(11) For the reasons recorded above, the writ petition is partially allowed to the extent that the respondents are directed to declare the result of the petitioner in respect of T.D.C., Part III (Pass Course) Examination. The petition in respect of the relief that the orders Annexure 'F' and 'G' be quashed, stands dismissed. In the circumstances of the case the parties are left to bear their own costs.

N.K.S.

ELECTION PETITION

Before D. K. Mahajan and R. S. Narula, JJ.

ANOKH SINGH,—*Petitioner.*

versus

SURINDER SINGH AND OTHERS,—*Respondents.*

Election Petition No. 2 of 1969

September 19, 1969.

Representation of the People Act (XLIII of 1951)—Section 9-A—Disqualification of a returned candidate under—Conditions to be satisfied—Stated—Expression "in the course of his trade or business" in the section—Whether has reference only to the point of time at which the contract is entered into—"Full performance" of a contract as mentioned in Explanation to section 9-A—Meaning of—Circumstances when a contract ceases to exist—Stated.

Held, that in order to sustain a disqualification of a returned candidate under section 9-A of Representation of the People Act, 1951, the following conditions must be satisfied. (i) The returned candidate should have entered into a contract with the appropriate Government; (ii) The contract must only be either for the supply of goods to the appropriate Government or for the execution of any work undertaken by that Government; (iii) The contract of the kind referred to in item No. (ii) above must have been entered into in the course of the trade or business of the contractor and not merely as a casual transaction; (iv) If and so long as such a contract as is hereinabove referred to subsists, the person concerned shall be disqualified. The effect of the Explanation added to the main provision is that even if all the four said ingredients are satisfied in the case of an elected candidate, he would still not be disqualified if the contract has come to an end by having been fully performed by the contractor, and all that remains is the discharge of the corresponding obligation of the Government under the terms of the contract. The object achieved by the Explanation is that in

cases where it is claimed by a returned candidate that the contract of the specific type has ceased to subsist because of its full performance by the contractor by his having done all that could be required of him, the contract would no more be said to be subsisting within the meaning of section 9-A merely because the appropriate Government has not discharged its corresponding obligations up to the crucial date.

(Paras 14, 15 & 17)

Held, that the expression "in the course of his trade or business" in section 9-A of the Act has reference to the point of time at which the contract is "entered into" and does not qualify the expression "there subsists" in the section. Keeping in view the policy of the law for enacting the disqualification in question, it appears that it is only the entering into contract with the appropriate Government which must be in the course of the contractor's trade or business. Once it is found that a contract is entered into with the appropriate Government by the returned candidate, in the course of his trade or business, the mere fact that the returned candidate has, after entering into the contract but before the crucial date, given up the trade or business in question, though the contract is otherwise subsisting, would not take the returned candidate out of the mischief of section 9-A of the Act.

(Para 22)

Held, that full performance in the Explanation to section 9-A merely means that the contractor has performed the work and the appropriate Government has either no right to ask for rectification of any part of the work done or has by consent relinquished or given up its right to insist on any better performance of the contract or has otherwise agreed not to have any further work performed in connection with the contract by the contractor. All that "full performance" appears to convey is that it is to be established that nothing more remains to be done by the contractor in connection with "the execution of the contract." (Para 37)

Held, that a contract may cease to subsist in numerous ways, for example:—(i) It may cease to subsist because it may have been fully performed by both sides. All the parties to the contract might have fully discharged their respective and mutual obligations. This will be called discharge by full performance; (ii) A contract may be brought to an end by one party committing breach thereof and the other party accepting the breach and holding the contractor responsible for payment of damages without keeping the contract alive even though claims and counter-claim of the parties may be pending; (iii) A contract may be brought to an end by abandonment by the contractor coupled with the non-existence or non-exercise of the appropriate Government's authority to insist on its performance. In such a case, the contract cannot be deemed to subsist, though the work may have been left incomplete; or the work done may be defective; (iv) A contract may come to an end by frustration recognised by law; (v) A contract may be brought to an end by implied or express mutual consent of the contracting parties despite the fact that claims and counter-claims of the parties in respect of the work done by the contractor still remain unsettled; and (vi) A contract will cease to subsist if an Act of a competent Legislature or other valid law brings it to an end. There may be various other ways of bringing

a contract to an end. A contract may cease to subsist without having been fully performed, by being rescinded, by being abrogated, by novation, by substitution, by frustration, by mutual consent, by abandonment etcetra.

(Paras 37 and 38)

Case referred by the Hon'ble Mr. Justice R. S. Narula, on 4th August, 1969, to a Division Bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan, and the Hon'ble Mr. Justice R. S. Narula, on 17th September, 1969.

Election Petition under Section 80 and 81 of the Representation of the People Act 1951, praying that the election of respondent No. 1, i.e., Shri Surinder Singh the Returned Candidate be declared as void and the same be set aside.

J. N. KAUSHAL, SENIOR ADVOCATE (M/S. B. S. KHOJI, ASHOK BHAN AND R. L. SHARMA, ADVOCATES, WITH HIM), for the Petitioner.

H. L. SIBAL, SENIOR ADVOCATE (M/S. C. L. LAKHANPAL, I. S. VIMAL, R. C. SETIA, ADVOCATES, WITH HIM), for the Respondent No. 1.

JUDGMENT

NARULA, J.—In this petition under sections 80 and 81 of the Representation of the People Act (43 of 1951) (hereinafter called the Act), Anokh Singh, an elector from the Patti Assembly Constituency, district Amritsar, has called in question the Mid Term election of Surinder Singh Kairon, respondent No. 1 (hereinafter referred to as the respondent). A declaration is sought to the effect that the election of the said respondent from the aforesaid Constituency held in February, 1969, is void on the solitary ground that the respondent entered into a contract with the Punjab Government for the construction of the additional Siswan Super-passage in the course of his trade and business which still subsists.

(2) The date of filing nomination papers has not been specified in the election petition. The date of polling was February 9, 1969. The result of the election was declared on February 10, 1969. Respondent No. 1, an official Akali Party candidate defeated his nearest rival, Jaswant Singh Kairon (who is the contesting respondent's uncle—the official Congress candidate). Respondent was thereupon declared returned to the Punjab Legislative Assembly from the Patti Constituency.

(3) The main preliminary objection of respondent No. 1, in his written statement is that even if all the allegations in the petition are

admitted to be true, the returned candidate is not disqualified under the provisions of section 9-A of the Act and that, there being no other ground for setting aside the election, the petition should be dismissed *in limine*. The other preliminary objections have not been pressed by the respondent.

(4) On the merits of the controversy, the respondent's plea in brief is that though he was the sole proprietor of the Capital Construction Company, he was not disqualified under section 9-A of the Act as no such contract was entered into in the course of respondent's trade or business as an enlisted contractor with the Punjab Government on the relevant dates and further because the contract, for the construction of the additional Siswan Superpassage, between him and the Government was neither subsisting on the date of nominations nor on the date of scrutiny. He has further emphasised that the work in question was undertaken on mere work orders and not on the basis of any regular contract. While admitting the work orders and the running payments, he has laid particular emphasis on the following two admitted conditions of contract contained in all the work orders in questions:—

(i) This order can be cancelled and the work stopped at any time by the Officer-in-charge of the work or by any officer superior to him in authority. Similarly, the contractor is at liberty to cease work at any time.

