

## **Topic: Whether A Person Who Is Disqualified To Be A Member Of State Legislature Could Be Appointed As A Minister Or The Chief Minister Under Article 164(4)?**

Name of the Case: B.R. Kapur v. State of Tamil Nadu, (2001) 7 SCC 231

Bench Justice G.B. Pattanaik, Justice S.P. Bharucha, Justice Brijesh Kumar, Justice Y.K. Sabharwal and Justice Ruma Pal

Fact of the Case: The nomination paper of Jayalalithaa for election to the state legislative assembly was rejected. She had been convicted for certain offences under the Prevention of Corruption Act and the Indian penal Code and sentenced to 3 years rigorous imprisonment. She had appealed to the High Court against her conviction; The High Court suspended her sentence but not her conviction pending decision on her appeal. Accordingly, she was disqualified to contest an election to the house. As a result of the election, her party AIDMK all by a big majority and elected her as a leader the governor of Tamil Nadu appointed her as the chief minister under Article 164(4) as she was not a member of the state legislature at this time. Her appointment as the chief minister was challenged in Supreme Court.

Judgment: The Supreme Court held that it would be “unreasonable and anomalous to conclude that a minister who is a member of legislature is required to meet the constitutional standards of qualification and disqualification but that a minister who is not a member of legislature need not. Logically, the standard expected of a minister who is not a member should be the same as, if not greater then, those required of a member.”

However, if the Governor appoints a disqualified person to a constitutional office, the discretion of the Governor may not be challengeable because of Article 361, but that does not confer any immunity on the appointee himself. The qualification of the appointee to hold office can be challenged in proceeding for quo warranto (a writ or legal action requiring a person to show by what warrant an office or franchise is held, claimed, or exercised). If the appointment is contrary to any constitutional provision, it can be quashed by the court.