
(2007) 05 AHC CK 0126
In the Allahabad High Court

Mrityunjaya Kumar Singh

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 : (2007) 5 ADJ 518 : (2007) 6 AWC 5523 : (2007) 103 RD 167

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. Mishra, 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 Pura Pandey, Development Block Chaka, district Allahabad Shri Bhagwat Prasad - respondent no. 4 was declared as elected having secured highest votes on 28.8.2005.

4. The petitioner filed an election petition in September 2005, on the ground that Shri Bhagwat Prasad was disqualified as he is an employee, of the Indian Telephone Industries Limited, Naini and holds office of profit as the Indian Telephone Industries Limited is wholly owned and controlled with 100% shares with the Central Government and as such disqualified u/s 5A(c) of UP Panchayat Raj Act, 1947 to hold the office of the pradhan, The Sub Divisional Magistrate/ Election Tribunal Karchhana Allahabad by his judgment dated 11.9.2006 held that respondent no. 4 holds office of profits and allowed the election petition

declaring the petitioner as duly elected pradhan. The petitioner was administered oath office on 15.9.2006 and his signatures were forwarded for operating bank account.

5. Shri Bhagwat Prasad-respondent No. 4 filed a Revision No. 471 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 Bhagwat Prasad-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 Indian Telephone Industries 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 AIIId. 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 Nagaraj and Ors. 2002 (2) S.C.C. and Pradyut Bordoloi v. Swapan Roy 2001 92 S.C.C. 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 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 the 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 Indian Telephone Industries 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.