

## Hari Singh Nalwa Vs Kartar Singh Bhadana and others

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Nov. 10, 2000

**Acts Referred:** Constitution of India, 1950 " Article 191, 286

Contract Act, 1872 " Section 25

Mines and Minerals (Development and Regulation) Act, 1957 " Section 2

Representation of the People Act, 1950 " Section 7(d)

Representation of the People Act, 1951 " Section 10, 10, 11, 11, 12, 12

**Citation:** AIR 2001 P&H 86 : (2001) 1 ILR (P&H) 371

**Hon'ble Judges:** A. S. Garg, J

**Bench:** Single Bench

**Advocate:** R. K. Malik with Jagbir Malik, for the Appellant; S. C. Kapoor with Asish Kapoor, Rajinder Chowkar, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

A. S. Garg, J.

The general elections to the Haryana Assembly were scheduled to be held in January/February, 2000. The petitioner Sri

Hari Singh Nalwa, claimed that he was a Congress nominee for Assembly Election relating to 18-Smalkha Assembly Constituency, District

Panipat. Respondent No. 1 Shri Kartar Singh Bhadana was a nominee of the ""Lok Dal"" for the said constituency. The rest of the respondents

were the other candidates who had filed their nomination papers. The election was actually held on 22-2-2000.

Respondent No. 1 was declared

elected as he secured 37, 174 votes.

2. Now the petitioner has brought the present Election Petition challenging the election of respondent No. 1 by setting up a case that he got the

highest number of valid votes and since respondent No. 1 was not qualified to be a candidate his nomination papers should have been rejected,

and therefore, the election of respondent No. 1 be set aside being illegal and unconstitutional and the petitioner be declared as an elected

candidate.

3. The general election to the Haryana Assembly was held according to the following schedule :-

(i) Date of filing nomination :27-1-2000

(ii) Last date of filing 3-2-2000

nomination :

(iii) Date of scrutiny : 4-2-2000

(iv) Date of withdrawal and

allotment of Symbol: 7-2-2000

(v) Date of polling : 22-2-2000

(vi) Result declared on : 25-2-2000

The names and the votes secured by each of the candidates, who contested the election are as under :

Sr. name of candidate votes secured

Sr. No. Name of candidate Votes secured

(1) Kartar Singh Bhadana 37,174

(2) GoriShanker 421

(3) RameshChand 3,483

(4) Hari Singh Nalwa 25,159

(5) Janeshwar 723

(6) AmolakhRaj 384

(7) Arun 211

(8) Rishi Parkash 2,343

(9) Charan Singh 179

(10) Balraj Chhokar 256

(11) Rajender 326

(12) Surender 16,722

(13) P. P. Kapoor 252

4. Broadly mentioned, the allegations of the petitioner are that respondent No. 1 has been holding five contracts for extraction of minor and major

minerals from the Haryana State and those contracts were subsisting at the time the nomination papers were filed and as per the provisions of

Section 9-A of the Representation of the People Act, 1951 (hereinafter referred to as the Act), such a person was not qualified to contest the said

election being a person deriving benefit under contracts from the State within the territorial jurisdiction of which the contracts were being operated.

5. The petitioner has mentioned the brief details of the contracts which respondent No. 1 was holding. The original contracts are Ex. R. 1 to Ex. R.

5 whereas their photostat copies are Ex. P. 1 to P. 5. According to the petitioner, respondent No. 1 was holding a contract for three years from 7-

4-1998 to 31-3-2000 pertaining to Alampur Quarry for extraction of road metal and masonry stone and respondent No. 1 was deriving benefit to

the extent of 50 per cent. This contract was in the name of M/s. Mohan Ram & Company of which respondent No. 1 is a partner.

6. Respondent No. 1 had another contract vide lease deed dated 10-6-1980 for 20 years i.e. up to 10-6-2000 for extraction of ordinary sand

and silica sand, a major mineral in respect of mines of village Anangpur, tehsil Ballabgarh, district Faridabad and was allegedly taking the benefit

under the said contract and was entered into by respondent No. 1 with the State of Haryana.

7. Another contract dated 13-2-1998 was from 19-11-1997 to 31-3-2000 for lease of sand quarry of Murtzabad Zone consisting of Ghori,

Gurwari, Rahimpur, Hansapur, Murtzabad and Phatasco Nagar villages. This was claimed to be extraction work. Still another contract was dated

13-2-1998 for a period of three years from 19-11-1997 to 31-3-2000 for extraction of ordinary sand with regard to Basantpur Zone consisting

of Basantpur, Agwanpur, Mahabetpur, Rajpur Kalan, Manjhawali, Alipur, Sikargah, Dunderpur quarries of village Basantpur tehsil and district

Faridabad.

8. Still another contract dated 13-2-1998 for the period from 19-11-1997 to 31-3-2000 with respect to sand quarries of Dalelgarh, tehsil and

district Faridabad and derived similar benefits from the Government of Haryana.

9. So, the petitioner further alleged that respondent No. 1 is holding the above five contracts in the name of M/s. Mohan Ram & Company, L-

116, Kirti Nagar, New Delhi, with the Haryana Government under the Mines and Mineral (Regulation and Development) Act, 1957 and Mineral

Concession Rules passed by the Parliament thereby enabling the State Government to make rules in respect of minor mineral etc. Respondent No.

