

A

SHRIKANT  
v.  
VASANTRAO AND ORS.

JANUARY 20, 2006

B

[Y.K. SABHARWAL, C.J., B.N. SRIKRISHNA AND  
R.V. RAVEENDRAN, JJ.]

C

*Representation of the People Act, 1951; Ss. 2, 7, 8, 8-A, 9, 9-A, 10, 10-A and 116-A/General Clauses Act, 1987; Section 2(60):*

D

*Election Petition—Election for Legislative Council—Returned candidate having subsisting contracts with a statutory body as on the date of filing of nomination—Disqualification—Held: Disqualification as defined under the provisions of the 1951 Act is very clear and specific—A candidate having a subsisting contract with the State/State Government for supply of goods/works contracts could only disqualify him from contesting the election—Meaning of the term 'State/State Government' defined in the context of its ordinary and normal sense and not in the broader sense in terms of Article 12 of the Constitution—Since the term 'State Government' in its ordinary sense does not emphasize in its field a local/statutory authority, the statutory authority in question cannot be termed as State Government—Since all rights and obligations of the State Government under the contracts in question stood transferred to a statutory body, no separate instruction for transfer/assignment necessary—The contracts though subsisting as on the date of filing of nomination were not contracts with the State Government/appropriate Government but with a statutory body—Hence, the returned candidate did not incur any disqualification under Section 9A of the Act—Constitution of India, 1950—Articles 12, 58, 64, 102 and 191.*

E

F

*Disqualification—Section 9(A) of the Act—Scope of.*

G

*Words and Phrases:*

*'Appropriate Government' and 'Subsisting Contract'—Meaning of in the context of Section 9(A) of the Representation of the People Act, 1951.*

H

**The first respondent, rival candidates, filed Election Petition in the**

High Court challenging the election of the appellant-returned candidate under the provisions of Sections 9-A, 98, 100(1)(a) and (d) and 101(1)(a) of the Representation of the People Act, 1951. It was alleged that the appellant was a government contractor as on the date of filing of nomination as he had entered into three contracts for execution of works, with the State Government, and the contracts were subsisting as on the dates of filing of nomination, scrutiny of the nomination papers and on declaration of result. According to the returned candidate one of the contracts stood transferred to Godawari Marathwada Irrigation Development Corporation (MG MIDC), a statutory body and other two contracts were already entered into with another statutory body, viz. Maharashtra Jeevan Pradhikaran (MJP). Therefore, as on the date of filing of nomination, he had no subsisting contracts with the State Governments/appropriate Government and thus he did not suffer from any disqualification under Section 9-A of the 1951 Act.

The High Court allowed the election petition and declared the election of the appellant void holding that GMIDC and MJP were statutory corporations wholly controlled by the State Government and therefore fell within the expression 'State' as defined in Article 12 of the Constitution. The High Court also held that GMIDC and MJP being 'State' under Article 12 of the Constitution, therefore, these statutory corporations could be termed as 'appropriate Government'. Consequently, the appellant had subsisting contracts with the appropriate government and therefore, incurred disqualification under Section 9-A of the Act. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. A person cannot be disqualified unless he suffers a disqualification laid down in Article 191 of the Constitution or under Sections 8, 8-A, 9, 9-A, 10 or 10-A of the Representation of the People Act. It is not possible to add to or subtract from the disqualifications, either on the ground of convenience, or on the grounds of equity or logic or perceived legislative intention. The disqualifications under Sections 8 to 10-A of the Act are clear and very specific. [507-A-B; 508-C]

*Jyoti Basu v. Debi Ghosal*, AIR (1982) SC 983; *S. Narayanaswami v. G. Panneerselvam*, AIR (1972) SC 2284 and *N.S. Varadachari v. G. V. Pai*, AIR (1973) SC 38, relied on.

A 1.2. Section 9-A only disqualifies person having a subsisting contract with the State Government either for supply of goods or for execution of any works undertaken by that government, but does not disqualify persons who have such contracts with any local or other authority nor disqualifies persons having subsisting contracts with the State Government if such contracts are not for supply of goods or for execution of any works undertaken by the State Government. [508-F-G]

B 1.3. While Articles 102 (1)(a) and 191(1)(a) of the Constitution disqualify any person holding any office of profit under the Government of India or Government of any State, Articles 58(2) and 66(4) disqualify any person holding any office of profit under the Government of India or the Government of any State or *under any local or other authority subject to the control of any of the said Governments*. There is thus a conscious and deliberate omission of the words ‘office of profit under any local or other authority subjected to the control of any of the said Governments’ while listing the disqualifications for membership of Houses of Parliament and membership of Legislative Assembly/Council of a State. Holding an ‘office of profit under local or other authority’ is not a disqualification for being elected to either house of Parliament or State Legislative Assembly/Council, but disqualification for being elected as the President or Vice-President. The above brings into focus that ‘State Government’ is different from ‘local or other authorities under the control of the State Government’ for purposes of disqualification. [509-A-B-C; 510-C]

*Gurushanthappa v. Abdul Khuddus*, AIR (1969) SC 744, referred to.

