

PETITIONER:
LALITESHWAR PRASAD SAHI

Vs.

RESPONDENT:
BATESHWAR PRASAD AND OTHERS

DATE OF JUDGMENT:
07/10/1965

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
HIDAYATULLAH, M.
SHAH, J.C.

CITATION:
1966 AIR 580 1966 SCR (2) 63
CITATOR INFO :
F 1969 SC 302 (10)
E 1980 SC1109 (4)

ACT:
Representation of the People Act, 1951-S. 7(d)-Contract with Government not complying with provision of Art. 299 of the Constitution--Not subsequently ratified by Government--Whether disqualifies candidate.

HEADNOTE:
In an election petition filed by the appellant, the respondent's election to the Bihar Legislative Assembly was challenged, mainly on the ground that he was disqualified under s. 7(d) of the Representation of the People Act, 1951, as he had entered into a contract with the State Government which was subsisting on January 14, 1962, i.e. the date fixed for filing nomination papers. One S had entered into a contract in 1951 with the State Government. for certain construction work and the respondent was working as a subcontractor under him. As there was delay etc. in the completion of the work by S, in exercise of a power reserved to the State Government in cl. 3(c) of the agreement with S, whereby the Government could, under certain circumstances, make alternative arrangements for the completion of the work, the Executive Engineer of the Government approached the respondent to ascertain if he would complete the work instead. In a letter addressed to the Executive Engineers, the respondent offered to do the work on certain terms and this offer was accepted. Thereafter, various letters were exchanged with the respondent by the S.D.O. and the Executive Engineer about the progress of the work. However, after most of the work to be done by the respondent was completed,, S was restored as the contractor and further correspondence about the work done by the respondent and regarding the payment for it was conducted by the concerned officers of the State Government with S. The payment for this work remained' outstanding on the date for filing nomination papers in January 1962. The Election Tribunal allowed the petition and declared the

respondents' election to be void. But the High Court reversed this decision and held that the respondent had at all relevant times continued to be a sub-contractor of S, and that even assuming there was a contract between the respondent and the State Government, the alleged contract was void in view of Art.. 299(1) of the Constitution.

On appeal to this Court,

HELD: (per majority)

No contract between the first respondent and the State Government subsisted at the relevant time and the respondent was not disqualified under s. 7(d).

The correspondence in the case clearly disclosed an agreement for the execution of work between the Executive Engineer and the respondent, But the fact that by virtue of cl. 3 (c) of the contract with S, the Government could, under certain circumstances, enter into an agreement

64

with someone else to do the work, did not dispense with the requirement of compliance with the provisions of Art. 299.

[70 E-F]

The evidence on record showed that the State Government had chosen not to ratify the agreement with the respondent but to consider the original contract with S as still standing and to treat the respondent as a subcontractor working under S. [73 H]

The principle in *Chatturbhuj Vithaldas Jasani's case* ([1954] S.C.R. 817) that although a contract may not comply with Art. 299, such contract, being capable of ratification by the Government may still disqualify a person under s. 7(d), cannot be extended to cover a case where the Government has in fact not ratified the contract. To hold otherwise would be to substitute "agreement" for "contract" in s. 7(d). A mere agreement entered into in contravention of Art. 299 and in fact not ratified cannot be called a "contract" within s. 7(d). [72 A-B]

New Marine Coal Co. (Bengal) v. The Union of India A.I.R. 1964 S.C. 152; *State of W. Bengal v. B. K. Mondal* A.R.R. 1962 S.C. 779; referred to.

(per Hidayatullah and Shah JJ., dissenting);

The available evidence clearly, supported the case that there was a contract directly between the first respondent and the State for the execution of certain construction work and not that the work was done by the first respondent under a sub-contract from S. The court was only required to determine whether there was such a contract and was not concerned with the question whether the contract was enforceable against the State. [81 G]

Although the contract was not in the form prescribed under Art. 299, it was not for that reason unlawful. It was always open to the State, notwithstanding informality in the mode of execution of the contract, to accept liability arising under the terms of the contract. Such a contract, although not enforceable by action against the Government was still to be regarded as disqualifying a person under s. 7(d). The first respondent had performed his part of the contract but no payment had been made to him. There was therefore a subsisting contract within the meaning of 7(d).

[79 A; 80 A-B; 91 B]

Chatturbhuj Vithaldas Jasani's case [1954] S.C.R. 817 applied; *Bhikraj Jaipuria v. Union of India* [1962] 2 S.C.R. 830 referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 211 of 1965. Appeal by special leave from the judgment and decree dated the April 25, 1964 of the Patna High Court in Election Appeal No. 11 of 1963.

Purshottam Trikundas and D. Goburdhun, for the appellant.

Sarjoo Prasad, Nagendra Kumar Roy and K. K. Sinha, for the respondent No. 1.

The Judgment of GAJENDRAGADKAR C.J., WANCHOO and SIKRI, JJ. was delivered by SIKRI J. The dissenting Opinion of HIDAYATULLAH and SHAH, JJ. was delivered by SHAH J.

65

Sikri J. This is an appeal by certificate granted by the High Court of Patna, directed against the judgment of the said High Court reversing the decision of the Election Tribunal, Muzaffarpur. This appeal arises out of the election of the respondent, Shri Bateshwar Prasad, to the Bihar Legislative Assembly from Lal Ganj North Constituency. The appellant was one of the candidates. He filed an election petition No. 133 of 1962, alleging inter alia that the election of respondent No. 1, Shri Bateshwar Prasad, was void as he was disqualified under s. 7(d) of the Representation of the People Act, 1951, hereinafter referred to as the Act. His complaint was that respondent No. 1 had entered into various contracts with the Government and that these contracts were subsisting on January 14, 1962, the date fixed for filing nomination papers. The Election Tribunal, after reviewing both oral and documentary evidence, held that the respondent had entered into contracts to do Mosaic flooring work in the Rajendra Surgical Block of Patna Medical Hospital and that these were subsisting on the date of the nomination, viz., January 14, 1962. The Election Tribunal further held that by virtue of cl. 3 (c) of the conditions embodied in the agreement, Ex. 'T', it was not at all necessary for the Public Works Department to have entered into a contract with the respondents company, called the Patna Flooring Company. In the result, the Election Tribunal declared the election of Respondent No. 1 to the Bihar Legislative Assembly from the Lal Ganj North Constituency as void, but refused the prayer of the petitioner before it to be declared elected. Both sides appealed to the High Court but we are only concerned with the election appeal No. 11 of 1963, filed by Bateshwar Prasad, the returned candidate. Before the High Court three points were taken :

(1) The appellant was not a contractor under the State Government for the mosaic work to be done in the Rajendra Surgical Block, but that at all relevant times, he was a sub-contractor under one G. P. Saxena, who was a contractor under the State Government for the purpose;

(2) Assuming that there was a contract within the meaning of section 7(d) of the Representation of the People Act, 1951 (Act 43 of 1951), sometime, there was no subsisting contract when the appellant had filed nomination paper in 1962 and thereafter;

66

(3) Assuming again that there was a contract between the appellant and the State Government some time, the contract alleged was void, in view of Article 299 (1) of the Constitution of India, so that the Tribunal could not have held that the appellant was disqualified. to be chosen as a candidate.