(ii) In the matter of dispute, the case shall be referred to the Superintending Engineer of the circle, whose order shall be final.

The other relevant conditions of the work order are:—

(i) the work to be done according to the specifications and to the entire satisfaction of the officer-in-charge;

(ii) the Government is entitled to make deduction of 20 per cent for incomplete work; and

(iii) express liberty to the contractor to cease work at any time.

He then referred to the two letters sent by the Capital Construction Company to the Government in August and November, 1964, about

the work having been abandoned due to a police raid conducted on August 18, 1964, and to the Government's reply dated December 4, 1964, and pleaded that a perusal of the said letters would show that there was no subsisting contract between the respondent and the Punjab Government since August, 1964, as already acknowledged by the appropriate Government too.

(5) From the pleadings of the parties, to the material portion of which reference has been made by me, Harbans Singh, J., who was then trying the petition, framed the following issue:—

> "Was the contract between the Capital Construction Company, of which respondent No. 1 was the sole owner, and the State Government of Punjab, for the construction of additional Siswan Super-passage, Kamalpur near Rupar, subsisting on the date of the nomination of respondent No. 1; if so, was the respondent not disqualified from standing as a candidate for the State Assembly?"

Part of the evidence on the above Issue was recorded by Harbans Singh, J., and the remaining evidence has been recorded by me. During the course of arguments before me in Single Bench, it was felt that the question of law involved in the case is of importance and likely to arise in other such cases from time to time. By my order, dated August 4, 1969, the case was, therefore, referred to a larger Bench. In pursuance of the said order of reference, this Special Bench was constituted by the learned Acting Chief Justice. This is how the petition has come up before us for disposal.

(6) To complete the picture, reference may also be made to Exhibit PW-1/4, Chief Engineer's letter, accepting the negotiated rates on the following conditions:—

> "(i) Payments to the contractor were to be made on through rates sanctionable by the Superintending Engineer. Copy of the sanctioned rates was required to be supplied to the office of the Chief Engineer in time.
>
> (ii) Through rates were subject to the scrutiny and revision by Accountant-General, Punjab."

The respondent undertook to execute certain works in pursuance of the above-said work orders and received certain running payments.

The work went on till August 17, 1964. On August 18, 1964, the police raided the office of the Capital Construction Company and took into possession some records, etc., of the respondent. Immediately after the raid, the respondent stopped the works entrusted to him under the work orders, Exhibit PW-1/1, PW-1/2 and PW-1/3, in exercise of the right vested in him by condition No. 3 of the work orders giving the contractor liberty to cease work at any time. On August 25, 1964, the respondent wrote letter Exhibit R. 2, to the Executive Engineer, Rupar Division, Sirhind Canal, Rupar, in the following terms:—

"SUBJ:—Construction of Additional Siswan Super-passage over Sirhind Canal.

The above-mentioned work was allotted to us after inviting regular tenders on labour-rates basis as per work order.

That according to the work order based on tenders we were working for last 16 months smoothly without any chance of complaint.

That the work was in full swing and about twenty parties of well sinkers and a few hundred labourers were working day and night to complete the work in shortest possible time.

That on 18th August, 1964, the police party unexpectedly raided our work and sealed our office and stores and harassed our employees and the men at work on site.

Due to this high-handedness of the police our labour and the staff got panicky and demoralised and struck off the work. A great fear has been created in their mind and they are reluctant to resume the work. Most of the imported labour which was brought from Rajasthan, Madhya Pradesh and U.P. on advancing a good deal of money, has run away without paying back our advances.

That the local labour is slipping away and is not prepared to resume the work with the result that the work has come to a standstill and we have been put to a great loss.

Under the circumstances, we find it impossible to re-start the work as no other labour is prepared to come and work at

the site. So, we have been forced to close the work of constructing the above additional Siswan Super-Passage at your risk, costs and responsibilities.

Consequently, we have been put to a great loss financial as well as reputation due to the uncalled for and unwarranted action of the Government and the highhandedness of the police party and shall be putting our claim in due course.

Further we request you to kindly take over charge of all machinery, tools, plants, tracks, etc., which were given to us on rental basis. Please also take possession of all other unused material lying at site to avoid deterioration and damages. We will not be responsible for any loss or damage henceforth. We shall further not be liable to pay you rent for machinery, etc., from the date of receipt of this letters."

On the receipt of the above quoted communication, Shri Rattan Singh, R.W. 1, who was admittedly the Executive Engineer, Rupar Division, at that time sent letter, Exhibit R.W. 1/1, dated August 29, 1964, to the Superintending Engineer, Sirhind Canal Circle, Ludhiana, in which he stated as follows:—

"Kindly refer to Sub-Divisional Officer, Doraha, letter No. 1922/S.S.W., dated August 26, 1964, copy sent to you,—*vide* his endorsement No, 1923 of even date.

The Capital Construction Company has given in writing that they are not prepared to do further work on account of police raid. The company has been written to get the final measurements done in their presence to avoid any dispute later on.

The work of constructing additional Siswan Super-Passive is an important flood control work.

The discharge of Patiala Ki Rao and Janta Ki Rao has already been diverted into Siswan torrent, The synchronised discharges in all the three hill torrents cannot be passed safely over the existing Siswan Super-Passage. Any damage to the existing Siswan Super-Passage on account of discharge beyond its capacity can mean dis-location and devastation in whole of Sirhind Canal System.

In my opinion tenders on agreement basis should immediately be called and work pushed up to its completion."

(7) Subsequently the Manager of the respondent sent on November 16, 1964, letter Exhibit R. 3 to the Executive Engineer, Rupar Division, Rupar, reading as follows:—

"Further to our letter, dated August 25, 1964,—*vide* which we had surrendered the Siswan Super-passage works at Kamalpur, as due to the harassment of the police we could not proceed with the works, it is requested that our final payment which is about Rs. 60,000 (rupees sixty thousand only) and the security which we had furnished with our tender may pleased be released at the earliest."

In the Executive Engineer's reply, Exhibit R. 1, dated December 4, 1964, the respondent was asked to supply the detailed account of the claim made by him for further action. No such claim was lodged by the respondent with the Government.