F 2. Having reached the conclusion that both GMIDC and MJP answer the definition of State under Article 12, the High Court wrongly, without any logical basis, assumed that they are ‘appropriate government’ and consequently held that the appellant had subsisting contracts with GMIDC and MJP, therefore, incurred disqualification under Section 9-A of the Act. Neither Article 12 nor the decisions rendered with reference to Article 12 is of any assistance for interpreting Section 9A of the Act. The term ‘State Government’ (as also the term ‘Central Government’) is used in the various provisions relating to disqualification, in contradistinction from its instrumentalities or local or other authorities. While it is true that the meaning of the terms ‘State’ and ‘State Government’ may depend on the context in which they are used, the manner in which the said terms are used in the various provisions relating to disqualification leaves no doubt

that 'State' refers to an entity described in the First Schedule to the Constitution of India and 'State Government' refers to the three wings of governance of the 'State' that is Executive, Legislature and Judiciary. The term 'State Government' in Section 9A read with Section 7 of the 1951 Act should, therefore, be understood in its ordinary and normal sense, and not with reference to the extended meaning under Article 12 of the Constitution of India. [511-F-G-H; 512-A-B]

3. A body would answer the definition of State under Article 12 if it is financially, functionally and administratively dominated by or under all pervasive control of the "Government". On the other hand, where the control by the "Government" is merely regulatory, whether under any statute or otherwise, it would not serve to make the body 'State'. Thus the very decisions relied on by the High Court make it clear that 'instrumentalities of State' are different from 'State Government', though both may answer the definition of 'State' under Article 12 for the limited purpose of Part-III of the Constitution. Further, the very inclusive definition of 'State' under Article 12 by referring to Government of India, the Government of each of the States and the local and other authorities, makes it clear that a 'State Government' and a local or other authorities, are different and that they fall under a common definition only for the purpose of Part-III of the Constitution. This Court has consistently refused to apply the enlarged definition of 'State' given in Part-III (and Part-IV) of the Constitution, for interpreting the words 'State' or 'State Government' occurring in other parts of the Constitution. While the term "State" may include a State Government as also statutory or other authorities for the purposes of part-III (or Part-IV) of the Constitution, the term "State Government" in its ordinary sense does not encompass in its fold either a local or statutory authority. It follows, therefore, that though GMIDC and MJP may fall within the scope of 'State' for purposes of Part-III of the Constitution but they are not "State Government" for the purposes of Section 9-A read with Section 7 of the 1951 Act.

[512-E-F-G-H; 513-A]

*Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors.*, [2002] 5 SCC 111, relied on.

4.1. The object and intent of Section 9A of the Act is to maintain the purity of the legislature and to avoid conflicts between duty and interest of members of Legislative Assembly and Legislative Council. The

- A object is sought to be achieved by ensuring that a person who has entered into a contract with the State Government liable to perform certain obligations towards the State Government, is not elected as a member of the Legislative Assembly or Legislative Council, lest he should use his influence as an elected member of Legislature to dilute the obligations or to seek and secure undue advantages and benefits in respect of the
- B subsisting contracts. It seeks to ensure that personal interests will not override his duties and obligations as a member of Legislature or Legislative Council. For the purpose of Section 9-A, what is relevant is whether the candidate has a subsisting contract with the appropriate Government, the State Government either for supply of goods to the State
- C Government or for execution of any work undertaken by the State Government. [513-B-C-D]

*Kartar Singh Bhadana v. Hari Singh Nalwa*, [2001] 4 SCC 661, referred to.

- D 4.2. It is clear from Section 9A of the Act that only certain type of contracts with the State Government will result in disqualification. [514-B]

- E *Kartar Singh Bhadana v. Hari Singh Nalwa*, [2001] 4 SCC 661; *Dewan Joyanal Abedin v. Abdul Wazed*, [1988] Supp. SCC 580 and *Ranjeet Singh v. Harmohinder Singh Pradhan*, [1999] 4 SCC 517, relied on.

- F 4.3. The term ‘appropriate Government’ in Section 9-A of the Act refers to the State Government alone, and not to any instrumentality of the State Government. Hence, GMIDC and MJP constituted under the MGMIDC Act and MJA Act respectively, are not ‘State Government’ and, therefore, any contracts with them are not contracts entered into by the candidate with the appropriate government. [514-F-G]

- G 5. A contract subsists till the rights and obligations thereunder are finally performed. The general rule is that though an employer may assign the benefits and obligations of a contract to an assignee, he will not be relieved of his obligations towards the contractor, unless the contractor is also a party to the assignment, in which event there is an assignment coupled with novation, (a new contract between the assignee and the contractor). But the exception to this general rule is where a statute vests certain assets of the State in a statutory corporation/Government
- H Company/other specified person and provides that as a consequence, the

rights and obligations of the State relating to such assets shall stand transferred to such statutory corporation/ Government Company/specified person. In that event, the statute engrafts itself into the existing contract and as a consequence, the statutory corporation stands substituted in place of the original employer, and the existing contracts become contracts between the statutory corporation and the contractor. In case of such statutory vesting/transfer, the consent of the contractor for the substitution of the contracting party and the assignment/transfer of the contract is not necessary. [515-F-G-H; 516-A-B]

6. When all rights and obligations of the State Government under the contract were transferred and vested in the statutory corporation, Godawari Marathwada Irrigation Development Corporation, by virtue of the statute, no separate instrument of transfer or assignment is necessary, nor the consent of the contractor is necessary for the transfer and vesting, as the statute engrafts itself over the subsisting contract. The contract, on such statutory transfer and vesting, though originally entered with the State Government ceased to be a subsisting contract with the State Government from the date of such transfer and vesting and will be considered as a subsisting contract with the statutory corporation. Therefore, the contract in question though subsisting on the date of filing of nominations and scrutiny of nomination, was not a contract with the appropriate Government, but with the statutory corporation. Hence, the appellant had no subsisting contract with the appropriate government either for supply of any goods or for execution of any work undertaken by that government on the date of filing the nomination, the date of scrutiny of nominations and the date of declaration of result. Consequently, the appellant did not incur any disqualification under Section 9A of the Act. [517-F-G-H; 518-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5895 of 2004.