The High Court reviewed the entire evidence and came to the

conclusion on point No. 1 above that the appellant was not a contractor under the State Government but continued to be a subcontractor under Saxena for mosaic work. It also differed from the Election Tribunal on the interpretation of cl. 3(c) of Ex. '1'. On the second point, the High Court felt that in view of its decision on the first point, the question was of mere academic interest and there might be substance in the argument of the learned counsel for the respondent that this question ought not to be allowed to be raised at this stage. Regarding the third point, the High Court held that Chaturbhuj's case (Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram) (1) was distinguishable because in the instant case the State Government had not accepted the performance of the contract by the appellant. It further held that since the decision in Chaturbhuj's(1) case the law had been amended by the amendment of s. 7 (d) and the effect of the amendment was "that the candidate shall be disqualified for being chosen as a member only if there still exists, in substance, at the relevant time, a valid and binding contract between him and the appropriate government." The High Court further observed that "it is difficult to accept the contention of the learned counsel for the respondent that a transaction may be void under the Contract Act, but its factual existence may still be a disqualification under present section 7(d)." In conclusion, the High Court held that Bateshwar Prasad had not incurred a disqualification under s. 7(d') of the Act, and accordingly set aside the judgment and order of the Election Tribunal. Mr. Purshottam, the learned counsel for the appellant, has urged before us that the High Court was wrong in holding that the amendment had made any change in the law on the question whether the contract which is void under art. 299 of the Constitution is or is not a contract within s. 7(d) of the Act. He says that the reasoning of the decision of this Court in Chatturbhuj's(1) case still holds the field. He then says that the High Court came to a wrong conclusion on the question of fact in this case, namely, (1) [1954] S.C.R. 817.

67

whether the contracts subsisted or not at the relevant date, and that this Court should reverse the finding even though it is a finding of fact. Mr. Sarjoo Prasad, the learned counsel, for the respondent, controverts this point and he urges that this Court should not go into the question of fact. On the question of law, he says that the present s. 7 (d) is quite different from the old s. 7 (a) and that the Supreme Court decision cannot be applied to the wording of the present section.

Coming to the law point, it is necessary to set out the old and the new statutory provisions, and these are as under :

"7. A person shall be disqualified for being chosen, as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State....

(d) if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share of interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by the appropriate Government;"

As amended

"7. A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative

Assembly or Legislative Council of a State....
(d) if there subsists a contract entered into in the course of his trade or business by him with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government;".

Comparing the old section and the new section, there is no doubt that there has been a change in the wording. One change is quite clear and that is that the contract now must have been entered in the course of his trade or business by a person with the appropriate government. Previously it need not have been a contract in the course of trade or business. The words were much wider and included any contract entered into for his benefit or on his own account or a contract in which he had any share or interest. To this extent the Legislature has clearly narrowed the area of this disqualification. But is Mr. Sarjoo Prasad right in, contending that the change has gone further and that it only

embraces executory contracts but not executed contracts ? In our opinion, the Legislature has made no change in this respect for under the old provision it was also necessary for a contract to have subsisted at the relevant time. This Court had in Chaturbhuj's(1) case included both executed and executory contracts within the provision of S. 7 (d) and had refused to follow the English rulings to the contrary. We cannot go into the question whether this was rightly done or not for we are bound by that decision. Accordingly, following Chaturbhuj's(1) case we hold that a contract for the supply of goods or for the execution of any works or the performance of any services undertaken does not cease to subsist only because the goods had been supplied or work had been executed or services performed. It continues to subsist till payment is made and the contract is fully discharged by performance on both sides.

But whether Chaturbhuj's(1) case applies when a void contract has not been accepted or ratified by the Government, we will consider presently. Mr. Purshottam next contends that the respondent entered into two contracts and they were subsisting at the date of the nomination as the respondent had not been paid for his work and as a matter of fact a suit is pending against the Government for recovery of the money. He has taken us through the documentary evidence and it is now necessary to deal with it. The documentary evidence may be conveniently divided into two groups. The 'first group relates to documents bearing on the formation of the alleged contract. It appears that one G. P. Saxena had entered into a contract, Ex. D., for the construction of a surgical block in the Patna Medical College compound, Patna, and this contract was entered into in 1951, and the respondent was working as a sub-contractor under him. It further appears that there were some disputes between Saxena and the Public Works Department and he was not completing the work in time or to their satisfaction. Consequently, the Sub-Divisional Officer enquired from the Patna Flooring Company whether they would be willing to complete the work. Patna Flooring Company, on April 17, 1955, wrote to the Executive Engineer, through the Sub-Divisional Officer, and gave their quotations and terms and conditions. It may be noted here that these terms were different from the terms under which Saxena had taken the contract. This is an important fact and it is necessary to bear this in mind. On April 25, 1955, the Sub-Divisional Officer forwarded this letter to the Executive Engineer with the remarks that "the contractor

(1) [1954] S.C.R. 817.

69

is being asked to start work immediately as per your orders." The Executive Engineer noted on this letter as follows : "It is hoped necessary notice has been given by you to the defaulting contractor." The S.D.O. noted that "the contractor had already been served with a notice and a copy to your office vide T.O. No. 497, dated 20th April, 1955. The P.F.C. has been ordered to start work and a copy of that submitted to you vide T.O. No. 504, dated 20th April, 1955". On April 20, 1955, the Sub-Divisional Officer wrote to the Patna Flooring Company to "start immediately the remaining mosaic floor and dado work in the R. S. Block and finish the work completely within a fortnight as promised by you." He endorsed a copy of this letter to the Executive Engineer. He also sent a notice to Saxena informing him that as he had failed to do (in spite of repeated asking) the remaining mosaic work of floor and dado in Surgical Block, the remaining work was being got done by other agency and the cost would be recovered from him. He endorsed a copy of this to the Executive Engineer noting that the remaining work was being done by the Patna Flooring Company, as instructed by him. On May 13, 1955, the Executive Engineer warned Patna Flooring Company to finish the work within the stipulated time and that no extension of time would be granted if the work would be left unfinished. On May 23, 1955, the Sub-Divisional Officer again wrote to Patna Flooring Company saying that necessary instructions regarding slope etc. had already been given at the site, that there was no cause for delay in work and asked them to push up the progress of the work as it was a top priority work. It appears that by May 25, 1955, 90% of the work had been done and the Patna Flooring Company wrote to the Sub-Divisional Officer requesting that the S.O. Incharge of the said work be ordered to submit an on account bill for making payment to them at an early date.

Mr. Purshottam contends that on a perusal of the correspondence contained in this group it is quite clear that an oral contract for the construction of work was entered into between the Executive Engineer and the Patna Flooring Company and that the High Court had erred in holding that no such contract ever came into being. He points out that under cl. 3 (c) of the Contract, Ex. D, the Executive Engineer was entitled to ask the Patna Flooring Company to do the work. Clause 3 (c) reads as follows

"Clause 3.-In any case in which under any clauses of this contract the contractor shall have rendered himself liable to pay compensation amounting to the whole

70

of his security deposit in the hands of Government (which whether paid in one sum or deducted by instalments) to Executive Engineer on behalf of the Governor of Bihar, shall have power to adopt any of the following courses, as he may deem best suited to, the interests of Government....

