2025:AHC-LKO:84197-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

PUBLIC INTEREST LITIGATION (PIL) No. - 10701 of 2017

Sanjay Sharma

…..Petitioner(s)

Versus

Union of India Thru Secretary of Ministry personnel and Ors.

…..Respondent(s)

Counsel for Petitioner(s)	:	Chandra Bhushan Pandey,
Counsel for Respondent(s)	:	C.S.C., A.s.g.

AFR
Judgment reserved on:16.10.2025
Judgment delivered on:16.12.2025

Court No. - 1

HON'BLE RAJAN ROY, J.
HON'BLE RAJEEV BHARTI, J.

(Per: Rajan Roy, J.)

1. Heard Shri Chandra Bhushan Pandey, learned counsel for the petitioner and Shri Anand Singh, learned Standing Counsel for the State.

2. This is a public interest litigation which was initiated in the year 2017 seeking following reliefs:-

> *"i) to issue a suitable writ, order or direction declaring appointment of opposite party nos. 5 and 6 as Chief Minister and Minister (Deputy Chief Minister) of U.P.,*

respectively, null and void w.e.f. 19.03.2017, after summoning the necessary records;

ii) to issue a writ, order or direction of or in the nature of quo warranto requiring the opposite party nos. 5 and 6 to explain on as to under what authority they are appointed as Chief Minister and Minister (Deputy Chief Minister) of U.P. and are continuing on the said post, as such;

iii) to issue an appropriate order or direction requiring the opposite party no. 2 to declare the seats of opposite party nos. 5 and 6 in the House of People (Lok Sabha) vacant;

iv) to issue an appropriate order, declaring Section 3(a) of the Parliament (Prevention of Disqualification) Act, 1959 ultra vires the Constitution of India;"

3. Relief nos. (ii) and (iii) have outlived their utility, as, the opposite parties no. 5 and 6 after being appointed as Chief Minister and Deputy Chief Minister of State of U.P. completed their term in 2020, when fresh elections were held. Their subsequent appointment as Chief Minister and Deputy Chief Minister of the State has not been assailed in this writ petition.

4. On being pointed out the aforesaid, learned counsel for the petitioner accepted this fact but insisted that relief no. (i) still survives, as, a declaration is required to be given by this Court as to whether the opposite party nos. 5 and 6 were validly appointed as Chief Minister and Deputy Chief Minister when they took oath on 19.03.2017 or their appointment was null and void. Such declaration according to him was

necessary. Only to this extent he asserted that an adjudication in the context of relief no. (i) is required. Thus, undisputedly relief nos. (ii) and (iii) have become infructuous.

5. The facts of the case in brief are that the opposite parties no. 5 and 6, both were Members of Parliament when they took oath as Chief Minister and Deputy Chief Minister of the State of U.P. on 19.03.2017. They resigned from Membership of Parliament on 21.09.2017. In the interregnum, on 08.09.2017, both were elected as Members of the Vidhan Parishad i.e. within the period of six months stipulated in Article 164(4) of the Constitution of India (hereinafter referred to 'the Constitution'). They completed their tenure in 2020.

6. After fresh elections to the State Legislative Assembly they were again appointed as Chief Minister and Deputy Chief Minister respectively and took oath on 25.03.2022. This is not a question before us.

7. It is not the case of the petitioner as specifically stated in Para 22 to 24 that appointment of the opposite party nos. 5 and 6 and their taking oath on 19.03.2017 as Chief Minister and Deputy Chief Minister, was bad in law as they were not Members of either house of the State Legislature. The grounds of challenge are different. They can be summarized as under:-

According to the petitioner’s counsel such appointment and taking oath was contrary to the implied constitutional restrictions and the very

constitutional scheme which prohibits one person to hold two constitutional posts. Reference was made in this regard to Articles 63, 64, 69 and 70 of the Constitution in the context of the Vice- President assuming office of the President on the latter falling vacant and thereby ceasing to work as Chairman of the Council of the States and also becoming disentitled to Salary and Allowances payable to the Chairman of the Council of States, a post held by the Vice President *ex officio*. Likewise, reference was made to Article 158 of the Constitution of India, according to which, if a member of either House of Parliament or the State Legislature is appointed as Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor. These provisions of the Constitution, according to the learned counsel for the petitioner, were indicative of the ingrained philosophy in the India Constitution to segregate the function and duties assigned to incumbents of various constitutional posts.

