

Poll panel cites SC rulings on office of profit

AAP legislators who were disqualified by the Election Commission addressing the media at Delhi Chief Minister Arvind Kejriwal's residence on Saturday. PTI/PTI

Even as the Aam Aadmi Party (AAP) has criticised the Election Commission for not giving its MLAs a proper hearing, the panel has cited several rulings of the Supreme Court in its recommendation to the President that the 20 legislators be disqualified for holding office of profit.

The recommendation said the Supreme Court in *Maulana Abdul Shakur vs Rikhab Chand* (1958) had defined the concept of office of profit under the government. The court said the government's power to appoint a person to an office, or to keep him in that office, or revoke his appointment at its discretion, and payment from government revenues were important factors in determining if one held an office of profit. Payment from a source other than government revenue was not the decisive factor.

Various parameters

In *Pradyut Bordoloi vs Swapan Roy* (2001), the Supreme Court outlined the following questions for the test: whether the government makes the appointment; whether the government has the right to remove or dismiss the holder; whether the government pays the remuneration; what are the functions of the holder; does he perform them for the government; and does the government exercise any control over the performance of those functions?

Three other rulings were cited to highlight the grounds on which a distinction between the holder of an office of profit and of a post/service under the government could be made.

In *Guru Gobinda Basu vs Sankari Prasad Ghosal* (1964), the court said: "But all these factors need not coexist. Mere absence of one of the factors may not negate the overall test. The decisive test for determining whether a person holds any office of profit under the government, the Constitution Bench holds, is the test of appointment; stress on other tests will depend on the facts of each case."

The court said the final query was, whether, on account of holding of such office, would the government be in a position to influence him so as to interfere with his independence in functioning as an MLA and/or would his holding of the two offices involve a conflict of interest.

Citing the judgments, the EC said the AAP MLAs were appointed Parliamentary Secretaries by the Delhi government, which exercised control over them. The government had the power to remove them, their work was allocated by Ministers concerned as delegated authority and expenses of their office were paid from government revenues. The Commission concluded that there could be "no dispute that the office of Parliamentary Secretary was an office under the government."

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