

Duties of Minister – His Fiduciary Position

Part VI of the Constitution of India deals with the States. It comprises sections 152 to 237. Chapter II of the said part deal with the Executive which the Governor and the Council of Ministers. It provides that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 163 provides that there shall be a council of Ministers with the Chief Minister as the head to do and advise the Governor in exercise of his functions. The Chief Minister is appointed by the Governor and other Ministers are appointed by the Governor on the advice of the Chief Minister.

Article 163 (3) provides that before a Minister enters upon his office, the Governor shall administer to him the oath of office and secrecy according to the forms set out in the 3rd schedule. The oath of office prescribes that a Minister of State shall swear in the name of God or solemnly affirm that he will bear true faith of the Constitution of India, that he will uphold the sovereignty and integrity of India and that he will consciously discharge his duties as a Minister and that he will do right to particular manner of belief in accordance with the Constitution and the law without fear or favour, affection or ill-will. From the above oath, it becomes very clear that the Minister is required to act independently, impartially and occupies a fiduciary position. This requires the Minister to act honestly and with good faith and do what he believes to be in the best interests of the State. His powers are held in trust for the State and must not be exercised for any purpose other than that for which the power was conferred. Most importantly, a Minister must not take advantage of his position which includes a duty not to make personal profit from his position.

Under the Companies Act, the Director of a Company occupies a similar fiduciary position. The Companies Act prescribes the Code of Conduct and makes it clear that a Director

who is interested in any subject ought not to participate in a matter which comes before the Board of Directors of which he is a member in the case of public limited companies. The role of a Director has an important aspect of corporate governance which has been the subject matter of debate in the corporate world. Every time a high profile crisis occurs in the corporate world, there is a reaction by setting up a committee and making new laws. The BCCI crisis and the Maxwell Group Crisis prompted the Cadbury Committee in UK to carefully examine the role of a Director. The Stock exchange and other regulatory bodies played a role and a best Practice Code was evolved. This was followed by the Greenbury Committee report set up by the British Industry which finds these provisions.

Though Ministers exercise far greater powers than the Directors, the fiduciary role of a Minister has not been the subject matter of any committee or public discourse, self-regulation is the answer in the corporate world. This was the belief when UK took over Code for self-regulation. In India the regulations framed by SEBI provides for self-regulation. It was found that self-regulation has its own limitation and unless legislation is put in place, self-regulation provides a flexible platform and therefore numerous legislations have been passed.

Unfortunately in the world of executive governance of a State, we have no such debate and no laws. In the recent past, issues of conflict of interest and duty, misuse and abuse of power have come to the fore and matters relating to conflict on economic interest between the Ministers and their private activities and businesses vis-à-vis the State. The Mining lobby as it is called today is calling the shots in the governance of the State. Though before memory is short, we have not forgotten the way in which the present BJP Government wrested control and formed the Ministry. It is also not forgotten that 2 businessmen played a key role in securing the majority in the State Legislative body, the same 2 persons now occupy Ministerial positions. There have been

complaints particularly in matters relating to mining. There have been innumerable cases both at the High Court and Supreme Court level. The public is crying hors that they are not able to get a fair and independent decision by the Government. Officers and officials of the Government are directed to function in a particular manner to suit the interests of the powers even though such action may not be in the best interests of the State and may lead to a considerable largess being dolled out to persons holding ministerial positions and to entities which are owned or controlled by them.

The time has therefore come for an informal debate as to whether Ministers who have business interests are at all eligible to occupy ministerial positions. The concept of a Minister not having interest in the subject matter of his position needs to be embedded in the constitutional scheme. This idea is widely prevalent in the judiciary when Judges reclude themselves from cases in which it is perceived that the Judge may have an interest in the outcome of the case. There is no such precedent among the executive arm of this country. The Constitution makers never expected this situation and therefore no provision was made for it. The long history and convention followed by the judiciary taking a queue from the courts of England adapted a Code of Conduct which ensures the independence of the judiciary. Such a Code of Conduct has to be prescribed by law if a semblance of good administration has to be provided to the team of millions of this country.

Recently the Governor of Karnataka has raised this issue. The debate requires to be intensified and Government and such constitutional functionaries need to be satisfied from this issue. The issue is so important that it cannot be left to individual discretion of the Minister concerned. A Code of Conduct for the Minister and for the Chief Minister is imperative. Sooner it is done, the better for democracy.