
(1996) 02 MP CK 0097
In the Madhya Pradesh High Court
Case No : E.P. No. 1 of 1991 (J)

Ramesh Bais

APPELLANT

Vs

Vidya Charan Shukla and Others

RESPONDENT

Date of Decision : 20-02-1996

Acts Referred:

Representation of the People Act, 1951 — Section 116A, 116B

Citation : (1996) 1 MPJR 337

Hon'ble Judges : D.P.S. Chauhan, J

Bench : Single Bench

Advocate : L.S. Baghel, for the Appellant; Kapil Sibbal with V.K. Tankha
Advocates, for the Respondent

Judgement

D.P.S. Chauhan, J.

The judgment in Election Petition No. 1 of 1991 is pronounced today before lunch. An application moved during the post lunch session by the learned counsel for the respondent No. 1 Shri V.K. Tankha taking prayer that this Hon'ble Court may kindly be pleased to stay the operation of the order delivered today for a period of one month or for such time as this Hon'ble Court deems just in the interest of justice.

Heard the learned counsel for the respondent No. 1, Shri V.K. Tankha and the learned counsel for the petitioners, Shri L.S. Baghel.

Under Section 116 A of the Representation of the People Act, 1951 (for brevity hereinafter referred to as "the Act"), the order made by the High Court u/s 98 or section 99 is appealable to the Supreme Court both on question of law as well as on the question of fact and the period of limitation is also provided there under, which is 30 days from the date of the order of the High Court. Section 116 B of the Act gives discretion to the High Court on the sufficient cause having been shown to stay the operation of the order on such terms and conditions as it may think fit. So far as the terms and conditions are concerned, learned counsel for

the respondent No. 1 relied on the case of Kirpal Singh V. Shri Uttam Singh and another decided by the Supreme Court on 9th October, 1985. In the case relied on, the Hon''ble Judges of the Supreme Court observed:

without meaning any disrespect to the learned judges who made the interim order, we think that where an election is set aside for no fault of his, such as a corrupt practice committed by him or his agent or a disqualification suffered by him, but on the ground that some one else's nomination had been improperly rejected, the more appropriate order would perhaps would be to grant an absolute stay so that the Constituency may not go unrepresented for no fault of either the elected or those who elected.

In the present case, the election of respondent No. 1 has not been set aside on the ground of any corrupt practice or on the ground sufferance of any disqualification, but the election petition has been allowed on the ground of improper rejection of the nomination paper of Shri Shobha Ram Burman. In view of this, so far as question of terms and conditions is concerned, the case relied on squarely covers the present case.

The other thing for grant of stay order to be seen is existence of sufficient cause. Since Section 116 A of the Act has provided for appeal both on law and facts and further in view of the observation of the Supreme Court in the case of Kirpal Singh (supra), there is sufficient cause for staying the operation of the order for a period of there weeks from today. Ordered accordingly.

Certified copy of this order as well as of the judgment delivered in Election Petition No. 1/91 may be supplied to the learned counsel for the parties on payment of usual charges.

ORDER

Consequent upon publication of notification u/s 14 of the Representation of People Act, 1951 (for brevity hereinafter referred to as the Act) sometimes in April, 1991 calling upon Parliamentary Constituencies for electing members for the House of floe People, the Election Commission appointed, as required u.s 30 of the Act, date for making nominations, scrutiny of nominations withdrawal of candidature after the date of scrutiny and the poll dates, whereupon the Returning Officer gave a public notice of election u/s 31 of the Act Inviting nomination of candidates, inter alia, in respect of 17-Raipur Parliamentary Constituency, which led to filing of various nomination papers but during the process of scrutiny, the nomination of one Shri Shobharam Barman was rejected by the Returning officer on 27.4.91 on the ground of his having disqualification under Article 102 (1) (a) of the Constitution of India (for brevity hereinafter referred to as " the Constitution") and after withdrawal of candidature, there remained in the fray as many as 29 candidates amongst whom Shri Vidya Charan Shukla and Shri Ramesh Bais were also the candidates at the contest. Shri Vidya Charan Shukla, who secured highest number of votes i.e. 1,88,335 was declared elected by the Returning Officer on 17.6.91 as against Shri Ramesh Bais who

pollted its next highest number of votes i.e. 1,87,376.

By means of the present election petition (for brevity hereinafter referred to as the petition) the election of Shri Vidya Charan Shukla (respondent No. 1) is called in question by Shri Ramesh Bais along with one Dr. Rajendra Dubey, an elector, seeking following reliefs :-

(1) To declare the election of the respondent No. 1 Vidya Charan Shukla, void u/s 100 (1) (a), (c) and (d) (i) of the Act;

(2) To declare the petitioner No. 1 duly elected from 17- Raipur Loksabha Constituency:

(3) To grant any other suitable relief along with costs of the petition.

The notice meant for respondents were served on the respondent No. 1 on 28.10.1991, respondents No. 2, 4, 5, 6, 9, 10, 11, 12, 13, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 on 24.9.1991 and respondent No. 3, 7 and 14 on 25.9.1991, respondent No. 17, on 1.11.91, respondent No. 18 on 10.11.91 and respondent No.8 on 5.12.91.

It was respondent No. 1 alone who put in appearance on 18.11.91 and filed his Written Statement. The other respondents 2 to 28 were proceeded ex - parte. On the basis of the pleadings in the petition, and the Written Statement, following issues were struck :-

ISSUES

1- (a) Whether respondent No. 1 having been disqualified under the provisions of Xth Schedule to the Constitution of India, was not qualified to contest the Parliamentary Elections ?

1-(b) What is the effect of the pendency of the Writ Petition filed by respondent No. 1 in Delhi High Court on the proceedings of this Election Petition challenging his disqualification under Xth schedule to the Constitution ?

Whether the nomination paper of Shri Shobharam Barman was improperly rejected ?

Relief and costs?

So far as the following facts are concerned, the learned counsel for the parties are not at variance :-

(a) That on the date of the scrutiny of the nomination paper for being candidate for the House of the People, from 17-Raipur Parliamentary Constituency, the nomination paper of Shri Shobharam Barman was rejected on 27.4.91 by the Returning Officer by passing following order :-

whereafter main contest confined between the petitioner No. 1 Ramesh Bais and the respondent No. 1 Shri Vidya Charan Shukla. The petitioner No. 1 was the

candidate set up by Bhartiya Janta Party whereas the respondent No. 1 was the candidate set up by Congress (I) Political party. Poll, as per scheduled programme, took place on 20.5.91 and on conclusion of the counting, which though came into abeyance till 16.6.91 owing to the assassination of the then Prime Minister of India Shri Rajiv Gandhi, the respondent No. 1. Shri Vidya Charan Shukla, having secured highest number of votes i.e. 1,88,335 as against the petitioner No. 1 Shri Ramesh Bais, who secured next highest number of votes i.e. 1,87,376, was declared on 17.6.1991 as having been duly elected for the House of the People.

(b) Anterior to the election in question by means of the present petition, there had earlier been an election for the House of the People, from 18-Mahasamund Parliamentary Constituency sometimes in November, 1989 whereat Shri Vidya Charan Shukla, set up as a candidate by the Janta Dal party, having secured highest number of votes, was declared duly elected. Janta Dal having succeeded in forming Government at the centre under the Leadership of Shri V.P. Singh could not continue owing to inner developments which promoted defections and Shri Vidya Charan Shukla was one of the defectors, received expulsion from the Janta Dal party on 5.11.90.

(a) The then Prime Minister Shri V.P. Singh thereafter tabled a motion, seeking confidence of the House on 7.11.90 whereat on division of votes, Shri Vidya Charan Shukla was found to have voted in support of confidence motion, which ultimately defeated, leading to resignation of Shri V.P. Singh and as well as dissolution of the House paving way for fresh poll in April, 1991 and the present petition is outcome thereof.

The then Speaker of House of the People vide order dated 11.1.91. which is as extracted below, declared inter alia, Shri Vidya Charan Shukla as having incurred disqualification for being a member of the House of the People.

In exercise of the powers conferred upon me under Paragraph 6 of the Tenth Schedule to the Constitution of India and the Rules there under, I, Rabi Ray, Speaker, Lok Sabha, hereby declare that the following 7 members of Lok Sabha have incurred disqualification for being Member of Lok Sabha in terms of Paragraph 2 (1) (b) of the said Schedule :

1. Shri Basavraj Patil.

Shri Hemendra Singh Banera,

Shri Vidya Charan Shukla.

Dr. Bengali Singh.

Shri Sarwar Hussain.

ft. Shri Bhagey Govardhan.

Shri Devnanda Amat.

Accordingly, the aforesaid Members having earned disqualification, ceased to be the Members of Lok Sabha with immediate effect and their seats shall thereupon fall vacant.

This order was given challenges by Shri Vidya Charan Shukla before Delhi High Court by means of writ Petition No. 537 of 1991 under Art. 226 of the Constitution which, according to the statement made at the Bar, is pending though the learned counsel for the contenting parties were at variance on the question of there being any order in the said Writ Petition, staying the impeached order of the Speaker of the Lok Sabha dated 11.1.91. Learned counsel for the respondent No. 1 Shri Kapil Sibbal, Senior Advocate, submitted that after the order of the Speaker of the Lok Sabha, fresh elections for the House of the People had taken place and the petition contains only challenged of the fresh election of respondent No. 1 and the pendency of the said Writ Petition in the Delhi High Court and grant or non-grant of any interim relief has no relevancy in the context of the facts of the present petition qua the Constitutional position.

