A

D. R. GURUSHANTAPPA

v.

ABDUL KHUDDUS ANWAR & ORS.

January 27, 1969

B [J. M. SHELAT, V. BHARGAVA AND C. A. VAIDIALINGAM, JJ.]

Representation of the People Act (43 *of* 1951), *s.* 10—*Candidate elected employed in a company owned by Government—If disqualified—Constitution of India Arts.* 102(1) *and* 191(1)—*Scope of.*

The first respondent was appointed in a undertaking started and managed by the State Government, as its own concern. Later a company C was registered and it took over the undertaking. All the shares in the company were held by the Government though some were in the name of its officers. The Directors of the Company were appointed by the Government—a Minister was one of the first Directors of the Company; the appointment of the Secretary of the Company was subject to approval of the Government; and, even in the general working of the company, Government had the power to issue directions to the Directors which were to be carried out by them. When the concern was taken over from the D Government by the Company, the services of the first respondent were not terminated and he was continued in the same post by the company which he was holding when the concern was being run by the Government, and there was no fresh contract entered into between him and the company. He was later promoted to the post of Superintendent in the Company, and he successfully contested a seat to the State Legislature. The appellant an unsuccessful candidate, challenged the election contending : (i) that the first respondent when initially appointed to the post was E a government servant and, even after that concern was taken over by the company, he continued to be in the service of the Government; and (ii) alternatively, that ever if the first respondent ceased to be Government servant, he still continued to hold an office of profit under the State Government, though technically he was in the employment of the company.

HELD : The first respondent was not holding an office of profit under F the State Government.

(i) When the undertaking was taken over by the company as a going concern, the employees working in the undertaking were also taken over and since, in law, the company had to be treated as an entity distinct and separate from the Government, the employees, as a result of the transfer of the undertaking, became employees of the company and ceased to be employees of the Government. The first respondent was a workman at G the time of the transfer of the undertaking and as a workman, he had, under s. 25FF of the Industrial Disputes Act, become an employee of the new employer, *viz.* the company. In view of this provision of law, there was no need for any specific contract being entered into between the Government and the first respondent terminating his Government service; nor was there any need for a fresh contract being entered into between the company and the first respondent to make him an employee of the company. Further, after the undertaking was taken over by the company, H the employees, who were workmen, were no longer governed by the State's Civil Service Regulations. Their conditions of service were determined by the Standing Orders of the Company which were certified under

the Industrial Employment (Standing Order) Act, 1946. The mere inclusion in the Civil List of the name of a person could not prove that that person was in the service of the Government, unless evidence was tendered to show the circumstances under which the name was included in the Civil List and to exclude the possibility of names of persons other than those in government service being included in the Civil List. No such evidence was given in this case. Finally the post, which he was holding while the concern was being run by the Government, ceased to be a Government post in the transfer of the undertaking to the company and became a post under the company, so that the first respondent ceased to be in Government service by continuing in that post. [429E, G; 430B, E—H]

(ii) The fact that the Government had control over the Managing Director and other Directors as well as the power of issuing directions relating to the working of the company could not lead to the inference that every employee of the company was under the control of the Government. The power to appoint and dismiss first respondent did not vest in the Government or in any Government servant. The power to control and give directions as to the manner in which the duties of the office were to be performed by the first respondent also did not vest in the Government, but in an officer of the company. Even the power to determine the question of remuneration payable to the first respondent was not vested in the Government which could only lay down rules relating to the conditions of service of the employees of the company. In the case of election as President or Vice-President, the disqualification arises even if the candidate is holding an office of profit under the local or any other authority under the control of the Central Government or the State Government, whereas, in the case of a candidate for election as a Member of any of the Legislatures, no such disqualification is laid down by the Constitution if the office of profit is held under the local or any other authority under the control of the Government and not directly under any of the Government. This clearly indicates that in the case of eligibility for election as a member of a Legislature, the holding of an office of profit under a corporate body like a local authority does not bring about disqualification even if the local authority be under the control of the Government. 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 the 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. [433F; 434H; 435 A—C]