From the Judgment and Order dated 31.8.2004 of the Bombay High Court in Election Petition No. 1 of 2002.

G.L. Sanghi, S.V. Deshpande, Prag Barde and Ms. Anuradha Rustagi for the Appellant.

D.A. Dave, S.U.K. Sagar, Ms. Bina Madhavan and Ambagh for M/s. lawyer's Knit & Co. for the Respondents.

The Judgment of the Court was delivered by

**A** **RAVEENDRAN, J.** This appeal under section 116-A of the Representation of the People Act, 1951 [for short the 'Act'] is by the returned candidate against the judgment dated 31.8.2004 passed by the learned single Judge of the Bombay High Court in Election Petition No. 1 of 2002 filed by the first respondent herein.

**B** 2. Notice of Election dated 29.5.2002 was given by the Returning officer in respect of an election to be held to elect a member to the Maharashtra Legislative Council from Aurangabad Division Graduates' Constituency. As per calendar, the last date for filing nominations was 5.6.2002, the scrutiny of nomination papers was taken up on 6.6.2002 and the poll was held on 23.6.2002. The appellant, who was one of the candidates, was declared elected on 26.6.2002. On 9.8.2002, the first respondent, one of the rival candidates, filed Election Petition No. 1/2002 in the High Court of Bombay, Aurangabad Bench, challenging the election of the appellant under section 9-A, 98, 100(1) (a) & (d) and 101(1)(a) of the Act.

**D** 3. In the said election petition, the first respondent alleged that the appellant was a government contractor carrying on business under the trade name of M/s. Precision Press Fabricon at Aurangabad. He further alleged that the appellant had entered into three contracts with the State Government, in the course of his business for execution of works undertaken by the appropriate Government, and such contracts were subsisting, on the date of filing of nomination/scrutiny of the nomination papers/declaration of result [in June, 2002]. The said contracts were :

- F** (a) Contract as per work order dated 19.5.1996 issued by the Executive Engineer, Medium Project Irrigation Division, Latur, for the work of designing, fabricating, and erecting the Automatic stilt doors at the canal of Tawarja Project.
- G** (b) Contract as per work order dated 31.12.1998 issued by the Executive Engineer, Maharashtra Jeevan Pradhikaran, Works Division No.2, Latur, for execution of the work relating to water supply scheme in ten villages surrounding Pangaon.
- (c) Contract as per work order dated 12.4.1999 issued by the Executive Engineer, Maharashtra Jeevan Pradhikaran for the work relating to water supply scheme, Stage-II Taluk Geora, District Beed.

**H** The first respondent contended that Maharashtra Jeevan Pradhikaran is

part and parcel of the State Government and therefore, contracts with the said Pradhikaran are in effect contracts with the State Government. First Respondent contended that as these three contracts (the first with the State Government and the other two with Maharashtra Jeevan Pradhikaran) were subsisting in June, 2002, the appellant was disqualified for being chosen as a Member of Legislative Council, under section 9A of the Act.

4. The appellant did not dispute that he had entered into such contracts and that they were subsisting in June, 2002. He, however, submitted that the correct position in regard to the three contracts was thus:

- (a) The contract dated 19.5.1996 with the State Government, stood transferred to "Godawari Marathwada Irrigation Development Corporation [for short 'GMIDC']", an authority constituted under the Maharashtra Godawari Marathwada Irrigation Development Corporation Act 1998 [for short 'MGMIDC Act'] with effect from 1.10.1998.
- (b) Contracts dated 31.12.1998 and 12.4.1999 were entered into with Maharashtra Jeevan Pradhikaran (for short 'MJP'), an authority constituted under the Maharashtra Jeevan Authority Act, 1976 (for short 'MJA Act') and not with the State Government.

He contended that the question of disqualification under section 9-A of the Act would arise only if any contract entered into by him [in the course of his trade or business] with the appropriate government (State Government) for the supply of goods or for execution of any works undertaken by that government, subsisted on the date of filing of nomination/scrutiny of nominations/ declaration of results. He pointed out that the first contract had been transferred to GMIDC in the year 1998 itself, and the second and third contracts were with MJP and not with the State Government. He, therefore, contended that he had no subsisting contract with the appropriate government in June, 2002 and therefore, did not suffer disqualification under section 9-A of the Act.

5. After considering the provisions of MGMIDC Act and MJA Act, the High Court allowed the election petition by order dated 31.8.2004 and declared the election of Appellant as void. It held that GMIDC and MJP were statutory corporations wholly controlled by the State Government and therefore, fell within the expression 'State' as defined in Article 12 by applying the principles laid down by this Court in *Ramana Dayaram Shetty v. The*

A *International Airport Authority of India*, AIR (1979) SC 1628; *Ajay Hasia v. Khalid Mujib Sehravardi*, [1981] 1 SCC 722; *The Mysore Paper Mills Ltd. v. The Mysore Paper Mills Officers Association and Anr.*, [2002] 2 SCC 167 and *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors.*, [2002] 5 SCC 111. The High Court also held that GMIDC and MJP being 'State' under Article 12, they are the same as being 'State Government' and therefore, GMIDC and MJP can be termed as 'appropriate Government'. Consequently, the High Court held that the Appellant had subsisting contracts with the appropriate government and therefore, incurred disqualification under section 9-A of the Act.