(c) To measure up the work of the contractor, and to take such part of the work of the contract as shall be unexecuted out of his hands, and to give it to another contractor to complete, in which case any expenses which may be incurred in excess of the sum which would have been paid to the original contractor if the whole Work had been

executed by him (of the amount of which excess the certificate in writing of the Executive Engineer shall be final and conclusive) shall be borne and paid by the original contractor and may be deducted from any money due to him by Government under the contract or otherwise, or from his security deposit or the proceeds of sale thereof, or a sufficient part thereof."

We are inclined to agree with Mr. Purshottam that the correspondence in this group clearly discloses an agreement for the execution of work between the Executive Engineer and the Patna, Flooring Company, and the Election Tribunal was quite right in coming to this conclusion. But we may say that the Election Tribunal was not right in holding that cl. 3 (c) got rid of art. 299 of the Constitution. Any work which is given in exercise, of the powers under cl. 3(c) has also to comply with the provisions of art. 299 of the Constitution. What the effect of this is we will consider later.

Mr. Sarjoo Prasad, however, says that assuming that a contract was entered into, the contract did not subsist at the time of the nomination because the Government had refused to ratify the contract given under cl. 3(c) and that Chattrbhuji's(1) case does not lay down that a contract which has not been ratified by the Government is a contract within S. 7(d) of the Act. It seems to us that there is a great deal of force in the contention of the learned counsel. It is true that this Court has held in a number of cases, the latest being *New Marine Coal Co. (Bengal) v. The Union of India*(2), that a contract entered into with the Government in contravention of S. 175(3) of the Government of India Act, 1935, or art. 299 of the Constitution is void and unenforce-

(1), [1954] S.C.R. 817.

(2) A.I.R. 1964 S.C. 152.

71

able. But in *State of West Bengal v. B. K. Mondal*(1) this Court distinguished Chattrbhuji's(2) case on the ground that in the latter case "this Court was dealing with the narrow question as to whether the impugned contract for the supply of goods would cease to attract the provisions of s. 7(d) of the Representation of the People Act on the ground that it did not comply with the provisions of art. 299 (1), and this Court held that notwithstanding the fact that the contract could not be enforced against the Government it was a contract which fell within the mischief of s. 7(d)." This Court further observed that "all that this Court meant by the said observation (of Bose J. in Chattrbhuji's(2) case at p. 835, quoted below) was that the contract made in contravention of art. 299(1) could be ratified by the Government if it was for its benefit and as such it could not take the case of the contractor outside the purview of s. 7(d). The contract which is void may not be capable of ratification, but, since according to the Court the contract in question could have been ratified it was not void in that technical sense. That is all that was intended by the observation in question." But the question arises whether Chattrbhuji's(22) case can be extended to cover a case where the contract has in fact not been ratified. Bose J. observed in Chattrbhuji's(2) case as follows :

"In the present case, there can be no doubt that the Chairman of the Board of Administration acted on behalf of the Union Government and his authority to contract in

that capacity was not questioned. There can equally be no doubt that both sides, acted in the belief and on the assumption, which was also, the fact, that the goods were intended for Government purposes, namely, amenities for the troops. The only flaw is that the contracts were not in proper form and so, because of this purely technical defect, the principal could not have been sued. But that is just the kind of case that s. 230 (3) of the Indian Contract Act is designed to meet.... It only means that the principal cannot be sued; but we take it there would be nothing to prevent ratification, especially if that was for the benefit of Government. There is authority for the view that when a Government officer acts in excess of authority Government is bound if it ratifies the excess : see *The Collector of Masulipatam v. Cavalry Venkata Narrainapah* (8 M.I.A. 529 at 554)."

(1) A.I.R. 1962 S.C. 779. (2) [1954] S.C.R. 817.

72

It seems to us that the decision in *Chatturbhuj's*(1) case cannot be extended to cover a case where the Government has in fact not ratified the contract. If we were to hold that this type of transaction is covered then we would be giving no effect to the word "contract" in s. 7 (d) and we would be substituting the word "agreement" for it. The Legislature has not chosen to use the word "agreement" but has used the word "contract". Therefore, a mere agreement entered into in contravention of art. 299 and in fact not ratified cannot be called a "contract" within s. 7(d) of the Representation of People Act.

The question then arises whether the Government did or did not ratify the oral contract entered into between the Executive Engineer and the Patna Flooring Company. In this connection, Mr. Sarjoo Prasad, relies on a number of documents. The first document he refers to is Ex. A-2, dated July 12, 1955. The Sub-Divisional Officer wrote to the Patna Flooring Company as follows :

"It is disappointing to note that in spite of my repeated askings you have not submitted your final bill for the mosaic work until now. I have been personally explaining to you the whole position and you promised to submit your final correct bill on Friday the 8th July, 1955 so that I may ask the contractor Shri G. P. Saxena to pay you off finally and settle your accounts immediately."

It appears that something happened between May 25, 1955 and July 12, 1955. According to the respondent, what happened was that Saxena approached the Superintending Engineer and the Superintending Engineer ordered that Saxena would continue to be the contractor as before and no contract would be given to any firm. The respondent stated this in his evidence as R. W. 32. It is objected that this is hearsay and this part of the statement is not admissible. There is some force in this contention and we omit this part of the statement from consideration. But apart from this oral evidence it is quite clear from this letter that something happened, otherwise it was not necessary to use the words "personally explaining to you the whole position" in this letter, and it is not understandable why the Patna Flooring Company was being asked to submit the bill to Saxena. This inference is strengthened by subsequent correspondence. By letter, dated July 13, 1955, Ex. A3, the S.D.O. acknowledged the receipt of the bill and said

(1) [1954] S.C.R. 817.

73

that he had sent it to Saxena for making settlement. Ex. A-17, dated July 20, 1955, is significant. The Sub-Divisional Officer requested Saxena to issue orders to his contractors "to mend and rectify all the cuttings and damages properly and nicely so that the building is in a fit condition for handing over on 1-8-1955." On July 23, 1955, Saxena endorsed it to the Patna Flooring Company for information and necessary action and with the request to rectify the defects pointed out to the Patna Flooring Company and complete the remaining portions of works and give final polishes thereto by the schedule date. It is not understandable why Saxena was endorsing this for action to Patna Flooring Company unless the Government had chosen not to ratify the contract with the Patna Flooring Company and was still treating him as a contractor. It is also significant that it has not been alleged or, proved that any similar letter was written to Patna Flooring Company direct by the S.D.O. On July 21, 1955, a "statement showing up to 21st day of July, 1955, correct amount for the mosaic work done by M/s. Patna Flooring Co. in the Rajendra Surgical Block, Patna Medical College and Hospital, Patna-Transactions between Shri G. P. Saxena, Prop. M/s. G. P. Saxena & Co. and M/s. Patna Flooring Co." was made out and this statement of account shows "Bill No. BP/1833/45/55, dated 13-7-55 through the S.D.O. No. III Subdivision, Construction Division, Patnabill for Rs. 14,000/9/-" and Saxena agreed to settle this bill, and a copy of that statement was forwarded to the Executive Engineer for record with reference to the discussion which was held between Saxena and Prasad in his presence and the presence of the S.D.O.' This statement shows that the Government Officer was acknowledging that the liability for work done by the Patna Flooring Company would be that of Saxena. If a direct contract between the Patna Flooring Company and the Government still subsisted, all this arrangement seems to be uncalled for.