(8) On or about May 11, 1967, the respondent submitted an application to the Court of the Senior Subordinate Judge, Rupar, under section 20 of the Arbitration Act (10 of 1940) for filing the arbitration agreement (contained in condition No. 5 of the standard conditions of the work orders which has already been quoted above), for reference of the matters in dispute between him and the State of Punjab to an arbitrator. A copy of that application is Exhibit RW-2/5. To the application, the respondent attached a list showing the tentative claim of the Capital Construction Company for the works in question, the total value of which claim came to Rs. 2,77,200. It was claimed that a dispute had arisen between the respondent and the relevant department of the Punjab Government in connection with the works mentioned above, and that the dispute between the parties was still subsisting. The cause of action for making the application was said to have arisen on August 25, 1964, when the work was stopped by the respondent because of the alleged obstruction caused by the department in the further execution thereof. Though a copy of the State's written statement filed in reply to the above-said application was submitted in this case as enclosure to C.M.A. No. 44-E of 1969, the same has not been proved by any of the parties.

(9) Besides the above-mentioned documentary evidence produced by the parties, some oral evidence has also been led by

them. P.W. 2, Sulakhan Singh, stated that he was Executive Engineer, Rupar Division, Rupar, in September, 1964. According to him, the Additional Siswan Super-Passage was constructed by the Capital Construction Company, and the witness inspected the work and made its measurements. He then stated:—

> "The result of my inspection and measurements was incorporated in a report and it was sent to the Superintendent of Police, C.I.D., Vigilance. I have seen the original report on the record of the case, *State* v. *Raj Kumar and others,* under section 5(2) of the Prevention of Corruption Act, 1947. Certified copy, Exhibit PW-1/5 is the correct copy. This report was made by me on the 17th March, 1965."

The witness also explained that the conditions of contract given in the work orders are the general conditions which applied to all work orders and also governed supplementary work order, Exhibit PW/1/3. He could not give orally the date on which he made the measurements. He, however, admitted that no work had been done by the Capital Construction Company, i.e., by the respondent, after the date of the letter, Exhibit R. 1 (which is, dated December 4, 1964). He could not say as to who did the work which was left incomplete by the respondent.

(10) Inder Mohan Mehta, PW-3, who was Executive Engineer, Rupar, Division, Rupar; since October 24, 1967, stated that the work in question had been done before he took charge of that Division, but he was quite sure that the work, which had already been done, had been approved though the bills for the same had not yet been finalised. He was not sure of the reason for the non-finalisation of the bills, and stated that possibly this was due to the pending criminal case. He admitted that the Capital Construction Company had also made some claim which was pending in a Civil Court. He added that he was not aware of the details, but could say that there was also a counter-claim by the department against the respondent. He admitted that no work had been done by the respondent since the witness took over charge of the Rupar Division on October 24, 1967, and that the Additional Siswan Super-passage work was still lying incomplete and had not been allotted to anybody for being completed. In the opinion of the witness the work had not been completed because possibly *status quo* was desired to be maintained till the pending cases arising out

of the works had been decided. This is the entire evidence produced by the petitioner.

(11) The respondent produced Rattan Singh, R.W. 1 who was the Executive Engineer, Rupar Division, in July, 1963, and who was finally transferred from there in September, 1964. He stated that so long as he was the Executive Engineer at Rupar, the Capital Construction Company was executing the work in question, but that they had stopped the work after the police raided their office. He admitted that the police raid took place before he was transferred from Rupar. He admitted the receipt of letter Exhibit R. 2, dated August 25, 1964, from the respondent. He added that on the receipt of the letter Exhibit R. 2, he sent reply to the Capital Construction Company, and also sent a communication to the Superintending Engineer, Sirhind Canal Circle, Ludhiana, on August 29, 1964, of which R.W. 1/1 is a copy. According to this witness, the difference between a "work order" and a "contract" is that whereas a work order can be terminated by the Government or the contractor at any time, a contract given on the acceptance of a tender cannot be so terminated, and no quantity of work is normally specified in the work order. He added that his opinion about the difference between a work order and a contract entered into on the basis of the acceptance of a tender is based on information gathered by him from an official publication known as Government of Punjab, Public Works Department Code. In examination-in-chief he further added that so long as he was in charge of the work in question, the Capital Construction Company went on carrying out its work according to the work orders. In cross-examination he stated that the progress reports which he had been sending were based on such reports received by him from the Sub-Divisional Officer-in-charge of the work, which Sub-Divisional Officer was a co-accused with the respondent in the criminal case.

(12) As R.W. 2, the respondent himself admitted that he was the sole proprietor of Capital Construction Company which had undertaken the work of the Siswan Super-passage on the basis of work orders Exhibits P.W. 1/1, P.W. 1/2, and P.W. 1/3. He also admitted the receipt of three running payments; and stated that in consequence of a police raid on his office on August 18, 1964, he abandoned the work which he was entitled to do in terms of condition No. 3 of the admitted conditions of the work orders. He proved letter by which he had informed the Government of having

stopped the work and in cross-examination proved copy of his application Exhibit R.W. 2/5, submitted by him under section 20 of the Arbitration Act and the annexure thereto. He tendered in evidence Exhibit P. 1, a certified copy of the judgment, dated July 27, 1967, given by the Senior Subordinate Judge, Ropar, along with his application under section 20 of the Arbitration Act, and further admitted that his claims and the Government's counter-claims were pending before the arbitrator.

(13) Before noticing and dealing with the rival contentions of the parties on the legal aspect of the matter, I would like to notice the history of the evolution of the statutory disqualification contained at present in section 9-A of the Act. The original disqualification in this respect was contained in section 7 (d) of the Act when it was passed in 1951. The relevant part of that provision was in the following terms:—

> "A person shall be disqualified for being chosen as, and for being, a member ..... of the Legislative Assembly . . . . . if, whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government."

Clause (d) of section 7 of the principal Act was substituted by the following provisions by section 15 of the Representation of People (Amendment) Act (58 of 1958):—(Only relevant extract is quoted):

> "A person shall be disqualified for being chosen as and being a member . . . . of the Legislative Assembly . . . . . if there subsists a contract entered into in the course of his trade or business by him with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by that Government."

For the purpose of consolidation of the provisions, relating to disqualifications for membership and voting, Chapter III of the principal Act as amended by the 1958 Act was replaced by a new Chapter by operation of section 20 of the Representation of People (Amendment) Act (47 of 1966). The Chapter starts with section 7. That section now contains only the definitions of the expressions "appropriate Government" and "disqualified". Disqualification on conviction for

certain offences is provided in section 8. Disqualification incurred by a person found guilty of having committed a corrupt practice is dealt with by section 8-A. Disqualification for dismissal for corruption or disloyalty is provided for by section 9. Section 9-A as it now exists was then brought into the statute book in the following terms:—

> "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."

(14) An analysis of the above quoted provision shows that in order to sustain a disqualification thereunder, the following conditions must be satisfied:—

(i) The returned candidate should have entered into a contract with the appropriate Government;

(ii) The contract must only be either for the supply of goods to the appropriate Government or for the execution of any work undertaken by that Government;

(iii) The contract of the kind referred to in item No. (ii) above must have been entered into in the course of the trade or business of the contractor and not merely as a casual transaction;

(iv) If and so long as such a contract as is hereinabove referred to subsists, the person concerned shall be disqualified.