C 6. Feeling aggrieved, the appellant has filed this appeal. On the contentions raised, the following questions arise for consideration:

- (i) Whether a statutory body or authority which answers the definition of 'State' under Article 12, for purposes of Part-III and IV of the Constitution of India, is an 'appropriate government' for purposes of section 9-A of the Act.

AND

Whether GMIDC and MJP can be termed as 'appropriate government' (that is 'State Government' having regard to definition under section 7 of the Act) for purposes of section 9-A of the Act.

- (ii) Whether the contract dated 19.5.1996 entered into by the Appellant with the State Government, continued to be a contract with the State Government, after its transfer to GMIDC with effect from 1.10.1998.

- (iii) Whether the Appellant incurred any disqualification under section 9-A of the Act, on account of his contracts dated 19.5.1996, 31.12.1998 and 12.4.1999.

Re : *Question (i)*

G 7. Article 191 of the Constitution of India prescribes the disqualifications for a person being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State. Apart from specifying four grounds of disqualifications, it provides that a person can be disqualified by or under any law made by the Parliament. The Representation of the People Act, 1951, a law made by the Parliament, has introduced six

disqualifications for a person being chosen as and for being Member of Legislative Assembly of Legislative Council of a State under sections 8, 8-A, 9, 9-A, 10 and 10-A of the Act. A

8. In *Jyoti Basu v. Debi Ghosal*, AIR (1982) SC 983, this Court clarified that the right to elect, the right to be elected and the right to dispute an election, though fundamental to democracy, are neither fundamental rights nor Common Law Rights, but are pure and simple statutory rights. This Court held :- B

“Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, Court is put in a straight jacket.” C D E

9. In *S. Narayanaswami v. G. Panneerselvam*, AIR (1972) SC 2284, the correctness of a decision of the Madras High Court which held that a non-graduate was not qualified to be a candidate for election to the Graduates' Constituency, (though the Constitution or any law made by the Parliament did not prescribe graduation as a qualification for election to Graduate's constituency), fell for consideration of this Court. A Constitution Bench of this Court reversed the decision of the High Court, on the following reasoning: F

“It could not even be said that qualifications of the electors as well as of those to be elected were not matters to which the attention of the law makers, both in the Constituent Assembly and in Parliament, was not specially directed at all or that the omission must be by mere oversight. The provisions discussed above demonstrate amply how legislative attention was paid to the qualifications of the electors as well as of the elected in every case. Hence, the correct presumption, in such a case would be that the omission was deliberate. H

A We think that the view contained in the judgment under appeal, necessarily results in writing some words into or adding them to the relevant statutory provisions, to the effect that the candidates from graduates' constituencies of Legislative Councils must also possess the qualification to having graduated. This contravenes the rule of "plain meaning" or "literal" construction which must ordinarily prevail.

B A logical corollary of that rule is that "a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made" (See Craies on Statute Law—6th Edn. P. 70). An application of the rule necessarily involves that addition to or modification of words used in statutory provisions is not generally permissible.

C We think that the language as well as the legislative history of Articles 171 and 173 of the Constitution and Section 6 of the Representation of People Act, 1951, enable us to presume a deliberate omission of the qualification that the representative of the Graduates should also be a graduate. In our opinion, no absurdity results if we presume such an intention. We cannot infer as the learned Judge of the Madras High Court had done, from the mere fact of such an omission and opinions about a supposed scheme of "functional representation" underlying Article 171 of our Constitution, that the omission was either unintentional or that it led to absurd results. We think that, by adding a condition to be necessary or implied qualifications of a representative of the Graduates which the Constitution-makers, or, in any event the Parliament, could have easily imposed, the learned Judge had really invaded the legislative sphere. The defect, if any, in the law could be removed only by law made by Parliament."

F 10. In *N. S. Varadachari v. G. V. Pai*, AIR (1973) SC 38, this Court held thus :—

G "Section 8 to 10-A of the Act set out the grounds which disqualify a person from being a candidate. If a person possesses all the qualifications prescribed in the Constitution as well as in the Act and has not incurred any of the disqualifications mentioned therein then he is qualified to be a candidate. It may look anomalous that a non-graduate should be a candidate in a Graduates' Constituency. But if a candidate possesses the qualifications prescribed and has not incurred any of the disqualifications mentioned in the Constitution or in the

H

Act other consideration becomes irrelevant.

