Supreme Court of India
U.C.Raman vs P.T.A.Rahim And Ors on 1 August, 1948
Author: S K Singh
Bench: Chief Justice, Shiva Kirti Singh

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5509 OF 2012

U.C. RAMAN ... APPELLANT

VS.

P.T.A. RAHIM AND ORS. ... RESPONDENTS

J U D G M E N T

SHIVA KIRTI SINGH, J.

The only issue falling for consideration in this Appeal filed under Section 116A read with Section 116B of the Representation of People Act, 1951 is whether for the purpose of Article 191(1)(a) of the Constitution of India, the first respondent held an office of profit under the Government of India and for that reason his nomination ought to have been rejected by the returning officer and the High Court should have set aside his election as a member of Kerala Legislative Assembly for which he was declared elected on 13.5.2011.

2. At the stage of scrutiny of nomination papers, the appellant as well as one another candidate raised objections against acceptance of nomination of the first respondent by pointing out to the returning officer that the first respondent was disqualified to contest the election to the Kerala Legislative Assembly by reason of his holding an 'office of profit' under the State Government namely the post of Chairperson of State Haj Committee. The returning officer rejected the objections. In the election, first respondent secured highest number of votes followed by the appellant and was declared elected. Undisputedly, the first respondent had been nominated by the State Government as one of the members of the Haj Committee under the provisions of Haj Committee Act, 2002 (Central Act 35 of 2002) (hereinafter referred to as 'the Act') on 18.6.2009.

3. Under the provisions of the Act, the first respondent got elected as the Chairperson and he was notified as such by the State Government in the Official Gazette with effect from 30.6.2009. The appellant obtained information regarding allowances received by the first respondent as Chairperson of State Haj Committee and filed Election Petition No.4 of 2011 on 27.6.2011. As

noticed earlier the case of the appellant is that election of first respondent was vitiated by improper acceptance of his nomination papers and that he was wholly disqualified to contest in the election on account of his holding an 'office of profit' under the State Government.

4. The first respondent filed written statement in the election petition wherein he admitted that at the relevant time he held the office of Chairperson of the Kerala State Haj Committee. However, he raised several objections to the maintainability of the election petition and also disputed that Chairperson of Kerala State Haj Committee holds an 'office of profit' under the State Government so as to be covered by the provisions of Article 191 of the Constitution of India. He also disputed that he was appointed by the State Government.

5. After noticing the relevant provisions of the Constitution, the Representation of People Act and the Act the learned Single Judge under the main issue, found two questions falling for consideration:- (1) Whether the first respondent occupies the office under the State Government? and (2) If it is an office, is he the holder of an office of profit?

6. The High Court further observed that if the aforesaid two questions are answered against the first respondent, then the next question would be whether he is exempted under the provisions of Kerala Legislative Assembly(Removal of Disqualification) Act, 1951 (Act 15 of 1951).

7. In the light of facts of the case and the various decisions of this Court, the High Court answered the first question in favour of the appellant and held that the office of Chairperson of the Haj Committee is an office under the State Government. However, on the basis of large number of precedents of this Court, the High Court decided the second question against the appellant by holding that the appellant had miserably failed to prove that the first respondent was holding an 'office of profit' as contemplated under Article 191 of the Constitution and therefore acceptance of his nomination did not suffer from any impropriety or illegality. Accordingly, the election petition preferred by the appellant, was dismissed by the judgment under appeal.

8. On behalf of the appellant, Mr. T.R. Andhyarujina, learned senior advocate made serious effort to persuade us to hold that on the basis of evidence adduced by the appellant, the High Court should have decided the second question also in favour of the appellant and ought to have held that the office held by the first respondent was an 'office of profit' covered by Article 191 of the Constitution of India and consequently the election of first respondent should have been set aside. On the other hand, Mr. V.A. Mohta, learned senior advocate, appearing for the first respondent defended the judgment of the High Court by referring to the evidence on record that had been considered by the High Court as well as by placing reliance upon several judgments of this Court and Section 2(1)of Act 15 of 1951.

