JUGAL KISHORE PATNAIK

v.

RATNAKAR MOHANTY

July 26, 1976

[H. R. KHANNA, V. R. KRISHNA IYER AND N. L. UNTWALIA, JJ.]

Representation of the People Act, 1951—*S. 9A—Contract signed as President, Gram Panchayat—Rejection of nomination paper—If valid—Improper rejection—If Courts could give relief under s.* 100(1)(*c*).

On the ground that there were subsisting contracts between him and the State Government for execution of certain works, the nomination papers of the respondent for the general election to the State Assembly were rejected by the Returning Officer under s. 9A of the Representation of the People Act, 1951 at the instance of one of the contesting candidates. In the election that ensued the appellant was declared elected. The respondent in his election petition contended that the works on account of which he had been disqualified had been undertaken by him, not in his personal capacity, but as the Sarpanch of the Gram Panchayat. The High Court held that the respondent was not disqualified under s. 9A of the Act and declared the election void.

On appeal, it was contended that the objections regarding the validity of the nomination papers of the respondent were raised in collusion with the respondent and a duly elected candidate should not be made to suffer because of an order made on such collusive objections.

Dismissing the appeal,

HELD : (1)(a) The appellant has clearly admitted in his written statement that objections which were filed about the validity of the respondent's nomination papers were not collusive but genuine. [53 G]

(b) According to Sec. 100(1)(c) of the Act, if the High Court is of the opinion that any nomination had been improperly rejected, it shall declare the election of the returned candidate to be void. In view of the imperative nature of the provision, it is open to question as to whether courts can, in the event of an improper rejection of nomination, afford relief to the successful candidate on the score that the objections resulting in the improper rejection of nomination, were collusive. Whether the legislature would do something in the matter is essentially for the legislature to decide. [53 G-H]

(2) A perusal of one of the disputed items shows that the tender in respect of the work was accepted on behalf of a Cooperative Society of which the respondent was the President. It was not the respondent but the Society which entered into contract for the execution of the work and he signed the documents in his capacity as President of the Society. The contract was not subsisting on the date of filing of the nomination paper. In respect of another item the contract was not entered into with the respondent in his personal capacity but the work had to be executed by the Gram Panchayat. [54 F-G]

Krishna Iyer J. (concurring)

(1) In the instant case the Returning Officer was taken in by the specious plea that the respondent had subsisting contracts with the State Government and rejected his nomination papers. Its aftermath was that the people's verdict had been stultified. Had there been any procedure for quick determination of objections to nominations with early appellate finality attached to it, the lurking danger of the whole process being ultimately baulked on account of antecedent official error would not have arisen. [56 C]

(2) The ambiguity in s. 9A, especially as to how long and in what sense can a contract be said to be subsisting envelopes the disbarment provision with subtle legal questions such as : how long does a contract subsist ? Is every

A liability arising on a breach of contract a claim under the contract attracting the provisions of s. 9A? If Government money is involved in the execution of the work does the contract necessarily become one with Government? It is very desirable that the disqualificatory net should not be cast too wide to disfranchise innumerable persons and must be easy of ascertainment if uncertainty is not to overhang elections. [56 E-H]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 910 of 1970.

(From the Judgment and order dated 16-6-1975 of the Orissa High Court in Election Petition No. 1/74).

D. P. Singh, R. P. Singh, Rajiv Dutta, Mrs. Nilma, L. R. Singh and *R. K. Jain,* for the Appellant.

C *Santosh Chatterjee, G. S. Chaterjee and D. P. Mukherjee,* for the Respondent.

The Judgment of H. R. Khanna and N. L. Untwalia, JJ., was delivered by Khanna, J. V. R. Krishna Iyer, J., gave a separate concurring opinion.

KHANNA, J. On an election petition filed by Ratnakar Mohanty respondent, the election of Jugal Kishore Patnaik appellant D to the Orissa Legislative Assembly from Bhadrak constituency was declared to be void by the Orissa High Court and as such set aside. The appellant has filed the present appeal against the judgment of the High Court.

