

(1993) 05 OHC CK 0013

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 1253 of 1991

Habibulla Khan

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 05-05-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Prevention of Corruption Act, 1988 — Section 19, 2

Citation : (1993) 76 CLT 218 : (1993) CriLJ 3604 : (1993) 1 OLR 545 : (1994) 1 RCR(Criminal) 351

Hon'ble Judges : B.L. Hansaria, C.J.;D.M. Patnaik, J

Bench : Division Bench

Advocate : G. Rath, for the Appellant; S.K. Das, Government Advocate, for the Respondent

Judgement

B.L. Hansaria, C.J.—The important point for determination in this case is whether previous sanction is necessary for prosecution of an M. L. A under the Prevention of Corruption Act, 1988 (herein- after "the Act"). As this question is being examined by this Court (may be, by any High Court) for the first time after the Act had come into force, in which the definition of "public servant"" as given in Section 2(c) of the Act is different from and wider than that given in Section 21 of the Indian Penal Code, which had come up for consideration by a Constitution Bench in R.S. Nayak Vs. A.R. Antulay, , in which it was held that an M. L. A. is not a public servant, detailed consideration of the matter is called for. In the background of very elaborate and well studied arguments advanced by Shri Rath in support of the petitioner's stand for whom he has appeared that such a sanction is necessary, which with ability has been controverted by Shri S. K. Das, learned Government Advocate, we are in a position to critically examine this question, which it deserves.

2. The broad facts which need to be noted and that the petitioner was once a Minister of Orissa from 1980 to 1989 and is presently a sitting M. L. A. A chargesheet against him was submitted by the Vigilance Police on 27-3-1991 u/s

13(1)(e) (possession of assets disproportionate to known sources of income) read with Section 13(2) (the punishing section) of the Act, Cognizance was taken by the Special Judge. Vigilance, Bhubaneswar on 15-6-1991 in T. R. Case No. 3 of 1991, and the matter was fixed to 25-7-1991 for consideration of charge. An objection was filed by the petitioner that the cognizance taken was in violation of Section 19 of the Act, as there was lack of previous sanction. The learned Special Judge rejected the petitioner's contention, inter alia, because an M. L. A. does not hold an office and also because he does not perform any public duty. Feeling aggrieved, this petition has been filed.

3. Shri Rath, persuasive and capable lawyer as he is, submits that the learned Special Judge committed an error of law in both of his aforesaid findings inasmuch as, according to the learned counsel, an M. L. A. "holds an office" and does perform "public duty". Satisfaction of these two requirements is enough to hold that an M.L.A is a public servant in view of the definition of this expression as given in the Act which, as already noted, is wider than the definition given to this expression in the Indian Penal Code.

4. We may first note the relevant part of the definition of "public servant" as given in Section 21 of the Indian Penal Code, as contained in Sub-clause (a) of the the twelfth clause which is relevant for our purpose; the same being ;

"Every person-

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government; "

It is this definition which had come up for consideration before the Apex Court in *Antuley's* case and for reasons given in that judgment it was held that an M.L.A. is not a public servant within the meaning of the aforesaid sub-clause. Shri Rath submits that the reasoning given by the Constitution Bench in not holding an M.L.A. to be a public servant within the aforesaid sub-clause is somewhat faulty. We think the embarrassment caused to us in this regard could have been avoided as the petitioner is really not relying in support of his case on this part of the definition of public servant as given in the Act, which is contained in Clause (i), but on Clause (viii), which reads ;

"any person who holds an office by virtue of which he is authorised or required to perform any public duty."

We would, therefore, confine our attention whether as per this definition, an M. L. A. can be said to be a public servant.

