IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 30TH DAY OF JUNE 2020 / 9TH ASHADHA, 1942

WP(C).No.12109 OF 2020(S)

PETITIONER:

B. RADHAKRISHNA MENON, AGED 66 YEARS,
SREE NIKETHEN, THRIKKODITHANAM,
CHANGANACHERRY, PIN - 686105.

BY ADVS.SRI.R.KRISHNA RAJ
SMT.E.S.SONI
SMT.KUMARI SANGEETHA S.NAIR

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

2 M. C. JOSEPHINE,
CHAIRPERSON KERALA WOMENS COMMISSION, N. H. 47,
PLAMMOODU, THIRUVANANTHAPURAM, KERALA, PIN - 695034.

R1 BY SENIOR GOVT. PLEADERS SRI.P.NARAYANAN,
SRI.V.MANU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-06-2020, THE COURT ON 30-06-2020 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of June, 2020

S. Manikumar, CJ

Instant public interest writ petition is filed seeking the following reliefs:

(i) Issue a writ of *quo warranto* and remove the 2nd respondent - M.C.Josephine, Chairperson, Kerala Women's Commission, N.H.47, Thiruvananthapuram, from the office of the Chairperson, Kerala Women's Commission.

(ii) To direct the 1st respondent - State of Kerala, to act on Exhibit-P3 complaint dated 8.6.2020 and initiate proceedings under Section 11 of Kerala Women's Commission Act, 1990, and remove the 2nd respondent from the office of Chairperson, Kerala Women's Commission, by issue of writ of mandamus or such other writ or order or direction;"

2. Shorts facts leading to the filing of the writ petition are as follows:

The grievance of the petitioner is that 2nd respondent, who is the Chairperson of Kerala Women's Commission, has refused to perform the functions bestowed upon her, several times, declaring that the incidents relating to party members of CPl(M) need not be looked into or enquired upon, as the party itself is police and the Court, that the party machinery has methods and procedures to take care of complaints relating to the party members, and in spite of the fact that her actions have attracted Sections 11(e) and (f) of Kerala Women's Commission Act, the Government is refusing to remove her from the office. Petitioner has pointed out that as per the provisions of the Kerala Women's Commissions Act, 1990, Women's Commission is constituted to improve the status of women in the State and to

inquire into unfair practices affecting women. Hence, as per the provisions of the Act, the Commission is bound to inquire into any unfair practice affecting women, if any such incident comes to their knowledge. If the Commission refuses to act on any such incidents of unfair practice that is freely available on the public domain and which is in the knowledge of the Commission, the Commission can be said to have refused to act, as provided in Section 11(1)(e) of the Act. As far as the 2nd respondent is concerned, she was appointed to the post of Chairperson because of the position she is holding in CPI(M) viz. its central committee member. She has openly stated on many occasions that she was appointed by CPI(M) as the member, and that she is obliged to the party for this appointment.

There were several occasions after the 2nd respondent has been appointed as the Chairperson, where the Commission refused to act against incident of unfair practice. One of such occasions was, a complaint made against a CPI(M) MLA on 14.08.2018 by a woman party member. The CPI(M) has issued a public statement acknowledging the receipt of the complaint against the CPI(M) MLA and the entire media reported on several days about the sexual harassment alleged in complaint by the woman against the MLA. But, the 2nd respondent dismissed the charges of sexual harassment stating that mistakes do happen. She has also stated that "we are all human beings, mistakes do happen. People inside the party may also have committed such mistakes". She has further stated that the Commission has not initiated any action as the woman has not filed any complaint. She has also stated that Commission is not in a position to register a suo motu case as they don't have the basic details like nature of complaints. She has also said that the CPI(M) would deal with this case internally as "that is up to the party to decide. The Marxist party will have their own system of dealing with

these complaints; it is not a new thing. Since its inception the party has handled such complaints"

On 06.06.2020 the 2nd respondent again responded, to the queries made by the press, regarding another incident where the Commission refused to act, as follows ”My party CPI(M). l may be the Chairperson of Women's Commission. But, l have grown through my party. My party has taken strict stand. l know the incident you are mentioning. In that incident, the family told me that they need action by the party as they believe in the party. Our party is a Court and a Police Station. We will not spare any leader". By making this atrocious statement, the 2nd respondent herself has admitted and declared that CPl(M) is an investigating agency as well as judiciary for the members of the party, and that, since the party is capable of handling any complaint of unfair practice, including sexual harassment, against their part workers, the Commission will not interfere in such cases even if it has its own knowledge or information. The stand taken by the 2nd respondent has made it clear that she will not act in any complaints made against the members of CPI(M), and that she is considering her party as an investigating agency as well as court above the Commission and, therefore, her continuance in office as Chairperson is detrimental to the public interest.

3. On the above pleadings, the petitioner has filed the writ petition on the following grounds:

(a) The commission has been constituted to improve the status of women in the State of Kerala and also to enquire into the unfair practices affecting women and for matters connected therewith or incidental thereto. Unfair practice includes mental or physical

torture or sexual excess on women. The Act also clearly stipulate that the commission shall inquire into any unfair practice on its own knowledge or information. So it is very clear that the Commission is bound to initiate inquiry and prosecution on any incident of unfair practice which comes to its knowledge and in the public domain. But, the 2nd respondent has refused to even acknowledge several incidents that were available in the domain in spite of several request made by several persons as stated in the writ petition. The refusal on the part of the 2nd respondent in initiating action against the CPl(M) MLA was a clear case of refusal on the part of the 2nd respondent to act upon the knowledge of an unfair practice. It is very pertinent to note here that even CP|(M) has publicly acknowledged by giving a press statement that it has received a complaint against its own MLA by a woman party worker and the inquiry commission appointed by the party itself has found that the MLA has committed such offence. So it is clear that the 2nd respondent has refused to act on several occasions warranting her removal from the office of the Chairperson of the Kerala Women's Commission under Sections 11(d) and 11(f) of the Act.

(b) The statements made by the 2nd respondent on two occasions would disclose that she is considering her party machinery above the Kerala Women's Commission by stating that her party namely CPl(M) is itself a court and police station and that the party has its own machinery to deal with complaints raised against party members. She has categorically admitted that she is incapable and she is not intending to take any action against the party workers who are involved in cases involving unfair practice against any woman. She has categorically stated that in case of woman having complaint against members of CPl(M) need not be inquired into by the Commission even if it has knowledge of the same as the party

machinery is capable of handling the same. She has admitted that she has knowledge about several incidents were the unfair practice against woman involving members of CPI(M) has taken place and she has admitted that she has refused to inquire in to such incidents and initiate prosecution proceedings taking a stand that the Commission need not do that as the party machinery would take care of the same. By this stand the 2nd respondent has abused her posting as Chairperson rendering her continuation in the office detrimental to the public interest.

(c) The inaction on the part of the 2nd respondent in not initiating inquiry and prosecution against members of CPI(M) on the ground that the Commission need not take any action as the party would take care of the same is illegal. The Kerala Women's Commission is a quasi judicial forum where in it is discharging the duties of civil as well as criminal court while trying a complaint or doing its business as per the Act. If the 2nd respondent taking the above stand that woman having complaints against members of statement she has made it is now clear that the obligation she has with the party for appointing her as the Chairperson weighs more than the statutory duty cast upon her under the Act. As a Chairperson of the Commission this is a clear failure on the part of the 2nd respondent in discharging her duties as prescribed under the Act and, therefore, her continuance is detrimental to the public interest. Though several complaints have been filed by several persons, including the petitioner, requesting the Government to remove the 2nd respondent from the office of the Chairperson Kerala Women's Commission, the Government have not taken any action in the matter and there is no chance that the Government will take any action because of political reason."

4. Based on the above grounds and inviting our attention to the press reports, Sri. R. Krishna Raj, learned counsel for the petitioner, submitted that as a Chairperson of the Kerala Women's Commission, the 2nd respondent has refused to act on several incidents, which were available in public domain, in spite of requests made by several persons, and in such circumstances, there is violation of Oath taken by the 2nd respondent, attracting issuance of a writ of *quo warranto*. According to the petitioner, refusal to act is one of the grounds under Section 11 of the Act, 1990, to seek for removal and thus, Exhibit-P3 complaint dated 08.06.2020 was made to the Chief Secretary, Government of Kerala. As no action has been taken, instant writ petition has been filed by the petitioner.

5. Refuting the abovesaid contentions and taking this Court through the averments made in the statement of facts, Sri. P. Narayanan, learned Senior Government Pleader, submitted that absolutely, there is no averment to the effect that respondent No.2 does not satisfy the qualifications prescribed for holding the office of Chairperson of the Kerala Women's Commission.

6. Learned Senior Government Pleader further submitted that though the petitioner has made a general statement that incidents of unfair practice are available in public domain, no particulars are furnished. According to the learned Senior Government Pleader, it is the case of the petitioner that the 2nd respondent being a Chairperson of the Kerala Women's Commission, has

refused to act. Placing reliance on the definitions of 'Commission', 'member', 'unfair practice', as defined in Section 2 of the Act, 1990 and, in particular, to Section 5 of the Act, he submitted that the Commission is a body comprising of Chairperson and four members, of whom, one shall be a person belonging to SC/ST, Secretary and other members. According to the learned Senior Government Pleader, as per the requirement of the Act, the members of the Commission shall be persons of ability, integrity, intelligence and standing, and have adequate knowledge or experience or have shown ability in dealing with problems relating to safeguarding and promoting the interests of women and protect their rights.