Heard the learned counsel for the petitioner Shri N.S. Kale, Senior Advocate, assisted by Shri L.S. Baghel and learned counsel for the respondent No. 1 Shri Kapil Sibbal. Senior Advocate assisted by Shri V.K. Tankha, Advocate. Learned counsel for the petitioner very fairly did not press the Issues No. 1 - (a) and 1 - (b), may be for not finding his way clear in view of the provisions of Article 102 of the Constitution which speaks that a person shall be disqualified for being a member of the either House of Parliament. Now, as such, the only issue survives for consideration is Issue No. 2 as the Issue No. 3 is resultant one

Shri Vidya Charan Shukla, the respondent No. 1 having filed Written Statement in the petition, did not come to Witness Box and did not examine any witness from his side, may be because of the fact that the issues involved in the petition were purely of legal character, not having dependence on the material not finding place in election petition and annexures thereto and the Written Statement, on any factual aspect, as on 12.11.92, the statement was made before this Court to the effect that respondent No. 1 does not wish to examine any witness nor himself. The Written Statement is only the pleading relating to admission or denial of the facts pleaded in the plaint and may also have new pleas under Order 8 Rule 2 C.P.C. to show non-maintainability of the petition, including all such grounds of defence as, if not raised, would likely to take the opposition by surprise or would raise issues of fact not raising out of the plaint. Evidence is defined in Sec. 3 of the Evidence Act, 1872 as "evidence means and includes

(1) the statements which the Court permits or require to be made before it by witnesses, in relation to matters of fact under enquiry. Such statements are called oral evidence.

(2) All documents produced for the inspection of the Court; Such Documents are called documentary evidence.

Thus, the Written Statement by itself is not evidence and is only pleading,

requiring proof of unadmitted or disputed facts but in the present petition, respondent No. 1 did not lead any evidence. Petitioner in support of his case, examined Shri G.S. Yadu as PW 1 and Ramesh Bais, the petitioner, as PW 2, and Shri Shobharam Barman as P.W. 3. Shri G.S. Yadu, a store Keeper in the Election Office Raipur who proved the order passed by the Returning Officer on the nomination paper. Shri Ramesh Bais (PW 2) proved the pleadings stating to the effect that he (Shri Shobha Ram Barman) was a watchman in the Food Corporation of India, which post doesnot fall in the ambit of "office of profit" but the Returning Officer rejected his nomination paper on this ground that he was holding office of profit in the Food Corporation. Shobha Ram Barman examined as PW 3. He proved his signatures on his nomination paper. He stated that he was employed as a Watchman in the Food Corporation of India at Raipur, and was in employment then he was getting salary Rs. 332/-, per month.

The nomination paper of Shri Shobharam Barman was rejected by the Returning officer on 27.4.91 (Ex. P-1) on the ground of his having incurred disqualification for being elected for the House of the People under the provisions of Article 102 (1) (a) of the Constitution, as he was under an employment of the Food Corporation of India (for brevity, hereinafter referred to as "the Food Corporation"). The allegations as regards to rejection of the nomination paper of Shri Shobharam Barman, by the Returning Officer as contained in Paras 14 (a) and 14 (b) of the petition, are, as extracted;

14. (a) That the election of the respondent No. 1 is also liable to be declared void u/s 100 (1) (c) of the Act for the reasons that the nomination-paper filed by Shri Shobharam Barman was improperly rejected on the ground that he was holding office of profit Though in fact the said Shri Shobharam Barman cannot be said to be holding officer of profit under Article 102 (1) (a) of Samvidhan, as he was posted only as a Watchman by the Food Corporation of India, the employees of which are not disqualified to fill a seat in the Loksabha or any other Legislative.

(Emphasis supplied)

(b) That though the said candidate filed affidavit stating therein that he was only a temporary employee in the Food Corporation of India, still the Returning Officer, without applying his mind, rejected the nomination-paper. A copy of the nomination-paper containing the order of rejection passed by the Returning Officer and the affidavit filed by the said candidate is annexed herewith as Annexure-A-1 and A-2 to this petition.

The Written Statement filed by the respondent No. 1 contains reply to Paras 14 (a) and 14 (b) of the petition in Paragraph 21 and 22 of the Written Statement which are as extracted :

21. That in reply to Para 14 (a):

It is submitted that Shobharam Barman was holding office of profit being an employee of Food Corporation of India."

that in reply to Para 14 (b):

It is submitted that whether an employee is temporary or permanent is not material. The fact remains that at the time of filing of the nomination paper, Shri Shobharam Barman was holding office of profit and the Returning Officer has rightly rejected his nomination paper.

Here holding by Shri Shobha Ram Barman "office of profit" being an employee of the Food Corporation India is admitted. It was also admitted that he was posted only as Watchman by the Food Corporation of India. The documents filed with the petition as Annexures-A-1 and A-2 were not denied. It has further not been denied or disputed that the employees of Food Corporation of India are not disqualified to fill a seat in the Lok Sabha or any other legislature.

The nature of employment of Shri Shobha Ram Barman as mentioned in Para 14 (b) of the petition has not been denied rather it has been said whether an employee is temporary or permanent is immaterial.

Thus, in respect of Para 14 (a) of the petition, it has been admitted that Shri Shobharam Barman was holding office of profit, being an employee of the Food Corporation of India and in respect of Para 14 (b) of the petition, it has been stated that whether an employee is temporary or permanent is not material, and the fact remains that at the time of filing of the nomination paper, Shri Shobharam Barman was holding office of profit and the Returning Officer had rightly rejected his nomination paper. Within the provisions of Order 8 Rule 4 of the Code of Civil Procedure, there is not denial of the allegation in the petition.

In the context of the controversy as involved here, it is relevant to consider various articles of the Constitution, such as Article 58 (2) of the Constitution, which deals with the disqualification for being a candidate at the election for the office of the President of India, Article 66 (4) of the Constitution which deals with the disqualification for being a candidate for the office of Vice-President, Article 102 (1) (a) of the Constitution, which deals disqualification for being a candidate for the election of either House of Parliament. Article 191 of the Constitution which deals with disqualification for being a candidate for the election to the Legislative Assembly or Legislative Council of a State; and the same are extracted below :-

Article 58 (2) with Explanation;

(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 - For the purpose of this Article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice President of the Union or the Governor of any State or is a Minister either for the Union or for any State

(Emphasis supplied)

Article 66 (4) with Explanation;

(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. - For the purpose of this Article, a person shall not be deemed to hold any office of profit by reason only that he is (he President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

(Emphasis supplied)

Article 102 (1) (a) with Explanation and Clause (2):

(1) A person shall be disqualified for being chosen as and for being a member of either House of Parliament -

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

Explanation - For live purpose of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of either House of Parliament, if he is so disqualified under the Tenth Schedule.

Article 191 (1)(a) and Clause (2):

(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-

(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;

(2) For the purpose 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.

On analysis of Articles of the Constitution extracted (supra) it comes to (a) Articles 58 (2) and 66 (4) provide that a person shall not be eligible for election as President/ Vice-President, if he holds any office of profit; (i) under the Government of India; or (ii) the Government of any State; or (iii) under any local or other authority subject to the control of any of the said Government.

Explanation makes it clear that a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President or the Governor of any State or is a Minister either for the Union or for any State. (b) Clause (a) of Article 102 (1) provides for disqualification for being chosen as a member of the House of the People if he holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder. The disqualification under Clause (a) of Art. 191 of the Constitution for being chosen as a Member of Legislative Assembly or Legislative Council of a State is the same as is provided for the House of the People except with the disqualify fixation as attached to a person who holds an office of profit under Government of State specified in the First Schedule, other than the office declared by the Legislature by law not to disqualify its holder.

There is no challenge to the fact regarding Shri Shobharam Barman is employment in the Food Corporation of India as Watchmen and in regard to the capacity of his service whether temporary or permanent, the Written Statement only contains the recital whether an employee is temporary or permanent is not material. The dispute related, irrespective of the capacity whether he was temporary or a permanent watchman, to the disqualification of Shri Shobharam Barman and the capacity of being permanent or temporary has no bearing to the basis controversy which is subject-matter of consideration.

The Food Corporation is a statutory Corporation, came into being, by virtue of Food Corporation Act. 1964 (for brevity hereinafter referred to as "the Food Corporation Act"), which is a legislation legislated by the Parliament in exercise of its Legislative power as contained in Item 43 List I of Seventh Schedule to the Constitution, as a trading Corporation for trading in foodgrains and other foodstuffs and the matters connected therewith and incidental thereto. Food Corporation was established u/s 3 of the Food Corporation Act and on its establishment it acquired the status of a body corporate by name i.e. Food Corporation of India, having perpetual succession having common seal with power subject to the provision of the Food Corporation Act, to acquire, hold and dispose of property and to contract and to sue or be sued by corporate name. Thus, the status of the Corporation, obviously, that of a juristic person distinct one being clothed with its own personality. In Daman Singh and Others Vs. State of Punjab and Others, Supreme Court had the occasion to deal with as to what is corporation and in this context the relevant portion is as extracted;

In Halsbury's Laws of England, 4th Edn. Vol. 3 Paragraph 1201, it is said -

A Corporation may be defined as a body of Persons (in the case of Corporation aggregate) or an office (in the case of corporation sole) which is recognized by law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question.

