

CASE NO.:
Appeal (civil) 3633 of 2001

PETITIONER:
M.V. RAJASHEKARAN & ORS.

Vs.

RESPONDENT:
VATAL NAGARAJ & ORS.

DATE OF JUDGMENT: 23/01/2002

BENCH:
G.B. Pattanaik & R.P. Sethi

JUDGMENT:

With Civil Appeal No.3714 of 2001 and
Civil Appeal No.3844 of 2001

JUDGMENT

PATTANAIAK, J.

These three appeals are directed against one and the same Judgment of the Karnataka High Court. An Election Petition was filed under Section 81 of the Representation of the People Act, 1951, challenging the election of the present appellants as Members of the Karnataka Legislative Council and for declaring the said election as null and void inter alia on the ground that the nomination of Vatal Nagaraj, respondent No. 1 had been improperly rejected. Said Vatal Nagaraj was an ex M.L.A. and had been appointed as a One Man Commission by the Government of Karnataka by Order dated 18.4.2000 to study the problems of the Kannadigas in the Border areas of Kerala, Maharashtra, Andhra Pradesh, Goa and Tamil Nadu. By a subsequent order, the Chairman of the Commission was accorded the status of a Minister of Cabinet rank and thereafter by a Government Order dated 24.5.2000, for defraying the expenses of pay and day to day expenditure of the Chairman of the Commission, a sum of Rs. 5 lacs was provided in the Budget estimate for the year 2000-2001. When election to the Karnataka Legislative Council was held for filling up 11 vacancies and said Vatal Nagaraj filed his nomination paper, on an objection being filed for accepting the nomination, the Returning Officer took up the scrutiny and rejected the nomination of said Vatal Nagaraj on a finding that he was holding an office of profit and as such was disqualified from being elected. Said Nagaraj, therefore, filed the election petition, alleging inter alia that his nomination has been improperly rejected within the ambit of Section 100[1][c] of the Representation of the People Act and, therefore, the election of all the Members must be declared void. By the impugned Judgment, the High Court having come to the conclusion that the post of Chairman of the Commission which said Nagaraj was holding, cannot be held to be an office and, therefore, the

Returning Officer illegally rejected the nomination paper of said Shri Nagaraj. The High Court ultimately held that the position held by Nagaraj, not being an office much less an office of profit, did not incur any disqualification under Article 191 of the Constitution and consequently, rejection of his nomination was improper. The High Court ultimately having allowed the election petition and declaring the election of the elected candidates to the Karnataka Legislative Council to be null and void and further directing the Returning Officer to accept the nomination of Nagaraj and proceed with the election in accordance with law, the present appeals have been preferred.

Mr. Shanti Bhushan and Mr. Venugopal, the learned senior counsel appearing for appellants in two different appeals, and Mr. Javali, learned senior counsel appearing for the appellant in third appeal contended, that having regard to the circumstances under which the post of One Man Commission was created and an ex M.L.A. was appointed to that post, and having regard to the fact that the government sanctioned money to defray the expenses of the pay and other allowances of the said Commission, the conclusion is irresistible that the post of One Man Commission was an office of profit and, therefore, the Returning Officer rightly rejected the nomination of respondent Vatal Nagaraj and the High Court committed error in holding that the post does not constitute an office much less an office of profit. In support of this contention reliance was placed on the decisions of this Court in Mahadeo vs. Shantibhai & Ors. - (1969) 2 SCR 422, Kanta Kathuria vs. Manak Chand Surana - (1970) 2 SCR 835 and Shibu Soren vs. Dayanand Sahay and Others (2001) 7 SCC 425. Mr. Bobde, the learned senior counsel appearing for respondent no. 1, on the other hand contended, that the word 'office' not having been defined either in the Constitution or in the Representation of People Act, and the definition given to the said expression by Justice Rowlatt in the case of Great Western Railway Co. vs. Bater 8 Tax Cases 231 having been accepted by this Court in Kanta Kathuria's case (supra) the test to be applied is whether it was subsisting, permanent, substantive which had an existence independent of the person who filled it, and on the other hand in the present case for a limited purpose a person was appointed to discharge certain obligations which came to an end on submission of the report by the person concerned. According to Mr. Bobde the test of permanency or substantive does not apply at all. In this view of the matter the High Court was fully justified in recording the finding that there was no office much less an office of profit, that was held by respondent no. 1 Vatal Nagaraj, and consequently the order of the rejection of his nomination was rightly held to be illegal. Mr. Bobde placed strong reliance on the self same decision of Kanta Kathuria's case on which the counsel for the appellant had relied upon, as well as the decision in Rabindra Kumar Nayak vs. Collector (1999) 2 SCC 627 wherein the dictum of Rowlatt, J. had been approved. Mr. Bobde also relied upon the decision of this Court in Ashok Kumar Bhattacharyya vs. Ajoy Biswas and others - (1985) 1 SCC 151, and also the decision in Satrucharla Chandrasekhar Raju vs. Vyricherla Pradeep Kumar Dev (1992) 4 SCC 404. The entire controversy, therefore, centers round the question whether the creation or constitution of a One Man Commission for the purpose of holding certain enquiry and appointment of an individual as the said Commission, and providing the money necessary for