7. Inviting the attention of this Court to the averments made in paragraph 3 of the statement of facts, learned Senior Government Pleader submitted that it is the specific case of the petitioner that the Commission is bound to enquire into any unfair practice affecting women, if any such incident comes to its knowledge. Having regard to the contention of the petitioner that the Commission had refused to act on any incident of unfair practice, which according to him, is freely available on public domain and which is in its knowledge, the learned Senior Government Pleader submitted that the 2nd respondent cannot be said to have refused to act, as provided under Section 11(1)(e) of the Act. Attention was also invited to the averment in paragraph 3 of the statement of facts filed by the petitioner, that on several

occasions after the appointment of 2nd respondent, as the Chairperson, the Commission has refused to act against incidents of unfair practice, which includes sexual excess on women where members of CPI(M) are involved. Our attention was further invited to the opening sentence of paragraph (4) of the statement of facts, where the petitioner has averred that on 6.6.2020, the 2nd respondent again responded to the queries made by the members regarding another incident, wherein the Commission has refused to Act. However, the petitioner has contended that the 2nd respondent as the Chairperson of the Kerala Women's Commission has refused to act.

8. Taking this Court through Section 7 of the Act, 1990, learned Senior Government Pleader submitted that the quorum for a meeting of the Commission shall be four. Inviting the attention of this Court to Section 8 of the Act, 1990, learned Senior Government Pleader submitted that the Chairperson of the Commission cannot decide any question unilaterally and as per Section 8 of the Act, which deals with disposal of business, the meeting of the Commission shall be presided over by the Chairperson or in her absence, a member chosen for that purpose by the members present and that the minimum quorum required is four.

9. Referring to Section 11 of the Act, 1990, which deals with removal of members from office, in particular to clause (d), which deals with refusal to act or becomes incapable of acting by a member (other than the Secretary) of

the Commission, learned Senior Government Pleader submitted that the said expression refusal to act or become incapable of acting, can be referable only to physical or mental disability of any member (other than the Secretary). He further submitted that as per the provisions of Act, 1990, no member, including Chairperson, can take cognizance of any complaint or refuse to take cognizance, in her capacity as member or Chairperson. In this context, he also invited our attention to Section 16 of the Act, which deals with the functions of the Commission.

10. Learned Senior Government Pleader further submitted that as per Section 16 of the Act, the Commission alone shall perform all or any of the functions, which include to inquire into any unfair practice, to take decision thereon, and to recommend to the Government, the action to be taken in that matter. He further submitted that no member, including a Chairperson, can independently take a decision for taking cognizance of a complaint regarding unfair practice and, therefore, the contention of the petitioner that the 2nd respondent has refused to act or to inquire into a complaint of unfair practice, which according to the petitioner, was available in public domain, is contrary to the Statute.

11. Referring to Section 17 of the Act, learned Senior Government Pleader submitted that the Commission shall inquire into any unfair practice or, (a) on receiving a written complaint from any woman alleging that she has

been subjected to any unfair practice or on a similar complaint from any registered women's organisation, (b) on its own knowledge or information, and (c) on any request from the Government. According to the learned Senior Government Pleader, in the case on hand, petitioner by placing any document, has not proved that there were materials in public domain. No complaint was submitted by any person to the Commission. Even before this Court, no material has been placed by the petitioner to substantiate his contention that any complaint was given to the Commission and that, the Commission has refused to act.

12. Inviting the attention of this Court to Section 28 of the Act, learned Senior Government Pleader submitted that the Government, may by notification in the Gazette, make rules for the purpose of carrying into effect the provisions of the Act, in particular, to the procedure for removal of members of the Commission under Section 11 and procedure for inquiries under Section 17 of the Act, 1990.

13. Referring to Rule 3 of the Kerala Women's Commission (Procedure For Investigation and Inquiry into Unfair Practices) Rules, 2003, learned Senior Government Pleader submitted that a specific procedure is contemplated for registration of complaints and preliminary investigation. According to him, the details of information regarding unfair practice received by the Commission and reduced to writing shall be forwarded to the

Registering Officer under clause (b) of sub-section (1) of Section 17. He also submitted that if any request in writing is received by the Commission from the Government, the same shall be forwarded to the Registering Officer. He referred to Rule 4 of the Rules, which deals with rejection of complaint. He also referred to Rule 6 - Inquiry, which prescribes that after considering the complaint and the report placed before it, the Commission has to take a decision and proceed further. Reference has also been made to Rule 7 of the said rules which deals with the findings and orders of the Commission.

14. Thus, after referring to various provisions of the Act, 1990 and the rules framed thereunder, learned Senior Government Pleader submitted that both, under the Act and the rules, power is given only to the Commission to inquire into any complaints, take decisions in the matter, and in the absence of any material before the Commission, contention of the petitioner that the 2nd respondent has refused to act on the complaint relating to any unfair practice, is contrary to the statutory provisions. In this context, learned Senior Government Pleader also placed reliance on Rules 3, 9 and 11 of the Kerala Women's Commission (disposal of Business) Rules, 2001, which explain as to how the meetings of the Commission have to be convened, quorum required for the meeting and the questions to be decided by the majority of votes by the Commission. Thus, in sum and substance, he submitted that the statutory provisions do not permit a member or a Chairperson to take a decision

independently and, therefore, there cannot be any allegation against the Chairperson, refusing to act, more so, when the contention of the petitioner in paragraph (3) of the statement of facts is that the Commission has refused to act.

15. Relying on the decisions in **University of Mysore v. C.D.Govinda Rao** [AIR 1965 SC 491], **Hari Banshi Lal v. Sahodar Prasad Mahto & Others** [2010 KHC 4620], **Prathapan K.D. v. State of Kerala and Others** [2015 KHC 606], and in **Neelakandan v. Union of India and Others** [2016 (2) KHC 588], learned Senior Government Pleader submitted that there is absolutely no averment in the statement of facts or in the grounds raised in the writ petition that the 2nd respondent does not possess the qualifications prescribed for the post of member or Chairperson of the Kerala Women's Commission, as the case may be. According to him, writ petition is totally silent regarding the abovesaid aspect. In such circumstances, writ petition filed for a writ of *quo warranto* deserves to be dismissed *in limine*.

16. Learned Senior Government Pleader has further submitted that if the initial appointment of holder in office is valid, satisfying the qualifications prescribed under the Statute or the rules framed thereunder, any subsequent conduct will not be a ground of disqualification for issuance of a writ of *quo warranto*. He also submitted that even if there is a breach of oath, the same cannot be a ground to issue a writ of *quo warranto*. In support of the above

contention, he relied on the decisions of this Court in **K.C.Chandy v. R. Balakrishna Pillai** [1985 KHC 170], **Kallara Sukumaran v. Union of India** [1985 KHC 126], **Raju Puzhankara v. Kodiyeri Balakrishnan and Others** [2009 KHC 244], and **Alappey Asharaf v. Chief Minister and Others** [2017 (5) KHC 875].

17. For the above reasons, learned Senior Government Pleader submitted that prayer (i) sought for by the petitioner is liable to be dismissed.

18. As regards the 2nd prayer sought for by the petitioner i.e. issuance of a direction to the 1st respondent, to act on Exhibit-P3 representation and to initiate proceedings under Section 11 of the Kerala Women's Commission Act, 1990, and to remove the 2nd respondent from the office of Chairperson, Kerala Women's Commission, by issuance of a writ of mandamus or such other writ or order or direction, learned Senior Government Pleader submitted that Exhibit-P3 is not a statutory representation under the Act and that the petitioner has no legal right to make any such representation. There is no *prima facie* case to consider the representation even though the petitioner has alleged that the 2nd respondent has refused to act. It is the further submission of the learned Senior Government Pleader that, the Statute empowers only the Commission to conduct an inquiry and take a decision, as per the procedure set out above. According to him, even the petitioner has candidly admitted that the Commission has not acted upon the materials in public

domain and, therefore, alleging that the 2nd respondent has refused to act, does not require any consideration by the Chief Secretary to Government, State of Kerala, Thiruvannathapuram (respondent No.1). Hence, the 2nd prayer sought for by the petitioner is liable to be rejected.

19. Taking this Court through the contents of Exhibit-P3 representation, learned Senior Government Pleader submitted that in the representation, the petitioner has referred to the alleged act of refusal by the 2nd respondent, quite contrary to the pleadings in paragraph (3) of the statement of facts, as to who has the authority to decide, to inquire, which according to the learned Senior Government, it is only the Commission, and not the Chairperson. According to the learned Senior Government Pleader, statutory provisions envisage inquiry into a complaint and disposal only by the Commission. It is the further contention of the learned Senior Government Pleader that there is no *bona fides* in the writ petition. Public interest litigation has been filed purely for publicity, without any materials.

20. Referring to the decisions of the Hon'ble Supreme Court in **Gurpal Singh v. State of Punjab and Others** [(2005) 5 SCC 136], **Manohar Lal Sharma v. Sanjay Leela Bhansali & Others** [(2018) 1 SCC 770] and a Hon'ble Division Bench of this Court in **Mythri Residents Association v. Secretary, Tripunithura Municipality and Others**, [2019 KHC 832], learned Senior Government Pleader submitted that writ petition filed without

any valid materials requires to be dismissed with costs.

21. On the submissions of the learned Senior Government Pleader and to a specific query, as to whether the petitioner has satisfied the requirements for issuance of a writ of *quo warranto*, as held by the Hon'ble Supreme Court, and whether, on the facts and circumstances, and giving due consideration to the decisions referred to by the learned Senior Government Pleader, this Court comes to the conclusion that instant writ petition does not satisfy the requirements of a Public Interest Litigation, for issuance of a writ of *quo warranto*, and liable to be dismissed with costs, Mr. Krishna Raj, learned counsel for the petitioner, submitted that the petitioner is a genuine person and costs need not be imposed. We take note of the said submission.

