

(1958) 07 AP CK 0015

In the Andhra Pradesh High Court

Case No : Special Appeal No"s. 3 and 4 of 1958

R. Narasimha Reddy and Another

APPELLANT

Vs

Bhoomaji and Another

RESPONDENT

Date of Decision : 08-07-1958

Acts Referred:

Representation of the People Act, 1951 — Section 100(2), 123, 124, 7

Citation : AIR 1959 AP 111

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

Bench : Division Bench

Advocate : V.K. Vaidya, for D. Narasaraju, General and P.V. Rajeswara Rao, in Spl. A. No. 3 of 1958, O. Chinnappa Reddy and C. Padmanabha Reddi, for the Appellant; P.V. Rajeswara Rao in Spl. A. No. 4 of 1958, B.V. Subrahmanyam, K. Venkateswarlu and P. Satyanarayana, for the Respondent

Judgement

Seshachalapathi, J.—These are two connected appeals filed u/s 116(a) of the Representation of the People Act, as amended by Act XXVII of 1956, hereafter called the Act against the decision of the Election Tribunal (District and Sessions Judge) Secunderabad in election petition No. 374 of 1957 on its file declaring the election of the legislative assembly of Andhra Pra-desh void.

2. The appellant, Sri R. Narasimha Reddy and Sri J.B. Muthyala Rao, appellants in Special Appeals Nos. 3 and 4 of 1958 respectively, the 1st respondent Sri Bhoomaji and five others stood as candidates for election to the Legislative Assembly, Andhra Pradesh from Gajwel double-member constituency in of about January 1957. The nominations were duly filed by all these candidates before the last date fixed, i.e., 29-1-1957 and they were duly scrutinized on 1-2-1957. The date for the polling was fixed to 4-3-1957 and the election took place on that day. The result of the poll was as follows

Candidate : -- Votes Polled. 1. Artula Ramchandra Reddy. 10183 G. 2. J.B. Mutual Rao. 24450 B. 3. Naraslah. ... 6494 B. 4. Banam Veeraswamy... 5684 R. 5. Bhoomaji. ... 5048 G. 6. Balakrishta Reddy... 5208 G. 7. Mallesham. ... 12998

E. 8. Reddygari Nirasimha Reddy. ...22168 G.

This being a double-member constituency, Sri J.B. Mutyal Rao, who polled 24,450 votes, was declared elected for the reserved seat, and Sri R. Narasimha Reddy, who polled 22,168 votes, was declared duly elected to the general seat.

3. Thereupon, Sri Bhoomaji, the 1st respondent in both the appeals, filed an election petition under Ss. 80 and 81 of the Representation of the People Act challenging the validity of the election and praying for a declaration that the election of the two returned candidates be declared void.

4. The main allegations in the petition are : 1. That the Petitioner Sri Bhoomaji had on 21-2- 1957, notified to the Returning Officer his intention to retire from the contest in accordance with Section 55 (a) of the Act, and that the retirement was not duly accepted on the ground that the communication was not delivered to the Returning Officer.

2. That by reason of the non-acceptance of the retirement, the appellants exploited the situation by spreading the rumour that the petitioner took a bribe from Artula Ramachandra Reddy, and that as the bargain was not completed he was continuing to stand in spite of his attempt to withdraw from the contest.

3. That on the polling day, i.e., on 4-3-1957, the appellants through their agents, political and otherwise, intimidated the voters by tying pairs of bulls at the four entrances of the polling booth at Majldpalli polling booth and making the voters put "Kum Kum" on the foreheads of the bulls and take oath to cast their votes for the Congress candidates and thus playing upon the religious superstition of the voters.

4. That the appellants through their agents and workers arranged for the conveyance of the voters by jeeps at Gajwel and also employed a transport lorry No. HYT 162 for conveying the voters from Laxmapur village to the polling booth at Akkannapet.

5. That on 23-2-1957, an election meeting presided over by the petitioner Sri Bhoomaji was violently disturbed resulting in abandonment of such a meeting.

6. That at Nemtoor, Itkyl and Jagdeopur polling booths goondaism was perpetrated by the respondents and their agents and the polling agents of A. Ramachandra Reddy were beaten and driven away.

