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SEWARAM
v.
SOBARAN SINGH

SEPTEMBER 15, 1992

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[KULDIP SINGH AND N.M. KASLIWAL, JJ.]

Representation of the People Act, 1951: Sections 9A-80, 84, 103 and 116-A.

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Election—Disqualification—Subsistence of contract with Appropriate Government—Contract awarded in individual capacity—Assignment of contract not permissible except with written approval of competent authority—Plea by elected candidate that contract was assigned to a firm—No evidence as to assignment of contract—Contract continued through the proxy of real brother—Held there was subsisting contract with the Government on

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the date of nomination—Election held void.

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The appellant was elected for the Legislative Assembly of State of Madhya Pradesh from the Morena Constituency. The respondent, one of the defeated candidates, filed an Election Petition challenging the appellant's election on the ground that on the date of filing the nomination paper on 1.2.1990 and declaration of the result of election on 28.2.1990, the appellant was having subsisting contracts with the Madhya Pradesh Government and therefore he was disqualified under Section 9-A of the Representation of the People Act, 1951.

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The appellant admitted his contract with the Public Works Department of the Government of Madhya Pradesh as well as with the M.P. Audyogik Kendra Vikas Nigam (Gwalior) Ltd. (MPAKVN) but submitted that no contract with the Appropriate Government was subsisting on the date of filing the nomination papers and the date of scrutiny. His case was that he carried on his construction business in his individual capacity upto 31.3.1988 and from 1.4.1988 by a partnership firm named as M/s Sewaram Gupta and the aforesaid contracts also were carried on by the said partnership. Since he intended to contest the elections, he retired from the partnership by duly executing a deed of dissolution on 31.12.1989 and accordingly gave up his interest in the contract. On the same day, a

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fresh partnership was entered into between the remaining partners and

one 'P' to continue the aforesaid contracts. The appellant also stated that by his letter dated 30.1.1990 addressed to Executive Engineer P.W.D. he informed that he has completely severed his connection with the contracts.

Rejecting the appellant's case, the High Court declared his election void declaring him disqualified under Section 9-A holding that the abandonment of the contracts by appellant was not established and even after his letter dated 30.1.1990 he continued to be associated with the contracts; that M.P. Audyogik Kendra Vikas Nigam was "Appropriate Government" under Section 9-A of the Act.

In appeal to this Court on the question whether the contract taken by the appellant with the P.W.D. of the Madhya Pradesh Government was subsisting on the date of filing nominations, it was contended on behalf of the appellant that (1) after the appellant's letter dated 30.1.1990 intimating the Department that he had withdrawn from the contract no contract subsisted between him and the State Government; therefore there was no question of any disqualification under Section 9-A of the Act; (2) after the appellant's letter there was no evidence to show that he participated in completing the contract.

On behalf of the respondent it was contended that (1) the P.W.D. awarded the contract to the appellant in his individual capacity and not to any firm. Clause 25 of the contract, which prohibited transfer or assignment of contract except with the prior written approval of the competent authority, was not complied with; (2) the sequence of events and documents makes it clear beyond doubt that it was the appellant alone who was participating in the execution of contract much after the filing of the nomination paper inasmuch as not only he participated in the process of adjudication of extension of time but also continued to sign all bills and Measurement Books in respect of the contract in his own name; and (3) the appellant's stand of severing his connection with contract by the letter dated 30.1.1990 was untenable because the said letter though addressed to Executive Engineer was not delivered in his office but was delivered in the Office of Sub-Divisional Officer.

Dismissing the appeal, this Court,

HELD: 1. The question of subsistence of a contract with the Appropriate Government making it a disqualification under Section 9-A of

A the Act is a question of fact depending on the facts and circumstances of each case. [525-F]

B 2. It is an admitted position that the appellant was awarded the contract by P.W.D. in his individual capacity. The partnership firm itself came into existence in 1988 and under Clause 25 of the Tender the contract could not have been assigned or transferred in favour of the firm without the written consent of the Divisional Officer. There is nothing on record to show that at any time during the subsistence of this contract appellant had ever intimated the P.W.D. Department that the contract may be transferred or assigned in favour of the firm nor any correspondence ever shows that the P.W.D. Department had accepted such transfer or assignment impliedly or expressly in favour of the partnership firm. Thus, it is established beyond any manner of doubt that till the date of filing the nomination paper, the contract with P.W.D. was continuing and dealt with by the appellant in his individual capacity and not by the partnership firm. [528 A-D]

D 3. It cannot be said that the contract came to an end by breach by writing the letter dated 30.1.1990. The facts of the case show that the contract did not come to an end but was sought to be continued through 'P', the appellant's real brother and member of Joint Hindu family with appellant. Not only that, 'P' was also an attorney holder of appellant during the relevant period. The correspondence even after 30.1.1990 has been made in the name of appellant though signed by 'P'. In these circumstances, it cannot be believed that appellant had put an end to the contract by breach. The conduct of appellant and his brother even prior to and after 30.1.1990 leads to an irresistible conclusion that the contract had not come to an end, and was subsisting, thereby incurring a disqualification under Section 9-A of the Act. [530 E-G]