A

11. A person cannot, therefore, be disqualified unless he suffers a disqualification laid down in Article 191 of the Constitution or under sections 8, 8-A, 9, 9-A, 10 or 10-A of the Act. It is not possible to add to or subtract from the disqualifications, either on the ground of convenience, or on the grounds of equity or logic or perceived legislative intention. A combined reading of Article 191 of the Constitution of India and Chapter III of the Representation of the People Act, 1951 makes it clear that a person can be held to be disqualified for being chosen as, and for being, a Member of the Legislative Assembly or Legislative Council of a State only on the following, and no other, grounds :

B

C

*Disqualifications under the Constitution of India :*

- (i) If he holds any office of profit under the Government of India or the Government of any State [specified in the First Schedule], other than an office declared by the Legislature of the State by law not to disqualify its holder vide Article 191(1) (a);
- (ii) If he is of unsound mind and stands so declared by a competent court vide—Article 191(1)(b);
- (iii) If he is an undischarged insolvent vide Article 191(1) (c);
- (iv) If he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State—vide Article 191(1)(d);

D

E

*Disqualifications under the Act :*

- (v) If he is convicted and sentenced for any offence as provided/ enumerated in Section 8 of the Act;
- (vi) If he is found guilty of corrupt practices by an order under section 99 of the Act—vide section 8-A of the Act;
- (vii) If he is a person who having held an office under the Government of India or under the Government of any State has been dismissed for corruption or for disloyalty of the State—vide section 9 of the Act;
- (viii) If he is a person having a subsisting contract with the State

F

G

H

A Government for the supply of goods to or for the execution of any works undertaken by that Government.—vide section 9-A of the Act;

(ix) If he is a person who is a managing agent, manager or secretary of any company or corporation, in the capital of which the State Government has not less than twenty-five per cent share—vide section 10 of the Act;

B

(x) If he is a person who has been declared as disqualified by the Election Commission for having failed to lodge account of election expenses within the time and in the manner required by or the under the Act—vide section 10-A of the Act.

C

12. The disqualifications under sections 8 to 10-A of the Act are clear and very specific. They do not leave any room at 'elbow joints' to widen or narrow the disqualifications. For example, section 10 of the Act disqualifies only persons who are working or functioning as managing agent, manager or secretary of a company or corporation in which the State Government has not less than twenty-five per cent shares, but does not disqualify other employees of such company or corporation. Section 9 disqualifies a person who had held an office under the Government of India or any State Government and who has been dismissed for disloyalty to the State or for corruption, but it does not disqualify a person who had held an office under a local or other authority and who has been dismissed for corruption. Similarly, all and every conviction do not lead to disqualification under Section 8. The disqualification will be attracted under section 8 only in cases where (i) the conviction is followed by sentence of not less than two years; or (ii) the conviction is for the offences enumerated in sub-section (1); or (iii) the conviction is in respect

D

of a contravention of a law referred in sub-section (2) and the sentence is not less than six months. Section 9-A only disqualifies person having a subsisting contract with the State Government either for supply of goods or for execution of any works undertaken by that government, but does not disqualify persons who have such contracts with any local or other authority nor disqualifies persons having subsisting contracts with the State Government if such contracts are not for supply of goods or for execution of any works undertaken by the State Government.

E

13. At this juncture, it is of some relevance to notice the distinction between Articles 102(1)(a) and 191(1)(a) which deal with disqualification for membership of Houses of Parliament and the membership of the State

F

are not for supply of goods or for execution of any works undertaken by the State Government.

G

13. At this juncture, it is of some relevance to notice the distinction between Articles 102(1)(a) and 191(1)(a) which deal with disqualification for membership of Houses of Parliament and the membership of the State

H

Legislative Assembly/Council on the one hand and Articles 58(2) and 66(4) which deal with disqualification for election as President and Vice President, on the other hand. While Article 102(1)(a) and 191(1)(a) disqualify any person holding any office of profit under the Government of India or Government of any State, Articles 58(2) and 66(4) disqualify any person holding any office of profit under the Government of India or the Government of any State or *under any local or other authority subject to the control of any of the said Governments*. There is thus a conscious and deliberate omission of the words 'office of profit under any local or other authority subjected to the control of any of the said Governments' while listing the disqualifications for membership of Houses of Parliament and membership of Legislative Assembly/Council of a State. Holding an 'office of profit under local or other authority' is not a disqualification for being elected to either house of Parliament or State Legislative Assembly/Council, but disqualification for being elected as the President or Vice-President. In *Gurushanthappa v. Abdul Khuddus*, AIR (1969) SC 744, this difference between disqualification under Article 58(2)/66(4) and Article 102(1)/191(1)(a) was highlighted thus :

"In this connection, a comparison between Article 58(2) and 66(4) and Articles 102(1) and 191(1) (a) of the Constitution is of significant help. In Arts. 58(2) and 66(4) dealing with eligibility for election as President or Vice-President of India, the Constitution lays down that a person shall not be eligible for election if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments. In Articles 102(1)(a) and 191(1)(a) dealing with membership of either House of Parliament or State Legislature, the disqualification arises only if the person holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament or State Legislature by law not to disqualify its holder. Thus, in the case of election as President or Vice-President, the disqualification arises even if the candidate is holding an office of profit under a local or any other authority under the control of the Central Government or the State Government, whereas, in the case of a candidate for election as a Member of any of the Legislatures, no such disqualification is laid down by the Constitution if the office of profit is held under a local or any other authority under the control of the Governments and not directly under any of the Governments. *This clearly indicates that in the case of eligibility for election as a member of a Legislature, the holding of*

A *an office of profit under a corporate body like a local authority does not bring about disqualification even if that local authority be under the control of the Government.* The mere control of the Government over the authority having the power to appoint, dismiss, or control the working of the officer employed by such authority does not disqualify that officer from being a candidate for election as a member of the Legislature in the manner in which such disqualification comes into existence for being elected as the President or the Vice-President.”