As per understanding of the learned counsel for the petitioner, one person can not hold two constitutional offices, simultaneously. Reference was made in this regard to Article 101 of the Constitution and provisions of the Prohibition of Simultaneous Membership Rules, 1950 applicable in case of Members of two houses of the Parliament or the State Legislatures.

Learned counsel for the petitioner also pressed upon the doctrine of separation of powers in this context to submit that while Member of Parliament is part of the Legislature, the Chief Minister and Deputy

Chief Minister are part of the executive but the same person i.e. the Member of Parliament holding two Offices of Chief Minister/Deputy Chief Minister amounts to violating the doctrine of separation of powers. In this context he submitted that both the opposite parties no. 5 and 6 were still Members of Parliament when they took oath as Chief Minister and Deputy Chief Minister of the State of U.P. on 19.03.2017, thereby, violating the aforesaid constitutional scheme, the implied restrictions and the doctrine referred hereinabove.

It was further contended that once they took oath as Chief Minister and Deputy Chief Minister they would not participate in the proceedings of Parliament for the obvious reason, that is, the onerous tasks assigned to them as Chief Minister and Deputy Chief Minister but they would still be drawing salary as Members of Parliament and also as Chief Minister and Deputy Chief Minister which is a situation not envisaged by the Constitution. The fact that such a person who draws salary for two posts but will not be able to perform the duties of one of them i.e. the Member of Parliament, is constitutionally objectionable and uncalled for, as, this puts unnecessary burden on the public exchequer that too in a developing economy. In this context, he referred to the Uttar Pradesh Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981.

It was submitted that the Governor while exercising his discretion under Article 164 to appoint the Chief Minister/ Deputy Chief Minister should have looked into these aspects of the of the matter and not having

done so he or she acted in arbitrarily and unconstitutional manner. Reference was made in this regard to the decisions of Hon'ble the Supreme Court reported in ***(2013) 5 SCC 1; State of Punjab Vs. Salil Sabhlok and Ors.***, ***(2016) 8 SCC 1; Nabam Rebia and Bamng Felix vs. Deputy Speaker, Arunachal Pradesh Legislative Assembly & Ors.,*** according to which, the Governor is required to exercise his discretionary power in just fair, reasonable and bonafide manner and not in disregard to the constitutional spirit.

In Para 38 and 39 of the writ petition the petitioner has specifically pleaded that though there is no specific restriction for a Member of Parliament to be appointed as a Chief Minister/ Deputy Minister, however, implied restrictions are engrained in the Constitution. Constitutional appointments are required to be guided by certain principles which may not be expressly stated in the Constitution but the person conferred with the powers to make such appointment is bound by unwritten code pertaining to morality and philosophy encapsulated in the preamble of the Constitution. The Governor, according to the petitioner's counsel, overlooked the implied restrictions while performing his duties under Article 164(1) of the Constitution. In the context of implied constitutional restrictions a reference has been made to the judgment rendered in the case of ***Salil Sabhlok*** (supra). According to the petitioner's counsel, the Governor of U.P. should have asked the opposite party nos. 5 and 6 to resign from their membership of Parliament before rendering oath and not doing so, was violative of the constitutional spirit and scheme.

He also pressed relief no. (iv) by which vires of Section 3(a) of the Parliament (Prevention of Disqualification) Act, 1959 (hereinafter referred to as 'the Act, 1959') has been challenged. At the outset, we must put it on record that relief no. 4 has no relation to relief No. 1, therefore, two separate causes have been joined together in these proceedings, nevertheless, we will consider these reliefs hereafter.

In this regard he contended that object behind Article 102(1)(a) of the Constitution of India was to disqualify any person from the Membership of Parliament if he holds any “office of profit” under the Government of India or the Government of any State and to carve out an exception to this vital and important principle contained in the constitutional provisions was to negate the object behind it. The Office of Chief Minister and Deputy Chief Minister were offices of profit under the State and therefore, they can not simultaneously hold the office of Member of Parliament under the Constitution. According to him, the Parliament exceeded its jurisdiction by inserting Section 3(a) of the Act, 1959 which contravenes the Constitution but no specific provision of the Constitution which is alleged to have been contravened was placed before us.

It was submitted that Article 102(1) (a) of the Constitution, to which the Act, 1959 is referable, does not empower the Parliament to make law in respect of the Offices which are already enumerated in the Constitution itself. According to him, excluding the office of a Minister from the list of offices of profit for the purposes of disqualification of

Member of Parliament, is absolutely unreasonable, bordering on absurdity.

