

Aklu Ram Mahto

Vs

Rajendra Mahto

Civil Appeals No. 7538 of 1997 with No. 7644 of 1997

(Suujata V. Manohar, K. Venkataswami JJ)

01.04.1999

JUDGMENT

SMT SUJATA V. MANOHAR, J. -

1. These appeals have been filed under Section 116-A of the Representation of the People Act, 1951. In January 1995 the Election Commission of India issued a notification for election, inter alia, to the Legislative Assembly of the State of Bihar. The last date for filing nomination papers for Bokaro Assembly Constituency No. 279 was 23-1-1995. The appellant and the respondents in the two appeals filed their nomination papers from Bokaro Assembly Constituency. Scrutiny of nomination papers took place on 24-1-1995. The nominations of the respondents in the two place on 24-1-1995. The nomination of the respondents in the two appeals were rejected on the ground that the respondents Rajendra Mahto and Ashok Kumar Srivastava were Managing Agents of the Bokaro Steel Plant belonging to Steel Authority of India Ltd. Hence they were disqualified under Section 10 of the Representation of the People Act, 1951.

2. At the election, the appellant was elected from Bokaro Assembly Constituency. The two respondents filed separate election petitions challenging the election of the appellant on the ground that their nomination papers were improperly rejected. They have succeeded in the election petitions before the High Court. The High Court has set aside the election of the appellant on the ground that the nomination papers of the two respondents were wrongly rejected. The appellant has filed the present appeals from the decision of the High Court in the two election petitions.

3. The respondent Rajendra Mahto (in Civil Appeal No. 7538 of 1997) was working as a Khalashi in the Bokaro Steel Plant of Steel Authority of India Ltd. at the material time. This is a Level III post in the said plant. The respondent Ashok Srivastava (in Civil Appeal No. 7644 of 1997) was working as a Meter Reader in the Bokaro Steel Plant of Steel Authority of India Ltd. This is a Level VII post. Steel Authority of India Ltd. is a company in which the entire shareholding is held by the Union Government. Section 10 of the Representation of the People Act, 1951 provides as follows :

"10. Disqualification for office under Government company.- A person shall be disqualified if, and for so long as, he is a managing agent, manager or secretary of any company or corporation (other than a cooperative society) in the capital of which the appropriate Government has not less than twenty-five per share."

4. The Returning Officer for 279 Bokaro Legislative Assembly Constituency in his order has held the nomination papers filed by Rajendra Mahto and Ashok Kumar Srivastava invalid on the ground that the two respondents are employees of the Bokaro Steel Plant and they are the Managing Agents

of the Bokaro Steel Plant. Hence they are disqualified under Section 10 of the Representation of the People Act, 1951.

5. The order of the Returning Officer is, on the face of it, unsustainable. Rajendra Mahto who was at the post of Khalashi which is at level L-III in the gradation of workers, is holding a non-executive post. Ashok Kumar Srivastava who was working as a Meter Reader was working at level L-VII. Both these posts are non-executive posts. Section 10 disqualified only the Managing Agent, Secretary or Manager of any company, in the capital of which the appropriate Government has not less than 25% shareholding. Obviously, neither of them is either Secretary or Manager. A Managing Agent is a person who has been entrusted with the management of the whole or substantially the whole of the affairs of a company. Managing agencies have been abolished with effect from 3-4-1970 by reason of the Companies Act, 1956 being amended by Act 17 of 1969. The Companies Act contains the following definition of a Managing Agent under Section 2(25) of the Companies Act, 1956 :

"2. (25) 'Managing agent' means any individual, firm or body corporate entitled, subject to the provisions of this Act, to the management of the whole, or substantially the whole, of the affairs of a company by virtue of an agreement with the company, or by virtue of its memorandum or articles of association, and includes any individual, firm or body corporate occupying the position of a managing, by whatever name called;

Explanation I. - For the purposes of this Act, references to 'managing agent' shall be construed as references to any individual, firm, or body corporate who, or which, was, at any time before the 3rd day of April, 1970, the managing agent of any company.

Explanation II. - For the removal of doubts, it is hereby declared that notwithstanding anything contained in Section 6 of the Companies (Amendment) Act, 1969, this clause shall remain and shall be deemed always to have remained, in force."

6. Quite clearly, neither of the respondents is in charge of the affairs of the Bokaro Steel Plant and cannot be considered as a Managing Agent of the Bokaro Plant. The rejection of the nomination papers of the two respondents was, therefore, wholly erroneous.