(15) The effect of the explanation added to the main provision is that even if all the four ingredients referred to above are satisfied in the case of an elected candidate, he would still not be disqualified if the contract has come to an end by having been fully performed by the contractor, and all that remains is the discharge of the corresponding obligation of the Government under the terms of the contract.

(16) The language of section 7(d) of the principal Act was considered by the Parliament (according to the objects and reasons of the 1958 Act) to be wide and vague enough to bring any kind of category of contract within its scope and this had been "a fruitful source of election disputes in the past." It is stated in the objects and reasons of the 1958 Act that persons who only occasionally broadcast any talk from the radio station or contributed any article to any Government publication were likely to come within the mischief of the section. It was, therefore, proposed in the bill which became the 1958 amending Act "to redraft section 7(4) in a simpler and more rational way so as to bring within its purview only two categories of contracts entered into by a person with the Government in the course of his trade or business." These two categories are the contracts for the supply of goods and contracts for the execution of any works. Except for certain possible verbal immaterial differences, the only distinction between section 7(d) of the principal Act as amended up to 1958 on the one hand and section 9-A of the Act as we now find it on the other, is the presence of the explanation in the present provision. The necessity for providing the explanation appears to have arisen from the manner in which a Division Bench of the Madhya Pradesh High Court interpreted section 7(d) of the principal Act as amended up to 1958 in *Inayatullah Khan* v. *Diwanchand Mahajan and others*, (1) (per M. Hidayatullah, C.J., as his Lordship the present Chief Justice of India then was, and V. R. Sen, J.), followed by the authoritative pronouncement of the Supreme Court in *Chatturbhuj Vithaldas Jasani* v. *Moreshwar Parashram and others* (2). It was held by the Supreme Court that a contract for the supply of goods continues in being till it is fully discharged by performance on both sides. Their Lordships of the Supreme Court differed with the observations is some English cases to the effect that the moment a contract is fully executed on one side and all that remains is to receive payment from the other, then the contract terminates and a new relationship of debtor and creditor comes into operation. It was observed that there is always a possibility of the liability being disputed before actual payment is made, and the vendor may have to bring an action to establish his claim to payment. The existence of the debt, held the Supreme Court, depends on the contract and cannot be established without showing that payment was a term of the contract.

(1) 15 E.L.R. 219.
(2) (1954) S.C.R. 817.

(17) The Parliament appears to have felt that this state of law would have disentitled any elector who had once entered into a contract of any of the two specified kinds with the Government to become a member of the Parliament or of any State Legislatures for any length of time till the Government chose to make final payment to him, and that disputes arising out of the contractor's claims against the Government or *vice versa* involving possible litigation might have resulted in taking away from certain electors their valuable right of standing at the election for a major part of their life in spite of the contract having been fully performed by the contractor. It was in order to remove this kind of obstacle from the way of Government contractors that the explanation appears to have been added to the principal provision, while re-enacting the relevant disqualification in 1966. The object achieved by the explanation is that in cases where it is claimed by a returned candidate that the contract of the specific type has ceased to subsist because of its full performance by the contractor by his having done all that could be required of him, the contract would no more be said to be subsisting within the meanning of section 9-A merely because the appropriate Government has not discharged its corresponding obligations up to the crucial date.

(18) I have already given a resume of the entire documentary and oral evidence led by the parties in this case. The following relevant facts which emerge from that evidence have been amply proved and were in fact not questioned by any of the parties at the hearing of the petition:—

(i) The respondent was the proprietor of the Capital Construction Company in 1963-64 and continued to be so;

(ii) The Capital Construction Company entered into a contract with the Punjab Government during February to June, 1963, for execution of the two main and one supplementary work order;

(iii) The conditions of the contract between the respondent and the appropriate Government authorised the respondent to cease and stop work at any time without notice without rendering himself liable to any claim of any kind on account of having stopped the work;

(iv) On August 18, 1964, the respondent actually ceased and stopped the work and abandoned the same;

(v) Neither the State Government was entitled to ask the respondent to resume work or even to rectify defects if any in the work already executed by him, nor the State Government ever in fact asked the respondent right from August 1964, till today, to resume work or to rectify any defects in the work already done by him;

(vi) The intention of the respondent as well as the appropriate Government after December, 1964, was only to get the claims of the respondent in connection with the balance due to him for the work already done by him settled ;

(vii) Despite a request having been made by the Government to the respondent in the end of 1964, to submit his claims, the respondent did not submit any claims to the Government directly, but availed of the arbitration clause in the contract whereunder his claims had been referred to an Arbitrator and the pending adjudication; and

(viii) The State Government has made counter-claims against the respondent before the Arbitrator which are also pending with him for decision.

(19) The only material questions on which the parties are not agreed relate to the following matters:—

(i) Whether it was the responsibility of the respondent to execute the works in question in accordance with any standards or specifications;

(ii) On the proof of the first point whether the works actually executed by the respondent were sub-standard or not according to the requisite specifications; and

(iii) Whether the counter-claims made by the department against the respondent before the Arbitrator are based wholly or partly on any allegation of the work executed by the respondent not being according to the specifications.

(20) At one stage we were inclined to frame additional issues on the abovementioned three points to allow the parties to lead evidence on those issues before finally disposing of the election petition. In the view which we have subsequently been persuaded to take before the

conclusion of the hearing of the arguments of the parties on the pure questions of law which call for decision on the admitted facts of the case, we have not considered it necessary to adopt the course of framing additional issues and recording evidence thereon. If we had come to a contrary conclusion on the legal aspect of the matter to which reference will hereinafter be made, we would not have pronounced on the matters in controversy without first giving the parties an opportunity to lead evidence on the above said suggested issues.

(21) From a proper analysis of section 9-A, it is clear that in this case the returned candidate cannot be held to be disqualified under section 9-A unless the petitioner is able to prove—

(i) that the returned candidate entered into a contract with the appropriate Government before the date of filing his nomination papers in the election in question ;

(ii) that the contract was for the execution of any work undertaken by the said Government;

(iii) that the contract to question was entered into in the course of the business of the returned candidate; and

(iv) that the contract for the execution of the work in question was subsisting on the date of filing of the nomination papers or on the date of scrutiny.

By the time the parties argued this petition, they were agreed that we should give our decision on the assumption that the first two conditions precedent referred to above for disqualifying the respondent have been satisfied. Whereas the counsel for the respondent half-heartedly raised a little controversy about point No. (iii) to which controversy a reference will be made immediately, the real dispute centres round question No. (iv). Mr. Sibal's argument on point No. (iii) was that despite proving all other ingredients of section 9-A, the disqualification under that provision would continue only so long as the doing of the contract business or the carrying on of the trade in question continues to be the main or normal vocation of the returned candidate. In other words, the contention was that in order to fall within the mischief of section 9-A the qualification of the contract in question having been entered into "in the course of his trade or business" must continue to attach to the subsistance of the contract after it was entered into till the

crucial date. Mr. Sibal submitted that inasmuch as there was no evidence to show that at the time of the election in question, the respondent was carrying on the business of a contractor, he could not be said to have incurred the disqualification in question. We are unable to find any force in this submission. In our opinion the expression "in the course of his trade or business" has reference to the point of time at which the contract is "entered into" and does not qualify the expression "there subsists" in section 9-A. Keeping in view the policy of the law for enacting the disqualification in question, it appears that it is only the entering into a contract with the appropriate Government which must be in the course of the contractor's trade or business. Once it is found that a contract was entered into with the appropriate Government by the returned candidate, in the course of his trade or business, the mere fact that the returned candidate has, after entering into the contract but before the crucial date, given up the trade or business in question, though the contract is otherwise subsisting, would not take the returned candidate out of the mischief of section 9-A. We have, therefore, no hesitation in repelling this contention of Mr. Sibal.