22. Heard the learned counsel for the parties and perused the material available on record.

23. Exhibit-P3 representation submitted by the petitioner before the Chief Secretary, Government of Kerala dated 8.6.2020, is extracted hereunder:

> "BEFORE THE CHIEF SECRETARY, GOVERNMENT OF KERALA
> REPRESENTATION BY B.RADHAKRISHNA MENON, SREE NIKETHEN, THRIKKODITHANAM, CHANGANACHERRY
>
> 1. The grievance of the complainant is that M.C Josephine who is the chairperson of Kerala Women's Commission has refused to act on incidents of unfair practice involving members of CPI(M) stating that "We are all human beings, mistakes do happen. People inside party may also have committed such mistakes". She has also stated

that the Commission has not initiated any action as the woman has not filed any complaint. She has also said that Commission is not in a position to register a suo motu case as they don't have the ‘basic details like nature of complaint. She has also said that the CPl(M) would deal with this case internally as that is up to the party to decide. Marxist party will have their own system of dealing with these complaints; it is not a new thing. Since its inception the party has handled such complaints"

2. She has also stated that ”My party CPl(M). I may be the Chairperson of Women's Commission. But I have grown through my party. My party has taken strict stand. I know the incident you are mentioning. ln that incident the family told me that they need action by the party as they believe in the party. Our party is a Court and a Police Station. We will not spare any leader.

3. By taking such a stand in cases of unfair practices involving the members of CPM, she has refused to act and discharge the duties cast upon her under the Kerala Women's Commission Act and therefore she is unfit to continue in that post. So it is most humbly prayed that may be pleased to initiate action against M.C.Josephine under Section 11 of the Kerala Women's Commission Act and remove from her from the office.”

Dated this the 8"‘ day of June 2020

B.Radhakrishna Menon”

24. The Kerala Women's Commission Act, 1990 (Act 17 of 1995) is an Act to provide for the constitution of a Women's Commission to improve the status of women in the State of Kerala and to enquire into unfair practices affecting women and for matters connected therewith or incidental thereto.

25. Section 2(a) of the Act defines "Commission", which means the Commission constituted under Section 5.

26. Section 2(d) of the Act, defines "member", which means a member of the Commission and includes the Chairperson.

27. Section 2(i) of the Act defines "unfair practice" and it reads thus:

> "unfair practice" means any distinction, exclusion or restriction made on the basis of sex for the purpose of or which has the effect of impairing or nullifying the recognition, enjoyment or exercise by women of fundamental constitutional rights, or of human rights, or of fundamental freedom in the political, economic, social, cultural, civil or any other field or the infringement of any right or benefit conferred on women by or under the provisions of any law for the time being in force or the mental or physical torture or sexual excesses on women."

28. Section 5 of the Act speaks about the Constitution of the Commission and the same is reproduced hereunder:

> "(1) For the purpose of this Act the Government shall, by notification in the Gazette, constitute a Commission to be known as "the Kerala Women's Commission", consisting of the following members, namely:-
>
> (a) a Chairperson, who is committed to the cause of women, with sufficient knowledge and experience in dealing with women's problems:
>
> (b) not more than four other members, of whom one shall be a person belonging to a Scheduled Caste or a Scheduled Tribe:
>
> (c) the Secretary of the Commission

(2) The members appointed by the Government under clauses (a) and (b) shall be women.

(3) The members of the Commission shall be persons of ability, integrity, intelligence and standing and have adequate knowledge or experience or have shown ability in dealing with problems relating to safeguarding and promoting the interests, of women and protecting their rights."

29. Section 6 of the Act speaks about the term of office and conditions of service of members and the same is extracted hereunder:

"(1) Every member [other than the Secretary] shall hold office for a period of five years.

(2) Notwithstanding anything contained in sub-section (l), a member '[other than the Secretary] may:-

(i) by writing under his hand and addressed to the Government resign his office at any time;

(ii) be removed from his office in accordance with the provisions of section 11.

(3) A vacancy arising by reason of resignation or removal of any member of the Commission under sub-section (2) or otherwise shall be filled up in accordance with the provisions contained in section 5:

Provided that a person so appointed shall hold office for the remaining period of the ten of the person in whose place such person is appointed :

(4) The members [other than the Secretary] shall receive a fixed honorarium and other allowances and shall be governed by such conditions of service, as may be prescribed:

Provided that the fixation of the honorarium shall be without taking into consideration the past service rendered by the person in any capacity before his appointment as a member.]"

30. Section 7 of the Act, 1990 reads thus:

> "7. **Quorum**:- The quorum of a meeting of the Commission shall be four."

31. Section 8 of the Act, 1990 reads thus:

> "**8. Disposal of Business**.- (1) The meeting of the Commission shall be presided over by the Chairperson or in her absence a member chosen for the purpose by the members present.
>
> (2) All questions at a meeting of the Commission shall be decided by the majority of the votes of the members present and voting and in case of equality of votes the Chairperson or the member presiding, as the case may be, shall have a second or casting vote.
>
> (3) The Commission may invite, if it is considered necessary, for such purposes and on such conditions as may be prescribed, any person with expert knowledge in a particular subject to be present at the meeting to assist the Commission in arriving at a decision but such person shall not be entitled to vote."

32. Section 11 of the Act speaks about Removal of members from office and the same is extracted hereunder:-

> "(l) Any member '[other than the secretary] of the Commission may be removed from office by an order of the Government, if he:-
>
> (a) becomes an undischarged insolvent;
>
> (b) is convicted and sentenced to imprisonment for an offence which involves moral turpitude;

(c) becomes of unsound mind;

(d) refuses to act or becomes incapable of acting;

(e) is without obtaining leave of absence from the Commission absents from three consecutive meetings of the Commission; or

(f) In the opinion of the Government has so abused the position of Chairperson or member as to render that person's continuance in office detrimental to the public interest:

Provided that a member shall not be removed under this section until that person has been given a reasonable opportunity of being heard in the matter.

[(2) The Secretary shall hold office during the pleasure of the Government.]"

33. Section 15 of the Act speaks about powers of the Commission and the same reads thus:

"(1) The Commission shall, for the purpose of any inquiry under this Act, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act of 1908), in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any witness and examining him:
(b) requiring the discovery and production of any document:
(c) receiving evidence on affidavits:
(d) requisitioning any public records or copy thereof from any public officer.
(e) issuing commissions for the examination of witnesses.

(2) any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Central Act 45 of 1860) and the Commission shall be deemed to be a court for the purpose of section 195 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

34. Section 16 of the Act speaks about the functions of the Commission and the same reads thus:

> "(1) The Commission shall perform all or any of the following functions. namely:-
>
> (i) inquire into any unfair practice, take decision thereon and to recommend to the Government the action to be taken in that matter;
>
> (ii) cause in investigations to be made by the Director on issues of importance concerning women and issues concerning unfair practice and to report thereon to the Government on the corrective measures to be taken;
>
> (iii) submit to the Government annual report on,-
>
> (a) the lacunae, inadequacies, or shortcomings in the laws in force which affect the constitutional right to equality and fair treatment of women and also on the remedial legislative measures to be taken to meet the situation;
>
> (b) the monitoring of the working of laws in force concerning women with a view to identifying the areas where the enforcement of laws is not adequately effective or has not been streamlined and recommending executive or legislative measures to be taken;
>
> (c) monitoring the recruitments made to State Public Services and State Public Undertakings and promotions within the said services and scrutinizing the rules and regulations governing such recruitments and promotions with a view to reporting to the Government action, if any, required to guarantee equal opportunity to women in the matter of such recruitments and promotions;
>
> (iv) (a) inspect or cause to be inspected, by the Director or any officer of the Commission authorised by the Commission in that behalf, prisons, police stations, lock-ups, sub-jails, rescue homes or

other places of custody where women are kept as prisoners or otherwise, or shelters for women or other places run by the Government or any of its agencies including agencies receiving aid from the Government for the purpose of offering rescue or shelter to women. or hostels intended for women or girls run by any person and such other places wherein unfair practice to women is complained of and cause further. inquiries to be made about the treatment that women and girls are subjected to at such places and to report to the Government for taking remedial action.

(b) in cases where the Commission is of the view that any public servant has been grossly negligent or grossly indifferent in regard to the discharge of his duties in relation to the protection of the interests of women recommended to the concerned disciplinary authority to initiate disciplinary action;

(v) recommend to Government, the welfare measures to be adopted and implemented by the Government with a view to ameliorating the conditions of women;

(vi) formulate a comprehensive and affirmative scheme for securing equal opportunities to women and devise a programme for implementing such scheme which shall be forwarded to the Government for approval and on obtaining approval thereof with or without modifications, implement the same;

(vii) empower the Director to recommend to the appropriate authority to take prosecution proceedings in respect of offences committed against women under any statute providing for penalty for violation of the provisions of such statute.

(viii) maintain comprehensive Data Bank relating to the social, economic and political conditions of women including comparative study, updating the same from time to time making available such data for use in actions for vindication of the rights of women;

(ix) recommend to Government to initiate legislation for removal of discrimination in the case of inheritance, guardianship, adoption and divorce or for matters relating to the safeguarding of the dignity of women and the honour of motherhood;

(x) call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;

(xi) participate and advise on the planning process of socio-economic development of women:

(xii) fund litigation involving issues affecting a large body of women;

(xiii) make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil;

(xiv) undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for, reducing drudgery and occupational health hazards and for increasing their productivity;

(xv) any other matter which may be referred to it by the Government.

