

occasion arises for the Election Commission to make an order about the payment of this amount to the successful party the use of the word "refundable" will cause no difficulty whatever. We hold that the security has been made by respondent 1 as required by s. 117 of the Act and would be at the disposal of the Election Commission in the present proceedings.

We would like to add that even s. 117 has been subsequently amended by Act 58 of 1958 and the reference to the Secretary has been deleted.

The result is the appeal fails and must be dismissed with costs.

Appeal dismissed.

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RAMESHWAR PRASAD SASTRI & OTHERS

(B. P. SINHA, P. B. GAJENDRAGADKAR and
K. N. WANCHOO, JJ.)

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April 14.

Election Dispute—Disqualification for membership—Election to State Legislature—Interest in contracts—Contract entered into as Mukhiya of Panchayat—Representation of the People Act, 1951 (43 of 1951), ss. 7(d), 81, 100(1)(a).

The election of the appellant as a member of the Bihar State Assembly was challenged under s. 7(d) of the Representation of the People Act, 1951, by the first respondent who was also a candidate for election for the same constituency, on the ground that at the date of the nomination the appellant had an interest in contracts for execution of works undertaken by the Bihar Government, and that his nomination had been improperly accepted. The appellant's plea inter alia was that he had executed the contracts not in his individual capacity but as the Mukhiya of the Village Panchayat and therefore the disqualification imposed by s. 7(d) of the Act could not be invoked against him. The contracts in question related to community projects undertaken in pursuance of the Second Five Year Plan, under which the execution of different works adopted under the plan was to be by popular local agencies like Village Panchayats. The contracts were all in the prescribed form and the appellant, at the com-

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mencement of the contract, described himself by his name, stating that he belonged to the village. The preamble to the contract showed that the appellant undertook to carry out the construction of the development project under local works programme mentioned in the contract as per estimate attached thereto, that he agreed to execute the work according to and subject to the terms and conditions contained therein and that he undertook to contribute 50% of the cost in cash and labour. At the end of the contract he signed as Mukhiya, giving his address as the Gram Panchayat. The Election Tribunal found in favour of the appellant and dismissed the election petition, but, on appeal, the High Court took the view (1) that the description of the appellant given by him at the time when he signed the contracts was not a term of the contract and could not therefore support his plea that he had executed the contract as Mukhiya of the Panchayat, and (2) that the fact that he undertook liability to execute the contracts as required and to become liable for payment of any fine imposed by the local government officer in case of his default showed obligations of a personal character inconsistent with his plea.

Held, that, on a proper construction of the contracts taking into account all the terms and conditions as a whole and considering them in the light of the background of the Second Five Year Plan, when the appellant signed the contracts as the Mukhiya of the Village Panchayat he acted as its agent and not as an individual acting in his personal capacity.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 139 of 1959.

Appeal by special leave from the judgment and order dated January 8, 1959, of the Patna High Court in Election Appeal No. 1 of 1958, arising out of the judgment and order dated November 30, 1957, of the Election Tribunal, Patna, in Election Petition No. 353 of 1957.

B. K. P. Sinha and *D. P. Singh*, for the appellant.

G. C. Mathur and *Dipak D. Choudhri*, for respondent No. 1.

R. H. Dhebar, for respondent No. 3.

1959. April 14. The Judgment of the Court was delivered by

Gajendragadkar J. GAJENDRAGADKAR, J.—This appeal by special leave arises from the election petition filed by respondent 1 (No. 353 of 1957) in which he claimed a declaration that the election of the appellant as a member of the

Bihar Legislative Assembly Maner Constituency should be declared to be void. In the last General Election for the said constituency which was held in February-March 1957, there were three candidates, the appellant, respondent 1 and respondent 2. The last date for filing nomination papers at the said election was January 29, 1957; the said papers were scrutinised on February 1, 1957. Respondent 1 had challenged the validity of the appellant's nomination paper at the said scrutiny but the returning officer had overruled the objection raised by respondent 1 and had accepted the nomination paper of the appellant along with those of the two other candidates. After the counting of votes was done on March 3, 1957, the appellant was declared duly elected at the election inasmuch as he had got 9,826 votes while respondents 1 and 2 had got 7,526 and 49 votes respectively. Thereupon respondent 1 filed his election petition under s. 81 of the Representation of the People Act, 1951 (hereinafter called the Act).