Mr. Sarjoo Prasad further points out an important fact that when Saxena submitted the bill to the Government, he not only charged for the work done by the Patna Flooring Company but he charged it at the rates contained in his own contract and not in the quotations, dated April 14, 1955, given by the Patna Flooring Company. We agree with him that this is a very significant fact and shows that as far as the Government was concerned, the original contract stood and the Government had not chosen to treat Patna Flooring Company as a contractor, but only as a subs. contractor working under Saxena.

74

Mr. Purshottam laid a great deal of stress on the pleadings in the money suit No. 53 of 1959. There is no doubt that the plaint in the money suit filed by the Patna Flooring Company shows that Bateshwar Prasad, plaintiff, was trying to make out that there was a direct contract entered into between the P.W.D. and the plaintiff, but even so, the plaint does not make them solely responsible. We have also come to a finding that there was admittedly a contract -in the beginning. The fact that the plaint does not allege any subsequent non-acceptance or refusal to ratify by the Government -would not stop the respondent from proving in this case that on the material on record it is clear that the Government had not -ratified the contract with the respondent but confirmed the original contract with Saxena. The written statement filed by the Government in the money

suit cannot be used to destroy the inference which clearly arises from the documents referred to above. It is doubtful whether the written statement can be taken into consideration at all.

In the result we hold that no contract between respondent No. 1 and the Government subsisted at the relevant time, viz., the date of the nomination, and the respondent was not disqualified under 7(d). The appeal accordingly fails and is, dismissed with costs.

Shah J. At the general elections held in February 1962 the appellant Laliteswar Prasad Sahi and the first respondent Bateswar Prasad contested a seat from the Lalganj North constituency in the Bihar Legislative Assembly. The first respondent was declared elected. The appellant then filed a petition before the Election Tribunal, Muzaffarpur, for an order declaring the election of the first respondent void on the ground that the first respondent was disqualified under S. 7(d) of the Representation of the People Act 1951-hereinafter called 'the Act'-for being a member of the Bihar Legislative Assembly, and for an order that the appellant be declared duly elected. The Election Tribunal disqualified the first respondent under S. 7(d) of the Act because in the view of the Tribunal on the date on which the first respondent filed the nomination paper there was a subsisting contract between him and the State of Bihar for execution of works undertaken by the Government. The Tribunal declined to declare the appellant duly elected.

Against the order passed by the Tribunal, appeals were preferred to the High Court of Patna by the appellant and the first respondent under s. 116-A of the Act. In the view of the High Court. the first respondent was not disqualified from being elected

75

a member of the Bihar Legislative Assembly because there was at the date of nomination no subsisting contract for supply of goods or execution of works between the first respondent and the Government of Bihar. The appeal filed by the first respondent was accordingly allowed and the appeal filed by the appellant was dismissed. With certificate granted by the High Court, the appellant has preferred this appeal. Section 7 (1) (d) of the Act as it stood at the relevant time read as follows

"A person shall be disqualified for being chosen as and for being, a member of either House of Parliament, or of the Legislative Assembly or Legislative Council of a State.

(d) If there subsists a contract entered into in the course of his trade or business by him with the appropriate Government for the supply of goods to, or for execution of any works undertaken by that Government."

The appellant contends that the first respondent was disqualified from being a member because there was between him and the Government of Bihar a subsisting contract relating to execution of works for the Government. Two components of the issue to be determined in this appeal are: whether at the relevant time there was between the State of Bihar and the first respondent a contract in the course of the first respondent's trade or business for execution of any work undertaken by that Government and whether at the material time the contract was subsisting. The Trial Court answered both the components in the affirmative. The High Court was of the view that there was no contract at any time between the State of Bihar and the first respondent. The appellant's case was that the first respondent and his

son Bhupendra Nath Prasad carried on business of executing mosaic flooring, plumbing and sanitary works in the name of M/s Patna Flooring Company, that the first respondent on behalf of M/s Patna Flooring Company had obtained contracts from the Government of Bihar for doing "Mosaic and dado works" at Rajendra Surgical Block of Patna General Hospital, and that in connection with the said contracts the first respondent had filed suit No. 53 of 1959 in the Court of the Subordinate Judge, Patna, against the State of Bihar the Executive Engineer, P.W.D. (Construction Division No. 1) and others for a decree for Rs. 18,5000/- and it
Sup. C.I../66-6

76

was claimed in the plaint in that suit that there was a "direct contract" between the first respondent and the State of Bihar, and on that account the first respondent was disqualified under S. 7(d) of the Act from being a member of the Bihar Legislative Assembly. The first respondent denied that he was looking after the business of M/s Patna Flooring Company on the date of filing of the nomination paper and contended that the contract for doing mosaic work at Rajendra Surgical Block of the Patna Medical College General Hospital was between G.P. Saxena and the Government of Bihar, and that he--the first respondent--had never entered into a contract with the Government of Bihar for doing mosaic work at Rajendra Surgical Block and that in any event there was no subsisting contract at the date of his nomination as a candidate.

There is on the record a mass of documentary evidence which throws light upon the question in dispute. Saxena had submitted in March 1951 his tender for the construction work of the Rajendra Surgical Block at Patna, which was undertaken by the Government of Bihar. Items 39 & 40 of the contract related to "mosaic flooring and dado". For "mosaic flooring" the rate tendered and accepted was Rs. 2/4/- per sq. ft and for "mosaic dado" the rate was Rs. 2/8/- per sq. ft. By cl. 2 of the conditions of the contract, it was provided, inter alia, that the contractor shall strictly carry out the work within the time stipulated with all due diligence and that the contractor, shall pay as compensation amounts equal to 1/3 per cent, on the estimated cost of the whole work as shown by the tender for every day that the work remains uncommenced or unfinished after the agreed dates. By clause 3 it was provided that in any case in which the contractor shall have rendered himself liable to pay compensation amounting to the whole of his security deposit in the hands of the Government, the Executive Engineer shall have power to adopt any of the following courses, as he may deem best suited to the interests of Government :

- (a) To rescind the contract;
- (b) To employ labour paid by the P.W.D. to carry out the work, or any part of the work, debiting the contractor with the cost of labour;
- (c) To take away such part of the work of the contract as shall be unexecuted out of his hand-,, and to give it to another contractor for completion.

77

The first respondent was working as a sub-contractor under Saxena in certain sections of the work undertaken by the latter. In April, 1956, Saxena was unwilling or unable to complete the "mosaic flooring" and "mosaic dado" under his contract, and negotiations took place between the Executive

Engineer, Construction Division, and the first respondent regarding completion of that work by the first respondent. On April 17, 1955, the first respondent addressed a letter Ext. 1 (g), to the Executive Engineer recording the conversation he had with the Executive Engineer relating to the rates of mosaic work etc., and submitted his terms and conditions. The rates offered by the first respondent were substantially lower than those under the contract with Saxena, but he requested that certain construction materials be supplied by the Department on his account, and the price thereof may be debited against his bill. The Executive Engineer made a note on this letter "It is hoped, necessary notice has been given to the defaulting contractor". On April 20, 1955, the Sub-Divisional Officer made a note that the contractor (Saxena) had "already been served with a notice" and that the first respondent's firm had been ordered to start the work. On April 20, 1955, the Sub-Divisional Officer addressed a letter Ext. 1 (c) to M/s Patna Flooring Company as under :

"As ordered by the Executive Engineer, please start immediately the remaining mosaic floor and dado work in the R. S. Block and finish the work completely within a fortnight as promised by you."