1 was deriving huge benefits from the State of Haryana from the execution of the work undertaken by the Government of Haryana.

10. The nomination papers were filed between 27-1 -2000 to 3-2-2000. The date of scrutiny was 4-2-2000. The petitioner allegedly came to

know about the existence of these contracts on 6-2-2000. However, in the meanwhile the nomination papers had been accepted by the Returning

Officer of the Constituency. After having come to know about the said disqualification of respondent No. 1, the petitioner claimed in the petition

that he got 50,000 pamphlets printed and distributed during the elections campaign and speeches were made highlighting the fact that respondent

No. 1 was not a qualified candidate and asked the people not to vote for him. So in this way, the election of respondent No. 1 was challenged u/s

9-A of the Act on the ground that respondent No. 1 was not duly qualified candidate to contest the same; his nomination papers were illegally

accepted by the Returning Officer and the same should have been rejected. So he claimed to be declared as elected.

11. Respondent No. 1, the main contestant in the petition, filed a written statement and set out the plea that the election petition did not disclose

material facts and did not mention the places of operation of the work and other details of the contracts and for want of the same the petition was

liable to be dismissed at the very threshold. It was also claimed that the petitioner did not raise a little finger by way of objection at the time the

nomination papers were being considered and therefore the petition could not proceed and succeed. It was also averred that respondent No. 1

was not deriving any benefit from the State Government and such type of contracts did not constitute any disqualification. No goods were being

supplied to the State of Haryana and, therefore, the question of deriving of benefits as such did not come within the four corners of the Statute and

that the petitioner was wrongly interpreting the said provisions of law and on merits too the petition was liable to be dismissed.

12. Respondent No. 9, Charan Singh and respondent No. 12, Surender, who also contested the election, in their written statements supported the

averments made in the petition and have prayed that the election of respondent No. 1 may be set aside, if respondent No. 1 is found to be

disqualified.

13. In the replication to the written statement filed by respondent No. 1, it was again mentioned by the petitioner in detail and has impressed upon

that all the mining operations vest in the Government of Haryana and were being performed by the State of Haryana itself and it was being done

directly under the supervision of the Government though the Contractors were engaged. Respondent No. 1 was performing various mining

operations under the contracts. It was also claimed that all mines, referred to above, under the contracts were within the jurisdiction of the Haryana

Government. It was the paramount duty of the State of Haryana to develop the mines and minerals either itself or through some duly authorised

persons. It was also specifically claimed that respondent No. 1 was having contracts for extraction of ordinary sand with the State Government

and was deriving the benefit in the ordinary course of his trade and business. Therefore, it was reiterated that respondent No. 1 was disqualified

from being member of State Assembly.

14. On the pleadings of the parties, the following issues were envisaged :

(1) Whether the present election petition does not disclose the material facts and circumstances required to be disclosed under the law. If so, the

Election Petition is liable to be dismissed/rejected as not maintainable? OPR

(2) Whether the contracts entered into by respondent No. 1 with the Government of Haryana for extraction of ordinary sand and silica sand and

other minerals etc. mentioned in paragraphs 5, 6 and 11 of the Election Petition and execution of these contracts/agreement do not attract the

provisions of Section 9-A of the Representation of the People Act, 1951 as claimed in the written statement? O.P.R.

(3) Whether the election of respondent No. 1 is void in view of the disqualifications provided u/s 9-A of the Representation of the People Act,

1951 and should have been disqualified from contesting the election? O.P.P.

(4) Whether the nomination of respondent No. 1 to the Haryana State Assembly was wrongfully accepted as claimed. If so to what effect? OPP

(5) Whether in case the petitioner succeeds, is he entitled to be declared as elected?

Onus on petitioner

(6) Relief.

15. Respondent No. 1 wanted the Court to hear on preliminary issue that the petition did not disclose material facts and the petition be dismissed

at the very initial stage. But since the reference was made regarding the aforesaid contracts in the petition itself in paragraph 5 to 9, therefore, this

Court observed that it was not likely that the case could be decided on preliminary issue. Since the questions were mixed questions of fact and

law, therefore, evidence had to be recorded.

16. The petitioner in support of his allegations produced Shri B. K. Gauba PW. 1, a Mining Engineer of the department of Mines and Geology,

Haryana. He placed on record the original contracts/lease agreements and also the photostat copies of the same as Ex. P. 1 to P. 5. He mentioned

that Shri Kartar Singh Bhadana signed these contracts which were entered into between M/s. Mohan Ram and Company with the State of

Haryana. These are the agreements executed between respondent No. 1 and the State of Haryana. The witness stated in his cross-examination

that no material was being supplied to the Government of Haryana under these agreements. However, he also stated that by virtue of these

agreements, as mentioned above executed between respondent No. 1 and the State of Haryana, the functioning of the agreements was being

undertaken by the State of Haryana.

