
(1967) 04 MAD CK 0018
In the Madras High Court

K.M. Rajaram

APPELLANT

Vs

Chinnathuraj and Another

RESPONDENT

Date of Decision : 27-04-1967

Acts Referred:

Representation of the People Act, 1951 — Section 7(d)
Transfer of Property Act, 1882 — Section 108B(1)

Citation : (1968) 81 LW 254 : (1968) 1 MLJ 383

Hon'ble Judges : T. Venkatadri, J;T. Venakatadri, J

Bench : Division Bench

Judgement

T. Venakatadri, J.—An interesting question of law arises in this writ petition, viz., whether a person can be disqualified for election as a

member of a Panchayat, on the ground that he was a lessee of a coconut thope belonging to the Panchayat, on the date of the nomination.

2. The writ petitioner had taken out a lease of coconut thope belonging to the Panchayat. In the election to the Perambur Panchayat, Mayuram

Taluk, held on 30th January, 1965, the petitioner was declared elected. Tine first respondent filed an election petition against the petitioner, for a

declaration that the election was void, as the petitioner had an interest in a subsisting contract with the Panchayat, Board on the date of nomination,

and he was therefore disqualified to be a member of the Panchayat.

3. As per the provisions of the Panchayat Act, a person is disqualified for election ^s a member, if, at the date of nomination or election, he is

interested in a subsisting contract made with or any work being done for, any panchayat. In the instant, case, it is common ground that the

petitioner was the highest bidder at the auction for the sale of the lease of the property on 30th April, 1964. The property owned by the Panchayat

comprises of 10 coconut trees and 6 lime trees. It is the case of the petitioner that on the date of nomination he had surrendered the lease, but the

Election Commissioner of Panchayat is (District Munsif), Mayuram, did not believe this case of the petitioner. He found that there was a subsisting

contract in respect of the thope at the date of nomination, and that the petitioner was, therefore, disqualified u/s 25(2)(c) of the Panchayat, Act,

1958, for election as a member of the Panchayat.

4. The only question, for consideration in this Writ petition is whether the petitioner can be disqualified, merely by reason of the fact, that he had

taken out a lease of the thope belonging to the Panchayat.

5. Learned Counsel for the petitioner contends that, once a lease had been executed and the lessee had taken possession of the leased property,

nothing remains to be done by the petitioner except to enjoy the usufruct during the period of the lease. The petitioner's Counsel, therefore,

submits that it cannot be said that there is a subsisting contract.

6. Before the present Act was enacted, under the provisions of the old Act, there was a notification issued by the Government which stated that no

person should be disqualified for election as a member of a Panchayat on the ground that at the date of nomination or election, he was interested in

a subsisting contract made with, or any work being done for, the Panchayats, and no member should cease to hold office as such on the ground

that he acquired any interest in any such contract. But under the provisions of the present Act, a member shall cease to hold office as such if he

acquires any interest in any subsisting contract with, or work being done for, the Panchayat. In this case, can it be said that the petitioner is

interested in a subsisting contract made with, or any work being done for, the Panchayat?

6. Learned Counsel has cited K.S. Sharma v. Ramgulam AIR 1954 Nag. 255, a case on identical facts, wherein the question for consideration

was whether a contract of lease with municipal committees would be a disqualification under Clause (1) of Section 15 of C.P. and Berar

Municipalities Act, which says that no person shall be eligible for election, selection or nomination as a member of a committee if such person has

directly or indirectly any interest in any contract with, by or on behalf of the committee, while owning such share or interest. A Division Bench of

the Nagpur High Court has held in that case, that, where a contract is completely executed by both the parties and nothing remains to be done by

either side, the contract is wholly exhausted and ceases to have any effect. In *Bholanath v. Krishna Chandra Gupte* 6 E.L.R. 104 the Election

Tribunal has held that a person to whom the Collector has leased out land u/s 4 of the U.P. Land Utilisation Act, 1948, is not disqualified u/s 7(d)

of the Representation of the People Act, 1951, as the transaction is not a contract, express or implied, between the lessee and the State

