

circumspect enough to insert any such alternative clause as would have given the judgment or order of this Court the same effect as is contemplated by the terms of the suréty bond quoted above.

The appeal must therefore be dismissed *in limine*.

Appeal dismissed.

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v.

K. SUBRAMANYAN AND OTHERS.

[VIVIAN BOSE, JAGANNADHADAS AND SINHA JJ.]

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Representation of the People Act, 1951 (Act XLIII of 1951), s. 7(4)—Appellant entered into agreement, with Central Government for conveying postal articles and mail bags through Motor Vehicle Service on certain remuneration—Appellant whether disqualified for election to the House of People under s. 7(d) of the Act.

The question for determination in this appeal was whether the appellant was disqualified under s. 7(d) of the Representation of the People Act, 1951 for election to the House of the People.

The material portion of s. 7(d) of the Act reads as follows:

“A person shall be disqualified for being chosen as and for being, a member of either House of Parliament . . . (b) if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for . . . the performance of any service undertaken by the appropriate Government”.

The appellant (a contractor) had entered into an agreement with the Central Government. The relevant portion of the said agreement was as follows:—

“The contractor has offered to contract with the Governor-General for the provision of a Motor Vehicle Service for the transit conveyance of all postal articles and mail bags from December 15, 1949 to December 14, 1952 and the Governor-General has accepted the offer.

“The Government agrees to pay to the contractor Rs. 200 per month during the subsistence of the agreement ‘as his remuneration for service to be rendered by him’.

Held that on the face of it the agreement was between two competent parties with their free consent, and there was a lawful cash consideration for it. The Appellant entered into the agreement with his eyes open knowing full well his rights and liabilities under the same.

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The case was a straightforward illustration of the kind of contract contemplated by s. 7(d) of the Act. At all material times the appellant had been directly concerned, for his own benefit, in the contract of carrying mail bags and postal articles entered into by him with the Government in the Postal Department.

Section 7 of the Act is clearly intended to avoid a conflict between public duty and private interests.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 252 of 1954.

Appeal by Special Leave from the Judgment and Order dated the 22nd January 1953 of the Election Tribunal, Vellore in Election Petition No. 35 of 1952.

N. C. Chatterjee (*A. N. Sinha* and *N. H. Hingorani*, with him), for the appellant.

C. V. L. Narayan, for respondent No. 1.

1955. March 29. The Judgment of the Court was delivered by

SINHA J.—The only question for determination in this appeal by special leave is whether the appellant is disqualified under section 7(d) of the Representation of the People Act, 1951 (hereinafter called the Act) for election to the House of the People, as held by the Election Tribunal, North Arcot, Vellore, by its orders dated the 20th January, 1953 in Election Petition No. 35 of 1952.

The facts of this case are not in dispute and lie within a narrow compass. The appellant and respondents 1 to 3 contested the last general elections from the Dharmapuri Parliamentary Constituency in the district of Salem in the State of Madras. Respondents 4 to 10 who were added subsequently by an order of the Tribunal were also candidates for election. Their nominations also had been held to be valid but they ultimately withdrew their candidature before the polling took place. The appellant was in due course declared to have been elected to the House of the People. Thereafter, on the 5th March, 1952 the 1st respondent filed an election petition before the Election Commission contesting the appellant's election

on the ground that the appellant was disqualified under section 7(d) of the Act as, from the date of his nomination and until the date of election and after, the appellant had a contract with the Government of India in the Postal Department for the transport of postal mail which was a service undertaken by the Government of India. At this stage it is necessary to state that it is admitted that the appellant is and has been the holder of a stage carriage service permit (Ex. B-2) dated the 26th April 1949, issued by the Regional Transport Authority, Salem, Madras. It was one of the conditions of the said permit that if called upon the appellant will enter into an agreement with the Government of India for the transport of postal articles and mail bags. In pursuance of that obligation the appellant entered into a registered agreement with the Government of India on the 16th November 1949 (Ex. A-3) to be noticed in detail hereinafter. After the appellant had filed his nomination paper; the 1st respondent by his petition dated the 28th November 1951 raised the objection to the effect that his nomination should be rejected on the ground that he had entered into a contract with the Government of India for his own benefit for the transport of mail between Salem and Yercaud. The Returning Officer for the Dharmapuri Parliamentary Constituency, Salem, by his orders (Ex. A-2) of the same date overruled the objection holding that the service rendered by the appellant of carrying mail is not under an agreement but on an imperative order of the Government under Rule 160-B of the Madras Motor Vehicles Rules. Apparently the registered agreement (Ex. A-3) had not been placed before him.

