

Supreme Court of India

Biharilal Dobray vs Roshan Lal Dobray on 23 November, 1983

Equivalent citations: 1984 AIR 385, 1984 SCR (1) 877

Author: E Venkataramiah

Bench: Venkataramiah, E.S. (J)

PETITIONER:

BIHARILAL DOBRAY.

Vs.

RESPONDENT:

ROSHAN LAL DOBRAY.

DATE OF JUDGMENT 23/11/1983

BENCH:

VENKATARAMIAH, E.S. (J)

BENCH:

VENKATARAMIAH, E.S. (J)

FAZALALI, SYED MURTAZA

CITATION:

1984 AIR 385 1984 SCR (1) 877

1984 SCC (1) 551 1983 SCALE (2) 761

CITATOR INFO :

R 1985 SC 211 (19)

R 1988 SC 1369 (15)

D 1992 SC 1959 (12,14,18,21)

ACT:

Constitution of India 1950, Article 191(I)(a):

'office of profit'-Holding of-What is-Tests for determination.

Teacher in a Basic Primary School run by the State Board of Basic Education constituted under a statute - Whether holder of office of profit'- Whether disqualified under Article 191(1)(a).

Statutory. Corporations:

Incorporation of a body corporate by statute-Tests to determine whether it is independent of the Government.

Words & Phrases.

'office of profit'-Meaning of-Article 191(1)(a) Constitution of India.

HEADNOTE:

In the election to a seat in a Legislative Assembly Constituency the nomination paper of the respondent who was an Assistant Teacher in a Basic Primary School run by the State Board of Education was rejected by the Returning

officer on the ground that he was holding an office of profit under the State Government', and he was therefore disqualified under Article 191(1)(a) of the Constitution, for being chosen as a member of the Legislative Assembly. In the election the appellant was declared elected.

In his Election Petition, the respondent contended that since the post of Assistant Teacher in a Basic Primary School which he was holding was not an 'office of profit under the State Government', the rejection of his nomination was improper and therefore the election was liable to be declared as void. The High Court allowed the Election Petition holding that the post held by the respondent was not an office of the profit under the State Government'. It declared the election as void by reason of the improper rejection of the respondent's nomination paper.

Allowing the appeal to this Court,

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HELD: 1 The respondent was holding an 'office of profit under the State Government' and his nomination was rightly rejected by the officer. [901 A]

In the instant case, the respondent was holding the post of Assistant Teacher in a Basic Primary School on the date of his nomination as a candidate at the election and was in receipt of the salary attached to that post. The Institution wherein he was employed was being run and managed by the Zila Parishad and the respondent was therefore an employee of the Zila Parishad on the promulgation of the U.P. Ordinance No. 14 of 1972 which was replaced by the U.P. Basic Education Act, 1972 he became an employee of the Board under section 9(1) of the Act which provided for the transfer of employees of local bodies to the Board. The State Government under section 19 framed the Uttar Pradesh Basic Educational Staff Rules, 1973 which were applicable to all the employees of the Board. The appointing authority in respect of Assistant Teachers was the District Basic Education officer, who was an officer appointed by the State Government. The Schedule to the Rules prescribed the appointing authorities and the appellate authorities in respect of different posts in the Board. The Rules provided for the procedure to be followed in disciplinary proceeding and the punishment that may be imposed when an employee was found guilty of any act of misconduct. The procedure laid down in the Civil Services (Classification, Control and Appeal) Rules as applicable to the servants of the Uttar Pradesh Government was required to be followed as far as possible. The funds of the Board came from the contribution made by the State Government. The School in question was not a privately sponsored institution which was recognised by the Board. The final control of the school was vested in the Government and such control was exercised by it through the Director or Deputy Director of Basic Education and other District Basic Education officers appointed by the

Government. The Board for all practical purposes was a department of the Government and its autonomy was negligible. The respondent therefore held an 'office of profit under the State Government'. [888 E, 893 E-897 B]

2. The object of enacting Article 191(1)(a) is that a person elected to a Legislature should be free to carry on his duties fearlessly without being subjected to any kind of governmental pressure. If such a person is holding an office which brings him remuneration and the Government has a voice in his continuance in that office there is every likelihood of such person succumbing to the wishes of the Government. Article 191(1)(a) is intended to eliminate the possibility of a conflict between duty and interest of an elected representative and to maintain the purity of the legislature. [881 E]

3. The term 'office of profit under the Government' occurring in Article 191(1)(a) though indeterminate is an expression of wider import than as 'post held under the Government' dealt with in Part XLV of the Constitution, [881 F]

4. For holding 'an office of profit under the Government' a person need not be in the service of the Government, and there need not be any relationship or master and servant between them. An office of profit involves two elements, namely that there should be an office and that it should carry some remuneration. [881 G]

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5. In order to determine whether a person holds an office of profit under the Government several tests are ordinarily applied such as whether the Government makes the appointment, whether the Government has the 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 on by him for the Government and whether the Government has control over the duties and functions of the holder. [881H-882 A]

