(2004) 08 AHC CK 0267

Allahabad High Court

Case No: Special Appeal No. 183 of 2003

Smt. Chandrawati Devi		APPELLANT
	Vs	
Phoolchand Bind and Others		RESPONDENT

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 is 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. Rajashekaran 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 !s 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.