To the election petition filed by the 1st respondent the appellant filed his written statement on the 28th May 1952 denying that he was disqualified for election as a member of Parliament by virtue of the provisions of section 7(d) of the Act. His contention was that "it is the exclusive privilege of the Government of India to convey all postal articles from one place to another and it is a normal function of the Government statutorily reserved to itself. There is no justifi-

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cation to regard the carrying of mails from one place to another as the performance of any service *undertaken* by the Government". It was further averred on behalf of the appellant that it was not justifiable to regard him as having any interest in a contract for the performance of any service undertaken by the appropriate Government within the mischief of section 7(d) of the Act; and that he had been only carrying out the obligations imposed upon him by Rule 160-B of the rules framed under the Motor Vehicles Act. It was also contended that under article 103 of the Constitution of India the question as to the disqualification of a member has to be decided by the President whose decision shall be final.

On those pleadings the following issues were framed by the Election Tribunal:—

1. Is the nomination of the 1st respt. invalid because of the prohibition contained in section 7(d) of the Representation of the People Act, 1951, or for any of the reasons set forth in paras. 9 to 11 of the petition?

2. Has this Tribunal no jurisdiction to decide the question as regards the disqualification of the returned candidate, because of article 103 of the Constitution of India?

It is not necessary to refer to the additional issue bearing on the question of limitation arising from an interlocutory application for impleading those candidates (respondents 4 to 10) whose nomination had been accepted but who had withdrawn from the contest. Both these issues were decided against the appellant. The Tribunal on a very elaborate discussion of the points raised before it, held that the postal service including the transport of mails is a service undertaken by the Central Government within the meaning of section 7(d); that at the date of the nomination the appellant was a contractor under the Central Government; that the agreement between the Government and the appellant involved mutual obligations which could not be referable to a bare statutory duty on the part of the appellant but that it was the result of mutual assent based upon a free

offer and acceptance; and that the agreement was supported by valid consideration. The Tribunal also held that article 103 of the Constitution was not a bar to its jurisdiction to decide the controversy. Accordingly it allowed the election petition and held the appellant's election to be void in terms of section 100(1)(c) of the Act, with costs to the respondent. Hence this appeal.

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In this appeal the contentions raised before the Election Tribunal, except the objection to the Tribunal's jurisdiction in view of the provisions of article 103 of the Constitution, have been pressed before us by the learned counsel for the appellant. It is manifest that the determination of this case must depend upon the true construction and legal effect of the agreement (Ex. A-3) admittedly entered into by the appellant with the Central Government. It is therefore necessary to set out in some detail the relevant clauses of the agreement. The appellant (called the "contractor") is of the one part and the Governor-General of India of the other. The preamble says—

"Whereas the said contractor Sri. N. Sathianathan has offered to contract with Governor-General for the provision of a Motor Vehicle Service for the transit conveyance and delivery of all postal articles and mail bags as defined in the Indian Post Office Act, 1898, as amended from time to time, ...from the 15th day of December 1949 to the 14th day of December 1952 and the Governor-General has accepted such offer upon the terms and conditions hereinafter appearing...

Now this indenture witnesseth that the contractor in pursuance of the said agreement and in consideration of the premises and of the payments hereinafter agreed to be made to him...

It is hereby mutually agreed and declared between and by the parties hereto as follows:—

1. *Contract to carry*:—The contractor shall during the continuance of this contract, that is to say, from the 15th day of December 1949 until the 14th day of December 1952 or until the said contract shall be determined by such notice as is hereinafter men-

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tioned or otherwise in (hereinafter referred to as the said contract period) duly and safely convey.....by means of motor vehicles of good and reliable manufacture all postal articles and mail bags.....”.

By clause 4 the contractor is permitted to carry passengers and their luggage by bus provided there is accommodation available and provided that the mail service is not prejudiced in any way. By clauses 5 and 6 the contractor is required to maintain in good order and repair a number of motor buses and their spare parts at his own expense and to bear all municipal and other taxes payable in respect of the motor vehicles. Clause 7 contains the schedule of penalties in the event of non-completion of any journey or of delay in completion thereof in accordance with the time table, etc. By clause 8 the contractor is made absolutely liable and responsible for the due and safe custody and delivery in good order and condition of postal articles and mail bags. By clause 10 non-gazetted postal and telegraph officers travelling on duty on the route allotted to the appellant are declared to be entitled to travel free of all charges and such official passengers shall have precedence over ordinary passengers. Clause 13 provides that the contract shall not be transferred by the contractor to any person or company without the previous consent in writing of the Director-General of Posts & Telegraphs. By clause 15 the Government agrees to pay to the contractor Rs. 200 per month during the subsistence of the agreement “as his remuneration for service to be rendered by him hereunder”. This monthly sum of Rs. 200 is liable to be increased or decreased proportionately to the increase or decrease in the mileage to be covered. Clause 18 is in these terms:—

“In the event of the contractor failing to secure a renewal of the permit on the line this contract will automatically terminate on the date up to which the old permit shall be valid and in such case no compensation shall be payable to either party for such termination. This contract may be absolutely determined and put an end to by either of the contracting

parties giving four calendar months notice in writing to the other of his intention so to determine and put an end to the same".

