
2. Article 164(4) of the Indian Constitution

Prelims Syllabus: State Legislature

Mains Syllabus: GS-II Parliament and State Legislatures - Structure, Functioning, Conduct of Business, Powers & Privileges and Issues Arising out of These.

Why in News?

- Maharashtra CM Uddhav Thackeray may end up losing his seat if he is not elected to the Legislative Council of the state before May 24th.

About the News:

- He took the oath of his office on November 28, 2019 without being a member of either the State legislature or council.
- But, he will have to get elected to either of the houses of the state legislature before May 24, as Article 164(4) of the Constitution stipulates.
- However, the Election Commission has already postponed Rajya Sabha polls, by-elections and civic body elections in the wake of COVID-19 pandemic.

What does the Constitution Say?

- **Article 164** of the Constitution allows a non-legislator to occupy a post in the council of ministers, including the office of the Chief Minister for Six Months.

What's the Alternative Available Now?

- **Article 171** of the Constitution says the governor can nominate eminent persons from the field for literature, science, art, cooperative movement and social service.
- Uddhav Thackeray does not directly fit into any of the criteria mentioned but social service has a wider scope. And, if governor nominates somebody to the legislative council, his/her decision cannot be challenged in the court, at least as of the precedent right now.
- The Maharashtra legislative council has two vacancies to be filled by governor's nominations.

What is the Issue Now?

- **Section 151A of Representation of the People Act 1951** puts a bar on the governor's discretionary power to nominate a person to the legislative council.
- It says election or nomination to vacant seats in the legislative council cannot be done "if the remainder of the term of a member in relation to a vacancy is less than one year".

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- The tenure of the two vacancies that arose on the account of resignations by members recently ends in June. So, the remainder of the term is less than a Year.

What's the Scope Now?

- Uddhav Thackeray cannot continue unless elected to any of the houses of Maharashtra legislature after May 28.
- Technically, he can be reappointed as the Maharashtra chief minister again after he resigns on May 27 or 28 and takes oath afresh.
- But, if Uddhav decides to resign and takes oath afresh, there could be another obstacle. This relates to a case in Punjab, where Tej Parkash Singh of the Congress was appointed a minister in 1995 and was reappointed at the expiry of six months' period in 1996 without getting elected to state assembly.
- Litigation followed in 2001, the Supreme Court declared the resign-and-reappoint bid as "improper, undemocratic, invalid and unconstitutional".
- This judgment did not have a bearing on Tej Parkash Singh but may come in the way of Uddhav Thackeray if he takes the Same Route.