A Corporation aggregate has been defined in Paragraph 12()4, as

A Corporation of individuals limited into one body under a special denomination having perpetual succession under an artificial form and vested by the policy of the law with the capacity of acting in several respects an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time or creation of at any subsequent period of its existence.

In *The Board of Trustees, Ayurvedic and Unani Tibbia College, Delhi Vs. The State of Delhi* and another, Supreme Court was posed with the question as to what is a corporation, which was answered with statements contained in Halsbury's Law of England extracted supra by adding -

A Corporation aggregate has therefore only one capacity namely, its corporate capacity. A corporate aggregate may be a trading corporation or a non - trading corporation. The usual examples, of a trading corporations are (1) Charter Companies (2) Companies incorporated by special acts of Parliament. (3) companies registered under the Companies Act etc. Non-trading corporations are illustrated by (1) Municipal Corporations, (2) District Boards, (3) benevolent institutions, (4) universities etc. An essential element in the legal conception of a Corporation is that its identity is continuous, that is, that the original member of members and his or their successors are one. In law the individual corporators, or members, of which, it is composed are something wholly different from the corporation itself: for a corporation is a legal person just as much as a individual. Thus, it has been held that a name is essential to an corporation; that a corporation aggregate can, as general rule, only act or express its will by deed under its common seal; that at present day in England a corporation is created by one or other of two methods, namely, by Royal charter of incorporation from the crown or by the Authority of Parliament that is to say, by or by virtue of statute. There is authority of long standing for saying that the essence of a corporation consists in (1) lawful authority of incorporation, (2) the persons to be incorporated, (3) a name by which the persons are incorporated, (4) a place, and (5) words sufficient in law to show incorporation. No particular words are necessary for the creation of a corporation any expression showing an intention to incorporate will be sufficient.

These facts, thus, make it clear that the Food Corporation of India is incorporated by statute.

It may be noticed that Para 1210 Vol. 9 4th Edn. of Halsbury's Laws of England deals with Corporation and crown status; and the relevant portion is:

The question whether a Corporation is a servant or agent of Crown depends on the degree of control which the Crown, through its ministers, can exercise over it in the performance of its duties. In the absence of any express statutory provision, the proper inference, at any rate, in the case of a commercial

Corporation is that it acts on its own behalf even though it is controlled to some extent by a Government department. The fact that a Minister of the Crown appoints the members of such a Corporation, is entitled to require them to give him information and is entitled to give them directions of a general nature does not make the Corporation his agent. The inference that a Corporation acts on behalf of the Crown is more readily drawn where its functions are not commercial but are connected with matters, such as the defence of the realm, which are essentially the province of Government.

(Emphasis supplied)

Under the scheme of the Act, so to find out the position of Shri Shobharam Barman qua the Art. 102 (1) (a) in regard to his disqualification for being chosen for the House of the People by virtue of his being under the employ of the Food Corporation as a Chowkidar, requires to be examined, undisputedly the Food Corporation is a trading (commercial) corporation, came into-being by statute for taking up state trading in foodstuffs on an appreciable scale and to function generally as an autonomous organisation working on commercial lines and to secure for itself a strategic commanding position in the food grains trade of the country. It has to work with the active and continued co-operation of State Government, and their machinery where for providing for setting up of Boards of Management or State Food Composition. With the establishment of the Food Corporation under the Act the work relating to storage, movement, distribution of and, sale of food grains, performed thitherto by the Regional Directorate under the Food Department of the Government, gradually transferred to the Food Corporation as also the staff working in the Regional Directorates to the Food Corporation where whom prescribing the conditions of service in regard to pay, pension and other similar facilities matters which are to be applicable to such employees on transfer, to the Corporation so to take care for not effecting adversely them on such a transfer. Here it may be noticed that it is not the case set up in Written Statement that Shobharam Barman is the person belonging to the category of employee transferred from Regional Directorate of Food Department of the Government to the Food Corporation on its coming into being. The Preamble of the Act reads as :

An Act to provide for establishment of Food Corporations for the purpose of trading in foodgrains and other food stuffs and for matters connected therewith and incidental thereto.

The Food Corporation on being established i.e., with effect from the date of issuance of the notification in the official Gazette u/s 3 of the Act came into a body Corporate by name having perpetual succession and common seal with power, subject to the provisions of the Act, to acquire, hold and dispose of property and to contract and may, by that name, sue and be sued. Functions of the Food Corporation are provided u/s 13 of the the Act, Parliament itself has provided the location of the Head Office of the Corporation, allowing option to the Central Government for specifying other place by notification, Food Corporation is

empowered for establishing its offices as also agencies at other places in or outside the country. The corporation, as such, has been invested independently with the power for establishing its offices and agencies not only inside the country but outside as well, which in fact, amplifies its autonomous character. Though its original capital which was not exceedable beyond one hundred crores of rupees made increasable from time to time by the Central Government after due appropriation made by the Parliament by Law for the purpose and subject to such terms and condition determined by that Government. The general superintendence, direction, and management of affairs and business of the Food Corporation vests in the Board of Directors, which to exercise all such powers and do all such acts and things as may be exercised or done by the Food Corporation under the Food Corporation Act. This Food Corporation, while exercising its functions required to work on business principles, having regard to the interests of the producer and consumer and to be guided by such instructions on question of policy as may be given to it by the Central Government, and on doubt being arisen whether a question is or is not a question of policy, the decision of the Central Government thereon to be final. The Board of Directors to consist of persons as provided u/s 7 of the, i.e. a Chairman, three Directors to represent respectively the Ministries of the Central Government dealing with: (a) Food (b) Finance, (c) and Cooperation, Managing Director of the Central Warehousing Corporation established u/s 3 of the Warehousing Corporation Act, 1962 Ex-Officio Managing Director and six other Directors. All the directors, except ex-officio to be appointed by the Central Government. The Managing Director to exercise such powers and perform such duties as the Board of Directors may entrust or delegate and to receive such salary and allowances as the Board of Directors fix with the approval of Central Government. The office of Managing Director and filling of vacancies to be made in the manner prescribed. Director is removable by Central Government after consultation with the Corporation, which of course to have primacy, after opportunity to him on incurring disqualification as provided u/s 8 of the Act. The Board of Directors to meet at such time and place and decision to be by voice vote, Chairman having casting vote and to observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at meetings) as may be provided by Regulations by the Food Corporation under the Food Corporation Act. Advisory Committee may be set up by the Central Government u/s 11 of the Act to give advice on being sought from it either by the Central Government or the corporation. Section 12 of the Act provides for the officers and other employees of the Food Corporation, which is as extracted;

(1) The Central Government shall, after consultation with the Corporation, appoint a person to be the Secretary of the Corporation.

(2) Subject to such rules as may be made by the Central Government in this behalf, the Corporation may appoint such other officers and employees as it may consider necessary for the efficient performance of its function.

(3) The methods of appointment, the conditions of service and the scale of pay of the officers and other employees of the Corporation shall -

(a) As respects the Secretary, be such as may be prescribed;

(b) as respects the other officers and employees, be such as may be determined by regulations made by the Corporation under the Act.

(Emphasis supplied)

Thus, the Food Corporation to appoint its other officers & employees as it considers necessary for the efficient performance of its functions. The method of appointment as respects the other officers and employees, be such as may be determined by regulations made by the Corporation under the Act. Section 26 of the Act provides for submission of programme of activities and financial estimates for each year in advance for the succeeding year. It has borrowing power u/s 27 of the Act which is as-

(1) A Food Corporation may, for the purposes of carrying out its functions under the Act, take advances against stocks of food grains or other food stuffs held by it, or borrow money-

(i) from any scheduled Bank; or

(ii) from any other Bank or financial institution approved by the Central Government in this behalf.

(2) The Central Government may guarantee the loans and advances taken by a Food Corporation under sub-section (I) as to the repayment of principal and payment of interest and other incidental charges.

(3) A Food Corporation may, for the purpose of carrying out its functions under this Act, also borrow money from the Central Government, and that Government may, after due appropriation made by Parliament by law in this behalf, pay to the Food Corporation. Such sums of money by way of loan on such terms and conditions as that Government may determine.

It may also lend or advance money to any person engaged in the production of food grains upon the security of food grains or such other security as may be prescribed connected with such productions. It has power to enter into agreement with any grower of crops for purchase of food grains after harvest of such crops. Scheduled Bank or other financial agency may, on the basis of agreement lend money to a grower of food crops on guarantee of loan by Food Corporation. The Food Corporation, to have its own funds, and all receipts of the Food Corporation to be credited thereto and all payments of the Corporation to be met therefrom. Such fund to be applied for meeting all its administrative expenses and for carrying out the purposes, of the Act. Its funds to be invested in the securities of the Central Government or any State Government or in such other manner as may be prescribed. It may establish a reserve fund to which amount to be credited every year such portion of its annual profit as it thinks fit.

After making provisions for such reserve fund and for bad and doubtful debts, depreciation in assets and all other matters which are usually provided for by companies registered and incorporated under the Companies Act, 1956, the balance of its annual profits to be paid;-

(a) In the case of a Food Corporation of India, to the Central Government; and

(b) in the case of a State Food Corporation, to the Central Government and the Food Corporation of India in the same proportion as the capital provided by them.

The Central Government, as such, has the right of participation in profit to receive profits qua proportion of its capital provided to the Corporation. Section 40 of the Act grants protection of action taken under the Act which is as extracted:-

No suit or other legal proceeding shall be against a Food Corporation or any member of the Board of Directors thereof or any officer or other employee thereof or any member of a Board of Management or its staff or any other person authorised by the Food Corporation or a Board of Management to discharge any functions under this, Act for any loss or damage caused or likely to be caused by anything, which in good faith done or intended to be done in pursuance of tills Act.