By s. 10 of the Representation of the People Act, the disqualification is limited to a person holding the office of a managing agent, manager or secretary of a company in the capital of which the Government has not less than 25% share, and the disqualification does not apply to other employees of the company. This gives two indications as to the scope of the disqualification laid down in Arts. 102(1) (a) and 191(1)(a) of the Constitution. One is that the holding of an office in a company, in the capital of which the Government has not less than 25% share, is not covered by the disqualifications laid down in Arts. 102(1)(a) and 191(1)(a), as. otherwise, this provision would be redundant. The second is that even Parliament, when passing the Act, did not consider it necessary to disqualify every person holding an office of profit under a Government company, but limited the disqualification to persons holding the office of managing agent, manager or secretary of the company. The fact that the entire share capital in the company in this case is owned by the Government does not, make any difference. [435 D—H]

A *Gurugobinda Basu* v. *Sankari Prasad Ghosal & Ors.* [1964] 4 S.C.R. 311 and *Maulana Abdul Shakur* v. *Rikhab Chand*, [1958] S.C.R. 387, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 718 of 1968.

B Appeal under s. 116-A of the Representation of the People Act, 1951 from the judgment and order dated November 17, 1967 of the Mysore High Court in Election Petition No. 7 of 1967.

S. V. Gupte, Shyamala Pappu, S. S. Javali and *Vineet Kumar*, for the appellant.

C *Lily Thomas*, for respondent No. 1.

The Judgment of the Court was delivered by

Bhargava, J. This appeal under section 116A of the Representation of the Peoples' Act No. 43 of 1951 (hereinafter referred to as "the Act") has been filed by one of the unsuccessful candidates for election to the Mysore Legislative Assembly from D No. 152, Bhadravati Constituency, against the judgment of the High Court of Mysore dismissing his election petition for setting aside the election of the successful candidate, respondent No. 1. After the nomination papers had been filed, the scrutiny of the nomination papers took place on the 21st January, 1967 and five nomination papers were declared as valid. They were the nomi- E nation papers of the appellant, respondent No. 1 and respondents Nos. 2 to 4. The polling for the Constituency took place on 15th February, 1967, and after the counting of votes, the results were declared on 22nd February, 1967. Respondent No. 1 received 15,862 votes, while the appellant received 13,380 votes. The other three candidates, respondents 2 to 4, were also unsuccessful F having received much smaller number of votes. On 5th April, 1957, the appellant filed the election petition challenging the election of respondent No. 1 on a number of grounds, out of which we need mention only one single ground, as the appeal in this Court is confined to that ground alone. It was pleaded that respondent No. 1 was disqualified under Article 191(1)(a) of the Constitution from being chosen as a member of the Legislative Assembly, G because he was holding an office of profit under the Government of the State of Mysore on the date of scrutiny. This ground, as well as other grounds taken by the appellant for challenging the validity of the election of respondent No. 1 were all rejected by the High Court and the election petition was dismissed. Consequently, the appellant has come up in this appeal to this Court. H Though, in this appeal, a number of grounds were raised, Mr. S. V. Gupte, counsel for the appellant, confined the case to this sole ground of disqualification of respondent No. 1 on the date of scrutiny.