(2) The Government shall lay the recommendations of the commission under sub-section (1) before the Legislative Assembly during its next session and cause action to be taken thereon by the authority concerned within two months from the date of laying such recommendations."

35. Section 17 of the Act deals with inquiry into unfair practices and the same reads thus:-

> "(1) The Commission shall inquire into any unfair practice,-
>
> (a) on receiving a written complaint from any woman alleging that she has been subjected to any unfair practice or on a similar complaint from any registered women's organisation;
>
> (b) on its own knowledge or information:
>
> (c) on any request from the Government.
>
> (2) Where the complaint has been made under clause (a) of sub section (1), the Commission may, before the issue of any process to the person complained against, cause a preliminary investigation to be made by the Director in such manner as it may deem fit, for the purpose of satisfying itself that the complaint requires to be inquired into.
>
> (3) where the person against whom the complaint has been made, appears and shows cause or fails to appear on the day appointed for that purpose the Commission may proceed to inquire into the matter in the complaint and take a decision thereon and if the Commission finds that there is unfair practice, it shall recommend to the Government the action to be taken thereon or initiate prosecution.
>
> (4) The Government shall, within two months from the date of receipt of the recommendation of the Commission under sub-section (3) take a decision thereon and intimate the same to the Commission."

36. Section 18 of the Act deals with initiation of prosecution and the same reads thus:-

"If, after investigation into any complaint under section 17, the Commission is satisfied that a person has committed any criminal offence and that he should be prosecuted in a court of law for such offence, then it may pass an order to that effect and initiate prosecution of the person concerned, if there is no necessity for prior sanction, and if prior sanction of any authority is required for such prosecution, then not withstanding anything contained in any law, such sanction shall be granted by that authority within thirty days of the request by the Commission and if such sanction is not granted within the said period such sanction shall be deemed to have been granted by that authority."

37. Section 28 of the Act, 1990, which speaks about the power to make rules, and the same reads thus:

"(1) The Government may by notification in the Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for,-

(a) the honorarium, allowances and other conditions of service of the members; the salary, allowances and other conditions of service of the Secretary, the Director and other staff of the Commission;

(b) procedure for removal of the members of the Commission under section 11;

(c) the procedure for registration under section 14 of the Act;

(d) procedure for inquiries under section 17 of the Act;

(e) investigations by the Director;

(f) Procedure for inspection of prisons, police stations, lock ups, sub-jails. rescue homes or other places of custody where

women are kept as prisoners or otherwise or shelters for women or other places run by the Government or any of its agencies including agencies receiving aid from the Government for the purpose of offering rescue or shelter to women or hostels intended for women or girls run by any person and such other places wherein unfair practice to women or girls is complained of or for holding of enquiries about the treatment that women or girls are subjected to at such places;

(g) maintaining a Data Bank;

(h) the formulation of comprehensive and affirmative scheme for securing, equal opportunity to women and for the improvement and uplift of women and programme for its implementation;

(i) procedure for recommending prosecution in respect of offences committed against women under any statute;

(j) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session, for a total period of fourteen days, which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rules should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

38. In exercise of the powers conferred by clauses (d) and (e) of sub-section (2) of Section 28 of the Kerala Women's Commission Act, 1990 (17 of

1995), Government of Kerala have framed the Kerala Women's Commission (Procedure For Investigation and Inquiry Into Unfair Practices) Rules, 2003. Sections 3, 4 and 7 of the said Rules relevant to the context, read thus:

> "**3. Registration of complaints and preliminary investigation.- (1) The Registering Officer shall register**.-
>
> (a) all complaints received under clause (a) of sub-section (1) of section 17:
>
> (b) details of the information regarding unfair practice received by the Commission and reduced to writing and forwarded to the Registering Officer under clause (b) of sub-section (1) of section 17;
>
> (c) request in writing received by the Commission from the Government and forwarded to the Registering Officer under clause (c) of sub-section (1) of section 17 in the Register in Form A and assign the register number and shall submit the same to the Commission in docket sheet in Form B.
>
> (2) The Registering Officer shall acknowledge the receipt of the complaints in Form C.
>
> (3) The Director or the Officer authorised shall conduct a scrutiny of the complaint and it he is of opinion that the complaint is not maintainable he shall place the complaint before the Commission for necessary orders.
>
> **4. Rejection of complaint**.- If after considering the complaint it is found that the same is not maintainable the decision shall be communicated in writing to the complainant.
>
> **7. Findings and orders of the Commission**.- (1) On conclusion of the enquiry, after considering the complaint, statement, reports, documents and other materials on record, the

Commission shall pass an order recording its findings and such order shall be signed by the Chairperson and Members of the Commission.

(2) If the unfair practice found as in the opinion of the Commission is of such a nature that it is for the Government to take action in the matter the Commission shall forward its order with its recommendations to the Government regarding the action to be taken in the matter.

(3) If it is found that a person has committed any act which amount to a criminal offence, the Commission may direct its Director or any other Officer authorized by the Commission in that regard to initiate prosecution. In such cases the Commission shall forward a copy of its order along with the documents and other records to the concerned officer."

39. In exercise of the powers conferred by Section 28 the Kerala Women's Commission Act, 1990 r/w. Section 8 thereof, Government of Kerala have framed the Kerala Women's Commission (Disposal of Business) Rules, 2001. Sections 3, 9 and 11 relevant to the context, read thus:

"3. Meeting of the Commission.- (I) The Secretary shall, in consultation with the Chairperson, convene meetings of the Commission once in a month for the disposal of its business but the Chairperson may at any time direct the Secretary to convene an extra-ordinary meeting if she considers it necessary to do so.

(2) Notwithstanding anything contained in sub-rule (1) the Secretary shall convene an extra-ordinary meeting of the Commission on the requisition made to the Secretary in writing for the purpose by not less than four members.

(3) The Commission shall hold its meetings ordinarily at Thiruvananthapuram but it may hold meetings at any other place in the State."

"9. Quorum.— The quorum for a meeting of the Commission shall be four."

"11. Questions to be decided by majority of votes.— All questions at a meeting of the Commission shall be decided by the majority of the votes of the members present and voting and in case of equality of votes the Chairperson or the member presiding, as the case may be. shall have a second or casting vote."

40. In exercise of the powers conferred by clause (a) and (b) of sub-section (2) of section 28 of the Kerala Women's Commission Act, 1990 (17 of 1995) r/w. sub-section (4) of Section 6 thereof, and in supersession of the existing rules, in this subject matter, Government of Kerala have framed the Kerala Women's Commission (Honorarium, Allowances and Other Conditions of Service and Procedure For Removal of Members) Rules, 2003, to provide for the honorarium, allowances and other conditions of service of the members and the procedure for the removal of members. Section 5 relevant to the context, reads thus:

"**5. Removal of a Member from office**.— (I) If the Government are of opinion that there is sufficient grounds for removing a Member under Section 11, she shall be served with a notice requiring her to show cause, within the period specified therein, but not exceeding fourteen days, why she should not be removed

from office for reasons recorded in such notice.

(2) If such explanation is received within the time limit, the Government may examine it on merits and pass appropriate orders. Before passing such orders the Government shall give an opportunity of being heard in person, if a request, in writing, for the same is made to the Government.

(3) If no explanation is received within the time limit fixed, the Government may proceed on the presumption that the Member/Chairperson has no explanation to offer.

(4) If, after examination of the entire matter under sub-rule (2), the Government have come to the conclusion that there exists a ground for removing the Member under Section 11, they may pass an order for removal of the Members as such, stating the reasons therefor and serve a copy thereof to the Member concerned.

(5) An order for the removal of a Member under sub-rule (4) shall take effect from the date of such order."

41. Before adverting to the rival submissions made by learned counsel for the parties, we take note of the decisions relied on by the learned Senior Government Pleader, and also the decisions on *quo warranto*.

"(i) Learned Senior Government Pleader made reference to paragraphs 6 to 9 of the judgment in **The University of Mysore and Ors. v. C.D. Govinda Rao and Ors**. reported in AIR 1965 SC 491, which read thus:

"6. The judgment of the High Court does not indicate that the attention of the High Court was drawn to the technical nature of the writ of quo warranto which was claimed by the respondent in the present proceedings, and the conditions which had to be satisfied before a writ could issue in such proceedings.

7. As Halsbury has observed :

> "An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to inquire by what authority he supported his claim, in order that the right to the office or franchise might be determined."

8. Broadly stated, the quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the Judiciary a weapon to control the Executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office, who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not.

9. In the present case, it does not appear that the attention of the Court was drawn to this aspect of the matter. The judgment does not show that any statutory provisions for rules were placed before the Court and that in making the appointment of appellant No. 2 these statutory provisions had been contravened. The matter appears to have been argued before the High Court on the assumption that if the appointment of appellant No. 2 was shown to be inconsistent with the qualification as they were advertised by appellant No. 1, that itself would justify the issue of a writ of quo warranto. In the present proceedings, we do not propose to consider whether this assumption was well-founded of not. We propose to deal with the appeals on the basis that it may have been open to the High Court to quash the appointment of appellant No. 2 even if it was shown that one or the other of the qualifications prescribed by the advertisement published by appellant No. 1 was not satisfied by him."