(22) The result is that the first three ingredients of the disqualification as analysed by me above have been established against the respondent.

(23) The main and the only surviving question which calls for decision in this petition is whether the contract which was entered into by the respondent with the appropriate Government in February/June, 1963, subsisted till January/February, 1969, or not. In order to come to a proper decision on this question, we have to bear in mind the fact, as repeatedly conceded by the counsel for the petitioner, that it is the common case of both sides that none of the parties, i.e. neither the appropriate Government nor the respondent ever intended to have anything done by the respondent in connection with the construction of the additional Siswan Super-passage, Kamalpur near Rupar, after December 4, 1964. Though the respondent's case has been that this was the position since August 18, 1964, I have purposely mentioned the date in question as December 4, 1964, as the petitioner claimed that it was after that day that the appropriate Government expressely affirmed this position.

(24) The question of subsistence or termination of the contract has to be decided from two different angles. The first aspect appears

to be comparatively simple. The precise allegation (regarding the manner in which the contract was subsisting in January, 1969) made in the election petition, beyond which the petitioner cannot be allowed to travel, is that "the said construction work has not been completed nor the accounts have been settled and the parties have not been released from the obligation of the contract and the said contract.... still subsists and it subsisted on all material dates ....." This allegation is capable of being divided into the following three distinct parts :—

(i) that the contract is subsisting because it has not been completed;

(ii) that the contract is subsisting as the accounts of the respondent have not been settled by the appropriate Government; and

(iii) that the contract is subsisting because the parties have not been released from the obligations of the contract.

(25) It was fairly and frankly conceded by Mr. Kaushal that in view of the express terms of the contract entitling the respondent to cease work at any time, and in view of the clear intention of the Government not to have any further work on the additional Siswan Super-passage done from the respondent, that part of the contract which could have been performed by the respondent, if he had not ceased work on August 18, 1964, cannot be said to be the responsibility of the respondent, and it cannot be held that the contract in question is subsisting because the respondent has not completed the additional Siswan Super-passage.

(26) The next question relates to the settlement of accounts. This can only relate to the settlement of the claims of the respondent. The respondent appears to have rightly pointed out in his written statement that this allegation has been made by the petitioner in ignorance of the explanation added to section 9-A. Settlement of the accounts of the respondent by paying him for the work done is an abligation of the appropriate Government. This would indeed be one of the mutual obligations of the parties to the contract. If the only way in which the contract might have come to an end, would be by the full performance of the same, the mere fact that the obligation of the appropriate Government to settle the accounts

of the respondent has not yet been discharged, would have made the contract to subsist in accordance with the law laid down by the Supreme Court in the **case of Chatturbhuj Vithaldas Jasani** (2). But now the explanation to section 9-A would take it out of the ambit of the disqualification. The mere fact, therefore, that the accounts have not been settled and the claim of the respondent against the appropriate Government for part of the money due to him for the work actually done by him is pending, would not entitle us to hold, in the face of the explanation, that the contract is subsisting within the meaning of section 9-A of the Act.

(27) The allegation about the contract being still subsisting on the ground that the parties have not been released from the obligations of the contract is rather vague. The obligation of the respondent under the contract was to do the work. The corresponding obligation of the appropriate Government was to pay for the same. The petitioner has neither pleaded nor argued that the respondent has not been released by the appropriate Government from executing the work undertaken by him. The argument of Mr. Kaushal was that the work which has actually been done by the respondent is not according to the specifications, and is sub-standard and the respondent cannot claim to have been released from the obligation of the contract by doing sub-standard work. The petitioner cannot ask us to go into this supposed case as it has not been pleaded in the election petition. If the petitioner wanted to make out a case of this type on facts, he had to allege that the work had to be executed in accordance with certain given specifications, that the work in fact done by the respondent was not in accordance with those specifications, and that the appropriate Government was still holding the respondent responsible for rectifying the work and bringing it up to the desired standard. If the petitioner had taken up those pleas, the respondent would have replied to them and appropriate evidence might have been led by the parties on the basis of which we might have, if called upon to do so, pronounced on those matters. Whereas the case of the petitioner was that the statement of Sulakhan Singh P.W. 2 read with his report Exhibit P. W. 1/5 establishes the fact that appropriate Government is claiming that the work has not been done by the respondent according to specifications, Mr. Sibal submitted that Sulakhan Singh has not uttered a single word about the work being sub-standard and that what is alleged in his report cannot be read as substantive evidence in the absence of the witness having deposed to the same effect in Court. We find force in this contention of Mr. Sibal. If

the petitioner had taken up those pleas or even otherwise if we had found it necessary to go into this matter, we would have recalled Sulakhan Singh to enable the petitioner to examine him on the points on which he now wants to make submissions, and would have adopted the course to which reference has already been made by me, that is, of framing additional issues and to allow the parties to lead evidence on those issues before deciding these disputed questions of fact. In the circumstances of this case, however, it is wholly unnecessary to adopt that course for the simple reason that there is no definite plea of the petitioner in that respect, and it is settled law that no amount of evidence, even if led by the parties, can be looked into by the Court for deciding something which is not pleaded by the parties.

(28) The other aspect of the argument of Mr. Kaushal relating to ingrediant No. (iv) is this. He says that the explanation to section 9-A applies only to a case of full performance, and inasmuch as there is no evidence to show that the work actually done by the respondent was to the satisfaction of the State Government, the contract has not been fully performed. It was submitted that the mere fact that the Government had made counter-claims against the respondent is enough to prove that the Government was not satisfied with the quality of the work done by the respondent. According to the learned counsel, once it is found that the contract has not been fully performed, it must be held to be subsisting because at least some payment for the work done by the respondent is still admittedly due to him and the explanation will not be attracted, except in a case where the contract has already been fully performed. I think there is an obvious fallacy in this reasoning of Mr. Kaushal. He seems to think that a contract must always continue to subsist so long, as it is not fully performed. In fact a contract may be discharged in various ways and its discharge by full performance is only one of such ways. This argument of Mr. Kaushal must be repelled in view the judgment of the Supreme Court in *Atam Das* v. *Suriya Parshad* (3) and the judgment of a Division Bench of the Madhya Pradesh High Court in *Gauri Shankar Shastri* v. *Mayadhardas son of Rameshwardas and others* (4), as those appear to be on all fours with this case. The brief facts leading to the judgment of the Supreme Court in *Atam Das's case* (3) were these. The "repairing work of Ratnavali

(3) Civil App. 1706 of 1967 decided by Supreme Court on 11th March, 1969.