5. For the aforesaid clause to be attracted, two requirements must be satisfied : (i) an M. L. A. must hold an office ; and (ii) he must perform public duty by virtue of holding that office. The meaning of the word "office" has been the subject-matter of various decisions of the Apex Court and Shri Rath in his written note dated 27-4-1993 has dealt with these decisions in pages 6 to 12, in which reference has been made to what was held in this regard in (1) *Maharaj Shri*

Govindlalji Ranchhodlalji Vs. Commissioner of Income Tax, Ahmedabad, (which is a judgment of Bombay High Court rendered by Chagla. C.J.)(2) Champalal Vs. The State of Madhya Pradesh and Another, ,in which the definition of the word "office" given in Corpus Juris Secundum "A position or station in which a person is employed to perform certain duty" was noted ; (3) Statesman (Private) Ltd. Vs. H.R. Deb and Others, , which is a rendering by a Constitution Bench stating "an office means no more than a position to which certain duties are attached" : (4) Srimati Kanta Kathuria Vs. Manak Chand Surana, , in which Hidayatullah, C.J., on behalf of self and J. K. Mitter, J. who were in minority, after referring to the Constitution Bench decision in Statesman's case, referred to the observation of Lord Wright in *Mc. Millan v. Guest*, 1942 AC 561, that the meaning of the word "office" covered four columns of the New English Dictionary, but the one taken as most relevant was (a) position or place to which certain duties are attached, especially one of more or less public character" ; where as Sikri, J. speaking for the majority, referred to the definition by Lord Atkin, 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" by further stating that there was essential difference between the definitions given by Lord Wright and Lord Atkin; and (5) Madhukar G.E. Pankakar Vs. Jaswant Chobbildas Rajani and Others, , in which the definition given in the Statesman's case was quoted with approval.

6. Shri Rath in his written note has called down the ratio of the aforesaid decision by stating that for the purpose of the case at hand "office" should be taken to mean "no more than a position to which certain duties are attached, essentially of a public character". According to the learned counsel, that is satisfied in so far as an MLA is concerned, even if what was stated by Sikri, J. in Kanta Kathuria's case is taken to be the correct position in law in as much as the office of MLA exists independently of the holder of that office.

7. Shri Das, learned Government Advocate, does not contest the submission of Shri Rath that the word "office" should mean, to repeat, "no more than a position to which certain duties are attached, specially of a public character". Let it be seen as to whether the test mentioned by Sikri, J. is satisfied, which, as already noted, is that there must be an office which exists independently of the holder of that office. To substantiate this part of his submission, Shri Rath has referred in his written note first to Art. 168 of the Constitution which has provided that for every State there shall be a Legislature which shall consist of the Governor, and in case of some States, two Houses and in case of others one House. Art. 170 states that the Legislative Assembly of each State shall consist of not more than 500 and not less than 60 members chosen by direct election from the territorial constituencies in the State for which purpose the State is divided into equal number of territorial constituencies. In Art. 172, duration of the Legislative Assembly has been specified to be for five years, and Art. 173 deals with the conditions of eligibility. Reference is then made to certain provisions of the Representation of People Act, 1950, which has provided for total number of seats

in the Legislative Assembly, and so far as Orissa is concerned, the Second Schedule mentions that the Orissa Legislative Assembly shall consist of 147 members.

8. Relying on the aforesaid provisions, it is contended, and rightly, by Shri Rath that the office of the MLA is created by the Constitution read with the Representation of People Act, 1950, whereas the actual election of MLAs is supervised, directed and controlled by the provisions contained in Arts. 324 to 329 of the Constitution and the provisions of the Representation of People Act, 1951, which brings home the distinction between "office" and "holder of the office".

9. The aforesaid submission appears to be unassailable, We would, therefore, accept the same by stating that an MLA does hold an office, which is one of the two necessary requirements to attract the definition of "public servant" as given in Clause (viii) of the Act, Another requirement, as already mentioned, is performance of public duty as holder of such office. This aspect has been dealt with by Shri Rath in paragraph 7 of his written note wherein mentioned has been made about various duties attached to the office of the MLA , as would appear from Chapter III of Part VI of the Constitution the same being, making of laws, acting conjointly to effectively control the activities of the executive, approval of the finance bill, etc. Indeed, no doubt can be entertained in this regard in view of what was stated in paragraph 59 of *Antulay's* case, which is as below :

"...it would be rather difficult to accept an unduly wide submission that MLA is not performing any public duty. However it is unquestionable that he is not performing any public duty either directed by the Government or for the Government. He no doubt performs public duty cast on him by the Constitution and his electorate. He thus discharges constitutional functions....."