(Emphasis supplied)

C The above brings into focus that ‘State Government’ is different from ‘local or other authorities under the control of the State Government’ for purposes of disqualification.

14. We will not deal with the disqualification prescribed under Section 9-A of the Act in more detail, as that is the subject matter of the appeal before us. The said section reads thus :—

D “9-A. *Disqualification for Government contracts, etc.*—A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.

E *Explanation* : For the purpose of this section, where a contract has been fully performed by the person by whom it has been entered into with the appropriate government, the contract shall be deemed not to subsist by reason only of the fact that the government has not performed its part of the contract either wholly or in part.”

F Section 7 defines the terms ‘appropriate government’ and ‘disqualified’ used in Chapter III (which includes section 9-A) of the Act, thus :-

“7. *Definitions.* - In this Chapter.-

G (a) ‘*appropriate Government*’ means in relation any disqualification for being chosen as or for being a member of either House of Parliament, the Central Government and in relation to any disqualification for being chosen as or for being a member of the Legislative Assembly or Legislative Council of a State, the State Government;”

H

- (b) '*disqualified*' means disqualified for being chosen as, and for being, a member of either Houses of Parliament or of the Legislative Assembly or Legislative Council of a State". A

As we are dealing with disqualification for being chosen as a Member of the Legislative Council, the term 'appropriate government' in section 9-A refers to and means the 'State Government'. B

15. The term 'State Government' is not defined either in the Constitution of India or in the Act (that is Representation of the People Act, 1951). Clause (a) of sub-section (1) of section 2 of the Act provides that unless the context otherwise requires, each of the expressions defined in section 2 or sub-section (1) of section 27 of the Representation of the People Act, 1950, but not defined in the Act, shall have the same meaning as in that Act. Section 2(j) of the Representation of the People Act, 1950 defines "State Government" as follows :- C

"2(j). '*State Government*'.- State Government in relation to Union Territory means the administration thereof." D

Section 2(60) of the General Clauses Act, 1897, provides that the term "State Government", as respects anything done or to be done, shall mean in a State, the Governor.

16. The High Court after an exhaustive consideration of the provision of MGMDC Act and MJA Act, and the principles laid down by this Court with reference to Article 12, has held that GMDC and MJP answer the definition of "State" under Article 12 of the Constitution. This is not seriously disputed by the Appellant. Having reached the conclusion that both GMDC and MJP answer the definition of State under Article 12, the High Court wrongly and if we may say so, without any logical basis, assumed that they are 'appropriate government' and consequently, the appellant who had subsisting contracts with GMDC and MJP incurred disqualification under section 9-A of the Act. Neither Article 12 nor the decisions rendered with reference to Article 12 is of any assistance for interpreting Section 9A of the Act. The term 'State Government' (as also the term 'Central Government') is used in the various provisions relating to disqualification, in contradistinction from its instrumentalities or local or other authorities. While it is true that the meaning of the terms 'State' and 'State Government' may depend on the context in which they are used, the manner in which the said terms are used in the various provisions relating to disqualification leaves no doubt that E  
F  
G  
H

A 'State' refers to an entity described in the First Schedule to the Constitution of India and 'State Government' refers to the three wings of governance of the 'State' that is Executive, Legislature and Judiciary. The term 'State Government' in section 9A (read with section 7 of the Act) should, therefore, be understood in its ordinary and normal sense, and not with reference to the extended meaning under Article 12 of the Constitution of India.

B

17. Article 12 provides that in Part III of the Constitution dealing with fundamental rights, the word 'State' would refer to and include not only the Government of India, Parliament of India, the Government and Legislature of each of the States, but also all local and other authorities within the territory of India and all local and other authorities under the control of Government of India. The significance of Article 12 lies in the fact that it occurs in Part III of the Constitution which deals with Fundamental Rights. The various Articles in Part III have placed responsibilities and obligations on the "State" *vis-a-vis* the individual, to ensure constitutional protection of the individual's rights against the "State", including the right to equality under Article 14, and equality of opportunity in matters of public employment under Article 16 and most importantly the right to enforce all or any of those fundamental rights against the "State" as defined in Article 12, either under Article 32 or Article 226 of the Constitution [vide *Pradeep Kumar Biswas* (supra)]. The decisions rendered under Article 12 lay down that a body would answer the definition of State under Article 12 if it is financially, functionally and administratively dominated by or under all pervasive control of the "Government". On the other hand, where the control by the "Government" is merely regulatory, whether under any statute or otherwise, it would not serve to make the body 'State'. Thus the very decisions relied on by the High Court make it clear that 'instrumentalities of State' are different from 'State Government', though both may answer the definition of 'State' under Article 12 for the limited purpose of Part-III of the Constitution. Further, the very inclusive definition of 'State' under Article 12 by referring to Government of India, the Government of each of the States and the local and other authorities, makes it clear that a 'State Government' and a local or other authorities, are different and that they fall under a common definition only for the purpose of Part-III of the Constitution. This Court has consistently refused to apply the enlarged definition of 'State' given in Part-III (and Part-IV) of the Constitution, for interpreting the words 'State' or 'State Government' occurring in other parts of the Constitution. While the term "State" may include a State Government as also statutory or other authorities for the purposes of part-III (or Part-IV) of the Constitution, the term "State