17. Shri M. R. Anand PW. 2, the Deputy Commissioner-cum-District Election Commissioner, Panipat, stated that the petitioner furnished the

original registers Ex. P6 and P. 7 and complied with the Rules and Regulations of the elections and that the petitioner did not violate any condition

of the election. The Deputy Commissioner also stated that the pamphlets, copy of which was Ex. P. 8, were permitted to be printed for distribution

in the public. He also granted permission to the petitioner for use of five loud speakers i.e. three for public meetings and two for publicity to be

done on vehicles from 8-2-2000 to 20-2-2000. He also granted permission to the petitioner to use seven vehicles on 8-2-2000, five vehicles on

11-2-2000, three vehicles on 12-2-2000 and two on 15-2-2000.

18. Shri Rattan Lal Sharma PW. 3 is an Advocate from District Courts, Faridabad. He claimed to have informed the petitioner that respondent

No. 1 could not contest the said election. This information was given by him to the petitioner on 6-2-2000. The witness claimed that similar

contracts were also with Mr. Ram Chander Banda, sitting Member Parliament from Faridabad and he had filed election petition against Shri

Banda, which is still pending.

19. Shri Atul Gupta PW. 4 claimed that the pamphlets, sample of which was Ex. P12 and the original of which were Ex. P10 and PI 1 were

printed by him.

20. Shri Hari Singh Nalwa, the petitioner himself appeared as PW. 5. He has mentioned in detail claiming that the election of respondent No. 1

was illegal and unconstitutional. He claimed that respondent No. 1 was deriving benefit under the aforesaid agreements from the State Government

relating to the work which was being undertaken by the State of Haryana. He also stated on Solemn Affirmation that he had been informed by

Rattan Lal Sharma PW. 3 that respondent No. 1 was holding contracts with the Government and was deriving benefits under the said contracts

and was not a competent person to be a candidate. Information about this was given to him on 6-2-2000. He claimed that he made speeches and

got distributed the aforesaid pamphlets and told the voters that respondent No. 1 was not a competent person who could be a candidate in the

said election according to law. He also claimed that he had himself complied with all the legal requirements to contest the election in a fair manner.

He got all the necessary permission from the Deputy Commissioner and other authorities for the use of loud speakers, to make speeches and did

not violate any Code of Conduct etc. and asserted that election of respondent No. 1 be declared illegal and wanted him to be declared as elected.

21. Shri Arvind Jain PW. 6, is a witness of the declaration Ex. P9 under the Press Act. Abid Mustaqim PW. 7 was the person who was

maintaining accounts relating to the expenditure in the election of the petitioner. Viney Nalwa PW. 8, Lehna Singh PW, 9, Vinod Kumar PW. 10,

Madan Lal PW. 11 and Jatinder Chhabra PW. 12 are the witnesses to say that the voters used to be told In the election meetings that respondent

No. 1 was not a competent candidate and not to vote for him. They distributed the pamphlets and they along with others attended large number of

election meetings.

22. On the other hand, Shri Kartar Singh Bhadana, respondent No. 1 appeared as RW. 1. He reiterated his own claim and admitted having signed

the original contracts Ex. R. 1 to Ex. R. 5 but he stated that he was neither deriving any benefit out of these contracts nor the works under these

contracts were being undertaken by the State of Haryana. He also claimed that all the pamphlets were got printed and fabricated after the elections

were held that the petitioner had been defeated. He claimed that he was competent to contest the election.

23. Shri Hari Ram RW. 2 and Shri Kavinder Singh RW. 3 claimed that respondent No. 1 was competent to contest the election and there was no

propaganda by the petitioner regarding the disqualification of respondent No. 1.

24. After having made a reference to the evidence on record, the law cited by the Learned Counsel shall be referred to. Mr. R. K. Malik, Learned

Counsel for the petitioner has referred to the authority of Apex Court in Konappa Rudrappa Nadgouda v. Vishwanath Reddy, AIR 1969 SC 447,

wherein the contracts for construction of road and hospital building entered into by a partnership firm with the State Government, contained a

condition that for a stipulated period the contractors would make due repairs to all the defective parts and it was held that Section 9A was not

inapplicable to the case merely because the contract was with a firm and not with a person. The law requires that a candidate should not have any

interest in any contract with Government and even a partner has an interest sufficient to attract the provisions of Section 9A.

25. He also referred to Item No. 52 of the Words and Phrases in the Election Laws relating to Section 9A of the Act. Then he referred to the

authority of a Division Bench of Madhya Pradesh High Court in Satya Prakash Vs. Bashir Ahmed Qureshi, wherein it was held that for the

operation of the disqualification of the holding of an office of profit under the Government the essential requirement is that the candidate himself

must hold the office. In B. Lakshmikantha Rao Vs. D. Chinna Mallaiah and Others, it was held that one of the requirements, apart from other

requirements u/s 9-A is, the subsisting contract must be for the supply of goods to the Government or for the execution of any works undertaken

by the Government.

26. The Learned Counsel for the petitioner then cited the authority of Apex Court in Ranjit Singh Vs. Harmohinder Singh Pradhan, wherein it was

observed that a plain reading of Section 9-A of the Act requires (i) that there must be a subsisting contract which has been entered into by the

person whose candidature is sought to be disqualified with the Government; (ii) that contract is for the supply of goods to the Government or (iii)

that the contract is for the execution of any works undertaken by the Government.