In this context, he submitted that as per the constitutional provisions only for a period of six months a person can be appointed as a Minister either in the Center or the State without being a Member of any of the Houses of Parliament or State Legislature. Likewise, is the case in the State, therefore, the Act, 1959 providing protection to the Union Minister or the State Minister was quite unnecessary. Such a provision was violative of federal structure of the Constitution which is its basic feature. It was also violative to the concept of Constitutional Morality deeply enshrined in our Constitution. In this regard he referred to the authority reported in ***(2014) 9 SCC 1;Manoj Narula v. Union of India.*** For all these reasons, he contended that Section 3(a) of the Act, 1959 was ultra vires the Constitution and inconsistent with Article 102.

8. Learned Standing Counsel for the State has contended that the entire writ petition is absolutely misconceived. There is no constitutional bar in any person taking oath as Chief Minister/ Deputy Chief Minister while being a Member of Parliament nor does Section 3(a) of the Act, 1959 suffer from any unconstitutionality or illegality, therefore, the writ petition lacks merit and is liable to be dismissed.

9. Having heard learned counsel for the parties and having perused the records, we find that we are required to consider only relief nos. (i) and (iv) of the writ petition.

10. First and foremost the question before us is as to whether the Constitution permitted opposite party nos. 5 and 6 to take oath as Chief Minister and Deputy Chief Minister of the State on 19.03.2017 while they were still Members of Parliament of India and had not resigned as such.

11. There is nothing in the Constitution which prohibits the appointment of a person who is already a Member of Parliament as Chief Minister or Deputy Chief Minister of a State.

12. Article 164 (1-B) provides that a member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier. The disqualification referred above is on the ground of defection. It is nobody's case that the opposite party nos. 5 and 6 suffered from aforesaid disqualifications.

13. The other disqualifications is contained in Article 191 of the Constitution. According to Article 191(1) (a), 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. In this context we may refer to an enactment, namely, the Uttar Pradesh State Legislature (Prevention of Disqualification) Act, 1971, vires of which is not under challenge. Section 3 thereof excludes certain offices of profit as disqualification for the holder thereof for being a Member of the State Legislature, one of which is, the office of Minister of State or Deputy Minister, or of Parliamentary Secretary to a Minister, either for the Union or for the State. No doubt it does not exclude a member of Parliament but whether member of Parliament holds an office of profit under the Government of India or the State so as to attract Article 191(1)(a). He by virtue of being member of Parliament certainly does not hold such office under the Government of any State. A Member of Parliament is an office of election. It is not an office or post on which appointment is made by the Government of India or the State Government. It is certainly not an office of profit under the Government of India or the State Government. Members of Parliament get elected to raise the voice of the people/ constituency whom/which they represent in Parliament and irrespective of the remuneration received by them as Members of Parliament, they can not be said to be holding any office or post under the Government of India. In fact, there is no foundation in the pleadings of the writ petition with documentary proof in support of

thereof to establish that in fact, it is an office of profit as referred in Article 191(1)(a) of the Constitution. The election and tenure of the Member of Parliament is not at the pleasure of the Government or the President of India.

14. We also draw support in this context from a decision of Hon'ble the Supreme Court reported in ***(2019) 11 SCC 683; Ashwini Kumar Upadhyay Vs. Union of India and Anr.***, wherein the question was as to whether a Member of Parliament can practice law; was it barred by regulations framed under the Advocates Act, 1961 or not. In that context Hon'ble Supreme Court while referring to Rule 49 of Bar Council of India Rules, 1975 observed that the said rule applies-"*where an advocate is a full-time salaried employee of any person, government, firm, corporation or concern. Indubitably, legislators cannot be styled or characterised as full-time salaried employees as such, much less of the specified entities. For, there is no relationship of employer and employee. The status of legislators (MPS/MLAs/MLCs) is of a member of the House (Parliament/State Assembly). The mere fact that they draw salary under the 1954 Act or different allowances under the relevant Rules framed under the said Act does not result in creation of a relationship of employer and employee between the government and the legislators, despite the description of payment received by them in the name of salary. Indeed, the legislators are deemed to be public servants, but their status is sui generis and certainly not one of a full-time salaried employee of any person, government, firm, corporation or concern as such. Even the expansive definition of term "person" in the*

