

CASE NO.:
Appeal (civil) 6931 of 2000

PETITIONER:
KARTAR SINGH BHADANA

Vs.

RESPONDENT:
HARI SINGH NALWA & ORS.

DATE OF JUDGMENT: 27/03/2001

BENCH:
S.P. Bharucha, N. Santosh Hegde & Y.K. Sabharwal.

JUDGMENT:

BHARUCHA, J.
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The appellant and the respondents were candidates from the Smalkha constituency at the general election to the Haryana Assembly held on 22nd February, 2000. The appellant secured the largest number of votes, namely 37,174, and he was declared elected. The first respondent secured 26,159 votes. The first respondent challenged the election of the appellant by filing an election petition in the High Court of Punjab and Haryana. He contended that at the time of scrutiny of the nomination papers the appellant held from the appropriate Government, that of the State of Haryana, five leases for the extraction of major and minor minerals and that, therefore, he was disqualified from contesting the election. The High Court upheld the contention holding that a mining contract or a mining lease is a contract to execute a Government work on behalf of the Government and it is covered under Section 9-A of the Act, the Act being the Representation of People Act, 1951 (hereinafter referred to as the said Act). The High Court set aside the election of the appellant and declared the first respondent duly elected.

The judgment and order of the High Court is under appeal by special leave.

Section 9-A of the said Act reads thus :

9-A. Disqualification for government contracts etc.
A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate government for the supply of goods to, or for the execution of any works undertaken by, that government.

The disqualification provision in the said Act has been amended twice. In the original Act it was provided by Section 7 that a person is disqualified 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. This provision was amended in 1958 and it said that a person is disqualified 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 to, or for the execution of any works undertaken by that government. This provision was amended in 1966 and Section 9-A as quoted above was substituted.

Three judgments of this Court deal with disqualification. A Constitution Bench considered disqualification in *C.V.K. Rao Vs. Dentu Bhaskara Rao* [1964(8) SCR 152] in the context of a mining lease. It was there contended that a mining lease was tantamount to a contract for the supply of goods to the appropriate Government and it was held that the contention must fail.

In *Dewan Joynal Abedin Vs. Abdul Wazed Alias Abdul Wazad Miah & Ors.* [1988 Supp. SCC 580] the question of disqualification was considered in the context of a contract to collect tolls at a Government ferry run under the Ferries Act. This Court held that an analysis of Section 9-A showed that only in two cases would a person be disqualified if he had entered into a contract with the appropriate Government in the course of his trade or business, which subsisted on the date of scrutiny of nominations; they were (1) when the contract was one for supply of goods to the appropriate Government and (2) when it was one for the execution of works undertaken by that Government. The question for determination, it was said, was whether the contract to collect tolls at a Government ferry entered into in accordance with the Ferries Act amounted to a contract for execution of any works undertaken by the appropriate Government. The Court noted the observations of Gajendragadkar, J. in the case of *Ram Padarath Mahto Vs. Mishri Singh* [1961(2) SCR 470], thus :

It may sound technical, but in dealing with a statutory provision which imposes a disqualification on a citizen it would be unreasonable to take merely a broad and general view and ignore the essential points of distinction on the ground that they are technical.

The Court also took note of the judgment of the Andhra Pradesh High Court in *B. Lakshmikantha Rao Vs. D. Chinna Mallaiah* [AIR 1979 AP 132] where the question was whether a person who was carrying on business in arrack and toddy under a contract with the Government under the provisions of the Andhra Pradesh Excise Act, 1968 was disqualified for being chosen as a member of the legislature. The High Court held that this contract did not come within the mischief of Section 9-A of the said Act as it was neither for the supply of goods to the Government nor for the execution of any works undertaken by it. This Court approved the view taken in the Andhra Pradesh decision and found that the position of the returned candidate before it was more or less similar to that of the returned candidate in the Andhra Pradesh case. It was noted that the word works in the expression execution of any works in Section 9-A was used in the sense of projects, schemes, plants, such as building works, irrigation works, defence works, etc. According to the Shorter Oxford English Dictionary, the expression work meant a structure or apparatus of some kind; an

architectural or engineering structure, a building edifice. When it was used in the plural, that is, as works, it meant architectural or engineering operations, a fortified building, a defensive structure, fortification or any of the several parts of such structures. This Court, therefore, found it difficult to hold that when a person acquired the right to collect tolls at a public ferry under the Ferries Act, he was performing a contract for the execution of works undertaken by the Government.