27. Then, the Learned Counsel referred to some of the relevant Sections of Mines and Minerals (Development and Regulations) Act, 1957, which

are extracted as under :-

Definitions :

3. In this Act, unless the context otherwise requires :

(a) & (b) xxx xxx xxx

(c) "'mining lease'" means a lease granted for the purpose of undertaking mining operations, and includes a sub lease granted for such purpose;

(d) "'mining operations'" means any operations undertaken for the purpose of winning any minerals;

(i) the expressions "'mine'" and "'owner'" have the meanings assigned to them in the Mines Act, 1952.

PROSPECTING OR MINING OPERATIONS TO BE UNDER LICENCE OF LEASE :

4. (1) and (2) xxx xxx xxx

(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made u/s 18 (undertake

reconnaissance, prospecting or mining operations with respect of any mineral specified in the First Schedule in any area within that State which is

not already held under any reconnaissance permit, prospecting licence or mining lease.

MAXIMUM AREA FOR WHICH A PROSPECTING LICENCE OR MINING LEASE MAY BE GRANTED:

6. (1) xxx xxx xxx

(2) For the purposes of this section, a person acquiring by, or in the name of, another person a reconnaissance permit, prospecting licence or mining

lease which is intended for himself shall be deemed to be acquiring it himself.

PERIODS FOR WHICH PROSPECTING LICENCES MAY BE GRANTED OR RENEWED :

(1) The period for which a reconnaissance permit or prospecting licence may be granted shall not exceed three years.

(2) A prospecting licence shall, if the State Government is satisfied that a longer period is required to enable the licensee to complete prospecting

operations be renewed for such period or periods as that Government may specify :

Provided that the total period for which a prospecting licence is granted does not exceed five years :

xxx xxx xxx xxx

PERIODS FOR WHICH MINING LEASES MAY BE GRANTED OR RENEWED :

8. (1) The maximum period for which a mining lease may be granted shall not exceed thirty years :



Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years.

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#### POWERS OF STATE GOVERNMENTS TO MAKE RULES IN RESPECT OF MINOR MINERALS :

(1) xxx xxx xxx xxx

(1A) XXX XXV XXX XXX

(a) the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the

fees to be paid therefor;

xxx xxx xxx xxx

(2) Until rules are made under subsection (1), any rules made by a State Government regulating the grant of quarry leases, mining leases or other

mineral concessions in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force.

#### DEVELOPMENT MINERALS :

18. (1) xxx xxx xxx xxx

(2) xxx xxx xxx xxx

(3) All rules made under this section shall be binding on the Government.

28. The Learned Counsel for the petitioner also referred to some clauses of the Mines Act, 1952 which are as under :

2. Definitions : In this Act, unless the context otherwise requires :-

(a) to (i) xxx xxx xxx

(j) ""mine"" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and

includes :-

(i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oil fields;

(ii) all shafts, in or adjacent to and belonging to a mine, whether in the course of being sunk or not;

(iii) all levels and inclined planes in the course of being driven;

(iv) all open cast workings;

(v) all conveyors or aerial rope-ways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse

therefrom;

(vi) all audits, levels, planes, machinery, works, railways, tramways and sidings in or adjacent to and belonging to a mine;

(vii) all protective works being carried out in or adjacent to a mine;

(viii) and (ix) xxx xxx xxx

(x) any premises for the time being used for depositing sand or other material for use in a mine or for depositing refuse from a mine or in which any

operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the power of the

mine;

(1) "owner", when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part

thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver but does not

include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine, subject to any lease, grant or

licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but any contractor or sub-lessee for

the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from

any liability.

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xxx.

29. He then referred to the relevant provisions of Punjab Minor Mineral Concessions Rules, 1964, which are as under :

2. Definitions: In these rules, unless the context otherwise requires :

(a) to (i) xxx xxx xxx

(j) "Contract" means a contract given on behalf of the Govt, to carry, win, work and carry away any mineral specified therein through open auction

or by inviting tenders for certain specified areas, notified by the Director.

(k) "Contractor" means a person or a party holding a contract under these rules.

30. A reference to Konappa Rudrappa Nadgouda Vs. Vishwanath Reddy and Another, was also made by the Learned Counsel, wherein it was

held that when there are only two contesting candidates, and one of them is under a statutory disqualification, votes cast in favour of the disqualified

candidate may be regarded as thrown away, irrespective of whether the voters who voted for him were aware of the disqualification and no fresh

poll is necessary. This is not to say that where there are more than two candidates in the field for a single seat, and one alone is disqualified. On

proof of disqualification all the votes cast in his favour will be discarded and the candidate securing the next highest number of votes will be

declared elected.