10. We, therefore, hold that an MLA has to be taken as a "public servant"" under the Act. This, however, is not the end of the matter, as it has to be further seen as to who could be said, if at all, to be the authority competent to give sanction. As to this, Shri Rath submits that the authority contemplated by Clause (c) of Sub-section (1) of Section 19 of the Act is such authority. That clause reads ;

"19. Previous sanction necessary for prosecution-(1) No Court shall take cognizance of an offence punishable Under Sections 7, 10. 11, 13, and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) xx xx xx

(b) xx xx xx

(c) in the case of any other person, of the authority competent to remove him from his office."

11. The authority visualised by the aforesaid clause has to be one about whom it

can be said for the case at hand that he is "competent to remove" an MLA. The submission of Shri Rath is that the Governor is such a person. Learned counsel has taken pains and with perseverance has tried to persuade us to agree with him in this submission; and we may state here itself that we have not felt so persuaded.

12. Let us say why not. This is for the reason that, according to Shri Rath, Governor is such a person because it is he who (1) clause the office of MLA; (2) abolishes the office of MLA, though temporarily and (3) gives a decision regarding continuance of individual member in case such members acquired any disqualification either under the Constitution or any law made by the Parliament, as Stated in Para 9 of his note. According to us, the first two contentions are not legally correct and the third is not relevant.

13. Shri Rath has, however, built his argument about creation of the office of MLA by the Governor because no election of the State Legislature can take place unless the Governor issues the notification u/s 15(2) of the Representation of People Act, 1951 and a member once elected can take office only on making an oath or affirmation before the Governor or his delegate, as mentioned in Art. 188 of the Constitution. The argument about abolition of the office is similarly built on the premises that it is the Governor who dissolves the Legislative Assembly in exercise of power Conferred by Art. 174(2)(b) of the Constitution.

14. Shri Das has submitted that these powers of the Governor cannot be read to mean that it is he who creates the office of MLA or abolishes it. In support of this submission, he has referred us to a Bench decision of Bombay High Court (Nagpur Bench) rendered in *Ram Narayan Ram Gopal v. Ramchandra*, 1960 Bom. LR 770. That case was concerned with the question as to what is meant by "office of profit" under the State Government and it came to be examined in the back- ground of a sitting member of the Bombay Legislative Council having been elected as a member of the Bombay Legislative Assembly. A plea was taken that as the incumbent was, prior to the date of election receiving a salary as a sitting member of the Council, he was disqualified for being chosen as a member of the Assembly because of the disqualification mentioned in Art. 191(1)(a) of the Constitution (which is holder of office of profit under the Government), because of which his election was liable to be set aside.

15. To bring home the case against the elected member, reliance was placed, inter alia, on the provision contained in Section 157 of the Representation of People Act, 1951 which deals with the question of commencement of the term of office of member of the legislative Council, as to which it is stated that the same shall begin on the date of notification to be issued in the Official Gazette (by the Government"). As to this power of notification, it was stated by the Court that the State Government has no option, but it is obligatory, and so, 3 member of the Legislative Council does not owe the appointment to the State. Shri Das submits that the same logic would apply to the notification to be issued u/s 15(2) of the Representation of People Act, 1951 by the Governor on which reliance has

been placed by Shri Rath to sustain his submission. In the Bombay case, reliance was then placed on the power of dissolution of the Legislative Council conferred on the Governor by Art. 174(2) of the Constitution, about which it was opined that the dissolution of the entire Council is not the same thing as removal or dismissal of a member from the Council, because in the former case the House itself ceases to function, while in the latter, the House continues to function but the individual ceases to be its member. With respect, we agree with this view as the conclusion is founded on a very sound reason.

16. This leaves for consideration the power which has been vested by Art. 192(1) of the Constitution in the Governor relating to the question of disqualification mentioned in Clause(1) of Art. 191. Shri Rath has placed very strong reliance on this power of the Governor to contend that it is he who should be taken to be the authority competent to remove an MLA. According to the learned counsel, the effect of disqualification being that the concerned person ceases to be a Member and so he gets removed, because of which the power conferred on the Governor to decide the question of disqualification should be taken to be the power akin to removal of an MLA. In support of this submission, reliance has been placed on *Brundaban Nayak Vs. Election Commission of India and Another*, in paragraph 14 of which it was stated that no person who was incurred any of the disqualifications specified in Art. 191(1) "is entitled to continue to be a member of the Legislative Assembly of the State". Shri Rath submits that as on disqualification one becomes disentitled to continue, it means that he ceases to be a member, which is tantamount to his being removed from membership. Another limb of this argument is that for the Governor to be regarded as the competent authority to remove an MLA, it is no longer necessary after the decision of the Constitution Bench in *K. Veeraswamy v. Union of India* (1991) 3 SCC 665, that the authority competent to remove the public servant should be vertically superior in the hierarchy in which the office of the public servant exists, as observed in paragraph 50 of the judgment. Shri Rath, therefore, submits that for the Governor to be accepted as a competent authority for the purpose of giving sanction need not be vertically superior in the hierarchy to the MIA.

