
(1963) 01 AP CK 0010
In the Andhra Pradesh High Court
Case No : Special Appeal No. 5 of 1963

Chennupati Ramakotayya	Vs	APPELLANT
Myheni Lakshmanaswamy and Another		RESPONDENT

Date of Decision : 31-01-1963

Acts Referred:

Representation of the People Act, 1951 — Section 7

Citation : AIR 1964 AP 14

Hon'ble Judges : P. Chandra Reddy, C.J.;Gopalakrishnan Nair, J

Bench : Division Bench

Advocate : D. Narasaraju, General and J.V. Krishna Sarma, for the Appellant; G. Balaparameswari Rao, K.V. Raghunadha Reddy and B. Balamukunda Reddy, for the Respondent

Final Decision : Allowed

Judgement

Chandra Reddy, C. J.

1. The question we are called upon to answer in this enquiry is whether a contract entered into with the Andhra Pradesh Mining Corporation (hereinafter referred to as the Corporation) for certain purposes is tantamount to a contract with the Government of Andhra Pradesh within the " meaning of Section 7(d) of the Representation of the People Act, 1951.

2. The facts leading upto this appeal lie in a short compass and may be stated thus. In the last general elections, the appellant and respondents. 1 and 2 sought election to the Legislative Assembly of the Andhra Pradesh State from the Kankipad Constituency of Krishna District. Having secured the largest number of votes, the appellant was declared elected to the Legislative Assembly.

3. Questioning the validity of his election, the first respondent filed an election petition u/s 80, the chief ground of attack being that the appellant had incurred a disqualification u/s 7(d) by reason of the firm of which he is a partner having entered into a contract with the above-mentioned Corporation for raising iron ore

from the mines and for transporting the same" by road or canal and for stevedoring the said mineral. There are also other allegations in the election petition but we are unconcerned with them, as the Election Tribunal held that they were not established and that conclusion is not canvassed before us.

4. The election petition was resisted by the appellant on the plea that the contract in question did not offer any obstacle" in the way of his standing for election to the Assembly, as it did not fall within the mischief of Section 7(d).

5. The Election Tribunal agreed with the contention of the first respondent that the contract between the appellant and the Corporation offended against Clause (d) of section 7 and held that consequently the appellant's election -was void. It is this view of the Tribunal that is impugned before us.

6. Before we refer to the statutory provisions Having a bearing on this enquiry, we have to refer to the circumstances in which the appellant is said to have incurred the disqualification. The Corporation was brought Into existence by the Government of Andhra Pradesh to give effect to its policy of exploiting the mines in public sector in February, 1961, when it was registered as a private limited company, under the provisions of the Indian Companies Act. Immediately thereafter, it applied to the appropriate Government in accordance With Mineral Con-cession Rules, 1960, for a mining lease for iron ore in respect of a large tract of land known as GanQrayi area of Krishna District. The lease was sanctioned by the State Government under G. O. No. 1608 dated 2-11-1961. Subsequently, as indenture was made between the Governor o[Andhra Pradesh on behalf of the State Government and the corporation on 5-12-1961 by and under which the lease was granted to the Corporation subject to the terms and conditions enumerated therein.

7-8. Between the date of the G.O. mentioned above and the instrument dated .5-12-1961 i.e., on 29-11-1961, 3 firm known as K.R.B.S. Mining Corporation, Vijayawada of which the appellant is a partner, entered into a contract with the Corporation which, according to the respondents, has imposed the disability contemplated by Section 7(d) on the appellant.

9. We will now extract here the provisions of Section 7(d) of the Representation of the Peoples Act, 1951. It recites:

"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--

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(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;

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10. It is argued on behalf of the respondents that Clause (d) is attracted to the present case, as the contract was entered into by the firm, of which the appellant is a partner, in the course of its trade or business with the Government of Andhra Pradesh for execution of works undertaken by that Government. On the other hand, the stand taken by the learned counsel for the appellant is that irrespective of the question whether the contract was for execution of works, the Corporation with whom the appellant had entered into the transaction in question could not be described as the "appropriate Government" and that there is no scope for equating the Corporation to the State Government. We have already stated that the purpose of the contract between the Corporation and the firm of K.B.B.S. Mining Corporation, Vijayawada is the extraction of the mineral from the mines and transporting it by road or canal and (or) severing it.