The facts relevant for deciding this issue may now be stated. On the date of scrutiny, respondent No. 1 was employed as Superintendent, Safety Engineering Department in the Factory run by the Mysore Iron & Steel Works Ltd., Bhadravati. His salary was more than Rs. 500 per mensem. The past history of the service of respondent No. 1 was that he was appointed in the year 1936 in the Mysore Iron & Steel Works, Bhadravati, which was started by the Government of Mysore and was being managed by the Government as its own concern. He continued to be a servant of the Government of Mysore when, in the year 1962, a private limited Company was registered under the name of Mysore Iron & Steel Limited, Bhadravati (hereinafter referred to as "the Company") under the Indian Companies Act, 1956, and this Company took over the Mysore Iron & Steel Works from the Government. Respondent No. 1 had first joined service as a daily worker in 1936, but was promoted as Chargeman, Asstt. Foreman, Foreman and thereafter as Assistant Superintendent which was the post held by him in the year 1962 at the time when the concern was taken over by the Company. Subsequently, he was promoted as Superintendent in the year 1964 and was working on that post at the time of the election in 1967. It was also the common case of the parties that the shares of the Company were held cent per cent by the Mysore Government, though some of the shares were shown in the names of some of the Officers in the service of the Mysore Government. Under the Articles of Association of the Company, the first Directors of the Company were the Minister-in-charge of the Industries Portfolio in the Mysore Government, the Secretaries to the Mysore Government in the Finance Department, and in the Commerce and Industries Department, the Managing Director of the Mysore Iron & Steel Ltd., and the Chief Conservator of Forests of the Mysore Government. The Governor of Mysore was entitled to appoint all or a majority of the members of the Board of Directors so long as the Government of Mysore held not less than 51 per cent of the total paid-up capital of the Company or so long as the Governor continued to be interested in any fiduciary capacity. The Board of Directors could also co-opt one or more individuals as Directors. Thus, the State Government had considerable control in appointment of Directors of the Company as well as in the appointment of the Managing Director who was to be appointed by the Governor from amongst the Directors nominated by him. The Governor was also entitled to appoint from amongst the nominated Directors a Chairman and Vice-Chairman of the Board of Directors. Even the Secretary of the Company had to be appointed by the Board of Directors after obtaining approval of the Governor. In respect of other employees of the Company, recruitment and service conditions had to be in accordance with the rules which may be prescribed by the Governor from time to time. When the concern was taken over from

A the Government by the Company, the services of respondent No. 1 were not terminated and he was continued in the same post by the Company which he was holding when the concern was being run by the Government. There was no fresh contract entered into between him and the Company. On these facts, two alternative contentions were raised by Mr. Gupte to urge that respondent B No. 1 was disqualified under Art. 191(1)(a) of the Constitution. The first argument was that respondent No. 1, when initially appointed to a post in the Mysore Iron & Steel Works in 1936, was a government servant and, even after that concern was taken over by the Company, he continued to be in the service of the Mysore Government. In the alternative, the second contention C was that, even if respondent No. 1 ceased to be a government servant, he still continued to hold an office of profit under the Government of Mysore though, technically, he was in the employment of the Company.

So far as the first point is concerned, reliance is placed primarily on the circumstance that, when the concern was taken over D by the Company from the Government, there were no specific agreements terminating the government service of respondent No. 1, or bringing into existence a relationship of master and servant between the Company and respondent No. 1. That circumstance, by itself, cannot lead to the conclusion that respondent No. 1 continued to be in government service. When the E undertaking was taken over by the Company as a going concern, the employees working in the undertaking were also taken over and since, in law, the Company has to be treated as an entity distinct and separate from the Government, the employees, as a result of the transfer of the undertaking, became employees of the Company and ceased to be employees of the Government. This F position is very clear at least in the case of those employees who were covered by the definition of workmen under the Industrial Disputes Act in whose cases, on the transfer of the undertaking, the provisions of section 25FF of that Act would apply. Respondent No. 1 was a workman at the time of the transfer of the undertaking in the year 1962, because he was holding the post of an Assistant Superintendent and was drawing a salary below G Rs. 500 per mensem. As a workman, he would, under s. 25FF of the Industrial Disputes Act, become an employee of the new employer, *viz.*, the Company, which took over the undertaking from the Mysore Government which was the previous employer. In view of this provision of law, there was, in fact, no need for any specific contract being entered into between the Mysore Gov- H ernment and respondent No. 1 terminating his government service, nor was there any need for a fresh contract being entered into between the Company and respondent No. 1 to make him an employee of the Company.