7. That the appellants got a bogus pamphlet purporting to be issued by Smt. Kamala Devi the wife of A. Ramachandra Reddy circulated. The pamphlet states that Smt. Kamala Devi had renounced her connections with the Communist Party and calls upon the voters to abstain from voting in favour of her husband A. Ramachandra Reddy, so as to teach him a lesson. It is stated that the publication of this spurious pamphlet purporting to be issued by the wife of one of the contesting candidates had a very great affect on the result of the polling.

8. That the appellant in Special Appeal No. 3 of 1958, R. Narasimha Reddy, had a

subsisting P.W.D: contract with the State Government and as such he was disqualified u/s 7, Clause (d) of the Representation of the People Act.

5. Sri Narasimha Reddy and Sri Mutyal Rao who were impleaded as respondents, filed their written statements denying the allegations in the petition and the petitioner filed a rejoinder thereto.

6. On the pleadings, the Tribunal settled eight issues and recorded its findings on each one of them.

7. The Tribunal found that even though the retirement of the candidature of Sri Bhoomaji should have been accepted in time and the reasons for not doing so are not tenable, still it could not be said that the result of the election was materially affected by the non-acceptance of the retirement and so found the issue against the petitioner. It is not necessary for us to deal with this question, as the learned counsel for the respondents in these appeals has not questioned the finding.

8. The Tribunal held that the allegation as to the exploitation of the superstition of the voters by the exhibition of the bulls and inducing the voters to take oath by smearing vermilion on the fore-heads of the bulls has been made out. The Tribunal further held that even though the charge of conveying the voters by jeep had not been pressed, the conveyance of the voters by the lorry from Laxmapur to Akkannapet had been sufficiently established, but it has also been held that it does not amount to a corrupt practice within the meaning of Section 100 (D) (2) of the Act.

The Tribunal held that the pamphlet Ex. P-L is a spurious document, that it was never issued by Suit. Kamala Devi, that it had been brought into existence by the respondents, that is, the appellants or their agents, and that by designs and effect it had a very adverse effect on the polling and that it would amount to a corrupt practice within the meaning of Section 123 (4) of the Act. As regards the disturbance of the meeting at Ramayanpet and the goondaism practiced on the election agents of A. Ramachandra Reddy, the Tribunal found in favour of the petitioner.

In regard to the allegation that R. Narasimha Reddy had a subsisting contract with P.W.D. of the State Government, the Tribunal came to the conclusion that the allegation is true and that R. Narasimha Reddy is, therefore, disqualified from standing as a candidate. In the result, the Tribunal gave a declaration that the election of the two returned candidates was void.

9. The learned counsel for the appellants has strenuously contended before us that the findings of the Tribunal are not based upon the evidence and are opposed to the probabilities of the case- The allegations as to corrupt practises as those referred to in Sections 123 and 12-4 of the Act are of quasi-criminal character and the standard of proof "required to establish them is the same as certains to proof in criminal cases. It is from that basic point of view that the

evidence tendered in this case has to be scanned and its value assessed.

10. In regard to the first objection, it is in evidence that the petitioner notified his intention to withdraw on 21-2-1957. It was not, however, accepted as it was not delivered in person to the Returning Officer. The result of it was that the ballot box of the petitioner was kept in all the polling booths and he polled as many as 5,048 votes.

11. It is contended for the appellants that, as a matter of fact, the petitioner personally canvassed for his election prior to the date of the polling and actually took interest in his election on the polling day. It is further contended that no confusion ensued on account of retention of the petitioner's polling box. It is not necessary for us to dwell further on this aspect of the case, as the Tribunal's finding that the failure to accept the retirement of the petitioner did not affect the result of election has not been disputed before us.

12. The allegation as to the employment of the bulls for purposes of playing upon the superstitious sentiments of the voters has been sought to be proved by the evidence of P.Ws. 1, 19 and 20. P.W. 1, the petitioner has in his evidence stated that he went to Majidapalli where the bulls were exhibited only on the next day of the polling.

Therefore, he could not have seen the bulls being employed in the manner suggested on the polling day at Majidapalli. P.W. 19 states in the chief examination that the bulls were tied at a distance of about 70 yards and that he had seen three or four people putting "kum kum" on the foreheads of the bulls. He states further that they all felt that if they did not vote for the bulls they would be committing a sin.