F 4. Though, the letter dated 30.1.1990 is addressed to the Executive Engineer, yet in fact, it was delivered not in his Office but was delivered in the Office of the Sub-Divisional Officer. It cannot be believed that when all correspondence relating to the contract was dealt with the Office of the Executive Engineer, why such an important letter was submitted to a lower authority of the rank of Assistant Engineer. In case appellant wanted to put an end to the contract, in the normal course of behaviour and human conduct he should have gone personally to no less an authority than the

Executive Engineer and to have put and end to the contract mutually or in case the concerned officers were not agreeable to end the contract mutually then he could have taken the step of ending the contract unilaterally by breach taking the risk of damages. The facts therefore lead to the conclusion that the appellant never intended nor in fact put an end to the contract, but continued with the contract through the proxy of his real brother. [529 D-F, 530 G-H, 531-A]

4.1. The finding recorded by the High Court that the contract with the P.W.D. was subsisting on the date of filing the nomination and the date of scrutiny of the nomination papers and the appellant thus incurred a disqualification for contesting the election is affirmed. Steps as contemplated under Section 103 of the Act shall be taken. [531 B-D]

Abdul Rahiman Khan v. Sadasiva Tripathi, [1969] 1 S.C.R. 351 and *Konappa Rudrappa Nadgouda v. Vishwanath Reddy & Anr.*, [1969] 1 S.C.R. 395, relied on.

S. Munishamappa v. B. Venkatarayappa and Ors., [1981] 3 S.C.C. 260 and *Smt. Ashing alias Lhingjanong v. L.S. John & Ors.*, [1984] 1 S.C.R. 863, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4390 of 1991.

From the Order dated 28.10.1991 of the Madhya Pradesh High Court in Election Petition No. 40 of 1990.

U.R. Lalit, Rameshwar Bhargava, Yashpal Dhingra, Baldev Krishan Satija and S.S. Khanduja for the Appellant.

Dr. A.M. Singhvi, Bansal, Ciccu Mukhopadhya, R. Sasiprabhu and R.G. Bansal for the Respondent.

The Judgment of the Court was delivered by

KASLIWAL, J. Election for the Morena Legislative Assembly Constituency in State of Madhya Pradesh was held on 27.2.1990. Sewaram, the appellant before us having secured 25,509 votes was declared elected. Sobaran Singh, the respondent in this appeal being one of the defeated candidates having secured 19,055 votes filed an Election Petition under

A Sections 80 and 84 read with Section 100 of the Representation of the People Act of 1951 (hereinafter referred to as 'the Act') challenging the election of Sewaram. The ground for challenge was based on the allegation that on the date of filing the nomination paper on 1.2.1990 and declaration of the result of the election on 28.2.1990, Sewaram was having contracts entered with the Madhya Pradesh Government subsisting and as such he **B** was disqualified under Section 9-A of the Act. The details of the subsisting contracts with the Government were given as under in paragraph 4 of the Election Petition:—

C (a) A contract with M.P. Government through the Managing Director, M.P. Industrial Area Development Corporation Ltd., Gwalior for construction of W.B.M. Road in Industrial Estate, Malanpur, Distt. Bhind of M.P. The contract is for Rs. 51 lacs. The work order was issued on 29.12.88 and the date of completion mentioned in the **D** contract is 28.3.90. Under this contract, the 10th running bill of Rs.1,63,805 is paid on 10.2.1990 and the construction work is still incomplete and being carried.

E (b) Another contract with M.P. Government through the same authority mentioned in the above clause No. (a) for the construction of W.B.M. Road in Industrial Estate Malanpur Distt. Bhind of M.P. This contract is for Rs.55 lacs. The work order was issued on 10.11.89. The work under this contract is still being carried on. The aforesaid Corporation mentioned in para 4(a) & (b) is a subsidiary **F** Coporation of the M.P. Industrial Development Corporation Ltd., Bhopal and the said Managing Director, Gwalior is a permanent Government servant. The Industries Department of the M.P. Government is the real owner and controller of these Corporations. The total finances and assets of these Corporations belong to the Government of **G** M.P. In brief, these corporations are Government Corporations. Its functions are akin to the Public Works Department of M.P.

H (c) A contractual agreement with the Governor of M.P. for development, improvement and maintenance of the Main

Road between Bus stand of village Rayroo and Gwalior in Distt. Gwalior (M.P.). This agreement No.2/87-88 is for Rs. 37,96,500. The work order No.2477 was issued on 16.4.87 by the Executive Engineer of P.W.D. of M.P. The running bill for Rs.2,22,416/87 P. is paid in the month of March, 1990 by a cheque issued by the Public Works Department of M.P. The work under this contract is still continuing. The aforesaid work is undertaken and carried on by Madhya Pradesh Public Works Department under M.P. Words Department Manual of 1983 published in M.P. Government Gazette Extraordinary dated 20.1.84. The aforesaid portion of the road is part of the road named as National Highway No.3 but it is under the jurisdiction of the Government of M.P. As per the provisions of the National Highway Act and related provisions of Law, the road is under the M.P. Government. The Central Public Works Department has nothing to do with the impugned contract."

