PETITIONER:
SATYA DEV BUSHAHRI

Vs.

RESPONDENT:
PADAM DEV AND OTHERS.

DATE OF JUDGMENT:
18/10/1954

BENCH:
AIYYAR, T.L. VENKATARAMA
BENCH:
AIYYAR, T.L. VENKATARAMA
MUKHERJEA, B.K.
BOSE, VIVIAN

CITATION:
1955 AIR 5 1955 SCR (1) 561
CITATOR INFO :
F 1956 SC 315 (2)
F 1956 SC 335 (1)

ACT:
Representation of the People Act (XLIII of 1961), ss. 7(8) and 9--General Clauses Act (X of 1897), s. 3(8)-Government of Part C States Act (XLIX of 1951), s. 17-Government contract with the Part C State Government whether contract with the Central Government--And thus a disqualification for election to Legislative Assembly of State under s. 17 of Act XLIX of 1951 read with s. 7(d) of Act XLIII of 1951.

HEADNOTE:
Held, (modifying the view of law taken in Civil Appeal No. 52 of 1954) that in view of section 3(8) of the General Clauses Act, 1897, a contract with the Chief Commissioner in a Part C State (in this case Himachal Pradesh Chief Commissioner) is a contract with the Central Government and that would be a disqualification for election to the Legislative Assembly of the State under section 17 of Act XLIX of 1951, read with section 7(d) of Act XLIII of 1951.

JUDGMENT:
CIVIL APPEAL JURISDICTION: Civil Miscellaneous Petition No, 641 of 1954,
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Application for review of the Judgment of this Court in Civil Appeal No. 152 of 1954.
N. C. Chatterjee (G. C. Mathur, with him) for the petitioner.
Veda Vyas (S. K. Kapoor and Naunit Lal, with him) for the respondent.
1954. October 18. The Judgment of the Court was delivered by
VENKATARAMA AYYAR J.-This is an application for review of the judgment of this Court in Civil Appeal No. 52 of 1954. That was an appeal against an order of the Election Tribunal, Himachal Pradesh (Simla), dismissing a petition to

set aside the election of the respondent to the Legislative Assembly, Himachal Pradesh, from the Rohru Constituency. Two points were raised at the hearing of the appeal before us: One was that the respondent was disqualified for election to the Assembly under section 17 of Act No. XLIX of 1951, read with section 7(d) of Act No. XLIII of 195 1, by reason of the fact that he was interested in contracts for the supply of Ayurvedic Medicines to the Himachal Pradesh Government, and the other, that he had appointed Government servants as polling agents, and had thereby contravened section 123(8) of Act No. XLIII of 1951.

On the first question, we held that, on a true construction of section 17, what would be a disqualification for election to either House of Parliament under article 102 would, under that section, be disqualification for election to the Legislatures of Part C States, and that the disqualification under section 7 (d) of Act No. XLIII of 1951 would accordingly be a disqualification under section 17 of Act No. XLIX of 195 1. A further contention was then raised on behalf of the respondent that even if section 7(d) were to be imported into section 17, that would not disqualify him, because under that section, the disqualification must be to being elected to either House of Parliament, and that under sections 7 and 9 of Act No. XLIII of 1951, a contract to operate as a disqualification to the election to either House of Parliament must be, with the Central Government, whereas

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the contracts of the respondent were with the Government of Himachal Pradesh. The answer of the petitioner to this contention was that under article 239 the administration of Part C States was vested in the President acting through the Chief Commissioner or the Lieutenant-Governor, and that the contracts of the respondent with the Chief Commissioner, Himachal Pradesh, must be held to be contracts with the Central Government. We, however, disagreed with this contention, and held that article 239 had not the effect of merging States with the Central Government, and converting contracts with the States into those with the Central Government.