Section 41 provides for offences, where, whoever without consent in writing of the Food Corporation, used its name in any production or advertisement, it made punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both but cognizance of offence could not be except on a complaint in writing by an officer authorised in this behalf by the Corporation. It not to be placed in liquidation save by an order of Central Government and in such manner as that Government may direct. The provisions of Income Tax and Supper Tax on income profit or gains to apply by deeming it a company within the meaning of Income Tax Act, 1961. It has power to make regulations with the sanction of Central Government by notification in the official Gazette not inconsistent with the Act and rules for providing for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act but without prejudice to the generality of the power the regulations, inter alia, may provide for -

(i) the method of appointment, the conditions of service and the scales of pay of the officers and employees of the Food Corporation of India.

(ii) the duties and conduct of officers and employees of a Food Corporation other than the Secretary.

Any regulation is rescindable by the Central Government by notification. The Food Corporation, undisputedly, is neither sovereign functionary under the Constitution nor is possessed of Regal powers. It is statutory trading (Commercial) Corporation and constitutionally does not enjoy sovereign immunity and is not a servant or agent of Central Government and does not

enjoy the status of the Central Government, and its property is not the properly held on behalf of the Central Government. Though under the Food Corporation Act, officers and employees of the Food Corporation are accorded protection from civil cause for any thing done or intended to be done in good faith, but it is founded on the theory of good faith not on the theory of sovereign immunity.

Now, the regulation framed by the Food Corporation, in exercise of powers conferred by Section 45 of the Food Corporation Act and all other powers there under enabling, and with the previous sanction of the Central Government, known as Food Corporation of India (Staff) Regulations, 1971 which were published in the Gazette of India, Part III, Section 4 dated 8th May, 1971 (for brevity hereinafter referred to as "the Regulations") may also be examined.

Clause (c) of Sub Regulation (3) of Regulation 7 of the Regulations permits appointments on ad-hoc basis notwithstanding anything contained in Regulation 7 itself which provides appointment to any post on a purely temporary basis for a period not exceeding one year. Under Regulation 3, classification of posts in the Food Corporation are categorized as :

Classification

All posts with a fixed pay of or on a

Classification

Scale of pay with a maximum of

Not less than Rs. 950/-

Category -I

Not less than Rs. 700/- But less than Rs. 950/-

Category -II

Not less than Rs. 150/-

But less than Rs. 700/-

Category - III

Less than Rs. 150/-

Category - IV

The post of watchman is there under Appendix II as per Regulation 6, the appointing authority in the Zonal office is Deputy Manager of the Food Corporation and in the District Office, the appointing authority is also District Manager. For appointment on regular basis, mode is provided under Regulation 7 and procedure is provided under Regulation 9 for direct recruitment for (he Class of category of employees falling in category III and IV under the categorization made there under. Regulation 15, except for ad hoc - temporary appointment,

provides for appointment under the Corporation to be on probation of one year extendable by one year. Regulation 19 provides for termination. Shri Shobhga Ram Barman, if he was a temporary Chowkidar in the Corporation was not governed by the regulations, though might have been governed by Industrial Employment (Standing Orders) Act, 1946 in the Food Corporation of India (Industrial Establishments) Standing Orders framed under the said Act. whatever may be his capacity, he, however, undoubtedly, did not fall in the category of officers or other officers of the Corporation as under the Act, words "officers", "other officers" and "employees" are used separately having different sense. The Central Government did not exercise control of supervision over him. Neither appointed nor removable by the Central Government. He was not the employee either of the Central or State Government nor was required to perform Governmental functions for the Government. Further the Corporation not having been created by statute enacted under legislative power under Item 5 List II of VII Schedule is not the local authority. However, even local authority so consumed becomes a separate and distinct entity as under the said entry municipalities are separately mentioned in contradistinction of the State Government.

Keeping in mind the above principles of law, the scheme of the Act and regulations, the question of disqualification of Shri Shobharam Barman, which is the main plank in the case, requires consideration.

In the case of D.R. Gurushantappa Vs. Abdul Khuddus Anwar and Others, , Supreme Court considered whether a candidate employed in a company owned by the Government was disqualified under Art. 102 (1) (a) and 191 (1) (a) of the Constitution and in this connection, considered the relevant provisions of An. 102 (1) (a) and 191 (1) (a) of the Constitution and after discussing the case of Gurugobinda.

Gurugobinda Basu Vs. Sankari Prasad Ghosal and Others, and the decision in the case of Maulana Abdul Shakur Vs. Rikhab Chand and Another, come to the conclusion 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 could not lead to the inference that every employee of the company was under the control of the Government. Thus the meaning of the word "under the Government" means under the control of Government.

In Ashok Kumar Bhattacharya v. Ajoy Biswas (AIR 1985 SC 215 para 16, the Court held :

The true principle behind this provision in Article 102 (1) (a) is that there should not be any conflict between the duties and the interest of an elected member. Government controls various activities in various spheres, and in various measures. But to judge whether employees or any authority or local authorities under the control of Government become Government employees or not or holders of office of profit under the Government, the measure and nature of

control exercised by the Government over the employee must be judged in the light of the facts and circumstances in each case so as to avoid any possible conflict between his personal interests and duties and of the Government.

(Emphasis supplied)

Thus position was further examined in the case of *Surya Kant Roy v. Imamul Hai Khan* (1975) 3 SCR 909 = 1975 SC 1053. There, under Bihar and Orissa Mining Settlement Act, 1920 a Board called the Mines Board of Health was established to provide for the control and sanitation of any area within which the persons employed in a mine reside and for the prevention therein the out-break and spread of epidemic diseases. After analysing the facts of that case. this Court held that the mere fact that the candidate was appointed Chairman of the Board by State would not make him a person holding an office of profit under the State Government. There the Supreme Court referred to the decision in the case of *Shivamurthy Swami v. Agadi Sanganna Andnappa*, (1971) 3 SCC 870 , Supreme Court in *Surya Kant Roy v. Imamul Hai Khan* (Supra) observed at page 911 (of (1975) 3 SCR): (at p. 1054 of AIR 1975 SC) as follows :-

Here again it is to be pointed out that the Government does not pay the remuneration nor does the holder perform his function for the Government. To hold otherwise would be to hold that local bodies like Municipal Councils perform functions for the Government though in one sense the functions they perform are Governmental functions.

Under the regulations the post could be created by the Corporation and appointments to be made independently by the Corporation so the termination. It not having come into being by an statute enacted under Item 5 List II of the VII Schedule is not the local authority but it having been established by statute enacted under power Item 43 List I of the VII Schedule as a trading corporation for purpose already mentioned, comes within the meaning of other authority as the word "authority" must be construed according to its ordinary meaning and therefore must mean a larger power by one person to another to do an act.

Supreme Court in the case *Dr. Gurushantappa v. Abdul Khuddus Anwar* (ARI 1969 SC 744) at page 750 observed :

The mere control of the Government over (he authority having the power to appoint, dismiss, or control the working of the officer employed by such authority does not disqualify that officer from being a candidate for election as a member of the Legislature in the manner in which such disqualification comes into existence for being elected as the President or the Vice-President.

So far as (he Capital of the Food Corporation is concerned Parliament itself fixed the same simultaneously empowering the Central Government for extension of limit but after due appropriation made by Parliament. It is not funded purely by the Central Government at its pleasure of discretion but is by appropriation by Parliament. However, the funds so provided to the Food Corporation looses its

character as that of Government fund no sooner the same are transferred to the Food Corporation and on losing its such character become the funds of the Food Corporation, its character as that of a fund by virtue of creation of its status as Corporation clothed with the power to acquire property whereas a multi-state cooperative society under the Multi-State Cooperative Societies Act, 1985 where a cooperative society on registration there under acquires the status of corporation u/s 52 thereof, which does not give power to the cooperative society so registered to acquire for itself movable or immovable property. On the registration of a multi-state cooperative society renders itself into a body corporate by name under which it is registered having perpetual succession and common seal, and with power to hold property, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted. Minus the power to acquire for itself.

It is settled position of law that the object behind Art. 102 (1) (a) of the Constitution is that there should not be any conflict between the duties and interest of an elected member. Government controls various activities in various spheres and in various measures. But to judge whether employees of any authority or local authorities under the control of Government become Government employees or not or holders of office of profit under the Government, the measure and nature of control exercised by the Government over the employee must be judged in the light of the facts and circumstances in each case so as to avoid any possible conflict between his personal interest and duties and the Government.

After analysing the facts and the law, the Chowkidar may he be irrespective of the capacity temporary or permanent is in the employment of the Food Corporation and he cannot be said to have any sort of conflict between his personal interests and duties and of the Central Government.

In *Kirpal Singh, M.L.A. Vs. Uttam Singh and Another*, Supreme Court was posed with the question as to what extent and which of the employees of the public corporations and Government companies should be disqualified from contesting election. In this context Para 3 is relevant, which is as extracted;

3. The clear and undoubted object of Art. 191 (1) (a) to (e) and the provisions of the Representation of the People Act (including S. 10) is the preservation of the purity and integrity of the election process by preventing Government or State employees from taking part in the elections. But then S. 10 appears to confine the disqualification, in so far as it relates to employees of Government companies to the "top-brass" only if such an uncouth expression may be allowed to creep into the judgment of a Court/Nowadays the activities of the State are so manifold and prolific that the State has been forced, in the interests of better management and administration and in order to further the directive Principles of State Policy, to set up various Corporations which are but mere instrumentalities of the State. Is the principle of Art. 191 (1) (a) then to be extended to employees of State Corporations also by enacting appropriate laws under Art.