This position is further clarified by the circumstance that, after the undertaking was taken over by the Company, the employees, who were workmen, were no longer governed by the Mysore Civil Service Regulations. Their conditions of service were determined by the Standing Orders of the Company which were certified under the Industrial Employment (Standing Orders) Act, 1946. These Standing Orders even referred to certain employees as "lent Officers". The reference was obviously to persons who continued to be in the Government service, but whose services were lent to the Company. It was conceded in the present case that respondent No. 1 was not a lent officer as envisaged by that expression used in the Standing Orders.

Respondent No. 1 further came to be governed by the Works Service Rules. It is true that, under the Articles of Association, the Governor had the power to lay down conditions of service of the employees of the Company; but that cannot mean that the employees of the Company continued to be in the service of the Government. Reliance in this connection was also placed on behalf of the appellant on the fact that the name of respondent No. 1 appeared in the Mysore Civil List under the heading "Iron and Steel Ltd., Bhadravati" from which an inference was sought to be drawn that respondent No. 1 must have continued in government service, as, otherwise, his name would not have been included in the Civil List. The mere inclusion in the Civil List of the name of a person cannot be held to prove that that person is in the service of the Government, unless evidence is tendered to show the circumstances under which the name was included in the Civil List and to exclude the possibility of names of persons other than those in government service being included in the Civil List. No such evidence was given in this case. On the other hand, the same Civil List shows that even the names of certain employees of the Universities in the State are also included in it, and, on the face of it, University employees could not be held to be in government service. The Civil List relied upon clearly is not confined to names of persons in Mysore Government service only, so that this piece of evidence relied on by the appellant also does not establish that respondent No. 1 continued to be in government service after the undertaking was taken over by the Company.

Finally, there is the circumstance that it is not shown that, after the undertaking was taken over by the Company, respondent No. 1 continued to hold a lien on any Government post. In fact, the post, which he was holding while the concern was being run by the Mysore Government, ceased to be a Government post on the transfer of the undertaking to the Company and became a post under the Company, so that respondent No. 1 ceased to be in government service by continuing in that post. The first contention raised on behalf of the appellant, therefore, fails.

A On the second contention that, even if respondent No. 1 was not holding a government post, he must be held to be holding an office of profit under the Government, Mr. Gupte relied on the principles laid down by this Court in *Gurugobinda Basu* v. *Sankari Prasad Ghosal and Others*(1). The Court in that case brought out the distinction between an office of profit under the Govern-
B ment and a post in the service of the Government by stating :—

> "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. The Constitution itself makes a distinction between 'the
C holder of an office of profit under the Government' and 'the holder of a post or service under the Government'; *see* Arts. 309 and 314. The Constitution has also made a distinction between 'the holder of an office of profit under the Government' and 'the holder of an office of profit under a local or other authority subject to the control of Government'; *see* Art. 58(2) and
D 66(4)."

The Court then proceeded to consider the earlier decision in the case of *Maulana Abdul Shakur* v. *Rikhab Chand and Anr.*(2) and held :—

> "It is clear from the aforesaid observations that in *Maulana Abdul Shakur's* case(2) the factors which
E 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 reve-
F nues was not always a decisive factor."

After this reference to *Maulana Abdul Shakur's* case(2), the Court proceeded to apply the principles to the facts of the case before it. In that case, the question was whether the appellant was holding an office of profit under the Government of India. It was pointed out that the appointment of the appellant as also
G his continuance in office rested solely with the Government of India in respect of the two Companies for which he was employed as an Auditor. His remuneration was also fixed by the Government. The Court assumed for the purposes of the appeal that the two Companies were statutory bodies distinct from Government, but noted the fact that, at the same time, they were Government Companies within the meaning of the Indian Companies Act.
H Emphasis was laid on the circumstance that, in the performance of his functions, the appellant was controlled by the Comptroller

(1) [1964] 4 S.C.R. 311. (2) [1958] S.C.R. 387.

