(2009) 02 AP CK 0053

In the Andhra Pradesh High Court

Case No : Election Petition No. 4 of 2007

Chalimeda Lakshmi Narasimha Rao APPELLANT

Vs

Chennadi Sudhakar Rao and Others RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Constitution of India, 1950 — Article 191(1)
Contract Act, 1872 — Section 60, 62
Partnership Act, 1932 — Section 32(2), 47
Representation of the People Act, 1951 — Section 100(1), 9A

Citation : AIR 2009 AP 117 : (2009) 3 ALD 517 : (2009) 4 ALT 164 : (2010) 8 RCR(Civil) 2193

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : Gandhra Mohan Rao, for the Appellant; E. Ajay Reddy and Sampath Prabhakar Reddy, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Ranganathan, J.—Election to the 20 - Karimnagar Local Authorities Constituency, for the Andhra Pradesh Legislative Council, was held on 17-3-2007. The petitioner, first respondent and the second respondent contested the election. While the petitioner contested as a candidate of the Indian National Congress, the first respondent contested as a candidate of the Telugu Desam Party. The first respondent was declared to be the returned candidate. This petition is filed to declare the first respondent''s election, as a returned candidate for the Andhra Pradesh Legislative Council from 20-Karimnagar Local Authorities Constituency, as void and illegal on the ground that he suffered disqualification u/s 9-A of the Representation of the People Act, 1951 (for short - ''the Act'').

Pleadings:

2. A notification was issued, for conducting elections to the 20-Karimnagar Local Authorities Constituency, on 15-2-2007. The last date for filing nominations was

22-2-2007. The nominations filed were scrutinized on 23-2-2007. The last date for withdrawal of nominations was 26-2-2007 and the date of polling was 17-3-2007.

3. The first respondent was hitherto the managing partner of M/s. Marthanda Rao and Company, a registered partnership firm with five partners. The partnership deed, of the said firm, dated 2-4-2003 was registered with the Registrar of Firms and a certificate of Registration was issued on 3-5-2003. On the death of Sri Marthanda Rao, the partnership firm was reconstituted and a deed of the reconstituted partnership firm dated 13-12-2003 was registered. The first respondent was also the managing partner of the reconstituted firm. M/s. Marthanda Rao and Company obtained registration as special class contractors, vide proceedings of the Engineer in Chief (Administration Wing), Irrigation and CAD Department, Government of Andhra Pradesh, dated 6-1-2004, wherein the first respondent was shown as the managing partner of the firm. The registration, as special class contractors, was valid till 4-11-2008. M/s. Marthanda Rao and Company, represented by the first respondent as its managing partner, entered into a joint venture agreement dated 8-12-2004 wtth M/s. Prathiba Construction Engineers and Contractors, Kolhapur. The joint venture was awarded the contract for executing package Nos. 106 and 107oftheNettampad Lift Irrigation Scheme under the Executive Engineer, PJP Division of the Irrigation Department of the Government of A.P. The said contracts subsisted on the date on which the first respondent filed his nomination for election to the 20-Karimnagar Local Authorities Constituency.

4. The first respondent claimed to have addressed letter dated 1-9-2006, to all the remaining partners of M/s. Marthanda Rao and Company, informing them of his intention to withdraw from the partnership due to personal reasons and that the said letter was acknowledged by all the other partners. The first respondent also claimed that a deed of retirement cum reconstitution of the partnership firm dated 20-2-2007 was executed whereby he retired from the partnership and ceased to be its managing partner with effect from 21-2-2007. The first respondent''s family, however, continued to remain members of the partnership with a share of 66%. The change in constitution of the partnership firm, with effect from 21-2-2007, was intimated to the Registrar of Firms on 24-2-2007. However, the first respondent''s retirement from the partnership was not intimated to the Government and the contracts between the partnership firm and the Government continued to subsist even after the first respondent filed his nomination.