191 (1) (e) ? Or are employees of Public Corporations to be treated differently from employees of the Government ? Are not some of them in a better position to exert undesirable pressure than Government employees ? On the other hand, are a tremendously large number of employees of Public Corporations to be denied the opportunity of being chosen as representatives of the People ? Do all the considerations applicable to Government Employees equally apply to employees of Public Sector undertakings ? Is there no distinguishing feature ? Are a large mass of highly or moderately literate people to be denied the right to speak for the people ? Is the right to be elected, to be confined, without meaning any disrespect to anyone to the professional politicians only ? These are some of the vital questions posed and which require to be answered. The answer should be best given by the elected representatives of the people themselves. We are not shirking the decision of these questions but our decision can only be confined to interpretation. Not so, Parliament which can decide upon the Policy. That is why, we recommend to the Government to have them matter examined by the Law Commission very early. When a suitable occasion arises in the future we will, of course, deal with the matter, probably helped by new legislation.

It may be noticed with gravity that observations of Supreme Court were paid on deaf ears.

Tremendously large number of employees who are the citizens of the country and have even no possible conflict between the personal interests and duties and of the Government, cannot be kept out of arena of democracy for being chosen for the House of People or Legislature, otherwise, as is seen present day, such a sacred body possessed of sovereign status and functions would go in the hands of professional class of politicians to the exclusion of vast literate majority, depriving the equal opportunity owing to consideration of poverty keeping the matter to top brassman. In India the majority is not a political professional majority. Majority is burnout made. A political professional majority is not purely a majority, it is the majority which is always made, unmade and remade. Judicial process must, by process of interpretation, in the healthy interest of the society, promote the citizens' active participation in proper perspective in order to maintain democratic process on an even feel keeping in arena a vast majority.

The case of Dr. Gurushantappa v. Abdul Khuddus (supra) was considered in the case Ashok Kumar Bhattacharya v. A Joy Biswas (AIR 1985 SC 215 Para 5).

The next case cited is Shivamurthy Swami v. Agadi Sanganna Andnappa, (1971) 3 SCC 870 where, the Supreme Court, after referring, to some of the above mentioned decisions, held thus :

The tests for finding out whether an office in question is an office under a Government and whether it is an office of profit, are

- (1) whether the Government makes the appointment;
- (2) Whether the Government has the right to remove or dismiss the holder;

(3) Whether the Government pays the remuneration;

(4) What are the functions of the holder ? Does he perform them for the Government, and

(5) Does the Government exercise any control over the performance of these functions ?

In *Madhukar G.E. Pankakar Vs. Jaswant Chobbildas Rajani and Others*, , the Court observed:

the next case of considerable importance is *Gurugobinda Basu Vs. Sankari Prasad Ghosal and Others*, which related to a chartered accountant, a partner of firm of auditors of two companies which were owned by the Union Government and the State Government. Disqualification for holding an office of profit, again, in this circumstance, was pressed before the Court, and S.K. Das Agg. C.J. speaking for the Court, observed :

"We think that this contention is correct, we agree with the High Court that for holding an office of profit under the Government, one need not be in the service of Government and there need be no relationship of master and servant between them." (P.319) (of SCR) = (at page 258 of AIR)

"In *Maulana Abdul Shakur Vs. Rikhab Chand and Another*, the appellant was the Manager of a school run by a committee of management formed under the provisions of the Durgah Khwaja Saheb Act, 1955. He was appointed by the administrator of the Durgah and was paid Rs. 100 per month. The question arose whether he was disqualified to be chosen as a member of Parliament in view of Art. 102 (1) (a) of the Constitution. It was contended for the respondent in that case that under Sections 5 and 9 of the Durgah Khwaja Saheb Act. 1955 the Government of India had the power of appointment and removal of members of the committee of management as also the power to appoint the administrator in consultation with the committee; therefore the appellant was under the control and supervision of the Government and that therefore he was holding an office of profit under the Government of India. This contention was repelled and this Court pointed out the distinction between the holder of an office of profit under some other authority subject to the control of Government." (Pages 319-320) (of SCR) = (at page 258 of AIR).

"It has to be noted that in *Maulana Abdul Shakur*'s case the appointment of the appellant in that case was not made by the Government nor was he liable to be dismissed by the Government. The appointment was made by the administrator of a committee and he was liable to be dismissed by the same body." (page 320) (of SCR) - at page 258 of AIR).

"it is clear from the aforesaid observations that in *Maulana Abdul Shakur*'s case the factors which were held to be decisive were (a) 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 (b) payment from out of

Government revenues, though it was pointed out that payment from a source other than Government revenues was not always a decisive factor. 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 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 safeguards in the Constitution as to his tenure of office and removability therefrom." (Pge 321) (of SCR) = (are page 259 of AIR).

"Therefore if we look at the matter from the point of view of substance rather than of form, it appears to us that the appellant as the holder of in office of profit in the two Government companies, the Durgapur Projects Ltd., and the Hindustan Steel Ltd., is really under the Government of India; he is appointed by the Government of India, he is removable from office by the Government of India; he performs functions for two Government companies under the control of the Comptroller and Auditor-General who himself is appointed by the President and whose administrative powers may be controlled by rules made by the President." (Page 322) (of SCR) = (at Page 259 of AIR)

"In *Ramappa v. Sangappa*, (AIR 1953 SC 937) the question arose as to whether the holder of a village office who has a hereditary right to it is disqualified under Art. 191 of the Constitution, which is the counterpart of Art. 102, in the matter of membership of the State Legislature. It was observed therein :

"The Government makes the appointment to the office though it may be that it has under the statute no option hut to appoint the heir to the office if he has fulfilled the statutory requirements. The office is therefore, held by reason of the appointment by the Govt. and (sic) simply because of a hereditary right to it. The fact that the Government cannot refuse to make the appointment does not alter the situation." There again, the decisive test was held to be the test of appointment. In view of these decisions we cannot accede to the submission of Mr. Chaudhary that the several factors which enter into the determination of this question - the appointing authority; the authority vested with power to terminate the appointment, the authority which determines the remuneration, the source from which the remuneration is paid, and the authority vested with power to control the manner in which the duties of the office are discharged and to give directions in that behalf - must all co-exist and each must show subordination to Government and that it must necessarily follow that if one of the elements is absent, the test of person holding an office under the Government, Central or State, is not satisfied.

The cases we have referred to specifically point out that the circumstance that the source from which the remuneration is paid is not from public revenue is

neutral factor-not decisive of the question. As we have said earlier whether the stress will be laid on one factor or the other will depend on the facts of each case. However, we have no hesitation in saying that where the several; elements, the power to appoint, the power to dismiss, the power to control and give directions as to the manner in which the duties of the office are to be performed, and the power to determine the question of remuneration are all present in a given case, then, the officer in question holds the office under the authority so empowered." (page 322 - 323) (of SCR) = (at page 259 of AIR).

The core question that comes to the fore from the survey of the panorama of case law is as to when we can designate a person gainfully engaged in some work having a nexus with Government as the holder of an "office of profit" under Government in the setting of disqualification for candidature for municipal or like elections. The holding of an office denotes an office and connotes its holder and his duality implies the existence of the office as an independent continuity and an incumbent thereof for the nonce.

39. Certain aspects to be elementary. For holding an office of profit under Government one need not be in the service of Government and there need to be no relationship of master and servant. *Gurugobinda Basu Vs. Sankari Prasad Ghosal and Others*, . Similarly we have to look at the substance, not the form. Thirdly, all the several factors stressed by this Court, as determinative of the holding of an, "office" under Government, need not be conjointly present. The critical circumstances, not the total factors, prove decisive. A practical view, not a pedantic basket of tests should guide in arriving at a sensible conclusion.

In *Kona Prabhakara Rao v. M. Seshagiri Rao*, (AIR 1981 SC 658) (Para 11) though the facts were different it was a case of Director of Travel & Tourism Corporation but as a principle, Court held :

In view of these decisions, it is absolutely clear that as the appellant was neither appointed nor was removable by Government and even his compensatory allowances were paid from the funds of the Corporation and not from the coffers of the Government, he cannot be said to be a person holding any office of profit under the Government.

Here *Shri Shobharam Barman*, as *Chowkidar*, was neither appointed nor was removable by the Government. The payment was not made from coffers of the Government but from the funds of the Corporation.

The next case cited is the case *Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev*, (AIR 1972 SC 1959), the Court extracted the observation made in *Deorao Laxman Anande Vs. Keshav Laxman Borkar*, that :

Before a person can be held to be disqualified under Article 19(1) (a), three things must be proved that (1) he held an office (2) that it was an office of profit, and (3) that it was an office under the Government of India or the State Government.

i.e. the proof of disqualification is condition precedent and burden squarely lay on the person who asserts and pleads disqualification.

From what has been stated earlier, it is clear that for holding Shri Shobharam Barman disqualified, the burden rests obviously on the objector and in the petition, on the respondents to establish by cogent evidence and material that he held an office of profit under the Central Government so to disqualify for being chosen as a member of the House of the People. In the Act and regulations, two words are used - officers and other employees and the question is if the post of Chowkidar could be held to be an office within the meaning of Art. 102 (1) (a) of the Constitution, by virtue of provisions of the Act and the regulations, then, was it an office of profit under the Government of India.

