

C.P. Nagarajan Vs. Election Commissioner, (Principal Subordinate Judge) and ors.

C.P. Nagarajan Vs. Election Commissioner, (Principal Subordinate Judge) and ors.

SooperKanoon Citation : sooperkanoon.com/821977

Court : Chennai

Decided On : Feb-10-1967

Reported in : (1967)2MLJ393

Appellant : C.P. Nagarajan

Respondent : Election Commissioner, (Principal Subordinate Judge) and ors.

Advocate for Pet/Ap. : Mr. K. Raja Iyer

Judgement :

ORDER

P.S. Kailasam, J.

1. This petition is filed by the unsuccessful candidate in the election to the eleventh ward of the Coimbatore Municipality against the order of the Election Commissioner, Principal Subordinate Judge, Coimbatore, finding him disqualified as he had a subsisting contract on the date of the nomination, and declaring the 2nd respondent as elected to the seat.

2. The petitioner and the 2nd respondent contested the election for the eleventh ward in the Coimbatore Municipality. The nominations were filed on 4th January, 1964 and the election was held on 5th February, 1964. On 7th February, 1964, it

was found that the petitioner had secured 1,795 votes as against 1,764 votes secured by the 2nd respondent and 341 votes secured by the 3rd respondent. The petitioner was declared elected. The 2nd respondent filed O.P. No. 51 of 1964 before the Election Commissioner, for a declaration that (1) the petitioner was disqualified as having had a subsisting contract with the Coimbatore Municipality on the relevant date, and (2) that he is duly elected as he had secured the highest number of votes next to the petitioner. The Election Commissioner found that the petitioner had a subsisting contract with the Coimbatore Municipality and was therefore disqualified. He also declared the 2nd Respondent elected to the seat as he had secured the highest number of votes next to the petitioner.

3. The petitioner is admittedly a partner of Greenland Automobile Company, running an automobile workshop in Coimbatore Town. The Municipality entrusted its ambulance van for repairs to the company. The agreement that was entered into is Exhibit A-15. Exhibit A-15 is not a complete document as only the preamble portion is found. Much reliance cannot therefore be placed on Exhibit A-15. But the correspondence between the Municipality and the Company clearly discloses that the Municipality entrusted its ambulance van to the company for repairs. The company quoted a sum of Rs. 3,854 for body re-building. Subsequently an additional estimate was sent by the company to the Municipality. On 10th April, 1962) under Exhibit B-3, the Commissioner accepted the additional estimate. The work was not completed as stipulated, and on 4th January, 1962, the company wrote to the Municipality asking for extension of time for completion of the work. The 1st respondent, after completing the work, submitted a bill for Rs. 7,732-50. The Municipality paid only Rs. 7,000 and the balance of Rs. 732-50 was not paid, till the final settlement of accounts on 14th May, 1964, that is, after the date of the election. In addition to the ambulance van, a lorry belonging to the Municipality, MDE 588, was entrusted to the company for repairs. It is admitted that there was no written agreement regarding this work; but the correspondence discloses that the vehicle was entrusted to the firm of which the petitioner was a partner, and the firm agreed to carry out the repairs. The work was not executed within the time stipulated and the firm asked for extension of time. The extension was granted. The Municipality attempted to levy a penalty for the delay. But ultimately, it is in evidence, that the bill was finally passed and money paid to the petitioner after the

date of the election. On the facts, Mr. K. Raja Iyer, learned Counsel for the petitioner, submitted that regarding the work carried out to the ambulance van, there was no proper contract and therefore it cannot be said that there was a subsisting contract attracting the disqualification under Section 49(2)e) of the Madras District Municipalities Act. He further contended that as the contract was not in proper form, the contract should be held void and the petitioner not disqualified. Regarding the work carried out to the lorry, learned Counsel submitted that admittedly there was no contract and the work that was carried out was on a quotation basis and would not amount to a subsisting contract.

4. It is no doubt true that the two contracts are not in proper form. So far as the contract relating to the ambulance van is concerned, there is only the preamble portion in the document. Regarding the contract in respect of the lorry, there is admittedly no written contract. It is also not disputed that the contract has not been executed in the manner prescribed under the Madras District Municipalities Act. But all these defects will not save the petitioner from disqualification. In *Chatturbhuj Vithaldas v. Moreswar Parashram* : [1954]1SCR817 , the Supreme Court held that as soon as an order was placed and accepted, a contract arose, and each separate order and acceptance constituted a different and distinct contract. Repelling the contention that a contract was void and that it was not in accordance with the requirements of Article 299(1) of the Constitution of India the Supreme Court held:

It would, in our opinion, be disastrous to hold that the hundreds of Government Officers who have daily to enter into a variety of contracts, often of a petty nature, and sometimes in an emergency, cannot contract orally or through correspondence and that every petty contract must be in a particular form. It may be that Government will not be bound by the contract in that case, but that is a very different thing from saying that the contracts as such are void and of no effect. It only means that the principal cannot be sued; but we take it there would be nothing to prevent ratification, especially if that was for the benefit of Government.

There is authority for the view that when a Government Officer acts in excess of authority Government is bound if it ratifies the excess;-We accordingly hold that the contracts in question here are not void simply because the Union Government could not have been sued on them by reason of Article 299(1).

Referring to Section 7(d) of the Representation of the People Act, the Court held that the section does not require that the contracts at which it strikes should be enforceable against the Government and that all it requires is that the contracts should be for the supply of goods to the Government. The decision therefore is authority for the proposition that a contract which is not in proper form is not void and the Government can always rectify it. It has also been held that the mere fact that the form under Article 299(1) of the Constitution of India has not been complied with, would not save a candidate from disqualification under Section 7(d) of the Representation of the People Act.