(ii) In **K.C. Chandy v. R. Balakrishna Pillai** reported in AIR 1986 Ker. 116, 1985 KHC 170, a Hon'ble Full Bench of this Court, had occasion to consider as to whether a writ of quo warranto can be issued. Short facts leading to the decision are as follows:

> "According to the petitioner, on May 25, 1985, at a public meeting at Ernakulam, the respondent, then a Minister in the Kerala Cabinet, incited the people to resort to terrorism and to wage a war against the Union of India on the 'Punjab model', to achieve their objectives. On June 4, 1985, the petitioner, who is stated to be a citizen who believes in upholding the sovereignty and integrity of the country, filed this writ for the issue of an information in the nature of quo warranto preventing the respondent from exercising the authority of his office, on the ground that the public speech alleged to have been made by him on May 25, 1985, amounted to breach of oath taken by him at the time of his assuming the office of the Minister, and, therefore, he had forfeited his right to continue in that office. On June 5, 1985, the learned Judge before whom the writ petition came up for admission, ordered issue of notice, making, at the same time, some observations. On the same day, the respondent tendered his resignation which was accepted by the Governor. In the counter-affidavit filed by the respondent, he has denied the allegation that he incited the people to wage a war against the Union of India on the 'Punjab model', for achieving their objective. Ext. P1 is a copy of the 'Financial Express' dated 3-6-1985 carrying the report of the speech alleged to have been made by the respondent on May 25, 1985."

The Hon'ble Full Bench discussed and decided thus:

> "2. The main questions that fall for decision in this writ petition are: (i) whether breach of oath committed by a Minister would be a constitutional impediment for his continuance in office; and (2) whether, in such circumstances, a writ of quo warranto or an information in the nature of quo warranto would be issued from this Court.
>
> 5. In fact, as far as we could see, breach of oath of office is not a disqualification specified in the Constitution or under any law made by Parliament. Even then, it could not be assumed that there is no sanctity to the oath taken before assumption of office or that there is no authority to take action

if there is violation of that oath. Article 164(3) insists that no Minister could enter upon his office unless the Governor administers to him the oaths of office and of secrecy. The constitutional requirement of an oath before assumption of office could not thus be treated merely as 'an additional moral obligation' (as stated by Willoughby in Vol. III, II Edn. of The Constitutional Law of the United States) without any legal consequences whatsoever. The oath of office insisted upon under the Constitution is the prescription of a fundamental code of conduct in the discharge of the duties of these high offices. The oath binds the person throughout his tenure in that office, and he extricates himself from the bonds of the oath only when he frees himself from the office he holds. Breach of this fundamental conduct of good behaviour may result in the deprivation of the very office he holds. When posts are held, not at the pleasure of the President or the Governor, but during 'good behaviour' breach of the oaths of office and of secrecy may attract the impeachment clauses and when posts are held at the pleasure of the President or the Governor, the termination, at their will, of the tenure may be the possible outcome of such breach.

8. Breach of oath is different from absence of oath. Absence of oath prevents entry into office while breach affects the continuance after a valid entry. If no oath is taken before assumption of office as enjoined by the Constitution, there is no legal title to hold that office and a writ of quo warranto will naturally go from this Court. Similarly, a Minister, who, for any period of six consecutive months, is not a member of the Legislature of the State shall, at the expiration of that period, cease to be a Minister. This is the mandate of Article 164(3) of the Constitution. A person without authority cannot function; and the jurisdiction under Article 226 could be invoked to prevent that usurper in office from functioning.

9. Breach of oath requires a termination of the tenure of office. This power can be exercised by the appointing authority under the Constitution, and according to the procedure, if any, prescribed therein. The termination of that tenure is not the function of a Court; and it would not be appropriate to exercise jurisdiction under Article 226 in such cases. Proceedings under Article 226 in such cases do not lie. It was Jefferson who said:

> "Our peculiar security is in the possession of a written Constitution; let us not make it a blank paper by construction" (Government by Judiciary -- Raoul Berger -- p. 304).

10. The question as to whether there was breach of oaths of office and of secrecy committed by a Minister is outside judicial review under Article 226 of the Constitution. It is to be decided by other appropriate forums; and in the case of the Minister in a State, it falls within the discretionary domain of the Chief Minister and/or the Governor. Breach of oath prescribed by the Constitution may, in certain circumstances, attract the penal provisions under the Indian Penal Code. When the Criminal Law is set in motion, it is of course for the criminal Court to decide whether an offence has been committed or not. That is an independent remedy which does not affect the Constitutional power, of withdrawing the pleasure to continue in office, ingrained in Article 164(1). As Raoul Berger refers in 'Government by Judiciary' at page 293: 'Judiciary was designed to police constitutional boundaries, not to exercise supra constitutional police making decisions' -- (Hamilton).

12. The next question that would naturally arise would be whether a writ of quo warranto would be issued if a Minister is found to have committed breach of oath. For our limited purpose it might not be necessary to trace the historical background of the writ of quo warranto. Suffice it to examine whether a writ of quo warranto can issue in respect of an appointment held at the pleasure of the appointing Authority. In one of the earliest cases, Darley v. The Queen, (12 Clause & F. 520 (537)), Tindal, C.J. expressed thus:

> "This proceeding by information in the nature of quo warranto will lie for usurping an office, whether created by charter alone, or by the Crown, with the consent of Parliament, Provided the office be of a public nature, and a substantive office, not merely the function or employment of a deputy or servant held at the will and pleasure of others, for with respect to such an employment, the Court certainly will not interfere and the information will not properly lie." and proceeded to hold in that case thus:
>
> 'The function of the treasurer were clearly of a public nature.....and it is equally clear that though appointed by the Magistrate, he is not removable at their pleasure, and not, we think, be treated not as their servant, but as an independent officer."

14. It would be appropriate at this stage to advert to the ruling of the Division Bench of this Court in Sukumaran v. Union

> of India AIR 1986 Ker 122 : 1985 Ker LT 567. The Division Bench ruling cannot be understood to lay down a proposition that breach of oath will not entail a termination of the tenure in office. The decision only held that breach of oath is not a disqualification under Article 191. To that extent we agree. Even apart from Article 191, if the Constitution provides and clearly indicates that the breach of oath may give rise to proceedings and actions for removing the alleged offender from the scene of activity, the Court cannot hold that Article 191 alone provides for the disability to continue as member of the Legislative Assembly. We hold that in the present case, the question as to whether there was a breach of oaths of office and of secrecy, is a matter to be decided under Article 164(1) for the purpose of the 'pleasure doctrine' applicable to the time in office of a Minister. The Minister holds office only 'at the disposal' of the Chief Minister and/or Governor and his office is held 'durante bene placito' of the Chief Minister and/or Governor."

(iii) In **Kallara Sukumaran v. Union of India (UOI) and Ors.** [AIR 1986 Kerala 122], in paragraphs 2 to 9 &, 11, 12, 13 & 16, relied on by the learned Senior Government Pleader, on the facts and circumstances of the case, this Court observed as follows:

> "2. The 3rd respondent was, and respondents 4 to 6 are, Ministers in the State of Kerala. They belong to the 'Kerala Congress', one of the constituents of the 'ruling front' which has formed the Ministry. Kerala Congress had a patty convention at Ernakulam on the 25th of May, 1985. These respondents participated and spoke in that meeting. The appellants-petitioners alleged that the 3rd respondent in his speech, aggressively exhorted for a 'Punjab model' agitation, directed against the Central Government. According to them, that speech was the result of an 'anti-centre' conspiracy hatched by many including respondents 4 to 6. Respondents 4 to 6 even encouraged the 3rd respondent in his speech, and had stood by him even subsequent to his resignation from the Ministry. The speech undermines the sovereignty and integrity of the Indian Union. It therefore subverts the Constitution as by law established. In so acting, they have violated the oath taken, by them under Article 164(3) as Ministers before the assumption of office. They have also violated the oath as Members of the Legislative Assembly taken under Article 188 of the Constitution. Such a wanton violation of the constitutional oath entails a

forfeiture of their position both as Ministers and as Members of the Assembly. They are therefore usurpers of office. A Writ of Quo Warranto is therefore sought seeking ouster of the usurpers of office. The acts also constitute a serious offence of sedition punishable under Section 124-A of the Indian Penal Code. No effective steps have been taken either by the Union or by the State for prosecution for that serious offence. A writ of mandamus is sought to compel the Central and State Governments to perform their statutory duty to bring to book the offenders involved in such a serious crime.

5. The Writ of Quo Warranto is one on information afforded in a judicial enquiry into the question whether the holder of a public office occupies that office without legal authority. The Court is enabled by such a writ to control executive action in the matter, of making appointments to public offices against the relevant statutory provisions. See *University of Mysore v. Govinda Rao,* (AIR 1965 SC 491). It is also available to have the holding of an office declared forfeited, "if, having once been rightfully possessed and enjoyed, it has become forfeited for misuser or nonuser." (See "Extraordinary Legal Remedies" by Ferris, Page 125).

6. Under Article 164 of the Constitution, the Chief Minister is to be appointed by the Governor and Ministers other than the Chief Minister are to be appointed by the Governor on the advice by the Chief Minister. It is not disputed that respondents 4 to 6 became Ministers in accordance with this constitutional provision. The contention is that they became subsequently disqualified for the reasons alluded to above. The correctness of the contention has to be evaluated by a reference to the constitutional scheme in that behalf.

7. A pivotal role is played by the high functionary of the State, the Governor. Article 164(1) is explicit that the Ministers shall hold office during the pleasure of the Governor. Consistent with the constitutional provisions and democratic conventions, it is open to the Governor to withhold his pleasure and dismiss the Ministry or any member of the Council of Ministers.