He does not say that anybody forced him to take an oath or that he saw any persons being forced or induced to vote for the Congress after smearing vermilion on the foreheads of the bulls. For the respondents, R. W. 2 states that he did not find any bulls tied to any place near the polling booth. Similarly R.W. 18 states that there was no pooja or decoration of the bulls in the village on the day of election.

13. In our view, the oral evidence is of little value. That the story of the bulls is an afterthought is clearly established by Ex. R-9 dated 6-3-1957. Two days after the election, the petitioner, Shri Bhoomaji wrote to the Returning Officer of Dommat constituency drawing his attention to the irregularities in the election held for the Gajweel constituency on 4-3-1957.

While he has mentioned several irregularities there was no reference at all to the bulls and, in our view, the omission of any reference thereto is a clinching circumstance militating against the truth of the story put forward by the petitioner. We are of opinion that the finding of the tribunal on this part of the case is incorrect. In the view we take of the facts it is unnecessary to consider whether the alleged exhibition of the bulls with intent to play upon the

superstitious sentiments of the voters would amount to a corrupt practice within the meaning of Section 123 (2)(a)(ii) of the Act.

14. We think it convenient to deal together with the alleged disturbance at Ramayaopet meeting and the personal violence to which the agents of A. Ramachandra Reddy were subjected. These allegations are covered by issues 7 and 8 in the enquiry before the Tribunal. The Tribunal gave a finding in Favour of the petitioner. These allegations are spoken to by P.Ws, 14, 15, and 18. P.W. 14 has stated that there was a meeting at Ramayanpet prior to the election and that it was presided over by Shri Boomaji.

During the course of the meeting, it is stated, the Congress volunteers who were drunk came there armed with bands, created disturbance by abusing Shri Boomaji and asking the speakers not to speak. In the cross examination it was elicited that the meeting took place about 100 paces from the Police Station and that there was a Sub-Inspector of Police with a posse of constables. Yet it would appear that no report was made to the Police Inspector.

P.W. 15 also speaks to the disturbance at the meeting, which according to him consisted of 2,000 persons. He also admits that the meeting was very near the police station. In cross-examination he states that the meeting lasted for three hours, and that he was present at the meeting from the beginning to the end. P.W. 18 also speaks of the disturbance, but also admits that it was very near to the Police Station. We are not impressed with this evidence.

15. On behalf of the respondents, R.Ws. 9, 10 and 11 have been examined. They are the residents of Ramayanpet. They say that they have attended the meeting and that there was no disturbance. The Tribunal has observed that the negative evidence of the three witnesses for the respondents does not seem to be convincing. We are unable to agree. The meeting was held about 10 or 12 days prior to the date of the election.

Admittedly it was held very near to the police station. It is highly improbable that anybody would dare create such disturbance in the immediate neighbourhood of the police station. However, if the meeting was really broken, no report of the disturbance would appear to have been lodged with the police. In these circumstances, we are unable to say that the allegation as to the disturbance of the public meeting at Ramayanpet has been made out.

16. Nor are we able to agree with the tribunal as to the beating of the agents of A. Hamachandra Reddy. P. Ws. 7, 8, 9 and 17 speak about the incident of violence. P. W. 7 states that he went to Jagdeopur and wanted to appoint one Chandra Reddy as polling agent, but that some 10 or 15 Congress people showed him Ex. P-1 threatened him, and asked him to go away and that he did so. P. W. 7 Chandra. Reddy supports P. W. 6. P. W. 8 states that he saw some 10 or 15 people asking P. W. 6 to go away. P. W. 9 was the polling agent of Ramachandra Reddy at Itkyal.

He states that some congress men came and showed him the pamphlet of Smt. Kamala Devi, that he was detained there till 12 O'Clock and beaten by them at 11 O'Clock. He further added that at 12 O'Clock Kamala Devi and others came there in a car and he went weeping and reported the matter to them. In the cross-examination he expressly admitted that he did not inform any of the constables about the beating; though there were several constables (about 5 or 6) near the booth. P. W. 10 speaks that at 11 O'Clock, P.W. 9 was made to hold his ears and stand and sit. That, however, was not the story given by F. W. 9 himself.