General Clauses Act, 1897 will be of no avail. The term "employment" may be an expansive expression but considering the constitutional scheme, the legislators being elected people's representatives occupy a seat in Parliament/Legislative Assembly or Council as its members but are not in the employment of or for that matter full-time salaried employees as such. They occupy a special position so long as the House is not dissolved. The fact that disciplinary or privilege action can be initiated against them by the Speaker of the House does not mean that they can be treated as full-time salaried employees. Similarly, the participation of the legislators in the House for the conduct of its business, by no standards can be considered as service rendered to an employer. One ceases to be a legislator, only when the House is dissolved or if he/she resigns or vacates the seat upon incurring disqualification to continue to be a legislator. By no standards, therefore, Rule 49 as a whole can be invoked and applied to the legislators." The said observations of Hon'ble the Supreme Court, albeit in a different context, throw some light on the status of legislators whether they be MPs/MLAs/MLCs.

15. It is evident from the aforesaid that they do not hold any office or post under the Government, in the first place, therefore, the question whether they held an office of profit under the Government of India or State, becomes superfluous. The mere fact that they draw salary under the Salaries, Allowances and Pension of Members of Parliament Act, 1954 or different allowances under the relevant Rules framed under the said Act does not result in creation of a relationship of employer and

employee between the Government and the legislators, despite the description of payment received by them in the name of salary. Their participation in the house for the conduct of its business by no standards can be considered as service rendered to an employer, whether it be the Government of India or the State. One ceases to be a legislator, only when the House is dissolved or if he/she resigns or vacates the seat upon incurring disqualification to continue to be a legislator. A Member of Parliament or the State Legislator does not function as such at the pleasure of the Government of India/ State or the President/ Governor. They are not appointed but are elected by electors from respective territorial constituencies. The form of oath also does not suggest that the Member is appointed by the President as such. Hon'ble the Supreme Court even observed - "the fact that the legislators draw salary and allowances from the consolidated fund in terms of Article 106 of the Constitution and the law made by Parliament in that regard, it does not follow that a relationship of a full-time salaried employee(s) of the Government or otherwise is created."

16. The petitioner has himself accepted in Para 38 that there is no specific bar in the Constitution for a Member of Parliament to be appointed or to take oath as Chief Minister or Deputy Chief Minister, but, he refers to certain implied restrictions which he has not been satisfactorily spelled out nor have we been able to find any. There is no such bar, express or implied.

17. In this context, it has been contended that if such a person is appointed, then, he will be holding two constitutional posts or office, one of Member of Parliament and the other of Chief Minister/ Deputy Chief Minister, however, this is not correct. A Member of Parliament does not hold a constitutional office or post. Parliament of India is constituted under Chapter II of the Constitution. It has two houses. One known as house of the people and the other Council of States. Members of the house of the People are '**elected**' by the people in terms of the Constitution, whereas, Members of the Council of States, some are elected, and, others are nominated etc. The Constitution does not create these offices or posts nor does it define their function and powers etc. They are thus not constitutional offices or posts. Constitutional Offices are offices such as that of the President of India, Vice President of India, Speaker and Chief Election Commissioner, so on so forth, therefore, the contention of Shri Pandey, learned counsel for the petitioner that the opposite party nos. 5 and 6 were holding two constitutional posts/offices at the same time, does not appear to be correct. One becomes a Member of Parliament based on election, whereas, a Chief Minister/ Deputy Chief Minister is appointed by the Governor in terms of the Constitution, which could be the case even when they have not been elected as Member of a State Legislature. The contention as noticed hereinabove is, therefore, constitutionally fallacious. Office of Member of Parliament is not a constitutional post or office. Reliance in this regard on Article 63, 64, 69, 70 and 158 is misplaced and the analogy sought to be drawn vis-a-vis office of Vice-President, Speaker etc. is without any constitutional

basis as latter are constitutional posts, whereas, Member of Parliament is not.

18. The reasoning being put forth on behalf of the petitioner that by taking oath as Chief Minister/Deputy Chief Minister the opposite party nos. 5 and 6 continued to be Members of Parliament thereby drawing salary from two sources, however, there is nothing on record to suggest, that it was factually so, just as, there is nothing on record to suggest that they, after being appointed as Chief Minister/ Deputy Minister, did not attend the parliamentary proceedings. In any case, these arguments have outlived their utility as already stated earlier in the context of relief nos. (ii) and (iii). We are only concerned with the issue as to whether their appointment of opposite party nos. 5 and 6 was unconstitutional or illegal.