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Sewaram filed a reply to the Election Petition and denied that the alleged contracts mentioned in para 4 (a) and (b) of the petition with the M.P. Audyogik Kendra Vikas Nigam (Gwalior) Ltd., (In short 'MPAKVN') are the contracts/works undertaken by the Madhya Pradesh Government. It was submitted that the said Nigam is a Limited Company incorporated under the Companies Act, 1956 and as such is an independent and sovereign body corporate with perpetual succession, seal and power to hold and manage its own property. It was, therefore, denied that the Industries Department of the Government of Madhya Pradesh was the real owner of the said Company. As such, it was also denied that the contracts with the said Company can be termed as contracts with the appropriate Government, in terms of Section 9-A of the Act.

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It was also submitted in the reply that he had been carrying on the construction business by taking contracts.

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This business was carried on in his individual capacity upto 31.3.1988. On 1.4.1988, he intered into a partnership for his work contracts with the Indian Railways at Kolaras by duly executing a deed of partnership. The firm was named as "M/s Sewaram Gupta". It was also submitted in the reply that on 1.4.1989 he put his work/contract with the M.P. PWD National

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A Highways, Gwalior and the first contract with MPAKVN, in the aforesaid firm M/s Sewaram Gupta. The second contract with MPAKVN was also put in the aforesaid firm of M/s Sewaram Gupta on 24.10.1989. The work/business of the aforesaid three contracts was carried on by the said partnership firm through him.

B It was further submitted in the reply that on 31.12.1989, he made up his mind to contest the election of the Morena Assembly Constituency and as such opted for a ticket from the Bhartiya Janta Party. It was admitted that on 31.12.1989, the following contracts with State Government and MPAKVN were subsisting:-

C (i) for construction of floodable reach in K.M. 105 to 108 of Agra Bombay Road with the M.P., P.W.D. National Highways, Gwalior.

D (ii) for the construction of WBM road at Malanpur agreement No.20 with the M.P. Audyogik Kendra Vikas Nigam (Gwalior) Ltd.

E (iii) for construction of WBM road at Malanpur agreement No.28 with M.P. Audyogik Kendra Vikas Nigam (Gwalior) Ltd."

F Shri Sewaram in his reply further submitted that since he intended to contest the election, he decided to sever for good his connection with the aforesaid contracts. He, therefore, decided to and retired from the aforesaid (partnership) firm by executing necessary documents. But, since the aforesaid works/contracts were at advanced stages, he made alternate arrangements with one Shri Patiram Gupta, who was also a registered contractor with M.P. PWD and the said MPAKVN to undertake and complete the said works. An agreement to this effect was duly executed between him and Shri Patiram Gupta on 31.12.1989 and duly got noted by G a Notary Public. He also retired from the aforesaid partnership firm by duly executing a deed of dissolution on 31.12.1989. On such retirement from the aforesaid firm, a fresh partnership was entered into between the remaining partners and Shri Patiram Gupta on 31.12.1989 to continue the aforesaid works/contracts. The aforesaid deeds of dissolution and fresh H partnership were also duly got noted by a Notary Public on 31.12.1989.

Sewaram further submitted in the reply that on 29.1.1990 he was permitted by high command of the Bhartiya Janta Party to file nomination papers for the Morena Vidhan Sabha Constituency. As such, he immediately informed the Executive Engineer, M.P. PWD, N.H. Gwalior and the Managing Director of MPAKVN that since he was willing to contest the election, he was unable to execute and complete the works/contracts and, as such, he completely withdrew himself from the works/contracts. He also wrote letters to the above effect to the Executive Engineer M.P. PWD, N.H., Gwalior and the Managing Director of MPAKVN on 30.1.1990 and enclosed a copy of his aforesaid agreement dated 31.12.1989 with Shri Patiram Gupta with each of the aforesaid three letters. He also made a request to transfer the works in the name of Shri Patiram Gupta. In each of these letters, he categorically made it clear that as far as he was concerned, the works stood closed. It was further alleged that he completely severed his connection with and did not even touch the said works. Shri Patiram Gupta started to execute them since then and has been executing the said works/contracts to date. It was further alleged that he filed his first nomination form on 1.2.1990 and had completely and duly severed his association with the aforesaid contracts. Thus, no contract with the appropriate Government was subsisting on the date of filing the nomination papers and the date of scrutiny. It was also submitted that the alleged running bill as mentioned in para 4 (a) of the Election Petition was prepared by the department and accepted by Shri Patiram Gupta and payment thereof was also received by Shri Patiram Gupta in terms of the arrangement mentioned in the letter dated 30.1.1990, and he was not concerned at all either with the said work/contract or the alleged running bill or its payment. On the basis of the aforesaid pleadings of the parties, the High Court framed the following issues:-

"(i) Whether M.P. Audyogik Kendra Vikas Nigam can be termed as an "appropriate Govt." within the meaning of Section 9- A of the Representation of Peoples Act, 1951?