P. W. 18 is Smt. Kamala Devi, the wife of Sri. A. Ramachandra Reddy. She states that Durga Reddy (P. W. 9) who was appointed as an agent at Itkyl was beaten. Obviously, she had seen the incident and she does not seem to have taken any steps to make a police report. Further Sri Boomaji¹ had not made any reference to the beating on 4-3-1957 to the Returning Officer for the Dommat constituency in his communication (Ex. R-9). In these circumstances, we are of opinion that the allegation as to the bearing of the election agents of Sri Ramachandra Reddy has not been made out. We are unable to agree with the tribunal in its finding on this issue.

17. We next come to the ease of the conveyance, which is covered by issue 4. It may at once be stated that the petitioners did not press at the enquiry before the tribunal, the case as regards the conveying of the voters by jeep, even though in the original petition it had been alleged that the respondents and their agents arranged for the conveyance of the voters through their own jeeps at Gajwel proper.

The only allegation pressed under this charge is that a lorry bearing No. HYT 160 was employed by the respondents and their agents for purposes of conveying the voters from Laxmapur polling booth to Akkannapet. There is no question that in Section 123 sub-section 5 of the Act, "the hiring or procuring, whether on payment or otherwise of any vehicle or vessel by a candidate or his agent or by any other person, for the conveyance of any elector (other than the candidate himself, the members of his family or his agents) to or from any polling station provided u/s 25 or a place fixed under Sub-section (1) of Section 29 for the poll" would be a corrupt practice.

It remains to be seen whether as a matter of fact, the lorry was used for the purposes of conveying the voters from Laxmapur to Akkannapet polling station. The evidence on which this charge is sought to be sustained is of P. Ws. 11, 12 and 13. P. W. 11 is a resident of Laxmapur. He states that he went in a lorry from Laxmapur to Akkannapet, and that Raja Reddy had arranged for the transportation. He further added that he was a worker in the Medak Taluk Congress Committee. He also gave the names of four other people, who are stated to have travelled in the lorry.

P. W. 12 states that Raja Reddy is the president of the Taluk Congress Committee

and said that he would arrange for a lorry. He stated further that there was only one trip and as he could not go by the first trip he went to the polling booth on foot. P. W. 13 also states that Raja Reddy brought a lorry for transporting the voters, and he gives the names of 5 or 6 people who travelled by the lorry. On the other hand R. Ws. 12 and 13 who are also residents of Laxmapur and R. W. 14 who is a resident of Ramayanpet, have deposed that there was no lorry and that all the villagers went on foot to the polling booth.

18. In this state of oral evidence we have to bear in mind that the onus of establishing a corrupt practice rests heavily upon the petitioner and we are of the opinion that that onus has not been duly discharged. Further the tribunal itself while holding that the transport of voters had been established held that it has not been proved that the result of the election had been materially affected by this corrupt practice within the meaning of Section 100 (D) (ii) of the Representation of the People Act.

19. Mr. B.V. Subrahmanyam, the learned counsel for the respondents has urged before us that the respondents had summoned Mala Gowd, stated to be the owner of the Lorry, and Raja Reddy who is stated to have arranged for the transportation with the lorry and that for reasons best known to them, the respondents have not examined them both. He wants us to draw an adverse inference from such non-examination. As stated supra, the onus of proof is on the petitioner.

As has been held, the proceedings before the [election tribunal alleging corrupt practice is in the nature of quasi criminal trial, and it is for the petitioner to establish it beyond reasonable doubt. We are of opinion that the evidence in this case is not enough to establish that the lorry was actually used at the instance of Raja Reddy.

Assuming for the sake of argument that Raja Reddy did provide for the transportation of the lorry, a further step has yet to be established, namely that the corrupt practice has been committed by the returned candidate or his election agent or by any other person with the consent of either. There is no evidence that the returned candidates or their agents have committed the corrupt practice. Rajareddy was admittedly not an election agent of the returned candidates.

The definition of an agent formerly in Section 79 (1) has now been put in Section 123 sub-section 7 Explanation 1, Raja Reddy does not certainly fall within this definition of an agent and consent of the returned candidates or their agents for the use of the lorry has not been proved by any other evidence. It cannot be a matter of conjecture or surmise. In these circumstances, we are unable to agree with the contentions of the learned counsel for the respondent that a case of corrupt practice within the meaning of Section 123 (5) has been established.

20. Mr. Subrahmanyam relied on certain observations in the decision of the Supreme Court in *Bhagwan Datt v. Ram Ratan Gupta*, 11 EL LR 448 (A), In that

case it was actually proved that the car belonging to the Socialist candidate for the State Assembly for the same constituency was used for conveying voters to the polling station for the House of the People, that the respondent had contributed funds for the Socialist Party and had no agents of his own.