5. The petitioner, on coming to know that the first respondent was actively involved with M/s. Marthanda Rao and Company which had entered into, and was in the process of executing, civil contracts with the Government of Andhra Pradesh and its instrumentalities and that, on the date of nomination, the contracts between M/s. Marthanda Rao and Company and the Government of Andhra Pradesh were subsisting at various stages of execution including the two

packages in Nettampad Lift Irrigation Scheme, filed his objection petition on 23-2-2007 before the Returning Officer requesting the latter td reject the nomination of the first respondent. On being put on notice by the Returning Officer, the first respondent submitted his reply thereto on 26-2-2007 claiming to have ceased to be a partner in M/s. Marthanda Rao and Company with effect from 2L-2r2007, that, on the date of filing nomination, he had nothing to do with the subsisting contract between M/s. Marthanda Rao and Company and the Government of Andhra Pradesh and, as such, Section 9-A of the Act was not attracted. The objection petition, was rejected by the Returning Officer.

6. While the petitioner would contend that failure on the part of the first respondent to obtain consent of the Government of Andhra - Pradesh, to his retirement from the partnership firm, meant that his contractual relationship with the Government of Andhra Pradesh, for execution of several packages, continued to subsist attracting the disqualification u/s 9-A of the Act, the first respondent would submit that, since he had resigned from the partnership firm with effect from 21-2-2007. he had ceased to be a partner of the registered partnership firm from that date and that he could not be said to individually have a subsisting contract with the Government of Andhra Pradesh after 21-2-2007, albeit the contract between M/s. Marthanda Rao and Company and the Government of Andhra Pradesh subsisting even thereafter.

7. Based on the rival contentions and averments, the following issues were settled for trial:

1. Whether the first respondent was a partner of the partnership firm M/s. Marthanda Rao and Company, as on the date of the filing of his nomination for election to the Legislative Council of the State of Andhra Pradesh from the 20-Karimnagar Local Authorities Constituency?

2. Whether the letter dated 1-9-2006 of the first respondent and the deed of retirement cum reconstitution of partnership dated 20-2-2007 whereby the first respondent allegedly retired from the partnership firm, M/s. Marthanda Rao and Company, are sham and got up documents?

3. Whether the alleged retirement of the first respondent from the partnership firm, vide deed of retirement cum reconstitution of partnership dated 20-2-2007, upon its execution, is in accordance with the partnership agreement dated 13-12-2003 and whether, by virtue of the deed of retirement, the first respondent can be said to have retired as a partner with effect from 21-2-2007?

4. In the light of the fact that the first respondent, in the capacity of Managing Partner of the partnership firm, M/s. Marthanda Rao and Company, was executing a subsisting contract entered into by and between the said firm and the Government of Andhra Pradesh and whether the alleged retirement of the first respondent from the firm has any legal effect or consequence without prior intimation of the same to the Government of Andhra Pradesh and without its consent?

5. Whether the Returning Officer acted illegally and improperly in rejecting the objection petition filed by the petitioner with regard to the disqualification of the first respondent u/s 9-A of the Representation of People Act, 1951?

6. Whether the first respondent was disqualified from contesting the election to the Legislative Council of the State of Andhra Pradesh under the provisions of Section 9-A of the Representation of the People Act, 1951?

7. Whether the election of the first respondent to the Legislative Council of the State of Andhra Pradesh from 20-Karlmnagar Local Authorities Constituency is void u/s 100(1)(a) of the Representation of the People Act, 1951?

8. Whether a partner who retired from a partnership firm as per the terms of the Deed of Retirement from a particular date is statutorily obligated to inform regarding his retirement to the Registrar of Firms on the very same day?

9. To what relief?

8. During trial, the petitioner examined himself as P.W. 1 and, along with the affidavit filed in lieu of chief examination, he filed Exs.A.1 to A. 16. He was cross-examined on 27-6-2008. After evidence of the petitioner was closed, the first respondent examined himself as R.W. 1 and, along with his affidavit in lieu chief examination, he marked Exs. B. 1 to B. 7. He was cross-examined on 11-7-2008.

