

A

KANTA KATHURIA

v.

MANAK CHAND SURANA

October 16, 1969

- B [M. HIDAYATULLAH, C.J., S. M. SIKRI, G. K. MITTER, A. N. RAY,
AND P. JAGANMOHAN REDDY, JJ.]

Constitution of India, 1950, Art, 191(1)—Office of profit—Office of Special Government Pleader if such office.

- C *Retrospective legislation—Candidate held to be disqualified because of holding office of profit—State Legislature enacting that such office not an office of profit and validating election—Effect of.*

Representation of the People Act (43 of 1951), s. 82(b)—'Any other candidate' against whom corrupt practices are alleged, to be made party.—Scope of.

- D Disputes between the State of Rajasthan and a company were referred to arbitration and the Government Advocate was appointed to represent the State. Another advocate was appointed to assist the Government Advocate but as the advocate was not able to appear, the appellant was appointed under O.27, r. 8B of the Civil Procedure Code, as Special Government Pleader. The appellant then stood for election to the State Legislative Assembly and was declared elected. The election was challenged and one of the grounds of challenge was that the appellant held an office of profit within the meaning of Art. 191 of the Constitution. The High Court set aside the election. While the appeal was pending in this Court, Rajasthan Act 5 of 1969 was passed declaring among others that the holder of the office of a Special Government Pleader was not disqualified from being chosen or for being a member of the State Legislative Assembly; and by s. 2(2), the Act was made retrospective removing the appellant's disqualification retrospectively.

- E
F On the questions : (1) Whether the appellant was holding an office of profit and hence was disqualified; (2) Whether the disqualification was removed by Act 5 of 1969; and (3) Whether the election petition was in accordance with law, because, another candidate from another constituency, against whom corrupt practices were alleged, was not impleaded as a party,

- G HELD : (1) (*Per* Sikri, Ray and Jaganmohan Reddy, JJ.) : The appellant was not holding an office of profit.

- (a) Before a person becomes subject to the disqualification in Art. 191(1) there must be an office which exists independently of his being the holder of the office. 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; but if a person was engaged on whatever terms to do the duties which were assigned to him, his employment to do those duties did not create an office to which those duties were attached. Hence an office does not come into existence every time a pleader is asked by the Government to appeal in a case on its behalf. [847 F; 848 A-B; 850 G-H]

(b) A reading of s. 2(7) and O.27, r. 8B of the Civil Procedure Code shows, that even an advocate who is acting under the directions of the Government Pleader could be deemed to be a Government Pleader. Therefore, the notification of the appellant's name under r. 8B as Special Government Pleader did not amount to the creation of an office. [850 F-G]

(c) Assuming that a Government Pleader is an agent of the Government for purposes of receiving processes against the Government, the fact that processes could be served on an advocate, would not mean that the advocate was holding an office under his client. [851 A-B]

(d) 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 the Legislative Assembly, it can make that provision under Art. 191(1)(c) of the Constitution. [851 C-D]

Great Western Railway Co. v. Bate, 8 Tax Cases 231 and *McMillan v. Guest* (H. M. Inspector of Taxes) 24 Tax Cases 190, applied.

Mahadeo v. Shantibhai & Ors. [1969]2 S.C.R. 422 distinguished.

Sakhawat Ali v. State of Orissa, [1955] 1 S.C.R. 1004, referred to.

(*Per* Hidayatullah, C.J. and Mitter, J. *dissenting*) : The High Court was right in holding that the appellant held an office of profit. [842 C]

It was not a case of the appellant merely being briefed as a lawyer and given the Government litigation. On the other hand an office, that of Special Government Pleader was created, and since the office of a Government Pleader is an office of profit, the office of Special Government Pleader will equally be an office of profit. It was an office which could be successively held, it was independent of its holder, it was a substantive position and as permanent as other supernumerary offices. [841 FG; 842B]

Mahadeo v. Shantibhai & Ors. [1969]2 S.C.R. 422 and *The Statesman (P.) Ltd. v. H. R. Deb & Ors.* [1968]3 S.C.R. 614 applied.

McMillan v. Guest, [1942] A.C. 561 and *Great Western Railway Co. v. Bate*, 8 Tax Cases 231, 235, referred to.

(2) (By Full Court) : The Act 5 of 1969 has removed the disqualification retrospectively.