11. We have to see whether this Corporation has the attributes of a Government. The submission made by Sri Balapameswari Rao, learned counsel for the first respondent, is that the Corporation was created by the Government to give effect to its policy, in exercise of its executive power to carry on the business of exploitation of mines through a Corporation owned by it and that, therefore, this body should be deemed to be the "appropriate Government" within the connotation of Clause (d). The learned counsel invites us to hold that it is a State-owned Corporation since the capital is contributed wholly by the State Government, the Directors are nominated by the Government, the transfer of shares could be effected only with the approval of the State Government, the present shareholders of the Corporation are all officers of Government and also because that was the only mode in which the business of winning iron ore and other minerals from the mines and marketing it could be carried out and that if the Corporation is owned by the Government it must be regarded as Government for purposes of Section 7(d). Do these facts make the Government a State-owned Corporation and as such could be regarded as a Department of Government?

12. We are not persuaded that the above mentioned ingredients have the effect that is attributed to them.

13. In the context of this question, we have to bear in mind certain basic facts. The Corporation which was formed for the objects fully set out in the Memorandum of Association, was registered under the provisions of the Indian Companies Act and it is governed by all the provisions of that Act. It is amenable to the jurisdiction of the Registrar of Joint Stock Companies. The Corporation could own property of its own, carry on business in its own name, borrow and lend money, and sue and be sued in its own name. It is directed by a group of persons called Directors nominated by Government. The day-to-day control of the administration is vested in the Managing Director assisted by other officials of the Company. The company makes its own appointments, has its own rules in regard to conditions of service, leave for the staff etc. Thus, it is its own master "and It does not act on behalf of the Government.

14. The articles of Association of the Corporation provide an elaborate machinery for issue and transfer of shares and for collection of share money. They also indicate that a private individual" could also own shares in the company.

15. Sri Balaparameswari Rao lays great stress on Article 3(b) which lays down

"Any intimation to the public to subscribe for any shares or debentures of the Company is hereby prohibited."

16. The provision is necessitated by the fact that the Company Is a private Limited concern and is in consonance with the character of such a concern. As such, this does not advance the case of the respondents that the Corporation is wholly a Government concern. The company is also excepted to make profits and distribute dividends among share-holders. There is another provision in the Articles of Association which has an important bearing on this enquiry, i.e., liquidation of the company. Normally, such a provision is inappropriate in the context of a Corporation wholly owned by the Government. Thus all the characteristics that pertain to an-ordinary company are possessed by this Corporation.

17. There are other considerations which are quite pertinent in this behalf. If the Corporation was a department of the State Government, what was the need for the Corporation to apply to the Government for a mining lease and to pay royalties and rents under various heads? It is also important to note that there are stipulations in the lease executed by the Corporation in favour of the Government for forfeiting the deposit for any default committed by the lessee and also for imposition of penalty not exceeding twice the amount of annual dead rent in certain contingencies.

The instrument of lease itself gives a clue as to the nature of the Corporation. That document is executed between the Governor of Andhra Pradesh on the one hand and the Corporation on the other. This document conforms to the requirements of Article 299 of the Constitution, this lease deed shows that the lessor and lessee are two different and separate entities and do not constitute the same legal person. The instrument itself in a way gives some indication that the Corporation is not a constituent part of the Government but it is a distinct legal entity. In the eye of law, it has an independent existence and cannot be treated as a department of the Government.

17A. It is true that very wide powers are vested in the Government in the matter of controlling the Corporation. It is also a fact that the capital for floating this Corporation was contributed by the Government. But, in our opinion these considerations do not make the Corporation as completely state owned. Much less could it be regarded as a department of the Government.

18. There is ample authority for this view of ours. in ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION Vs. Income Tax OFFICER, HYDERABAD, AND ANOTHER., a branch of this Court of which one of us was a member, decided that

the Road Transport corporation created under, the Motor Vehicles Act, which possesses qualities several of which are akin to those of a Corporation, could not be said to be entirely State-owned, notwithstanding the fact that the capital was contributed by the State Government and the latter had enormous powers in regard to the control of that Corporation. Jaganmohan Reddy, J., who spoke for the Court, after referring to the various circumstances which, according to the learned Advocate General then appearing for the State, indicate that the Road Transport Corporation was completely a State-owned Corporation, remarked thus:

"Nonetheless, it has never been and cannot, in our view be suggested that that company is a State-owned company or that the income of it is not subjected to Income Tax."

19. The argument advanced on behalf of the Corporation that It was an instrumentality of the Government and that, therefore, the income there from was the income of the State was also repelled. The doctrine of that case is applicable to this Corporation.

