

## **Topic: Disqualify Members Of Parliament Of Office Of Profit Under The Government**

Name of the case: Madhukar v. Jaswant, AIR 1976 SC 2283

Bench: Justice V.R. Krishna Iyer and Justice N.L. Untawalia

Fact of the case: The appellant, who was a private medical practitioner and whose name was included in the panel of doctors maintained by the corporation and the respondent, were contestants in an election for the Presidentship of a medical Council.

Judgment: The Supreme Court has replaced the approach to disqualify members of Parliament upon holding office of profit. The court says, "after all, all law is a means to an end. What is the legislative and here in disqualifying holders of office of profit under government? Obviously, to avoid a conflict between duty and interest, to cut out the massive job of sale position to advance private benefit and to avoid the likelihood of influence in government to promote personal advantage. So, this is the mischief to be suppressed. At the same time we have to bear in mind that our Constitution mandates the state to undertake multifarious public welfare and social economic activities involving technical persons, welfare workers, and lay people on a massive scale so that participatory government may prove a progressive reality. In such an expending situation, can we keep out from elective post at various levels many doctors, lawyers, engineers and scientists, not to speak of any army of the other non-official who are wanted in various fields, not as full-time government servants but as part-time participant in People's project sponsored by government?

For instance, if a National Legal Service Authority funded largely by state comes into being, a large segment of the legal profession may be employed in ennobling occupation of legal aid to the poor. Doctors, lawyers, engineers, scientists and other experts may have to be invited into local bodies, legislature and like political administrative organ based on election if these vital limbs of reference government are to be the monopoly of populist politician or lay members but is sprinkled with technician in an age which belongs to technology. So, an interpretation of 'office of profit' or cast the net so wide that our citizen with specialities and know-how are inhibited from entering elected organs of public administration and offering voluntary services in para official, statutory or like projects run or directed by government or cooperation controlled by the state may be detrimental to the democracy itself. Even athletes may hesitate to come into Sports Councils if some fee for services is paid and that prove their funeral if elected to Panchayat! A balanced view, even if it invokes 'judicial irreverence' to vintage precedents, is the wiser desideratum.

Further development

The Supreme Court in *Jaya Bachchan v. Union of India*, AIR 2006 SC 2119, held that payment of honorarium in addition to daily allowance in the nature of compensatory allowance, 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 construed as profit.

For the purpose of disqualification, the office in question must be under the government. If the office is not under the government, no disqualification will arise. To determine whether a person holds an office under government, several tests which are ordinarily applied are:

Whether the government makes the appointment;

Whether the government has right to remove or dismiss the holder of the office;

Whether the government pays the remuneration;

Whether the functions performed by the holder are carried by him for the government and

Whether the government has control over the duties and function of the holder

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