer and as such the election of Bikram Keshari Arukh, the returned candidate (respondent

No. 1) for the 66-Bhanjanagar Assembly Constituency is void?

(2) Whether the petition as laid is maintainable?"

Evidence was led by the parties in respect of these issues.

We shall take up the question relating to the rejection of the nomination paper of Shri Panchanan Das-respondent No. 7 only and do not find it necessary to consider either the grounds of rejection or the effect thereof insofar as Shri Pratap Chandra Swain or Shri Rajendra Kumar Sahu- respondent Nos. 5 and 6 respectively are concerned because the findings recorded by the High Court in their case have not been seriously assailed before us. Findings regarding the rejection of nomination paper of respondent No. 7 have, however, been vehemently assailed.

Insofar as respondent No. 7, Shri Panchanan Das is concerned, the material averments regarding the improper rejection of his nomination paper are contained in para. 10 of the election petition, which reads thus :

"10. That the nomination of Shri Panchanan Das S/o Late Saita Das, At - Sanatota Sahi, Bhanjanagar, Dist. Ganjam, Respondent No. 7 has been rejected on the ground that the candidate is the P.D.S. Dealer of Ward No. 13. The rejection Order is illegal and improper because P.D.S. Dealership is not a disqualification for being chosen as a member of the legislative Assembly. Besides, there was evidence or material before the Returning Officer at the time of scrutiny to come to such a conclusion. In course of his trade or business through P.D.S. Dealership of Ward No. 13 under the Bhanjanagar, N.A.C., Sri Das had nothing to do with the State Government and much less he was interested in any subsisting contract with the State Government which could have disqualified him under the provisions of the Representation of the People Act, 1951. He had not entered into any contract at all with the State

Government. His appointment as such was under the recommendation of committee set up by the N.A.C. He was to purchase commodities at prices fixed and on selling get a commission which is also fixed. Therefore there is no scope for any advantage being derived even if one becomes a member of the Legislative Assembly. In the circumstances, therefore, the nomination of Sri Panchanan Das having been improperly rejected the election of the Respondent No. 1 is liable to be declared void. . . . "

In the written statement filed by respondent No. 1, the response to the averments contained in para 10 of the election petition is as follows:

"15. That the averment made in paragraph 10 of the election petition that the nomination paper of Sri Panchanan Das, the Respondent No. 7 has been improperly rejected is false and denied and the petitioner is put to strict proof thereof. The Returning Officer has acted legally and within his power and authority in rejecting the nomination paper in question as the same was violative of the relevant provision of the Act and he has made an endorsement to that effect on this nomination paper. Thus this averment is denied."

The learned Designated Judge of the High Court after

considering the evidence on the record and taking note of various judgments including the judgment of the Andhra Pradesh High Court in Cheekati Parasuram Naidu Vs. Mariseria Venkatarami Naidu and another AIR 1985 AP, 169 opined :

"The transactions between the State and respondent No. 7 do not constitute supply by the latter to the State. Therefore, it cannot be said that respondent No. 7 was disqualified in terms of Section 9A."

Thus, the learned Designated Judge found that the ground on which the nomination paper had been rejected by the Returning Officer was not valid.

The learned Designated Judge of the High Court, while dismissing the election petition, in spite of the above finding observed :-

"In view of the legal position there can be no doubt that improper rejection nullifies the election. But some of the peculiar features as highlighted above need to be carefully analysed. No doubt an election dispute can be raised by a candidate or an electorate of the constituency, because the election involves each of the electorates as well as the contestants. Judged in that background, the election petition has been held to be maintainable as discussed above.

Improper rejection of a nomination affects the election. But the person who is really affected is the person whose nomination paper has been rejected. In the case at hand, he himself states that his presence in the field of contest would have hardly made any difference and would not have materially affected the election of the elected candidate. He has stated with reference to his past performance in various elections that he would not have polled more than 200 to 300 votes. A candidate is the best person to say about his election prospects. When the candidate himself states that he would have got about 200 to 300 votes had he contested, it would be not proper to accept the version

of the election petitioner that his presence in the election contest would have materially affected the result." (Emphasis Ours)

The learned Designated Judge also opined

"Respondent No. 7 Panchanan Das, whose nomination has been rejected, has stated that he did not think it proper to file election petition as he was satisfied that his presence in the field of contest would not have made the position different."