In his petition respondent 1 challenged the election of the appellant on several grounds all of which were controverted by the appellant. On the allegations of the parties the tribunal had framed several issues and parties had led evidence on them. At the stage of arguments, however, only a few issues were pressed by respondent 1 and all of them were found against him and in favour of the appellant. In the result the tribunal dismissed the election petition on November 30, 1957.

Against the said decision of the tribunal respondent 1 preferred an appeal in the High Court of Judicature at Patna; and in his appeal he pressed only issue No. 1. This issue was whether the nomination of the appellant was hit by the provision of s. 7(d) of the Act and as such whether the said nomination had been improperly accepted. On this issue the tribunal had found in favour of the appellant but the High Court reversed the said finding and accepted the plea of respondent 1. As a result of this finding the High Court allowed the appeal preferred by respondent 1 and

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declared on January 8, 1959, that the election of the appellant was void under s. 100(1)(a) of the Act.

The validity of the appellant's nomination has been challenged under s. 7(d) of the Act on the ground that at the date of the nomination he had an interest in a contract for the execution of works undertaken by the Bihar Government. There is no doubt that if a person is interested in a contract for the execution of any work undertaken by the appropriate Government he is disqualified for membership of the State Legislature in question. The appellant, however, denied that the disqualification imposed by s. 7(d) could be invoked against him. His case was that the contracts in question had not been undertaken by the Bihar Government but they had been undertaken by the Central Government; and he also urged that he had not taken the said contracts individually in his personal capacity, but as the Mukhiya of the Jeorakhan Tola Gram Panchayat. On both these issues the Election Tribunal and the High Court have differed; and it is the said two issues that arise for our decision in the present appeal. It is clear that if the appellant succeeds in showing that he had entered into the impugned contracts not individually but on behalf of the Panchayat of which he was the Mukhiya it would be unnecessary to consider whether the works covered by the said contracts had been undertaken by the Government of Bihar. Let us therefore first consider that point.

The impugned contracts are five in number. They were for the execution of works under local development works programme envisaged under the Second Five Year Plan formulated by the Government of India. These contracts are evidenced by five documents, Exs. 16-A, B, C, D & E. The first is for the construction of Beyapore-Jeorakhan Tola Road, the second for the construction of the Beyapore M. E. School, the third for the construction of a Dispensary at Jeorakhan Tola, the fourth for the construction of the Gram Panchayat building, and the last for the construction of a well at the said village. It is admitted by the appellant that these contracts had not been completed at the time of his nomination.

In considering the appellant's plea that he had executed these contracts as a Mukhiya of the Village Panchayat of his village, it would be necessary to bear in mind the background of the scheme in pursuance of which these works were undertaken. The Second Five Year Plan published by the Planning Commission in 1956 shows that the programme of starting these works was treated as a part of the co-operative movement and the Commission had therefore recommended that the States were to sponsor and assist actively in the organisation and development of Village Panchayats which was an important constituent of the programme of fostering corporate life in the rural areas as it would promote among the rural community active interest in the development programmes of the villages. The object of this programme which would operate in areas not yet reached by the National Extension Service was to enable village communities to undertake works of local benefit mainly with their own labour. The Commission realised that the resources of all the States taken together would fall far short of the requirements of this Plan and so it recommended large transfers of resources from the Centre to the States. In this connection the conclusion of the Commission was that out of Rs. 200 crores sanctioned for the year 1957-58, 12 crores would be required for the Centre for schemes undertaken or directly sponsored by the Community Project Administration and 180 crores were to form part of the balance for the States. Thus it is obvious that the basic idea underlying the Plan was to evoke popular response to the community projects undertaken in pursuance of the Plan and to leave the execution of different works adopted under the Plan to be fulfilled by popular local agencies like Village Panchayats.