(2) Whether the contract No.20 as narrated in para 4(a) of the petition, entered between the respondent and the M.P. Audyogik Kendra Vikas Nigam was subsisting during the election i.e. between 1.2.90 to 27.2.90?

(3) Whether the contract No.28 as detailed in para 4 (b)

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A of the petition, entered between the respondent and the M.P. Audyogik Kendra Vikas Nigam was subsisting during the related Election?

B (4) Whether the contract No.2/87-88 for constructing the road, detailed in para 4(c) of the petition, entered between the respondent and the Rajyapal of Madhya Pradesh was subsisting during the related Election?

C (5) Whether the respondent, Sawaram Gupta, validly severed his connection on 31.12.89 with the contracts alleged in paras 4(a), 4 (b) and 4(c) of the Election Petition on or before the relevant date and was not disqualified to stand for Election?"

The election petitioner examined 5 witnesses and Shri Sewaram Gupta examined 7 witnesses. Shri N.K. Mandloi, Executive Engineer PWD, D N.H. Division, Gwalior was examined as a court witness. The parties also produced documentary evidence. The High Court under issue No.1 held that MPAKVN is a Government Company being a subsidiary of M.P. Audyodik Kendra Vikas Nigam Limited, and the State Government and MPAKVN are not separate legal entities, the latter being the machinery is a part of the State Government entrusted to carry out designated functions and activities. The High Court, thus concluded that MPAKVN is "appropriate Government" within the meaning of the term used in Section 9-A of the Act and accordingly decided issue No.1 in affirmative.

F The High Court then discussed the oral and documentary evidence in detail and under issue No.5 held that the plea of severance set up by Sewaram has not been established. The High Court also held that no effect was given to the purported severance contemplated in terms of respondent Sewaram's letter dated 30.1.1990. The Executive Engineer and Superintending Engineer continued to deal with Sewaram treating him as the contractor. Thus, issue No.5 was decided in negative. The High Court thereafter took issues Nos. 2, 3, and 4 jointly into consideration and held that the abandonment of works in respect of the three contracts, by respondent Sewaram, is not established. Whether those contracts were continued by Sewaram overtly or through his proxy Patiram covertly, matters little. Even after writing his letters dated 30.1.1990, Sewaram Gupta G continued to be associated with those contracts with PWD and MPAKVN. H

The High Court as such decided these issues also in affirmative. As a result of the findings recorded above, the High Court held that Sewaram was disqualified in terms of Section 9-A of the Act. The election of Sewaram was declared void. It was directed that as contemplated under Section 103 of the Act, steps shall be taken by the Registry to intimate at once the substance of the order to the Election Commission, New Delhi and the Speaker M.P. Legislative Assembly, Bhopal and in due course to send also to the Election Commission an authenticated copy of the decision.

Sewaram aggrieved against the aforesaid Judgment of the High Court has filed the present appeal under Section 116-A of the Act.

We have heard learned counsel for the parties at length and have thoroughly gone through the record. It may be mentioned at this stage that in view of the fact that we are affirming the findings of the High Court as regards the contract with the PWD of the Government of Madhya Pradesh subsisting on the relevant dates, we refrain from recording any finding whether MPAKVN was an appropriate Government within the meaning of Section 9-A of the Act. In view of this we also find it unnecessary to decide the question whether any works/contracts taken by Sewaram with MPAKVN were subsisting or not on the relevant dates. We are, thus, determining the only question whether the work/contract taken by the appellant Sewaram with the PWD of the Government of Madhya Pradesh was subsisting or not on 1.2.1990 - the date of filing nominations.

Learned counsel for the appellant submitted that the appellant had clearly intimated to the department that he had withdrawn from the contract and his interest in the contract had come to an end vide his letter dated 30.1.1990. Any conduct on the part of the department or on the part of Patiram Gupta after the aforesaid date cannot be taken as a circumstance against the appellant. After 30.1.1990 Patiram had dealt with the department and the department had also accepted the work to be done by him and this clearly goes to show that the contract with the petitioner had come to an end. The department had given two separate completion certificates, one to Patiram and the other to the appellant and this clearly shows that the department had treated the appellant as having terminated his part of the contract on 30.1.1990. It was submitted that the contents of letter dated 30.1.1990 leave no manner of doubt that the appellant had expressly intimated the Executive Engineer that the appellant had