C

D

E

F

G

H

Government” in its ordinary sense does not encompass in its fold either a local or statutory authority. It follows, therefore, that though GMIDC and MJP may fall within the scope of ‘State’ for purposes of Part-III of the Constitution, they are not “State Government” for the purposes of section 9-A (read with section 7) of the Act. A

18. The object and intent of section 9A of the Act is to maintain the purity of the legislature and to avoid conflicts between duty and interest of members of Legislative Assembly and Legislative Council. The said object is sought to be achieved by ensuring that a person who has entered into a contract with the State Government and therefore liable to perform certain obligations towards the State Government, is not elected as a member of the Legislative Assembly or Legislative Council, lest he should use his influence as an elected member of Legislature to dilute the obligations or to seek and secure undue advantages and benefits in respect of the subsisting contracts. It seeks to ensure that personal interests will not override his duties and obligations as a member of Legislature or Legislative Council. For the purpose of section 9-A, what is relevant is whether the candidate has a subsisting contract with the appropriate Government (in this case, the State Government) either for supply of goods to the State Government or for execution of any work undertaken by the State Government. The six requirements for application of disqualification under section 9A of the Act where a candidate holds a contract for execution of works undertaken by the appropriate Government have been listed by this Court in *Kartar Singh Bhadana v. Hari Singh Nalwa*, [2001] 4 SCC 661] as follows :- B C D E

- (i) There should be a contract entered into by the candidate;
- (ii) Such contract should be entered into by him in the course of his trade or business; F
- (iii) The contract should be entered into with the appropriate Government;
- (iv) The contract should subsist;
- (v) The contract should relate to the works undertaken by the appropriate Government; and G
- (vi) The contract should be for execution of such works.

This Court in *KARTAR SINGH* (supra) also clarified that :

“the provisions of Section 9A disqualify a citizen from contesting an H

A election; a citizen may, therefore, be disqualified *only if the facts of his case squarely fall within the conditions prescribed by Section 9A.*”

[Emphasis supplied]

B 19. It is clear from section 9A of the Act that only certain type of contracts with the State Government will result in disqualification. For example subsistence of a mining lease granting by a government to the candidate to win minerals from a specified area was held not to attract section 9A in *Kartar Singh Bhadana* (supra). A contract for collection of tolls at a government ferry was held to be not a contract for execution of any work undertaken by the appropriate government in *Dewan Joynal Abedin v. Abdul Wazed*, [1988] Supp. SCC 580. A subsisting contract for sale of liquor with the appropriate government was held to be not a contract falling under section 9A in *Ranjeet Singh v. Harmohinder Singh Pradhan*, [1999] 4 SCC 517]. In *Ranjeet Singh* (supra), this Court reiterated the following observations in  
 C  
 D *Ram Padarath Mahto v. Mishri Sinha*, AIR (1961) SC 480) :—

“.....section 9-A is a statutory provision which imposes a disqualification on a citizen. It would, therefore, be unreasonable to take a general or broad view, ignoring the essentials of the section and the intention of the legislature. Purposive interpretation is necessary.”  
 E

20. Therefore, when section 9-A provides that subsistence of a contract with the appropriate government (either for supply of goods or for execution of any work undertaken by that government) will disqualify a candidate for being elected as a member of the Legislative Assembly or Legislative Council,  
 F the term ‘appropriate Government’ refers to the State Government alone, and not to any instrumentality of the State Government. We, therefore, hold that GMIDC and MJP constituted under the MGMIDC Act and MJA Act respectively, are not ‘State Government’ and, therefore, any contracts with them are not contracts entered into by the candidate with the appropriate  
 G government. We accordingly answer both parts of question (i) in the negative.

*Re : Question (ii)*

21. We will next consider the question as to whether the contract dated 19.5.1996 entered by the appellant with the Maharashtra State Government  
 H which stood transferred to GMIDC in the year 1998 could be considered to

be a subsisting contract with the State Government in the year 2002. The first respondent contended that the said contract dated 19.5.1996 was between the appellant and the state government; that the said contract was not amended substituting 'GMIDC' as the employer in place of 'State of Maharashtra'; that the said contract was entered by the appellant in the course of his business with the State Government for execution of work undertaken by the State Government; and that the said contract was subsisting as on the date of scrutiny and acceptance of the nomination; and that the subsistence of the said contract attracted the disqualification under section 9-A of the Act. A  
B

22. The appellant does not dispute the fact that his concern entered into the said contract dated 19.5.1996 with the State Government for execution of a work undertaken by the State Government, or the fact that the said contract dated 19.5.1996 was subsisting on the date of his nomination and scrutiny of nominations. What is contended is that the contract stood transferred to GMIDC in the year 1998 by virtue of the provisions of MGMIDC Act and, thereafter, the said contract ceased to be a contract with the State Government and therefore, what was subsisting in June, 2002 (at the time of filing nomination/scrutiny of nomination/declaration of result) was a contract with GMIDC and not a contract with the State Government. C  
D

23. What is relevant under section 9-A of the Act is that the contractor should have some obligations to perform towards the State Government on the relevant date. In fact, the explanation to section 9-A makes it clear that where a contractor has performed all his obligations, but the government is yet to perform its obligations (for example, where the work assigned under a work order is completed by the contractor and that is duly certified, but payment therefore is not yet made by the Government) then there is no contract 'subsisting' within the meaning of section 9-A of the Act. E  
F

24. A contract subsists till the rights and obligations thereunder are finally performed. The general rule is that though an employer may assign the benefits and obligations of a contract to an assignee, he will not be relieved of his obligations towards the contractor, unless the contractor is also a party to the assignment, in which event there is an assignment coupled with novation, (a new contract between the assignee and the contractor). But the exception to this general rule is where a statute vests certain assets of the State in a statutory corporation (or Government Company or other specified person) and provides that as a consequence, the rights and obligations of the State relating to such assets shall stand transferred to such statutory corporation H

A (or Government Company or specified person). In that event, the statute engrafts itself into the existing contract and as a consequence, the statutory corporation stands substituted in place of the original employer, and the existing contracts become contracts between the statutory corporation and the contractor. In case of such statutory vesting/transfer, the consent of the contractor for the substitution of the contracting party and the assignment/transfer of the contract is not necessary.