7. The appellant, however, contended in the election petition that even if Section 10 of the Representation of the People Act, 1951 may not be attracted, the provisions of Article 191 of the Constitution are applicable to the two respondents and hence their nomination papers were rightly rejected. Under Article 191(1)(a) it is provided as follows :

"191. (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State -

(a) If he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holders;"

8. Can either of the two respondents be considered as holding any office of profit under the Government of India ? In the case of *Guru Gobinda Basu v. Sankari Prasad Ghosal* (AIR 1964 SC 254 : (1964) 4 SCR 311 : 33 Comp Cas 1132) the Court after examining earlier authorities

enumerated various factors which enter into the determination of the question whether a person holds an office of profit under the Government. He holds an office of profit under the Government if the Government is :

- (1) the appointing authority;
- (2) the authority vested with power to terminate the appointment;
- (3) the authority which determines the remuneration;
- (4) the source from which the remuneration is paid; and
- (5) the authority vested with power to control the manner in which the duties of office are discharged.

All factors need not be present. Whether stress will be laid on the factor or the other will depend on the facts of each case. But where several elements are present in a given case then the officer in question holds the office under the authority so empowered. This Court pointed out that the Constitution itself makes a distinction between "the holder of an office of profit under the Government" and "the holder of a post or service under the Government" (see Articles 309 and 314). The Constitution has also made a distinction between "the holder of an office of profit under the Government" and "the holder of an office under a local or other authority subject to the control of the Government" [see Articles 58(2) and 66(4)]. In *Guru Gobinda Basu case* (AIR 1964 SC 254 : (1964) 4 SCR 311 : 33 Comp Cas 1132) the appellant was a Chartered Accountant. He was a partner of a firm of Auditors. This firm acted as Auditors of two companies amongst others. One of the companies was wholly owned by the Union of India and the second company was wholly owned by the West Bengal Government. The Court was required to consider whether the Chartered Accountant could be said to hold an office of profit under the Government. In this context this Court said that an office of profit under the Government need not imply that the person holding the office of profit should be in the service of the Government. There need not be any relationship of master and servant. However, in that case the Chartered Accountant was appointed as an Auditor of the two companies by the Central Government; he was removable by the Central Government; the Comptroller and Auditor General of India exercised full control over him and his remuneration was fixed by the Central Government although it was paid by the companies concerned. In this situation the Court said that he was holding an office of profit under the Government.

9. The same test was reiterated by this Court in the case of *D. R. Gurushanthappa v. Abdul Khuddus Anwar* ((1969) 1 SCC 466 : AIR 1969 SC 744). The tests spelt out in *Guru Gobinda Basu case* (AIR 1964 SC 254 : (1964) 4 SCR 311 : 33 Comp Cas 1132) were held was not relied upon in this case. This Court further said that an indirect control by the Government of the Company in which the office of profit was held was not contemplated under Article 191. In the case of *Gurushanthappa* ((1969) 1 SCC 466 : AIR 1969 SC 744) a government undertaking was transferred to a company registered under the Companies Act. The shares of the Company were held by the Government. The power to appoint and dismiss an employee working as a Superintendent did not vest in the Government. The power to control and give directions as to the manner in which duties of office were to be performed by that workman also did not vest in the Government. Even the power to determine the question of remuneration payable to the workman was not vested in the Government. In these circumstances, the indirect control exercisable by the Government because of its power to appoint Directors and to give general directions to the Company could not make the post of

Superintendent, Safety Engineering Department of the Company an office of profit under the Government.

10. The Court dealt with Article 191 (1)(a) of the Constitution along with Section 10 of the Representation of the People Act, 1951. It said that the disqualification laid down under Article 191(1)(a) of the Constitution is not intended to apply to the holder of an office of profit of a company under the control of the Government. It is Section 10 of the Representation of the People of the Government. It is Section 10 of the Representation of the People Act, 1951, which deals with the holding of an office of profit in a company in the capital of which the Government has not less than 25% shares. Otherwise this section will be redundant. Also, Parliament when passing the Act did not consider it necessary to disqualify every person holding an office of profit under a government company. It limited the disqualification to persons holding the office of Managing Agent, Manager or Secretary of such a company. Therefore, the fact that the entire share capital in a company is owned by the Government does not obliterate the distinction between Article 191 (1)(a) of the Constitution and Section 10 of the Representation of the People Act, 1951.