Issues 4 to 9:

9. Issues 4 to 8 relate to the legal effect/consequences of the retirement of the first respondent from the partnership firm without either intimation to, or the consent of, the Government with whom the partnership firm had a subsisting contract, rejection of the petitioner''s objection petition by the Returning Officer and intimation of the first respondent regarding his retirement to the Registrar of Firms subsequent to the date of his nomination.

Evidence:

10. On these issues P.W. 1, in his examination in chief, stated that the first respondent was actively involved in the business of M/s. Marthanda Rao and Company, a partnership firm, which had entered into and was in, the process of executing civil construction contracts with the Government of A.P. including two packages in Nettampad Lift Irrigation Scheme, Mehboobnagar being executed jointly by the partnership firm, (M/s. Marthanda Rao and Company), and M/s. Pratibha Construction Company for the Superintending Engineer, Jurala Project, Irrigation Department, Government of A.P., and that, on the date of his nomination, the first respondent''s contract with the Government was still subsisting, being at various stages of execution. P.W. 1 deposed that the partnership firm, M/s. Marthanda Rao and Company, had obtained registration as a special class contractor, vide proceedings dated 6-1-2004 of the Engineer in Chief (Administration Wing), Irrigation and CAD Department, Government of Andhra Pradesh, Hyderabad, wherein the first respondent was shown as the

managing partner, that the said registration was valid till 4-11-2008, that it was in pursuance of such registration that the first respondent had entered into contracts with the State Government on behalf of the firm, that the registration had neither been cancelled nor altered after the alleged retirement of the first respondent, that the contract, relating to the Nettampad Lift Irrigation Scheme, was still subsisting with the Government of A.P. that, on the date of filing his nomination papers, the first respondent, in his capacity as the managing partner of M/s. Marthanda Rao and Company, was in the process of executing the said contract which he had entered into with the Government of A.P. on behalf of the firm, that the partnership firm had no separate legal status independent of its constituent partners and that, after retirement of the first respondent from the partnership firm, there ought to have been a novation of the contract with the Government of A.P. He also stated that the first respondent, and the partnership firm, had never brought to the notice of the Government of A.P. that there was a reconstitution of the firm owing to the retirement of the first respondent and that, in the absence of such intimation to the Government of A.P., and its consent, the contract must be deemed to be in existence even on the date of filing of the nomination by the first respondent notwithstanding his alleged retirement from the firm, that he was, therefore, disqualified u/s 9-A and that his election to the Legislative Council of the State of A.P. was illegal and void.

11. In cross-examination, P.W. 1 admitted that all the contracts executed by the first respondent were on behalf of the partnership firm, that the status of a special class contractor was conferred by the Government on the firm and not on the first respondent, that the contracts awarded by the Government were to the partnership firm of which the first respondent was the managing partner and that he had not filed any document which required the first respondent to obtain permission before retiring from the partnership.

12. R.W.1, in his chief examination, stated that he had retired from the partnership firm, that there was no relationship subsisting between him and the Government on the crucial date of nomination, the mere fact that the earlier partnership firm had subsisting contracts with the Government, as on the date of filing his nomination, would not disqualify him u/s 9-A as he had ceased to be the partner/managing partner of the firm with effect from 21-2-2007 by virtue of the deed of retirement cum reconstitution of partnership dated 20-2- 2007, that he was not concerned with the contracts that may be subsisting between M/s. Marthanda Rao and Company and the Government of Andhra Pradesh after 21-2-2007, as he had ceased to be a partner/managing partner of the said firm with effect from 21-2-2007, that he had executed the contracts only in his capacity as the managing partner of the partnership firm, that no condition was stipulated obligating the retiring partner to intimate the Government/department with whom the contracts had been entered into, that, even after his retirement with effect from 21-2-2007, the firm had subsisting contracts with the Government and that such contracts could not be equated as contracts subsisting between him in his individual capacity and the Government with effect from 21-2-2007,