Maulana Abdul Shakur v. Rikhab Chand & Anr. [1958] S.C.R. 387; M. Ramappa v. Sangappa & Ors. [1959] S.C.R. 1167; Gurugobinda Basu v. Sankari Prasad Ghosal & Ors [1964] 4 S.C.R. 311; D.R. Gurushantappa v. Abdul Khuddus Anwar & Ors. [1969] 3 S.C.R. 425; Divya Prakash v. Kultar Chand Rana & Anr. [1975] 2 S.C.R. 749; State of Gujarat & Anr. v. Raman Lal Keshav Lal Soni & Ors [1983] 2 S.C.R. 33; Kona Prabhakara Rao v. M. Seshgiri Rao & Anr A.I.R. 1981 S.C. 658 referred to.

6. The incorporation of a body corporate may suggest that the statute intended it to be a statutory corporation independent of the Government. But it is not conclusive on the question whether it is really so independent. Some times the form may be that of body corporate independent of the Government but in substance it may be just the alter ego of the Government itself: The true test depends upon the degree of control the Government has over it the degree of its

dependence on Government for its financial needs and the functional aspect and so on. [898 H-899 B]

7. Article 45 of the Constitution requires the State to endeavour to provide for free and compulsory education for all children until they complete the age fourteen years. Primary education in a State, unlike higher education, is the special responsibility of its Government. [899 C]

In the instant case, the Uttar Pradesh Basic Education Act, 1972 was passed with the object of enabling the Government to take over all basic schools which were being run by the local bodies in the State and to manage them and to administer all matters pertaining to the entire basic education in the State, through the Board consisting mostly of officers appointed by the Government. [899 F-G]

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1101 of 1982.

Appeal by Special leave from the Judgment and order dated the 3rd March, 1982 of the Allahabad High Court in Election Petition No. 21 of 1980.

P. R. Mridul, J. B. Dadachanji, R. Narain, O. C. Mathur and Mrs. A. K. Verma for the Appellant.

J. P. Goyal, V. K. Verma and Rajesh for the Respondent. The Judgment of the Court was delivered by VENRATARAMIAH, J. The question involved in this appeal is whether an Assistant Teacher employed in a Basic Primary School run by the Uttar Pradesh Board of Basic Education constituted under the Uttar Pradesh Basic Education Act, 1972 (U P. Act No. 34 of 1972) (hereinafter referred to as 'the Act') is disqualified for being chosen as a member of the State Legislative Assembly under Article 191 (1)(a) of the Constitution.

The appellant Biharilal Dobray, the respondent Roshan Lal Dobray and some others were nominated as candidates at the election to the Uttar Pradesh Legislative Assembly from 308 Kanauj (S.C.) Assembly constituency at the last general elections held in the year 1980. The nomination paper of the respondent was, however, rejected by the Returning officer by his order dated May 5, 1980 on the ground that he was holding an office of profit under the Government of the State of Uttar Pradesh and hence was disqualified under s Article 191(1)(a) of the Constitution for being chosen as a member of the Legislative Assembly. After such rejection the polling took place on May 28, 1980 and the appellant who secured the highest number of votes was declared elected on June 1, 1980. Aggrieved by the result of the election, the respondent who was not allowed to contest the election by reason of the rejection of his nomination paper filed an election petition before the High Court of Allahabad challenging the correctness of the order of rejection of his nomination paper and the result of the election which was held thereafter. He contended that since the post of an Assistant Teacher in a Basic Education School which he held was not an office of profit under the State Government the rejection of his nomination was improper and, therefore, the election of the

appellant was liable to be declared as void as provided in section 100(1)(c) of the Representation of the People Act, 1951. The High Court being of the opinion that the post held by the respondent was not an office of profit under the State Government held that the rejection of his nomination was improper and the election of the appellant was liable to be declared as void. Accordingly the election petition was allowed and the appellant's election was declared as void. Aggrieved by the decision of the High Court, the appellant has preferred this appeal under section 116-A of the Representation of the People Act, 1951.

Although there was an alternative plea raised in the election petition that the respondent had ceased to hold the post of the Assistant Teacher in the Basic Education School on the relevant date by reason of his prior registration, it was not pressed at the hearing of the election petition and the parties proceeded on the basis that the respondent was holding the said post at all material times. The only issue tried by the High Court was whether the said post was an office of profit under the State Government or not which, as stated earlier, was answered in favour of the respondent.

