

# **SUPREME COURT OF INDIA**

Gajanan Samadhan Lande

Vs.

Sanjay Shyamrao Dhotre

C.A.Nos.7923 of 2010

(R.M.Lodha and H.L.Gokhale JJ.)

30.11.2011

## **JUDGMENT**

### **R.M.LODHA, J.**

1. This is an Appeal under Section 116-A of the Representation of the People Act, 1951 (for short the 1951 Act).
2. The respondent - Sanjay Shyamrao Dhotre - contested the election from Akola Constituency for the 15th Lok Sabha and was declared elected.
3. The appellant - a voter in the constituency - challenged the election of the respondent (hereinafter referred to as returned candidate) in the election petition before the Bombay High Court, Nagpur Bench, Nagpur. The invalidity of the election of the returned candidate was sought under Section 100(1)(a) of the 1951 Act. The appellant averred in the election petition that the returned candidate was disqualified to contest the election as he was holding the 'office of profit' under the Government company being a Director of the Maharashtra Seeds Corporation (for short Corporation). Section 10 of the 1951 Act and Article 102(1)(a) of the Constitution of India were pressed into service by the election petitioner in this regard.
4. The returned candidate contested the election petition and disputed that he was holding an 'office of profit' under the Government. His case was that he was elected as a Director of the Corporation from Growers constituency and the allowances received by him as an elected Director were not in the nature of profit but were paid to him by way of reimbursement of actual expenses. Moreover, the

returned candidate was not appointed by the Government nor the Government has any right to remove or dismiss him from the elected office of Director of the Corporation. He also set up the case that the Government has no control over the performance of functions of the elected Director of the Corporation.

5. On the basis of the pleadings of the parties, the High Court framed 14 issues. The appellant examined two witnesses, including himself and tendered documentary evidence. On the other hand, the returned candidate examined himself and one more witness who was Deputy General Manager (Audit) of the Corporation. He also produced documentary evidence in support of his defence.

6. The High Court by an elaborate judgment, on consideration of the evidence on record and on hearing the counsel for the parties, held that the returned candidate was not disqualified to be a member of Parliament either under Article 102(1)(a) of the Constitution or under Section 10 of the 1951 Act.

7. Mr. Vishaal Jogdand, learned counsel for the appellant, assailed the correctness of the judgment of the High Court and submitted that the returned candidate at the time of nomination and election was holding the office of profit. In this regard, he referred to the allowances received by the returned candidate, namely, Rs. 0.75 Lakh meeting allowance calculated at the rate of Rs. 300/- per day; telephone allowance in the sum of Rs. 2,000/- per month; dearness allowance paid at the rate of Rs. 100/- for metropolitan cities and Rs. 85/- for other places and also sale of seeds at concessional price. Learned counsel further submitted that the Corporation was a Government company and Government has full control and supervision over the company as well as its directors. Learned counsel also submitted that the returned candidate as an elected Director was entitled to enter into contract with the company and make profit from such contract. He invited our attention to Section 10 of the 1951 Act and Article 102(1)(a) of the Constitution and submitted that the facts clearly demonstrate that the returned candidate was holding the 'office of profit'.

8. On the other hand, Mr. Saurav S. Shamsbery, learned counsel for the respondent, stoutly defended the findings recorded by the High Court. He also invited our attention to a decision of this Court in Pradyut Bordoloi Vs. Swapan Roy<sup>1</sup> in support of his argument that the first and foremost thing that the election petitioner, in a case as the present one, is required to show is whether the Government has appointed the returned candidate and has power to remove him from the office and if the election petitioner has not been able to show that, nothing further is required to be seen.

9. Section 10 of the 1951 Act reads 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 co-operative society) in the capital of which the appropriate Government has not less than twenty-five per cent share.

10. Section 10 refers to category of persons who shall be disqualified from contesting election, inter alia, of either House of Parliament. These persons are, managing agent, manager or secretary of any company or 1 AIR 2001 SC 296 corporation (other than a co-operative society) in the capital of which the appropriate Government has not less than twenty-five per cent share. The Government of Maharashtra admittedly has more than 25 per cent share in the Corporation. The Corporation is, thus, covered by Section 10. However, the returned candidate is an elected Director from the Growers constituency on the Board of the Corporation. He is neither managing agent nor manager nor secretary in the Corporation. Section 10 of the 1951 Act is, therefore, not at all attracted in the present case.

11. Article 102 of the Constitution provides for disqualifications for membership. Article 102(1)(a) is relevant for the present purposes and it reads as follows :-

102. Disqualifications for membership.-- (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament-

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) x x x (c) x x x (d) x x x (e) x x x

12. For attracting the disqualification provided in the above provision of the Constitution, a person must be holder of 'office of profit' under the Government of India or the Government of any State. The returned candidate is not the holder of any office of profit under the Government of India. Is he the holder of the office under the Government of Maharashtra? Our answer is in the negative for more than one reason.

13. In the first place, the returned candidate was holding an elected office and not an office by appointment. The test of appointment is decisive. The Government

had nothing to do in the election of Director from the Growers constituency. Moreover, being an elected office, the Government has no power to remove the returned candidate from that office. On this ground alone, it must be held that the returned candidate does not hold an office much less an 'office of profit' under the Government.

14. Secondly, one of the essential necessities in determining the question whether the office is an 'office of profit' or not is whether such office carries remuneration in the form of pay or commission. As an elected Director, the amount paid to the returned candidate by way of allowances, by no stretch of imagination, can be said to be 'remuneration' in the form of pay or commission. It is only a sort of reimbursement of the expenses incurred by the returned candidate. Essential condition that office carries remuneration in the form of pay or commission is also not satisfied.

15. Lastly, the peculiar features of an elected office of Director in the Corporation, do not bring such office within the meaning of 'office of profit'.

16. Thus, we are satisfied that the view of the High Court does not suffer from any legal infirmity justifying interference by us in this Appeal.

17. The Appeal is, accordingly, dismissed with no order as to costs.