that he was neither a managing partner nor a partner of the firm as on the date of filing his nomination on 22-2-2007, that retirement of a partner/managing partner was not required to be intimated to the Government which was a party to the contract, that the Government and the partnership firm, being legal entities, would continue to be parties to the contract and that such contracts must be deemed to be in existence solely between the partnership firm represented by the, partners and the Government. In cross-examination he admitted that he did not intimate the Engineer-in-Chief (Administration Department), Irrigation and CAD Department, who was the registering authority, of his retirement from the partnership firm.

Contentions of Counsel on either side:

13. Sri G. Mohan Rao, learned Counsel for the petitioner, would submit that retirement of the first respondent from the partnership on 21-2-2007, even if it is presumed not to be a sham, was a private arrangement between the parties, that the first respondent had admitted that he did not intimate his retirement from the partnership to the Engineer-in-Chief, Government of Andhra Pradesh, that consent of the Government for the petitioner''s retirement from the partnership had not been obtained, that the partnership firm continued to execute the two works in question for the Government even after the petitioner filed his nomination, that a partnership firm is not a legal entity, that the partnership business belongs to the partners and each of them is an owner thereof, that a partnership deed covered internal relations amongst partners and had nothing to do with third parties, that, as third parties were not concerned with the internal arrangement among partners, and as the contract continued to subsist, it was for the first respondent to show how the contract came to an end, that no evidence had been let in by the first respondent to show that his contract with the Government came to an end on the date on which he filed his nomination, that in the absence of even intimation, let alone obtaining consent, the first respondent''s contract with the Government, for execution of the Nettampad works, continued to subsist even after he filed his nomination and, therefore, he suffered disqualification u/s 9-A of the Act. Learned Counsel would rely on Syndicate Bank Vs. R.S.R. Engineering Works and Others, , Konappa Rudrappa Nadgouda v. Vishwanath Reddy AIR 1969 SC 447, Sewaram Vs. Sobaran Singh, , Rajeshekar Basavaraj Patil Vs. Subash Kallur and Others, , P. Saibaba Rao v. Dr. Duggala Srinivasa Rao Judgment in E.P. No. 1 and 3 of 2004 dated 30-8-2007 reported in AIR 2008 166, State of Punjab Vs. Jullunder Vegetables Syndicate, , Regional Director, Employees'' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries, and Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others, .

14. On the other hand, Sri E. Ajay Reddy, learned Counsel for the first respondent, would submit that the first respondent had retired from the partnership having executed a deed on 21-2-2007, that the change in constitution of the partnership was intimated to the Registrar of Firms on

24-2-2007, that no limitation is prescribed for such intimation, that failure to intimate the Registrar, prior to the date of filing nomination, was of no consequence, that, while a retiring partner may be liable for any loss caused to the Government on execution of works by the partnership firm, no contractual relationship subsisted between the Government and a partner of the firm after his retirement, that failure on the part of the first respondent to intimate the Government of, or obtain its consent for, his retirement from the firm was of no consequence, that the contract did not specifically provide that, in case of retirement of a partner, permission of the Government had to be taken, that special class contractor status was given the partnership firm and not to the first respondent, that the burden lay on the petitioner to prove that the first respondent was still dealing with the department and that he had a subsisting interest in the contracts with the Government. Learned Counsel would rely on Ranjit Singh Vs. Harmohinder Singh Pradhan, , Kartar Singh Bhadana Vs. Hari Singh Nalwa and Others, , Shrikant Vs. Vasantrao and Others, and Rajasthan Trading Co. Vs. The Registrar of Firms and Another, .