The plea of disqualification of the respondent for being chosen as a member of the Legislative Assembly was based on Article 191 of the Constitution, the material part of which reads thus :

"191. (1) A person shall be disqualified for being chosen as and for being, a member of the Legislative Assembly or Legislative Council of an State

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the first Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;.. "

The object of enacting Article 191 (1) (a) is plain. A person who is elected to a Legislature should be free to carry on his duties fearlessly without being subjected to any kind of governmental pressure. If such a person is holding an office which brings him remuneration and the Government has a voice in his continuance in that office, there is every likelihood of such person succumbing to the wishes of Government. Article 191 (1) (a) is intended to eliminate the possibility of a conflict between duty and interest and to maintain the purity of the Legislatures. The term 'office of profit under the Government' used in the above clause though indeterminate is an expression of wider import than a post held under the Government which is dealt with in Part XIV of the Constitution. For holding an office of profit under the Government a person need not be in the service of the Government and there need not be any relationship of master and servant between them. An office of profit involves two elements, namely, that there should be an office and that it should carry some remuneration. In order to determine whether a person holds an office of profit under the Government several tests are ordinarily applied such as whether the Government makes the appointment, whether the Government has the 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 on by him for the Government and whether the Government has control over the duties and functions of the holder. Whether an office in order to be characterised as an office of profit under the Government should satisfy all these tests or whether any one or more of them may be decisive of its true nature has been the subject matter of several cases decided by this Court but no decision appears to lay down

conclusively the characteristics of an office of profit under the Government although the Court has no doubt determined in each case whether the particular office involved in it was such an office or not having regard to its features.

In *Maulana Abdul Shakur v. Rikhab Chand & Anr.*(1) the question before this Court was whether the Manager of the Durgah Khwaja Saheb School run by a committee of management formed under the provisions of the Durgah Khwaja Saheb Act, 1955 held an office of profit under the Central Government. The appellant in that case was elected to the Council of States (Rajya Sabha) by the Electoral College of Ajmer at the election held in 1957. The unsuccessful candidate, the respondent therein, filed an election petition questioning the validity of the election on the ground that the appellant therein was disqualified for being chosen as a member of Parliament as he was holding the office of the Manager of the school belonging to the Durgah Khwaja Saheb which was governed by the Durgah Khwaja Saheb Act, 1955 and had been appointed as Manager by the committee of management appointed by the Central Government under section 6(2) of that Act. It was contended by him that because a member of the committee of management could be removed by the Central Government and because the committee could make bye-laws prescribing the duties and powers of the employees of the Durgah, the appellant therein was holding an office of profit under the Central Government and was, therefore, disqualified under Article 102(1)(a) of the Constitution which was more or less similar to Article 191(1)(a) of the Constitution. The Election Tribunal accepted the above plea and set aside the election. On appeal this Court reversed the decision of the Election Tribunal holding that the office of the Manager in question was not an office of profit under the Central Government. The Durgah in question was a religious institution and its affairs were regulated by the Durgah Khwaja Saheb Act, 1955. The said Act was passed for making provision for the proper administration of the Durgah and the endowment of the Durgah Khwaja Moin-ud- din Chishti generally known as Durgah Khwaja Saheb of Ajmer. The property, endowment and funds of the said Durgah belonged to it and not to the Central Government and the employees who were working in the Durgah were employees of the Durgah. The Central Government only had the power to appoint the members of the committee. This Court observed in the course of its judgment at page 394 thus:

"No doubt the Committee of the Durgah Endowment is to be appointed by the Government of India but it is a body corporate with perpetual succession acting within the four corners of the Act. Merely because the Committee or the members of the Committee are removeable by the Government of India or the Committee can make bye-laws prescribing the duties and powers of its employees cannot in our opinion convert the servants of the Committee into holders of office of profit under the Government of India. The appellant is neither appointed by the Government of India nor is removable by the Government of India nor is he paid out of the revenues of India. The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenues are important factors in determining whether that person is holding an office of profit under the Government though payment from a source other than Government revenue is not always a decisive factor. But the appointment of the appellant does not come within this test."

In *M. Ramappa v. Sangappa & Ors* (1) the question before this Court was whether Patels and Shanbhogs who were holders of hereditary village offices governed by the Mysore Village Offices Act, 1908 were disqualified under Article 191(1)(a) of the Constitution for being chosen as members of the State Legislative Assembly. The Court answered the question in the affirmative and observed at pages 1176-77 thus:

"We then come to this that Patels and Shanbhogs are officers, who are appointed to their offices by the Government though it may be that the Government has no option in certain cases but to appoint an heir of the last holder; that they hold their office by reason of such appointment only; that they work under the control and supervision of the Government; that their remuneration is paid by the Government out of Government funds and assets; and that they are removable by the Government, and that there is no one else under whom their offices could be held. All these clearly establish that Patels and Shanbhogs hold offices of profit under the Government." The next case to be noticed is *Gurugobinda Basu v.*

Sankari Prasad Ghosal & Ors.(1) in which this Court had to decide whether the appellant therein who was a chartered accountant and a partner of a firm of auditors appointed as auditors of two Government companies was holding an office of profit under the Union Government and the Government of West Bengal and was, therefore, disqualified under Article 102(1)(a) of the Constitution from being chosen as a member of the Lok Sabha. The appellant therein contended that on a true construction of Article. 102(1)(a) of the Constitution he could not be said to hold an office of profit under the Government of India which held the entirety of shares in one company and the Government of West Bengal which held the entirety of shares of the other company because the various tests viz. the Government had the power to appoint, the Government had the right to remove, the Government paid the remuneration and the Government controlled the functions and duties of the holder of the office did not co-exist and that the fulfillment of some of the said tests alone did not make the office and office of profit under the Government. He contended that his remuneration was paid by the companies and not by the Governments; he performed the functions for the companies and that his duties were controlled by the Comptroller and auditor General who was different from the Government. This Court rejected the plea of the appellant holding that what had to be considered was the substance of the matter and not the form. It observed:

"In the case before us the appointment of the appellant as also his continuance in office rests solely with the Government of India in respect of the two companies. His remuneration is also fixed by Government. We assume for the purpose of this appeal that the two companies are statutory bodies distinct from Government but we must remember at the same time that they are Government companies within the meaning of the Indian Companies Act, 1956 and 100% of the shares are held by the Government. We must also remember that in the performance of his functions the appellant is controlled by the Comptroller and Auditor-General who himself is undoubtedly holder of an office of profit under the Government, though there are safeguard in the Constitution as to his tenure of office and removability therefrom ...As we have said earlier whether stress will be laid on one factor or the other will

depend on the facts of each case."

Ultimately the Court held that the appellant held an office of profit under the two Governments and was disqualified under Article 102(1)(a) of the Constitution. This was a decision by a Bench of Five Judges. But in *D. R. Gurushaniappa v. Abdul Khuddus Anwar & Ors.*(1) a Bench of three Judges of this Court distinguished the decision in *Gurugobinda Basu's* case (supra) and held that an employee of a Government company was not holding an office of profit under the Government. The following passage in that judgment appearing at page 433 brings forth the view expressed by the Court:

"Mr. Gupta, from these views expressed by the Courts, sought to draw the inference that the primary consideration from determining whether a person holds an office of profit under a Government is the amount of control which the Government exercises over that officer. In the present case, he relied on the circumstances that all the shares of the Company are not only owned by the Mysore Government but the Directors of the Company are appointed by the Government-a Minister was one of the first Directors of the Company; the appointment of the Secretary to the Company is subject to approval of the Government; and, even in the general working of the Company, Government has the power to issue directions to the Directors which must be carried out by them. It was urged that respondent No 1 was directly under the control of the Managing Director who is himself appointed by the Government and may even be a 'lent officer' holding a permanent post under the Government. Respondent No. 1 thus, must be held to be working under the control of the Government exercised through the Managing Director.

We are unable to accept the proposition that the mere fact that the Government had control over the Managing Director and other Directors as well as the power of issuing directions relating to the working of the Company can lead to the inference that every employee of the Company is under the control of the Government. The power of appointment and dismissal of respondent No. 1 vested in the Managing Director of the Company and not in the Government. Even the directions for the day-to-day work to be performed by respondent No. 1 could only be issued by the Managing Director of the Company and not by the Government. The indirect control of the Government which might arise because of the power of the Government to appoint the Managing Director and to issue directions to the Company in its general working does not bring respondent No. 1 directly under the control of the Government."

Divya Prakash v. Kultar Chand Rana & Anr.(1) is a decision of this Court which is very close to the present case. There the Court had to consider whether the post of a Chairman of the Board of School Education of the State of Himachal Pradesh appointed under section 18 of the Himachal Pradesh Board of School Education Act, 1968 was an office of profit under the State Government. The Court while holding that the said office was an office under the State Government held that since the candidate concerned was appointed in an honorary capacity without any remuneration even though the post carried remuneration, he was not holding an office of profit and thus was not disqualified

under Article 191(1)(a) of the Constitution.

Now we come to the latest decision of this Court which is very relevant of purposes of this case and that is State of Gujarat & Anr. v. Raman Lal Keshav Lal Soni & Ors in which the question was whether the employees transferred to the Gujarat Panchayat Service and working under the local authorities formed under the Gujarat Panchayats Act, 1961 were State Government employees or not. The said local authorities were corporate bodies constituted under the statute. After considering several earlier decisions cited before it the Court observed at pages 50-51 thus:

"We may now revert to the question whether the members of the Gujarat Panchayat Service are government servants. First, we see that the duties which they are required to perform are in connection with those affairs of the State which are entrusted to the Panchayat Institutions by the statute itself or by transfer by the Government under the statute. Next, the expenditure towards the pay and allowance of officers and servants of the panchayat service, serving for the time being under any panchayat has, no doubt, to be met by the panchayat from its own fund, but, as we have seen, the fund consists substantially of some contributed or lent by the State Government and of the proceeds of any tax or fee imposed by or assigned to the panchayat under the Act. The imposition of a tax or a fee in the nature of a tax, as we know, is essentially a function of the State. So the salary and allowances of the servants and officers of the panchayat service are paid out of funds contributed, or lent by the Government or raised by the discharge of an essential government function. Secretaries of Gram and Nagar Panchayats are to be appointed in accordance with the Rules made by the Government, while the Taluqa Development officer is to be Secretary of the Taluqa Panchayat and the District Development Officer is to be the Secretary of the District Panchayat. Taluqa and District Development Officers are, of course, officers of State service. Gram and Nagar Panchayats may have other servants, as may be determined under Section 203, but they have to be appointed by such authority as may prescribed by the Government and their conditions of service shall be such as may be prescribed by the Government. Section 203 as already noticed by us, contemplates the constitution of a single centralised panchayat service, the classes, cadres and posts of which have to be determined by the Government from time to time. The mode of recruitment, whether by examination or other-wise, the conditions of service, the power in respect of appointments, transfers and promotions of officers and servants and disciplinary action which may be taken against them, are to be regulated by the Rules made by the Government. The Rules so made are particularly required to contain a provision entitling servants so such cadres in the panchayat service to promotion to such cadres in the State service as may be prescribed vide Section 203(4)(a). This is an important provision. There cannot be any question of a rule providing for promotion from the panchayat service to the State service unless the panchayat service is also a service under the State. Again Section 203(5) requires that rules may provide for inter-district transfers of servants belonging to the panchayat service and the circumstances in which and the conditions subject to which such transfers may be made. This provision along with