A withdrawn from the contract. No contract can be held as subsisting between the appellant and the Government after such notice sent by the appellant vide his letter dated 30.1.1990. It was submitted that an unequivocal clear intimation given by the appellant vide his letter dated 30.1.1990 clearly shows a severance of the contract on 30.1.1990 and there was no question of any disqualification of the appellant under Section 9-A of the Act. it was also contended that even if such intimation given by the appellant is treated as unilateral, there does not remain any disqualification on the basis of any subsisting contract with the appropriate Government under Section 9-A of the Act. Reliance in support of the above contention has been placed on *S. Munishamappa v. B. Venkatarayappa and Others*, [1981] 3 SCC 260 and *Smt. Astihing alias Lihingjanong v. L.S. John & Ors.*, [1984] 1 SCR 863. It was further contended on behalf of the appellant that so far as the PWD contract is concerned, prior to 30.1.1990 Patiram had never participated in any work of this contract inspite of the fact that he was holding a general power of attorney from the appellant. All actions prior to 30.1.1990 were taken only by the appellant. After 30.1.1990, there is no evidence to show that the appellant participated in completing the work of the contract. Shri V.P. Srivastava, R.W.7, Sub Divisional Officer working on this contract has expressly stated in his evidence that after 30.1.1990 the appellant did not come on the work site. After 30.1.1990 all documents concerning the PWD contract show that Shri Patiram alone had participated in the work contract. In support of this contention reliance is placed on Exhibit P.60 dated 15.2.1990 by which extension for completing the contract was sought by Patiram. Exhibit R.23 dated 24.2.1990 by which Patiram Gupta communicated that he had completed the work. Exhibit R.24 dated 16.3.1990 by which Patiram had asked for the payments. Exhibit P.71 dated 31.3.1990 shows that the running bill was paid to Patiram and this bill was counter signed by many officers including the Executive Engineer and ultimately to complete the formalities a new contract was made in favour of Patiram vide Exhibit R.2. A completion certificate was given to Patiram vide Exhibit R.20 and a final bill was prepared in the name of Patiram and paid to him vide Exhibit R.25 dated 22.9.1990. It was also submitted that the letter Exhibit R.12 dated 30.1.1990 was accepted by the PWD department and a completion certificate as of 30.1.1990 was issued in the name of the appellant vide Exhibit R.19. The authenticity of the aforesaid documents is affirmed in the evidence of Shri V.P. Srivastava. He

was the person who was incharge and the evidence of Srivastave is further corroborated by the subsequent act and the steps taken by other officials of PWD at various stages. A

Learned counsel for the respondent on the other hand submitted that admittedly the contract with PWD was applied for, tendered for and awarded to Sewaram Gupta in his individual capacity and it remained unchanged at all relevant times. The Chief Engineer, PWD vide his communication dated 3.4.1987 approved the contract in the name of Sewaram Gupta himself and not to any firm. Clause 25 of the contract specifically prohibited and interdicted the transfer or subletting or sub-contracting of the work awarded to Sewaram Gupta except with the prior written approval of the Divisional Officer. Admittedly, this clause was never invoked nor any written approval for transfer of the contract in favour of the firm M/s Sewaram Gupta has even been alleged much less proved. There is not a single document or communication or any other piece of evidence to suggest that the PWD ever dealt with Shri Sewaram Gupta as a firm or that at any time it was dealing with anyone else except Shri Sewaram Gupta in person. It was further argued that Shri Patiram Gupta was not a stranger, but was the real brother of Sewaram Gupta as well as power of attorney holder on behalf of Sewaram. It is not the case of Sewaram either set up in the reply or in evidence that it was a case of complete secession or stoppage of work on the part of Sewaram. On the contrary, it is an admitted case by the appellant himself that the contract was continued and completed by no other person than Patiram who was not a stranger, but the real brother, member of the joint family and a power of attorney holder of Sewaram. It was submitted that not only upto January 1990, but even thereafter at all relevant dates including in February, March and indeed till the service of the summons of the election petition on 22.7.1990, the appellant himself acted in respect of the contract and to execute the contract. It was also submitted that on 15.2.1990 a letter was sent in the name of Sewaram Gupta seeking extension of time in the present contract itself. At the end of the letter, the name of Mr. Sewaram Gupta is typed. It has been contended that it has been sought to be explained on behalf of the appellant that the word 'Sewaram Gupta' at the end of the letter means and should be read as Sewaram Gupta firm, but such plea is palpably dishonest and liable to be rejected. There is no ground or justification for reading the plain word Sewaram Gupta to be read as Sewaram Gupta firm. On 31.3.1990 the Measurement Book (in short 'MB') relating to the present B
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A contract itself has been signed at the end by Patiram Gupta, but with the name of Sewaram Gupta. The bill prepared on the basis of the aforesaid MB dated 31.3.1990 has been signed by Patiram Gupta for Sewaram Gupta. Communication dated 2.4.1990 from Executive Engineer to Superintending Engineer recommending further extension of time for completion of contract makes a mention of Sewaram Gupta and it is addressed to Sewaram Gupta alone. On 2.5.1990 Superintending Engineer, PWD wrote to Sewaram Gupta informing him to attend hearing at which his request for extension of time will be adjudicated. On 25.6.1990, letter has been issued from Superintending Engineer to Executive Engineer, intimating him the decision of the Superintending Engineer granting extension of time after hearing both the parties including the contractor and a copy of this letter is marked to Mr. Sewaram Gupta in person. It has been contended that the above sequence of events and documents makes it clear beyond any manner of doubt that it was Sewaram Gupta alone who was participating in the execution of the contract much after the filing of nomination paper on 1.2.1990. Sewaram Gupta, not only participated in the process of adjudication for extension of time, but also continued to sign all bill and MBs in respect of this very contract in his own name. The fact that Patiram Gupta was signing various letters, measurement books and bills is simply because he was acting at all relevant times as the agent of Sewaram. It was further contended that only communication by Patiram Gupta in his own name occurs after 22.7.1990 which is admittedly the date on which notice of Election Petition had been served on the appellant Sewaram Gupta. There is no communication worth the name by Patiram in his own name as a contractor prior to 22nd July, 1990 and this totally falsifies the stand taken by the appellant that he had severed his connection with the contract on 30.1.1990