17. Shri Das joins issue with Shri Rath on this aspect of the case and contends that the power conferred upon a Governor by Art. 192 (1) cannot be said to have anything to do with the power of removal of an MLA inasmuch as under that Article what the Governor does is that he only formally pronounces the decision relating to disqualification, which decision, in fact, is taken by the Election Commission as would appear from what was stated in paragraph 16 of *Brundaban Nayak's* case. The matter was put thus in that paragraph because Clause (2) of Art. 192 states that before giving any decision on the question of disqualification (mentioned in Clause (1) of Art. 191), the Governor "shall obtain the opinion of the Election Commission and shall act according to such opinion". The Constitution Bench, therefore, stated that the Governor has only to act in accordance with the opinion of the Commission and only pronounces the decision of the Commission. Shri Das has further referred us in this connection to Article

190(3) of the Constitution which states that on a member of the Legislature of a House becoming subject to any disqualification mentioned, inter alia, in Article 191(1), "his seat shall thereupon become vacant." Learned counsel, therefore, submits that on disqualification being incurred, the vacancy occurs by force of this Article and nothing is required to be done in this regard by any body. By further referring to Clause (b) of Article 190(3) read with the proviso, it is stated that in case of resignation, a letter is required to be addressed to the Speaker and it is the Speaker who accepts the same; whereas, in case of the seat becoming vacant, nothing is required to be done, it is automatic ; it follows as the day follows the night.

18. In this context Shri Das refers us also to Article 191(2) read with the provisions finding place in the Tenth Schedule dealing with the disqualification of a member of the House (which word includes, as per the definition in paragraph 1 (a), the Legislative Assembly) on ground of defection. If any question arises as to whether a member of a House has become subject to disqualification under that Schedule the question is required to be referred for the decision of the Speaker in case of an MLA and his decision in this regard is final as stated in paragraph 6 of the Schedule. This shows that there, is another constitutional authority to disqualify an MLA, submits Shri Das.

19. We have duly considered this aspect of the matter in the light of the contentions advanced by the learned counsel of the parties, and we would agree with Shri Das for these reasons : First, if we were to agree that the power of disqualification conferred on the Governor should be treated as a power conferred on him to remove the MLA, we shall have to take the same view in so far as disqualification incurred by an MLA under the Tenth Schedule is concerned, because of which the Speaker shall have to be taken as the person competent to remove an MLA. This is not all. There are some provisions in the Representation of People Act. 1951 as well dealing with disqualification. There are Sections 8, 8-A, 9, 9-A, 10 and 10-A. Shri Rath contends that of these provisions it is Section 8 alone which is relevant for our purpose because Sub-section (3) thereof (after amendment in 1989) deals with disqualification following conviction and sentence of imprisonment for not less than two years, which disqualification would be incurred by the petitioner if he were to be convicted under the provisions of the Act, as the allegations against him is u/s 13(2) of the Act, which visualises punishment upto seven years" imprisonment, which, according to the learned counsel would attract disqualification mentioned by Article 191(1)(e) of the Constitution, relating to which the Governor alone can take a decision.

20. Though it is correct that in the present case Article 191(1)(e) is attracted, but if we were to hold that an authority who can disqualify can be said to be one who removes a person, we cannot take a different view relating to other authorities who are competent to disqualify an MLA because of what has been stated in other sections, Though it may be that those disqualifications do not result from any conviction, but that is not relevant to decide the question as to

whether a person competent to disqualify can be said to be competent. to remove. The fact that in the present case we are concerned with the disqualification ensuing by the force of Section 8(3) of the Representation of People Act is not germane to decide the correctness of the contention advanced by Shri Rath, because in logic and principle we cannot make any distinction between the power the Governor has under Art. 192(1) and some other (constitutional) functionaries have either under the Tenth Schedule of the Constitution, or some provisions of the Representation of People Act. What is good for goose is good for gander also.