On the other hand, Mr. S. C. Kapoor, Sr. Advocate, the Learned Counsel for respondent No. 1 also referred to Ranjit Singh Vs. Harmohinder

Singh Pradhan, wherein the candidate having a subsisting contract for sale of liquor with State Government as on the date of filing of nomination

paper as well as on the date of scrutiny of nomination paper, it was held that such contract would not fall within the expression ""for supply of goods

to, or for the execution of any works undertaken by that Govt."" and hence disqualification under S. 9-A was not attracted. To the same effect is

the authority in Somnath Rath Vs. Bikram K. Arukh and Others, cited by the Learned Counsel. He then cited the case of Ram Padarath Mahato

v. Mishri Singh, AIR 1961 SC 480 wherein it was held that the contract of bailment which imposed on the bailee the obligation to stock and store

the foodgrains in his godown could not be said to be a contract for the purpose of the service of sale of grain which the State Government had

undertaken within the meaning of S. 7(d). The Learned Counsel also cited C.V.K. Rao Vs. Dentu Bhaskara Rao, wherein it was held that right of

pre-emption did not amount to contract for supply of goods which could be said to subsist between the parties. In B. Lakshmikantha Rao Vs. D.

Chinna Mallaiah and Others, ) also cited by the Learned Counsel for respondent No. 1 it was held that the contracts entered into by the returned

candidate with the State Government to sell toddy and arrack did not come within the mischief of S. 9-A as they were neither for supply of goods

to the Government nor for the execution of any works undertaken by the Government and consequently he did not suffer from any disqualification

for being chosen as a Member of Legislative Assembly.

31. The Learned Counsel for respondent No. 1 also referred to the authority of Apex Court in Azhar Hussain Vs. Rajiv Gandhi, wherein it was

held that failure of the petitioners to incorporate in petition material facts and particulars relating to alleged corrupt practice, the power to dismiss

the petition can be exercised at threshold. The other authorities in Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi, and Samant N. Balkrishna

and Another Vs. V. George Fernandez and Others, are to the same effect.

32. The Learned Counsel for the parties have been heard at length and my issue wise findings are as under :

ISSUE No. 1

33. Relating to issue No. 1 it may be stated after having discussed the entire situation above that paragraphs 5, 6, 7, 8 and 9 of the petition refer to

five contracts entered into between the Governor through the State of Haryana and respondent No. 1 providing the dates, the kind of mineral

specified and the place where from the extraction was to be operated upon and therefore it could not be said that the petition was devoid of any

material facts or lacked any particulars required to be mentioned so as to constitute a cause of action. The execution of the aforesaid agreements is

rather not disputed. The case of respondent No. 1 is rather that execution of such agreements do not attract the provisions of Section 9-A of the

Act. Each and every case has its own peculiar facts and circumstances. Even the dates and other details of the agreements are mentioned in the list

of reliance and documents mentioned in the list are attached with the petition. Even the replication is so detailed that it reiterates the original

allegations made in the petition. It was, therefore, in such circumstances that the decision of this election petition in the beginning and at the initial

stage might have resulted in the denial of the trial not only to the petitioner but even to respondent No. 1. Issue No. 1 stands decided against

respondent No. 1 and in favour of the petitioner.

## ISSUE No. 2

34. The terms and conditions of the agreements are in detail in the aforesaid agreements but relevant portions of the agreement copy of which is

Ex. PI may be extracted hereunder :-

This indenture made this 10th day of June, 1980 between the Governor of Haryana, acting through the Director of Industries, Haryana, for the

time being Shri Dhanendar Kumar, I.A.S. (hereinafter referred to as the State Government which expression shall where the context so admits be

deemed to include the successors and assigns) of the one part; and M/s. Mohan Ram & Company, L-116 Kirti Nagar, New Delhi (hereinafter

referred to as the lessee which expression shall where the context so admits be deemed to include all the said partners their respective heirs,

executors, legal representatives, (Contd. on 2nd Col.) successors and permitted assigns) through its partners.

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## PART I

### LOCATION AND AREA OF THE LEASE :

#### THE AREA OF THIS LEASE

All that tract of lands situated at village Anangpur Tehsil Ballabgarh District Faridabad comprising of Khasra Nos. as per the details given below :-

(See Table below)

Measuring 60 Hectares delineated on the plans also hereto annexed and thereon coloured, hereinafter referred to as ""the said lands"".

## PART II

Liberties, powers and privileges to be exercised and enjoyed by the lessee subject to the restrictions and conditions in Part III.

xxx

xxx

xxx

xxx

#### PARTV

Rents and Royalties reserved by this lease.

1 and 2 xxx xxx xxx xxx

#### RATE AND MODE OF PAYMENT OF ROYALTY

3. Subject to the provision of clause 1 of this part, the lessee shall during the subsistence of this lease pay to the State Government at such time and

in such manner as the State Government may prescribe royalty in respect of any mineral removed by him from the leased area at the rate for the

time being specified under item 24 in the Second Schedule to the Mines and Minerals (Regulation and Development) Act, 1957.