Learned counsel for the respondent further submitted that the contention of the appellant regarding the sending of letter dated 30.1.1990 is itself wholly untenable and clearly reflects a desperate and afterthought attempt to set up a case of severance of contract in order to wriggle out of the provisions of Section 9-A of the Act. It was submitted in this regard that this letter dated 30.1.1990 though addressed to the Executive Engineer, but has supposedly been given to the Office of the Sub Divisional Officer Mr. Srivastava. It has been pointed out in this regard that all communications in respect of the present contract with PWD have been sent to the Office of the Executive Engineer, but such an important letter dated

30.1.1990 on which the entire case hinges has not been delivered in the Office of the Executive Engineer, but to Sub Divisional Officer Mr. Srivastava who has apparently come out to support the appellant. Mr. Mandloi, Executive Engineer appearing as a court witness categorically states that he had no knowledge whatsoever of the letter dated 30.1.1990 before 23.7.1990. Clause 28 of the contract also makes it clear that work is to be done under the direction of the Executive Engineer or Superintending Engineer. It has also been argued that according to the statement of Sewaram, he himself and his friend Rajesh Verma had gone to deliver the letter dated 30.1.1990 and Rajesh Verma also supports the above statement of Sewaram, but Mr. V.P. Srivastava categorically states that Sewaram came along with Patiram and not with Rajesh Verma for delivering the letter dated 30.1.1990 to him. It was also submitted in this regard that there is no explanation as to why this letter dated 30.1.1990 was not brought to the notice of Shri Mandloi - the Executive Engineer till 23.7.1990 specially when it was addressed to the Executive Engineer and was a very material and important document in order to uphold the contention of the appellant of severing the contract which was coming in his way for contesting the election. Learned counsel for the respondent on several grounds also assailed the genuineness of the documents brought in existence by the appellant on 31.12.1989 purportedly to show that Sewaram had withdrawn from the partnership of the firm M/s Sewaram Gupta and Patiram Gupta joined the said firm as one of the partners.

We have given our thoughtful consideration to the arguments advanced by learned counsel for both the parties and also the case law cited at the bar. The question of subsistence of a contract with the appropriate Government making it a disqualification under Section 9-A of the Act is a question of fact depending on the facts and circumstances of each case. In *Abdul Rahiman Khan v. Sadasiva Tripathi*, [1969] 1 SCR 351, the respondent was declared elected to the Legislative Assembly of Orissa from the Nowrangpur General Constituency. The appellant filed an election petition before the High Court of Orissa for an order setting aside the election of the respondent, on the ground that the appellant's nomination paper was improperly rejected and he was illegally deprived of his right to contest the election. It was a common ground that the appellant was carrying on the business of a building contractor and that in pursuance of a notification issued by the Government of Orissa he had submitted tenders for construction of buildings of the Rental Housing Scheme at the rates specified

A therein. The tenders were accepted and the appellant had carried out a part of the construction work, but had thereafter stopped the work because he suffered serious injuries which necessitated his detention in a public hospital. The appellant claimed that at his request the contract was cancelled, and on that account at the date of filing of his nomination there was, between him and the State of Orissa no subsisting contract for execution of works undertaken by him, and that in any event there was in law no contract between him and the State relating to the execution of works which disqualified him from standing at the election as a candidate for a seat in the State Legislative Assembly.

C In the facts and circumstances of the above case, it was held that the appellant had commenced execution of the work, but had not completed it. Payment for the work done was not made to the appellant. The contract was not determined by *mutual agreement nor was it abandoned (emphasis supplied)*.

D In *Konappa Rudrappa Nadgouda v. Vishwanath Reddy & Anr.*, [1969] 1 SCR 395, the appellant and the first respondent were candidates for election in February, 1967 from the Yadagiri constituency which was won by the first respondent. The appellant challenged his election by a petition on the ground that he was a partner in a firm which had two contracts with the State Government, one for the construction of a road and the other for the construction of a dispensary building, which were subsisting on the day when nominations were filed; he was therefore disqualified from being a candidate under Section 9-A of the Representation of the People Act, 1951 and his election was void. The High Court dismissed the election petition.