disbursement of salary and other allowances of such Commission would make the Commission an office of profit within the ambit of Article 191 of the Constitution read with Section 100 (2) of the Representation of People Act, or it would not constitute an office and as such, the disqualification for being elected, as engrafted in the Constitution as well as in the Representation of People Act will not be attracted. Under Article 191 (1) of the Constitution a person would be disqualified being chosen as and for being a member of the Legislative Assembly or Legislative Council of State, if he holds any office of profit under the Government of India or Government of any State other than the office declared by the Legislature of the State by law not to disqualify its holder. In order to attract the aforesaid disqualification, therefore, the person concerned must hold an office and that office must be an office of profit under the Government of India or under the Government of any State. The very object of providing the disqualification under Article 191 of the Constitution is that the person elected to the Legislative Assembly or Legislative Council should be free to carry on his duty fearlessly without being subjected to any kind of governmental pressure. The Court, therefore is required to find out as to whether there exists any nexus between the duties discharged by the candidate and the government, and that a conflict is bound to arise between impartial discharge of such duties in course of his employment with the duties which he is required to discharge as a member of legislature, on being elected. While examining the aforesaid question the Court has to look the substance and not the form and, further it is not necessary that all factors and tests laid down in various cases must be conjointly present so as to constitute the holding of an office of profit under the government. Section 100 provides the grounds for declaring an election to be void and clause (1) {c} stipulates that improper rejection of nomination is one of the ground for declaring an election to be void. Since nomination of Vatal Nagaraj was rejected by the Returning Officer on the ground that he held an office of profit, and as such, was intelligible to contest an election under Article 191(a) of the Constitution, the sole question for consideration would be whether that order of rejection was improper as held by the High Court? The answer to the question would depend upon a finding as to whether the post of One Man Commission constituted by the Government of Karnataka to study the problems of Kannadigas in the border areas is an office of profit or not. As has been stated earlier, the expression 'office' has not been defined in the Constitution but this Court has interpreted the said word in different cases and it would, therefore, be necessary to examine some of the case laws on the point. In the case of Mahadeo vs. Shantibhai and ors. (1969) 2 SCR 422, the question for consideration was whether appointment of a person on the panel of lawyers by Railway Administration can be held to be an office and is that office is one for profit? The Court, in that case referred to observation of Lord Wright of the House of Lords in the case of Mcmillon vs. Guest (1942) Appeal Cases 561, where Lord Wright has opined "The word 'office' is of indefinite content. Its various meanings cover four columns of the New English Dictionary, but I take as the most relevant for purposes of this case the following; a position or place to which certain duties are attached, especially one of a more or less public character." In the aforesaid case this Court while considering the appointment of the person concerned and all terms and conditions came to the conclusion that it is difficult to hold