9. On behalf of the appellant it was further contended that Section 37 of the Haj Committee Act, 2002 though provides that office of a member of the Committee or State Committee shall not be deemed to be an 'office of profit', it cannot be of any help to the first respondent because he held the post of Chairperson of the State Haj Committee and also because the Haj Committee Act, 2002 is a Central Act and not a law enacted by the legislature of the State as contemplated under Article

191(1)(a). On the other hand Mr. Mohta has relied upon Section 2 of Act 15 of 1951 to supplement his submissions that a person shall not be disqualified, as per aforesaid State Act, for being chosen as and for being a member of the legislative assembly of the State of Kerala by reason only that he is in receipt of travelling and daily allowances while serving as a member of any Committee or Board constituted by the Government of India or the Government of any State.

10. The issue of exemption from disqualification by virtue of Section 37 of the Haj Committee Act, 2002 or Section 2 of Act No. 15 of 1951, will be relevant and worth deciding only if the appellant succeeds in assailing the finding of the High Court on the basis of judgments of this Court and the evidence on record that office in question is not an 'office of profit'. On this issue, the conclusions derived by High Court as findings of fact on the basis of evidence on record have not been assailed as perverse or even erroneous. The relevant findings are that the evidence led by the appellant coupled with pleadings of the rival parties disclose that the appellant has succeeded only in proving that the first respondent has obtained pecuniary benefits by way of travelling allowance covered by exhibits P-4, P-5, and P-6 and beyond that the first respondent has not received any pecuniary benefits by way of any other allowances, salary or commission. There is no pleading, evidence or even a suggestion given to the first respondent that he received anything beyond TA which is admissible to the Chairperson, Vice-chairperson and members, as per Rule 11 of the Haj Committee Rules, 2002 made by the Central Government in exercise of powers conferred under Section 44 of Haj Committee Act, 2002. The rules do not entitle the Chairperson and the members anything besides TA and daily allowance for attending meetings. It is also an admitted fact that although State Government has been vested with power to prescribe allowances to the members of the Haj Committee under Section 20 of the Act but such power has not been exercised by the State Government so far. Keeping in view the nature of TA and daily allowance in mind, the High Court has come to the conclusion that not only the pecuniary benefits received by the first respondent are only compensatory in nature but as a matter of fact the post did not carry any other benefits which may be categorized as pecuniary benefits 'receivable' by the first respondent, so as to classify the office in question as an 'office of profit'.

11. In the backdrop of factual matrix noted above, learned senior advocate for the appellant has advanced a submission that profit should not be confined to pecuniary benefits but also to other factors such as status, power and influence emanating from the post. He has placed reliance upon the judgments of this Court in the cases of :

(1) Gurugobinda Basu vs. Sankari Prasad Ghosal and Ors. 1964 (4) SCR 311, (2) Biharilal Dobray vs. Roshan Lal Dobray, 1984 (1) SCC 551 (3) Pradyut Bordoloi vs. Swapan Roy, 2001 (2) SCC 19 and (4) Jaya Bachchan v. Union of India & Ors., (2006) 5 SCC 266.

The first three judgments deal with various tests which should be applied to find out whether the office in question is an office under the Government or not. Since in the present case this issue has been decided by the High Court in favour of the appellant and there is no serious challenge to that finding, those judgments are not of much relevance. So far as the case of Jaya Bachchan is concerned, this Court was called upon to answer what the term 'office of profit' could mean although the context was Article 102 of the Constitution of India which is concerned with disqualification of

member of either House of Parliament. Nonetheless, the interpretation given by this Court to the term 'office of profit' is equally applicable in interpreting the same phraseology in the context of Article 191 of the Constitution. It will be useful to extract a part of paragraph 6 of the judgment which runs as follows:

"6. ..... 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 [pic]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 (2001) 7 SCC 425."

12. The law as indicated above was not only noticed by the High Court but also appreciated in proper perspective. In that light, the High Court examined the evidence on record and came to the conclusion that the pecuniary gain not only received but also 'receivable' in connection with the office was only compensatory in nature by way of TA and daily allowances. Therefore, the High Court in tune with the aforesaid judgment of this Court held that office in question was not an 'office of profit'. The answer given by the High Court is fully in accord with the law laid down by this Court because as per the evidence on record the first respondent was neither in receipt of any pay, salary, emoluments, remuneration or commission, nor anything of such nature was payable to him. He was in receipt of only TA and daily allowance which are compensatory allowance and these alone were 'receivable' also.

