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Lecture-8



LECTURE 8: ANTI- DEFECTION LAW

JUDICIARY'S STAND

Even though there is no explicit definition of “office of profit”, it can be inferred from a reading of Articles 102 and 191 that the disqualification arises when:

1. There is an office;
2. The office is one of profit; and
3. The office is under the Central or State government.

1. There is an “Office”

The term “office” has nowhere been expressly defined. However, from many judicial verdicts, an “office” refers to an employment which is permanent in nature and exists independent of the holder. In *Kanta Kathuria v. Manak Chand Surana* it was held that a Member of Legislative Assembly cannot be disqualified for holding an ‘office of profit’ unless it is proved that an office exists independent of the holder of the said office. In the above case, Mrs. Kathuria’s election was questioned on the ground that she was employed as a Special Government Pleader for the State of Rajasthan which was allegedly an office of profit under the government. The court held that the post did not constitute an office as the appellant was simply appointed to do certain duties assigned to her instead of holding a permanent post.²

2. The office is one of “profit”

If a legislator receives any pecuniary benefit apart from the “compensatory allowance” as given in section 2(a) of Parliament (Prevention of Disqualification) Act, 1959, he becomes disqualified.

In *Divya Prakash v. Kultar Chand Rana and Another*, the respondent was appointed as the Chairman of the State Board of School Education in an honorary capacity. His election was challenged on the ground that he held an office of profit. It was contended that although the respondent did not receive any salary but the post carried a scale of pay. However, this argument was rejected by the court. It was held that the respondent never received any profit by way of salary and furthermore, he did not become entitled to any salary due to his appointment in an honorary capacity. Importantly, the Board,

which fixed the pay scale for the post of Chairman, was not authorised to do so.

3. The office is under the government

Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev and Another: In this case, the election of a primary school teacher in a school run by the Integrated Tribal Development Agency (ITDA) was challenged. The appointing authority was a Government officer. Members of the governing body of the school, who controlled its activities, were officers of the government. Also, the government-sanctioned funds to the school. However, the court held that the post was not one under the government. Although, the government had some control over the ITDA, it did not directly control the teachers. Moreover, it was not the appointing authority.

Some tests were laid down in the same case. These were:

1. Whether the government has the power to appoint or revoke the appointment of the office-holder. Mere control of the government over the authority having the power to appoint or dismiss is not decisive.
2. Whether the office-holder is paid out of government revenues.
3. Whether the body which employs the office-holder is independent of the government.
4. The degree/extent of control the government has over the body.

Maulana Abdul Shakur v. Rikhab Chand and Anr: The appellant was the Manager of a school run by Committee of the Durgah Endowment. Appellant's election was challenged on the grounds that the appointing body could be appointed and dismissed by the Central government. The government could also supersede the Committee. The court held that the post is not an office of profit as the Committee was a body corporate independent of the government with perpetual succession. The court held that "the appellant is neither appointed by the Government of India nor is removable by the Government of India nor paid out of the revenues of Government of India".

The Honourable Supreme Court has highlighted that none of the decisions has conclusively laid down the definition of an office of profit "under the government" even though various tests have been formulated for determining whether a post is "under the government" or not. In *Biharilal* case, the appellant, who was an Assistant Teacher in a primary school, was ruled to hold any office of profit under the state government. The school was run by the Zila Parishad and thus was allegedly under governmental control. This case also evolved certain tests for determining whether the office is under the government:

1. Whether the government makes the appointment;
2. Whether the government has the right to remove or dismiss the office-holder;
3. Whether the government pays remuneration;
4. Whether the office-holder performs functions for the government;
5. Whether the government controls the duties and functions of the office-holder.

However, there is no cut-and-dried test for determining what constitutes an office of profit. Each case has to be decided in light of the relevant provisions of the Acts governing the law.