and Auditor-General who himself was undoubtedly holder of an office of profit under the Government, though there were safeguards in the Constitution as to the tenure of his office and removability therefrom. Under Art. 148 of the Constitution, the Comptroller & Auditor-General was appointed by the President and he could be removed from office in like manner and on the like grounds as a Judge of the Supreme Court. The salary and other conditions of service of the Comptroller & Auditor-General were to be such as might be determined by Parliament by law and, until they were so determined, they were to be as specified in the Second Schedule to the Constitution. Other provisions relating to the Comptroller and Auditor-General were also taken notice of and an inference was drawn from these provisions that the Comptroller and Auditor-General is himself a holder of an office of profit under the Government of India, being appointed by the President, and his administrative powers are such as may be prescribed by the rules made by the President, subject to the provisions of the Constitution and of any law made by Parliament. The Court then held:—

A B C D E F G H

> "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 an 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."

Thereafter, the Court proceeded to hold:—

> "In view of these decisions, we cannot accede to the submission of Mr. Chaudhury 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 a 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

A from which the remuneration is paid is not from public revenue is a neutral factor not decisive of the question. As we have said earlier, whether 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
B 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."

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

F We are unable to accept the proposition that the mere fact that the Government had control over the Managing Director and other Directors as well as the power of issuing directions relating to the working of the Company can lead to the inference that every employee of the Company is under the control of the Government. The power of appointment and dismissal of respondent No. 1 vested in the Managing Director of the Company and not in the
G Government. Even the directions for the day-to-day work to be performed by respondent No. 1 could only be issued by the Managing Director of the Company and not by the Government. The indirect control of the Government which might arise because of the power of the Government to appoint the Managing Director and to issue directions to the Company in its general working does
H not bring respondent No. 1 directly under the control of the Government. In *Gurugobinda Basu's* case(1), the position was quite different. In that case, the appellant was appointed by

(1) [1964] 4 S.C.R. 311.

the Government and was liable to be dismissed by the Government. His day-to-day working was controlled by the Comptroller and Auditor-General who was a servant of the Government and was not in any way an office-bearer of the two Companies concerned. In fact, the Court had no hesitation in holding that the appellant in that case was holding an office of profit under the Government, because the Court found that the several elements which existed were 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. All these elements being present, the Court did not find any difficulty in finding that the appellant was holding an office of profit under the Government. In the case before us, the position is quite different. The power to appoint and dismiss respondent No. 1 does not vest in the Government or in any government servant. The power to control and give directions as to the manner in which the duties of the office are to be performed by respondent No. 1 also does not vest in the Government, but in an officer of the Company. Even the power to determine the question of remuneration payable to respondent No. 1 is not vested in the Government which can only lay down rules relating to the conditions of service of the employees of the Company. We are unable to agree that, in these circumstances, the indirect control exercisable by the Government because of its power to appoint the Directors and to give general directions to the Company can be held to make the post of Superintendent, Safety Engineering Department, an office of profit under the Government.

In this connection, a comparison between Arts. 58(2) and 66(4), and Arts. 102(1) and 191(1)(a) of the Constitution is of significant help. In Arts. 58(2) and 66(4) dealing with eligibility for election as President or Vice-President of India, the Constitution lays down that a person shall not be eligible for election 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. In Articles 102(1)(a) and 191(1)(a) dealing with membership of either House of Parliament or State Legislature, the disqualification arises only if the person holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament or State Legislature by law not to disqualify its holder. Thus, in the case of election as President or Vice-President, the disqualification arises even if the candidate is holding an office of profit under a local or any other authority under the control of the Central Government or the State Government, whereas, in the case of a candidate for election as a Member of any of the Legislatures, no such disqualification

A is laid down by the Constitution if the office of profit is held under a local or any other authority under the control of the Governments and not directly under any of the Governments. This clearly indicates that in the case of eligibility for election as a member of a Legislature, the holding of an office of profit under a corporate body like a local authority does not bring about disqualification B even if that local authority be under the control of the Government. 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 in the manner in which such disqualification comes C into existence for being elected as the President or the Vice-President. The Company, in the present case, no doubt did come under the control of the Government and respondent No. 1 was holding an office of profit under the Company; but, in view of the distinction indicated above, it is clear that the disqualification laid down under Art. 191(1)(a) of the Constitution was not intended to apply to the holder of such an office of profit.