#### PART-VII The Covenants of the Lessee.

Village Tehsil District Khasra Nos. Bighas Area

Bighas

Anangpur Ballabgarh Faridabad 41 100 00

42 100 00

51 100 00

52 100 00

53 100 00

54 100 00 -

59 100 00

Total 700 00

or 60 Hectares

(1) and (2) xxx xxx xxx xxx

#### TO COMMENCE OPERATIONS WITHIN A YEAR AND WORK IN A WORKMAN LIKE MANNER.

3. Unless the State Government for good cause permits otherwise, the lessee shall commence operation within one year from the date of execution

of the lease and shall thereafter at all times during the continuance of this lease search for in work and develop the said minerals without voluntary

intermission in a skilful and workman-like manner and as prescribed under clause 12 hereinafter without doing or permitting to be done any

unnecessary or avoidable damage to the surface of the said lands or the crops buildings structures or other property thereon. For the purposes of

this clause operations shall include the erection of machinery laying of a tramway or construction of a road in connection with the mine.

(4) to (6) xxx xxx xxx

#### TO ALLOW INSPECTION OF WORKING

7. The lessee shall allow any officer authorised by the Central Government or the State Government in that behalf to enter upon the premises

including any building excavation or land comprised in the lease for the purpose of inspecting, examining, surveying, prospecting and making plans

thereof sampling and collecting a data and the lessee shall with proper person employed by the lessee and acquainted with the mines and work

effectually assist the office, agents, servants and workmen in conducting every such inspection and shall afford them all facilities information

connected with them the working of the mines which they may reasonably require and also shall and will conform to and observe all orders and

regulations, which the Central and State Governments as the result of such inspection or otherwise may from time to time see fit to impose.

#### TO KEEP RECORD AND ACCOUNTS REGARDING PRODUCTION AND EMPLOYEES ETC.

10. The lessee shall at all time during the said term keep or cause to be kept at an office to be situated upon or near the said lands correct and

intelligible books of accounts which shall contain accurate entries showing from time to time :-

(1) to (6) xxx xxx xxx

(7) Such other facts, particulars and circumstances as the Central or the State Government may from time to time require and shall also furnish free

of charge to such officers and at such times as the Central and State Government may appoint true and correct abstract of all or any such books of

accounts and such information and returns to all or any of the matters aforesaid as the State Government may prescribe and shall at all reasonable

times allow such officers as the Central Government or State Government shall in that behalf appoint to enter into and have free access to the said

officers for the purpose of examining and inspecting the said books of accounts, plans and records and to make copies thereof and make extracts

therefrom.

11. xxx

xxx

xxx

xxx

The lessee shall allow any officer of the Central or the State Government, authorised in this behalf by the Central Government to inspect the same

at all reasonable times. He shall also supply when asked for by the State Government/the Coal Controller/the Director General, Geological Survey

of India/the Controller, Indian Bureau of Mines, a composite plan of the area showing thickness, dip, inclination, etc. of all the seams as also the

quantity of reserves qualitywise.

12. to 13. xxx

xxx

xxx

xxx

The lessee shall permit the State Government at all times during the said term to employ any person or persons, to be present at the weighing of the

said minerals as aforesaid and to keep accounts thereof and to check the accounts kept by the lessee. The lessee shall give 7 days previous notice

in writing to the Deputy Commissioner/Collector or every such measuring or weighing in order that some officer on his behalf may be present there

at.

14. to 22. xxx

xxx

xxx

xxx

#### RECOVERY OF EXPENSES INCURRED BY THE STATE GOVERNMENT.

23. If any of the works or matters which is accordance with the covenants in that behalf hereinbefore contained are to be carried or performed by

the lessee be not so carried out or performed within the time specified in that behalf, the State Government may cause the same to be carried out

or performed and the lessee shall pay the State Government on demand all expenses which shall be incurred in such carrying out or performance of

the same and the decision of the State Government as to such expenses shall be final,

Similar, same or likewise are the terms and conditions of other contracts Ex. P2 to P5.

35. The Learned Counsel for the petitioner has argued that since operations of excavating and mining of minerals was to be directly undertaken by

the Government of Haryana and respondent No. 1 was to conduct and carry out the same and the operations under the said agreements were

within the scope of Section 9-A of the Act, therefore, respondent No. 1 was disqualified from being a candidate to contest the Assembly election.

The Learned Counsel for respondent No. 1 has urged that the winning candidate i.e. respondent No. 1 is neither supplying any goods to the State

out of this contract nor is there any agreement of supply of goods. Unless it is so, the case of the petitioner could not be covered u/s 9-A of the

Act. He urged that respondent No. 1 was since long in mining business and this was a fact too well known to the people at large. Mere existence

of contracts for extraction of sand and mining and making profits did not fall within the four corners of this aforesaid Statute. He also urged that

extraction of minerals both major and minor on the basis of agreements does not amount to execution of a work undertaken by the Government of

Haryana and this has been urged in view of the authorities quoted by him and already referred to above.

36. So as to properly appreciate the controversy, Section 9-A of the Act may be reproduced which reads as under :-

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.

Explanation :- For the purposes 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.