(4) A.I.R. 1959 M.P. 39.

Burj" at Bhopal taken by Atam Das on contract from the Government of India in February, 1954, was left by him incomplete in 1956, and was neither resumed by him thereafter nor got completed from any other agency. The Director General of Archaeology complained that even the work done by the contractor was defective. The contractor did not admit this. The account of Atam Das had not been settled. It was in his situation that Atam Das filed his nomination paper on January 19, 1967, and was eventually elected to the Lok Sabha.

(29) In the election petition filed by Suriya Parshad the election of Atam Das was set aside by the Madhya Pradesh High Court on the solitary ground that he was disqualified on the crucial date under section 9-A of the Act because the abovesaid contract was subsisting till then. By its order, dated March 20, 1968, the Supreme Court held that the evidence produced to prove that the contract was subsisting was inconclusive and no inference of the subsistence of the contract could be drawn from the fact that the contract had not been completed. The case was remanded to the High Court for recording evidence and findings on three additional issues in order to obtain more definite evidence on the question of discharge of the contract by breach or by abandonment. After recording additional evidence, the High Court returned the case to the Supreme Court with the findings, (i) that the contracted work had not been got completed either departmentally or through some other contractor; (ii) that none of the parties having insisted on the performance of the contract for an inordinate length of time, the parties were deemed to have mutually abandoned the contract; and (iii) that in such circumstances, the contract stood discharged.

(30) While finally allowing Atam Das's appeal by judgment, dated March 11, 1969, the Supreme Court held (i) that even in the absence of an express plea of the respondent about the contract having been determined by abandonment, the trial of the issue, about the subsistence or otherwise of a contract, necessarily included an inquiry into the question whether the contract was completed or determined at the crucial date or not; (ii) that "failure to settle the respective claims (of the contractor and the Government) does not evidence an intention to keep the original contract subsisting"; (iii) that the demand for rectification of the defects did not evidence an intention either to keep the original contract outstanding or to enter into a fresh contract for carrying out the repairs in the work already executed; and (iv) that

studied inaction for nearly six years by Atam Das as well as by the Government led to the inference of abandonment of the contract.

(31) The only other case which appears to be directly in point for deciding this petition is the earlier judgment of a Division Bench of the Madhya Pradesh High Court (M. Hidayatullah, C. J., and G. P. Bhutt, J.), in *Gauri Shankar Shastri* v. *Mayadhardas, son of Rameshwardas and others,* (4). The facts of that case were these. The returned candidate had entered into a contract to print and supply a part of the Hindi Electoral Rolls of the Madhya Pradesh Legislative Assembly. He deposited the security and agreed to complete the work within 45 days. Before the expiry of the stipulated period, he intimated in writing to the Government about his inability to execute the contract. In reply, the Government wrote to the contractor to return the manuscript copies of the rolls and the paper supplied to him. This was done and the work was executed by some other party. The Government then ordered the recovery of Rs. 1,933/13, from Gauri Shankar Shastri as arrears of land revenue representing the extra cost for getting the Rolls printed from some other contractor. Gauri Shankar thereafter contested the election, and succeeded therein. His election was sought to be set aside on the ground that he was disqualified under section 7(d) of the Act and the acceptance of his nomination papers was illegal. The Tribunal allowed the election petition and declared the election of Gauri Shankar to be void on two grounds, viz., (i) that the returned candidate having admitted the taking of the contract for printing the Rolls, it was for him to plead and prove that the contract was not subsisting on the date of the acceptannce of his nomination papers which burden of proof he had not discharged, and that (ii) the contract was deemed to subsist and the disqualification in question was still operating till recovery of the extra charge and penalty levied on Gauri Shankar by the Government had been effected. The Tribunal based its decision on the judgment of the Supreme Court in the *case of Chatturbhuj Vithaldas Jasani* (2) (supra). On appeal against the Tribunal's order to the Madhya Pradesh High Court, the decision of the Tribunal on the first point was not affirmed. After referring to the facts of *Chatturbhuj Vithuldas Jasani's case* (2), and to the decision of the Supreme Court therein, the learned Chief Justice of the Madhya Pradesh High Court held that "there was no question of performance of the contract because the contract had been breached already and its performance was out of the question inasmuch as the contract was already performed by another printing press." It was noticed that all that remained was to enforce the penal clauses of the

agreement against the contractor for the breach of the contract committed by him, and it was held that a contract is discharged in various ways and that the discharge of the contract by performance is merely one of such ways. One other way in which the contract is discharged is by breach by one of the parties and the rescission of the contract on accepting the breach by the other. That there are claims rising from or under the contract does not show that the contract itself is subsisting. Their Lordships further observed that where, before the time has expired, one party has intimated the other of its inability or its unwillingness to perform the contract and the other party has accepted that as the breach of the contract and has rescinded it, the contract must be treated as discharged by breach. It was specifically pointed out that the fact that claims for damages etc. arise under the contract and that the agreement may have to be referred to in that connection does not show that the contract 'for the supply of goods or for the execution of any works' is subsisting. M. Hidayatullah, C. J., observed that the short question to be answered was whether by the existence of the terms relating to the right of the Government to get the work executed at the risk of the contractor as to damages and entitling parties to refer their dispute to arbitration, one could say that the returned candidate continued to hold a contract for the supply of goods or for the execution of any work from the Government. It was held that the prohibition contained in section 7(d) of the Act does not embrace such a state of affairs where the breach having already been committed and accepted by the aggrieved party, the contract must be treated as rescinded, and, therefore, at an end. *Gauri Shankar's case* (4), was distinguished from the facts of *Chatturbhuj Vithaldas Jasani's case* (2), decided by the Supreme Court in the following words :—

> "We have read carefully the decision of their Lordships of the Supreme Court. We do not think there is any observation therein which states the law in such general terms that the subsistance of a contract which has not been fully performed by both sides can be equated to the breach of the contract by one party and the acceptance of the breach and recision of the contract by the other."