Clause 21 contains the usual arbitration clause to the effect that all disputes and differences arising out of or in any wise touching or concerning the agreement shall be referred to the sole arbitration of the Director-General of Posts and Telegraphs or his nominee. It is also provided that the award of the arbitrator shall be final and binding on the parties.

It will be observed that the agreement set out above is a formally drawn up document which satisfies all the requirements of a contract. It is not the appellant's case that the contract has been vitiated by undue influence, fraud or such other cause. But it has been argued that it was a necessary sequel to the stage carriage permit granted by the Transport Authority under the Motor Vehicles Act read along with the relevant rules. In this connection reference was made to rule 160-B of the Madras Motor Vehicles Rules which is as follows:—

"It shall be a condition of every stage carriage permit that the holder of the permit shall, if so required by the transport authority which granted the permit, carry mails at such rates and on such terms as the transport authority may fix after consultation with the holder of the permit and the postal authorities concerned".

The rule quoted above has apparently been made under the authority of section 48(d) of the Motor Vehicles Act. It is common ground that the agreement aforesaid between the appellant and the Central Government is in pursuance of rule 160-B aforesaid; but it has been argued on behalf of the appellant that though the agreement aforesaid has the "semblance of a contract", it is lacking in the "essential ingredients of a free consensus of acceptance and offer". This argument is based on the further contention that the appellant has been carrying mail on his buses in performance of a statutory obligation which cannot come within the mischief of

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section 7(d) of the Representation of the People Act, 1951. The material portion of the section is in these terms :—

“A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament.....

(b) if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for.....the performance of any services undertaken by the appropriate Government”. It has further been argued alternatively that if the agreement has the force of a contract, it is totally lacking in consideration because the monetary consideration provided for in the agreement is no more than the subsidy already fixed by the Regional Transport Officer by his orders dated the 23rd July, 1949; that the agreement in question being with a third party, namely, the Governor-General, to render service which was already due to another party, namely, the Transport Authority for the same consideration cannot amount to a valid contract supported by consideration; and finally, that the transport of mail is not a “service undertaken by the Central Government”.

In our opinion, there is no substance in any one of these contentions. It is true that the appellant entered into the contract aforesaid with the Central Government for the transport of postal articles and mail bags on the 16th November, 1949. From before that date he had been carrying on the business of plying buses on the route allotted to him by the Regional Transport Authority. But he entered into the contract with his eyes open and knowing full well his rights and liabilities under the same. No one is compelled to carry on the business of stage carriage service or for the matter of that, of transporting postal articles and mail bags. In terms of the permit, it is open to the Government to call upon a permit holder to undertake the additional burden of carrying postal articles and mail bags which carries with it the additional remuneration to be fixed by the Transport Authority after consultation with the postal autho-

rities and the carrier. It is not every stage carriage permit holder who is called upon to do so. At the time the appellant entered into the contract with the Government in the postal department he may not have had any idea of standing for election to the House of the People when in future the general elections came to be held. If he wished to steer clear of the difficulty created by section 7 of the Act, he could have given due notice to Government under clause 18 of the contract referred to above. On the expiry of the term of the notice he would have been free to stand for election to a State or Central Legislature. Section 7 of the Act is clearly intended to avoid a conflict between public duty and private interest.

The Tribunal discussed a number of authorities with reference to the English and the American Law of Contract for arriving at the conclusion that the agreement between the appellant and the Government of India in the Postal Department had all the ingredients of a valid contract. The Tribunal need not have travelled so far afield, especially when the provisions of the Indian Contract Act which govern the case are sufficient to answer all the contentions raised on behalf of the appellant. On the face of the transaction the agreement was between two competent parties with their free consent. There was no question but that there was lawful consideration. The permit for the stage carriage had been granted by the authority under the Motor Vehicles Act; and the agreement for transport of postal articles and mail bags was between the Government of India in the Postal Department and the appellant for a cash consideration.

