

PETITIONER:
C. V. K. RAO

Vs.

RESPONDENT:
DENTU BHASKARA RAO

DATE OF JUDGMENT:
04/05/1964

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
GAJENDRAGADKAR, P.B. (CJ)
GUPTA, K.C. DAS
SHAH, J.C.
DAYAL, RAGHUBAR

CITATION:
1965 AIR 93 1964 SCR (8) 156

ACT:
Representation of the People Act (XLIII of 1951), s. 7(d)-
Scope of "In the course of trade or business", Meaning of-
Mining lease Right of Government to pre-emption of minerals-
If a contract for supply of goods by lessee.

HEADNOTE:

The respondent obtained a mining lease from the State Government. Clause 21 of the lease reserved to the Government the right to prior purchase of the minerals raised by the lessee. While the lease was subsisting, the respondent stood for election to the state Legislative Assembly and was elected. The appellant, his closest competitor, challenged the election by an election petition on the ground, inter alia, that the respondent was disqualified under section 7(d) of the Representation of People Act (XLIII of 1951), because he had a contract with the Government for supply of goods.

153

HELD: the petition must be dismissed.
The disqualification which results from the section is conditioned by three circumstances. First, there must be a subsisting contract between the appropriate Government and the candidate. Then the contract must be in the course of the trade or business of the candidate and, finally it must be inter alia for the supply of goods to such Government. Held in the case that as the mining lease was subsisting, the contract if any, was also subsisting. Further that the mining lease, if it was a contract, was in the course of the business of the respondent. It was not necessary that a course of business based upon other transactions must have first existed before the offending contract could be said to be in the course of business. The contract itself could be the start of the business. Held therefore that the mining lease was not a contract to supply goods to the Government. There was only a right in the Government to pre-empt the minerals and lessee could not begin delivery to the Government until Government served a notice on him stating the quantity preempted and the time within which the supply

should be made. This was only a reservation of a right of pre-emption which did not amount to a contract for the supply of goods which could be said to subsist between the parties.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal -No. 1072 of 1963.

Appeal from the judgment and order dated April 10, 1963 of the Andhra Pradesh High Court in Special Appeal No. 52 of 1962.

K. R. Chaudhuri, for the appellant.

A. V. Viswanatha Sastri and T. V. R. Tatachari, for the respondent.

May 4, 1964. The Judgment of the Court was delivered by HIDAYATULLAH J.-The respondent Dentu Bhaskara Rao was returned to the Andhra Pradesh Legislative Assembly from Kakinada constituency at the last general election. The appellant C. V. K. Rao was his closest competitor. There were two other candidates but they obtained very few votes and they have not shown any further interest. The appellant filed an election petition to question the election of the respondent on many grounds: one such ground was that the respondent was disqualified

154

under s. 7 (d) of the Representation of the People Act, 1951 (43 of 1951). The respondent had obtained a mining lease from the State of Andhra Pradesh on April 13, 1960, though on the date he filed his nomination paper he had not begun operations under that lease. The appellant took objection to the nomination of the respondent on the ground that he held a contract from the Andhra Pradesh Government within the prohibition of s. 7(d) of the Act, but the Returning Officer over-ruled his objection. The Election Tribunal later held that he was disqualified under s. 7(d) of Act 43 of 1951 and declared the election void. On appeal, the High Court of Andhra Pradesh reversed the decision and the present appeal has been filed on a certificate granted by the High Court.

Section 7(d) reads as follows:--

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

(a)

(b)

(c)

(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;"

The mining lease was in the standard form and after setting out the consideration for the lease, it described in Parts I to III, the area of the lease, the description of the area, liberties, powers and privileges to be exercised and enjoyed by the lessee and the restrictions and conditions as to their exercise. In Part IV it described the liberties, powers and privileges reserved to the State Government and in Parts V and VI the rents and royalties reserved by the lease and certain other provisions relating to them. Part VII then dealt with the covenants of the lessee in respect of payment

155

of rents, royalties, taxes etc. One such covenant was in

clause 21 and was headed "Right of Pre-emption" and it conferred on the State Government a right of pre-emption of the minerals lying in or upon the land demised or elsewhere under the control of the lessee. That clause was interpreted by the Tribunal as a contract entered in the course of trade or business by the respondent with the State

Government for the supply of goods to that Government.

The High Court held that there was no such contract.

