
(2007) 05 AHC CK 0261
In the Allahabad High Court

Jai Singh Yadav

APPELLANT

Vs

Additional District Judge (Court No. 1) and Others

RESPONDENT

Date of Decision : 25-05-2007

Acts Referred:

COMPANIES ACT, 1956 — Section 617
Constitution of India, 1950 — Article 101, 191

Citation : AIR 2007 All 165 : (2007) 6 AWC 5818 : (2007) 103 RD 121

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Shri Ashok Khare, learned Senior Advocate assisted by Shri S.D. Shukla for petitioner and Shri Shashi Nandan, learned Senior Advocate assisted by Shri B.N. Misra for contesting respondent. Learned standing counsel appears for state respondents.

2. With the consent of parties, the writ petition was heard at the admission stage and is being finally decided.

3. A notification was issued on 29.7.2005 for elections of Gram Panchayat Sandwa Kalan, Development Block Chaka, District Allahabad. The petitioner and respondent Nos. 4 to 7 filed their nomination papers for the post of pradhan. The objections filed by the petitioner to the nomination papers of respondent Nos. 4 and 5 were rejected. In the elections the respondent No. 4 was declared elected on 28.8.2005 with maximum votes followed by respondent No. 5 and the petitioner.

4. The petitioner filed an election petition in September 2005. The Sub Divisional Magistrate/Election Tribunal Karchhana, Allahabad by his judgment dated 7.9.2006 allowed the election petition and held that respondent Nos. 4 and 5 were disqualified from contesting the elections and declared the petitioner as duly elected pradhan. It is alleged that on 13.9.2006, the petitioner was

administered oath of office and the block Development Officer forwarded his attested signatures on 16.9.2006 for operation of bank account.

5. Shri Shiv Prasad Yadav filed a Revision No. 470 of 2006 in which the District Judge did not grant any interim order. The revision, however, was allowed on 24.2.2007 setting aside the order of Sub Divisional Magistrate, Karchhana, Allahabad giving rise to this writ petition.

6. The short question that arises for consideration in this case is whether Shri Shiv Prasad Yadav respondent No. 4, who secured the highest number of votes was disqualified for being elected as pradhan u/s 5A(c) of UP Panchayat Raj Act 1947, as at the time of his election, he was an employee of Bharat Pumps and Compressor Ltd Naini, Allahabad which is a Government of India Undertakings with 100% shares held by the Central Government and was holding an office of profit in the Corporation owned and controlled by the Central Government.

7. The Additional District Judge, Court No. 1, Allahabad, the revisional court, has relied upon a Division Bench judgment of this Court in Chandrawati Devi v. Phool Chand Bind, Alld. H.C. 2004 (97) R.D. 347 in which relying upon a judgment of Supreme Court in M.V. Raja Shekaran and Ors. v. Vatal Nagarai and Ors. 2002 (2) SCC and Pradyut Bordoloi v. Swapan Roy 2001 92 SCC 19. in a matter in which the plea of disqualification u/s 5A(c) of the UP Panchayat Raj Act 1947 was raised upholding the judgment of learned Single Judge, that the returned candidate, an employee of Food Corporation of India, which is a statutory corporation is not disqualified as the Central Government does not have any control over the Corporation and its employee in its day-to-day functioning. The revisional court after going through the entire case law and the tests laid down in Pradyut Bordoloi's case where the appellant was working as Clerk in Coal India Limited in which the Central Government had 100% share held following Supreme Court's judgment are; that the tests to find out answers to questions framed in Shivmurthy case are; (1) whether the Government makes the appointment; (2) whether the Government has the right to remove or dismiss the holder; (3) whether the Government pays the remuneration; (4) what are the functions of the holder; does he perform them for the government; and (5) does the Government exercise any control over the performance of those functions. The revisional court distinguished the case of Java Bachchan v. Union of India and Ors. 2006 (64) A.L.R. 1988 S.C. which related to MLAs and MPs, chose to rely upon Chandrawati Devi's case and allowed the revision, with the findings that the tests laid down are not applicable to the employment of the returned candidate and thus he was not disqualified to contest the election of pradhan of the village.