E This Court allowed the appeal and held that the High Court was in error in holding that the contracts had been fully performed and Section 9-A did not apply. It was held that the law requires that a candidate should not have any interest in any contract with Government and therefore even a partner in a firm has an interest sufficient to attract the provisions of Section 9-A. The first respondent could not by a private dissolution of the partnership escape his liability under the contract to the Government, and there was here no novation, because notice of the dissolution was not given to Government and the Government had not accepted the person to whom the business was transferred in place of the respondent's firm.

H In *S. Munishamappa v. B. Venkatarayappa and Others*, [1981] 3 SCC

260 (supra) on which reliance has been placed by the learned counsel for the appellants. In that case the letter written by the appellant to the Executive Engineer clearly proceeded on the basis that at that point of time there was no existing contract between him and the Government and he was only asking for a settlement of his bills and for cancellation of the licence. The endorsements made on the said letter by the authorities also indicated that the said position was accepted by them and necessary directions for finalisation of the bills were given. The further fact was that the security deposit had been refunded to the appellant and no penal action had been taken against him and the remaining works had been allowed to be executed by other contractors, also established that the said contract between the parties had come to an end before the appellant filed his nomination paper. In these circumstances this Court held that the contract was not subsisting on the date the appellant filed his nomination paper.

In *Smt. Ashing alias Lhingjanong v. L.S. John & Ors.*, [1984] 1 SCR 863 (supra), this Court held that the respondent was a party to a subsisting contract with the Government for widening of a road words a letter to the concerned Executive Engineer stating that he was closing the said contract. The appellant contended that the contents of the letter did not have the effect of putting an end to the contract. Dismissing the appeal this court held that after the letter, the contract came to an end by breach and was no longer subsisting. Acceptance of the letter by the authorities was unnecessary for putting an end to the contract although the breach may give rise to an action for damages. In the facts of that case this court accepted that a letter was written on 30.11.1979 to the concerned Executive Engineer stating that he was closing the said contract. The last date for filing nomination was 10.12.1979. This court after going through the contents of the letter held that it was absolutely clear that the contractor unilaterally put an end to the contract and informed the department concerned accordingly and also he had resigned from the contractors' list of PWD Malanpur. It was held that after this letter, the contract came to an end by breach and the contract was no longer subsisting. Thus, the question of subsistence of the contract at the relevant time has been decided in all the above cases on the basis of the facts and circumstances of each one of those cases. As already held above, such question is a question of fact depending on the facts and circumstances of each case.

A In order to decide the controversy, we shall now take into consideration the facts of the case in hand. It is an admitted position that Sewaram in his individual capacity had submitted a tender/application on 6.11.1986 for seeking the contract for raising of floodable reach in K.M. 105 to 108 of A.B. Road on National Highway No.3 for an amount of Rs. 37,96,500.

B This tender for the above work was accepted in favour of Sewaram by the Executive Engineer, PWD, National Highway Division, Gwalior on behalf of the Governor, Madhya Pradesh on 16.4.1987. Clause 25 of the contract clearly provided that the contract shall not be assigned or sublet without the written approval of the Divisional Officer. Admittedly the firm M/s Sewaram Gupta itself came into existence in 1988 and the contract made

C originally in favour of Sewaram in his individual capacity could not have been assigned or transferred in favour of the firm without the consent of the Divisional Officer. Even otherwise, there is nothing on record to show that at any time during the subsistence of this contract Sewaram had ever intimated the PWD department that the contract may be transferred or assigned in favour of the firm nor any correspondence ever shows that the

D PWD department had accepted such transfer or assignment impliedly or expressly in favour of the firm M/s Sewaram Gupta. Thus, it is established beyond any manner of doubt that till 1.2.1990 the date of filing the nomination paper, the contract with PWD was continuing and dealt with Sewaram in his individual capacity and not with the firm Sewaram Gupta. The

E appellant has taken the stand that an agreement was executed between him and Patiram on 31.12.1989 by which he gave up his interest in the existing contract with PWD and MPAKVN and executed another document on the same day dissolving the partnership firm and a new partnership deed was executed on the same date between Patiram and other persons. There is a

F serious controversy raised in this regard on behalf of the respondent that all these documents as alleged to have been executed on the stamp paper supplied by one Narayan Swaroop Saxena, stamp vendor are forged and void. This Narayan Swaroop Saxena has appeared in the witness box and has deposed that he did not enter the sale of the stamps to the appellant Sewaram in his register and has further admitted that the stamp paper

G alleged to have been sold to appellant Sewaram bearing the serial number 13429 had been sold to a third party stranger namely Budh Ram who had purchased the same on behalf of lady Radha Bai. It has also been argued on behalf of the respondent that the notary Shri Chhinga Lal Gupta was a relation of Sewaram and though there were various notaries having jurisdiction in Morena, the document was got notarised from Shri Chhinga Lal

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Gupta, a notary from Gwalior. Many other circumstances have been shown in order to establish that all the documents brought into existence on 31.12.1989 were forged and manufactured, but we do not consider it necessary to record a positive finding in this regard, in view of the fact that nothing material turns out on these documents for deciding the main controversy raised in the present case. Even if, for arguments sake it may be admitted that Sewaram had dissolved the partnership firm M/s Sewaram Gupta and Patiram was introduced as a new partner in this firm on 31.12.1989, it is neither established in fact, nor it was permissible to transfer or assign the contract in favour of the firm at any time without the approval of the Divisional Officer as per terms of Clause 25 of the contract.