Per Hidayatullah, C.J. and Mitter, J. : It is well recognised that Parliament and the Legislature of a State can make their laws operate retrospectively subject to limitations, if any, in the Constitution. Any law that can be made prospectively may be made with retrospective operation except those which cannot operate retroactively. In Art. 191 itself, power is reserved to the State Legislature to make a declaration that the holder of an office shall not be disqualified and there is nothing in the words of the Article to indicate that such a declaration cannot be made with retrospective effect. Therefore, whatever may be the propriety of such legislation, regard being had to legislative practice and the absence of a clear prohibition, express or implied, the Act must be declared to have retrospective effect. [843 B-C, D-F]

A *Per Sikri, Ray and Jaganmohan Reddy, JJ.* : Parliament and the State legislatures can legislate retrospectively subject to the provisions of the Constitution. No limitation on the powers of the Legislature to make a declaration validating an election, effective from an earlier date, is expressly stated nor could it be implied in Art. 191(1). [851 F-G; 852 D-E]

B The apprehension that it may not be a healthy practice and might be abused is no ground for limiting the powers of the State Legislature. [852 E]

The impugned Act does not amend or alter the Representation of the People Act, 1951, in any respect whatsoever. By enacting the impugned Act, the disqualification if any, which existed in the 1951 Act has been removed, but that is what the State Legislature is entitled to do under Art. 191 so long as it does not touch the wording of the 1951 Act. [852 F-G]

C (3) (By Full Court) : The words 'any other candidate' in s. 82(b) of the Representation of the People Act, 1951, who should be impleaded, refers to a candidate in the election for the constituency which is the subject matter of the petition, and not to a candidate from another constituency. [843 G-H; 853 D-E]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1869 of 1968.

Appeal under s. 116-A of the Representation of the People Act, 1951 from the judgment and order dated August 12, 1968 of the Rajasthan High Court in Election Petition No. 16 of 1967.

S. V. Gupte, M. M. Tiwari, H. K. Puri, Bishamber Lal, M. K. Garg, K. K. Jain and S. P. Vij, for the appellant.

E *M. C. Chagla and S. M. Jain*, for respondent.

Niren De, Attorney-General, G. C. Kasliwal, Advocate-General, Rajasthan and K. B. Mehta, for the State of Rajasthan.

The Judgment of S. M. SIKRI, A. N. RAY and P. JAGANMOHAN REDDY, JJ. was delivered by SIKRI, J., M. HIDAYATULLAH, C.J. and G. K. MITTER, J. gave a separate opinion.

F *Hidayatullah, C.J.* We regret our inability to agree that the appellant Mrs. Kanta Kathuria was not holding an office of profit under the Government of Rajasthan when she stood as a candidate for election to the Rajasthan Legislative Assembly from the Kolayat Constituency.

G Mrs. Kathuria is an advocate practising at Bikaner. She contested the above election held on February 18, 1967 against seven other candidates. She was declared elected on February 22, 1967. One of the defeated candidates filed the election petition, from which this appeal arises, questioning her election on several grounds. We are concerned only with one of them, namely, that on the date of her nomination and election she was disqualified to be chosen to fill the seat as she held the office of Special Government Pleader, which was an office of profit under the Government of Rajasthan.

H

Article 191 of the Constitution, which is relevant in this connection, reads : A

“191 : Disqualifications for membership :

(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State— B

(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;

“
Mrs. Kathuria was appointed by the Government of Rajasthan as Special Government Pleader to conduct arbitration cases between the Government and Modern Construction Company arising out of the construction of Rana Pratap Sagar Dam and Jawahar Sagar Dam. The order was passed on June 26, 1965 (Ex. 1). The order reads : C
D

“ORDER

Sub : Construction of R.P.S. Main Dam—Contract of M/s. M.C.C. (Pvt.) Ltd., Arbitration in disputes arising out of.

In pursuance of Rule 8(b) of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 read with clause (7) of Section 2 of the Code, the Governor is pleased to appoint Smt. Kanta Kathuria, Advocate Bikaner as Special Government Pleader to conduct the above noted case on behalf of the State of Rajasthan alongwith Shri Murali Manohar Vyas, Government Advocate, Jodhpur. E
F

By order,

Sd. D. S. Acharya

26-6-65

(D. S. Acharya) G

Joint Legal Remembrancer”.