In this application, Mr. Chatterjee appearing for the petitioner invites our attention to the definition of " Central Government " in section 3(8)(b)(ii) of the General Clauses Act. It is as follows:

"Central Governmnet" shall in relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include in relation to the administration of a Part C State, the Chief Commissioner or Lieutenant-Governor or Government of a neighbouring State or other authority acting within the scope of the authority given to him or it under article 239 or article 243 of the Constitution, as the case may be."

He argues that by force of this definition, contracts with the Chief Commissioner of Himachal Pradesh must be treated as contracts with the Central Government, and that in consequence, the respondent was disqualified for election under section 17 of Act No. XLIX of 1951, read along with section 7(d) of Act No. XLIII of 1951.

As against this, Mr. Veda Vyas for the respondent relies on the definition of " State " in section 3(60)(b) of the General Clauses Act, which runs as follows:

" State Government " as respects anything done or to be done after the commencement of the Constitution, shall mean, in a Part A State, the Governor, in a Part B State the Rajpramukh, and in a Part C State the Central Government."

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His contention is that there being in the Constitution a fundamental distinction between the Government of the Union and Government of the States, section 3(8) of the General Clauses Act should be so construed as not to destroy that distinction, and that having regard to the definition of " State " in section 3(60), it must be held that to the extent the Central Government administers Part C States under article 239, its character is that of the State Governments. We are unable to agree that section 3(8) has the effect of putting an end to the status of Part C -States as independent units, distinct from the Union Government under the Constitution. It merely recognies that those States are centrally administered through the President under article 239, and enacts that the expression " Central Government " should include the Chief Commissioner administering a Part C State under the authority given to him under article 239. Section 3(8) does not affect the status of Part C States as distinct entities having their own Legislature and judiciary, as provided in articles 239 and 240. Its true scope will be clear if, adapting it, we substitute for the words " Central Government" in section 9 of Act No. XLIII of 195 1, the words " the Chief commissioner acting within the scope of the authority given to him under article 239." A contract with the Chief Commissioner would, therefore, under section 9 read with section 3(8) of the General Clauses Act, be a contract with the Central Government, and would operate as a disqualification for election to either House of Parliament under sections 7(d) and 9 of Act No. XLIII of 1951, 'and it would be a disqualification under section 17 of Act No. XLIX of 1951, for election to the Legislative Assembly of the State.

It is argued for the respondent that this construction would lead to this anomaly that whereas in the States in Part A or Part B a contract with the State would operate as disqualification only for election to the State Legislatures, such a contract would in Part C States operate as a disqualification to be chosen, both to the State Legislature and to either House of Parliament. That anomaly is undoubtedly

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there. But the contrary conclusion also involves the anomaly already pointed out, that in Part C States a contract with the State Government is not a disqualification for election even to the State Legislature, as it is in Parts A and B States. Whatever the anomaly, in our view, the proper course is to give effect to the plain language of the statute. We must accordingly hold that in view of section 3(8) of the General Clauses Act, a contract with the Chief Commissioner in a Part C State is a contract with the Central Government, and that would be a disqualification for election to the Legislative Assembly under section 17 of Act No. XLIX of 1951 read with section 7(8) of Act No. XLIII of 1951.

This conclusion, however, can result in no advantage to the petitioner, as the further finding of the Election Tribunal is that no contracts of the respondent with the Himachal Pradesh Government were proved to have been subsisting at the material period. That finding is, for the reasons already given, not open to attack in this appeal, and is sufficient answer to the objection that the respondent was disqualified under section 17.

The second point that was argued before us in appeal was that the respondent had appointed certain Government servants to act as polling agents, and had thereby committed