The said Court in the case of Dr. Deorao Laxman Anande (supra) in para 12 further observed:

In our opinion, the principal test for deciding whether an office is under the Government, are (1) what authority has the power to make an appointment to the office concerned, (2) what authority can take disciplinary action and remove or dismiss the holder of office and (3) by whom and from what sources is his remuneration paid. Of these, the first two are, in our opinion, more important than the third one.

Supreme Court in Para 11 of the case of Satrucharla Chandrasekhar Raju's case, laid down some of the tests/principles that emerge for determining a person holds office of profit under the Government which are :

(1) The powers of the Government is to appoint a person in office or to revoke his appointment at his discretion. The mere control of the Government over the authority having the power to appoint, dismiss, or control the working of the officer employed by such authority does not disqualify that officer from being a candidate for election as a member of the legislature.

(2) The payment from out of Government revenues; are important factors in determining whether a person is holding an office of profit or not, of the Government. The payment from a source other than Government revenue is not always a decisive factor.

(3) The incorporation of a body corporate and entrusting the functions to it by the Govt. 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. Sometime, the form may be that a body corporate independent of Govt. but in substance, it may be the just after-ego of the Government itself.

(4) 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 very other bodies or committees, and its composition, the degree of its dependence on the Government for its finance 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 the Government function.

In Para 12 of the said case Court stated:

It can be seen that one of the main test of determination of the question is the degree and extent of control i.e. direct or remote over I.T.D.A. by the Govt. particularly with reference to making the appointment of the persons in office or to revoke the same at its discretion. In this context it is necessary to refer to some later decisions of this Court which are directly on the point and some of which have not been cited before the High Court. Before doing so, we may, however, usefully refer to the object underlying Articles 102 (1) (a) and 191 (1) (a) of the Constitution. These two Articles deal with disqualifications of a person being chosen as a member of the Parliament or the State Legislature, respectively on the ground of holding of office of profit under the Government. Generally it is understood that an office means a position to which certain duties are attached. An office of profit involves two elements namely that there should be such an office and that it should carry some remunerations. It is not the same as holding a post under the Government, and therefore, for holding an office of profit under the Government, a person need not be in the service of the Government. It is well settled that the object of enacting Art. 102 (1) (a) and 191 (1) (a) is that there should not be any conflict between the duties and interests of an elected member and to see that such an elected member can carry on freely and fearlessly his duties being subjected to any kind of Governmental pressure, thereby implying that if such an elected person is holding an office which brings him remunerations and if the Government has a voice in his functions in that office, there is very likelihood of such person succumbing to the wishes of the Government. These Articles are intended to eliminate the possibility of such conflict between duty and interest so that the purity of legislature is unaffected.

(Emphasis supplied)

Thus it is clear by reference to the object of enacting Art. 102 (1) (a) that the object is not to find out a new head of illegality.

In *Biharilal Dobray Vs. Roshan Lal Dobray*, at p. 387) Supreme Court observed in regard to the object enacting Article 191(1) (a) as:

the object of enacting Article 191 (1) (a) is plain. A person who is elected to 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 office which brings him remuneration and the Government has a voice in his continuance in that office, there is very likelihood of such person succumbing to the wishes of Government. The Article 191 (1) (a) is intended to eliminate the possibility of a conflict between duty and interest and to maintain the purity of the legislature.

(Emphasis supplied).

Likewise Supreme Court observed in Ashok Kumar Bhattacharyya Vs. Ajoy Biswas and Others, .

The true principle behind this provision in Art. 102 (1) (a) is that there should not be any conflict between the duties and the interest qua elected member.

The case of Satrucharla Chandrasekhar Raju Vs. Vyricherla Pradeep Kumar Dev and another, is a complete answer to the question/controversy qua the disqualification under Art. 102 (1) (a) of the Constitution. In this case the Supreme Court had the occasion to consider almost all the relevant cases, i.e.

- (1) Ravanna Subana v. G.S. Kageerappa (AIR 1964 SC 653);
- (2) Maulana Abdul Shakur Vs. Rikhab Chand and Another, ;
- (3) Deorao Laxman Anande Vs. Keshav Laxman Borkar, ;
- (4) M. Ramappa Vs. Sangappa and Others, ;
- (5) Gopala Kurup Vs. Samuel Arulappan Paul and Others, ;
- (6) Joti Prasad Upadhya Vs. Kalka Prasad Bhatnagar and Others, ;
- (7) Kona Prabhakara Rao Vs. M. Seshagiri Rao and Another, ;
- (8) Gurugobinda Basu Vs. Sankari Prasad Ghosal and Others, ;
- (9) Biharilal Dobray Vs. Roshan Lal Dobray, ;
- (10) Ashok Kumar Bhattacharyya Vs. Ajoy Biswas and Others, ;
- (11) D.R. Gurushantappa Vs. Abdul Khuddus Anwar and Others, ; and
- (12) Shivamurthy Swami v. Agadi Sanganna Andnappa, (1971) 3 SCC 870 .

In Para 21 of Satrucharla's case, Court said;

We do not agree. The facts of Biharilal Dobray's case are distinguishable.

The facts in Satrudcharlas" case were :

There was an Intergrated Tribal Development Agency (I.T.D.A. for short) which was running a primary school through its Project Officer wherein Satmuchrla Chandra Sekhar Raju was a teacher having joined his duly in January, 1988 and was working in a School in Jeyyammavalas Mandal in Vizianagaram District. On 2.8.1988, the Tribal Welfare Officer inspected the said School and is alleged to have notice some irregularities and he kept the appellant under suspension pending enquiry by an order dated 23.8.1988. The appellant questioned the same before Andhra Pradesh Administrative Tribunal by filing a petition but the same was rejected. Thereafter by a letter dated 26.10.1989, the appellant submitted his resignation to the Project Officer who was the appointing authority. However, the Project Officer made an endorsement on the said letter that his

resignation cannot be accepted in view of pending enquiry. Subsequently the election programme for the Legislative Assembly was announded and the appellant filed his nomination and contested election from the Andhra Pradesh Legislative Assembly from No. 8 - Nagurulsra Constituency on 22.11.1485 who was declared duly elected on 27.11.1985. Then, Vyricherla Pradeep Kumar Dev who was one of the contesting candidate and who lost the election, filed an election petition challenging the election on the ground that he was disqualified as he was holding office of profit not only on the date of his filing of the nomination but also subsequently in view of the fact that his resignation was not accepted in view of the pending enquiry and therefore he shall be deemed to be holding an office of profit under the Government.

The Andhra Pradesh High Court allowed the petition and set aside the election of Satrucharla Chandrasekahr Raju whereupon he preferred appeal before Supreme Court and Supreme Court allowed the appeal by setting aside the judgment in appeal.

Learned Judge in election Petition held :

(i) Though the society appears to be independent of the State Government but in substance, its activities are controlled by the officers of the Government who are ex officio members of governing body. The Chairman as well as the Project Officer are the officers of the State Government. A majority of the members of the State Government. A majority of the members of the Governing body are the officers holding posts in Government by virtue of which they became the ex-officio members of the Governing body. Thus, for all practical purposes, it is the officers of the Government who control the activities of the society;

(ii) Though the Project Officer is the appointing authority of the appellant but he is only a Secretary of the Society by virtue of his being an officer in the Government;

(iii) The Government sanctions the number of posts of teacher, fixes their scales of pay;

(iv) Although the rules provide to have funds of its own by way of recurring or non-recurring grants made by the Government of India but it is the Government who sanctions the funds;

(v) Since the Civil Services (Classification, Control and Appeal) Rules of the State Government are being applied to the teachers of the Society, they must be deemed to have been treated as the employees of the Government. The State has to provide free and compulsory education to all the children and primary education is also the responsibility of the State Government and it is meeting expenditure out of its funds. Therefore, the function of appointment of the teacher in the society by the Project Officer is of the Governmental functions and thus the State Government exercise almost full control.

Supreme Court considered all the cases mentioned (supra) and observed in Para

22 which is as:

It is also necessary to bear in mind that the Government is undertaking several projects and activities including commercial activities through the Corporations and local bodies, exercising some control over such corporations or bodies. In view of the matter, they may come within the meaning of the "State" as envisaged in Art. 12, but that may not be a decisive factor in deciding the issue. As a matter of fact, Section 10 of the R.P. Act as well as Art. 58 (2) of the Constitution of India do indicate that all persons employed in such undertakings, Corporations or local bodies cannot be deemed to suffer disqualification for contesting the election except to the extent indicated therein. This aspect also has been considered in some of the above mentioned decisions. If a strict and narrow construction is to be applied, that amounts to shutting off many prominent and other eligible persons to contest the elections which forms the fundamental basis for the democratic set-up. Therefore, several factors as indicated above depending upon the facts of each case have to be taken into consideration in deciding whether a particular person is disqualified by virtue of his holding an office of profit before concluding that such an office is under the Government.