8. Shri Ashok Khare, learned Senior Advocate submits that the disqualification u/s 5A(c) of the Act is much wider than disqualification under Article 101 and 191 of the Constitution of India. The tests under the Constitution, whether an office of profit is under the Government, are not relevant for testing the office of profit in a corporation owned and controlled by the Government. The revisional court

has failed to notice the difference of language. The words "or a local authority other than a gram panchayat or nyay panchayat or a body or corporation owned or controlled by a State Government or the Central Government" are relevant for the purposes of the case. Shri Ashok Khare further submits relying upon Pradyut Bordoloi's and M.V. Raja Shekaran and other cases that in Chandrawati Devi's case the Food Corporation of India is a statutory corporation created by the statute and in that case the Central Government did not have any effective control over the corporation or its employee in its day-to-day functioning. In the case in hand the corporation is owned and controlled by the Central Government and that the services of respondent No. 4 are directly under the control of the Central Government. He is getting his salary from the Central Government and he can be removed by the Central Government.

9. Shri Ashok Khare further submits, relying upon the doctrine of "thrown away" votes, that the voters were aware of the disqualification of respondent No. 4 and that since there were only three contesting candidates namely Jai Singh Yadav, Shiv Prasad yadav and Lai Bahadur and remaining namely Ram Surat Yadav and Suresh Kumar Yadav have withdrawn their nomination papers. The contest was only between petitioner and respondent No. 4 and thus relying upon Konappa Rudrappa Nadgouda Vs. Vishwanath Reddy and Another, and Rule 72 of UP Panchayat Raj (Elections of Members, Pradhan and Up Pradhans) Rules 1994, the declaration of petitioner as pradhan by the Sub Divisional Magistrate was valid.

10. Shri Shashi Nandan, defending the revisional judgment, submits that there is not much difference between the case in hand and the case decided by the Division Bench in Chandrawati Devi's case where the employment under the State Government or Central Government or a local authority other than Gram Panchayat and Nyay Panchayat or a Board, Body or Corporation owned and controlled by the State Government or the Central Government, the test is whether the State Government or the Central Government has any control over the corporation and its employee in its day-to-day functioning. Shri Shashi Nandan submits that it does not make any difference whether the corporation is a statutory Corporation or a Government Company with or 100% shares are held by the Central Government inasmuch as the tests of control over the employees is a relevant factor. The import question is to be asked as to whether the Government has powers to appoint or remove the person from office.

11. I have carefully gone through the submissions and the judgments of die Supreme Court and Chandrawati Devi's case and do not find any error of law in the opinion expressed by the revisional court. The respondent No. 4 is serving as semi skilled labourer in Bharat Pump and Compressor Ltd, Naini Allahabad in which 100% shares are held by the Central Government. The corporation is a company u/s 617 of the Companies Act, 1956. The day-to-day management of the corporation, is with the Board of Directors and not by the Central Government. The Central Government does not have direct control over the services of the employees of the Corporation. The Central Government neither

appoints nor directly pays the salary to the employees of the corporation and does not have powers to take disciplinary action against them. The test in such case for deciding whether a person holds office of profit under the State Government or Central Government or the Corporation wholly owned by the State Government or Central Government is the extent of control, the Government exercises over such employee. The disqualification in the matter of election of MLAs and MPs under Article 101 and 191 and in the matter of language of Section 5A(c) of the UP Panchayat Raj Act, 1947, do not make such a difference as the tests laid down by the Supreme Court in both the cases is the same.

12. The revisional court correctly appreciated the facts and the law and has not made any error of law or jurisdiction in allowing the revision and to set aside the judgment of the Sub Divisional Magistrate. The writ petition is dismissed.