20. In the same trend of thought and which is of greater help in the context of this enquiry is the judgment of the Court of Appeal in *Tamlin v. Hannaford* 1949 2 All ER 327. It was decided there that the British Transport Commission was not a servant or agent of the Crown and its property was as much subject to the Rent Restrictions Acts as the property of any other person. There, the British Transport Commission was brought into being under the Transport Act, 1947. The Commission was directed by a group of men whose duty was to see that its powers were properly used. It could own property, carry on business, borrow and lend money just as any other corporation might do so long as it kept within the bounds which the parliament had set.

But the Commission had no share-holders to subscribe the capital or to have any voice in its affairs, the money which the Corporation needed was raised, not by the issue of shares but by borrowing and its borrowing was not secured by debentures but was guaranteed by the Treasury, If it could not repay, the loss fell on the consolidated Fund of the united Kingdom, that is to say, on the tax-payer. There were no share-holders to elect directors or to fix their remuneration. There were no profits to be made or distributed, the duty of the Corporation being to make revenue and expenditure balance one another, taking of course, one year with another, but not to make profits, if it should make losses and be unable to pay its debt, the property was liable to execution but It was not liable to be wound up at the suit of any creditor.

In spite of these qualities of the Corporation, it was held that it was not the Crown and that it had none of the immunities and privileges of the Crown. The characteristic qualities of the Corporation enumerated above were said to be those which belonged to the Corporation of the other kinds to which the country was accustomed. It was recognised, that the Transport Act, 1947, which was responsible for the creation of the Transport Commission, had vested large

powers in the Government for the control of the Corporation. It was the Minister who appointed the Directors - the members of the Commission - and fixed their remuneration. He could get any information he wanted. He had power to give them directions of a general nature in matters which appeared to him to effect the national interest, as to which he was the sole Judge, and they were bound to obey. Nevertheless, as we have already stated, it was held that it was not the Crown, and it did not enjoy the immunities or privileges of the Crown.

21. We will do well in this context to quote the words of Lord Justice Denning:

"These are great powers, but still we cannot regard the Corporation as being his agent, any more than a company is the agent of the shareholders or even of a sole shareholder. In the eye of the law, the Corporation is its own master and is answerable as fully as any other person or corporation. It is not the crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property, it is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a Government Department nor do its powers fall within the province of Government."

22. The principle enunciated in this case applies with full vigour to the instant case. This is an a fortiori case. In that this is not a statutory corporation but a company governed by the Indian Companies Act, It is expected to make profits, declare dividends, distribute them among the shareholders and is even liable to be wound up, which elements are absent in (1949) 2 All ER 327. For these reasons we are unable to accede to the theory that the Andhra Pradesh Mining Corporation answers the description of "appropriate Government" within the contemplation of Section 7(d) of the Representation of the People Act, 1951.

23. Lastly, Sri Balaparameswari Rao, learned Counsel for the respondents, fell back upon the argument that having regard to the Legislative Policy underlying Section 7(d) namely, maintenance of Independence and integrity of the members of the Legislature, that provision should receive a beneficial construction. In support of this contention, reliance is placed on the following remarks of Atkin LJ., in *Lapish v. Braithwaite* (1925) 1 KB. 474:

"The object is manifest. It is to obtain for the public body concerned the disinterested advice of its members, so that they are not put in position where their duty and interest conflict. It is intended also to prevent the possibility of members' votes and other matters being influenced by the promise or receipt of beneficial contracts. And it is further intended to secure the honour and dignity, of the Corporation itself by securing that there shall be no suspicion of the integrity of its members, and no ill-will amongst burgesses not members of the Corporation, because they are passed over in business in preference to favoured councilors"

24. For one thing, we cannot agree that this clause should be liberally construed, it being a disabling provision, it should be strictly construed. Assuming that a

beneficial construction is adopted, it cannot convert a private limited company into a State Government. We have, therefore, to repel this argument also.

25. It follows that the appellant was not disqualified u/s 7(d) and consequently he was validly elected as a member of the Andhra Pradesh Legislative Assembly and that the decision of the Tribunal is unsustainable.

26. In this view of ours, it is unnecessary for us to express any opinion on the question whether the contract entered into by the firm was a contract for the execution of the works undertaken, by the Corporation, which is said to constitute the Government.

27. In the result, the appeal is allowed with costs. Advocate's fee Rs. 100/- (One Hundred).