the other provisions of Section 203 which provide for the promotion and transfer of servants belonging to the district, taluqa and local cadres within the district, taluqa and gram or nagar clearly show that the servants are not the servants of the individual panchayats but belong to a centralised service."

In the light of the above pronouncements we shall proceed to examine this case. There is no dispute that the respondent was holding the post of an Assistant Teacher in a Basic School on the date of his nomination as a candidate at the election in question and was in receipt of the salary attached to that post. The only question which needs to be examined is whether the post he was holding was one under the State Government or not. This leads us to the consideration of the relevant provisions of the Act i.e. the Uttar Pradesh Basic Education Act, 1972. The Statement of Objects and Reasons attached to the Bill which later on became the Act reads thus:

"Statement of objects and Reasons-(1) The responsibility for primary education has so far rested with the Zila Parishads in rural areas and with Municipal Boards and Mahapalikas in urban areas. The administration of education at this level by the local bodies was not satisfactory, and it was deteriorating day by day. There was public demand for the Government to take immediate steps for improving the education at this level. Hence for reorganizing, reforming and expending elementary education it became necessary for the State Government to take over its control into its own hands.

(2) Repeated demands had been made by all sections of the Legislature also for the take-over of the control of elementary education by the State Government from local bodies. Echoing this public demand, the Governor had also in his address to both the Houses of the Legislature on March 20, 1972, said that in order to strengthen the primary and junior high schools and to increase their usefulness Government was going to assume full responsibility for its control and management. (3) With a view to taking effective steps for securing the object of Article 45 of the Constitution, and fulfilling the assurances given in the Governor's address and respecting the popular demand it was necessary to entrust the conduct and control of elementary education to a virile institution which may be expected to inject new life into it and to make it progressive. It was, therefore, decided by the Government to transfer the control of primary education from the local bodies to the Uttar Pradesh Board of Basic Education with effect from the educational session 1972-73.

(4) The educational session had commenced and the Legislative Council was not in session and if immediate action had not been taken, the matter would have had to be postponed till the educational session 1973-74 with the result that the desired object would not have been achieved. Therefore, in order to implement the said decision immediately, the Uttar Pradesh Basic Education Ordinance, 1972, was promulgated.

(5) The Uttar Pradesh Basic Education Bill, 1972, is being introduced to replace the said Ordinance."

A reading of the above Statement of objects and Reasons shows that the Act was enacted for the purpose of enabling the State Government to take over the responsibility of primary education from the local authorities such as Zila Parishads, Municipal Boards and Mahapalikas. For this purpose the Act provides for the constitution of a Board to run the school imparting primary education instead of keeping them as a part of a Department of Education of the State Government. The Board is established by the State Government under section 3 of the Act with the Director, ex officio, as its Chairman. The other members of the Board are two persons to be nominated by the State Government from amongst Adhyakshas, if any, of Zila Parishads; one person to be nominated by the State Government from amongst the Nagar Pramukhs, if any, of the Mahapalikas; one person to be nominated by the State Government from amongst the Presidents, if any, of the Municipal Boards; the Secretary to the State Government in the Finance Department, ex officio; the Principal of the State Institute of Education, ex officio; the Secretary of the Board of High School and Intermediate Education, Allahabad, ex officio; the President of the Uttar Pradesh Prathmik Shikshak Sangh, ex officio; two educationists to be nominated by the State Government and an officer not below the rank of Deputy Director of Education to be nominated by the State Government who shall be the Member Secretary of the Board. The functions of the Board are set out in section 4 of the Act thus:

"4. Function of the Board - (1) Subject to the provisions of this Act it shall be the function of the Board to organise, co-ordinate and control the imparting of basic education and teachers' training therefore in the State, to raise its standard and to correlate it with the system of education as a whole in the State. (2) Without prejudice to the generality of the provisions of sub-section (1) the Board shall, in particular, have power-

(a) to prescribe the courses of instruction and books for basic education and teachers' training therefor;