By subsequent orders, which we do not consider necessary to quote here, her remuneration was fixed at Rs. 150/- per day for each date of hearing, Rs. 75/- per day for days of travel and dates on which the case was adjourned, and days spent on preparation of the case. Mrs. Kathuria began appearing in the case from March 27, 1965. It is an admitted fact that she was paid for work between that date and November 28, 1966 a sum of H

- A Rs. 26,325/- and again from February 26, 1967 to March 2, 1967 a sum of Rs. 900/- and that the arbitration proceedings were continuing on the date of the filing of the election petition. Therefore for over two years she was employed as Special Government Pleader and was still employed when her election took place. It is also admitted by her that prior to this employment, she had never paid income-tax in excess of Rs. 1200/- in any year.

- B
- C On these facts, the High Court held that Mrs. Kathuria was disqualified. Before this appeal came on for hearing before us, the Governor of Rajasthan by Ordinance 3/68 (December 24, 1968) removed the disqualification retrospectively. The Ordinance was followed by Act V of 1968 (April 4, 1969). The operative portions of the Act which are the same as of the Ordinance read :

"Prevention of disqualification of membership of the State Legislative Assembly—

- D (1) It is hereby declared that none of the following offices, in so far as it is an office of profit under the State Government, shall disqualify or shall be deemed ever to have disqualified the holder thereof from being chosen as, or for being, a member of the Rajasthan Legislative Assembly, namely :—

- E (a) the office of a Government Pleader or Special Government Pleader or Advocate for the Government, appointed specially to conduct any particular suit, case or other proceeding by or against the State Government, before any court, tribunal, arbitrator or other authority;

- F (b) the office of a Government Pleader, a Special Government Pleader or Advocate for the State Government, appointed specially to assist the Advocate General, Government Advocate or Pleader, or Special Government Pleader, or Advocate for Government, in any particular suit, case or other proceeding by or against the State Government before any court, tribunal, arbitrator or other authority;

- G (c) the office of a panel lawyer if the holder of such office is not entitled to any retainer or salary, by whatever named called;

- H (4) the office of a Pradhan or Pramukh as defined in the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959 (Rajasthan Act 37 of 1959).

(2) Notwithstanding any judgment or order of any Court or Tribunal, the aforesaid offices shall not disqualify or shall be deemed never to have disqualified the holders thereof for being chosen as, or for being, members of the Rajasthan Legislative Assembly as if this Act had been in force on the date the holder of such office filed his nomination paper for being chosen as a member of the Rajasthan Legislative Assembly."

The Ordinance and the Act seem to have been passed to nullify the decision in this case. One of the contentions of the answering respondent is that the Legislature of Rajasthan could not remove the disqualification retrospectively since the Constitution contemplates disqualifications existing at certain time in accordance with the law existing at that time. We shall deal with this matter later.

When the Government of Rajasthan appointed Mrs. Kathuria it had two courses open to it. Firstly, Government could have engaged Mrs. Kathuria to conduct the particular arbitration case or cases, or even to assist the Government Advocate in those cases. Alternatively Government could create a special office of Special Government Pleader and appoint Mrs. Kathuria or any other lawyer to that office. It is obvious that Government did not choose the first course. There were as many as 26 arbitration cases then pending and more were likely to arise. Government thought that they should be conducted by the Government Advocate but as the work involved was too much as additional office had to be created and given to a lawyer. An office was therefore, created and given to Mrs. Kathuria.

In a recent case (Civil Appeal No. 1832 of 1967—*Mahadeo v. Shantibhai & Others*—decided on October 15, 1968), we held that a panel lawyer engaged to watch cases on behalf of the Central & Western Railway Administrations, held an office of profit. The duty of the panel lawyer was to watch cases coming up for hearing against the Railways at Ujjain and to appear in court and ask for an adjournment. The lawyer was paid Rs. 5/- for each such adjournment if he was not entrusted with the case later. In dealing with this matter reliance was placed by us on the meaning to the word 'office' given in *the Statesman (P) Ltd. v. H. R. Deb & Ors.*⁽¹⁾ In *the Statesman* case, this Court approved of the observations of Lord Wright in *Mcmillan v. Guest*⁽²⁾ to the following effect :

"The word 'office' is of indefinite content. Its various meanings cover four columns of the New English

(1) [1968] 3 S.C.R. 614.

(2) [1942] A.C. 561.

- A Dictionary, but I take as the most relevant for purpose of this case the following :

‘A position or place to which certain duties are attached, especially one of a more or less public character.’