19. We have already stated that there is no constitutional provision which prohibits a Member of Parliament from being appointed or taking oath as Chief Minister or Deputy Chief Minister of State.

20. To say that this violates the doctrine of separation of powers is preposterous. The fallaciousness of the contention is evident from the fact that every Minister in the State has ultimately to be a Member of either of two houses of the State Legislature, an inference which follows from Article 164(4) of the Constitution itself. If this contention is accepted that no Member of Legislature should be appointed as a Minister because as member of the Legislature he is part of the Legislative wing and as Chief Minister/ Deputy Chief Minister he

becomes part of the executive, then no minister could be appointed, as, every minister so appointed has to be a member of either house, whether initially or within six months as mandated under Article 164(4) of the Constitution, therefore, this contention is apparently fallacious and against express constitutional persons. It is rejected. For all these reasons, to say that the Governor of U.P. did not exercise his discretion constitutionally, is misconception.

21. One of the arguments of Shri Pandey was that after becoming the Chief Minister or Deputy Chief Minister such person would be unable to address the problems of his constituency i.e. the Parliamentary Constituency. This also is an argument which is without any factual and legal basis. In this case opposite party nos. 5 and 6 resigned from their membership of Parliament within 14 days of being elected as members of State Legislature. It is accordingly rejected.

22. The legal position is settled that even if person is not a Member of the State Legislature he can be appointed as Chief Minister of the State subject to the condition contained in Article 164(4) of the Constitution that he shall cease to be such Minister if he does not get elected within a period of six months as referred hereinabove. Now, this 'person' could, would include one who is not a Member of the State Legislature, and a person who is a Member of Parliament, as, there is no such bar that a Member of Parliament while remaining as such, can not be appointed as Minister of a State.

23. As regards application of Article 101 we have perused the same and find that Clause (1) and (2) of Article 101 of the Constitution have no application to the facts of this case. In this case, the election to the State Legislature was held on 08.09.2017 and the opposite party nos. 5 and 6 resigned from their membership of Parliament on 21.09.2017 and their seats fell vacant in the Parliament on the said date in view of Article 101 (3)(b).

24. The rules made under Article 101(2) of the Constitution, namely, the Prohibition of Simultaneous Membership Rules, 1950 and Rule 2 and 3 contained therein have no application to the facts of this case. They envisage a contingency where a person has been simultaneously holding a seat in the Parliament and in a house of legislature of a State specified in the 1st Schedule to the Constitution of India and if he does not vacate his seat in the State Legislature, then, his seat in the Parliament will fall vacant, whereas, in the case at hand the opposite party nos. 5 and 6 resigned from their membership of parliament itself in terms of Article 101(3)(b) of the Constitution on 21.09.2017, therefore, Rules 2 and 3 of the Rules, 1950 made by the President under Article 101(2) and Article 190(2) of the Constitution have no application to the case at hand.

25. As regards the provisions contained in Article 190(3) to the effect that if a member of a House of the Legislature of a State - (a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of Article 191, then, at the expiration of such period his seat shall

thereupon fall vacant, we have already discussed Article 191(1)(a) and ancillary issues earlier. No other disqualification under Article 191 of the Constitution has been pleaded by the petitioner.

26. We may now refer to the U.P. State Legislature (Prevention of Disqualification) Act, 1971, where, office of Minister of State or Deputy Minister or of Parliamentary Secretary either for the Union or for the State is excluded from the list of offices of profit, meaning thereby, the holder of such office is not disqualified for being chosen as, and for being, a member of the State Legislature. This provision is not attracted to the case at hand.

27. None of the aforesaid provisions put any bar on a Member of Parliament being appointed as Chief Minister or Deputy Chief Minister.

28. In the facts of this case, the opposite party nos. 5 and 6 were elected to the Vidhan Parishad in the State Legislature of U.P. on 08.09.2017 and resigned from membership of Parliament on 21.09.2017 and no such provision has been placed before us that during this period they having been Member of Parliament and member of the Vidhan Parishad simultaneously, invited any disqualification or vacation of their seat, either way, under the Constitution or under any statute or Rules, therefore, we do not find any reason to grant relief no. 1 to the writ petition. It is declined.

29. Now, coming to relief no. (iv), Section 3(a) of the Parliament (Prevention of Disqualification) Act, 1959 is as under:-

*"**3. Certain offices of profit not to disqualify**.— It is hereby declared that none of the following offices, in so far as it is an office of profit under the Government of India or the Government of any State, shall disqualify the holder thereof for being chosen as, or for being, a member of Parliament, namely:—*

(a) any office held by a Minister, Minister of State or Deputy Minister for the Union or for any State, whether ex officio or by name;

(aa).....