that he held any office of profit under the Government. In *Kanta Kathura vs. Manak Chand Surana* (1970) 2 SCR 835 a Constitution Bench of this Court considered the question as to whether a Special Government Pleader can be held to be an office of profit within the ambit of Article 191(1) of the Constitution. The majority view expressed through Justice Sikri held that before a person becomes subject to the disqualification in Article 191(1) there must be an office which exists independently of his being the holder of the office., and the word 'office' means an office or employment which was a subsisting, permanent, substantive position which had an existence independent of the person who filled it, which went on and was filled in succession by successive holders. In the majority judgment it was held that it is not necessary to give a wider meaning to the word 'office' because if Parliament thinks that a legal practitioner who is being paid fees in a case by the Government should not be qualified to stand for an election as a member of Legislative Assembly, it can make that provision under Article 191(1)(e) of the Constitution. The majority judgment in the aforesaid case accepted justice Rowlatt's definition of the word 'office' in *Great Western Railway co. vs. Bater*, 8 Tax Cases 231, and applying the said test to the case came to hold that a Special Government Pleader would not come within the meaning of Article 191(1) of the Constitution. The minority judgment expressed by Hidayatullah, C.J. came to hold that an office going under the names of 'Additional Government Pleader', 'Assistant Government Pleader', 'Special Government Pleader' will equally be an office properly so-called as government is always at liberty to create offices of special duties, and further held that the said office was an office of profit. While coming to the said conclusion Their Lordships relied upon the earlier decision of the Court in *Mahadeo's case* (supra) as well as Lord Wright's enunciation of the word 'office' in *McMillon's case*.

In *Shibu Soren vs. Dayanand Sahay and Others* (2001) 7 SCC 425, a Three Judge Bench of this Court considered several earlier judgments of this Court and preferred to follow the earlier judgment in *Ashok Kumar Bhattacharyya vs. Ajoy Biswas and Others* (1985) 1 SCC 151, wherein the Court had observed, "for determination of the question whether a person holds an office of profit under the Government, each case must be measured and judged in the light of the relevant provisions of the Act". In paragraph 36 the Court held thus

"The question whether a person holds an office of profit, as already noticed, is required to be interpreted in a realistic manner having regard to the facts and circumstances of each case and relevant statutory provisions. While 'a strict and narrow construction' may not be adopted which may have the effect of 'shutting off many prominent and other eligible persons to contest the elections' but at the same time 'in dealing with a statutory provision which imposes a disqualification on a citizen it would be unreasonable to take merely a broad and general view and ignore the essential points'. The approach which appeals to us to interpret the expression 'office of profit' is that it should be interpreted with the flavour of reality bearing in mind the object for enactment of Article

102(1)(a), namely, to eliminate or in any event to reduce the risk of conflict between the duty and interest amongst members of the legislature by ensuring that the legislature does not have persons who receive benefits from the executive and may thus be amenable to its influence."

In our considered opinion this appears to be the right approach to be adopted, particularly when the word 'office' has not been defined in the Constitution.

Mr. Bobde, the learned senior counsel, on the other hand relying upon the judgment of this Court in the case of *Rabindra Kumar Nayak vs. Collector, Mayurbhanj, Orissa and others* (1999) 2 SCC 627, contended that the enunciation of word 'office' by Rowlatt in *Great Western Railway Co. vs. Bater*, indicating that it should be subsisting, permanent, substantive position which had an existence independent from the person who filled it, which went on and was filled in succession by successive holders, was approved by this Court in the aforesaid case as well as in *Kanta Kathuria's* case by the Constitution Bench, and therefore, that test should be applied to the case in hand. It may be noticed at this stage, the decision of this Court in *Madhukar G.E. Pankakar vs. Jaswant Chobbildas Rajani and others* (1977) 1 SCC 70, where this Court held that for deciding the question whether it was an office of profit under the Government or not it is the circumstances that has to be looked at and not the form and further all the several factors stated by the Court, as determinative of the holding of an office under Government, need not be conjointly present. It was held that the practical view, not pedantic basket of tests, should guide in arriving at a sensible conclusion. A conspectus of the aforesaid decisions of this Court unequivocally therefore, indicate that the question has to be answered depending upon the facts peculiar to the case in hand with the object of finding out whether in fact the Government retain some control over the post which the incumbent was holding at the time of filing of nomination and was there any profit attached to the post in question. The underlined idea obviously is, that it should be free from any pressure from the Government so that there can be no conflict in discharge of his independent duties as a member of the Legislative Assembly or the Legislative Council. Mr. Bobde, the learned senior counsel appearing for the respondent strongly urged that One Man Commission, which Shri Vatal Nagaraj was holding had been created for a specific tenure which does not last after the tenure is over and, therefore, if the test of Rowlatt, J. is applied which has been approved by this Court, it cannot be held to be an office of profit within the ambit of Article 191(1) of the Constitution. We are, however, unable to persuade ourselves to agree with this submission as in our view, taking into account the order of the Government constituting the Commission, to study the problems of Kannadigas in the Border areas of Kerala, Maharashtra, Andhra Pradesh, Goa and Tamil Nadu and to submit a report to the Government and the appointment of Shri Vatal Nagaraj as a Chairman of that Commission and thereafter conferring the status of the Minister of Cabinet rank to that post and finally making a Budgetary provision in order to a new head of account to defray the expenses of pay and day to day expenses of the Chairman of the Commission it must be held that the office was office of profit within the ambit of Article 191(1) of the Constitution and the rejection of nomination on that score was not improper and High Court committed error in holding