8. It is conceivable that situations may arise where a person enters office as a Minister lawfully and properly, but forfeits the right to continue so by the operation of the disqualifying provisions of the Constitution. Thus, for example, a person can become a Minister even if he is not the member of the Legislature of the State. But he can function so -- as one not

duly elected -- only for a period of six months. At the expiration of that period, he would cease to be a Minister, if, by that time, he is not a member of the Legislature. That is the effect of Article 164(4) of the Constitution.

9. There may also arise situations where a member of the Assembly becomes subsequently disqualified in any one of the modes made mention of in Article 191. That, in turn, has a direct impact on such a person continuing as a Minister, as a result of the conjoint operation of Articles 164(4) and 191. It is to be noted that under Article 191, the disqualification not only extinguishes the existing membership but also operates as a bar for further or future choice of the person as a member of the Assembly. Such a situation has not arisen in the present case: for, the eventualities in which a disqualification attaches itself for being a member of the Assembly are: (1) the holding of any office of profit as referred to in Clause (a), (2) the declaration by a competent Court of the person being of unsound mind, (3) undischarged insolvency, (4) ceasing to be a citizen of India, voluntarily acquiring the citizenship of a foreign State, or being under acknowledgment of allegiance or adherence to a foreign State, and (5) the disqualification which may be provided by any law made by Parliament in that behalf under Clause (a). It is agreed that the only law so made by the Parliament as visualised in Clause (e) is the Representation of the People Act, 1951. The corrupt practices and other grounds of disqualification are referred to in Sections 8, 8A, 9, 9A and 11A of that Act. The Constitution itself nominates the authority competent to decide about the disqualification referred to in Article 191. That authority is the Governor. The modality of his action is also regulated by the constitutional provision. Before giving any decision on disqualification, the Governor shall obtain and act according to the opinion of the Election Commission, (vide Article 192). The provisions referred to forcefully suggest that the Constitution exhaustively deals with and provides for the heads of disqualification. They are such of those expressly referred to in the Constitution itself and those to be notified by law in that behalf. When the constitutional scheme thus indicates the existence of an exhaustive scheme regarding the heads of disqualification, it is not ordinarily for this Court to expand the scope of disqualification or increase the heads of disqualification. What was observed by the Supreme Court of Maryland, though in a different context, affords a guidance in the present situation. The Supreme Court held that "where the Constitution defined the qualifications of an officer, it was not in

the power of the legislature to change or super-add to them, unless the power to do so was expressly or by necessary implication conferred by the Constitution itself." (See "A Treatise on the Constitutional Limitations" by Thomas M Cooley, 1972, page 64). Here is a similar case. The Constitution defined the disqualifications of a member of the Assembly. It is not in. the power of the Court to change or superadd to them, there being no power either expressly conferred or inferable by necessary implication by the Constitution.

11. The argument is fraught with other anomalous consequences. In the case of a minister for a State, the oath relates to the following matters: (1) bearing true faith and allegiance to the Constitution, (2) upholding the sovereignty and integrity of India, (3) faithful and conscientious discharge of duties as a Minister, and (4) doing right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will. In the case of a member of the Assembly, many matters which are special and peculiar to a Minister who wields power, are absent. However, bearing true faith and allegiance to the Constitution and upholding the sovereignty and integrity of India are the high-lights of that oath too. The form and content of the oaths would certainly demonstrate the solemnity and seriousness of the matters covered thereby. They are not to be looked upon or treated in a casual or light hearted manner. The question, however, is whether being unfaithful to the oaths or any portion thereof, would operate as a disqualification as a member of the Assembly or as a member of the Council of Ministers. A divagation from the oath can happen in respect of many a matter referred to therein. Take for example the case where it is established that a Minister omits to faithfully or conscientiously discharge his duties as a Minister; or again, his acting under fear of an extra-constitutional authority, or out of motive to favour a partisan. Take even the case where actions arise out of affection, or are the projections of a pronounced ill-will. Will anyone of these violations of oath spell in the realm of a disqualification as Minister? We are of the view that it will not. A malfunctioning of a Minister or by a member of Assembly would be primarily a matter for assessment and judgment at the political level. That assessment and that judgment would have to be made by the party to which the erring members belong or by the people to whom he has, under our constitutional scheme, an established accountability. May be, in situations warranting drastic action, the constitutional functionaries such as the Chief

Minister or the Governor, could intervene in the matter and bring about a corrective to the situation. Even if the Chief Minister of the State or the Governor fail in that behalf, the Constitution still has the safety valve of a Presidential action under Article 356 of the Constitution, whereunder, the President is enabled to act on receipt of a report from the Governor or otherwise on his satisfaction that there is a break-down of the constitutional machinery in the State.

12. The morality or propriety of an undesirable person continuing as a Minister is essentially a political question to be eminently dealt with and at any rate initially, at the political level, such as by the Chief Minister, by the Legislature, and 'the general public holding a watching brief over them', and later by the constitutional functionaries as provided in the Constitution itself. Such was the reaction of Dr. Ambedkar when he referred to this topic. (Constituent Assembly Debates Vol. VII, page 1160). If that be so, that is an area where the High Court's jurisdiction under Article 226 is hardly attracted. This view has the support of the decision of the Delhi High Court in *Inder Mohan v. Union of India*, (AIR 1980 Delhi 20). Whether Sri. Bahuguna could with propriety continue as a Minister of the Union Government was not a matter for the Court to decide -- it was held. The idea is cogently and forcefully expressed by Frankfurter J. in *Charles W. Baker v. Joe C. Carr (1962) 369 US 186 : 7 Led 2 663* :

> .....there is not under our constitution a judicial remedy for every political mischief..... In this situation, as in others of like natures, appeal for relief does not belong here. Appeal must be to an informed, civically militant electorate. In a democratic society like ours, relief must come through an aroused popular conscience that sears the conscience of the people's representatives.

13. In this connection, the following passage dealing with disqualification of Members of House of Commons (as contained in De Smith's Judicial Review of Administrative Action", 4th Edn. page 465) appears to be apposite:

> The question of qualification to sit as a member of either House of Parliament falls within the scope of parliamentary privilege and is not, therefore, cognisable by Courts of law except in so far as Parliament has expressly provided for a judicial determination. The relevant statutory provisions do not

> empower the Courts to award injunctions to restrain persons from sitting as members.
>
> 16. We shall now consider the prayer for the issue of a Writ of Mandamus. We are not satisfied that the learned Judge was right in declining the relief on the technical ground of the prayer not being preceded by a prior demand. It is well known that the trammels of the English Courts in relation to the ancient writs do not fetter the jurisdiction of the High Court under Article 226 of the Constitution. Circumstances justifying, this Court could issue a writ or a direction, under that extraordinary and extensive power. The question, however, is whether a case has been made out at this stage, for the exercise of such a power."

(iv) In **Manohar Lal Sharma v. Sanjay Leela Bhansali and Ors.** reported in (2018) 1 SCC 770, the Hon'ble Supreme Court while dealing with a PIL relating to a film titled as "Padmavati" that it should not be exhibited in other countries without obtaining the requisite certificate from the Central Board of Film Certification (CBFC) under the Cinematograph Act, 1952 (for brevity, 'the Act'), observed thus;

> "2. It needs to be stated at the outset that the reliefs sought are not only extremely ambitious but also the nature of pleadings in the petition have the effect of potentiality that can erode the fundamental conception of pleadings in a Court of Law. It needs to be stated that neither laxity nor lack of sobriety in pleadings is countenanced in law. The assertions in a petition cannot show carelessness throwing all sense of propriety to the winds. Rambling of irrelevant facts only indicates uncontrolled and imprecise thinking and exposes the inability of the counsel. On certain occasions, it reflects a maladroit design to state certain things which are meant to sensationalize the matter which has the roots in keen appetite for publicity. When these aspects are portrayed in a nonchalant manner in a petition, it is the duty of the Court to take strong exception to the same and deal it with iron hands.
>
> 8. At this stage, we are obligated to state that writ petitions are being filed even before the CBFC, which is the statutory authority, takes a decision. This is a most unfortunate situation showing how public interest litigation can be abused. The hunger for publicity or some other hidden motive should not propel one to file such petitions. They sully the temple of justice and intend to create dents in justice dispensation system. That

> apart, a petition is not to be filed to abuse others. The pleadings, as we have stated earlier, are absolutely scurrilous, vexatious and untenable in law, and we, accordingly, strike them off the record."

(v) As stated above, placing reliance on the decision in **Alappey Asharaf v. Chief Minister, Govt. Secretariat, Thiruvananthapuram and Ors**. [2017 (5) KHC 875], learned Senior Government Pleader contended that a breach of oath is not a ground for issuance of a writ of *quo warranto*, and similar to **Alappey Asharaf's** case, the petitioner has not approached the commission duly supported by valid materials, to take action on the alleged unfair practice and, therefore, his complaint does not require any action. Short facts leading to the decision are as follows:

> "In this writ petition filed in public interest, the petitioner invokes the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India against respondents 3 to 6 stating that they are the Ministers in the State Cabinet, who have taken oath in terms of the Third Schedule to the Constitution of India. According to the petitioner, the Chief Minister had convened a Cabinet meeting at 8 a.m. on 15/11/2017, and the Cabinet had taken several important policy decisions, it is alleged that the aforesaid respondents abstained/boycotted from the Cabinet due to political reasons. It is alleged that the third respondent had also handed over a letter to the Chief Minister stating that their party had decided to abstain from the meeting of the Cabinet. Exhibit P1, a news report that appeared in the Hindu daily dated 16/11/2017 is produced in support of the aforesaid averments. The petitioner states that the aforesaid alleged act of abstinence/boycotting amounts to breach of oath of office taken by respondents 3 to 6, entitling him to seek the reliefs from this Court."