(b) to conduct the junior high school and basic training certificate examination and such other examinations as the State Government may from time to time by general or special order assign to it and to grant diploma or certificates to candidates successful at such examination;

(c) to lay down by general or special orders in that behalf, norms relating to the establishment or institutions by the Zila Basic Shiksha Samitis or Nagar Basic Shiksha Samitis and to Superintend the said Samitis in respect of the administration of institutions for imparting instruction and preparing candidates for admission to examinations conducted by the Board; (cc) to take over the management of all basic schools which before the appointed day, belonged to any local body;

(d) to exercise supervision and control over basic schools, normal schools, basic training certificate units and the State Institute of Education;

(e) to accord approval (with or without modification) to the schemes prepared by the Zila Basic Shiksha Samiti or the Nagar Shiksha Samiti for the development expansion

and improvement of and research in basic education in any district or in the State or in any part thereof;

(f) to acquire, hold and dispose of any property, whether movable or immovable and in particular, to accept gift of any building or equipment of any basic school or normal school on such conditions as it thinks fit;

(g) to receive grants, subventions and loans from the State Government;

(g-1) to have superintendence over the Zila Basic Shiksha Samitis and the Nagar Basic Shiksha Samitis in the performance of their functions under this Act and subject to the control of the State Government, to issue directions to the Samitis which shall be binding on such Samitis;

(g-2) to constitute sub-committees (from amongst the members of the Zila Basic Shiksha Samitis and Nagar Basic Shiksha Samitis) for such purposes as the Board thinks fit;

(h) to take all such steps as may be necessary or convenient for, or may be incidental to the exercise of the power, or the discharge of any function or duty conferred or imposed on it by this Act;

Provided that the courses of instruction and books prescribed and institutions recognised before the commencement of this Act shall be deemed to be prescribed or recognised by the Board under this Act, For the purposes of exercising powers of management supervision and control over the basic schools under clause (cc) or clause (d) of sub-section (2), which before the appointed day belonged to a local body the powers and functions of a local body in respect of such schools shall stand transferred to the Board."

Section 6 of the Act which deals with officers and other employees of the Board reads thus:

"6 Officers and other employees of the Board- (1) For the purposes of enabling it efficiently to discharge its functions under this Act the Board may appoint such number of office teachers and other employees as it may, with the previous approval of the State Government, think fit.

(2) XX XX XX XX XX (3) XX XX XX XX XX" (Emphasis added) Section 7 of the Act states that the Board shall have its own fund, and all receipts of the Board are required to be credited into it and all payments are to be made out of it. The Director, the Deputy Director of Education (Member Secretary) and District Basic Education Officers who are incharge of the administration of the Board are officers appointed by the State Government. Section 13 of the Act which vests the control in the hands of the State Government reads thus :

"13. Control by the State Government- (1) The Board shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act.

(2) If in, or in connection with, the exercise of any of its powers and discharge of any of the functions by the Board under this Act, any dispute arises between the Board and the State Government, or between the Board and any local body, the decision of the State Government on such dispute shall be final and binding on the Board or the local body, as the case may be.

(3) The Board or the local body shall furnish to the State Government such reports, returns and other information, as the State Government may from time to time require for the purposes of this Act."

The respondent was originally working as an Assistant teacher in the Basic Primary School, Sengarmau, Tahsil Kanauj, District Farrukhabad. That institution was being run and managed by the Zila Parishad of Farrukhabad and the respondent was therefore an employee of the said Zila Parishad. On the promulgation of the U.P. Ordinance No. 14 of 1972 which was replaced by the Act, he became an employee of the Board under section 9(1) of the Act which provided for the transfer of employees of the local bodies to the Board. Section 9(1) of the Act reads thus :

"9. Transfer of employees-(1) On and from the appointed day every teacher, officer and other employee serving under a local body exclusively in connection with basic schools (including any supervisory or inspecting staff) immediately before the said day shall be transferred to and become a teacher, officer or other employee of the Board and shall hold office by the same tenure, at the same remuneration and upon the same other terms and conditions of service as he would have held the same if the Board had not been constituted and shall continue to do so unless and until such tenure, remuneration and other terms and conditions are altered by the rules made by the State Government in that behalf:

Provided that any service rendered under the local body by any such teacher, officer or other employee before the appointed day shall be deemed to be service rendered under the Board:

Provided further that Board may employ any such teacher, officer or other employee in the discharge of such functions under this Act as it may think proper and every such teacher, officer or other employee shall discharge those functions accordingly."