Bhadrak assembly constituency is a single-member general constituency. During the general elections to the Orissa Legislative Assembly E held in February 1974, the respondent filed four nomination papers for being elected from this constituency. At the time of scrutiny on January 30, 1974, objection was raised at the instance of Balaram Sahu, one of the contesting candidates, before the Returning Officer that the respondent was disqualified for being chosen as a member of the Assembly as there subsisted contracts between him and the Government of Orissa for execution of certain works. The respondent, it was F accordingly asserted, was disqualified under section 9A of the Representation of the People Act, 1951 (hereinafter referred to as the Act) from seeking election. Some documents were also produced before the Returning Officer to show that proceedings had been initiated by the Block Development Officer for realisation of certain amounts alleged to be due under those contracts from the respondent. The Returning Officer upheld the objection and rejected the nomination G papers of the respondent.

Four candidates contested the election, but the main contest was between the appellant, a Congress nominee, who secured 25,522 votes, and Balaram Sahu, an Utkal Congress nominee, who secured 18,723 votes. The result of the election was declared on February 28, 1974. Petition to challenge the election of the appellant was filed by H the respondent on April 12, 1974.

The case of the respondent, as set up in the election petition, was that his nomination papers had been improperly rejected by the Returning Officer. According to the respondent, the works on account

of which he had been held to be disqualified by the Returning Officer had been undertaken by him not in his personal capacity but as the Sarpanch of Rahanj Gram Panchayat under the Bhadrak Panchayat Samiti. The respondent, therefore, prayed that the election of the appellant be declared to be void.

The petition was resisted by the appellant. Objections were raised on his behalf that the petition was liable to be dismissed for non-compliance with sections 81, 82 and 83 of the Act. It was also averred that the nomination papers filed by the respondent were not in conformity with sections 33 and 34 of the Act. On merits, the appellant stated that the respondent was disqualified under section 9A of the Act from seeking election to the Legislative Assembly of Orissa because he had on the date of filing of the nomination papers subsisting contracts with the Government of Orissa in course of his trade and business for execution of work undertaken by the Government. Following issues were framed by the High Court :

ISSUES

1. Is the election petition liable to be dismissed for non-compliance of sections 81, 82 and 83 of the Representation of the People Act, 1951 ?

2. Whether the nomination paper filed by the petitioner was in substantial compliance of sections 33 and 34 of the Representation of the People Act, 1951 ?

3. Was the petitioner disqualified under section 9A of the Representation of the People Act, 1951 having subsisting contract with the Government of Orissa in course of his trade and business for execution of work undertaken by the Government on the date of the filing of the nomination ?

4. To what relief, if any, the petitioner is entitled to in the facts and circumstances of the case ?"

Issues (1) to (3) were decided by the High Court in favour of the respondent and against the appellant. In the result, the election of the appellant was declared to be void.

In appeal before us Mr. D. P. Singh has at the outset assailed on behalf of the appellant the finding of the High Court on issue No. (1). The challenge to the finding on issue No. (1) is, however, confined only to alleged infraction of sub-section (3) of section 81 of the Act. According to that sub-section, every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. Mr. Singh contends that no attested copy of the election petition signed by the petitioner was filed along with the petition. This contention has been controverted by Mr. Chatterjee on behalf of the respondent, who submits that a copy of the petition attested by the respondent under his own signature was filed along with the petition. It is further pointed out that the said attested copy of the petition was sent along with the

A summons to the appellant, but as he declined to accept the summons, the attested copy along with the summons was affixed at his residence. The above stand of the respondent is borne out by the report of the process server.

Mr. Singh has assailed the correctness of the above report of the process server, and has contended that in the index attached to the B petition there was no reference to the copy. As against that, it is submitted on behalf of the respondent that it is not the usual practice in the High Court to refer to the copy of the petition in the index.

There are, in our opinion, some broad facts of the case which lend support to the finding of the High Court on issue No. (1) that the election petition was accompanied by an attested copy signed by the C respondent. Endorsement dated April 15, 1974 made by an officer of the High Court shows that a copy of the election petition had been filed. We find no cogent reason as to why an officer of the High Court should make a false endorsement on the petition if, in fact, no such copy had been filed. As regards the factum of the attestation of the copy by the respondent under his own signature, we find that the appellant cannot in the very nature of things assert positively that the copy D had not been attested by the respondent as, according to him, he did not see that copy. The copy was also not available on the record as the same had been affixed at the residence of the appellant when he, according to the report of the process server, declined to accept the summons. Before summons were issued to the appellant, the following endorsement was made by an officer of the High Court in respect of the election petition filed by the respondent :

E "Defect Nil."