21. The disqualification visualised by, say, Section 8-A on the ground of corrupt practice can be decided ultimately by the President in consultation with the Election Commission. Then power of deciding about disqualification and/or declaring a person disqualified rests with the Election Commission in some cases, to wit, those attracting Sections 9 and 10 of the Representation of People Act. Now, if we were to agree with Shri Rath that the decision which the Governor can take relating to disqualification contemplated by Art. 192(1) of the Constitution would make the MLA removable by the Governor, we have to take the same view about the President or Election Commission, as the case may be, being the authority competent to remove an MLA. This would give rise to a very anomalous situation, namely, there would be four constitutional functionaries competent to remove an MLA-they being the President, the Governor, the Speaker and the Election Commission. This result itself is a good reason not to accept this part of the submission of Shri Rath.

22. Our second reason for not agreeing with Shri Rath is that the word "removal" is a word of art and for our purpose it can be said that it means an action importing the idea of punishment or penalty, as stated in *Shyam Lal Vs. State of U.P. and Another*, by placing reliance on *Kapur Chand Godha Vs. Mir Nawab Himayat Ali Khan Azamjah*. We may deal here with the submission of Shri Rath that the President has been accepted in *Veeraswamy's* case as the person competent to give sanction for prosecuting a High Court Judge though, according to the learned Counsel, the President does not have the power of removal ; it is really the Parliament which removes by adopting an impeachment motion. It is therefore urged that allotting of specific power of removal is not necessary to regard an authority competent to do so for the purpose of Section 19(1)(c) of the Act. This argument, the underlying idea of which is to satisfy us that hierarchical superiority of the Governor is not necessary to accept him as an authority competent to remove an MLA, has, however, no force to bring home the submission of Shri Rath, because proviso (b) to Art. 217 does speak about "removal", and the question in *Veeraswamy's* case was to decide as to who is the authority competent to remove, which authority was found in the President. The removal, about which Art. 217 or, for that matter, Art. 124 speaks, is an action intended to import the idea of punishment or penalty inasmuch as if a High Court Judge or, for that matter, a Supreme Court Judge is removed by an order of the President, the same is intended to inflict on him a punishment or

penalty. But the same does not happen in the case of an MLA when the Governor decides to disqualify him. The mere fact that the Governor's not being vertically superior to an MLA would not debar him from being an authority competent to remove an MLA, is a negative argument. We, however, find the positive aspect missing.

23. Shri Rath has yet another weapon in his armoury to use. The same is that the Act is aimed at widening its net and to punish a person like an MLA (among others) who indulges in taking bribe. In this connection, reference is made to the observations made in paragraph 36 of Antulay's case in which, while tracing the history of the law with regard to corrupt actions of members of public bodies, reference was made to the unanimous recommendation of Mudiman Committee in its paragraph 124 stating, inter alia, that the tender of "a bribe to, or receiving of a bribe by, a member of a legislature in India as an inducement for him to act in a particular manner as a member of the legislature is not at present an offence" ; but the same should be so made to fulfil which object a bill was introduced in 1925 called Legislative Bodies Corrupt Practices Act which attempt, however, proved abortive as the bill was not enacted into law. Shri Rath submits that it was to fulfil this desire that wider coverage has been given to the Act, and wide meaning has been given to the expression "public servant" by the Act. That the Parliament desired giving of wider definition has been stated even in the Statement of Objects and Reasons, and so, we would agree with Shri Rath in the broad submission which he has made. But then, whether an MLA was also in mind while thinking of the necessity of previous sanction to prosecute him (which is necessary only in the case of a public servant, vide Section 19 of the Act) is a subject on which there can be two opinions. If that was the object, nothing would have been easier than saying so specifically in the defining Section 2(c) which contains as many as 12 clauses and has stated specifically about many other holders of office like Judge (Clause iv), arbitrator (Clause vi), president, secretary or other office bearer of a registered cooperative society (Clause-ix), chairman, member of employee of any Service Commission or Board (Clause-x), Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee of any University (Clause-xi), an office-bearer or an employee of an educational, scientific, social, cultural or other institution (Clause-xii).