In exercise of its powers under section 19 of the Act the State Government has framed the Uttar Pradesh Basic Educational Staff Rules, 1973 which are applicable to all the employees of the Board. The appointing authority in respect of Assistant Teachers is the District Basic Education Officer who is an officer appointed by the State Government. The Schedule given under the said Rules which prescribes the appointing authorities and the appellate authorities in respect of the different posts in

the Board is as follows:

"SCHEDULE"

| Sl. No. | Name of the post | Appointing Authority | Appellate Authority |
|---------|--|--|-----------------------|
| 1 | Education Superintendent (Male and Female). | Director of Education (Basic)/Chairman of the Board. | State Government |
| 2. | Assistant Attendance officer (Male and Female) | Deputy Director of Education (Elementary) Member Secretary of the Board. | Chairman of the Board |
| 3. | Head Clerk | Ditto | Ditto |
| 4. | Accountant | Ditto | Ditto |

| Sl. No. | Name of the post | Appointing Authority | Appellate Authority |
|---------|---|---|--|
| 5. | Store-keeper | District Basic Education Officer | Member Secretary of the board |
| 6. | Other Clerks | Ditto In Rural Areas | Ditto |
| 7. | Class IV employees offices and Institution. | Deputy Inspectors of schools, Deputy inspectresses of Schools. In Urban Area Education Super- | District basic Education Officers. District Basic Education |

intendent/Lady Educa- Officers
tion Superintendent.

8. Headmasters/ District Basic Educa- Chairman of the Headmis- tion Officer/Addi- Board tresses
in tional District Basic Senior Basic Education Officer Schools (Women).

- | | | | |
|-----|--|-------|-------------------------------|
| 9. | Assistant Teachers/ Mistresses of Senior Basic Schools. | Ditto | Member-Secretary of the Board |
| 10. | Headmasters/ Headmistresses of junior Basic Schools. | Ditto | Ditto |

----- Sl. Name of the Appointing Appellate Authority
No. post Authority

1 2 3 4

- | | | | |
|-----|--|--|--------------------------------|
| 11. | Assistant Teachers/ Mistresses of Junior Basic Schools. | District Basic Education Officer/Additional District Basic Education Officer (Women) | Member-Secretary of the Board. |
| 12. | Headmistresses | District Basic | Member-secretary |

of Nursery Education Officer of the Board.

- | | | | |
|-----|--|--|-------|
| | Schools. | District Basic Education Officer (Women) | |
| 13. | Assistant Mistresses of Nursery Schools. | Ditto | Ditto |

It is seen that all officers mentioned in column 3 and column 4 of the above Schedule are either the State Government or officers appointed by the State Government. The said officers are all officers of the Government Department who hold the posts in the Board ex officio, that is, by virtue of the corresponding post held by them under the Government. The Rules provide for the procedure to be followed in disciplinary proceedings and the punishments that may be imposed when an employee

is found guilty of any act of misconduct. Rules 5 of the said Rules provides for an appeal against any order imposing punishment to the prescribed authority. The procedure laid down in Civil Services (Classification, Control and Appeal) Rules as applicable to servants of the Uttar Pradesh Government is required to be followed as far as possible in the case of the employees of the U.P. Board of the Basic Education. The funds of the Board mainly come from the contribution made by the State Government. The school in question is not a privately sponsored institution which is recognised by the Board. The Statement of Objects and reasons attached to the Bill which was passed as the Act clearly says that the Act was passed in order to enable the State Government to take over the administration of schools imparting primary education which were being run by the local authorities into its own hands. Even though the representatives of local authorities are associated in the administration of such schools after the Act was passed, the final control of the schools is vested in the Government and such control is exercised by it through the Director and Deputy Director of Basic Education (Member-Secretary) and other District Basic Education Officers appointed by the Government.

The High Court principally relied on the decisions of this Court in Maulana Abdul Shakur's (supra) and D.R.Gurushantappa's case (supra) in reaching the conclusion that the respondent was not holding an office of profit under the Government. In the first case, as mentioned earlier, the employer was the Durgah which was a religious institution whose affairs were only regulated by an Act of Parliament and the remuneration was being paid out of the funds of the Durgah. In the second case the candidate in question was an employee of a Government company which had been registered under the Companies Act but the powers of management were vested in the Managing Director of the Company functioning in accordance with the Articles of Association of the Company and the control of the Government was very indirect. In Kona Prabhakara Rao v. M. Seshagiri Rao & Anr. in which the judgment was rendered by one of us (Fazal Ali, J.) the candidate whose nomination was questioned was a part-time Chairman of a company called the Travel and Tourism Corporation (Andhra Pradesh) Private Limited who had been appointed by the Andhra Pradesh State Road Transport Corporation which was a Corporation established under the road Transport Corporations Act, 1950. In this case also the control of the Government was too remote.

We are of the view that the present case is governed by the principles laid down by the judgment of this Court in Raman Lal Keshav Lal Soni's case (supra). The functions of the employees of the Board are in connection with the affairs of the State. In expenditure of the Board is largely met out of the moneys contributed by the State Government to its funds. The teachers and other employees are to be appointed in accordance with the rules by officers who are themselves appointed by the Government. The disciplinary proceedings in respect of the employees are subject to the final decision of the State Government or other Government officers, as the case may be. This Court, as mentioned earlier, held in Divya Prakash's case (supra) that the officers of the Board of School Education constituted under the Himachal Pradesh Board of School Education Act, 1968 which was a body corporate having perpetual succession and a common seal held their offices under the Government although in that particular case it was held that the office was not an office of profit as the person concerned was working in an honorary capacity. We have gone through the Himachal Pradesh Board of School Education Act, 1968 and we find that the provisions of that Act are almost similar in pattern to the provisions of the Act with which we are concerned in this case.