5. Section 49(2)(c) of the Madras District Municipalities Act provides that a person shall be disqualified for election as a councillor if such person is at the date of nomination or election interested in a subsisting contract made with, or any work being done for, the Municipal Council except as a shareholder other than a director in a company. As the entire bills were settled long after the date of election, there cannot be any dispute that there was a subsisting contract. It was submitted that the wording of this sub-section is different from Section 7(d) of the Representation of the People Act and as the disqualification under Section 49(2)(c) is to attach to a person interested in a subsisting contract and to persons interested in any work being done to the municipality, the two clauses should be construed differently and it should be held that the petitioner was interested in the work being done to the Municipality and as the work had already been executed he will not come within the disability. I am unable to accept this contention, for it is clear that the petitioner is a person interested in a subsisting contract, thus falling within the first part of the sub-section. Mr. Rajah Iyer relied on the decision reported in *Laliteshwar Prasad v. Bateshwar Prasad* : [1966]2SCR63 , where the Supreme Court held:

This Court had in *Chatturbhuj's* case : [1954]1SCR817 included both executed and executory contracts within the provisions of Section 7(d) and had refused to follow the English rulings to the contrary. We cannot go into the question whether this was rightly done or not for we are bound by that decision. Accordingly, following *Chatturbhuj's* case : [1954]1SCR817 we hold that a contract for the supply of goods or for the execution of any works or the performance of any services undertaken does not cease to subsist only because the goods had been supplied or work had been executed or services performed. It continues to subsist till payment is made and the contract is fully discharged by performance on both sides.

The Supreme Court also accepted the view propounded in the earlier decision in *Chatturbhuj Vithaldas v. Nareshwar Parashram* : [1954]1SCR817 , that a contract which is not in proper form can be rectified subsequently by the Government. While following *Chatturbhuj Vithaldas v. Nareshwar Parashram* : [1954]1SCR817 , the Supreme Court held that the decision will not be applicable to a contract which had not been ratified by the Government. The decision relied on does not in any way qualify the law as stated in *Chatturbhuj Vithaldas v. Nareshwar Parashram* : [1954]1SCR817 , Mr. Rajah Iyer then referred to the recent unreported decision of the Supreme Court in *K.P. Chowdhry v. The State of Madhya Pradesh C.A. No. 695 of 1965* Since reported in (1967) 2 S.C.J. 119, where it was observed.

The second consequence which follows from these decisions is that if the contract between Government and another person is not in full compliance with Article 299(1) it would be no contract at all and could not be enforced either by the Government or by the other person as a contract. In the present case it is not in dispute that there never was a contract as required by Article 299(1) of the Constitution. Nor can the fact that the appellant bid at the auction and signed the bid-sheet at the close thereof or signed the declaration necessary before he could bid at the auction amount to a contract between him and the Government satisfying all the conditions of Article 299(1) The position therefore is that there was no contract between the appellant and the Government before he bid at the auction, nor was there any contract between him and the Government after the auction was over as required by Article 299(1) of the Constitution.

The fact of the case relied on indicate that apart from the party bidding at the auction and signing the bid-sheet at the close thereof and signing a declaration necessary before he could bid at the auction, the contract was not concluded by the Government at any stage. The question of ratification therefore does not arise in this case. In the result, following the decision reported in *Chatturbhuj Vithaldas v. Nareshwar Parashram* : [1954]1SCR817 , I hold that there was a subsisting contract and that the petitioner was rightly disqualified.

6. The Election Commissioner, referring to the contention of the 2nd respondent that he had the highest number of votes next to the petitioner and that he should be declared duly elected, held that there was no corrupt practice alleged to vitiate the election and as the 2nd respondent had secured the majority of votes as between the qualified candidates he should be declared elected. This view cannot be supported as it has been held by a Full Bench of this Court in *Gopala Ayyangar v. Mahomed Ibrahim Rowther* : [1966]2SCR63 , following the decision in *Hobbs v. Morey* : [1966]2SCR63 , that where a candidate, who stands next in rank and who challenges an election claims the seat and the disqualification under which the successful candidate is ultimately found to labour was not known to all or any of the voters who cast their votes for him, a second election must be ordered and the candidate who stood next in rank cannot be declared elected. The following passages of Kennedy, J., was quoted and accepted as accurate:

As here the disqualification was not apparent and the petition does not allege that the voters knew of the respondent's disqualification, (the only notices being notices to the Mayor and to the opposing candidate) and the petitioner had only a minority of votes, I do not think he can successfully claim the seat.

This decision was followed by a Bench of the Andhra Pradesh High Court in *T. Jalayya v. Venkateswara Rao* C.A. No. 695 of 1965 Since reported in (1967) 2 S.C.J. 119, and Subba Rao, C.J., (as he then was) held:

The Court on the hearing of the petition cannot, I think, declare that a candidate who has a minority of votes is elected, unless it has first decided that the votes given to the candidate who is returned at the head of the poll are votes thrown away.

This Court has followed the above decisions in W.P. No. 4599 of 1965. The order of the Election Commissioner declaring the 2nd respondent as having been elected will have to be set aside. In the result, the order of the Election Commissioner finding that the petitioner is disqualified is confirmed, but the declaration that the 2nd respondent is elected to the seat is set aside. There will be a fresh election for the seat. Ordered accordingly. There will be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com