Government, for the supply of goods, to, or the performance of any services undertaken by, the State Government. In *Lumba Ram v. Ram Narain*

5 E.L.R. 319, the Director of the Department of Mines and Geology of State granted to the petitioner the sole right to quarry building stone from

the various quarries of the State under a contract which contained a stipulation that the petitioner agreed to submit to the excavation and removal of

all stone required for the State Railway and Military Works and also to allow the P.W.D. contractors to excavate and remove all stone required

for Government works on payment of a fixed royalty. The Election Tribunal held that the contract was not one for the supply of goods to the

Government within the meaning of Section 7(d) of the Representation of the People Act, as there was no agreement to supply goods but only to

allow the removal of stone required for Government purposes. In *R. Deshpande Vs. Muttam Reddy and Others*, , it was alleged that the first

respondent therein was a beedi-leaf contractor of the Government for some named villages which contract Was subsisting at the time the

nomination papers were filed, and therefore his election should be set aside. The question for consideration was whether the terms of the contract

deemed it a contract for the supply of goods or the execution of any works or the performance of any services undertaken by the appropriate

Government. The Bench observed that the nature of the Beedi-leaves contract was such that no supply of goods or execution of any works to or

for the Government was envisaged, and that the agreement between the Government and the first respondent as one for sale and purchase of

beedi-leaves, pure and simple. In *Dip Narain Singh Vs. Nageshar Prasad and Others* it was held by a Full Bench of the Allahabad High Court that

once a document transferring Immovable property had been duly executed and registered, the transaction passed out of the domain of mere

contract into one of conveyance, and that such a complete transaction was governed by the provisions of the Transfer of Property Act. The same

view was held in the case of lease in Kandasami Pillai and Others Vs. Ramasami Mannadi and Others, , After referring to the above case, it is

observed in K.C. Sharma V. Ramgulam AIR 1954 Nag. 255, that, although, therefore, in a case of completed lease there is a continuing liability to

pay rent, it cannot be referred to the contract after it is executed and that this liability would, after the completion, of the lease, be enforceable u/s

108-B(1), Transfer of Property Act, and not under the provisions of the Contract Act or Specific Relief Act.

7. Lastly, In C.V.K. Rao Vs. Dentu Bhaskara Rao, , the Supreme Court held that in the case of a mining lease by Government, where there was a

covenant for pre-emption of minerals in favour of Government, the right of pre-emption did not amount. to contract for supply of goods which

could be said to subsist between the parties. Their Lordships have observed that the disqualification which results from Section 7(d) of the

Representation of the People Act is conditioned by a number of circumstances; there must be a subsisting contract between the appropriate

Government and the candidate, the contract must be in the course of trade or business of the candidate and finally it must be inter alia for the

supply of goods to such Government. In. the present case, the petitioner is not supplying the usufruct to the Panchayat. He cannot be said to

supply goods to the Panchayat nor render service to the Panchayat under the alleged contract. It is also useful to refer to the following passage

occurring in *Tranton v. Astor* (1917) 33 T.L.R. 383.

I will say at once that I think that the real and sufficient answer to the claim of the plaintiff in this action is that even if Government department

acting, directly does give an order to a newspaper for the insertion of a Government advertisement in a particular issue of the newspaper, and the

newspaper accepts and inserts the advertisement, and that is all, such a transaction is not a contract or agreement within the meaning of this

legislation at all, and such casual or transient transactions are not the kind of contracts coveted by these statutes, but that what are meant to be

covered are contracts of a more permanent or continuing and lasting character, the holding and enjoying of which might, improperly influence the

action both of legislators and the Government.

8. Therefore, in the present case, once the petitioner has taken out a lease of the thope belonging to the Panchayat and once the lease has been

executed, there remains nothing to be done by the petitioner to the Panchayat, and he is; only required to enjoy the usufruct of the leasehold

property during the period of the lease. And the petitioner is not supplying any goods to the Panchayat. Therefore, on a review of the case-law and

upon facts, it appears to me that the conclusion come to by the Election Commissioner is vitiated by an error apparent on the face of the record.

9. The Writ Petition is allowed but without costs.