It was emphasised that *Gauri Shankar's case* (4), was one where the breach had been accepted by the other side, and it was

not a case of "discharge by performance" in which one side is still to execute his part of the contract and the contract is not fully discharged. It was held that both sides had elected not to proceed with the performance and had agreed to terminate the contract, and to treat it as rescined. The principles enunciated by their Lordships of the Supreme Court in *Chatturbhuj Vithaldas Jasani's case* (2), were, therefore, held to be inapplicable to the *case of Gauri Shankar* (4). The Division Bench judgment of the Madhya Pradesh High Court emphasised that the mere enforcibility of the arbitration clause at the instance of the returned candidate does not denote that the contract subsists. Distinction between liability to pay the price on the one hand and the enforcement of a claim for damages on the other was clearly brought out. It was repeatedly observed that the law laid down in *Chatturbhuj Vithaldas Jasani's case* (2), was meant only for cases of performance by one side and performance due by the other, and that the analogy of that case could not serve as a binding precedent in the determination of *Gauri Shankar's case* (4), where the contract had been put an end to by the voluntary breach of one side and the acceptance of the breach by the other resulting in its rescission. It was held, that in such a case the contract must be regarded as ended and the mere fact that a claim for damages or arbitration proceedings to determine the effect of breach are pending or not the considerations which flow naturally from the wording of section 7(d). In order to bring a case under section 7(d), Court should be in a position to see that the contract for the supply of goods or for the execution of work subsists between the Government and the returned candidate. It was on the basis of the law laid down to the above effect that Gauri Shankar's appeal was allowed and the decision of the Tribunal declaring his election to be void was set aside.

(32) The law laid down by the Supreme Court in *Atam Das's case* (3) and the judgment of Hidayatullah, C.J., as Chief Justice of the Madhya Pradesh High Court, in *Gauri Shankar's case* (4), clearly show that *Chatturbhuj Bithaldas Jasani's case* (2), relates to a contract ceasing to subsist only in one manner, i.e., by full performance and not to a contract coming to an end in various other possible manners.

(33) The judgment of the Supreme Court in *Brij Mohan Singh* v. *Priya Brat Narain Sinha and others* (5), does not appeal

(5) (1965) 3 S.C.R. 861.

to be in point. It was referred to by Mr. Kaushal only in order to argue that it was for the respondent to prove that the contract once entered into had ceased to subsist. The suggestion made by Mr. Kaushal was that if once the existence of a contract of a specified nature between the returned candidate and the appropriate Government is proved, the burden of showing that the contract has ceased to subsist or that the case falls within the four corners of the explanation to section 9-A, lies on the returned candidate. On the other hand the contention of Mr. Sibal was that the burden of proving the disqualification lies heavily on the election petitioner and a duty is cast on the petitioner not only to prove that the contract was once entered into, but also that it subsisted till the crucial dates. This controversy has now been set at rest by the decision of the Supreme Court in *Atam Das's case* (3). In the order of remand passed by the Supreme Court on March 20, 1968, it was observed, *inter alia*, as follows: —

> "The burden of proving the charge of disqualification or corrupt practice in an election dispute lies heavily upon the person who makes that charge, and the charge must be established by evidence which is beyond reasonable doubts."

In their final order, dated March 11, 1969, their Lordships further observed in *Atam Das's case* (3) on the question of *onus probandi* as follows :—

> "The burden of proving that issue (the issue relating to the disqualification under section 9-A of the Act) lay upon the respondent. By merely proving that the candidate had at sometime in the past entered into a contract to execute works, the burden was not discharged; it had further to be established that the contract was subsisting at the crucial date. In making that enquiry it was necessary to decide whether the contract was completed or if, not completed, it was renounced. Whether there was a subsisting contract being the issue to be decided, the trial necessarily included an enquiry, *even in the absence of an express plea* whether the contract was completed *or determined* at the crucial date."

[Underlined by me (Italics in this report)].

The abovequoted observations of the Supreme Court in *Atam Das's case* (3) lead me to the irrisistible conclusion that it is for the petitioner to prove each one of the ingredients of section 9-A.

(34) The next case on which Mr. Kaushal relied is the judgment of the Supreme Court in *Lalitershwar Prasad Sahi* v. *Bateshwar Prasad and others* (6). The only material point decided in that case which is relevant for the persent controversy was that a contract for the supply of goods continued to subsist till payment is made and the contract is fully discharged by performance on both sides. This case does not appear to advance the matter any further than the judgment of the Supreme Court in *Chatturbhuj Vithaldas Jasani's case* (2). The case of *Abdul Rahiman Khan* v. *Sadasiva Tripathi*, (7), was under section 9-A. In that case it was held that where the contract has not been wholly performed or completed by the contractor, unless it is shown that the contract had been determined by mutual consent, the contractor cannot claim that there was no subsisting contract at the date of the filing of the nomination papers, and that such a case does not fall within the explanation to sector 9-A. After appraising the entire evidence on the record of the case, the Supreme Court held that the contract had not been wholly performed by Abdul Rahiman Khan, and he had neither been able to show that he had completed the contract nor had he been able to prove that the same had been determined by mutual assent. It is significant that the Supreme Court clearly pointed out in *Abdul Rahiman Khan's case* (supra) (7), that full performance was not the only manner in which a contract could cease to subsist and that in spite of full performance not having been made, the contract would still not subsist if it could be shown that it had been determined by mutual assent.

(35) In *Konappa Rudrappa Nadgouda* v. *Vishwanath Reddy and another* (8), another case under the present section 9-A, it was held by Hidayatullah, C.J., that if the work is completed, it would not mean that the contract is subsisting merely because a glass pane is found broken or a tower bolt or a drop bolt or a handle has not been fixed where it should have been. The learned Chief Justice observed that the law is not so strict as all that and a sensible view of the

(6) (1966) 2 S.C.R. 63.
(7) A.I.R. 1969 S.C. 302.
(8) A.I.R. 1969 S.C. 447.

section will have to be taken. It was emphasised that the right of a person to stand for an election is a valuable right just as a right of a person to vote, and that it is the essence of the law of election, that candidates must be free to perform their duties without any personal motives being attributed to them. It was held that a contractor who is still holding a contract" with Government is considered disqualified, because he is in a position after successful election to get concession for himself "in the performane of his contract." The Supreme Court emphasised that such a situation would arise only where the contract has not been fully performed although what is full performance of a contract of completion is a matter which depends on the circumstances of each case. In that case so far as the contract of building was concerned, the finding was that the contract had been completed recently, but the flooring had to be re-done and various other things were left unfinished which had to be completed by the contractor. On those findings of fact it was held that it could not be said that the contract had been fully performed, because the contract of execution as such was still to be performed as some part had been found to be defective and had to be done again. In that context it was observed that in essence it was a part of the contract of execution to rectify the defects because no execution could be said to be proper or complete till it was properly executed. Hidayatullah, C:J:, held that the amendment of the original provision by adding the explanation thereto took away from the ban of the section the subsistence of one side of the contract, viz., the perormance thereof by Government by paying for the work executed. and that in other respects the law remained very much the same as it was when the *case of Chatturbhuj Vithaldas Jasani* (2) (supra) was decided.

(36) Coming back to the facts of the case before us, it is obvious that the mere fact that a counter-claim has been made by the Government does not show that it relates to the work done by the petitioner being defective. Mr. Kaushal submitted in this connection that the contract must be deemed to subsist so long as (a) either a certificate of the appropriate Government is produced by the respondent to the effect that he has executed the work in accordance with specifications, or (b) the respondent produces the judgment or order of a tribunal or a Court in his favour on the question of his having executed the work to the satisfaction of the State Government Counsel submits that so long as this is not done, it cannot be held that the contract has been "fully performed" by the respondent within the meaning of that expression used in the explanation to section 9-A. I

think this is merely another way of arguing that the burden of proving that the contract does not subsist is on the elected candidate. The Supreme Court has held otherwise. This argument has, therefore, to be rejected.

