

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

WRIT PETITION (CIVIL) NO(s). 199 OF 2006 (FOR PREL. HEARING)

JAYA BACHCHAN

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. and office report )

Date: 08/05/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.K. THAKKER

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Petitioner(s)

Mr. F.S. Nariman, Sr.Adv.

Mr. Ejaz Maqbool, Adv.

Mr. Pradeep Kumar Rai, Adv.

Mr. Rohit Mammen Alex, Adv.

Mr. Vikas Singh, Adv.

Ms. Taruna Singh, Adv.

Mr. Abhijit Sinha, Adv.

For Respondent(s) Mr. S.N. Shukla, Adv.

Mr. S.K.Rungta, Adv.

Mr. Sushil Kumar Jain, Adv.

Mr. A.P. Dhamija, Adv.

Mr. Sarad Singhania, Adv.

Ms. Pratibha Jain, Adv.

UPON hearing counsel the Court made the following

O R D E R

The writ petition is dismissed in terms of the signed order.

(N. Annapurna)

Court Master

(V.P. Tyagi)

Court Master

(Signed reportable order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C)NO.199 OF 2006

Jaya Bachchan

...Petitioner(s)

Versus

Union of India & Ors.

...Respondent(s)

O R D E R

The challenge in this petition filed under Article 32 of the Constitution of India, is to the order of the Hon'ble President of India, dated 16th March, 2006, whereby, in exercise of powers conferred under clause (1) of Article 103 of the Constitution of India, the Hon'ble President has decided, after obtaining

the

opinion of the Election Commission as required by Article 103(2), that the

petitioner stands disqualified for being a Member of the Rajya Sabha on and

from 14th day of July, 2004. The challenge is also to the opinion dated 2nd March,

2006 rendered by the Election Commission to the Hon'ble President, under

clause (2) of Article 103, that the petitioner became disqualified under Article 102

(1)(a) of the Constitution for being a Member of the Rajya Sabha on and from

14th July, 2004 on her appointment by the Government of Uttar Pradesh as

Chairperson of the U.P. Film Development Council.

2. The Government of Uttar Pradesh, by Official Memorandum dated

14.7.2004, appointed the petitioner as the Chairperson of Uttar Pradesh Film

Development Council (for short 'the Council') and sanctioned to her the rank of

a Cabinet Minister with the facilities as mentioned in O.M. No.14/1/46/87-C.Ex.

(1) dated 22.3.1991 (as amended from time to time). The benefits to which she

became entitled, as a consequence, are :

(i) Honorarium of Rs.5,000/- per month;

(ii) Daily allowance @ Rs.600 per day within the State and Rs.750/- outside the State. Rs.10,000/- per month towards entertainment expenditure.

(iii) Staff car with driver, telephones at office and residence, one P.S. ., one P.A. and two class IV employees.

(iv) Body Guard and night escort.

(v) Free accommodation and medical treatment facilities to her and family members.

(vi) Free accommodation in government circuit houses/guest houses and hospitality while on tour.

3. The Election Commission, after referring to the facts and the law enunciated

by this Court in several decisions, has expressed the opinion that the office of

Chairperson of the Council to which the petitioner was appointed by the State

Government by O.M. dated 14.7.2004, on the terms and conditions specified

therein, is an "office of profit" under the Government of Uttar Pradesh for

purposes of Article 102(1)(a) of the Constitution. The Commission also found that

Section 3 of the Parliament (Prevention of Disqualification) Act, 1959 did not

exempt the said office of profit from disqualification under Article 102(1)(a) of

the Constitution.

4. The petitioner contends that the post of Chairperson of the Council, and

the conferment of the rank of Cabinet Minister, were only "decorative"; that she

did not receive any remuneration or monetary benefit from the State

Government; that she did not seek residential accommodation, nor used

telephone or medical facilities; that though she travelled several times in

connection with her work as Chairperson, she never claimed any reimbursement;

and that she had accepted the Chairpersonship of the Council honorarily and did

not use any of the facilities mentioned in the O.M. dated 22.3.1991. The petitioner

contends that in the absence of any finding by the Election Commission that she had received any payment or monetary consideration from the State Government, she could not be said to hold any office of profit under the State Government and, therefore, her disqualification was invalid.

5. It is not in dispute that the Council is not an autonomous body or statutory Corporation, that the Council has no budget of its own, and that all its expenses are met by the Department of the State Government administratively in-charge of

it. Similarly, the fact that the petitioner was appointed as Chairperson of the

Council, conferring on her the rank of a Cabinet Minister entitling her to all the

remuneration and benefits as provided in the O.M. dated 22.3.1991 (extracted

above), is also not disputed.