B  
C  
D  
E  
25. The Maharashtra State Legislature enacted the Maharashtra Godawari Marathwada Irrigation Development Corporation Act, 1998 (published in the Maharashtra Government Gazette dated 17.8.1998). The object of the Act was to make special provisions for promotion and operation of irrigation projects, command area development and schemes for generation of hydro-electric energy to harness the water of Godawari river pertaining to State of Maharashtra and other allied and incidental activities by establishing the Godawari Marathwada Irrigation Development Corporation. Section 3 required the State Government to establish a Corporation by notification in the Official Gazette. Accordingly, by Notification dated 28.8.1998, the Corporation (GMIDC) was so established under the Act. Sub-section (2) of section 3 provides that Corporation established under sub-section (1) of section 3 shall be a body corporate having perpetual succession and a common seal, with power to contract, acquire, hold and dispose of property and to do all things necessary for the purpose of the Act and may sue and be sued in its corporate name. Section 15 relates to vesting and transfer of property, assets, liabilities and obligations to the Corporation. It reads thus:

F  
"15(1). From such date as may be specified, from time to time, by the State Government (hereinafter in this section referred to as "the appropriated date"),

G  
*(a) the properties and assets comprising movables and immovables including Irrigation Projects, Hydro-Electric Power Projects, works under construction and management of completed schemes, specified in that behalf, situated in the area of operation of the Corporation, which immediately before the appointed date vested in the State Government and were under the control of the Irrigation Department, shall vest in and stand transferred to the Corporation and all income derived and expenses incurred in that behalf be brought on books of the Corporation; and*

H  
*(b) the rights, liabilities and obligations of the State Government,*

whether arising out of any contract or otherwise pertaining to the said projects of the State Government shall be deemed to be the rights, liabilities and obligations of its corporation.

(2) Such properties, assets, rights, liabilities and obligations shall be valued in such manner as the State Government may determine.

(3) All suits and other legal proceedings with respect to any scheme for the development of Irrigation Projects and Hydro-Electric power Projects vested in the Corporation, under sub-section (1), instituted against or defended by the State Government before the appointed date may be continued, or defended by or against, the Corporation."

The projects that stood transferred to and vested in GMIDC from the State Government are described in the Schedule to the Act, namely, "all completed, on-going and major, medium and minor irrigation projects within the area of operation of the Corporation (excluding Bhandaradara Hydro-Electric Power Project and Ghatgar Hydro-Electric Power Projects)" in the districts of Aurangabad, Jaina, Parbhari, Beed, Usmanabad, Latur, Nanded, Ahmednagar and Nashik.

26. It is not in dispute that from the appointed date (1.10.1998), the Tawarja Project (a Medium Irrigation Project in Latur Division) with all rights, liabilities and obligations of the State Government stood vested in and transferred to the Corporation (GMIDC). As a consequence, all rights, liabilities and obligations relating to the said project, including the rights, liabilities, and obligations under the contract dated 19.5.1996 (which was one of the contracts relating to the said project) statutorily vested in and stood transferred to GMIDC, and the contract ceased to be a contract with the State Government. When all rights and obligations of the State Government under the contract were transferred and vested in the statutory corporation (GMIDC) by virtue of the statute, no separate instrument of transfer or assignment is necessary, nor the consent of the contractor is necessary for the transfer and vesting, as the statute engrafts itself over the subsisting contract. The contract, on such statutory transfer and vesting, though originally entered with the State Government ceased to be a subsisting contract with the State Government from the date of such transfer and vesting and will be considered as a subsisting contract with the statutory corporation (GMIDC). Therefore, the contract dated 19.5.1996 though subsisting on the date of filing of nominations and scrutiny of nomination, was not a contract with the appropriate Government, but with GMIDC.

A *Re : Question (iii) :*

27. Out of the three subsisting contracts, the contract dated 19.5.1996 was with GMIDC and contracts dated 31.12.1998 and 12.4.1999 were with MJP. We have already held that neither GMIDC nor MJP is 'appropriate government'. Therefore, the appellant had no subsisting contract with the appropriate government either for supply of any goods or for execution of any work undertaken by that government in June, 2002 (on the date of filing the nomination, the date of scrutiny of nominations and the date of declaration of result). Consequently, the appellant did not incur any disqualification under Section 9A of the Act.

C 28. Accordingly, we allow this appeal and set aside the order of the High Court and reject the challenge to the election of appellant by the first respondent in Election Petition No. 1 of 2002 on the file of the High Court of Bombay, (Aurangabad Bench). The said Election Petition stands dismissed. Parties to bear their respective costs.

D S.K.S.

Appeal allowed.