Intimation about entrustment of the work to M/s Patna Flooring Company was also given to Saxena by letter Ext. 1 (j). It was stated in that letter :

"As you have failed to do (in spite of repeated askings) the remaining mosaic work of floor and dado in Surgical Block, the remaining work is being got done by other agency and the cost will be recovered from your bill which plea&-, note."

M/s Patna Flooring Company was called upon by letters dated May 7, 1955 and May 13, 1955 and May 23, 1955 to complete the work within the period stipulated. On May 25, 1955 M/s Patna Flooring Company addressed a letter to the Sub-Divisional Officer informing him that his firm had finished about 90% of the entire work entrusted to them, and requested that an "on account payment" may be made to them. There is on the record no further correspondence in regard to the mosaic flooring and dado

78

work in the Surgical Block. On December 23, 1955, the Sub-Divisional Officer addressed a letter to M/s Patna Flooring Company referring to an "oral order" of the Executive Engineer and requested the Company to do mosaic work in "two bath rooms and laboratory of the Lecture Theatre" and asked them "to do the work as, per instructions". On April 4, 1956 M/s Patna Flooring Company submitted a bill for the "flooring and dado work" done in the bath rooms of the Lecture Theatre under the orders of the Executive Engineer and of the Sub-Divisional Officer and requested that payment be made to them. A copy of that letter was sent to the Sub-Divisional Officer along with a copy of the bill for the work done, for information and for immediate payment, but no payment was made. The P.W.D. authorities, it appears, thought that instead of making the payment directly to the first respondent, Saxena should be called upon to pay the amounts due to M/s Patna Flooring Company for work done by them. This is evidenced by several letters on the record to which we will presently refer.

Interrupting the narrative at this stage, it may be observed that the evidence set out leaves no room for doubt

that there were negotiations between M/s. Patna Flooring Company and the Executive Engineer for carrying out "mosaic flooring and dado work" which was part of work Saxena had undertaken to do and which he had failed to complete. The Executive Engineer asked M/s Patna Flooring Company to carry out that work and the latter submitted its own schedule of rates, and asked for certain facilities which did not form part of Saxena's contract. In our view Ext. 1 (g) dated April 17, 1955 and Ext. 1 (c) dated April 20, 1955 constitute an offer to execute "the mosaic and dado" work and acceptance thereof on behalf of the Government of Bihar. The work of "mosaic flooring and dado" work in the Rajendra Surgical Block which was part of the contract of Saxena was completed by M/s Patna Flooring Company in July 1955 after Saxena was intimated that the work which remained to be done would be completed through other agency. Similarly under the instructions of the Executive Engineer they did the work of "mosaic flooring and dado work" in the bath rooms and the Lecture Theatre some time after January 1956. These contracts were not in the form prescribed by S. 299 of the Constitution, and the contracts not being expressed to be entered into by the Governor of the State and in the manner directed by the Governor were unenforceable against the State: see *Bikhraj Jai-puria v. Union of India*(1). But the contracts were not, because (1) [1962] 2 S.C.R. 880.

79

they were not executed in the manner or in the form prescribed by Art. 299 of the Constitution, unlawful. It is always open to the State, notwithstanding informality in the mode of execution of the contract to accept liability arising under the terms of the contract. There is no dispute that the Executive Engineer was competent on behalf of the State to, enter into contracts with M/s Patna Flooring Company in respect of both the items of work. The contracts resulted from offer 'by M/s Patna Flooring Company and acceptance by the Executive Engineer. It has been held by this Court that in cases arising under the Act, a contract not enforceable by action against the Government may still be regarded as a contract which disqualifies a person from standing for election as a member of the legislature under s. 7(d): see *Charturbhuj's case*(2). In *Chatturbhuj's case* no contract was executed in the manner prescribed by Art. 299 of the Constitution. The contract in that case was one for supply of goods. The Court in considering whether the existence of a contract not in the form described by Art. 299 of the Constitution disqualified a person under s. 7(d) observed at p. 835 :

"It would, in our opinion, be disastrous to hold that the hundreds of Government officers who have daily to enter into a variety of contracts often of a petty nature, sometimes in an emergency, cannot contract orally or through correspondence and that every petty contract must be effected by a ponderous legal document couched in a particular form. It may be that Government will not be bound by the contract in that case, but that is a very different thing from saying that the contracts as such are void and of no effect. It only means that the principal cannot be sued; but we take it there would be nothing to prevent ratification, especially if that was for the benefit of Government. There is authority for the view that when a Government officer acts

in excess of authority Government is bound if it ratifies the excesses. The Collector of Masulipatam v. Cavalry Venkata Narrainapah-8 M.I.A. 529 at 554."

It was also held that s. 7(d) of the Act did not require that the contracts at which it strikes, should be enforceable against the Government: all that it requires is that the "contract should be for the supply of goods to the Government." The purpose of the Act it was observed, is to maintain the purity of the legislatures and to avoid a conflict between duty and interest, and that it is (1) [1954] S.C.R. 817.

80

obvious that the temptation to place interest before duty is great when there is likely to be some difficulty in recovering the money from the Government. Absence of a formal contract in the terms of Art. 299 of the Constitution will not therefore affect the operation of disqualification prescribed by s. 7(d) of the Act.

The inference arising from the documentary evidence, which we have already set out, is further strengthened by the admissions made by the first respondent many years after execution of the "mosaic and dado" work. In a notice served by him upon the Government of Bihar under S. 80 of the Code of Civil Procedure On January 3, 1959 for payment of the amount due to him for "mosaic flooring and dado work" in the Rajendra Surgical Block and the bath rooms and lecture theatre in the year 1955-56, M/s Patna Flooring Company stated that "suspension of the work by Saxena made the P.W.D. authorities anxious" and they called upon them to continue the work. It was then stated in paragraph- 11 :

"That the P.W.D. authorities, when failed in their attempt to persuade Shri G. P. Saxena to continue the work approached Sri Bateshwar Prasad, one of my said clients, to take up the work direct and assured full payment by deducting from the bills of Shri G. P. Saxena or by preparing direct bills, in the nature of a contract of guarantee."

In paragraph-12 it was stated

"That as a result of the said approach and assurance, letter No. BP/1763/28/55 dated 17-4-1955 was addressed by the firm of my clients to the Executive Engineer quoting rates rather less than the rates on which Sri G. P. Saxena got the work from the P.W.D. Department which was confirmed in letter No. 504, dated 20-4-1955 from the S.D.O. No. III Sub-division, Construction Division, Patna where in the department asked my clients to proceed with the remaining work

In paragraph-13 it was stated:

"That on the receipt of the said letter dated 20-4-1955 my clients started doing the work and received materials from the P.W.D. Stores from time to time."

81

In paragraph-14 it was stated

"That the firm of my clients was in direct contract with you and your department....."

In paragraph-16, the letter dated June 5, 1955 informing the Executive Engineer about the completion of the work is referred to, and it is stated that on July 13, 1955 M/s Patna Flooring Company had submitted their bill for Rs.