The disqualification which results from s. 7(d) is conditioned by a number of circumstances. First, there must be a subsisting contract (this is to say in actual existence) between the appropriate Government and the candidate. Then the contract must be in the course of the trade or business of the candidate and, finally, it must be inter alia for the supply of goods to such Government. The appropriate Government according to the definition of the expression is the Government of Andhra Pradesh. The High Court in reaching its conclusion interpreted cl. 21 of Part VII of the lease and held that the mining lease was not a contract, that clause 21 did not amount to a contract and that cl. 21 even if a contract was not a contract for the supply of goods to the Government. This conclusion is assailed by the appellant. It is convenient to quote the clause at this stage:

"21. (a) The State Government shall from time to time and at all times during the said term have the right (to be exercised by notice in writing to the lessee) of pre-emption of the said minerals (and all products thereof) lying in or upon the said lands hereby demised or elsewhere under the control of the lessee and the lessee shall with all possible expedition deliver all minerals or products or minerals purchased by the State Government under the power conferred by this provision in the quantities, at the times in the manner and at the place specified in the notice exercising the said right.

156

(b) Should the right to pre-emption conferred by this present provision be exercised and a vessel chartered to carry the minerals or products thereof procured on behalf of the State Government or the Central Government be detained on demurrage at the port of loading the lessee shall pay the amount due for demurrage according to the terms of the charter party of such vessel unless the State Government shall be satisfied that the delay is due to causes beyond the control of the lessee.

(c) The price to be paid for all minerals or products of minerals taken in pre-emption by the State Government in exercise of the right hereby conferred shall be the fair market price prevailing at the time of pre-emption provided that in order to assist in arriving at the said fair market price the lessee shall, if so required, furnish to the State Government for the confidential information of the Government

particulars of quantities, descriptions and prices of the said minerals or products for carriage of the same and shall produce to such officer or officers as may be directed by the State Government original or authenticated copies of contracts and charter parties entered into for the sale of freightage of such minerals or products.

(d)

Mr. K. R. Chaudhury contended that under this clause there was a standing contract for the supply of goods and all that Government had to do was to send a notice to the respondent -and he was compelled to supply the goods to Government. He

pointed out that from the time the lease was granted Government was asking the respondent to commence operations to raise the minerals but the respondent avoided working the mine probably to save himself from the disqualification. According to Mr. Chaudhury, it mattered not whether the mine was worked or not, but

157

what mattered was that there was a subsisting contract for the supply of mineral, to the appropriate Government. Mr. A. Vishwanatha Sastri, in reply, contended that the mining lease could not be regarded as a contract and further that it was not in the course of the trade or business of the respondent, and finally that, in any event, it was not a contract for the supply of goods. That it was in the course of business of the respondent almost goes without saying. It is not necessary, as Mr. Sastri suggested, that a course of business based upon other transactions must first exist before the offending contract can be said to be in the course of business. That contract may itself be the start of the business and the words 'in the course of the business' would still be apt. As the mining lease was subsisting, the contract, if any there be, was also subsisting and there is no doubt on that aspect of the matter. The question is whether the provisions of cl. 21 bring about a contract for the supply of goods. This question can be broken into two which are: (a) whether cl. 21 can be regarded as a contract and (b) whether it can be regarded as a contract for supply of goods. Clause 21 is invariably inserted in every mining lease. It reserves to the Government the right to the minerals which vest in Government but which are allowed to be raised by the lessee holding the lease. The lease is, in one sense, a contract between the Government and the lessee because there is consideration on both sides and an offer and acceptance. There are obligations created by it, some of which are contractual even though some may be regarded as arising from the conditions of the contract. The mining lease without cl. 21 cannot possibly be described as a contract for the supply of goods. Without that clause there would neither be a mention of goods nor of their supply. If the lease is to be read as satisfying the disqualification in s. 7(d), cl. 21 alone can satisfy it. Clause 21 speaks of a right of the Government to pre-empt the minerals and all products thereof lying in or around the land demised or elsewhere under the control of the lessee. There is, however, no concluded contract in respect of any goods because it hardly needs to be said that relying upon this clause the lessee cannot begin delivery of the ore to the Government. He can do so only if the Government

158

serves a notice on him stating the quantity pre-empted and the time within which the supply is to be made. The clause, however, does not make it obligatory on Government to pre-empt any quantity of mineral or at all. There is no obligation to buy nor is there any compulsion on the part of the lessee to sell unless asked. In these circumstances, the clause does no more than to keep intact a right of the Government to obtain the minerals or their products as and when Government requires in preference to others. Till Government makes up its mind and serves a notice there is no obligation to make any deliveries and even though the word 'subsists' is a word of wide import, it cannot be said that a contract for the sale of goods subsists because a contract requires an offer and its acceptance and is not a mere reservation of a right.

Taking the most liberal view of the matter it is clear that cl. 21 did not bring into being a contract for the supply of goods. AR that it did was to reserve to the Government the right to prior purchase of the minerals raised by the respondent. The reservation of such rights does not amount to a contract for the supply of goods which can be said to subsist between the parties. The High Court was, therefore, right in reversing the decision of the Election Tribunal. The appeal fails and is dismissed with costs.
Appeal dismissed.

JUDIS