We see no cogent ground to question the correctness of this endorsement which clearly lends support to the inference that the copy filed with the petition had been attested by the respondent and that the petition did not suffer from lack of compliance with the procedural requirement. F

Mr. Singh has next assailed the correctness of the finding of the High Court on issue No. (2). It is urged that the respondent obtained signatures of his proposers on blank nomination papers, subsequently filled in the columns and then filed the nomination papers. It is, in our opinion, not necessary to express opinion about three of the nomination papers as we find that one of the nomination papers in any G case did not suffer from any such alleged infirmity. This nomination paper of the respondent was signed by Lakshmikant Mahapotra (PW 3) as proposer. Evidence of this witness clearly shows that he signed the nomination paper as proposer of the respondent after the various columns in that paper had been filled in. Nothing has been brought to our notice as to why the statement of the witness in this respect be not accepted. As at least one of the nomination papers filed by the res- H pondent was in compliance with the legal requirement, the High Court, in our opinion, correctly decided issue No. (2). In view of the above finding, it is not necessary to express opinion on the point as to whether a nomination paper should be held to be invalid in case the

signature of the proposer is obtained before filling in the columns of the nomination paper. A

It has been faintly argued that Balaram Sahu, who raised objection to the validity of the nomination papers of the respondent, was not impleaded as a party in the election petition and as such the petition was liable to be dismissed for non-joinder of parties. This submission too is bereft of force. According to section 82 of the Act, a petitioner B shall join as respondents to his petition where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidates has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates. It is further provided that if allegations of any corrupt practice are made in the petition against any C other candidate, he too shall be joined as a respondent. In the present case, there was no prayer made by the respondent in the election petition that he or any other person should be declared to have been duly elected. There was also no allegation of corrupt practice against any candidate. In the circumstances, the requirements of law should be held to be fully satisfied when the respondent impleaded the successful candidate, namely, the appellant, as a respondent in the petition. D

Contention has also been advanced on behalf of the appellant that the objections of Balaram Sahu before the Returning Officer about the validity of the nomination papers of the respondent were raised in collusion with the respondent. The appellant, who has been duly elected, should not, according to the contention, suffer because of any order made on such collusive objections. In this respect we find that there E is no factual basis for the assertion that the objections which were raised by Balaram Sahu about the validity of the nomination papers of the respondent were of collusive character. On the contrary, the appellant in the course of his written statement stated in respect of the objections as under :

> "At the time of the scrutiny valid and genuine objections F were filed against the petitioner on the ground that there was subsisting contract between the petitioner and the Government of Orissa and as such he was disqualified to be a candidate."

In view of the unequivocal assertion of the appellant in the written statement that the objections were valid and genuine, it would not be G permissible for the appellant to take an inconsistent stand in appeal and urge that those objections had been filed in collusion with the respondent. Apart from that, we find that according to section 100 (1) (c) of the Act, if the High Court is of the opinion that any nomination has been improperly rejected, it shall declare the election of the returned candidate to be void. In view of the imperative nature of the provision, it is open to question as to whether the courts can, in the event of an improper rejection of nomination, afford relief to the successful H candidate on the score that the objections resulting in the improper rejection of the nomination, were collusive. Whether the legislature would do something in the matter is essentially for the legislature to

A decide. We need not, however, dilate upon this aspect of this case in the face of our finding that the appellant has clearly admitted in the written statement that the objections which were filed about the validity of the nomination papers of the respondent were not collusive but were genuine.

Lastly, Mr. Singh has assailed the finding of the High Court on B issue No. (3). Although during the course of the trial of the election petition the appellant relied upon 15 items to show that the respondent had entered into works contracts with the State Government, in this Court Mr. Singh has confined his argument to only two items, namely, item No. (1) and item No. (8). Item No. (1) relates to an advance of Rs. 100 for repair of Erein School. The case of the respondent is that the above amount was received by him as Sarpanch of Gram Pan- C chayat Rahanj, and that the said work had to be executed by that Gram Panchayat and not by the respondent personally. The High Court accepted the stand of the respondent, and we find no cogent ground to take a different view. Ex. 43 is letter dated December 3, 1968 signed by the Sub-Divisional Officer Bhadrak to the Certificate Officer for recovery of Rs. 7,017/-. This letter shows that the aggregate sum of Rs. 7,017, of which Rs. 100 was a part, constituted the fund of the D Gram Panchayat. Order dated May 25, 1965 of the Block Development Officer also shows that the work on account of which Rs. 100 were paid had to be executed through the agency of Rahanj Gram Panchayat. To similar effect is the statement of PW 9 Khageswar Roy, Block Development Officer. The evidence of this witness shows that the amount in question was given to the Gram Panchayat for repair work. The above material, in our opinion, clearly shows that the con- E tract for the execution of the repair work, which is the subject matter of item No. (1), was not entered into with the respondent in his personal capacity and that the said work had to be executed by the Gram Panchayat.