Now we shall consider the main plank of the contention on which the entire edifice has been built by Sewaram that he had submitted a letter dated 30.1.1990 whereby he had severed all his connections with the contract in question and after this date there was no subsisting contract so as to incur any disqualification under Section 9-A of the Act. Admittedly, this letter dated 30.1.1990 is addressed to the Executive Engineer, but in fact, it was delivered not in the Office of Executive Engineer Mr. Mandloi, but had been delivered in the Office of the Sub Divisional Officer Mr. Srivastava. It is important to note that all correspondence in respect of the contract in question has been done by Sewaram with the office of the Executive Engineer except the letter dated 30.1.1990 in question which alone according to the appellant had been submitted to Shri V.P. Srivastava, the Sub Divisional Officer sitting in a different office and far away from the Office of the Executive Engineer. According to Sewaram, one Rajesh Verma accompanied him while delivering this letter to Srivastava, but according to Srivastava, Patiram had accompanied Sewaram and not Rajesh Verma. It cannot be believed that when all correspondence relating to the contract was dealt with the Office of the Executive Engineer, why such an important letter dated 30.1.1990 was not submitted in the Office of the Executive Engineer and is alleged to have been submitted to a lower authority of the rank of Assistant Engineer. We see force in the submission of the learned counsel for the respondent in this regard that Shri Mandloi, the Executive Engineer was not willing to oblige the appellant by taking a false stand and as such the appellant took a false plea that he had given such letter dated 30.1.1990 to Mr. Srivastava. It is important to note that Mr. Mandloi in his statement has clearly stated that he never saw nor had any knowledge of the letter dated 30.1.1990 prior to 23.7.1990. Even if, for

A arguments sake it may be considered that the appellant had submitted the letter dated 30.1.1990 *bonafidely* for some reasons on the same day in the Office of the Assistant Engineer Mr. Srivastava, it was incumbent upon the appellant to see that the letter should have reached immediately in the Office of the Executive Engineer who alone was competent to deal with such important matter. Admittedly, the letter was addressed to the Executive Engineer and it came to his notice on 23.7.1990 after the service of the notice of the Election Petition on the appellant. The contract can come to an end by any of the following modes:-

- B
- (1) By performance;
 - C (2) By express agreement;
 - (3) Under the doctrine of frustration; and
 - (4) By breach.

D Mr. Lalit, learned senior counsel appearing on behalf of the appellant frankly and rightly submitted that in the present case by letter dated 30.1.1990, the contract did not come to an end under the above mentioned three categories, but according to him, the case of the appellant falls under the fourth category of contract coming to an end by breach. We are not satisfied that in the present case the contract came to an end by breach by writing the letter dated 30.1.1990 as sought to be submitted on behalf of the appellant. In the facts of the present case the contract had not come to an end but was sought to be continued through Patiram Gupta. It is an admitted fact that Patiram Gupta is the real brother and member of joint

E Hindu family with Sewaram appellant. Not only that, patiram was also an attorney, holder of Sewaram during the relevant period. The correspondence even after 30.1.1990 has been made in the name of Sewaram appellant though signed by Patiram. In these circumstances, it cannot be believed that Sewaram had put an end to the contract by breach and the conduct of Sewaram and Patiram even prior to and after 30.1.1990 leads to an

F irresistible conclusion that the contract had not come to an end, and was subsisting, thereby incurring a disqualification under Section 9-A of the Act. In case Sewaram wanted to put an end to the contract, in the normal course of behaviour and human conduct he should have gone personally to no less an authority than the Executive Engineer and to have put an end

G to the contract mutually or in case the concerned officers were not agree-

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able to end the contract mutually then he could have taken the step of ending the contract unilaterally by breach taking the risk of damages. The facts of the present case lead us to the conclusion that the appellant never intended nor in fact put an end to the contract, but continued with the contract through the proxy of his real brother Patiram. A

In the circumstances mentioned above, we are in agreement with findings recorded by the High Court in this regard that the contract with the PWD was subsisting on the date of filing the nomination and the date of scrutiny of the nomination papers and the appellant thus incurred a disqualification for contesting the election of Morena Assembly Constituency in the State of Madhya Pradesh. B C

As we are dismissing the appeal filed by the appellant on one question alone, we are not expressing any opinion on any other question decided by the High Court and leave all other questions open. In the result, we find no force in this appeal and it is accordingly dismissed with costs. Future steps as contemplated under Section 103 of the Act shall now be taken as directed by the High Court. In view of the appeal having been dismissed, any interim orders passed during the pendency of this appeal stand automatically vacated. D

T.N.A.

Appeal dismissed.