D

It also appears to us that it was in view of this limited application of the disqualification laid down in Arts. 102(1)(a) and 191(1)(a) of the Constitution that Parliament made an additional provision in section 10 of the Act by laying down that "a person shall be disqualified if, and for so long as, he is a managing agent, manager or secretary of any company or corporation (other than E a co-operative society) in the capital of which the appropriate Government has not less than twenty-five per cent share." It is to be noted that the Parliament, in enacting this section, limited the disqualification to a person holding the office of a managing agent, manager or secretary of a company, and not to other employees of the Company. This provision, thus, gives two indica- F tions as to the scope of the disqualification laid down in Arts. 102 (1)(a) and 191(1)(a) of the Constitution. One is that the holding of an office in a company, in the capital of which the Government has not less than 25 per cent share, is not covered by the disqualifications laid down in Arts. 102(1)(a) and 191 (1)(a), as, otherwise, this provision would be redundant. The G second is that even Parliament, when passing the Act, did not consider it necessary to disqualify every person holding an office of profit under a Government Company, but limited the disqualification to persons holding the office of managing agent, manager or secretary of the Company. The fact that the entire share capital in the Company in the case before us is owned by the Government does not, in our opinion, make any difference. Under the H Articles of Association, it is clear that, though, initially, all shares were held by the Government, it is possible that private citizens may also hold shares in the Company. In fact, there are provisions indicating that shares held by certain shareholders can pass

by succession to members of their family or can even be transferred by gift to them. The Articles of Association lay down that the Company shall be a private limited company within the meaning of the Indian Companies Act, 1956, and, though the shares in the capital of the Company are under the control of the Board of Directors, they have been given the liberty to allot, grant option over or otherwise dispose of the shares at such time and to such persons, and in such manner and upon such terms as they may think proper. Under this power, the Directors can allot shares to private individuals. It is under art. 34 of the Articles of Association that a shareholder is given the power, by way of gift or for or without any pecuniary consideration, to transfer any share in the capital of the Company to the wife or husband of such member, or to a son, daughter, father, mother, grandson, grand-daughter, brother, sister, nephew or niece of such member or the wife or husband of any person standing in such relationship to the transferring member. Devolution of shares, consequent to the death of a member, on his heirs is also recognised by the Articles of Association. In these circumstances, the principles which will apply to the Company will be on a par with those applicable to other Government Companies or Companies in which the Government holds more than 25 per cent of the share capital. The Company cannot, therefore, be treated as either being equivalent to the Government or to be an agent of the Government, so that the control exercised by its Directors or the Managing Director over respondent No. 1 cannot be held to be control exercised by the Government.

Mr. Gupte, in this connection, also urged that we should pierce the veil of the Company being a separate juristic and legal entity, apart from the Government which owns all the shares in the Company, and hold that, in fact, the Company should be equated with the Government of Mysore itself. In our opinion, in the present case, no question of piercing the veil can arise in view of the provisions of section 10 of the Act which specifically deals with disqualification for membership of persons holding offices under a Company in which a Government holds shares. That section limits the scope of disqualification to holders of three particular offices only and in companies in which the share-holding of the Government is not less than 25 per cent. This provision clearly indicates that, for purposes of determining disqualification for candidature to a Legislature, it would not be appropriate to attempt to lift the veil and equate a Company with the Government merely because the share-capital of the Company is contributed by the Government. The discussion of the relevant Constitutional provisions above also supports this view. In the present case, therefore, respondent No. 1 cannot be held to be holding an office of profit under the Government of Mysore and was not dis-

qualified from being chosen as a member of the Assembly of the State.

The appeal fails and is dismissed with costs.

Y.P. *Appeal dismissed.*