- B Our brother Sikri has also relied upon the same case and has referred to the observations of Lord Atkin where he approved of the observations of *Rowlatt, J. in Great Western Railway Co. v. Bater*⁽¹⁾. Justice Rowlatt said thus :

- C “Now it is argued, and to my mind argued most forcibly, that that shows that what those who use the language of the Act of 1842 meant, when they spoke of an office or employment which was a 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, and if you merely had any man who was engaged on whatever terms, to do duties which were assigned to him, his employment to do those duties did not create an office to which those duties were attached. He hereby was employed to do certain things and that is an end of it, and if there was no office or employment existing in the case as a thing, the so-called office or employment was merely an aggregate of the activities of the particular man for the time being”.
- D
- E

- We say with profound respect for this most succinct exposition, that we entirely agree. The distinction that we are making is precisely the distinction which has been brought out by *Rowlatt, J.* If Mrs. Kathuria had been briefed as a lawyer and given all the Government litigation in Rajasthan to conduct on behalf of the Government she could not have been described as holding an office of profit. The aggregate of her work and her activities could not have created an office nor could she have been described as anything but an advocate. What happened here was different. An office was created which was that of a Special Government Pleader. Now it is admitted that the office of a Government Pleader is an office properly so-called. Therefore an office going under the names ‘Additional Government Pleader’, ‘Assistant Government Pleader’, ‘Special Government Pleader’ will equally be an office properly so-called. It matters not that Mrs. Kathuria was to conduct a group of arbitration cases and against the same party. For that matter Government is always at liberty to create offices for special duties. They might have even created another office of Special Government Pleader for Land Acquisition cases
- F
- G
- H

(1) 8 Tax Cases 231, 235.

or a group of cases or Railway cases or a group of cases arising out of a particular accident and so on and so forth. What matters is that there was an office created apart from Mrs. Kathuria. It is in evidence that it was first held by Mr. Maneklal Mathur another advocate. It is likely that if Mrs. Kathuria had declined some one else would have been found. Therefore, there was an office which could be successively held; it was independent of Mrs. Kathuria who filled it, it was a substantive position and as permanent as supernumerary offices are. Every one of the tests laid down by Rowlatt, J. is found here.

We would, therefore, hold that the High Court was right in its conclusion that Mrs. Kathuria held an office. Since there is no dispute that it was for profit and under the State, the election of Mrs. Kathuria must be held to be void as she was disqualified to stand for the election.

This brings us to the next question. Does the Act of the Rajasthan Legislature remove the disqualification retrospectively. in other words; can such a law be passed by the Legislature after the election is over ?

The first question is whether the new law is remedial or declaratory. If it was declaratory then it would be retrospective; if remedial only, prospective unless legally made retrospective. That it has been made expressly retrospective lends support to its being remedial. Its retrospective operation depends on its being effective to remove a disability existing on the date of nomination of a candidate or his election. Of course, there is no difficulty in holding the law to be perfectly valid in its prospective operation. The only dispute is in regard to its retrospective operation.

Our brother Sikri has cited an instance of the British Parliament from May's well-known treatise when the Coatbridge and Springburn Elections (Validation) Bill was introduced to validate the irregular elections. Halsbury's Laws of England (3rd Edn. Vol. 14 p. 5) has the following note :

"If a person is elected when disqualified, his disqualification for being a member of Parliament may be remedied or he may be protected from any penal consequences by an Act of Validation or indemnity."

The position of the British Parliament is somewhat different from that of the Indian Parliament and the Legislatures of the States. British Parliament enjoys plenary sovereignty and the Acts of the British Parliament no court can question. In India the sovereignty of the Indian Parliament and the Legislatures is

- A often curtailed and the question, therefore, is whether it is in fact so curtailed.

B At the hearing our attention was drawn to a number of such Acts passed by our Parliament and the Legislatures of the States. It seems that there is a settled legislative practice to make validation laws. It is also well-recognised that Parliament and the Legislatures of the States can make their laws operate retrospectively. Any law that can be made prospectively may be made with retrospective operation except that certain kinds of laws cannot operate retroactively. This is not one of them.

C This position being firmly grounded we have to look for limitations, if any, in the Constitution. Article 191 (which has been quoted earlier) itself recognises the power of the Legislature of the State to declare by law that the holder of an office shall not be disqualified for being chosen as a member. The Article says that a person shall be disqualified if he holds an office of profit under the Government of India or the Government of any State unless that office is declared by the Legislature not to disqualify the holder. Power is thus reserved to the Legislature of the State to make the declaration. There is nothing in the words of the article to indicate that this declaration cannot be made with retrospective effect. It is true that it gives an advantage to those who stand when the disqualification was not so removed as against those who may have kept themselves back because the disability was not removed. That might raise questions of the propriety of such retrospective legislation but not of the capacity to make such laws. Regard being had to the legislative practice in this country and in the absence of a clear prohibition either express or implied we are satisfied that the Act cannot be declared ineffective in its retrospective operation.

