

was unwell. We can take the horse to the river, but we cannot make it drink. It becomes hard task to convenience the party in such situations. Want of integrity is not the only creterion. His conduct, Courtesy to the bar, parties, witnesses, number of hours he works on the bench have to be assessed. A vigilant bar is better Judge. The advocates are the judges of judges as observed by *Krishna Ayyer, J.* But they have own their limitations. All the same it is not possible to establish a case against an erring Judge. Only after crossing endurance level the bar will adopt a resolution, that too for transfer of the Judge. But the transfer is not an answer and such officer is liability where ever he is posted. The disciplinary action and the resultant punishment is time consuming with uncertain results.

Inspite of some short comings and human frailities which are marginals, the justice delivery system is still enjoying respect and public confidence. At the same time this image has to be kept. It is the duty and responsibility of every associated with this institution to

keep its prestine glory and insulate it suitably. The judicial reforms are of dire necessity in the present context of things. As part of such reforms the honourable High Court should create a high powered Vigilence Cell to watch and monitor over the performance and conduct of the officer. The officers of the wing should make surprise visits to mofusil Court in disguise and watch the performance of the officers on and off the bench and send their assessment reports. The suitable modelaties can be worked out. The very existence of such mechanism will inculcate a sense of accountability and answerability among errant officer. At the same time, the independence of the judicial officers, their honour and dignity should not compromised, as judicial independence is the hallmark of the Institution. Salt should not loose its taste, if it is salteh. Unfortunately a few black sheep are sulleying the image. It is enough if some correctional measures are taken. It are brought to the main stream, the course of justice will flow smoothly and majestically serving the asperations of the litigants and the general public.

A NOTE ON "OFFICE OF PROFIT"

By

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"Office of Profit" used under various articles of constitution is no where defined. It is a composite word. It consist two independent words 'office and profit'. This composite word is used, while prescribing qualification to stand for election as 'President' under Article 58 of the constitution, under Article 102 as a disqualification for being a member of parliament of either house and Article 191 as a disqualification for a member being chosen.

This composite word assumed political importance in recent times and has become an issue before apex Court.

This apex Court in more than one instance laid down certain guidelines to determine the scope of this word. But when a member suffers disqualification as envisaged under Article 102 of the constitution, the deciding authority is the President of the India. His decision shall be final. The President shall

obtain the opinion of Election Commission and act according to such opinion. It seems by implication the Court has no jurisdiction.

Close examination of Article 58, Article 102 and Article 191 of the Constitution stipulates a condition precedent. "If the person seeking for being chosen as a president or as a member of parliament or being chosen holds an "Office of Profit" under the Government of India or Government of any state specified in the first schedule succumbs disqualification". In the case of a person seeking election of president, it further stipulates that he shall not hold 'office of profit' even under any local or other authority subject to the control of any of said Governments. This particular condition appears to be silent in the case of a person choosing to contest as a member of parliament of either house under Article 102 and disqualification envisaged under Article 191 of the Constitution.

Hence an analysis of these articles prohibit certain persons choosing election for being a president, Member of Parliament of either of houses from 'holding office of profit' under the Government or state as the case may be and being a member, holding the post of an 'office of profit' suffers disqualification and loses his membership as a member of parliament as well 'president of India'.

But an explanation is provided to Article 102 that a person shall not be deemed to hold an 'office of profit' by reason of being a minister of a Government or a state. It further provides that a person shall be disqualified if he is disqualified under the tenth schedule *i.e.* (provisions as to disqualification on the ground of defection).

"Office of profit" is preceded by the verb 'holding' and followed by 'under the Government or State' or under any local or other authority subject to the control of any of the said Governments.

The word 'Hold' means to 'occupy'. Though the word is comprehensive in its meaning 'occupy' is proper in the context it is used under various articles of the constitution.

Then the composite word 'office' + 'profit'. These two words are distinct words connote various meanings depending upon the usage.

It has however been said that intrinsic meaning of the word 'office' is well expressed by the old English word 'place' and figurative terms 'incumbent'. In AIR 1971 MP Page 88 at Para 15. It is held 'the word office' is used in different senses and in each case that meaning must be assigned to it which conforms with language used in the enactment and its object. This is a case under M.P. Panchayat Act-Section 26 Resignation was addressed to Sarpanch. It was delivered in office-election was conducted – his election was challenged on the ground that it was not accepted – held ceases to hold 'office' the moment Resignation was addressed.

In A.I.R. 1964 SC 254 FB '*Gurugovinda Basu v. San Sankari Prasad Ghosal and others*', the apex Court defined what constitutes 'office of profit' under Article 102(1)(a) of the constitution. It was a case where a person was appointed Auditor of 'Durgapur Project Ltd., or Hindustan Steel Ltd.,' holds 'office of profit' under Government or not. It was held that the constitution itself makes a distinction between a 'Holder' of a post and 'office of profit' under Government. The decisive test is for determining whether a person holds an office of profit under the Government is the test of appointment, the power of appointment, to dismiss, the power to control and give directions, the power to give directions as to manner in which the duties are to be performed, to determine remuneration, if all the elements are present it must be held that the 'office'

in question holds office of profit. In this case it was held that comptroller and Auditor-general of India exercise full control over the Auditors of Government company. Hence, the Auditor is not a holder of office of profit. Thus it is clearly laid down that 'controlling' test decides the nature of 'office of profit'. It is nothing but an organization test. If it is by Government, he holds office of profit. This decision is followed in AIR 1964 SC page 744.

The word 'profit', has a great variety of meanings and it has been variously interpreted in judicial pronouncement. It is an elastic relative term. It is an ambiguous term. It is difficult to lay down any strict legal definition though not impossible.

No doubt Courts held the mere fact, that the Government holds more shares, appoint a Board of Directors is not a factor to hold that the company or any under taking is a state and the office can be treated

as an 'office of profit'. But I feel that the Courts invented a theory called 'Theory of instrumentality', where the Government holds control over the office. In such case, it is deemed to be a 'State' and eventually the 'office is an office of profit'.

Perhaps envisaging these future developments the framers of the constitution deprived a Member of either house to hold two offices; by imposing disqualification.

Members of either house are elected by the citizens to frame the laws in the best interest of the nation. It is a social service. They are paid for it. Under the guise of it no member shall hold office of any other nature, other than the said office.

Hence, it is advisable to the parliament to define 'what is office of profit' instead of leaving it to judicial probe. Guidelines may be laid down in the constitution itself. It avoids frequent judicial interference.

DOCTOR.....NOT ABOVE THE LAW

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Every Medical Practitioner should know Medical Law and Ethics—is essential to know the Legal involvement in the Practice of Medicine to practice medicine smoothly and effectively. Recently after the introduction of CPA, filing of cases against medical practitioners has enormously increased although many are proved baseless. Doctors should not be over confident and should be in a position to understand the

various areas of Litigation – Proceeding in the Court of Law-Scientific defenses should be presented in good way to counter the cases.

Prevention is always better than cure; Medical profession is just like any other profession should be transparent and accountable. Profession should be used for social needs than self.