But it was argued that the agreement was in pursuance of a pre-existing obligation imposed by the rule aforesaid framed under the Motor Vehicles Act. It is true that the permit does contain a condition that the permit-holder may be called upon to undertake transport of mail bags and postal articles but that is only a notice to intending applicants for a stage carriage permit that the grantee of such a permit may have to render that additional service for an additional remuneration if called upon to do so by the

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authorities of the Postal Department. If any one was not prepared to undertake that additional responsibility, he was free not to make an application for such a permit; but that does not mean that the agreement actually entered into between the Postal Department and the permit holder is not an independent contract governed by its own special terms. As indicated above, clause 18 has reserved the right to either party to terminate the contract on giving four months' notice. The appellant must be presumed to have known that the agreement that he had entered into with the Postal Department will stand in the way of his running as a candidate for election to the Central or the State Legislature. There was nothing to prevent him from giving the necessary notice to the department and thus terminate his agreement so as to be free to stand as a candidate for election to the legislature. Section 7 of the Act is intended to ensure that there is no occasion for a conflict between public duty and private interests. The appellant had a clear and free choice before him. If he was anxious to serve the community as a member of the Central Legislature, he had to give up his private gains in the shape of the remuneration for carrying postal articles and mail bags in his buses. It may be that on his terminating the agreement with the postal department he would have to give up his stage carriage permit also but not necessarily so. If on the same route a number of bus services are permitted to different parties, the Postal Department may choose any one of them to enter into the agreement for the carriage of mail bags and postal articles. But even if there was only one service for the route in respect of which the appellant held the stage carriage permit, if he had to give up his permit, some other party would take his place for running the bus service and carrying the postal articles and mail bags.

It was further argued that the appellant had no hand in the fixing of the remuneration to be paid by the Postal Department for carrying its mails, etc. But it is clear, by a reference to the terms of the rule

quoted above, that the amount of the remuneration had to be fixed by the department after consultation with the carrier. It was always open to the latter to demur to the terms proposed by the department and if he found that the department was not prepared to accept his terms he was not bound to enter into the agreement. The fact that he had agreed to carry postal articles and mail bags was possibly an additional qualification for him to obtain a renewal of his permit and thus gave him an advantage over his competitors. Hence instead of being an additional burden or a handicap to him, it was an additional advantage to him in the matter of getting a renewal of his permit in preference to others. The agreement was therefore based on mutual promises, by the appellant to carry the mail bags, etc., and by the Postal Department to pay him suitable remuneration for the services thus rendered.

It was further contended on behalf of the appellant that the Central Government could not be said to have 'undertaken' any 'service' within the meaning of section 7(d) of the Act when it made arrangements for the carriage of mail bags and postal articles through the appellant. It has not been and cannot be contended that the Government is bound in the discharge of its duties as a sovereign state to make provision for postal mail service. The provisions of the Indian Post Office Act, VI of 1898, are only enabling in the sense that they authorize the State agency to have the exclusive privilege of conveying letters, etc. for the convenience of the public and for the benefit of the Government, without making it obligatory upon it to provide every individual and every place with those facilities. It may be that those facilities are being extended from time to time and are being brought nearer to every home but that is only evidence of the fact that the State as a welfare state is anxious to provide for the conveniences of the public in the matter of communications and correspondence. That is to say, the Government in the Postal Department has only undertaken a service to be rendered to the community and that such

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a service is not an essential function of a sovereign state. It cannot be gainsaid that the Government in the Postal Department is rendering a very useful service and that the appellant has by his contract with the Government undertaken to render that kind of service on a specified route. The present case is a straightforward illustration of the kind of contract contemplated by section 7(d) of the Act. At all material times the appellant has been directly concerned, for his own benefit, in the contract of carrying mail bags and postal articles entered into by him with the Government in the Postal Department.

For the reasons aforesaid we have not the least hesitation in holding that the conclusions arrived at by the Tribunal are entirely correct. The appeal is accordingly dismissed with costs.

Appeal dismissed.

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v.

STATE OF BOMBAY.

[S. R. DAS, BHAGWATI and IMAM JJ.]

Criminal Procedure Code, 1898 (Act V of 1898), s. 439(1)(2)(6) —Appellant convicted by Magistrate—His appeal to High Court dismissed summarily—After summary dismissal of that appeal State Government filed revision application to High Court for enhancement of sentence—Notice issued to appellant to show cause against enhancement under s. 439(2)—Whether appellant entitled to show cause against his conviction under s. 439(6) of Code of Criminal Procedure.

The appellant in this appeal was convicted by the Presidency Magistrate, Bombay, of an offence under s. 66(b) of the Bombay Prohibition Act (Act XXV of 1949) and sentenced to undergo imprisonment till the rising of the court and to pay a fine of Rs. 250 or in default to undergo rigorous imprisonment for one month. He preferred an appeal to the High Court at Bombay, which was summarily dismissed. After the dismissal of that appeal, the State of Bombay made a revision application to the High Court praying for enhancement of the sentence. Notice was issued to the appellant under s. 439(2) of the Code of Criminal Procedure to show cause against enhancement.