37 The position which prima facie appears to be is that agreements in dispute were for execution of any works undertaken by the Government. It

is the admitted case of the parties that the mines from which respondent No. 1 is permitted to extract minor and major minerals under the aforesaid

agreements belong to the State of Haryana. The contracts for extraction of minor and major minerals are governed by the provisions of Mines and

Minerals (Regulation & Development) Act, 1957. This Act was promulgated to provide for the regulation of mines and development of minerals

under the control of the Central Government. Under S. 2 of the said Act it is expedient in the public interest that the Union Government should

take under its control the regulation of mines and the development of minerals to the extent hereinafter provided. The minerals are divided into

minor minerals and all other minerals. Sections 4 to 13 of the Act do not apply to them by virtue of Section 14 of the Act. In other words, the

general restrictions on undertaking prospecting and mining operations contained in S. 4 to 12 have no application to minor minerals. As per S. 15

the powers have been conferred on the State Government to make rules with respect to minor minerals. Although a separate treatment is given to



minor minerals and all other minerals, the declaration as envisaged in S. 2 of the Act encompasses both classes of minerals. The second objective

of the Central Act is development of minerals. As per S. 18 of the Act a duty has been cast on the Central Government to take such steps as are

necessary for conservation and development of minerals in India and to make rules in that behalf providing inter-Alia for opening new mines and

regulation of Mining Operations, excavation of minerals and generally for the development of mines.

38. A perusal of the above would show that the regulation of mines and the development of minerals is under the control of the Government and it

is its primary duty to undertake the said job. However, the Act permits granting of lease/licence to private persons for extraction of minerals on the

terms and conditions stipulated in the lease/licence. The work which is to be undertaken by the Government is for execution by the lessee under the

lease/licence which is an agreement between the parties. Thus, once a lease for extraction of major or minor minerals is granted to a person under

a contract, this means a contract for execution of works undertaken by the Government and it clearly falls within the ambit of S. 9-A of the Act.

39. According to the terms of the agreements Ex. R. 1 to R.5, respondent No. 1 shall have to pay contract money. Even there is a clause for

payment of interest for delayed payment of the contract money. It is specifically mentioned in the contracts as to where the quarry operation is

permitted and where it is not permitted. There is a mention in the contracts that the Contractor has even to submit reports and returns in prescribed

forms giving total quantity of minerals raised and despatched from the specified area. As mentioned above the terms and conditions of the lease

deeds/contracts are of similar nature.

40. As per clause 20 of the Agreement, the Contractor is under obligation to deliver possession of the quarry to the Government in workable

condition. According to clause 21, the Contractor is not entitled to open any new quarry without obtaining prior permission in writing from the

Director of Mines & Geology, Haryana. A joint reading of various clauses of the agreement clearly shows that the Contractor is the Agent of the

Government and is executing the contract on behalf of the Government. In view of such terms and conditions of the Contract, it will certainly fall

within the ambit of S. 9-A of the Act and during the subsisting of such contracts, respondent No. 1 in my view was disqualified from contesting the

election.

41. Article 191 of the Constitution of India lays down the disqualifications for membership of any State Legislature and it provides that a person

shall be disqualified from being chosen as member and from being a member of the Legislative Assembly if he holds any office of profit under the

Government of India or the Government of any State. The reason for debarring holders of office of profit under the Government from being a

member of a State Legislature is that such a person cannot exercise his function independently of the executive of which he is a part. Same analogy

has been applied in S. 9-A of the Act according to which a person holding a contract for supply of goods to Government or for execution of any

government work shall be disqualified from contesting any election to the State Legislature or the Parliament. In the present case also being a party

to the contract the executive i.e. State government can exercise its influence on the member of the State Legislature to prevent him from executing

the contract according to its conditions. In similar way a member can also exercise his influence on the executive (i.e. that State Government) to

derive a pecuniary benefit out of contract. In my view a member cannot act independently if he holds a contract in which executive is also a party

and thus he is liable to be disqualified under Article 191 of the Constitution or under S. 9-A of the Act.

42. Even according to the definition of contract under Indian Contract Act, 1872, a contract is an agreement enforceable by law, which is made of

two elements, namely, an agreement and an obligation. According to S. 25 of the Contract Act an agreement without consideration is void meaning

thereby that in a valid contract there has to be consideration or obligation. A member of the State Legislature can exercise undue influence to affect

the consideration or obligation to his advantage. Similarly, the executive can also under the threat of affecting the consideration to the disadvantage

of the member can force him not to act independently.

43. Mining lease is a contract according to which a mining lessee undertakes to pay a royalty per tonne of the mineral despatched from lease hold

area as a consideration in lieu of the permission of the State Government to mine the minerals which otherwise is owned by the State Government.

State instead of exploiting the mineral itself demise the same to the lessee/contractor who execute the same on behalf of the State. In case of a

mining lease a lessee executes a contract to exploit the mineral deposit on behalf of the State Government and in lieu thereof pay royalty to the

State. Therefore, a mining contract or a mining lease is a contract to execute a Government work on behalf of the Government and is covered

under S. 9-A of the Act. The member and the executive can exert their influence inter se.

44. It is necessary to give interpretation of the provisions of S. 9-A of the Act and the duties contained in the said Section and should be

construed<sup>1</sup> keeping in view the objective behind the said provision which was specifically introduced by making amendment in the Act.

