

## Surya Kant Roy vs Imamul Hai Khan on 12 March, 1975

**Equivalent citations: 1975 AIR 1053, 1975 SCR (3) 909, AIR 1975 SUPREME COURT 1053, 1975 (1) SCC 531, 1976 SCJ 549, 1975 2 SERVLR 1, 1976 PATLJR 41, 1975 3 SCR 909, ILR 1975 54 PAT 410**

**Author: A. Alagiriswami**

**Bench: A. Alagiriswami, N.L. Untwalia**

PETITIONER:

SURYA KANT ROY

Vs.

RESPONDENT:

IMAMUL HAI KHAN

DATE OF JUDGMENT 12/03/1975

BENCH:

ALAGIRISWAMI, A.

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ALAGIRISWAMI, A.

UNTWALIA, N.L.

CITATION:

1975 AIR 1053                      1975 SCR (3) 909

1975 SCC (1) 531

CITATOR INFO :

R                      1985 SC 89 (20)

R                      1985 SC 211 (16)

ACT:

Representation of the People Act, 1951--Holding an office of profit--Tests for determination--Chairman of a statutory body--Whether an office of profit under Government.

Allegations of corrupt practice should be proved beyond reasonable doubt.

HEADNOTE:

Under the Bihar and Orissa Mining Settlement Act, 1920 a Board called the Mines Board of Health may be established to provide for the control and sanitation of any area. The Board consists of members who are elected by mine owners, non-officials selected by the State Government and persons nominated by Government. The Chairman of the Board is

appointed by the State Government from among the members of the Board. The Board is a body corporate. A fund called "The Mining Settlement Fund" is created consisting of sums charged by the Board under the Act from land-owners as also sums allotted from the State revenues as well as sums borrowed by the Board under the Local Authorities Loans Act, grants received from local Authorities, associations and private persons. The respondent was appointed by the Government as Chairman of the Jharia Mines Board of Health. The respondent was elected as a member of the State Assembly in the general elections. The election petition of the appellant (the unsuccessful candidate) against the respondent was dismissed by the High Court.

On appeal to this Court it was argued that the respondent was disqualified, from standing for the election as he held an office of profit under the State Government.

Dismissing the appeal,

HELD : (1) The mere fact that the respondent was appointed as Chairman of the Board by the Government Would not make him a person holding an office under the State Government. The fact that the Government and other local authorities might make grants to the Board did not mean that all the funds of the Board were Government funds or Government property. The provisions ' of the Act are enough to establish that the Board is a 'local authority' within the meaning of that expression as defined in cl. (31) of s. 3 of the General Clauses Act, 1897. [911 C; B]

(2) In determining whether a person is holding an office of profit under the Government the tests laid down by this Court were (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 control over the performance of those functions? [911 G]

In the instant case the Government did not pay remuneration to the respondent nor did he perform his functions for the Government. The office held by him was held under a local authority. The holding of an office of profit in it did not bring about a disqualification, even if the local authority be, under the control of the Government. The control exercised by the Government did not make the Board an organ of the Government nor did it make the respondent a person holding an office under the Government. [912 E-F]

Maulana Abdul Shakur v. Rikhabchand & Anr. [1958] S.C.R. 387 at 394 and Shivmurthy Swami v. Agadi Sanganna Andanappa [1971] 3 S.C.C. 870, followed.

910

Gurushantappa v. Abdul Khaddus A.I.R. 1969 S.C. 744-[1969] 3 S.C.R. 425, referred to.

(3) An allegation of corrupt practice being a serious one, leading not merely to the consequence of the election of

the successful candidate being set aside, but also of his being disqualified to stand for election for a certain period, should be proved beyond reasonable doubt. Such proof is lacking in this case. [913 C]

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1116 of 1973.

From the judgment and order dated the 22nd January, 1973 of the Patna High Court in Election Petition No. 21 of 1972. J. P. Goyal and Y. C. Parashar, for the appellant. D. Goburdhan, for the respondent.

The Judgment of the Court was delivered by ALAGIRISWAMI, J.-This appeal by one of the unsuccessful candidates in the election held to the Legislative Assembly of Bihar State from the Baghmara constituency is against the dismissal of his election petition questioning the respondent's election by the High Court at Patna. Only two questions were argued before us (1) that the respondent was disqualified for standing for the election as he held an office of profit under the Government of Bihar, and (2) that he obtained the services of a Sub-Inspector of Police for the furtherance of the prospects of his election. The facts relating to the first question are these : Under the Bihar and Orissa Mining Settlement Act, 1920 a Board called the Mines Board of Health may be established to provide for the control and sanitation of any area within which persons employed in a mine reside and for the prevention therein of the out break and spread of epidemic diseases. Before the area is declared to be a mining settlement for the purposes of the Act certain prescribed formalities like receiving objections etc. have to be observed. The Board is a body corporate having perpetual succession and a common seal with power to hold and acquire property. It consists of not less than seven and not more than eleven members of whom not less than two and not more than four are elected by owners of mines within the mining settlement, three non-officials selected by the State Government and two or more members but not exceeding four nominated by the State Government. The Chairman of the Board is to be appointed by the State Government from among the members of the Board. A fund called "The Mining Settlement Fund" is formed for every mining settlement and the fund vests in the Board. charged by the Board under the Act from sums allotted to the Board from the State by the Board under the Local Authorities from Local Authorities, associations and Board appoints Health Officers as well as Board can impose taxes like latrine tax and also make yearly assessment. There are certain powers conferred on the State Government The fund consists of sums land owners etc. as also revenues; sums borrowed Loans Act; grants received private persons etc. The Sanitary inspectors. The Board can impose taxes like latrine tax and also make yearly assessment. There are certain powers on the State Government.

under the Act but they are no more than powers conferred on State Governments in respect of various local bodies. The respondent was appointed by the Government as the Chairman of the Jharia Mines Board of Health.