So far as item No. (8) is concerned, the same relates to work of wooden culvert No. 9 on Jamujhari Khirkona road. Ex. 55 is the written agreement relating to this contract. Perusal of the agreement F makes it clear that the tender in respect of this work was accepted on behalf of the Modern Labour Co-operative Contract Society, of which the respondent was the President. The document thus shows that it was not the respondent but the society which entered into contract for the execution of the above work, and the respondent signed the document in his capacity as the President of that Society.

G Apart from the above, we agree with the High Court that the above contract was not subsisting on the date of the filing of the nomination paper. The agreement for the execution of the above work was dated May 8, 1964. On November 24, 1966 an order was made by the Block Development Officer that the construction work of the culvert had been completed since long and final measurements too had already been made. The total work was found to be worth Rs. 4,253.70. It H was further observed in the order that Rs. 722 should be paid on account of the above work after deducting the previous advances and cost of the material. The contractor was directed to return the material used in the tubewell. The above order of the Block Development

Officer shows that the cost of the material and the amounts advanced to the respondent were deducted before direction was given for payment of Rs. 722 to the contractor. Mr. Singh has laid particular stress upon the direction in the order of the Block Development Officer that the contractor should return the material used in the tubewell. In respect of the material used in the tubewell, it appears to us that the said material was also returned by the contractor the same day the order was made. According to the testimony of RW 11 J.K. Satpathy Block Development Officer, if the material required to be returned as per that last order was not returned, the final bill amount in respect of that work could not have been paid. Rs. 722 were, however, admittedly paid on November 24, 1966. The factum of that payment clearly points to the conclusion that the contractor returned the material used in the tubewell before the payment of Rs. 722 was made to him. There is also nothing to show that any demand was made to the contractor subsequent to 1966 for return of the material used in the tubewell. The absence of any such demand, even though a long period has elapsed since 1966, clearly goes to show that no material used in the tubewell remained with the contractor. It cannot, therefore, be said that the said contract was subsisting on the date the respondent filed his nomination paper. We consequently uphold the finding of the High Court on items (1) and (8) under issue No. (3).

A B C D

As a result of the above, we dismiss the appeal, but in the circumstances without costs.

KRISHNA IYER, J., Whole-hearted is my agreement with the judgment of my learned brother Khanna J., both in the conclusions and in the reasonings. This does not obviate an extra opinion on certain deeper, though peripheral, aspects of the law thrown up by the facts, disturbing in their implications and laying bare certain gaping gaps in the election law. In a democracy, the electoral process has a strategic role and in India it has constitutional status although canalysed by the Representation of the People Act, 1951 (hereinafter called the Act). Lord Holt long ago observed :(1)

E

> "A right that a man has to give his vote at an election of a person to represent him in Parliament, there to concur to the making of laws, which are to bind his liberty and property, is a most transcendent thing, and of an high nature, and the law takes notice of it as such in divers statutes..... The right of voting at the election of burgesses is a thing of highest importance, and so great a privilege, that it is a great injury to deprive the plaintiff of it....."

F G

And, if I may add, this widespread right belongs to every common citizen.

In such circumstances, no one can gainsay the need for the provisions regulating disqualifications affecting the adult franchise to run for elective office to be fool-proof to that degree that the little man of India may confidently participate in the political process without being exposed to booby traps of the law.

H

(1) Quoted in University of Pensylvania Law Review 1968 p. 24 (Vol. 117).

A In this case an election was honestly fought and won by the appellant but the verdict has been reduced to a Dead Sea fruit by a surprise blow of the law because the respondent's nomination, on the captious objection of the defeated candidate (the appellant being innocent, at that stage, of raising any obstructive tactic), was illegally rejected The facts, already set out by my learned brother, disclose that the wrong rejection by the Returning Officer was on the score that he had B subsisting contracts with the State Government. This ground was plausibly urged before the Returning Officer by a candidate who polled poorly. The Officer was taken in by the specious plea and rejected the respondent's nomination. Its aftermath, long after the election was fought and won, is that people's verdict has been stultified and its victim is the then innocent appellant. Had there been any procedure for double-quick determination of objections to nominations with early C appellate finality attached to it, the lurking danger of the whole process being ultimately baulked on account of antecedent official error would not have arisen—a consummation devoutly to be wished. Nor does it require great imagination to make provision in this behalf, but its omission has led to the martyrdom of the appellant and the orphanage of the electorate.