11. However, in the later case of *Biharilal Dobray v. Roshan Lal Dobray* ((1984) 1 SCC 551) (SCC at p. 569) this Court said that even though the incorporation of a body corporate may suggest that the statute intended it to be a statutory corporation independent of the Government, it is not conclusive on the question whether it is really so independent. Sometimes the form may be that of a body corporate independent of the Government. But in substance it may be just the alter ego of the Government itself. The true test of determination of the said question depends upon the degree of control the Government has over it, the extent of control exercised by several other bodies or committees over it and their composition, the degree of its dependence on the Government for its financial needs and its functional aspect, namely, whether the body is discharging any important governmental function or just some function which is merely optional for the Government. In *Biharilal Dobray* ((1984) 1 SCC 551) a teacher who was employed by the Board of Basic Education under the U. P. Basic Education Act, 1972 was considered as holding an office of profit under the State on the ground that the U. P. Basic Education Act discharged an important responsibility of the Government to provide primary education in the State. The Act enabled the State Government to take over all basic schools which were being run by the local bodies in the State and to manage them as provided under the Act; as also to administer all matters pertaining to the entire basic education in the State through the Board. The teachers and other employees were to be appointed in accordance with rules by officers who were themselves appointed by the Government. The disciplinary proceedings in respect of the employees were subject to the final decision of the State Government. In these circumstances, the post of a teacher under the U. P. Basic Education Act was an office of profit under the Government.

12. In the case of *Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev* ((1992) 4 SCC 404) however, the post of a teacher of a school run by the Integrated Tribal Development Agency (ITDA) which was a registered society, was held not to be an office of profit under the Government. The Government by its order had directed that all the educational institutions in ITDA shall be brought under the unified control of the Education Department. The Government accorded sanction for creation of posts and funds for meeting the expenditure. The Project Officer of ITDA who was also the District Collector alone appointed teachers and had the power to remove them. The Court said that the degree and extent of control of the Government had to be examined on the facts of each case. Although the Government had some control over ITDA, it was a registered society having its own constitution. The Project Officer and not the Government had the power to appoint and remove teachers. The whole scheme was set up for the welfare of tribals and it was entrusted to ITDA, an

authority by itself, subject to the control of the Government in certain respects just like any other local authority. Therefore, taking a practical view it could not be said that the teacher was holding an office of profit under the Government.

13. We need not examine more authorities, since the principles for applying Article 191(1)(a) appear to be well settled.

14 The appellant, however, relied upon *State of Gujarat v. Raman Lal Keshav Lal Soni* ((1983) 2 SCC 33 : 1983 SCC (L&S) 231) which was a decision of a Constitution Bench of this Court. This decision was not concerned with Article 191(1)(a). This Court, however, was required to decide whether ex-municipal employees who were allotted to the Panchayat Service of the State Government had the status of governments servants. The Court examined the provisions of the Gujarat Panchayats Act, 1961 and held that the Panchayat Service constituted under Section 203 of the Gujarat Panchayats Act is a civil service of the State and the members of the Service are government servants. We fail to see how this judgment can be applied to the facts of the present case.

15. The Bokaro Steel Plant is under the management and control of Steel Authority of India Ltd. This is a company incorporated under the Companies Act. Undoubtedly, its shares are owned by the Central Government. The Chairman and the Board of Directors are appointed by the President of India. However, the appointment and removal of workers in the Bokaro Steel Plant is under the control of Steel Authority of India Ltd. Their remuneration is also determined by Steel Authority of India Ltd. The functions discharged by Steel Authority of India Ltd. or by the Bokaro Steel Plant cannot be considered as essential functions of the Government. Amongst the objects of Steel Authority of India Ltd. set out in the Memorandum of Association are to carry on in India or elsewhere the trade or business of manufacturing, prospecting, raising, operating, buying, selling, importing, exporting, purchasing or otherwise dealing in iron and steel of all qualities, grades and types. These objects also include rendering consultancy services to promote and organise an integrated and efficient development of iron and steel industry and to act as an agent of the Government/public sector financial institutions in the manner set out in the Objects clause. In this context a worker holding the post of a Khalashi or a Meter Reader is not subject to the control of the Central Government not is the power of his appointment or removal exercised by the Central Government. Control over its work is exercised not be the Government, but by Steel Authority of India Ltd. The respondents cannot, therefore, be considered as holding an office of profit under the Central Government.

16. The High Court, therefore, was right in holding that the nomination papers of the two respondents were wrongly rejected and hence the election of the appellant was required to be set aside under Section 100 of the Representation of the People Act, 1951. In the premises the appeals are dismissed with costs.