15. The admitted facts are that the partnership firm of M/s. Marthanda Rao and Company continued to execute works and its contract with the Government continued to subsist even after the first respondent filed his nomination on 22-2-2007, that the first respondent was the managing partner of M/s. Marthanda Rao and Company till 20-2-2007 and that neither before, nor on, the date of his filing nomination on 22-2-2007 had the first respondent intimated, or obtained consent of, the Government, regarding his retirement from the firm or to bring his contract with the Government, in relation to the works In question, to an end. On these admitted facts, the question which arises for consideration is whether retirement of the first respondent from the partnership firm i.e. M/s. Marthanda Rao and Company with effect from 21 -2-2007 would, by itself, result in termination of his contract with the Government, though the partnership firm continued to execute the works, and its contract with the Government continued to subsist thereafter also?

16. Under Article 191(1)(e) of the Constitution of India, a person shall be disqualified for being chosen as, and from being a member of the Legislative Council of the State, if he is disqualified by or under any law made by Parliament. u/s 100(1)(A) of the Act, if the High Court is of the opinion that, on the date of his election, a returned candidate was disqualified to be chosen to fill the seat under the Act, the High Court shall declare the election of the returned candidate to be void. Section 9-A of the Act relates to disqualification for Government contracts etc., and, thereunder, 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 execution of any works undertaken by that Government.

17. An analysis of Section 9-A shows that only in two cases would a person be disqualified if he has entered into a contract with the appropriate Government in

the course of his trade or business which is subsisting on the date of scrutiny of nomination. They are (i) when the contract is one for supply of goods to the appropriate Government and (ii) where the contract is for the execution of any works undertaken by that Government. Ranjit Singh Vs. Harmohinder Singh Pradhan, . Insofar 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. Kartar Singh Bhadana Vs. Hari Singh Nalwa and Others, , Shrikant Vs. Vasantrao and Others, and Syndicate Bank. Section 9-A requires that a candidate should not have any interest in any contract with the Government and, therefore, even a partner in a firm has an Interest sufficient to attract the provisions of Section 9-A. Konappa Rudrappa Nadgouda AIR 1969 SC 447, Sewaram Vs. Sobaran Singh, .

18. While admitting that the contract between the partnership firm, of which he was the managing partner, and the Government subsisted till 20-2-2007, the first respondent would contend that, since he had retired from the partnership firm with effect from 21-2-2007, his contract with the Government ceased to remain in force from that date, though the partnership firm continued to execute the subject works even thereafter. Under the law of partnership, a firm is not a legal entity buy only consists of individual partners for the time being. State of Punjab Vs. Jullunder Vegetables Syndicate, . One of the essential requisites of a partnership is that there must be mutual agency between the partners and must be carried on by all or any one of the partners acting for all. A partnership firm is not a legal entity. In a partnership each partner acts as an agent of the other. The partnership business belongs to the partners and each one of them is an owner thereof. Regional Director, Employees'' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries, . A firm is only a collective or compendious name for all the partners. In other words, a firm does not have any existence away from its partners. A decree against a firm in the name of the firm has the same effect as a decree against the partners. While the firm is incurring a liability it can be assumed that all the partners were incurring that liability and so the partners remain liable jointly and severally for all the acts of the firm. Dena Bank Vs. Bhikhabhai Prabhudas Parekh and Co. and Others, .

19. Under Sub-section (2) of Section 32, the liability of the retiring partner, as against third parties, would be discharged only if there is an agreement between the retiring partner, the third party, and the partners of the reconstituted firm. (Syndicate Bank). There is no a priori presumption to the effect that the creditors of a firm do, on the retirement of a partner, enter into an agreement to discharge

him from liability. An adoption by the creditor of the new firm as his debtor does not necessarily deprive him of his rights against the old firm especially when the creditor is not a party to the arrangement and there is no fresh agreement between the creditor and the newly constituted firm. (Syndicate Bank).