In *Madhukar C. & E. Panekar's case* (AIR 196 Sc 2283) as to what should be the approach, Supreme Court observed in Para 22, as :

After all law is a means to an end. What is the legislative end therein disqualifying holders of "office or profit under Government, obviously to avoid a conflict between duty and interest, to cut out the misuse of official position to advance private benefit and to avert the likelihood of influencing Government to promote personal advantage. So this is the mischief to be suppressed. At the same time, we have to bear in mind that our Constitution mandates the State to undertake multifarious public welfare and social economic activities involving technical persons, welfare workers and lay people on a massive scale so that participatory Government may prove a progressive reality. In such an expanding situation, can we keep out from elective post at various levels many directors, lawyers, engineers and scientists, not to speak of on any of the other not-officials who are wanted in various fields, not as full time Government Servants but as part time participants in people's projects sponsored by Government ? For instance, if a national legal services Authority funded largely by the State comes into being, a large segment of the legal profession may be employed part time in the enabling occupation of legal aid to the poor. Doctors, lawyers, engineers, scientists and other experts may have to be invited into local bodies, legislature and like political and administrative organs based on election. If these vital limbs of representative Government are not to be the monopoly of populist politicians in an age which belongs to technology. So, an interpretation of "office of profit" to cast the net so wide that all our citizens with specialities and know-how are inhibited from entering elected organs of public administration and offering semi-voluntary services in para-official, statutory or like projects run or directed by

Government or corporations controlled by the State may be detrimental to democracy itself. Even athletes may hesitate to come into sports councils, if some fee for services is paid and that proves their funeral if elected to a Panchayat. A balanced view even if it involves "judicious irreverence" to vintage precedents is the wiser desideratum.

Supreme Court in *Satrucharla Chandrasekhar Raju's* case (supra) in Para 23 held as:

What emerges from the above discussion is that the Government has some control over the ITDA which is set up as a project, since it provides funds and sanctions the posts; the District Collector is appointed as Project Officer and some officers are ex officio members of the ITDA which carries out the object of providing the compulsory education in tribal areas. But the ITDA is a registered society having its own constitution. Though the Project Officer is the District Collector, he acts as a different entity. The power to appoint or to remove teachers is not with the Government but with the Project Officer. The Government may have control over the appointing authority but has no direct control over the teachers. The small post that appellant holds in ITDA is only that of a Teacher who is directly under the control of the Project Officer. In such a situation the question of any conflict between his duties and interests as an elected member does not arise since it cannot be said that he as a teacher, can be subjected to any kind of pressure by the Government which has neither the power to appoint him nor to remove him from service. Taking a practical view of the substance of these factors into consideration, we are of the view that the appellant cannot be held to be holding an office of profit under the Government.

The present case is on better footing

(a) Shri Shobharam Barman was a Chowkidar (Class IV Post) in the Food Corporation and was the holder of too small a post in the Corporation. The words "holding of an office" denote an office and connotes its holder and this directly implies the existence of office as an independent continuity and the incumbent thereof for the nonce. The post of Chowkidar in the Corporation in fact and in essence is not an office and he cannot be the holder of it, as there is no existence of office as independent continuity or otherwise. Generally it is understood that an office means a position to which certain duties are attached. However, that post of Chowkidar does not, thus fall into the category of office. He does not exercise the executive powers. The regulations which provide for method of appointment of other officers and employees are framed by the Corporation with the sanction of Central Government. The appointment of other officers and servants is subject to such rules as may be made by the Central Government. The appointment or termination of Chowkidar is not even with the sanction of the Central Government. It even independently, do not either sanction the other posts or provides for appointment with its approval;

(b) Apart from all, the case of *Joti Prasad v. Kalka Prasad* (AIR 1962 Allahabad

128) is also of relevance. Here it was held that "Vice-Chancellor of the Agra University holding an office of profit is a whole time job carrying salary, appointed by the Government of Uttar Pradesh in his capacity as Chancellor of the Agra University under the provision of the Agra University Act, 1976. Even so, the Vice Chancellor is not disqualified to stand as member of U.P. Graduates Constituency on the ground that he holds the office of profit under the State Government. The provisions of Agra University Act Reveal an intention of legislature not to regard the Chancellor to be a part of the State Government. While exercising his powers under the said act, the Chancellor goes not exercise the executive powers of State and the office of the Vice-Chancellor cannot be said to be under the State Government by virtue of the appointment having been by the Government in another capacity.

(c) In Gurugobinda's case (Supra) Supreme court held;

Similarly we have to look at the substance, not the form. Thirdly all the several facts stressed by this Court as determinative of the holding of an "office" under the Government, need not be simultaneously present. The critical circumstances, not the total factors prove decisive. A practical view of tests, should guide in arriving at a sensible conclusion.

In Para 11 of Satrucharla Chandra Sekhar Raju's case (supra), the one of the test/principle is:

the incorporation of a body corporate and entrusting the functions to it by the Government 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. Sometime, the form may be that of a body corporate independent of the Government, but in substance, it may be the just alter ego of the Government itself.

Learned counsel for respondent No. 1 laid much emphasis on the said test out of the tests laid down in Para 11 of Satrucharla Chandra Sekhar Raju's case (supra) and submitted that the Corporation is just alter-ego of the Government itself.

First it may be found out as to what is "alter ego" and which and under what circumstances it could be attracted. In Black's Law Dictionary (Sixth Edn.) at page 77, Column II for "alter ego" it was said :

Under doctrine of "alter ego" court merely disregards corporate entity and holds individual responsible for acts knowingly and intentionally done in the name of Corporation.

In the book titled as "5000 Legal Maxims & Phrases" by N.M. Mulchandani, the maxim "alter ego" was given the meaning as "A Second Self." In "the Readers" Digest Great Encyclopaedic Dictionary" at p. 40 "alter ego was given meaning as "One's either self".

Thus, the doctrine of "alter ego" is not to be applied as a rule by the Court

without bearing in mind the circumstances necessitating its aid. The Food Corporation Act u/s. 13 has set out its functions and has not left any thing on the Government in relation to entrustment of its functions to the corporation by the Government," Apart from it, it is the Court which under the cover of this doctrine could disregard the corporate entity for a limited purpose for holding individual responsible for act knowingly and intentionally done in the name of Corporation and then the protection under the Food Corporation Act made available qua the acts of individual knowingly and intentionally done in the name of corporation. It is, in reality the authority of the Court lift the shelter of corporate mask i.e. juristic personality for holding individual treating him as second-self responsible for his acts knowingly and intentionally done in the name of corporation such as it could make a member of the Board of Directors of the Corporation or Board of Management responsible for any member or any officer or other employee of the corporation or the Board of management for deficiency of value of or title to, any property or security acquired by it on behalf of corporation even in good faith etc. despite the provision under Sub-section 2 of Section 39 of the Act. Apart from this, member of the Board of Directors or officers could be brought within the fold of doctrine of alter-ego of the Government by taking him or them away from the corporate mask on account of the other tests as enumerated in Para 11 of Satrucharla Chandrasekhar Raju's Case (supra) are in est and only the test (3) by virtue of corporate status impedes a person as holder of office of profit under the Government. The word "alter-ego" is a latin word meaning only other self; intergrate friend. The word "after"" means change or multiply the sense but not obstruct, in the self to the personality.

(1) Regulation 35 of the regulations which is as extracted was relied on behalf of respondent No. 1 for the purpose that Shri Shobharam Barman was even otherwise disqualified for being chosen for the House of the People.

No employee shall canvass or otherwise interfere with or use his influence in connection with or take part in an election to any legislature or local authority provided that -

(i) An employee qualified to vote at such an election may exercise his right to vote, but where he does so, he shall give no indication of the manner in which he proposes to vote or has voted.

(ii) any employees shall not be deemed to have contravened the provisions of this paragraph by reason only that he asserts in the conduct of an election in due performance of a duty imposed on him by or under any law for (he time being in force.

Explanation : The display by an employee on his person, vehicle or residence of any electoral symbol shall amount to using his influence in connection with an election within the meaning of this regulation.

Under Art. 102 (1) (a) a person could be disqualified by or under any law made by Parliament.

Section 45 of the Food Corporation Act, 1964 which is as extracted below, gives the regulation making power to the Corporation :

45. Power of Food Corporation to make regulations. -

(1) A Food Corporation may, with the previous sanction of the Central Government, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made there under to provide for all matters for which provision is necessary or expedient for the purposes of giving effect to the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such regulations may provide for-

(a) the methods of appointment, the conditions of service and the service and the scales of pay of the officers and employees of a Food Corporation, other than the Secretary of the Food Corporation of India;

(b) the duties and conduct of officers and employees of a Food Corporation, other than the Secretary aforesaid;

(c) the functions and duties which may be entrusted or delegated to the managing director or, as the case may be, the General Manager, of a Food Corporation;

(d) the times and places at which meetings of a Food Corporation or any committee thereof shall be held and the procedure to be followed thereat;

(e) the fees and allowances payable to the members of a committee under sub-section (6) of section 14 or sub-section (6) of section 24;

(f) generally, the efficient conduct of the affairs of a Food Corporation.

(3) The Central Government may, by notification in the Official Gazette, rescind any regulation which it has sanctioned and thereupon such regulation shall cease to have effect.

(4) Any regulation which may be made by the Food Corporation of India under this Act may be made by the Central Government within three months from the establishment of that Corporation and any regulation which may be made by a State Food Corporation under this Act may be made by the Food Corporation of India within three months from the establishment of such State Food Corporation, and any regulation so made may be altered or rescinded by the Food Corporation concerned in the exercise of its powers under this Act.