45. A statute is an edict of the legislature and the conventional way of interpreting or construing a Statute is to seek the intention of its maker. A

statute is to be construed according to "to the intent of them that make it" and "the duty of judicature is to act upon the true intention of the

legislature the mens or sententia legis". Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some

public benefit. The legislation is primarily directed to the problems before the Legislature based on the information derived from past and present

experience. When the purpose and object or the reason and spirit pervading through the statute is clear, Court has to adopt purposive approach in

interpreting such a Statute. It may be appropriate to mention that in the judgment of Eastman Photographic Materials Co. v. Controller General of

Patents, Designs and Trade Marks, reported in 1898 AC 571 page 576 wherein the Earls of Halsbury reaffirmed the rule as follows: -

My lords, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act and

to the ascertained evils to which the former Act had given rise, and to the later Act which provides the remedy. These three being compared. I

cannot doubt the conclusion.

46. The Apex Court in The Bengal Immunity Company Limited Vs. The State of Bihar and Others, applied the rule in construction of Article 286

of the Constitution. After referring to the state of prevailing in the province prior to the Constitution as also to the chaos and confusion that was

brought about in inter-state trade and commerce by indiscriminate exercise of taxing powers by the different provincial legislatures founded on the

theory of territorial nexus, S.R. Das, C.J. proceeded to say : (Para 23)

It was to cure this mischief of multiple taxation and to preserve the free flow of inter-State trade or commerce in the Union of India regarded as

one economic unit without any provincial barrier that the constitution makers adopted Article 286 in the Constitution.

47. Furthermore, the Hon<sup>ble</sup> Supreme Court while interpreting the provisions of S. 7 (d) of the old Act, which correspondes to S. 9-A of the

Act, in Chattanatha Karayalar Vs. Ramachandra Iyer and Another, has held that the contract for felling trees in Government forests and

transporting them for delivery at the space specified therein was a contract which falls under S. 7 (d) of the old Act. Reference in this regard may

also be made to the authority of the Apex Court in Mahendra Kumar Vs. Sm. Vidyavati and Others, wherein it was held that contracts with the

Chief Commissioner in Part C States would operate as a disqualification for election to the State Legislatures under S. 17 of Act 49 of 1951 read

along with S. 7(d) of the Act.

48. Admittedly, respondent No. 1 is a partner in the firm M/s Mohan Ram and Co. which has been awarded the contracts. It is settled law that

partnership firm does not have any legal entity and is known by its partners and the partners are jointly and severally liable to creditors and their

liability is unlimited. Therefore, even if the contracts are in the name of partnership firm the same would be contract with respondent No. 1 who is

the beneficiary as partner.

49. The respondent side has not been able to say anything significant as to how to take out the case from the ingredients of S. 9-A of the Act. In

fact the respondent side appears to be virtually defenceless and has become more vulnerable since he occupies vast territory of mines for mining

operations for the work undertaken by the State Government. Such a person whose head and ears are within the control of the State and who

derives benefit from the State which could be stopped by the State Government at any time, the legislation never thought him to be a proper

person to contest the election. It is not a case of supply of goods, rather of a contract undertaken by the State Government for extraction of minor

and major minerals. In such a case where the execution of the contracts and the fact that the contracts are actually being carried out, under the

subsisting contracts respondent No. 1 could not wriggle out.

50. So in view of the Statute, the various other supporting legislations and rules and in view of the terms of the contracts, the entire situation and the

arguments from both the sides, the only irresistible conclusion which can be drawn is that the provisions of S. 9-A of the Act are completely

attracted to the case and respondent No. 1 has not been able to prove that his case was beyond S. 9-A of the Act. Rather, the petitioner has been

able to bring ample evidence in support of his contentions. Issue No. 2 is, therefore, decided against respondent No. 1 and in favour of the

petitioner. ISSUE NOS. 3 AND 4

51. Both these issues obviously are dependent on the preceding issue and as is clear from the decision of that issue it has to be held that

respondent No. 1 was disqualified from contesting the election held on 22-2-2000 as well as it has to be held that his nomination papers were

wrongly and illegally accepted. Issues Nos. 3 and 4 are decided in favour of the petitioner and against respondent No. 1.

ISSUE No. 5

52. Coming to issue No. 5, the petitioner had published the aforesaid pamphlets and had sufficiently announced the voters that respondent No. 1

was not competent to be a candidate and there is no reason to disbelieve the witnesses produced by the petitioner. There is nothing to suggest that

the pamphlets were fabricated later on. It is immaterial that he did not raise any objection at the time the nomination papers were being scrutinized.

If there is any inherent defect in the candidature of a person he can come to the Court and can seek the relief. A person who was not at all

competent to even file the nomination papers could not be allowed to carry on as a member of the legislative Assembly and the election of

respondent No. 1 is therefore, held to be illegal and there is no bar for the petitioner to be declared as elected in view of the valid votes he had

secured in the Assembly election. The petitioner has proved that he did not commit any illegality in his own election campaign. Issue No. 5 is

decided in favour of the petitioner and against respondent No. 1.

#### RELIEF

53. In view of the findings set out above, the petition succeeds and the election of respondent No. 1 only is set aside being illegal and

unconstitutional and the petitioner Shri Hari Singh Nalwa is declared as elected to the Haryana Vidhan Sabha from 18-Smalkha Constituency as

prayed for with costs which are quantified at Rs. 10,000/-.