14,000/- to the Executive Engineer. By this notice the first respondent demanded from the State of Bihar Rs. 22,947/07 nP and Rs. 5,000/- as damages and loss sustained by M/s Patna Flooring Company.

In the plaint in suit No. 53 of 1959 filed by M/s Patna Flooring Company by paragraphs -6, 7 and 8 substantially the same averments were made. In paragraph-7 of the plaint it was stated "Thus it is clear the plaintiffs and their firm began the work under a direct contract from the P.W.D. which also appears from letter No. 705 and 706 dated 23-5-55 addressed to the plaintiffs firm by the S.D.O. No. III Sub-division..... and in paragraph-8 it was stated that "the mosaic work done by the plaintiffs had been done under a direct contract from the P.W.D. authorities and "Sri G. P. Saxena had no interest in this mosaic work but if any how it has been entered in the M.B. in the name of Sri G.P. Saxena then the payment to the extent of the plaintiffs dues should be withheld and the same should be paid to the plaintiffs by the P.W.D. authorities."

We are informed at the Bar that suit No. 53 of 1959 has as yet not been disposed of.

We are called upon in this case to decide whether it is established that there was a contract between the State of Bihar and the first respondent relating to construction work, which disqualified him from being a member of the Bihar Legislature. We are not concerned to decide 'whether the contract was enforceable against the State. The evidence already set out in our view abundantly supports the case, that there was a contract directly between the first respondent and the State of Bihar relating to the execution of work, and that the contract was made in the course of the first respondent's trade or business.

The first respondent had pleaded in his written statement that there was in fact no contract and that he (the first respondent) had completed the "mosaic and dado work" in the Surgical Block,

82

the bath rooms and the lecture theatre as a sub-contractor of Saxena. In so pleading he sought to ignore the letters Exts. 1 (g), 1 (c) and the relevant correspondence. No explanation was attempted before the Election Tribunal explaining that correspondence. It was merely urged that the two letters Exts. 1 (g) & 1 (c) between M/s Patna Flooring Company and the P.W.D. authorities and the other correspondence between the Executive Engineer and, Saxena indicated that the "mosaic flooring and dado work" was completed by the first respondent as an agent of Saxena. It is urged in this Court for the first time that assuming that Exts. 1 (g) & 1 (c) amounted to an offer by the first respondent and acceptance thereof by the Executive Engineer, that offer and acceptance thereof could amount to a binding contract between M/s Patna Flooring Company and the Government of Bihar, only if the Superintending Engineer accepted or ratified the contract and in the absence of any evidence to that effect, the offer and acceptance did not give rise to any contract disqualifying the first respondent under s. 7(d) of the Act.

We may at once observe that the subsequent correspondence and settlement of accounts Ext. G contain at best ambiguous statements which do not raise any inference in favour of the first respondent. We may briefly refer to this evidence. On July 12, 1955 the Sub-Divisional Officer addressed a letter to M/s Patna Flooring Company intimating that it was "disappointing to note that in spite of repeated askings" the firm had not submitted their final bill for the mosaic

work till that date. The letter then proceeded "I have been personally explaining to you the whole position and you promised to submit your final correct bill on Friday the 8th July, 1955 so that I may "ask the contractor Shri G. P. Saxena to pay you off finally and settle your accounts immediately." This letter clearly indicates that in the view of the Sub-Divisional Officer the bill had to be submitted by the first respondent to the P.W.D. -authorities and that they would persuade Saxena on account of whose default the contract with the first respondent was necessitated to pay the amount due to him. The next letter is dated July 13, 1955 addressed- by the Sub-Divisional Officer to M/s Patna Flooring Company intimating that the bill of M/s Patna Flooring Company had been sent to Saxena for immediate settlement and payment, and asking the Company to settle the account with Saxena and to receive payment from him and to report to the P.W D. authorities. On July 20, 1955 there is another letter from the Sub-Divisional Officer forwarding a copy of letter No. 949 dated July 20, 1955 which was addressed

83

to Saxena asking the latter to issue orders to his contractors to mend and rectify all the cuttings and damages properly so that the building may be in a fit condition for handing over on August 1, 1955. A copy of this letter was forwarded to M/s Patna Flooring Company for their information and necessary action, and they were asked to rectify all the defects pointed out to them and to complete the remaining work by the scheduled date. It may be noticed that Saxena's contract in its entirety was not terminated : only a part of the contract had been taken away from him. Directions had therefore to be given to him to complete the contract of the building and to hand over the same by July 31, 1955, and to M/s Patna Flooring Company to rectify all the defects pointed out of them. If M/s Patna Flooring Company were merely a subcontractor, there is no reason why a copy of this letter should have been addressed to them and that they should have been asked to rectify the defects. On July 21, 1955 a statement of account was drawn up in respect of the mosaic work done by M/s Patna Flooring Company in the Rajandra Surgical Block. It is described as "a statement of account of mosaic work between G. P. Saxena and Messrs Patna Flooring Company". On the credit side of the account are three items : Rs. 57,443/4/3 in respect of bill dated November 25, 1933 ; Rs. 4,719/9/3 in respect of bill dated March 31, 1955 -and Rs. 14,000/- in respect of bill dated July 13, 1955 through the Sub-Divisional Officer No. III Sub-division, Construction Division, Patna. On the debit side., are various items of payments aggregating to Rs. 49,754/9/3 leaving a balance, of Rs. 26,408/13/3. Against that amount a cheque for Rs. 15,000/- is recorded as given on July 21, 1955 on the Bank of Bihar Ltd., leaving a balancer of Rs. 11,408/13/3, There are two notes at the foot of this account. The first part of note No. (1) deals with the, bill dated March 31, 1955 which is not material. It then proceeds to record that M/s Patna Flooring Company will be responsible for rectification of the defects in mosaic work in bill No.-BP/1838/35/55 and 93/55 dated July 13, 1955 and March 31, 1955 respectively. Note No. (2) states that M/s Patna Flooring Company will realise from Saxena immediately the amount of the claim for work included in the third bill. This is signed by the first respondent. At the foot of these two notes there are two endorsements one signed by Saxena and the other by the first respondent. In the endorsement signed by Saxena it is stated that the account

was correct and he admitted that Rs. 11,408/13/3 were due from him which he promised "to pay very soon". It was also stated that the terms of the original agreement between Saxena and M/s Patna Flooring Company

84

will also remain operative. The endorsement signed by the first respondent states :

"Agreed and accepted the cheque for Rs. 15,000/We shall finish the final polish work within a very short time. As the account has been settled today, the 21st July, 1955. I am herewith returning the cheque No. BZ/131 08046 dated 18-1-55 drawn on the Imperial Bank of India, Patna for Rs. 12,000/- and balance now stands as mentioned Rs. 11,408/13/3 as per settlement, subject to encashment of to-day's cheque No. G140696 dated 21-7-1955 on the Bank of Behar Ltd. Patna."