In those circumstances it was held that the finding of the Tribunal that the conveying of the voters was with the connivance of the candidate was correct. We are of opinion that the decision cited has no application, as in the instant case there are no such circumstances. Further under the amended language of Section 100 (b) "consent" of the returned candidate or his election agent is necessary for acts done by others. No such proof is forthcoming in this case.

21. The next ground upon which the learned counsel for the respondent has laid strong reliance is the distribution of the pamphlet Ex. P-I. The tribunal considered this question under issue 5 and found the issue in favour of the petitioner. Ex. P-I is a pamphlet in Telugu purported to be issued by Smt. Arutula Kamala Devi, the wife of A Ramachandra Reddy.

It states that she was originally a member of the Communist party, that she successfully stood for the Aleir Constituency last time, that she was again standing for Aleir, that the Communists have been responsible for several cruel acts, that she had not so far divulged all of them, that wherever she goes people are reluctant to help her, that the Congress candidate Poona Reddy had rendered great public services, and that she believed that he would win. Further it is stated in the pamphlet that she had given up her contact with the Communist Party and that she desired that her husband should be defeated in the election and taught a lesson. The pamphlet ends with the slogan; "Down with cruelties of the Communists and our vote is for the Congress."

22. The contention is that this pamphlet was got up falsely in the name of Smt. Kamala Devi and distributed at some of the polling booths with the intention of damaging the electoral chances of Arutula Ramachandra Reddy, the P. D. F. Candidate. The petitioner will have therefore to establish that this pamphlet, firstly was a false one, and secondly, that it was issued or caused to be issued by the respondents or their agents Or any other person with the consent of the respondent or their election agents.

23. Smt. Kamala Devi was examined as P. W. 17. She denies having issued Ex. P-I and we see no reason to discredit her disclaimer. That the pamphlet was distributed at Jagdeopur, Peerlapalli, Dharmaram and Itkyal is spoken to by P. W. 4. P. W. 2 is the owner of the press by name "Kisan Press" at Afzal Gunj, Hyderabad. He states that one Seshagiri Rao gave him an order for printing of the pamphlets and he has produced the vouchers dated 2-3-1957 signed by Seshagiri Rao and marked as Ex. P-7. He states that he was asked by Smt. Kamala Devi about the printing of the pamphlets and he told her that the order was given by one Seshagiri Rao.

Seshagiri Rao was examined as P. W.3. He gave a curious story and says that on

2-3-1957 he had come to Hyderabad from Aleir and near Osman Gunj some person accosted him and told him that he had some matter to be printed and gave his name as Chinna Kistha Reddy and requested the witness to help him in that behalf. So P. W. 6 obligingly got the pamphlets printed. In the cross examination he says that he does not belong to any party though he was a four anna member of the Congress from Bhongir Taluq. He states further that one congress volunteer came to him and took the pamphlets.

He states that he was surprised at the contents of the pamphlets but made no enquiries and delivered it at the Congress Office. We are unable to attach any value to this evidence It is extremely improbable that P.W. 3, who is an educated man would have taken the responsibility to get such a pamphlet printed at the instance of a person whom he did not know before and who accosted him casually near the Osman Gunj. R.W. 4 is a person who is stated to have distributed these pamphlets.

He states that he was a four anna member of the Congress and that he worked for the Congress. He wrote Ex. R-2 to Narasimha Reddy stating that Artula Ramachandra Reddy had summoned him to give evidence about the distribution of the hand bills of Smt. Kamala Devi's resignation, and that Narasimha Reddy was responsible for the money due to Mutyal Rao for loaning the cycle to him. In the cross-examination he states that he found the pamphlets in the office of the Congress at Jagdeopur and that somebody dropped them in the room. We are not at all impressed with this evidence.

The suggestion is that P.W. 3 who is a congressman got them printed and P.W. 4, also a Congressman distributed them obviously with a view to discredit the P.D.F. candidate and thereby serve the interests of the respondents. Assuming that P.W. 3 and P.W. 4 are both Congressmen, there is absolutely no evidence that the respondents or their election agents had any knowledge of the publication or distribution of the pamphlet or they gave any consent thereto. We are of opinion that the finding of the Tribunal on this part of the case is erroneous and that it has not been proved that the respondents are responsible for or consented to the printing and the distribution of the pamphlets.