D

Yet another legislative insufficiency surrounding s. 9A of the Act needs to be highlighted. This provision, as has been explained earlier by my learned brother, disqualifies a person from being a candidate if 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. E It is followed by an Explanation which is more or less a legal fiction. The rugged edges of ambiguity of s. 9A especially as to how long and in what sense can a contract be said to be subsisting envelop the disbarment provision with subtle legal questions. The common man of India is the potential candidate and is he to risk his candidature on the niceties of the law of contracts? In this context we must remember that the vast and various developmental works undertaken by the F State and its subsidiaries and executed by a large number of little construction contractors made it very desirable that the disqualificatory net should not be cast too wide to disfranchise innumerable persons and must be easy of ascertainment if uncertainty is not to overhang elections in our political system. In this very case several problems were mooted, somewhat difficult to answer. How long does a contract subsist? Is every liability arising on a breach of contract, a claim under the G contract attracting the lethal coils of s. 9A? If government money is involved in the execution of the work. does the contract necessarily become one with government? A host of other questions may mystify the legal imports of the taboo s. 9A sets out and yet every lay man is imperilled by this vague provision in the exercise of his electoral right. Such a brooding fear and haunting provisions is counter-productive and may perhaps have to be re-drafted in the light of experience H in court. These are problems not of high-sounding law but affecting the common man in the exercise of his most democratic right. Nietzche once said: 'The great problems are in the streets'. The inaugural error in the drawing up of our election law, as is illustrated by this

case, is that sophisticated provisions amenable to logico-linguistic feats or subtle interpretation of civil law ill suit a regulatory area of the political process where the small individual offers himself for electoral contest. I choose to make these observations and draw the attention of the concerned instrumentalities only because in my humble view the court has an activist role to tell the nation, through its judgment or other designated channels where the law misfires, or how the law stands in need of reform. This case therefore induces me to make what may be regarded as *obiter* :

> "The little case, the ordinary case, is a constant occasion and vehicle for creative choice and creative activity, for the shaping and on-going reshaping of our law."(1)

More than a hundred years ago Lord Chancellor Westbury made certain seminal observations(2) :

> "The first thing, then, that strikes every member of our profession who directs his mind beyond the daily practical necessity of the cases which come before him is, that we have no machinery for noting, arranging, generalising and deducing conclusions from the observations which every scientific mind could naturally make on the way in which the law is worked in the country.....Take any particular department of the common law—take, if you please, any particular statute. Why is there not a body of men in this country whose duty it is to collect a body of judicial statistics, or, in the more common phrase, make the necessary experiments to see how far the law is fitted to the exigencies of society, the necessities of the times, the growth of wealth, and the progress of mankind?...."

Way back in 1921, Benjamin N. Cardozo, then a Judge of New York's highest court, said :(3)

> "The Courts are not helped as they could and ought to be in the adaptation of law to justice. The reason they are not helped is because there is no one whose business it is to give warning that help is needed. ..... We must have a courier who will carry the tidings of distress..... To day courts and legislature work in separation and aloofness. The penalty is paid both in the wasted effort of production and in the lowered quality of the product. On the one side, the judges, left to fight against anachronism and injustice by the methods of judge-made law, are distracted by the conflicting promptings of justice and logic, of consistency and mercy, and the output of their labors bears the token of the strain. On the other side, the legislature, informed only casually and intermittently of the needs and problems of the courts, without expert or responsible or disinterested or systematic advice

(1) Quoted in (1961-62) Vol. 71 Yale Law Jownal p. 259.

(2) Quoted in Vol. 128, Mod. L. R. p. 1.

(3) Address to the Association of the Bar of the City of New York, quoted in (3) supra.

A as to the workings of one rule or another, patches the fabric here and there, and mars often when it would mend. Legislature and courts move on in proud and silent isolation. Some agency must be found to mediate between them."

May be, as has been done in the State of New York, the establishment of a Law Revision Commission charged with comprehensive law re-
B form duties with direct link with the law court may go a long way to meet the felt need.

P.B.R.