

CASE NO.:
Writ Petition (civil) 199 of 2006

PETITIONER:
JAYA BACHCHAN

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 08/05/2006

BENCH:
Y.K. SABHARWAL CJI & C.K. THAKKER & R.V. RAVEENDRAN

JUDGMENT:
JUDGMENT

ORDER

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 the 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 house 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 v. 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 Dobrav v. Roshanlal Dobrav*, [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 Dobrav'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 Office. 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 Prakash* 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 the 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.

JUDIS