

Smt. Chandrawati Devi Vs Phoolchand Bind and Others

Court: Allahabad High Court

Date of Decision: Aug. 19, 2004

Acts Referred: Food Corporations Act, 1964 " Section 7
Uttar Pradesh Panchayat Raj Act, 1947 " Section 5A

Citation: (2005) 1 AWC 782

Hon'ble Judges: Umeshwar Pandey, J; M. Katju, J

Bench: Division Bench

Advocate: B.N. Singh, H.N. Singh and R.K. Pandey, for the Appellant; V.K. Singh, S.C., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M. Katju, J.

This special appeal has been filed against the impugned judgment passed by the learned single Judge dated 19.2.2003. We

have heard learned counsel for the parties and have perused the record.

2. The respondent No. 1 in this appeal was elected as Pradhan of Gram Panchayat Gotwa, Vikas Khand Bhadurpur, Tahsil Phoolpur, district

Allahabad. By an order dated 1.8.2002, he was removed from office on the ground that he is disqualified u/s 5A (c) of the U. P. Panchayat Raj

Act.

3. Against that order Writ Petition No. 33767 of 2002 was filed in this Court and by its judgment dated 20.8.2002 this Court set aside the said

order of on the ground that opportunity of hearing was not given. However, the District Magistrate, Allahabad, was directed to pass a fresh order

after giving opportunity of hearing to the petitioner. By the impugned order dated 8.1.2003 the District Magistrate, Allahabad, again removed the

petitioner on the ground that he was disqualified to hold the office of the Pradhan in view of Section 5A (c) of the Act as he was working as

Assistant Workman with the Food Corporation of India and was drawing wages as a permanent workman.

4. Section 5A (c) states :

5A. Disqualification for membership.--A person shall be disqualified for being chosen as, and for being the Pradhan or a member of Gram

Panchayat, if he :

(a)

(b)

(c). holds any office of profit under a State Government or the Central Government or a local authority, other than a Gram Panchayat or Nyaya

Panchayat or a Board. Body or Corporation owned or controlled by a State Government or the Central Government.

5. The short question in this case therefore, is whether the respondent No. 1 was holding an office of profit under the State Government or Central

Government or a Corporation owned or controlled by the State Government or Central Government.

6. The learned single Judge in the impugned judgment has referred to a large number of decisions and we have perused the same. It has been held

in these decisions that the question involved depends on the facts peculiar to each case. In M.V. Rajashekar and Others Vs. Vatal Nagaraj and

Others, , the Supreme Court observed that the underlying idea is that the employee should be free from any pressure from the Government so that

there can be no conflict of interest in discharge of his independent duties as an M.L.A. or the M.L.C. In Pradyut Bodoloi v. Swapan Roy (2001) 2

SCC 19 the Supreme Court observed that the first and foremost question to be asked is whether the Government has power to appoint or

remove the persons from office. If the answer is negative no further enquiry is called for, but if the answer is positive, further probe has to be done

and the totality of the facts and circumstances have to be considered. It has to be found whether on account of holding such office would the

Government be in a position to influence him so as to interfere with his independence in functioning as an M.L.A. and/or would his holding the two

offices-one under the Government and the other being an M.L.A. involve a conflict of interests.

7. In the present case there is no dispute that the respondent No. 1 is an employee of the Food Corporation of India and is getting salary from the

Food Corporation of India. The question, however, is whether the Food Corporation of India is owned or controlled by the Central Government.

8. We agree with the learned single Judge that the Food Corporation of India is not owned or controlled by the Central Government. The Food

Corporation of India is a statutory Corporation established under the Food Corporations Act, 1964. The management of the Food Corporation of

India is vested in the Board of Directors. The function of the Corporation are to be carried out by the Board of Management. Once the Directors

are appointed u/s 7 of the Food Corporations Act they constitute an Executive Committee to carry out the functions of the Corporation. Hence at

the local level the District Manager and other employees are working under the directions of the Executive Committee. The Central Government

does not have any control over the Corporation or its employees in its day-to-day functioning. The Central Government does not have power to

make appointments or remove employees. We agree with the learned single Judge in his view that the respondent No. 1 being a workman of the

Food Corporation of India does not and cannot be influenced by the Government, and there is no conflict of interest in these two positions.

9. Thus, there is no infirmity in the impugned judgment and this appeal is dismissed.