(37) Mr. Kaushal lastly argued that the condition precedent for bringing the case within the four corners of the explanation to section 9-A (i.e., for holding that the contract does not subsist despite money being still due from the appropriate Government to the contractor for the work done by him) is that the contractor must have "fully performed" the contract. Learned counsel for the petitioner concedes that by insisting on full performance of the contract, he may not be understood to suggest that the contract would continue to subsist till the respondent executed the remaining work of the construction of the additional Siswan Super-passage, that is, the work which had not been done by the respondent at all but could have been done by him after August 18, 1964. His argument was that "full performance" in contradistinction to mere "performance" means performance according to specifications and to the satisfaction of the appropriate Government. We are unable to agree with this contention and we think, in the context of the various judgments to which reference has already been made. full performance in the explanation to section 9-A merely means that the contarctor has performed the work and the appropriate Government has either no right to ask for rectification of any part of the work done or has by consent relinquished or given up its right to insist on any better performance of the contract or has otherwise agreed not to have any further work performed in connection with the contract by the contrator. All that "full performance" appears to us to convey is that it should be established that nothing more remains to be done by the contractor in connection with "the execution of the ontract." The explanation is a part of the section. "Full performance" has relation to the contract "for the execution of any work" undertaken by the appropriate Government. Once it has been conceded by the counsel for the petitioner, and we think rightly, that the appropriate Government was neither entitled under the terms of the contract to compel the respondent to execute any further works nor to execute any job for the rectification of the alleged defective works, it cannot be argued that the contract for the execution of the work of construction of the additional Siswan Superpassage was subsisting at the relevant time. We are further of the opinion that it is not necessary for the respondent to prove full performance of the contract so as to seek the shelter of the explana-

tion', if it is proved that the contract had otherwise come to an end. A contract may cease to subsist in numerous ways, for example:—

(i) It may cease to subsist because it may have been fully performed by both sides. All the parties to the contract might have fully discharged their respective and mutual obligations. This will be called discharge by full performance. *Chatturbhuj Vithaldas Jasani* (2), had claimed full performance but had failed as Government's obligation of paying for the completed supplies had not yet been discharged and at that time there was no provision in section 7(d) corresponding to the explanation to section 9-A).

(ii) A contract may be brought to an end by one party committing breach thereof and the other party accepting the breach and holding the contractor responsible for payment of damages without keeping the contract alive even though claims and counter-claims of the parties may be pending. *Gauri Shankar's case* (4), decided by the Madhya Pradesh High Court falls in this class. Chitty on Contracts (23rd Edition) refers to discharge of this type in Article 1331 on page 631.

(iii) A contract may be brought to an end by abandonment by the contractor coupled with the non-existence or non-exercise of the appropriate Government's authority to insist on its performance. In such a case, the contract cannot be deemed to subsist, though the work may have been left incomplete; and the work done may be defective. *Atam Das's case* (3) decided by the Supreme Court falls in this class;

(iv) A contract may come to an end by frustration recognised by law ;

(v) A contract may be brought to an end by implied or express mutual consent of the contracting parties despite the fact that claims and counter-claims of the parties in respect of the work done by the contractor still remain unsettled, and

(vi) A contract will cease to subsist if an Act of a competent Legislature or other valid law brings it to an end. (An

example of cases falling in this category is of forward contracts of certain types which are from time to time rescinded by legislative interference.)

(38) There may be various other ways of bringing a contract to an end. A contract may cease to subsist without having been fully performed, by being rescinded, by being abrogated, by novation, by substitution, by frustration, by mutual consent, by abandonment and in various other ways. In any event it is clear that full performance of the contract is not the only way in which a contract ceases to subsist. The law laid down by the Supreme Court in *Chatturbhuj Vithaldas Jasani's ase* (2), would, in our respectful opinion, apply only to cases where the contract is claimed to have come to an end by full performance. This is what the learned Judges of the Madhya Pradesh High Court held in *Gauri Shankar's case* (4), and we are in full and respectful agreement with them.

(39) Another thing which is certain is that the mere fact that there are defects in the work done, as was the situation in *Gauri Chankar's case,* (4) or that the work has been left incomplete or substandard, as was the situation in *Atam Das's case* (3), would not make a contract to subsist if it is otherwise at an end. We are also of the opinion that what must subsist for the purposes of section 9-A is the contract "for the execution of the work" and not merely claims or counter-claims arising out of the contract. Claim for payment for the work done under and in acordance with a contract is an obligation directly related to the execution of the works and would make the contract to subsist, but this would not be so in case of contract being brought to an end by abandonment, cancellation, rescision, breach, or legislative interference. The Division Bench judgment of the Madhya Pradesh High Court and the law laid down by the Supreme Court in *Atam Das's case* (3), leave no doubt in my mind that the mere fact that claims and counter-claims are pending in connection with the contract which had been brought to an end by mutual consent of the parties as long ago as in the end of 1964, would not make the contract to subsist. If Mr. Kaushal's contention—to the effect that the contract between the Punjab Government and the respondent subsists merely beause there are alleged defects in the work done—were to be correct, the Supreme Court would never have remanded *Atam Das's case* (3), for further enquiry. In ultimate analysis it would, in our opinion, depend on the terms of a contract, the intention and conduct of the contracting parties and the facts and circumstances of each case whether at a particular point of time the contract between them subsisted or not. In the present case no one has

asked the respondent to resume or rectify the work for the last five years and nothing remains to be done by the respondent in the matter of execution of the contract. Since 1964, both sides have taken it for granted that the respondent has abandoned the contract for execution of the works in question.

(40) No other argument having been addressed to us in this behalf, we have no hesitation in holding on the facts and in the circumstances of this case, that the contract for the construction of additional Siswan Super-pasage, Kamalpur, Rupar, which had been entered into by the respondent in the course of his business with the Punjab Government in 1963, ceased to subsist before the end of December, 1964, and was, therefore, not subsisting in January/February, 1969. We accordingly hold that the respondent was not disqualified under section 9-A of the Act either on the date of filing his nomination papers or at any time thereafter. The election of the respondent cannot, therefore, be set aside under section 100(1)(c) of the Act as the respondent is not shown to have been disqualified to be chosen to fill the seat in the Punjab Legislature to which he was elected.

(41) For the foregoing reasons, this petition fails and is dismissed with costs. Counsel's fee Rs. 1,000/-:

D. K. Mahajan, J.—I agree.

K. S. K.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

KISHAN SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 654 of 1969

September 22, 1969.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955 as amended by XXXVII of 1962)—Section 32-D—Interpretation of—Collector's order scrutinised under Sections 32-D(3) or 32-D(4)—Whether can be re-opened Collector—Whether has jurisdiction to review his order passed under section