that the nomination had been improperly rejected. Our aforesaid conclusion is further strengthened by the provisions of the Karnataka Legislature (Prevention of Disqualification) Act, 1956. The said Act had been enacted by the Karnataka Legislature on 15th January, 1957 declaring certain offices not to be the office of profit and stating that the holders thereof are not ineligible for being chosen as, or for being members of the Karnataka Legislative Assembly and Karnataka Legislative Council. Under Article 191 (1)(a) a person who is disqualified for being chosen as and for being a member of the Legislative Assembly or Legislative Council, if he holds any office of profit under the Government of India or the Government of a State other than an office declared by the legislature of the State by law not to disqualify its holder. The aforesaid Karnataka Act appears to have been enacted, as contemplated under Article 191(1)(a) of the Constitution. Section 2(a) defines a 'Committee' to mean any Committee, Commission, Council, Board or any other body of one or more persons whether statutory or not, set up by the Government of India or the government of any State. Section 3 (d) includes the office of the Chairman or Member of a committee, and therefore, by application of Section 3, the office of the Chairman or member of a Committee would stand excluded from the disqualification ordinarily. But the proviso to the said clause further indicate that the holder of any such office is not in receipt of or entitled to, any remuneration other than the compensatory allowance. The expression 'compensatory allowance' has been defined in Section 2(b). The Chairman or a member of a Committee, therefore it is in receipt of or is entitled to any remuneration other than compensatory allowance then the removal of disqualification clause would not apply and the person concerned would stand disqualified. The fact that the office of the Chairman or a member of a Committee is brought within the purview of this Act implies that the office concerned must necessarily be regarded as an office of profit, but for the exclusion under the clause by the legislature, the holder of such office could not have been eligible for being chosen as member of the legislature. The object of this provision is to grant exemption to holders of office of certain description and the provision in substance is that they will enjoy the exemption even though otherwise they might be regarded as holders of offices of profit. A conjoint reading of Section 2(a), 2(b), and 3(d) together with its proviso of the Karnataka Legislature (Prevention of Disqualification) Act, 1956 unequivocally supports our conclusion earlier that the post of Chairman of a Commission is an office of profit and in the case in hand, in view of the Government order dated 24.5.2000, the remuneration which said Vatal Nagaraj was getting cannot be held to be compensatory allowance within the ambit of Section 2(b) of the Act, and therefore, he was holder of an office of profit and consequently the disqualification attached under Article 191 of the Constitution would apply.

Mr. Venugopal is also right in his submission that the second direction of the High Court is not sustainable in law, but we need not further delve into the question, in view of our finding on the other question.

In the aforesaid premises, we have no hesitation in coming to the conclusion that the respondent Vatal Nagaraj was holder of an office of profit and, therefore, his nomination had rightly been rejected and the High Court committed error in holding that it was an improper rejection.

Necessarily, therefore, the election of the elected candidates could not have been held to be null and void. We, therefore, set aside the impugned judgment of the High Court of Karnataka and allow this appeal and hold that the appellants were duly elected to the Karnataka Legislative Council and their election cannot be held to be null and void.

.....J.
(G.B. PATTANAIAK)

.....J.
(R.P. SETHI)

January 23, 2002.

JUDIS