We agree with the learned Judge of the High Court that it is difficult to accept the argument that the Board is wholly under the control of the State Government in all its functions. The Board levies taxes and other assessments and has, got its own funds, The fact that the Government and other local authorities might make grants to the Board does not mean that all the funds of the Board are Government funds or Government property. The provisions we have set out above are enough to establish that the Board is a 'local authority' within the meaning of that expression as defined in clause (31) of section 3 of the General Clauses Act, 1897. Indeed this position does not seem to have been disputed by the petitioner before the High Court in the course of his argument. We do not, therefore, think that the mere fact that the respondent was appointed as Chairman of the Board by the Government would make him a person holding an office under the State Government. We may in this connection refer to certain decisions of this Court. In *Maulana Abdul Shakur v. Rikhabchand & Anr.*(1) this Court held :

"The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenues are important factors in determining whether that person is holding an office of profit under the Government."

We have already pointed out that in this case the payments to the respondent are not from out of the Government revenues.

In *Shivamurthy Swami v. Agadi Sanganna Andanappa*(2) this Court pointed out ".... the office in question must have been held under a Government and to that some pay, salary, emoluments or allowance is attached... This Court in several decisions had laid down the tests for finding out whether an office in question is an office under a Government and whether it is an office of profit. Those tests are : (1) Whether the Government makes the appointment; (2) Whether the Government has 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 then for the Government and (5) Does the Government exercise any control over the performance of those functions ?"

Here again it is to be pointed out that the Government does not pay the remuneration nor does the holder perform his functions for the Government. To hold otherwise would be to hold that local (1) [1938] S.C.R. 387 at 394.

(2) [1971] 3 S.C.R. 870.

bodies like Municipal Councils perform their functions for the Government though in one sense the functions they perform are governmental functions.

The decision of this Court in *Gurushantappa v. Abdul Khaddus*(1), which was also relied upon by the High Court, may be usefully referred to. It was there observed:

"Thus, in the case of election as President or Vice-President, the disqualification arises even if the candidate is holding an office of profit under local or any other authority under the control of the Central Government or the State Government, whereas, in the case of a candidate for election as a Member of any of the Legislatures, no such disqualification is laid down by the Constitution if the office of profit is held under a local or any other authority under the control of the Government and not directly under any of the Governments. This clearly indicates that in the case of eligibility for election as a member of a Legislature, the holding of an office of profit under a corporate body like a local authority does not bring about disqualification even if that local authority be under the control of the Government, The mere control of the Government over the authority having the power to appoint, dismiss, or control the working of the officer employed by such authority does not disqualify that officer from being a candidate for election as a member of the Legislature in the manner in which such disqualification comes into existence for being elected as the President or the Vice-President."

The office held by the respondent is held under a local authority. The holding of an office of profit in it does not bring about a disqualification even if that local authority be under the control of the Government. The mere control of Government over the authority having the power to appoint, dismiss, or control the working of the officer employed by such authority does not disqualify that officer from being a candidate for election as a member of the Legislature. Therefore, the control exercised by the Government over the Board in this case does not make the Board an organ of the Government nor does it make the respondent a person holding an office under the Government. It is, therefore, unnecessary to go into the question whether the office held by the respondent was an office of profit, though we may indicate that on the evidence available in this case we have come to the conclusion that it is not an office of profit. We are not setting out the evidence at length only because it is unnecessary for the purpose of this case.

As regards the 2nd question the allegation of the appellant was that the respondent taking advantage of his position as a former Cabinet Minister of the State of Bihar had procured the services of the Officer-in-charge of Chas police station in arranging and holding his election meeting on 20th February, 1972 within the premises of the Chas police station and this was a corrupt practice within the meaning of sub-s. (7) (1) A.I.R. 1969 S.C. 744-[1969] 3 S.C.R. 425.

of s. 123 of the Representation of the People Act. According to the respondent the election meeting was held in the vacant space on the southern side of the compound wall of the police station. The evidence relied upon by the appellant for providing his charge were his own and that of two of his co-villagers. The appellant was not an eye witness of this meeting and his evidence was pure hearsay. The person who is said to have informed him was not examined. The evidence of P. Ws. 1 and 2 was not accepted by the High Court. The police officer concerned, who was examined as R.W. 8, as well as the respondent (R.W. 10) have denied the allegation. After a careful examination of all the evidence the High Court held this charge not proved. We have gone through the evidence and see no reason to differ from the High Court on this point.

An allegation of corrupt practice being a serious one leading not merely to the consequence of the election of the successful candidate being set aside but also of his being disqualified to stand for election for a certain period should be proved beyond reasonable doubt and we find such proof lacking in this case, The appeal is dismissed with costs.

P. B . R. Appeal dismissed.