A copy of this account was forwarded to the Executive Engineer, 'Construction Division, through the Sub-Divisional Officer "for information and record with reference to the discussion which was held between" Saxena and the first respondent "in his presence and the presence of the Sub-Divisional Officer No. III Subdivision." Strong reliance was placed upon this document by counsel for the first respondent in support of his claim that there was in truth no contract between the State of Bihar through its P.W.D. authorities and the first respondent, but the contract continued at all material times to subsist between Saxena and the State of Bihar. -After carefully considering this argument, in our view, this document is not susceptible of any such interpretation The P.W.D. authorities had adopted the attitude that even though they were liable to meet the bill of M/s Patna Flooring Company for the work done under the arrangement arrived at between them by Exts. 1(g) and 1(c) they would procure payment of the amount due from Saxena. The first respondent had admittedly done the work in respect of two bills dated November 25, 1953 and March 31, 1955 as sub-contractor for Saxena. A third bill for Rs. 14,000 had been submitted for the work done by the first respondent for which the bill was sent to the Sub-Divisional Officer. Saxena was apparently refusing to make the payment, and a meeting was arranged in the presence of the Executive Engineer and the Sub-Divisional Officer in which a consolidated account was made and Saxena agreed to pay the balance of Rs. 26,408/13/3 and against which he gave a cheque for Rs. 15,000/-. This statement of account cannot conceivably be utilised in support of the case of the first respondent that there was no contract between him and the P.W.D. authorities representing the State of Bihar: it is merely a settlement arrived at between the first respondent and Saxena in the presence of the

85

Executive Engineer and the Sub-Divisional officer under which Saxena agreed to pay the amount of Rs. 11,408/13/3 remaining due on the consolidated account. The settlement at the instance of the Executive Engineer and the, Sub-Divisional Officer does not purport to wipe out the contract which was previously arrived at and the construction work done in pursuance of that contract, and the mere endorsement under the signature of Saxena that the terms of the original agreement between him and M/s Patna Flooring Company will also remain operative only indicates that M/s Patna Flooring Company may continue to work as subcontractor of Saxena, lost it might give an impression that the sub-contract

between Saxena and M/s Patna Flooring Company was terminated.

For the work which Saxena failed to complete, he was liable to compensate the Government under the terms of his contract. The Executive Engineer had informed Saxena that the amount payable to the first respondent would be deducted from his bill, and had on diverse occasions called upon Saxena to pay the amount due, to the first respondent. The first respondent was concerned to receive the money due to him, and it was a matter of no consequence to him whether the Government paid it directly or the authorities got it paid by Saxena. The desire of the first respondent not to imperil his position as a contractor with the Government in P.W.D. contracts may well be understood. It is difficult to appreciate how this settlement made in the presence of the Executive Engineer, whereby Saxena agreed to discharge the liability of the Government, in consideration of discharge of his own liability under his contract, negatives the existence of the contract between the Government of Bihar and the first respondent.

There is on the record correspondence relating to the demands for payment by the first respondent. A letter dated March 28, 1956 was addressed by Saxena to the Executive Engineer informing him that M/s Patna Flooring Company had not sent their bill to him and that they may be directed to furnish a copy of their bill to enable him to check the same and arrange payment. This letter refers to the payment for the work done after December 1955, because the bill in respect of the work done in July 1955 had already been submitted and was the subject-matter of the settlement of account Ext. G. There are letters dated August 21, 1957, December 7, 1957 and March 8, 1958 in which the Executive Engineer called upon Saxena to settle the claim of M/s Patna Flooring Company. There is draft of a letter of the Executive Engineer dated March 16, 1958 reciting that Saxena was requested several

86

times to settle the claim amicably "but he was not in a mood to do so and wanted to drag the department into litigation". The second paragraph of that letter is important. It states

"As a matter of fact when Shri Saxena failed to complete the particular item of work M/s Patna Flooring Co., were engaged at the instance of the then Departmental Officer. Materials were also issued to them, the cost of which are still outstanding against them. And as such the department will have to pay the amount in question to M/s Patna Flooring Co. for the work done by them. It may be added here that the work done here by this time has already been billed for in favour of Shri G.P. Saxena. The correct procedure in this case would have been for the department to make payment to M/s Patna Flooring Co."

By the last paragraph it is recorded that Saxena may be advised to settle the matter amicably and to obtain a clearance certificate from M/s Patna Flooring Company. The Superintending Engineer also addressed a letter to Saxena on May 26, 1958 calling upon him to settle the matter amicably with M/s Patna Flooring Company within a month and threatening that the amount due will have to be deducted from his final bill. A copy of this letter was forwarded to M/s Patna Flooring Company.

It appears that on July 25, 1958, Saxena submitted a statement about the construction work done by him and included

therein the work done by M/s Patna Flooring Company. At the foot of the bill is a memorandum, relating to payments made from time to time and the last item shown therein is Rs. 13,897/- due to M/s Patna Flooring Company. Saxena not having paid the amount to M/s Patna Flooring Company, a letter dated September 10, 1958 was addressed to Saxena by the Executive Engineer in which it was recorded that the contractor's (Saxena's) representative had seen the Executive Engineer in his office at the time of refund of the security deposit kept back on account of income-tax dues and had promised that he would settle up the account with M/s Patna Flooring Company and pay their dues immediately, and that although the "refund of the amount had already been given the dues of M/s Patna Flooring Company had not been cleared". Saxena was once more requested to clear off the dues of M/s Patna Flooring Company so that the refund of the amount kept in deposit may be given to him.

87

This is all the material correspondence on which the first respondent has relied. The correspondence makes it abundantly clear that the primary liability for payment of the dues was of the State of Bihar and they accepted that liability. The Bill of M/s Patna Flooring Company was received by the P.W.D. authorities and they called upon Saxena to satisfy the claim because under the terms of the contract the liability for payment would ultimately be enforced against Saxena. None of these letters even indirectly suggests that the contract for work done by M/s Patna Flooring Company in the matter of "mosaic flooring and dado work" was done in execution of the subcontract which that Company had obtained from Saxena. The anxiety evinced by the Superintending Engineer, the Executive Engineer and the Sub-Divisional Officer that the claim of M/s Patna Flooring Company be settled by payment through Saxena is consistent with the case that the primary liability was of the State of Bihar and the P.W.D. authorities wanted to avoid litigation. The conduct of the authorities in the context of the documents to which we have already referred to is in our view consistent only with the inference that the construction work was done by M/s Patna Flooring Company under a contract directly with the P.W.D. authorities.

M/s Patna Flooring Company were approved contractors and if they were made to believe that Saxena will be induced to pay the amount due to them, it was not expected that they would incur the displeasure of the authorities, by insisting upon payment directly by the State. The offer and acceptance incorporated in Exts. 1 (g) and 1 (c) the construction work done by M/s Patna Flooring Company, thereafter the submission of the bills by M/s Patna Flooring Company for payment, the anxiety of the P.W.D. authorities that payment should be made to M/s Patna Flooring Company and their intervention in securing payment and anxiety to avoid litigation clearly establish that the contract pursuant to which the work of "mosaic flooring and dado" was done was between M/s Patna Flooring Company and the Government directly. the contract was not unauthorised and therefore no question of ratification arises. It may also be noticed that the contract required to be ratified and was not ratified was never raised in the trial Court or in the High Court.