This Court in *Ranjeet Singh Vs. Harmohinder Singh Pradhan* [1999(4) SCC 517] was concerned with a case where the returned candidate had a subsisting contract, in partnership with others, for the sale of liquor with the appropriate Government. This Court, relying upon *Dewan Joynals* case, held that the returned candidate had not incurred the disqualification. This Court said that Section 9- A was a statutory provision which imposed a disqualification on a citizen; it was, therefore, unreasonable to take a general or broad view, ignoring the essentials of the section and the intention of the legislature.

In so far as is relevant to a case where it is alleged that a candidate holds a contract for the execution of works undertaken by an appropriate Government, Section 9-A requires (a) that there should be a contract entered into by the candidate; (b) that it should be entered into by him in the course of his trade or business; (c) that it should be entered into with the appropriate Government; (d) that it should subsist; (e) that it should relate to works undertaken by that Government and (f) that it should be for the execution of such works. The provisions of Section 9-A disqualify a citizen from contesting an election; a citizen may, therefore, be disqualified only if the facts of his case squarely fall within the conditions prescribed by Section 9-A.

It is not in dispute that the appellant held mining leases from the appropriate Government. What is in dispute@@
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 is whether, by reason of the mining leases, the appellant@@
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 was executing works undertaken by the Government. The contention on behalf of the appellant is that the Government has not undertaken mining operations and the appellant was not carrying out the same for the Government.

Learned counsel for the first respondent drew our attention to the meaning of the word undertake in Blacks Dictionary of Law, Fifth Edition. It reads thus :

UNDERTAKE To take on oneself; to engage in; to enter upon; to take in hand; set about; attempt; as, to undertake a task or a journey; and, specifically, to take upon oneself solemnly or expressly. To lay oneself under obligation or to enter into stipulation; to perform or to execute; to covenant; to contract. Hence, to guarantee; be surety for; promise; to accept or take over as a charge; to accept responsibility for the care of. To engage to look after or attend to, as to undertake a patient or guest. To endeavor to perform or try; to promise, engage, agree, or assume an obligation.

There can be no doubt about the correctness thereof.

Learned counsel for the first respondent submitted that the appellant, in doing mining work, was executing works undertaken by the Government, which it was the Government's obligation to perform. Because it was the Government's obligation, this was work undertaken by the Government. Reference was made by learned counsel, and by the High Court in the judgment under challenge, to Section 18 of the Mines and Mineral (Development and Regulation) Act, 1957. Section 18 deals with mineral development and says that it shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations and for such purposes the Central Government may, by notification in the Official Gazette, make such rules as it thinks fit. The obligation under Section 18, such as it is, is that of the Central Government and not that of the State of Haryana, the appropriate Government. Secondly, the obligation of the Central Government under Section 18 is to take steps for the systematic development of minerals in India and for such purpose to make rules. There is no obligation cast upon the Central Government to exploit minerals; the obligation is to ensure that such exploitation as takes place is systematic.

Reference was made to the mining leases by learned counsel for the first respondent. Thereunder, the appropriate Government has granted and demised to a partnership firm of which the appellant is a partner the right to win minerals from the areas therein mentioned. Clause 23 thereof, which was relied upon, says that if the lessee does not carry out its obligations under the covenants in the lease the lessor may cause the same to be carried out and performed and the lessee shall pay the lessor all expenses in this behalf. There is nothing in this clause in the leases which can support the submission made on behalf of the first respondent that the appellant had entered into a contract for the execution of any works undertaken by the Government.

As we see it, it is only when the appropriate Government has undertaken works, such as the laying of a road, the erection of a building or the construction of a dam, and has entered into a contract for the execution of such works that the contractor is disqualified under Section 9-A. Section 9-A does not operate to disqualify the lessee of a mining lease such as the appellant.

Having regard to this conclusion, it is not necessary to deal with the submission on behalf of the appellant that, in any event, the High Court could not have declared the first respondent duly elected.

The appeal is allowed. The judgment and order under appeal is set aside. The first respondent shall pay to the appellant the cost of the appeal quantified at Rs.25,000/-.

.....J.

[S.P. Bharucha]

.....J.

[N. Santosh Hegde]@@
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[Y.K. Sabharwal] @@
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March 27, 2001

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