This policy was emphasised by the Secretary of the Planning Commission in his communication to all State Governments, No. PC/Pub/52/53 dated August 11, 1953 (H. 1). This communication set out the seven categories of work which were most suitable for assistance and it said that the local contribution in cash or kind or through voluntary labour together

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with any contribution that the State Government or a local body might make should be a minimum of 50% of the total cost of each work. The intention was to spread the benefit over as wide an area and to as many people as possible. The State Governments were accordingly requested to arrange for a detailed scrutiny of the schemes before they were accepted and for making adequate provisions providing for their proper execution. They were also required to nominate a liaison officer for each district or other suitable unit for the purpose of checking the execution of the works and for maintenance of such initial accounts as might be necessary. This communication makes detailed provisions about financing and accounting procedures to be followed and required the State Governments to make progress reports from time to time.

It appears that the Government of India was aware that the District Boards whose primary responsibility it was to sponsor these undertakings would find the project beyond their financial resources and so it accepted the recommendation of the Planning Commission to contribute 50% of the cost of each of the schemes on the condition that the remaining half had to be found by the District Board or by the public to be benefited by it in the form of cash or voluntary labour.

The five impugned contracts related to community projects of the kind envisaged by this programme. By its letter dated February 27, 1954 (H. 2) the Bihar Government had advised all the District Local Boards to assist the execution of such projects and to afford all facilities to and co-operate with the district officers in the execution of the programmes undertaken by these projects without charging any remuneration for the same. The idea clearly was that if the Village Panchayats sponsored works undertaken under these programmes they should encourage people to contribute labour and even money. The result would be that the works undertaken would benefit the community at large and if any saving was made in executing the contract it would enure for the benefit of the village Panchayats that were usually expected to be the sponsoring units.

It is in the light of this background that we have to consider the question whether the contracts in question had been executed by the appellant in his individual capacity as contended by respondent 1 or in his capacity as the Mukhiya of the Village Panchayat as urged by the appellant.

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The four contracts evidenced by Exs. 16A, C, D and E are all similarly executed whereas contract 16-B which is in respect of the construction of the Beyapore M. E. School is somewhat differently worded. With regard to this latter contract both the Election Tribunal and the High Court are agreed that it had been executed by the appellant as the Secretary of the Beyapore Madhyamik Vidyalaya and that in this contract the appellant was not personally interested. The Election Tribunal took the view that the other contracts are substantially of the same character whereas the High Court has held that they are entirely different and that the appellant has personally executed them. The question which we have now to decide is whether this view of the High Court is right.

We would take Ex. 16-A as typical of the remaining four contracts. The material terms of this contract are 8 in number and they are all in the prescribed form. At the commencement of the contract the appellant has described himself by his name and he has stated that he belongs to the village of Jeorakhan Tola and that his profession is cultivation. The preamble to the contract shows that the appellant undertook to carry out the construction of the development project under local works programme mentioned in the contract as per estimate attached thereto and he agreed to execute the work according to and subject to the terms and conditions contained therein, and he also undertook to contribute 50% of the cost in cash and labour. At the end the appellant has signed as Mukhiya and has given his address as Jeorakhan Tola Gram Panchayat. The High Court took the view that the description of the appellant given by him at the time when he signed the contract was not a term of the contract and could not therefore support his plea that he had executed the contract as Mukhiya of

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the Panchayat. It is on this ground that the High Court distinguished this and the other three allied contracts from the school contract, Ex. 16-B. In this latter contract the appellant has described himself as the Secretary, Madhyamik Vidyalaya, both at the commencement of the document and at the end where the appellant has signed. In our opinion, the distinction made by the High Court between the two sets of contracts is not valid. We do not see any reason to take the view that the description given by the appellant about his status while he signed the contract is no part of the contract itself. Incidentally we may observe that the contract is accepted by the officer who signs as the S. D. O., Dinapore. The designation of the officer given by him while signing the acceptance of the contract indicates the character in which the officer has accepted the contract. Similarly the description given by the appellant about his status and character when he signed the contract should be taken to denote the character in which he executed the contract.