(ab).....

(ac).....

(ad).....

(b) .....

(ba) .....

(i).....

(ii).....

(iia) .....

(iii).....

(c).....

(d) .....

(e) .....

(f) .....

(g) .....

(h) .....

(i) .....

(j) .....

(k) .....

(l) .....

(m) .....

Explanation 1 — For the purposes of this section, the office of chairman, deputy chairman or secretary shall include every office of that description by whatever name called.

Explanation 2.—In clause (aa), the expression "Leader of the Opposition" shall have the meaning assigned to it in the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977 (33 of 1977).

Explanation 3.— In clause (ac), the expressions "recognised party" and "recognised group" shall have the meanings assigned to them in the Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1988 (5 of 1999)."

30. The aforesaid relief has presumably been sought because on assuming office of Chief Minister and Deputy Chief Minister on 19.03.2017 the opposite party nos. 5 and 6 as per the understanding of the petitioner held an office of profit under the State of U.P., therefore, they were disqualified to be Members of Parliament in view of Article 102 (1)(a) of the Constitution of India. This Relief No. (iv) may have been relevant in the context of Relief No. (ii) which as stated earlier has outlived its utility. Nevertheless, in the context of Relief No. (iv) we may first and foremost refer to Article 102 of the Constitution which reads as under:-

*"**102. Disqualifications for membership-** (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;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

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

Explanation.-- For the purposes 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."

31. On a bare reading of the aforesaid provisions it is evident firstly that the Constitution under Article 102(1)(a) itself permits exclusion of an office from the purview of the said provision so as not to disqualify its holder, if it is so declared by Parliament by law. Secondly, the explanation to Article 102 as amended by the Constitution (Fifty-second Amendment) Act, 1985 w.e.f. 01.03.1985 clearly explains the provision and clarifies it that for the purpose of this clause i.e. Clause 102(1)(a), 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. The Chief Minister is also a Minister of a State, therefore, clearly the explanation itself excludes the office of the Chief Minister from application of said provision which is not attracted to the said office.

32. Parliament has enacted a law in this regard from time to time which is referred to Article 102. The first one being the Parliament (Prevention of Disqualification) Act, 1950; then, the Parliament (Prevention of Disqualification) Act, 1951; the Prevention of Disqualification (Parliament and Par- C State Legislatures) Act, 1953 and ultimately, a consolidated Act was promulgated, namely, Parliament (Prevention of Disqualification) Act, 1959, Section 3- A of which has been challenged by the petitioner. It is the latter which has been challenged. This provisions declares that none of the Offices mentioned therein in so far as it is an office of profit under the Government of India or the Government or any State, shall disqualify the holder thereof for being chosen as, or for being, a member of Parliament. Of course the Act, 1959 enumerates several other offices but it also includes in Section 3(a) any office held by a Minister, Minister or State or Deputy Minister for the Union or for any State, whether *ex officio* or by name which includes the Chief Minister and Deputy Chief Minister also. The Constitution itself having excluded the office of Minister of a State which includes Chief Minister and Deputy Chief Minister from the purview of operation and application of Article 102 and the said explanation to Article 102 (1) of the Constitution not having been challenged by the petitioner, we fail to understand as to how such a

challenge to Section 3(a) of the Act, 1959 can be raised and sustained. It can not.

33. Apart from pleading appointment of opposite party nos. 5 and 6 as Chief Minister and Deputy Chief Minister nothing else has been pleaded as to why they would be disqualified in view of Article 102(1)(a), in view of the explanation to Article 102(1)(a).

34. We do not find any constitutional or legal basis for declaring Section 3(a) of the Act, 1959 as unconstitutional. The Act, 1959 does not contravene Article 101 in any manner whatsoever. In fact, it is permissible vide Article 102(1), especially its Explanation.

35. In view of the above discussion, we do not find any unconstitutionality in Section 3(a) of the Act, 1959. Relief No. (iv) is also declined. For all these reasons, we do not find any merit in the writ petition. Accordingly, the writ petition is **dismissed.**

(Rajeev Bharti,J.) **(Rajan Roy,J.)**

December 16, 2025
R.K.P.

Digitally signed by :-
RAJ KUMAR PATEL
High Court of Judicature at Allahabad,
Lucknow Bench