a major corrupt practice under section 123(8) of Act No. XLIII of 1951. In rejecting this contention we observed that, "as an abstract proposition of law, the mere appointment of a Government servant as a polling agent in itself and without more" is not an infringement of section 123(8). The correctness of this conclusion is now challenged by Mr. Chatterjee. His contention is that having regard to the nature of the duties of a polling agent as laid down by the Rules and furtfier elucidated by the instructions contained in the Election Manual issued by the Government, the polling agent must be held to be interested in the candidate for whom he acts as polling agent, and that his employment would therefore be hit by section 123(8).
Examining closely the duties of a polling agent under the Rules and under the Election Manual, they
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can be grouped under three categories. The first category relates to the period of time antecedent to the recording of votes. The duties of the polling agent at this stage are to see that the ballot boxes are, to start with, empty, that the names of the candidates and their symbols are correctly set out thereon, that the slits in the boxes are in an open position, that the knobs of the slits are properly secured, and that the boxes are properly bolted and sealed. These are duties which are cast on the presiding officer and the polling officers as well, and as these are matters to be attended to before any recording or votes begins, it is difficult to see how they -can be said to assist in the furtherance of the election prospects of any one candidate more than of any other. The second stage is when the polling is actually in progress. The duty of the polling agent at this stage is to identify the voters. Rule 27 provides that when there is a doubt as to the identity of a voter, the presiding officer may interrogate the voter and that be should do so, if so required by a polling agent. Under rule 30, it is open to the polling agent to challenge any voter on the ground that he is not the person whose name is entered in the voters' list, and when such objection is taken, it is the duty of the presiding officer to hold an enquiry and pass an order. The object of these Rules is to prevent personation, and that is a matter in which the duty is cast equally on the presiding officer. Rule 24 provides that,
"The presiding officer may employ at the polling station such persons as he thinks fit to assist him-or any polling officer in identifying the electors.
The work of the polling agent under rules 27 and 30 is of the same character, and it cannot in itself be said to further the election prospects of any particular candidate. The third stage is reached after the polling is over'. Then the boxes are to be examined with. a view to find out whether the slits are open and the seals intact, the object of these provisions being to ensure that the ballot boxes had not been tampered with during the time of actual polling. Then the unused ballot papers, the tendered ballot papers and other material documents-are required to be put in separate
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packages, and the polling agents have the right to seal all of them. It cannot be said that in carrying out these duties the polling agent advances the election prospects of the candidate, as they admittedly relate to a stage after the completion of the polling. Indeed, the work of the polling agent both in the first stage and in the last stage is similar in character, and neither can be said to

contravene section 123(8). As regards the second stage, as already stated in our judgment, the duty of polling agent is merely to identify a voter, and that could not by itself and without more be said to further the election prospects of the candidate.

Reliance was placed by Mr. Chatterjee on the following passage in Parker's Election Agent and Returning Officer, Fifth Edition, at page 20:-

"The polling agents appointed for the same candidate to attend the several polling stations at any election, are engaged on the same duty and in the same interest, and it is generally very desirable that they should meet, under the presidency of the candidate or his election agent, before the opening of the poll for the purpose of mutual discussion and co-operation."

What that passage means is that as the duty to be performed by the polling agents at the several booths is of the same character, it would be desirable that they should all be assembled and their duties explained to them. This has no bearing on the question whether those duties are such as must inherently promote the election prospects of the candidate. A passage which is more in point is the one at page 18, mentioning who could be appointed as polling agents. It is as follows:

"Any competent person, whether an elector or not, may be appointed as polling agent, provided he be not the returning officer, the acting or deputy acting returning officer, or an officer or clerk appointed under P.E.R., r. 27, or a partner or clerk of any of them."

In this connection, it must be noted that while section 41 of Act No. XLIII of 1951 contains a prohibition against the appointment of certain persons as election agents, there is none such with, reference to the appointment of polling agents under section 46 of the

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Act. To hold that Government servants are, as such and as a class, disqualified to act as polling agents would be to engraft an exception to the statute, which is not there.

Accordingly, we reaffirm the view taken by us that the appointment of a Government servant as polling agent does not, without more, contravene section 123(8). It is scarcely necessary to repeat our observation in the original judgment that "if it is made out that the candidate or his agent had abused the right to appoint a Government servant as polling agent by exploiting the situation for furthering his election prospects, then the matter can be dealt with as an infringement of section 123(8)." In the result, this petition is dismissed; but under the circumstances, without costs.

Petition dismissed.