In our opinion, the above approach of the High Court was wholly erroneous.

Section 100 (1) (c) of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') provides as under :-

"100. Grounds for declaring election to be void:- (1) Subject to the provisions of sub-section (2) if the High Court is of opinion-

(a)

(b)

(c) that any nomination has been improperly rejected;
or ..."

The High Court having found and, in our opinion, rightly that the ground on which the Returning Officer had rejected the nomination paper of respondent No. 7,

viz., that he was a dealer under the Public Distribution System did not disqualify him from contesting the election, ought not to have proceeded any further because it was essentially a case where the rejection of the nomination paper by the Returning Officer, insofar as respondent No. 7- Shri Panchanan Das is concerned, was improper because respondent No. 7 was not disqualified in terms of Section 9A of the Act. The improper rejection of a nomination paper by itself and without anything more is a ground under Section 100 (1)(c) of the Act to declare the election void. No enquiry as to "material effect" on account of the rejection of the nomination paper is required to be made under Section 100 (1)(c) of the Act. The enquiry whether the result of an election has been materially affected insofar as the Returned Candidate is concerned is required in the cases covered by Section 100 (1)(d) of the Act.

Learned counsel for the Returned Candidate, however, asserted that the finding of the Returning Officer for rejecting the nomination paper was correct and the High Court's finding in that behalf was not correct. Learned counsel submitted that the case of respondent No. 7, a dealer under the Public Distribution Scheme, was covered by Section 9A of the Act. We are unable to accept this submission.

Section 9A of the Act reads, thus :

"9A. 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."

Section 9A of the Act has come up for consideration of this Court in *Dewan Joynal Abedin Vs. Abdul Waged a I ias Abdul Wazad Miah and Others*. 1988 (Supp) SCC, 580 = 1987(2) SCALE, 1447 and *RanJeet Singh Vs. Harmohinder Singh Pradhan*. 1999 (3) SCALE, 630. Analysing Section 9A of the Act, this Court has consistently taken the view that a person would be disqualified under Section 9A of the Act, 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 nominations and :

(1) the contract is one for supply of goods to the Appropriate Government; and

(11) the contract is for the execution of any works undertaken by that Government

We find ourselves unable to accept the submission of learned counsel for respondent No. 1 that in Section 9A of the Act, the expression 'works' would also include 'schemes' of the type of Public Distribution System. The expression 'works' as used in Section 9A was interpreted in *Dewan Joyanal Abedin* (supra) wherein this Court opined :

"..... The word 'works' in the expression in 'execution of any works' appearing in Section 9A of the Act is used in the sense of 'projects', 'schemes', 'plants', such as building works, irrigation works, defence works etc. Respondent 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, fortifications; any of the several parts of such structure". The words '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

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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 1956 had been there in Section 9-A of the Act."

The above observations are a complete answer to the submission made by learned counsel for respondent No. 1.

From the pleadings of the parties and particularly averments contained in para 10 of the election petition, it is obvious that the respondent No. 7 - Shri Panchanan Das did not have any subsisting contract in the course of his trade or business with the Appropriate Government either for the supply of goods to the Government or for the execution of any works undertaken by that Government. He was a mere licensee under the Public Distribution System. Such a person does not suffer any disqualification for being chosen as a Member of the Legislative Assembly under Section 9A of the Act.

Since the only ground on which the Returning Officer

rejected the nomination paper of Shri Panchanan Das, respondent No. 7 was that "he was a dealer under the Public Distribution System" and the High Court rightly found that respondent No. 7 was not disqualified under Section 9A of the Act, it ought to have been held that the nomination paper of respondent No. 7 had been improperly rejected and as a consequence Section 100 (1)(c) of the Act was attracted to avoid the election.

The improper rejection of the nomination paper by itself being sufficient to invalidate the election, the High Court under the circumstances fell in error in dismissing the election petition and not invalidating the 'election of the Returned Candidate on the ground of improper rejection of the nomination paper of respondent No. 7 - Shri Panchanan Das.

As a result of the above discussion, this appeal succeeds and is allowed. Consequently, the election petition would stand allowed to the extent indicated above. The election of the Returned

Candidate-respondent No. 1 is, hereby, set aside under Section 100(1) (c) of the Act. We, however, leave the parties to bear their own costs insofar as this appeal is concerned.