24. Not only this, the omission to mention an MLA specifically in any of the clauses of the definition may even indicate in the background of Antulay's case that it was not contemplated to make him such a public servant to prosecute whom previous sanction is necessary. If the intention of the Parliament would have been, as submitted by Shri Rath, to annul the decision in Antulay's case, which had held that for prosecution of an MLA sanction is not necessary nothing would have been easier to do so than to specifically mention an MLA in the definition clause ; more so, when many other office holders have been so named.

25. The result of the aforesaid discussion is that according to us the Governor is

not the competent authority to remove an MLA, and indeed, there is no authority competent to do so. So, there is no authority who can grant previous sanction as contemplated by Section 19 of the Act. Now, it is apparent that if there be none to give sanction in case of an MLA, it cannot be urged that sanction is none-the-less necessary, merely because an MLA is a public servant. Shri Rath is fair in submitting that he would not contend that even if there be no person competent to give sanction for prosecuting an MLA under the Act, none-the-less sanction for his prosecution has to be obtained merely because an MLA is a public servant.

26. We, therefore, conclude by stating that though we are satisfied that an MLA would come within the fold of the definition of "public servant", as given in Section 2(c) of the Act, he is not the type of "public servant" for whose prosecution under the Act, previous sanction is required by Section 19 is necessary. We quite realise the anomaly of our conclusion, because though Section 19 of the Act makes no distinction between one public servant and another for the purpose of previous sanction, we have made so. But this is a result which we could not have truly and legally avoided. According to us it is a fit case where the parliament should make its mind known unambiguously and un- equivocally.

27. The petition is, therefore, dismissed by upholding the order of the learned Special Judge, but for entirely different reasons.

28. Before parting, we desire to put on record our appreciation for the very able assistance received by us from the learned counsel of both the sides, but for which we would not have been able to deal with the aforesaid important question in the manner we have done.

D.M. Patnaik, J.

29. I have gone through the succinct and illuminating judgment of my lord the Chief Justice. I entirely agree with the points discussed, views expressed, reasons given and the conclusion arrived at. Realising the importance of the issue in question, I, however, propose to supplement the judgment by stating as below.

30. It having been stated in the leading judgment that the Governor has no express power of removal, let it be seen whether this power can be read by necessary implication, which is also an under-tone of Shri Rath's argument.

31. The doctrine of implied power is invoked where without the said power the material provisions of an enactment become impossible of enforcement. To put it differently, this doctrine is pressed into service where, to make the statute workable, power is read by necessary implication. To bring home the Segal proposition, reference to two Constitution Bench decision of the Apex Court would be enough. The first of these is *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, and the second, *Bidi, Bidi Leaves" and Tobacco Merchants Association Vs. The State of Bombay*, . In the first case, the Court was

examining the question whether Section 77 of the Hyderabad District Municipalities Act, which has conferred express power in negative language on the Municipal Committee to transfer immovable property, impliedly prohibited transfer of the property. It was held in paragraph 17 that when a statute confers an express power, a power inconsistent with that expressly given cannot be implied. In the second case, what had happened was that the State of Bombay had issued a notification under the Minimum Wages Act enhancing minimum wages of the Bidi workers. In the same notification, the Government also sought to deal with certain terms of the agreement between the workers and the employer touching the right of the employer to reject certain percentage of Bidi prepared by the workers. The Court declined to give this power to the State on the basis of the doctrine at hand.

32. The aforesaid shows that the power which is inconsistent with the one expressly given cannot be implied, and that power alone can be implied which is necessary to make the power expressly conferred enforceable. It having been held in the leading judgment that the Governor has no express power of removal, the same cannot be conceded by necessary implication, which would violate the first principle of law; and the second would not be applicable. It may be stated that the Act would be fully workable even if previous sanction for prosecution would not be required in any particular case or, for that matter in any case.

33. This apart, as pointed out by my lord the Chief Justice conceding of the power of removal to the Governor would result in an anomalous situation because there would then be many constitutional functionaries which would have this power and the doctrine of implied power cannot have its play in such a situation.