24. There remains one question which is referable only to Narasimha Reddy and that is the disqualification u/s 7(D) of the Act by reason of the P.W.D. contract. This is covered by issue 6. That Narasimha Reddy is a P.W.D. contractor, that he entered into a contract with the Hyderabad State Public Works Department (Irrigation Branch) for restoring the Shalipat tank in Medak District as per the estimates and specifications can admit of no doubt.

However, on deciding to stand for the election to the Legislative Assembly the petitioner wrote Ex. R-4 to the Executive Engineer, Irrigation Branch, Medak asking for the cancellation of his certificate as a "D" class Contractor and for a reply in writing. On 29-12-1956, the Executive Engineer replied in R-5 that his name was removed from the list of contractors in his division as desired. It is,

therefore, contended for the appellants that on the relevant date the appellant was not a contractor and as such there was no disqualification within the meaning of Section 7 (D) of the Act.

25. This argument proceeds upon misapprehension. It may be that he was removed from the list of contractors of the "D" Class, but the question is whether the contract he entered into with the Government was subsisting or not.

26. The respondent, Narasimha Reddy, had executed a power of attorney Ex. P-14 (a) in favour of one Jagpat Rao on 5-11-1956 and addressed a letter Ex. P-15 dated 13-11-1956 to the Executive Engineer requesting that he had appointed Jagpat Rao as his agent for doing the construction work taken in his name. The Executive Engineer addressed a letter Ex. P-5 to the Superintending Engineer on M-3-1957 suggesting that by reason of the removal of Narsimha Reddy's name from the list of "D" class contractors, the power of attorney also had to be cancelled, and if it were so, fresh tenders would have to be called for, which would take considerable time.

Hence he sought the advice of the Superintending Engineer whether the work could not be done through the power of attorney agent. The Superintending Engineer replied in Ex. P-4, that the work of the 1st contractor may be closed and the balance work let out to the other man in his name, and on 17-7-1957 the Superintending Engineer wrote his final reply (Ex. P-13), In that reply the Superintending Engineer had stated that a retrospective transference of the contract in the name of Jagpat Rao could not be granted and that the contract should be considered as being continued in the original man's name.

27. It is true that by the letter dated 29-12-1956, the Executive Engineer informed R. Narasimha Reddy that his name has been removed from the list of contractors in his division, but that cannot mean that the contract entered into by R. Narasimha Reddy with the P.W.D. under Ex. P-10 had become completed and all the rights and liabilities thereunder were settled and adjusted. In fact, the Superintending Engineer did not agree to the transference of the contract to Jagpat Rao. It is also clear from Ex. R-6 that the contractor had already started the work and that he received the mark out and that the work of the removal of obstruction at the Weir site was in progress.

It is, therefore, obvious that prior to 29-12-1956 some work was done in respect of the contract either by the principal contractor Narasimha Reddy or his power-of-attorney agent, Jagpat Rao. Under Cf. 14 of the contract for work done 7% shall be held in deposit in addition to the 2% that was deposited by the contractor on the full estimated value of the work and the value of the work had to be determined later on and due payments made.

It would also appear from Ex. P-16 that a bill was drawn in the name of Jagpat Rao, the power of attorney holder and it was cancelled and issued in the name of Narsimha Reddy (Ex. P-16 and P-16-A). P.W. 21. The Executive Engineer in his evidence has stated that the bills were made in the name of Narasimha Reddy

and that the final bill has been prepared on 25-6-1957 (Ex. P-17), but that the payment has not been made. R.W. 16 also speaks to the same effect.

28. It seems to us, therefore, clear that on the relevant date the contractor under Ex. P-10 was subsisting. The Superintending Engineer who alone under Clause 24 (E) of the contract (Ex. P-10) has right to terminate the contract had not so terminated it. The transfer of the work in the name of Jagpat Rao had not been recognised. The bills were being issued in the name of the principal contractor. In view, of these circumstances, we are of opinion that the contract was not terminated and the interest of Narasimha Reddy continued in the contract.