F The result, therefore, is that while we hold that Mrs. Kathuria held an office of profit under the State Government, we hold further that this disqualification stood removed by the retrospective operation of the Act under discussion.

G As regards the supplementary point that the petition was bad for non-joinder of Mr. Mathura Das Mathur against whom corrupt practices were alleged in the petition, we are of opinion that s. 82 of the Representation of People Act, 1951, in its clause (b) speaks of candidates at the same election and not persons who are candidates at other elections. As Mr. Mathur was a candidate from another constituency he need not have been made a party here.

H

For the above reasons we would allow the appeal but make no order about costs since the election of the appellant is saved

by a retrospective law passed after the decision of the High Court.

Sikri, J. This appeal arises out of an election petition filed under section 80 of the Representation of the People Act, 1951, hereinafter referred to as the 1951 Act, by Shri Manik Chand Surana, a defeated candidate, challenging the election of Smt. Kanta Kathuria, before the High Court. The High Court (Jagat Narayan, J.) allowed the election petition on the ground that the appellant held an office of profit within the meaning of Art. 191 of the Constitution on the day on which she filed the nomination paper and was thus disqualified for being chosen as a member of the Rajasthan Legislative Assembly. This judgment was given on August 12, 1968. An appeal was filed in this Court on August 20, 1968. During the pendency of the appeal, the Rajasthan Legislative Assembly Members (Prevention of Disqualification) Act, 1969 (Act No. 5 of 1969) (hereinafter referred to as the impugned Act), was passed, which received the assent of the Governor on April 4, 1969.

The impugned Act *inter alia* provides :

"2. Prevention of disqualification of membership of the State Legislative Assembly. (i) It is hereby declared that none of the following offices, in so far as it is an office of profit under the State Government shall disqualify or shall be deemed ever to have disqualified the holder thereof from being chosen as, or for being, a member of the Rajasthan Legislative Assembly, namely :—

(a) the office of a Government Pleader or Special Government Pleader or Advocate for the Government, appointed specially to conduct any particular suit, case or other proceeding by or against the State Government, before any court, tribunal, arbitrator or other authority;

(b) the office of a Government Pleader, a Special Government Pleader or Advocate for the State Government appointed specially to assist the Advocate General, Government Advocate or Pleader, or Special Government Pleader, or Advocate for Government in any particular suit, case or other proceeding by or against the State Government before any court, tribunal, arbitrator or other authority;

- A** (2) Notwithstanding any judgment or order of any Court or Tribunal, the aforesaid offices shall not disqualify or shall be deemed never to have disqualified the holders thereof for being chosen as, or for being, members of the Rajasthan Legislative Assembly as if this Act had been in force on the date the holder of
- B** such office filed his nomination paper for being chosen as a member of the Rajasthan Legislative Assembly."

- We may note another fact on which an argument is sought to be made by the learned Counsel for the appellant. It was alleged in the election petition that the appellant was a close
- C** friend of one Shri Mathura Dass Mathur who was a Minister in the State of Rajasthan at the time of the election, who contested elections as a candidate in a constituency different from that of the appellant. Shri Mathur visited the constituency during the election very frequently and during these visits the appellant accompanied by Shri Mathur visited several places in the Constituency where Shri Mathur in the presence of the appellant offered
- D** and promised to get several works done in those areas if the electors were to cast votes for the appellant at the said election. In spite of these allegations of corrupt practice, Shri Mathur was not made a party to the petition.

- E** The learned Counsel for the appellant, Mr. Gupte, contends that the High Court erred in holding that the appellant held an office of profit within the meaning of Art. 191 of the Constitution. In the alternative he contends that the Rajasthan Act No. 5 of 1969 is retrospective and the disqualification if it existed, cannot now be deemed to have existed because of this Act. The last
- F** point raised by him is that the petition was not in accordance with law as the respondent, Shri Surana, had not impleaded Shri Mathur as respondent to the petition.