At para 4 of the judgment, a Hon'ble Bench of this Court held thus:

> "4. Insofar as this basic question is concerned, the issue is no longer res integra and is entirely covered by the full bench judgment of this Court in K.C. Chandy's case (K.C. Chandy vs. R. Balakrishna Pillai reported in AIR 1986 Ker 116, 1985 KHC 170). In the Full Bench judgment, the two questions that were considered by this Court were whether the breach of oath

committed by a Minister would be a constitutional impediment for his continuance in his office and whether in such circumstances a writ of quo warranto or an information in the nature of quo warranto could be issued from this Court. These questions were considered by this Court and answered thus:

> "2. The main questions that fall for decision in this writ petition are: (1) whether breach of oath committed by a Minister would be a constitutional impediment for his continuance in office; and (2) whether, in such circumstances, a writ of quo warranto or an information in the nature of quo warranto would be issued from this Court.
>
> 3. Art.164(3) of the Constitution lays down:
> "Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the Forms set out for the purpose in the Third Schedule."
> Article 191 of the Constitution prescribes disqualification for membership in the Legislative Assembly of the States and Art.192 details the procedure for deciding the disputes in respect of those disqualifications. The power of the Governor under Art.192 is thus attracted only in those cases where Art.191 could be applied. Art.191 and 192, therefore, constitute a composite machinery for the purpose of disqualifying a member of the Legislature under the Constitution.
>
> 4. So far as a member of the Legislative Assembly or Legislative Council is concerned, penalty for sitting and voting before making oath of affirmation under Art.188, is provided in Art.193 of the Constitution, which lays down, inter alia, that such a person shall be liable in respect of each day on which he so sits or votes, to a penalty of five hundred rupees to be recovered as a debt due to the State. The Constitution, however, is silent as to the penalty to which a Minister would be liable if he enters upon office without taking oath. So also, there appears to be no express provision in the Constitution which attaches specifically any disqualification to the Minister who commits breach of his oath.
>
> 5. In fact, as far as we could see, breach of oath of office is not a disqualification specified in the

Constitution or under any law made by Parliament. Even then, it could not be assumed that there is no sanctity to the oath taken before assumption of office or that there is no authority to take action if there is a violation of that oath. Art.164 (3) insists that no Minister could enter upon his office unless the Governor administers to him the oaths of office and of secrecy. The constitutional requirement of an oath before assumption of office could not thus be created merely as 'an additional moral obligation' (as stated by Willoughby in Vol. III, II Edn. of 'The Constitutional Law of the United States') without any legal consequences whatsoever. The oath of office insisted upon under the Constitution is the prescription of a fundamental code of conduct in the discharge of the duties of these high offices. The oath binds the person throughout his tenure in that office, and he extricates himself from the bonds of the oath only when he frees himself from the office he holds. Breach of this fundamental conduct of good behaviour may result in the deprivation of the very office he holds. When posts are held, not at the pleasure of the President or the Governor, but during 'good behaviour', breach of the oaths of office and of secrecy may attract the impeachment clauses and when posts are held at the pleasure of the President or the Governor, the termination, at their will, of the tenure may be the possible outcome of such breach.

6. Oath of office is not an empty formality with no constitutional significance. In the debates in the Constituent Assembly on Art.56, Dr. Ambedkar is reported to have said that the phrase "violation of the Constitution" is a large one and may well include treason, bribery or other high crimes and misdemeanours, because treason is certainly violation of the Constitution and bribery will be violation of the Constitution because it will be a violation of the oath by the President. In the Judges' transfer case, *S.P. Gupta and others. v. President of India and others* (AIR 1982 S.C. 149) Pathak, J., observed thus:

> "When a Judge permits his judgments in a case to be influenced by the irrelevant considerations of caste and creed, of relationship or friendship, of hostility or enmity, he commits a breach of his oath.

> It is a case where justice is not done and is denied. It is a case of misbehaviour, to which the provisions of Art.218 read with clauses (4) and (5) of Art.124 are attracted."

7. Breach of oath may thus be a betrayal of faith. The appointing authority, the Governor, in such cases, can consider whether there was, in fact, any breach of oath. It is not for this Court to embark on any such enquiry.

8. Breach of oath is different from absence of oath. Absence of oath prevents entry into office while breach affects the continuance after a valid entry. If no oath is taken before assumption of office as enjoined by the Constitution, there is no legal title to hold that office and a writ of quo warranto will naturally go from this Court. Similarly, a Minister, who, for any period of six consecutive months, is not a member of the Legislature of the State shall, at the expiration of that period, cease to be a Minister. This is the mandate of Art.164(3) of the Constitution. A person without authority cannot function; and the jurisdiction under Art.226 could be invoked to prevent that usurper in office from functioning.

9. Breach of oath requires a termination of the tenure of office. This power can be exercised by the appointing authority under the Constitution, and according to the procedure, if any, prescribed therein. The termination of that tenure is not the function of a Court; and it would not be appropriate to exercise jurisdiction under Art.226 in such cases. Proceedings under Art.226 in such cases do not lie. It was Jefferson who said:

> "Our peculiar security is in the possession of a written Constitution; let us not make it a blank paper by construction" (Government by Judiciary Raoul Berger p.304).

10. The question as to whether there was breach of oaths of office and of secrecy committed by a Minister is outside judicial review under Art.226 of the Constitution. It is to be decided in other appropriate forums; and in the case of the Minister in a State, it falls within the discretionary domain of the Chief Minister, and/or the Governor. Breach of oath prescribed by the Constitution

may, in certain circumstances, attract the penal provisions under the Indian Penal Code. When the Criminal Law is set in motion, it is of course for the Criminal Court to decide whether an offence has been committed or not. That is an independent remedy which does not affect the Constitutional power, of withdrawing the pleasure to continue in office, ingrained in Art.164(1). As Raoul Berger refers in 'Government by Judiciary' at page 293: 'Judiciary was designed to police constitutional boundaries, not to exercise supra constitutional police making decisions' (Hamilton).

11. Sir Ivor Jennings in his book 'Cabinet Government' states thus:

> "A Prime Minister has an undoubted right to request any of his colleagues whose presence in his Cabinet, is, in his opinion or judgment, prejudicial to the efficiency or policy of the Government, to resign his office.
>
> There is a tradition--a kind of public school function--that no Minister desires office but that he is prepared to carry on for the public good. The tradition implies a duty to resign where a hint is given."
>
> "The pardon of the perpetrator of a political crime, such as political assassination, treason, riot, unlawful assembly and seditious libel might involve political questions of the first order of magnitude."

Said Sir Patrick Hastings: "When the public interest may conflict with the strict exercise of his duty, it is not only the right but the duty of the Attorney-General to consult the Cabinet. Every law officer who is undertaking a prosecution in the interest of the State must possess himself not only guidance of technical law; said the Prime Minister, "but must possess himself of guidance on the question, whether, if a prosecution is initiated, the effect of the prosecution will be harmful or beneficial to the State in whose interests it has been taken." (Cabinet Government Sir Ivor Jennings (1951) P. 218).

S.A. De Smith speaks of the Prime Minister as "Primus inter pares" first among equals and states thus:

> "The authority of a Prime Minister will depend necessarily on such variables as the confidence and popularity he commands as a leader, his intellectual grasp of the problems of Government, his tactical acumen, his performances as an orator and on the floor of the house, his ability to make quick and acceptable decisions and to carry his senior colleagues and his party with him, the stature of those colleagues, the state of the country's economy, sheer luck and the often fickle mood of public opinion." (S.A. De Smith 2nd Edn. page 163).

In 1887 Gladstone wrote to the Queen thus:

> "I have no general jurisdiction over the speeches of my colleagues and no right to prescribe their tone and colour. When they offend against an assurance which, with their authority, I have given to the Queen, they then afford me a title to interfere upon which I have been, I hope, not unduly slow to act."

To this, the Queen replied:

> "The Queen thinks and maintains that the Prime Minister has and ought to have that power, and that former Prime Ministers did exercise it."

Mr. Gladstone's answer was:

> "Your Majesty is well aware that there is no code on record from which he (Mr. Gladstone) may learn the powers of his office in such matters; and he has formed his estimate simply according to such knowledge as he had gathered under the heads of the Cabinets in which he has served. As he would be very sorry to exaggerate the rights appertaining to his office, so he should deem it a serious offence knowingly to allow any of them to fall into abeyance. He does not doubt that there are many cases in which the Prime Minister can interfere, both as to acts and language; for instance cases which affect duty to the crown or cases where a Minister undertakes to commit his colleagues" (Cabinet Government Sir Ivor Jennings)."

12. The next question that would naturally arise would be whether a writ of quo warranto would be issued if a Minister is found to have committed breach of oath. For our limited purpose it might not be necessary to trace the historical background of the writ of quo warranto. Suffice it to examine whether a writ of quo warranto can issue in respect of an appointment held at the pleasure of the appointing Authority. In one of the earliest case, Darley v. The Queen (12 Cl. & F. 537), Tindal, C.J., expressed thus:

> "This proceeding by information in the nature of quo warranto will lie for usurping an office, whether created by charter alone, or by the crown, with the consent of Parliament, provided the office be of a public nature and a substantive office, not merely the function or employment of a deputy or servant held at the will and pleasure of others, for with respect to such an employment, the Court certainly will not interfere and the information will not properly lie."

And proceeded to hold in that case thus:

> "The functions of the treasurer were clearly of a public nature..... and it is equally clear that though appointed by the Magistrate, he is not removable at their pleasure, and not, we think, be treated not as their servant, but as an independent officer."