The argument -that after the contract was entered into, the Superintending Engineer had countermanded the arrangement, is in our judgment without substance. On the letter dated May 16, 1958 there is an endorsement presumably by the Executive Engineer in which it is recorded that M/s Patna

Flooring Company

88

were engaged at the instance of the then Departmental Officers for completing the work left incomplete by Saxena, and it is followed by a query "Was the sanction of S.E., S 'B.C. taken to this arrangement, if so, copies of the correspondence may please be furnished ?" There is no record of the reply, if any, given to this query. There is, however, at the foot of the letter an endorsement dated May 17, 1958, made by some one "write to, the contractor". It is true that the Superintending Engineer was in overall charge of the construction work and by the terms of the tender itself the authority of the Executive Engineer to accept the tender is limited : cl. 9 of the form of tender Ext. D. But there is no evidence on the record that the Superintending Engineer had at any time countermanded the arrangement between the Executive Engineer and M/s Patna Flooring Company. The first respondent in his examination before the Trial Court stated that

"I had sent Ext. 1 (g) to S.D.O., P.W.D. No. 3 mentioning the rates and terms that my firm had with G. P. Saxena for construction of mosaic and Dado work in Rajendra Surgical Block. No direct contract was ever entered with between P.W.D. department and my firm even after this letter Ext. 1 (g). Saxena went to Superintending Engineer and objected. The Superintending Engineer ordered that Saxena will continue to be the contractor as before and no direct contract will be given to any firm."

But it is not suggested that there was any such arrangement in the presence of the first respondent. The Superintending Engineer has not been examined, and there is on the record no evidence to support this part of the case, which was never set up in the Trial Court and the High Court.

The admissions made by the first respondent in his notice and the plaint in suit No. 53 of 1959 were sought to be explained by him on the plea that he had signed the plaint and the verification without reading the plaint of the suit as the plaint was required to be filed in great hurry. A similar explanation was also given in respect of the contents of the notice. It is difficult to accept this explanation which was invented with a view to get out of the inconvenient admissions. The Executive Engineer Mukteshwar Prasad in his evidence stated that the Sub-Divisional Officer had given a warning to Saxena that his contract would be terminated and a part of the work would be done through another agency

89

and that thereafter M/s. Patna Flooring Company were engaged to complete the work. Rameshwar Prasad Singh, who succeeded Mukteshwar Prasad as the Executive Engineer also said that the unexecuted part of the mosaic work was taken away from Saxena and was entrusted directly to, M/s. Patna Flooring Company and that M/s. Patna Flooring Company were directed to complete the work. It was never suggested to either of these witnesses that the arrangement was countermanded by the Superintending Engineer.

The first respondent approached the Court denying that there was a contract between him and the State of Bihar relating to the construction work. That denial is falsified by letters Exts. 1(g) and 1 (i) and is further falsified by his statements made by him on oath in his plaint. On his own admissions, the first respondent is a person who is willing

to trim his sails as his interest demands. The explanation given by the first respondent regarding the admissions made by him in the plaint cannot be accepted as truthful. On a careful consideration of all the circumstances, we are unable to agree with the High Court that there was no contract between the first respondent and the P.W.D. authorities representing the State of Bihar in respect of the "mosaic and dado work" by Exts. 1 (g) and 1 (c) pursuant to which the first respondent carried out the work independently of Saxena.

It now remains to consider whether there was a subsisting contract at the date of filing of the nomination paper. The work of construction entrusted to the first respondent was completed in July 1955 and in respect of "bath rooms and the lecture theatre" was completed sometime before April 1956. The first respondent had not been paid the amounts due to him. It cannot be said that in view of the attitude adopted by the State of Bihar there has been a breach of the contract. The expression "there subsists a contract" in s. 7(d) of the Act includes cases in which one party has performed his part of the contract and part performable by the other party remains. It was so held by this Court in *Chatturbhuj's case*(1). The first paragraph of the head note in that case states :

"A contract for the supply of goods does not terminate when the goods are supplied, it continues into being till payment is made and the contract is fully discharged by performance on both sides."

(1) [1954] S. C. R. 817.

90

In that case pursuant to an oral request made on behalf of the State of Madhya Pradesh, *Chatturbhuj Jasani* had supplied "canteen stores" between October 8, 1951 to January 23, 1952, and had submitted invoices in respect thereof. Payments were made in respect of those invoices between November 15, 1951 and March 20, 1952. Elections to the Parliament were held in December 1951, and *Jasani* stood as a candidate for one, of the two seats before payment for the stores supplied was made. The Court refused to accept the plea raised on behalf of the elected candidate that the moment the contract is fully executed by the candidate, the contract is at an end and a new relationship of debtor and creditor takes its place. It is true that the material words of s. 7 (d) of the Act which fell to be considered in that case were somewhat different. They stood as follows :

"A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State ..

(d) If, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by the appropriate Government-

The conditions under which disqualification was incurred were wider under the section as it then stood. Any share or interest in a contract for the supply of goods, or for the execution of any works or the performance of any services undertaken whether by himself or any person or body of persons in trust for him or for his benefit or on his account, disqualified a candidate from being elected as a member of the Legislature. The Act as amended has now restricted the conditions which import a disqualification.

The two conditions now are that the contract must be in the course of the candidate's trade or business, and it must be for supply of goods or for execution of any works undertaken by the Government. Contracts in respect of services undertaken for the appropriate Government are apparently not within s. 7(d) as amended. The amended section again requires that there must be a contract entered into by the candidate. Mere interest in a contract unless the candidate has entered into the contract directly or through an agent, would apparently not disqualify him. But s. 7(d) before it was amended was attracted, if there was a subsisting contract

91

and the application of the clause after it was amended also is subject to the same condition. If there was no subsisting contract, neither under s. 7 (d) before it was amended, nor after it is amended, would the disqualification be incurred. In the present case the first respondent performed his part of the contract, and no payment has been made by the Government of Bihar to him. In the circumstances, relying upon Chhatturbhuj Jasani's case(1), we are of the view that the contract was a subsisting contract. Mr. Sarju Prasad appearing on behalf of the first respondent, contended that by s. 116-B of the Act, the decision of the High Court is made "final and conclusive" and interference by this Court with that decision, even if it appears that an error has been committed by the High Court, will not be justified. But by s. 116-B the jurisdiction conferred upon this Court by Arts. 133 and 136 of the Constitution is not, and cannot be restricted. If the circumstances of the case justify, this Court has the power, and is indeed under a duty, to set aside the verdict of the High Court. The Court is dealing with a case in which a question which vitally concerns the purity of elections arises-. A person who has a contractual relationship between him and the executive would, on getting elected, be able to bring pressure to bear upon the executive to settle his claim or to secure advantage for himself to which he may not be lawfully entitled. This appears to be the scheme underlying s. 7(d) which disqualifies a person from being chosen, as a member of the Legislature if there subsists a contract entered into the course of his trade or business by him with the appropriate Government for the supply of goods or for execution of any works. If, on the evidence, subsistence of the contract which disqualifies a candidate is established, the Court would not be justified in refusing to give effect to its conclusion especially when the question vitally concerns the public in keeping out of the Legislature persons who have claims arising out of subsisting contracts against the Government. In our view the appeal ought therefore be allowed, and the order passed by the High Court set aside and the order of the Election Tribunal restored with costs in this Court and the High Court.

ORDER

In accordance with the opinion of the majority the appeal is dismissed with costs.

(1) [1954] S. C. R. 817.

Sup. C.I./66-7

92