The facts relevant for appreciating the first point are these :—

- G** The appellant was an advocate at all material times. Disputes arose between M/s. Modern Construction Company Private Ltd. and the State of Rajasthan in connection with some works relating to the Rana Pratap Sagar Dam. These disputes were referred to arbitration. Shri Murli Marohar Vyas, Government Advocate in the High Court of Rajasthan at Jodhpur was appointed by the Government to represent it in these arbitration proceedings. The
- H** Government Advocate wanted one more advocate to assist him. On his suggestion, Shri Manak Lal Mathur advocate was appointed to assist the Government Advocate. As there was a possibility that Shri Manak Lal Mathur may not be available to

help the Government Advocate, the appellant was, on the suggestion of the Government Advocate, appointed to assist him in the absence of Shri Mathur. This proposal was approved by the Rajasthan Law Minister on March 30, 1965 and on June 26, 1965, and the Government issued the following order :—

“Sub :—Construction of R.P.S. Main Dam Contract of M/s M.C.C. (JVT) Ltd. Arbitration in dispute arising out of—

In pursuance of rule 8(b) of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 read with clause (7) of section 2 of the Code, the Governor is pleased to appoint Smt. Kanta Kathuria Advocate, Bikaner, as Special Government Pleader to conduct the above noted case on behalf of the State of Rajasthan along with Shri Manohar Vyas, Government Advocate Jodhpur.”

Later, on Sept. 3, 1965, the Government laid down the fees payable to the appellant. It was stated in the order dated Sept. 3, 1965 that “Smt. Kanta Kathuria who has been appointed to assist the Government advocate in the absence of Shri Mathur will get her share of fee in proportion to the assistance rendered by her out of the daily fee of Rs. 150/- to Shri Manak Lal Mathur.”

As Shri Manak Lal Mathur was not able to appear in the case, on Nov. 18, 1965 the Governor sanctioned the payment of daily fee of Rs. 150/- to the appellant instead of Shri Manak Lal Mathur, for days of actual hearing. The appellant appeared from March 27, 1965 to November 28, 1966, but she did not appear from Nov. 29, 1966 to Feb. 25, 1967. She again started appearing in the case from February 26, 1967. The appellant claimed travelling allowance, incidental charges and daily allowance, but the Government decided that the appellant was not entitled to any travelling allowance or daily allowance in addition to the fees.

By a notification, the Election Commission of India called upon the electors of the Kolayat Assembly Constituency of the Rajasthan Legislative Assembly to elect a member to the Rajasthan Legislative Assembly and invited nomination papers for the elections to be held on February 18, 1967. The appellant was declared duly elected by the Returning officer on February 22, 1967, the appellant having secured 11926 and the respondent having secured 8311 votes.

A The relevant portion of Art. 191 reads as follows :—

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

B (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;

C (e) if he is so disqualified by or under any law made by Parliament.

D (2) For the purposes of this article, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

E It seems to us that the High Court erred in holding that the appellant held an office. There is no doubt that if her engagement as Special Government Pleader amounted to appointment to an office, it would be an office of profit under the State Government of Rajasthan. The word 'office' has various meanings and we have to see which is the appropriate meaning to be ascribed to this word in the context. It seems to us that the words 'its holder' occurring in Art. 191(1)(a), indicate that there must be an office which exists independently of the holder of the office. Further, the very fact that the Legislature of the State has been authorised by Art. 191 to declare an office of profit not to disqualify its holder, contemplates existence of an office apart from its holder. In other words, the Legislature of a State is empowered to declare that an office of profit of a particular description or name would not disqualify its holder and not that a particular holder of an office of profit would not be disqualified.

F

G It seems to us that in the context, Justice Rowlatt's definition in *Great Western Railway Company v. Bater*⁽¹⁾ is the appropriate meaning to be applied to the word 'office' in Art. 191 of the Constitution.

Justice Rowlatt observed at page 235 :—

H "Now it is argued, and to my mind argued most forcibly, that that shows that what those who use the

(1) 8 Tax Cases 231.

language of the Act of 1842 meant, when they spoke of an office or an employment, was an office or employment which was a 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; and if you merely had a man who was engaged on whatever terms, to do duties which were assigned to him, his employment to do those duties did not create an office to which those duties were attached. He merely was employed to do certain things and that is an end of it; and if there was no office or employment existing in the case as a thing, the so-called office or employment was merely an aggregate of the activities of the particular man for the time being. And I think myself that that is sound. I am not going to decide that, because I think I ought not to in the state of the authorities, but my own view is that the people in 1842 who used this language meant by an office a substantive thing that existed apart from the holder."

This definition was approved by Lord Atkinson at page 246.

This language was accepted as generally sufficient by Lord Atkin and Lord Wright in—*McMillan v. Guest (H.M. Inspector of Taxes)* (1). Lord Atkin observed at page 201 :—

"There is no statutory definition of 'office'. Without adopting the sentence as a complete definition, one may treat the following expression of Rowlatt, J., in *Great Western Railway Co. v. Bater*, [1920] 3 K.B., at page 274, adopted by Lord Atkinson in that case, [1922] 2 A.C., at page 15, as a generally sufficient statement of the meaning of the word : 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."