13. On behalf of the appellant an attempt was made to take advantage of amendment made in the year 2006 through Parliament (Prevention of Disqualification) Act 2006, whereby Section 3 was enlarged and the table annexed to the Parliament (Prevention of Disqualification) Act, 1959 was amended by adding several Committees, Councils, Trusts etc. including the Haj Committee of India constituted under Section 3 of the Haj Committee Act, 2002. According to the learned senior counsel for the appellant, the very amendment amounts to an acceptance, though by the Central Government, that the Vice Chairman or member of the Haj Committee of India suffered from

disqualification and therefore, they were included under Section 3 of the Parliament (Prevention of Disqualification) Act, 1959 with a view to save them from disqualification as holder of an 'office of profit'

14. In our considered view the inclusion of Haj Committee of India constituted under Section 3 of Haj Committee Act, 2002 within the purview of Section 3 of the Parliament (Prevention of Disqualification) Act, 1959 cannot help the case of the appellant because the first respondent happened to be Chairperson of the State Haj Committee of Kerala and the allowances admissible to the Haj Committee of India have not been shown to be same as that for the State Haj Committee, Kerala. Further the reply on behalf of the first respondent that such amendment may have been introduced by way of abundant caution is also plausible and cannot be brushed aside.

15. Learned counsel for the first respondent has placed reliance upon the following judgments of this Court to further illustrate as to what are the essential requirements for determining whether the office in question is an 'office of profit' or not.

1. Gajanan Samadhan Lande v. Sanjay Shyamrao Dhotre, (2012) 2 SCC 64

2. Shivamurthy Swami Inamdar etc. vs. Agadi Sanganna Andanappa etc., 1971 (3) SCC 870

3. Ravanna Sabanna vs. G.S. Kaggeerappa, AIR 1954 SC 653

16. Paragraph 12 of judgment in the case of Ravanna Subanna discloses that a small amount of Rs.6/- for each sitting of Committee for the Chairman deserved to be treated as consolidated fee for the out-of-pocket expenses which he has to incur for attending the meetings of the Committee and is not meant to be a payment by way of remuneration or profit.

17. In the case of Shivamurthi Swami also a similar view was taken in paragraph 17 by treating Rs.16/- per day payable to the member of the concerned Board as a payment for the purpose of reimbursing the expenses incurred by the members and hence it was held to be a compensatory allowance and not a profit.

18. In the case of Gajanan Samadhan Lande to which one of us (Justice R.M. Lodha)(as His Lordship then was) was a member, it was succinctly explained that :

"..... one of the essential necessities in determining the question whether the office is an "office of profit" or not is whether such office carries remuneration in the form of pay or commission. As an elected Director, the amount paid to the returned candidate by way of allowances, by no stretch of imagination, can be said to be "remuneration" in the form of pay or commission. It is only a sort of reimbursement of the expenses incurred by the returned candidate. The essential condition that the office carries remuneration in the form of pay or commission is also not satisfied."

19. The aforesaid judgments relied upon by the learned advocate for the first respondent clearly support the view taken by the High Court and fortify the judgment under appeal.

20. The plea raised by Mr. Andhyarujina, learned senior advocate for the appellant that the word 'profit' should include even status and influence etc., besides the pecuniary profits, is not found acceptable in view of long line of judgments of this Court, some of which have been cited by both the parties and have been noticed above. This Court has given categorical clarification on more than one occasion that an 'office of profit' is an office which is capable of yielding a profit or pecuniary gain. The word 'profit' has always been treated equivalent to or a substitute for the term 'pecuniary gain'. The very context, in which the word 'profit' has been used after the words 'office of', shows that not all offices are disqualified but only those which yield pecuniary gains as profit other than mere compensatory allowances, to the holder of the office. There is no requirement to make a departure from the long line of established precedents on this issue. If the submissions of learned counsel for the appellant were to be accepted, it would add a great amount of uncertainty in deciding whether an office is an 'office of profit' or not.

In the aforesaid factual and legal premises, we find no option but to dismiss the appeal. We order accordingly. However, parties shall bear their own costs, so far as this appeal is concerned.

.....CJI
(R.M. LODHA)

.....J. (SHIVA KIRTI SINGH)
New Delhi,
August 01, 2014.