6. Clause (1)(a) of Article 102 provides that a person shall be disqualified

for being chosen as, and for being, a member of either House of Parliament 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. The term 'holds an office of profit' though not defined, has been the

subject matter of interpretation, in several decisions of this Court. An office of

profit is an office which is capable of yielding a profit or pecuniary gain. Holding

an office under the Central or State Government, to which some pay, salary,

emolument, remuneration or non-compensatory allowance is attached, is 'holding

an office of profit'. The question whether a person holds an office of profit is

required to be interpreted in a realistic manner. Nature of the payment must be

considered as a matter of substance rather than of form. Nomenclature is not

important. In fact, mere use of the word 'honorarium' cannot take the payment

out of the purview of profit, if there is pecuniary gain for the recipient. Payment

of honorarium, in addition to daily allowances in the nature of compensatory

allowances, rent free accommodation and chauffeur driven car at State expense,

are clearly in the nature of remuneration and a source of pecuniary gain and

hence constitute profit. For deciding the question as to whether one is holding an

office of profit or not, what is relevant is whether the office is capable of yielding

a profit or pecuniary gain and not whether the person actually obtained a

monetary gain. If the "pecuniary gain" is "receivable" in connection with the

office then it becomes an office of profit, irrespective of whether such pecuniary

gain is actually received or not. If the office carries with it, or entitles the holder

to, any pecuniary gain other than reimbursement of out of pocket/actual

expenses, then the office will be an office of profit for the purpose of Article 102

(1)(a). This position of law stands settled for over half a century commencing

from the decisions of *Ravanna Subanna v. G.S. Kaggeerappa* [AIR 1954 SC 653],

*Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa* [1971 (3) SCC 870],

*Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev* [1992 (4) SCC

404] and *Shibu Soren v. Dayanand Sahay & Ors.* [2001 (7) SCC 425].

7. The petitioner relied on the decisions in *Umrao Singh v. Darbara Singh* [(1969) 1 SCR 421] and *Divya Prakash v. Kultar Chand Rana & Anr.* [1975 (1) SCC 264].

8. In *Umrao Singh (supra)* the question that arose for consideration was whether payment of a monthly consolidated allowance for performing all official duties and journeys concerning the work and a mileage allowance for the journeys performed for official work outside the district and daily allowances for the days of attendance of meetings/travel/halt, would convert the office of Chairman of a Panchayat Samiti into an office of profit. This Court held that these were allowances paid for the purpose of ensuring that the Chairman did not have to spend money out of his own pocket for discharging his official duties, and therefore, receipt of such allowances did not make the office one of profit.

9. In *Divya Prakash (supra)*, this Court held that the post of a Chairman of the Board of School Education of the State of Himachal Pradesh was not an office of profit. The candidate was appointed specifically in an honorary capacity without any remuneration. Further the post of Chairman did not carry with it a scale of pay. On the same date Bench also decided the case of *K.B. Rohamare vs. Shankar Rao* [(1975) 1 SCC 252], where while discussing the question at length,

Ravanna Subanna (supra) was cited with approval. It was held in the said case that amount of money receivable (emphasis supplied by us) by a person in connection with the office he holds is material when deciding whether the office carried any profit.

10. Learned counsel for the petitioner has also referred to Biharilal Dobray vs. Roshanlal Dobray [(1984) 1 SCC 551] and contended that citing Divya Prakash (supra), with approval, it was held that when a candidate is appointed in an honorary capacity without any remuneration even though post carried remuneration, he cannot be said to be holding an office of profit and thus was not disqualified under Article 191 (1)(a) of the Constitution. In Biharilal Dobray's case (supra) it was held that respondent was holding an office of profit under the State Government and his nomination was rightly rejected by the Returning Officer. In that case, the only question was whether the post the respondent was holding was one under State Government or not. The observations made with reference to Divya Prakash's case were clearly obiter. Further, an error seems to have been made while noticing Divya Prakash's case. In Divya Pradesh it was held that the post did not carry with it any remuneration but in Biharilal Dobrey it was said that the post carried remuneration.

11. A careful examination of the decisions relied upon by learned counsel on behalf of the petitioner shows that each of those cases turned on its own facts and did not lay down any proposition of law contrary to what has been laid down in a

series of decisions starting from Ravanna Subanna to Shibu Soren. It is well

settled that where the office carries with it certain emoluments or the order of appointment states that the person appointed is entitled to certain emoluments, then it will be an office of profit, even if the holder of the office chooses not to receive/draw such emoluments. What is relevant is whether pecuniary gain is

"receivable" in regard to the office and not whether pecuniary gain is, in fact,

received or received negligibly.

12. In this case, as noticed above, the office carried with it a monthly honorarium of Rs.5000/-, entertainment expenditure of Rs.10,000/-, staff car with driver, telephones at office and residence, free accommodation and medical treatment facilities to self and family members, apart from other allowances etc. That these are pecuniary gains, cannot be denied. The fact that the petitioner is affluent or was not interested in the benefits/facilities given by the State Government or did not, in fact, receive such benefits till date, are not relevant to the issue.

13. In this view, the question whether petitioner actually received any

pecuniary gain or not is of no consequence. We find no merit in the writ petition and the same is, accordingly, dismissed.

.....CJI.

(Y.K. SABHARWAL)

.....J.

(C.K. THAKKER)

.....J.

(R.V. RAVEENDRAN)

New Delhi,

May 08, 2006.