Lord Wright at page 202 observed :

"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. This, I think, roughly corresponds with such approaches to a definition as have

(1) 24 Tax Cases 196.

A been attempted in the authorities, in particular *Great Western Railway Co. v. Bater*, [1922] 2 A.C. 1..... where the legal construction of these words, which had been in Schedule E since 1803 (43 Geo. III, c. 122, Section 175), was discussed.”

B In *Mahadeo v. Shantibhai & Ors.*⁽¹⁾—Mitter J. speaking for this Court, quoted with approval the definition of Lord Wright. In our view there is no essential difference between the definitions given by Lord Wright and Lord Atkin. The Court of Appeal in the case of *Mitchell v. Ross*⁽²⁾, thought that both the noble and learned Lords had accepted the language employed by Rowlatt J. as generally sufficient. In *Mahadeo's case*⁽¹⁾, this
C Court was dealing with a panel of lawyers maintained by the Railway Administration and the lawyers were expected to watch cases. Clause (13) of the terms in that case read as follows :—

“You will be expected to watch cases coming up for hearing against this Railway in the various courts at UJB and give timely intimation of the same to this
D office. If no instructions regarding any particular case are received by you, you will be expected to appear in the court and obtain an adjournment to save the *ex-parte* proceedings against this Railway in the court. You will be paid Rs. 5/- for every such adjournment if you are not entrusted with the conduct of the suit
E later on.”

That case in no way militates against the view which we have taken in this case. That case is more like the case of a standing Counsel disqualified by the House of Commons. It is stated in Rogers [on Elections Vol. II]—at page 10 :—

F “However, in the Cambridge case (121 Journ. 220), in 1866, the return of Mr. Forsyth was avoided on the ground that he held a new office of profit under the Crown, within the 24th section. In the scheme submitted to and approved by Her Majesty in Council was inserted the office of standing counsel with a certain
G yearly payment (in the scheme called ‘salary’) affixed to it, which Mr. Forsyth received, in addition to the usual fees of counsel. The Committee avoided the return. . .”

It is urged that there can be no doubt that the Government
H Pleader holds an office and there is no reason why a person who assists him in the case should also not be treated as a holder of

(1) [1969] 2 S.C.R. 422.

(2) [1960] 2 All E.R. 238 at 225-226.

office, specially as the notification appointed the appellant as Special Government Pleader. We see no force in these contentions.

Rule 8B. of Order 27, C.P. Code reads as follows :—

“In this Order unless otherwise expressly provided ‘Government’ and ‘Government leader’ mean respectively—

(a) in relation to any suit by or against the Central Government or against a public officer in the service of that Government, the Central Government and such pleader as that Government may appoint whether generally or specially for the purposes of this Order;

(c) in relation to any suit by, or against a State Government or against a public officer in the service of a State, the State Government and the Government pleader, as defined in Clause 7 of Section 2 or such other pleader as the State Government may appoint, whether generally or specially, for the purposes of this Order.”

This rule defines who shall be deemed to be a Government Pleader for the purpose of the Order. ‘Government Pleader’ is defined in Sec. 2 of Clause (7) C.P. Code thus—

“(7) ‘Government Pleader’ includes any officer appointed by the State Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader :”

It follows from reading Order 27 rule 8B and Clause (7) of Sec. 2 C.P. Code together that even if a pleader who is acting under the directions of the Government Pleader would be deemed to be a Government Pleader for the purpose of Order 27. Therefore, no particular significance can be attached to the notification made under rule 8B appointing the appellant as Special Government Pleader. We cannot visualise an office coming into existence, every time a pleader is asked by the Government to appear in a case on its behalf. The notification of his name under rule 8B, does not amount to the creation of an ‘office’. Some reliance was also placed on rule 4 of Order 27 C.P. Code, which provides that :

“The Government Pleader in any Court shall be the agent of the Government for the purpose of receiving

- A processes against the Government issued by such Court."

This rule would not apply to the facts of this case because the appellant was appointed only to assist the Government Advocate in a particular case. Assuming it applies, it only means that processes could be served on the appellant, but processes can be served on an Advocate under Rule 2 of Order XLV of the Supreme Court Rules, 1966. This does not mean that an Advocate on Record would hold an office under the client.

