
MAJOR JUDICIAL DECISIONS

Jan.–Dec., 2014

1. Constitutional Law

X v. Fuchu City

Supreme Court Third Petty Bench, May 27, 2014
Case No. (O) 888 of 2012
247 SHUMIN 1

Summary:

The Political Ethics Regulation of the Fuchu City Assembly which provides that the company which has the second degree of kinship of a member of the local assembly has to refuse to accept the contract work of Fuchu City is constitutional under Article 21(1), 22(1), 29 of the Constitution.

References:

Constitution, Article 21(1), 22(1), 29; The Political Ethics Regulation of the Fuchu City Assembly, Article 4(3)

Facts:

The Appellee, who was a member of the Fuchu City assembly, was warned by the chairman of the city assembly and so on because he violated the Political Ethics Regulation of the Fuchu City Assembly 4(3). The appellee claimed that this ordinance, in which the company which has the second degree of kinship of a member of the city assembly has to refuse to accept contract work of Fuchu City and demands that the member of the city assembly strive to meet the company to hand in reports about refusing, infringes on the constitutional rights of free political activity and economic freedom.

In the original judgment, the Hiroshima High Court found as follows: (1) The regulation about the second degree of kinship could restricts assembly member's political activities and economic freedom of the company meet to this ordinance. (2) Because the regulation based on the second degree of kinship has no rationality or necessity, this ordinance infringes articles 21(1), 22(1), and 29 of the Constitution.

Opinion:

Reserved and remanded.

The Opinion of the Court:

First, whether this ordinance infringes article 21(1) should be judged by whether the regulation based on the second degree of kinship is approved as the necessity and the rationality. This must be decided by balancing the degree of necessity of restriction to achieve its purpose with the restricted contents, the nature of the freedom and the concrete condition and degree of restriction.

The purpose of this ordinance is to ensure fairness of the city assembly members' performance of duty, and to ensure fair administration of the assembly and the reliability of citizens through attempting to prevent the member of the assembly from conducting any acts that may bring about suspicion or distrust from the citizens. Thus, the purpose of this ordinance is reasonable.

This ordinance imposes duties to the member of the city assembly, without regard to whether the member of the city assembly is the

substantial owner of the company, only by the standard that whether the company which make a contract with Fuchu City is in the second degree of kinship of the member of the city assembly. However, such company contracts with the city are in danger of causing harm to the fair performance of duty of the member of the city assembly, and such a company having contracts with the city is itself a cause of bringing about suspicion or distrust from the citizens.

And this ordinance imposes on the member of city assembly only the duty to try to hand in reports about refusing contracts, and does not impose duty to hand in. So this duty can be fulfilled by the effort of the member of the city assembly. And if the member of the city assembly does not fulfill this duty, this ordinance does not provide legal effects or force such as depriving the status of the member of the city assembly. In addition, this ordinance has the nature of self-regulation which based on the internal autonomy of the assembly, and should be respected as a voluntary judgment.

Thus, this ordinance does not violate article 21(1) of the Constitution.

Second, considering whether this ordinance infringes articles 22(1) and 29 of the Constitution: if the company is managed by the second degree of kinship of the member of the city assembly, this company is not restricted to make contracts with Fuchu City or forced to refuse contracts legally. And if this company enters into a contract, this contract is not invalid. So this restriction is not lacking in the necessity or rationality to achieve the above-mentioned reasonable purpose.

Thus, this ordinance does not violate articles 22(1) and 29 of the Constitution.

Editorial Note:

In this judgment, the first constitutional judge about the political ethics regulation of local government was found. In the original judgment, Hiroshima High Court found that this regulation is unconstitutional, because there are no rational reasons or necessity to restrict the economic freedom or free political activity of the manager of a company or member of an assembly without consideration of whether the member of the assembly participates in the management. However, the Supreme Court treated this case as self-regulation which is based on the internal

autonomy of the assembly and examined under a less strict standard. So the Court found that the purpose to ensure the fair administration of the assembly and the reliability of citizens is rational and necessary, and the measure does not exceed the assembly's discretion because this ordinance imposes legal force to the member of the assembly or the manager of the company.

In this case, what matters is whether it is constitutional to make such a restriction of free political activity of a member of an assembly and the economic freedom of the second degree of kinship's company. In the latter case, the right of a private person who is related with the assembly comes into question. So, the stricter standard is required. In Japan, the money-and-politics problem has become an object of social and political concern. So I agree that it is necessary and reasonable to ensure the fair administration of the assembly and the reliability of citizens. However, this ordinance restricts not only the political activity of a member of an assembly, but also the second degree of kinship of a member of the assembly which bids for Fuchū City's works. This ordinance has no legal force, so this restriction is de facto. However, indirectly a restriction exists, so it is necessary to show the rationality and necessity of such restriction.

If a company is managed by a second degree of kinship of the member of the assembly, there is no rule of thumb that the member of the assembly participates in management and no evidence. Even if the purpose of this ordinance which is to ensure fair administration of the assembly and the reliability of citizens is reasonable, it is still questionable the suitability of the measures is. Although the Court points out that free political activity is self-regulation which is based on the internal autonomy of the assembly, the restriction, particularly the restriction to the second degree of kinship, must be examined under the strict standard.

2. Administrative Law

X et al. v. Japan

Supreme Court 1st P.B., October 9, 2014

Case No. (*Ju*) 771 of 2014