The Food Corporation act has not laid down any disqualification disqualifying any person for being chosen for the House of the People either under Art. 102 (1) (a) of the Constitution or the Food Corporation Act has neither empowered the Central Government nor the Food Corporation for laying down the disqualification for a person. Thus, under Food Corporation Act, rule or regulations as per requirement of Art. 102 (1) (a) Constitution no authority rests with the Central

Government or the Food Corporation disqualifying a person for being chosen for the House of the People. If under the regulation contained in Section 4 (Conduct of Regulations) of the Regulations laying down the conduct regulation under the category of conduct. The Regulation 35 of the Regulations (supra) the user of the words "take part in an election" does not speak that he shall not be entitled for being chosen for the House of the People etc. but only could mean that he shall not take part in election in the capacity as counting or polling agent of any candidate at the election to any legislature or local authority. The submission thus being sans substance deserves to be rejected. In a society where the people of India have constituted India into a sovereign Socialist Secular Democratic republic securing to all its citizens justice-Social, economic and political, liberty of thought, expression belief, faith and worship, equality of status and opportunity and to promote among them all, fraternity, assuring the dignity of the individual and the unity and integrity of the nation, the participation in the election and also being candidate for being chosen for the legislature is a rule and non-participation in the name of disqualification is exception and as such, the interpretation that is required to be the purpose oriented providing rule and not to allow the exception for setting at naught the purpose by excluding from arena of democratic process the vast majority of populace.

Owing to no objection in the Written Statement in any shape directly, indirectly or remotely about not giving complete concised statement of material facts leading to non-disclosure of full cause of action no such issue struck. Not only this, the respondent No. 1 did not come to witness box nor examined anybody as its witness for any purpose, there arises no question for allowing during the course of arguments the objection of the nature not having its foundation in the Written Statement.

In the case of Manohar Nathurao Samarth Vs. Marotrao and Others, a similar provision to that of 35 of the Regulation quoted (supra) came up for consideration before Supreme Court where Court held as :

I hold that the impact of Regulation 25 (4) is not to impose ineligibility on an LIC employee to be a member of a municipal corporation. Its effect is not on the candidature hut on the employment itself.

Court in Para 16, which is as extracted indicated the persuasive factor as broadly supportive of our conclusion.

16. There is a broader constitutional principle with supports this semantic attribution. The success of our democracy to "torunique" excess of authority depends on citizen participation. An inert citizenry indifferent to the political process is an enemy of the Republic's vatality. Indeed, absolutism thrives on inaction of the members of the polity. Therefore activist involvement in various aspects of public affairs by as many citizens as can be persuaded to interest themselves is a sign of the health and strength of our democratic system. Local self-government and adult franchise give constitutional impetus to the citizens to

take part in public administration. Of course, this does not mean that where a plain conflict of interests between holding an office and taking part in the political affairs of government exists, a disqualification cannot be imposed in public interest. The rule is participation, the exception exclusion. Viewed from that angle, if a government servant or an employee of the LIC participates in local administration or other election it may well be that he may forfeit his position as government servant or employment, if dual devotion is destructive of efficiency as employee and be subject to disciplinary action - a matter which depends on a given milieu and potential public mischief. I am not resting our decision on this general consideration but mention this Persuasive factor as broadly supportive of our conclusion.

In para 40 of the report Pathak, J. said :

The right to stand for election flows from the election law. Regulation 25 (4) does not take away or abrogate the right; it merely seeks to restrain the employee from exercising it in the interests of service discipline.

The Written Statement filed by respondent No. 1 contains no allegations in regard to any defect in the petition nor even in regard to non-containment of concise statement of material facts on which petitioner relied or even non-disclosure of cause of action. Obviously there was none and absence of any such pleading resulted in non-framing of issue which could be put to trial. It may be noticed without acceptance of any defect in petition, that Section 83 of the Act is taken out of arena of Section 86 for the dismissal of the petition without there being any objection, though it contains in its fold the other provisions of Sections, 81, 82 and 117. Despite all this, the learned counsel for the respondent No. 1 Shri Kapil Sibbal raised a preliminary objection during the cause of arguments at the stage of final hearing of the petition in this regard that the petition did not contain concise statement of material facts on which the petitioner relied, as required u/s. 83 (1) (a) of the Act resulting in the non-disclosure of full cause of action qua disqualification under Article 102 (1) (a) of the Constitution, the requirements whereof were :

- (1) That the person holds an office;
- (2) That the office is an office of profit;
- (3) That it was an office under the Government of India or the State Government.

Section 83 of the Representation of People Act deals with the contents of the petition and Clause (a) of sub-section (1) thereof states that an election petition to contain a concise statement of material facts on which the petitioner relies. It has not been fatal to such an extent so to lead to the dismissal of an election petition u/s. 86 of the Representation of People Act. If it is raised in Written Statement to be decided under an issue framed to this effect on the basis "of the evidence in qua the objection in Written Statement and the burden squarely rests on him as indication comes from the case of Deorao Laxman Anande Vs.

Keshav Laxman Borkar, where the Court in Para 4 observed as :

Before a person can be held to be disqualified under Article 191 (1) (a), three things must be proved (1) he held an office (2) that it was an office of profit and (3) that it was an office under the Government of India.

In Samant N. Bal Krishna v. George Fernandes which was a case relating to corrupt practices, Court in Para 29 observed :

What is the difference between material facts particulars ? The word "material" shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet.....

.....The material facts thus will show the ground of corrupt practice and the complete cause of action and particularly will give the necessary information to present full picture of cause of action.

In the case of Quamarul Islam v. S.K. Kanta (AIR 1994 SC 1773) which related to corrupt practice whereat at much belated stage IA III moved on 3.4.1992 when evidence was over and then learned counsel raised an objection as contained in Para 22 of the report, wherein Court in Pra 41 held as:

Even if the application of the appellant IA III seeking dismissal of the election petition may be held to have been rightly rejected on the ground that after the parties had gone to trial, despite the absence of full facts and particulars of (he alleged corrupt practice and had led evidence, an election petition is not liable to be thereafter dismissed for those defects only but in such cases, the evidence that is required to prove the allegations of corrupt practices in an election petition has to be more strictly scrutinised, lest the evidence, which in a way travels beyond the pleadings, is accepted without proper analysis.

The present is not a case of corrupt practice and the nature of material facts vary controversy to controversy. Here controversy is of legal nature and the petition contains adequately all necessary material facts making clear to the respondent what case he has to meet. It may however be observed that in the present petition there is no such objection in the Written Statement. Consequently no such objection and that even at the delayed stage can be taken.

What to constitute the material facts will depend not on any catalogued formula but depend upon controversy qua the ground of challenge and the criterion of material facts to vary in the case containing round of disqualification under article 102 (1) (a) i.e. for the reason of holding of office of profit under the Government of India as is in the present case and the case of disqualification on the ground of commission of corrupt practice provided u/s 123 of the Act. So far as material facts are concerned, their concise statements to be made in the

petition to give the basic idea of the ground of disqualification under Art. 102 (1) (a) of the Constitution so to make it clear as to on what controversy the petition is founded. The petition does not suffer from the defect in regard to lacking in material facts.

As has been said in *Vimala (K.) Vs. Veeraswamy (K.)*, , which was a case of corrupt practice, u/s. 123 of the Act, Court spelled out the underlying idea in requiring the election petitioner to set out in a concise manner all the material facts as well as full particulars, where as commission of corrupt practice is complained of, is to delineate the scope, ambit and limits of the inquiry at the trial of the election petition, as the charge of corrupt practice has two dimensional effect, its impact on the returned candidate has to be viewed from the point of view of the candidate's future political and public life and from the point of view of the electorate to ensure purity of election process. There can, therefore, be no doubt that such an allegation involving corrupt practice must be viewed very seriously and the High Court should ensure compliance with the requirements of Sec. 83 of the Act before parties go to trial.

The present case stands on different pedestal. It is not a case of corrupt practice and as such there is no question of candidate's future political or public life as the candidate cannot be disqualified. Concise statement of material facts qua the controversy in the petition, the written statement contains no such objections rather it admits the material on no objection is filed independently of written statement and what has been stated in the petition is the sufficient concise statement of facts qua the ground of Art. 102 (1) (a) of the Constitution where under the nomination of Shobha Ram Burman was rejected on the controversy basically founded upon consideration of law and legal aspect.

In view of above having regard to the facts, circumstances of the case, material on the record and the relevant law as well as analysing the legal position, the conclusion as arrived at is that the nomination paper of Shri Shobha Ram Burman for being a candidate at the election for the House of People from 17-Raipur Parliamentary Constituency was improperly rejected by the returning officer on the ground of his having disqualification under Article 102 (1) (a) of the Constitution being holder of office of profit under the Food Corporation of India which is a undertaking of the Government of India being in the employment of the Food Corporation of India.

The election petition thus, deserves to be allowed and the election of Shri Vidya Charan Shukla, the respondent No. 1, deserves to be set aside. Accordingly, the election petition is allowed and the election of Shri Vidya Charan Shukla (Respondent No. 1) for the House of People from 17-Raipur Parliamentary Constituency is set-aside declaring the same to be void. The relief of declaration of Shri Ramesh Bais as having been declared as elected in his place is refused as there were in the fray more than two candidates. The cost is quantified at Rs. 5,000/- (Rupees Five Thousand Only). The petitioner are also entitled for the refund of the whole of the security amount.

As per requirement of Section 103 of the Representation of Peoples Act, 1951, the substance of decision may be communicated to the Speaker of House of People and the copy of the decision may be sent to the Election Commission of India.