20. In Rajasthan Trading Co. Vs. The Registrar of Firms and Another, , a Division Bench of this Court held that registration would render easy to prove the existence of the partnership in case of disputes between the partners themselves or between the trading public and the, firm, that, in the case of a retired partner, it was necessary to have the changes noticed in the Register since he continued to be liable for the acts of the firm until notices were given of the retirement and that, though no limitation is prescribed as to the period within which notice should be filed, it should, however, be given within a reasonable time.

21. Registration would, however, not put to an end a previous subsisting contract between the retiring partner and third parties. The first respondent, and the other partners of the firm, individually had a subsisting contract with the Government till 20-2-2007. Would retirement of the first respondent from the partnership on 20-2-2007 automatically result in termination of his subsisting contract with the Government from that date? A contract can be terminated by mutual consent of the parties, by efflux of time or by termination as provided in the contract. If a contract is impossible of its performance, it is also deemed to have been terminated. By express intention, parties to the contract agree to bring the contract to an end in which event without anything else the contract stands terminated or cancelled. When mutual promises under the contract are fully performed to the satisfaction of the other, the contract conies to an end and stands terminated. P. Saibaba Rao AIR 2008 166. The contract can come to an end by any of the following modes:

(1) By performance;

(2) By express agreement;

(3) Under the doctrine of frustration; and

(4) By breach.

Sewaram Vs. Sobaran Singh, and Rajeshekar Basavaraj Patil Vs. Subash Kallur and Others,

22. The right of a person to stand for an election is a valuable right. But if the contract subsists in such a mariner that it cannot be said to have been substantially completed, the law must take its own course. What is full performance of a contract, or completion, depends on the circumstances of each case. The question of subsistence of a contract with the appropriate Government, making it a disqualification u/s 9-A of the Act, is a question of fact depending on the facts and circumstances of each case. (Sewaram). The contract must be said to subsist if a portion of it is required to be performed at any time, for as long as the contract has not been discharged, by full performance, it must be taken to

subsist. Konappa Rudrappa Nadgouda AIR 1969 SC 447, P. Saibaba Rao AIR 2008 166. Admittedly, the works in question were at different stages of execution on the date on which the first respondent filed his nomination and continued to be executed by M/s. Marthanda Rao & Co. even thereafter. As the works in question had not been substantially completed, the question of the contract being terminated, on its being fully performed, does not arise.

23. When the terms of the contract have been reduced to writing it cannot be changed without mutual agreement of both the parties. Polymat India P. Ltd. and Another Vs. National Insurance Co. Ltd. and Others, . Terms and conditions of the contract cannot be altered or modified unilaterally unless there exists any provision either in contract itself or in law. Novation of contract, in terms of Section 60 of the Contract Act, must precede the contract making process. The parties thereto must be ad idem so far as the terms and conditions are concerned. If a contracting party intended to alter or modify the terms of contract it was obligatory on its part to bring the same to the notice of the other party. Having not done so, new terms of contract cannot be thrust upon the other party to the contract. Delhi Development Authority, N.D. and Another Vs. Joint Action Committee, Allottee of SFS Flats and Others, . The general Rule is that, though a party may assign the benefits and obligations of a contract to an assignee, he will not be relieved of his obligations towards the other contracting party unless it is also a party to the assignment, in which event there is an assignment coupled with novation, (a new contract between the assignee and the other contracting party), Shrikant Vs. Vasantrao and Others, .

24. One of the essential requirements of "novation", as contemplated by Section 62, is that there should be complete substitution of a new contract in place of the old. It is in that situation that the original contract need not be performed. Substitution of anew contract in place of the old contract which would have the effect of rescinding or completely altering the terms of the original contract, has to be by agreement between the parties. Lata Construction and Others Vs. Dr. Rameshchandra Ramniklal Shah and Another, . It is not even the case of the first respondent that, prior to or on the date on which he filed his nomination, a new contract had been entered into between the Government and the reconstituted partnership firm. The first respondent could not, by private arrangement amongst the partners, escape his liability under the contract to the Government, and there was here no novation, because notice of retirement of the first respondent from the partnership was not given to the Government.