On behalf of the respondent it is however urged that the Board of Basic Education being a body corporate having perpetual succession and a common seal its employees cannot be considered as holding any office of profit under the Government and in support of this contention reliance has been placed on the decision of the High Court of Allahabad in *Radha Krishna Visharad v. Civil Judge, Aligarh & Ors.* In that case the Court had to construe the provisions of clause

(c) of section 13 of the U.P. Intermediate Education Act, 1921 which provided that a person was disqualified for being chosen a member of Kshetra Samiti or coopted as a member thereof or for being elected as a Pramukh under section 7 of that Act if he held any office of profit in the gift or disposal of Government or any local authority including a Gaon Sabha. The ground on which the Returning officer had rejected the nomination paper of the petitioner in that case for election to the office of the Pramukh of Kshetra Samiti was that inasmuch as he was in the service of the Jawahar Inter College which was an institution receiving grant-in-aid from the Government, he was holding an office of profit in the gift or disposal of the Government. The Court held that the rejection was bad because all that the U.P. Intermediate Education Act, 1921 intended to do was to regulate the working of recognised institutions and to provide for High School and Intermediate Examinations and that the said Act did not contemplate that the Government should become the owners of the private recognised institutions. This decision is not, therefore, of much assistance to the respondent. Even though the incorporation of a body corporate may suggest that the statute intended it to be a statutory corporation independent of the Government it is not conclusive on the question whether it is really so independent. Sometimes the form may be that of a body corporate independent of the Government but in substance it may be just the alter ego of the Government itself. The true test of determination of the said question depends upon the degree of control the Government has over it, the extent of control exercised by the several other bodies or committees over it and their composition, the degree of its dependence on Government for its financial needs and the functional aspect, namely, whether the body is discharging any important Governmental function or just some function which is merely optional from the point of view of Government. In this connection it is necessary to recall the provisions of Article 45 of the Constitution which require the State to endeavour to provide for free and compulsory education for all children until they complete the age of fourteen years. Primary education in a State unlike the higher education is the special responsibility of its Government and as observed earlier the Act was passed with the object of enabling the Government to take over all basic schools which were being run by the local bodies in the State and to manage them as provided specifically in section 4(2) (cc) of the Act and to administer all matters pertaining to the entire basic education in the State through the Board consisting mostly of officers appointed by the Government. The rules made regarding the disciplinary proceedings in respect of the teachers in the basic schools managed by the Board as observed earlier vest the final voice in the State Government or its Officers and almost the entire financial needs of the Board are met by the Government. The Board for all practical purposes is a department of the Government and its autonomy is negligible. Sub-section (2) of section 13 of the Act which emphasis is placed by the respondent is also not of much significance. It no doubt recognises the possibility of a dispute arising between the Board and the Government regarding the functions of the Board but that very sub-section provides that if any such dispute arises the decision of the State Government shall be final and it shall be binding on the Board.

It is next urged on behalf of the respondent that the difference between the language of Article 58(2) and Article 66(4) of the Constitution which deal with the question of disqualification of a person who seeks election as President or Vice-President respectively and the language of Article 191(1)(a) of the Constitution should be given due importance in deciding this case. For purposes of convenience, Article 58(2) and Article 66(4) of the Constitution are set out below. They read thus:

"58.(2) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation....."

"66.(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation....."

The contention of the respondent is that the Board being an authority subject to the control of the Government cannot be considered as the Government itself as otherwise Article 58(4) and Article 66(4) of the Constitution which refer to the Government as well as other authority subject to the control of any Government would have to be treated as suffering from the vice of redundancy. It is further argued that when the Constitution itself has made a distinction between the Government and other authority subject to the control of the Government, in the absence of any reference to any other authority subject to the control of the Government in Article 191(1)(a) of the Constitution, the holding of an office of profit under the Board which is only an authority under the control of the Government would not amount to a disqualification. The argument is indeed quite attractive. But it is difficult to accept it having regard to the provisions of the Act and the Rules. We have already shown that the Board is not an authority which is truly independent of the Government and that every employee of the Board is in fact holding his office under the Government. This is not even a case of attempting to pierce the veil and trying to find out the true nature of something after uncovering it but a case where its true nature i.e. the subordination of the Board and its employees to the Government is writ large on the face of the Act and the Rules made thereunder.

Having considered all aspects of the question in the light of the high purposes underlying. Article 191(1)(a) of the Constitution, we are of the view that the respondent was holding an office of profit under the State Government and his nomination was rightly rejected by the Returning Officer. The judgment of the High Court is, therefore, liable to be reversed.

In the result, the judgment of the High Court is set aside and the election petition filed by the respondent is dismissed.

The appeal is accordingly allowed. Parties are, however, directed to bear their own costs throughout.

Appeal allowed.