The High Court also thought that cls. 4 and 7 by which the appellant undertook liability to execute the contract as required and to become liable for payment of any fine imposed by the local government officer in case of his default clearly showed obligations of a personal type which were inconsistent with his plea that he had entered into the contract as the Mukhiya of the Panchayat. We think that this argument has no force. If the nature of the liability undertaken by these two clauses necessarily involves the conclusion that the execution of the contract must be by an individual person, then it is significant that the same two clauses occur in the school contract and yet the High Court has held that the said contract has been executed by the appellant not in his individual capacity but as the Secretary of the Madhyamik Vidyalaya. Therefore too much reliance cannot be placed upon these two clauses to support the view that the contract has been executed by the appellant personally.

Besides, the High Court has not properly considered the term of the contract by which the contracting

party undertakes to contribute 50% of the cost of the work in cash or labour. In other words, the contracting party becomes a sponsoring agent of the contract and agrees to undertake 50% of its cost. It is very difficult to appreciate the suggestion that the appellant personally and in his individual character agreed to contribute 50% of the cost in cash or labour. In ordinary course a person who undertakes to carry out a building contract expects to make profit and would never agree to contribute 50% of the cost of the contemplated work. This clause clearly indicates that the sponsoring of the contract was really done by the Village Panchayat which agreed through its Mukhiya that it would contribute 50% of the cost either in cash or in labour. Consistently with the general policy of Plan the Village Panchayat became a sponsoring agent and hoped and expected to obtain popular response from the villagers who would contribute their labour and thus make up the 50% of the cost of the intended work. Therefore, in our opinion, if the contract in question is considered in the light of the background of the Plan of which it forms one item, and all its conditions are taken into account together, there can be no doubt that the appellant as the Mukhiya of the Village Panchayat acted as its agent when he signed the contract, and not as an individual acting in his personal capacity.

This position is also corroborated by the record kept by the Village Panchayat in respect of these contracts. This record consists of the several proceedings before the Village Panchayat, the budgets adopted by it and the resolutions passed by it from time to time in respect of these contracts. It had been alleged by respondent 1 that the whole of this record had been fabricated for the purpose of the present proceedings. The Election Tribunal has made a definite finding against respondent 1 on this point. It has considered the oral evidence given by the appellant and other witnesses in proving the said record. It has examined the entries themselves on their merits and has taken into account the fact that some of the exhibits showed that they had been signed and

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approved by the District Panchayat Officer from time to time. The tribunal, therefore, thought that it was impossible to believe that all persons who purported to sign the record had helped the appellant to manufacture it simply because the appellant was the Mukhiya of the village. The judgment of the High Court shows that it was not prepared to reverse this finding in terms. It has, however, made certain observations in respect of this record which would show that it was not prepared to attach any importance to it. "The papers", says the judgment, "do not inspire much confidence and cannot be relied upon in proof of the facts disclosed by them". It is unfortunate that when a serious allegation was made against the whole of the record alleged to have been kept by the Village Panchayat and it had been categorically rejected by the Election Tribunal, the High Court should not have made its own finding on the point in clear and unambiguous terms.

The oral evidence led by the appellant in support of the record and the other material circumstances considered by the Election Tribunal do not appear to have been properly taken into account by the High Court in dealing with this point. The High Court was, however, impressed by what it called two defects in respect of this record. It observed that the accounts had not been audited as required by r. 20 of the Bihar Gram Panchayat Account Rules, 1949, and that the cash balance had not been kept by the Mukhiya in the nearest Post Office Savings Bank or in any recognised Co-operative Bank or a Government Treasury in the name of the Panchayat as required by r. 8. These two defects may undoubtedly suggest that the officers of the Panchayat including the appellant had not acted properly and had not complied with the obligations imposed by the said rules; but it is difficult to understand how the said two defects can have a material and direct bearing on the question as to whether the record had been fabricated. If the High Court intended to hold that the record had in fact been fabricated it should have considered the relevant evidence and the material circumstances

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more carefully and should have made a definite finding in that behalf. To say that the record bore only the signatures of the appellant and his clerk and to seek to draw an adverse inference from that fact is, in our opinion, adopting a wrong approach to the question. If the appellant was the Mukhiya he was bound to sign the record, and so was the clerk bound to write it; that cannot therefore be treated as a suspicious circumstance by itself. We have carefully examined this question and we do not see any reason why the well-considered finding of the Election Tribunal on this point should not have been accepted. Therefore, we must assume that the Panchayat record produced by the appellant is not shown to have been fabricated.