25. Frustration signifies a certain set of circumstances arising after the formation of the contract, the occurrence of which is due to no fault of either party and which render performance of the contract by one or both parties physically and commercially impossible. The Court regards these sets of circumstances as releasing the parties from any further obligations. Where the entire performance of a contract becomes substantially impossible without any fault on either side, the contract is prima facie dissolved by the doctrine of frustration, Indian

Contract and Specific Relief Acts - Pollock & Mulla 12th Edition. It is the admitted case of the parties that, even after the first respondent filed his nomination, the contract between M/s. Marthanda Rao & Company and the Government, for execution of the two works relating to Nettampad Lift Irrigation scheme, continued to subsist and the said works were at different stages of execution. It is evident, therefore, that the contract had not come to an end by frustration.

26. In case the elected candidate i.e., the first respondent wanted to put an end to the contract, in the normal course of behaviour and human conduct, he should have gone personally to put an end to the contract mutually and, in case the officers concerned were not agreeable to end the contract mutually, then he could have taken the step of ending the contract unilaterally by breach taking the risk of damages. Sewaram Vs. Sobaran Singh, and Rajeshekar Basavaraj Patil Vs. Subash Kallur and Others, . The first respondent did not even intimate his retirement from the partnership firm to the Government let alone take steps to put an end to the contract mutually or unilaterally. The question whether a retiring partner would attract disqualification u/s 9-A, as long as the work awarded to the firm, of which he was a partner, remained incomplete and the contract had not been terminated, is no longer res Integra for, in P. Saibaba Rao AIR 2008 166, VVS Rao, J. observed:

...Even if a firm is reconstituted in accordance with terms of the contract among partners with or without some new partners, the nature of right, title, interest and possession of the original partners does not change. Indeed, u/s 47 of the Partnership Act, after dissolution of the firm, mutual rights and obligations of the partners continue notwithstanding such dissolution so far as such rights and obligations may be necessary to wind up the affairs of the firm. Thus if a firm is given contract for execution of work undertaken by the Government even if an elected candidate claims that he ceased to be partner, as long as the work remains incomplete, subject to other circumstances being proved, such candidate would certainly attract disqualification u/s 9-A of the Act....

27. It is evident, therefore, that the contract between the first respondent and the Government did not come to an end on the date of his nomination as it had not been terminated by any of the modes aforementioned. As the contract between him and the Government continued to subsist, on the date of filing his nomination, the first respondent stood disqualified u/s 9-A of the Act and as such, u/s 100(1)(a) of the Act, the election of the first respondent is liable to be, and is hereby declared void. The Returning Officer ought not to have rejected the objection petition filed by the first respondent in this regard.

Issues 1 to 3:

28. These issues relate to whether the first respondent was a partner of the partnership firm M/S. Marthanda Rao & Company on the date of filing his nomination, whether the letter dated 1-9-2006 and the deed of retirement cum reconstitution of partnership dated 20-2-2007 are sham and got up documents

and whether the alleged retirement of the first respondent from 20-2-2007 is in accordance with the partnership agreement dated 13-12-2003?

29. In view of the conclusions arrived at, on issues 4 to 8, it is wholly unnecessary to examine issues 1 to 3, for even if the retirement cum reconstitution of partnership deed dated 20-2-2007 is held not to be a sham document, the first respondent had, nonetheless, a subsisting contract with the Government on the date of his nomination as he had failed to intimate, let alone obtain consent of, the Government regarding his retirement from the partnership firm.

Issue No. 9:

30. In the result, the election petition is allowed. As the first respondent stood disqualified u/s 9-A of the Act his election, as a member of the A.P. Legislative Council from 20-Karimnagar Local Authorities Constituency, held on 17-3-2007, is declared to be void and is, accordingly, set aside. However, in the circumstances, without costs.