The learned Counsel for the respondent, Mr. Chagla, urges that we should keep in view the fact that the object under-lying Art. 191 of the Constitution is to preserve purity of public life and to prevent conflict of duty with interest and give an interpretation which will carry out this object. It is not necessary to give a wide 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 Art. 191(1)(e) of the Constitution.

The case of *Sakhawat Ali v. The State of Orissa*⁽¹⁾ provides an instance where the Legislature provided that a paid legal practitioner should not stand in the municipal elections.

In view of the above reasons, we must hold that the appellant was not disqualified for election under Art. 191 of the Constitution. But assuming that she held an office of profit, this disqualification has been removed retrospectively by the Rajasthan Legislative Assembly by enacting the impugned Act.

Mr. Chagla, learned Counsel for the respondent, contends that the Rajasthan State Legislature was not competent 'to declare retrospectively' under Art. 191(1)(a) of the Constitution. It seems to us that there is no force in this contention. It has been held in numerous cases by this Court that the State Legislatures and Parliament can legislate retrospectively subject to the provisions of the Constitution. Apart from the question of fundamental rights, no express restriction has been placed on the power of the Legislature of the State, and we are unable to imply, in the context, any restriction. Practice of the British Parliament does not oblige us to place any implied restriction. We notice that the British Parliament in one case validated the election : [Erskine May's Treatise on the Law. Privileges Proceedings & Usage of Parliament—Seventeenth (1964) Edition]—

H "After the general election of 1945 it was found that the persons elected for the Coatbridge Division of

(1) [1955] 1 S.C.R. 1004.

Lanark and the Springbourn Division of Glasgow were disqualified at the time of their election because they were members of tribunals appointed by the Minister under the Rent of Furnished Houses Control (Scotland) Act, 1943, which entitled them to a small fee in respect of attendance at a Tribunal. A Select Committee reported that the disqualification was incurred inadvertently, and in accordance with their recommendation the Coatbridge and Springburn Elections (Validation) Bill was introduced to validate the irregular elections [H.C. Deb. (1945-46) 414, c. 564-6]. See also H.C. 3(1945-46); *ibid.* 71 (1945-46) and *ibid.* 92 (1945-46)."

A

B

C

We have also noticed two earlier instances of retrospective legislation, *e.g.*, The House of Commons (Disqualification) Act, 1813 [Halsbury Statutes of England p. 467] and Sec. 2 of the Re-election of Ministers Act, 1919 (*ibid.* p. 515).

D

Great stress was laid on the word 'declared' in Art. 191(1) (a), but we are unable to imply any limitation on the powers of the Legislature from this word. Declaration can be made effective as from an earlier date.

E

The apprehension that it may not be a healthy practice and this power might be abused in a particular case are again no grounds for limiting the powers of the State Legislature.

F

It is also urged that by enacting the impugned Act the State Legislature has amended the 1951 Act. We are unable to appreciate this contention. The State Legislature has exercised its powers under Art. 191 to declare a certain office not to have ever disqualified its holder. The impugned Act does not amend or alter the 1951 Act, in any respect whatsoever. It is said that under the 1951 Act as it existed before the impugned Act was passed, the appellant was not qualified to be chosen for this particular election. By enacting the impugned Act the appellant's disqualification has been removed and the 1951 Act is, so to say, made to speak with another voice. But that is what the State Legislature is entitled to do, as long as it does not touch the wording of the 1951 Act. The answer given by the 1951 Act may be different but this is because the facts on which it operates have by valid law been given a different garb.

G

H

It is further urged that the impugned Act violates Art. 14 of the Constitution because the Central Government might have appointed Government Pleaders under rule 8B of Order 27 and the impugned Act nowhere mentions the alleged offices held by

- A** them. No material has been placed to show that any such offices exist. We cannot, therefore, entertain this point. In view of the above reasons we are of the opinion that the impugned Act is valid and removes the disqualification if it existed before.

- B** There is no force in the third point raised by the learned counsel for the appellant. Section 82 of the Representation of the People Act, 1951, reads as follows :—

“81. A petitioner shall join as respondents to his petition—

- C** (a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or *any other candidate* has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

- D** (b) *any other candidate* against whom allegations of any corrupt practice are made in the petition.

In this context the words ‘any other candidate’ plainly mean a candidate in the election for the constituency which is the subject matter of the petition.

- E** In the result the appeal is allowed, the judgment of the High Court set aside and the petition dismissed. In the circumstances of the case the parties will bear their own costs throughout.

V.P.S.

Appeal allowed.