Besides, the High Court itself appears to have assumed that this record showed that there was an understanding between the appellant and the Village Panchayat in regard to the financial obligations involved in the execution of the impugned contracts. "It might well be", says the judgment, "that the loss or the profit was ultimately to be borne or pocketed by the Gram Panchayat itself"; but that, according to the High Court, "does not take away the effect of the contract itself which on the face of it was entered into by the appellant himself". If the Panchayat agreed to bear the loss or take the profit flowing from the performance of the contract then it clearly supports the appellant's case that he had executed the contract as the Mukhiya of the Panchayat. The arrangement to which the High Court refers, if genuine, would be wholly inconsistent with the case set up by respondent 1 that the contract had been executed by the appellant personally.

The High Court has also held that the appellant had not made out this specific case either before the returning officer when his nomination was challenged or in the present proceedings when he filed his written statement. The appellant had no doubt stated in reply that he had no interest in any contract undertaken by the State Government. According to the

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High Court his failure to add the further particular that the contract had been executed by him on behalf of the Panchayat shows that the said plea is an after-thought. We are unable to see the force of this criticism. But apart from it, the question raised by the appellant relates to the construction of the contract and we do not see how the construction of a document can be prejudicially affected by the failure of the party to make a more specific and more precise plea in his written statement. We have no doubt that, if the contract is considered as a whole, it would show that the appellant had executed it as the Mukhiya of the Village Panchayat and this conclusion cannot be affected by the alleged defect in the plea taken by him in the written statement.

The High Court has also relied on the fact that if the contract was intended to be executed by the appellant on behalf of the Panchayat it should have been executed in the name of the corporate body as required by s. 6 of the Bihar Panchayat Raj Act (Bihar Act 7 of 1958). It may be that the Gram Panchayat is a body corporate by the name specified in the notification under sub-s. (1) of s. 3 and has a perpetual succession and a common seal, and so has power to contract in the name of the body corporate; but as the judgment of the High Court itself points out the invalidity of the contract would not affect the merits of the issue raised under s. 7(d) of the Act. That is the view taken by this Court in *Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram* ⁽¹⁾, and that in fact is the point made by the High Court in rejecting the appellant's contention that since the contract was invalid he could not be said to be interested in it under s. 7(d) of the Act. Therefore, the invalidity of the contract cannot help us in deciding the question as to whether, on its true construction, the contract can be said to have been executed by the appellant in his personal capacity or as the Mukhiya of the Village Panchayat. Our conclusion, therefore, is that the four impugned contracts have been executed by the appellant as the Mukhiya of the Village

(1) [1954] S.C.R. 817.

Panchayat just in the same way as he had executed the school contract as the Secretary of the Vidyalaya in question. That being so, s. 7(d) cannot be invoked against him. In view of this conclusion it is unnecessary to decide whether the works in question had been undertaken by the Government of Bihar or by the Central Government.

The result is that the appeal must be allowed, the order passed by the High Court set aside and that of the tribunal restored; respondent 1 shall pay the costs of the appellant throughout; and the Election Commission shall bear their own.

We would like to add that, after this appeal was argued before us on April 2, 1959, we had announced our decision that the appeal would be allowed and that the judgment would be delivered later on in due course. It is in pursuance of that order that the present judgment has been delivered.

Appeal allowed.

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THE INCOME-TAX OFFICER, PORBANDAR

(B. P. SINHA, J. L. KAPUR and

M. HIDAYATULLAH, JJ.)

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April 14.

Income Tax—Depreciation—Written Down Value—Computation for prior years—Whether binding for succeeding years—Fresh calculation for written down value by Income-tax Officer—Notice to assessee—When essential—Indian Income-tax Act, 1922 (XI of 1922), ss. 10(2)(vi), 35(1), 63.

Sub-section (1) of s. 35 of the Indian Income-tax Act, 1922, provided: ".....the Income-tax officer may.....on his own motion rectify any mistake apparent from the record.....and shall.....rectify any such mistake which has been brought to his notice by an assessee: Provided that no such rectification shall be made, having the effect of enhancing or reducing a