In *Chatturbhuj Vithaldas Jasani Vs. Moreshwar Parashram and Others*, Bose J., speaking for the Supreme Court observed that a contract continues in being till it is discharged by both the sides. So long as in the case the final bills have not been settled, R. Narasimha Reddy must be deemed to have a subsisting interest in the contract.

It has been contended that after the removal of the contractor's name from the list of contractors, the contract must be deemed to be at an end; that no work was practically done under the contract in respect of which payment could be demanded by the contractor, that the original deposit must be deemed to have been forfeited, so much so that there was nothing to be done under the contract after the removal of the name of the contractor. We have taken the view that under Clause 24(E) it is only the Superintending Engineer who can terminate the contract. Such a termination had not been made. The removal of his name from the list of contractors did not amount in fact and cannot amount in law to the termination of the contract.

29. The learned Advocate-General pressed on our attention that when there is a rescission of contract any deposit made would be forfeited, and so Narasimha Reddy could not claim it back. In support of that contention he relied upon : *Howe v. Smith*, (1884) 27 Ch D 89 , Ex parte Barrel; *Re Parnell*, (1875) 10 Ch A 512 , *Sprague v. Booth*, 1909 AC 576 , *Natesa Ayyar v. Appavu Padayachi*, ILR 38 Mad 178 : (AIR 1915 Mad 896) , *Abdul Gani and Co. Vs. Trustees of the Port of Bombay*, (G1, *Chiranjit Singh v. Har Swarup*, AIR 192C PC . These cases are, in our view of little assistance to the point in question.

Where in respect of contract for sale some earnest money is paid and if eventually the purchaser does not perform his part of the contract, it has been held in those cases that the earnest money paid as an advance would be forfeited even though there may be no express covenant in that behalf. The forfeiture in such cases is dependent upon a repudiation or a rescission of the contract. In this case there has been no such rescission. On the contrary Narasimha Reddy has desired that the work should be performed by his power of attorney agent and the contract continues in his name.

It seems to us that there can be no question of automatic forfeiture of the

deposit so as to constitute a complete termination of all possible rights and obligations under the contract. The case of the appellant is not that there was any rescission or repudiation. Further as seen from R. 6 some work was done by the appellant or his agent and the final bill is Still pending. In these circumstances, we are clearly of opinion that Narasimha Reddy was under a disqualification within the meaning of Section 7 (D) of the Representation of the People Act and the finding of the Tribunal under issue 6 is correct.

30. It, therefore, follows that on this ground alone the Special Appeal No. 3 of 1958 should be dismissed. But since most of the grounds alleged are found to be unsustainable we make no order as to costs.

31. Special Appeal No. 4 of 1958 : The appellant in this case is Shri J.B. Muthyal Rao. There is no allegation that he had any contract with the Government or that he was interested in such contract within the meaning of Section 7 (D). The only grounds of objection against his election are general grounds common to both the appellants and covered by issues 1, 2, 3, 4, 5, 7 and 8. We have taken the view that the findings of the Tribunal in so far as they are against the elected candidate on these issues are incorrect. It, therefore, follows that the appellant's election is not in any way vitiated.

32. Mr. B.V. Subrahmanyam, the learned counsel for the respondent has urged that election to a double member constituency is an integral whole and that where one election is set aside, the entire election should be held to be void. In support of his contention he drew our attention to the decision of the Supreme Court in Surendra Nath Khosla Vs. Dalip Singh, . In that case the question was whether there was an improper rejection of the nomination within the meaning of Section 100 (1) (c) of the Representation of People Act.

Their Lordships of the Supreme Court came to the conclusion that the rejection was improper and that it, therefore, rendered the entire election void. That decision has no bearing on this case. In this case there is no improper rejection of any nomination & the presumptions that may arise in that behalf will not arise. All that can be said is that Narasimha Reddy on the date of his election was disqualified to be chosen to fill a seat on the Andhra Pradesh Legislative Assembly by reason of Section 7 (d) of the Act.

In such a case the Tribunal can only declare the election of the returned candidate void. The entire election cannot be deemed to be void. Therefore, the disability of Narasimha Reddy and the declaration that his election is void will not affect the other candidate Sri Muthyal Rao.

33. Under these circumstances, we are of opinion that Sri Muthyal Rao's election is not open to any objection and the declaration given by the Tribunal setting aside his election is incorrect. We, therefore, allow the appeal with cost. Advocate's fee Rs. 100/-.