13. This statement of the law was approved in the leading case, *R. v. Speyar* [(1916) 1K.B. 595] and it has been cited in all the important cases relating to quo warranto jurisdiction. A writ of quo warranto or a writ by way of information in the nature of quo warranto cannot issue in these cases when a post is held 'at pleasure'. This is the normal rule. Even in those cases, however, the non-fulfilment of the conditions prescribed for assumption of office or the absence of the required qualification to hold that office affecting the title to that office will give rise to the issuance of this writ. Once the office is held under a valid title, and the continuance depends on the pleasure doctrine, the writ of quo Warranto does not run; and no such writ, which can be

> defeated immediately by the mere exercise of an executive will, will therefore issue.
>
> 14. It would be appropriate at this stage to advert to the ruling of the Division Bench of this Court in *Sukumaran v. Union of India (1985 K.L.T. 567)*. The Division Bench ruling cannot be understood to lay down a proposition that breach of oath will not entail a termination of the tenure in office. The decision only held that breach of oath is not a disqualification under Art.191. To that extent we agree. Even apart from Art.191, if the Constitution provides and clearly indicates that the breach of oath may give rise to proceedings and actions for removing the alleged offender from the scene of activity, the Court cannot hold that Art.191 alone provides for the disability to continue as member of the Legislative Assembly. We hold that in the present case, the question as to whether there was a breach of oaths of office and of secrecy, is a matter to be decided under Art.164 (1) for the purpose of the 'pleasure doctrine' applicable to the tenure in office of a Minister. The Minister holds office only 'at the disposal' of the Chief Minister and/or Governor and his office is held 'durante bene placito' of the Chief Minister and/or Governor.
>
> 15. The Division Bench placed reliance on the doctrine of political question enunciated in Baker v. Carr (369 U. S.186). We notice that even in the country of its birth, this doctrine has only little application, as observed in Powell v. McCormack (295 U. S.486). There is a lucid discussion of this subject in Seervai's Constitutional Law of India, III Edn. Vol. II at p. 2205. In the view we have taken, it is not, however, necessary to go into the details of this aspect of the matter. To compel the Court to decide a political question may be 'to charge the judiciary with duties beyond its equipments" as stated by Frankfurter J., in (341 U. S.494 at 551.)."

(vi) In **Neelakandan C.R. v. Union of India and Ors.** [2016 (2) KHC 588], relied on by the learned Senior Government Pleader, short facts leading to the filing of a writ of quo warranto are summarised as under:

> "This writ petition filed as public interest litigation prays for issue of writ of certiorari quashing Ext. P1 order, by which, the Central Government has constituted State Level Environment Impact Assessment Authority (SEIAA), Kerala and State level Expert Appraisal Committee (SEAC), Kerala. A writ of quo warranto has also been prayed for against respondents 5 to 8. Counter-affidavits have been filed by respondent Nos. 2, 5 to 8. Statement has also been filed by the counsel appearing for the first respondent. Brief facts necessary to be noticed for deciding the writ petition are: In exercise of powers conferred by sub-section (1) and Clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986, a notification has been issued by the Ministry of Environment and Forests dated 14/09/2006 providing for obtaining environmental clearance for construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to the notification from the Central Government or as the case may be by the State Level Environment Impact Assessment Authority. As per Clause (3) of the notification, the Central Government was required to constitute a State Level Environment Impact Assessment Authority (hereinafter referred to as 'SEIAA') comprising of three members, including a Chairman and a Member Secretary. Clause (4) refers to constitution of State Level Expert Appraisal Committee (hereinafter referred to as 'SEAC') by the Central Government."

Adverting to the submissions, the Hon'ble Division Bench, at paragraphs 9 and 10, held thus:

> "9. Before, we proceed to examine the respective qualifications of respondents 5 to 8, it is necessary to look into the scope and ambit of judicial review in a writ of quo warranto. The Constitution Bench of the Hon'ble Apex Court in *University of Mysore v. Govinda Rao 1965 KHC 518 : AIR 1965 SC 491 : 1964 (4) SCR 575 : ILR 1963 Mys 949*, had occasion to consider the scope of writ of quo warranto. In the above case respondent *Govinda Rao* had filed a Writ Petition in the High Court under Article 226 of the Constitution praying for issue of a writ of quo warranto calling one *Niya Gowda* (respondent in the Writ Petition) to show-cause as to under what authority he was holding the post of Research Reader in English in the Central College, Bangalore. High Court held that appointment of Niya Gowda was invalid. Appeal was filed by the University. The Constitution Bench examined the content

and scope of writ of quo warranto and following was laid down in paras 6 and 7:

> "6. The judgment of the High Court does not indicate that the attention of the High Court was drawn to the technical nature of the writ of quo warranto which was claimed by the respondent in the present proceedings, and the conditions which had to be satisfied before a writ could issue in such proceedings.
>
> 7. As Halsbury has observed:
>
> "An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined." Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the Courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the Court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

In ***Centre For PIL v. Union of India (2011) 4 SCC 1***, with regard to writ of quo warranto the following was laid down in paragraph 51 which is to the following effect:

"51. The procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions. Before a citizen can claim a writ of quo warranto he must satisfy the Court inter alia that the office in question is a public office and it is held by a person without legal authority and that leads to the inquiry as to whether the appointment of the said person has been in accordance with law or not. A writ of quo warranto is issued to prevent a continued exercise of unlawful authority."

Thus writ of quo warranto is for a judicial enquiry in which a person holding public office is called upon to show by what right he hold the said office. If the enquiry reaches to the finding that the holder of the office has no valid title the issue of writ of quo warranto will oust him from that office. Court in the proceedings can enquire as to whether appointment of defendant is made contrary to the statutory provisions.

10. The Hon'ble Apex Court in **Rajesh Awasthi v. Nand Lal Jaiswal** [2012 KHC 4631 : (2013) 1 SCC 501], has laid down the following in paragraph 19:

> "19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in ***Mor Modern Co-op. Transport Co-op. Transport Society Ltd. v. Govt. of Haryana***, (2002) 6 SCC 269 held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In B. ***Srinivasa Reddy*** (supra), this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in Hari Bans Lal (supra) wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules."

The judgment of the Hon'ble Apex Court in ***Renu and Others v. District & Sessions Judge, Tis Hazari and***

Another 2014 KHC 4089 : 2014 (1) KHC SN 24 : 2014 (2) KLT SN 56 : ILR 2014 (2) Ker. 803 : AIR 2014 SC 2175 : (2014) 14 SCC 50 was also relied, wherein, the nature and ambit of writ of quo warranto was explained in paragraph 15, which is to the following effect:

> "15. Where any such appointments are made, they can be challenged in the Court of law. The quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the Judiciary a weapon to control the Executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it. (Vide: The University of Mysore and Another v. C.D. Govinda Rao and Another, : 1965 KHC 518 : AIR 1965 SC 491 :1964 (4) SCR 575 : ILR 1963 Mys 949; Shri Kumar Padma Prasad v. Union of India and Others, 1992 KHC 1021 : AIR 1992 SC 1213 : (1992) 2 SCC 428 : 1992 SCC (L&S) 561 : 1992 (20) ATC 239 : 1992 (1) LLN 951 : 1992 (2) SLR 210; B.R. Kapur v. State of Tamil Nadu and Another, 2001 KHC 937 : AIR 2001 SC 3435 : 2001 (3) KLT SN 100 : (2001) 7 SCC 231; The Mor Modern Co-operative Transport Society Ltd. v. Financial Commissioner and Secretary to Govt.. Haryana and Another, 2002 KHC 1716 : AIR 2002 SC 2513 : (2002) 6 SCC 269; Arun Singh v. State of Bihar and Others, 2006

> KHC 1151 : AIR 2006 SC 1413 : JT 2006 (3) SC 389 : (2006) 9 SCC 375; Hari Bansh Lal v. Sahodar Prasad Mahto and Others, 2010 KHC 4620 : AIR 2010 SC 3515 : (2010) 9 SCC 655; and Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and Others, 2013 KHC 4873 : (2014) 1 SCC 161 : 2013 (4) KHC SN 31 : 2013 (13) SCALE 477 : AIR 2014 SC 246."

In view of the law as laid down above, the enquiry in the present writ petition has to be confined as to whether respondents 5 to 8 have fulfilled the statutory qualification to be nominated as Chairman/Member of the SEIAA and SEAC. In an event, if they do not fulfill the statutory qualification, they have no right to continue to hold the posts, which is a public office of great importance. However, in an event, if respondents 5 to 8 possessed necessary qualification as provided in Appendix VI, it is not for this Court to enter into the issue as to whether they were better candidates or whether they ought to have been appointed or not. We, thus, proceed to examine the challenge accordingly.

(vii) In **K.D. Prathapan v. State of Kerala and Ors.** reported in 2015 KHC 606, this Court observed thus:

> "34. Before we proceed to examine the above judgments relied on by the learned counsel for the petitioner, it is relevant to note the scope of a writ of quo warranto. In the present Writ Petition petitioner has prayed for issue of writ of quo warranto calling upon respondent No. 4, to show cause before this Court under what authority he is holding the office of Vice Chancellor. Further to quash Ext. P8 by which the State Government has restored respondent No. 4 in the post of Vice Chancellor in obedience of the judgment of the Division Bench dated 30.07.2012 in W.A. No. 347 of 2012. The Constitution Bench of the Apex Court in University of Mysore v. Govinda Rao (MANU/SC/0268/1963 : AIR 1965 SC 491) had occasion to consider the scope of writ of quo warranto. In the above case respondent Govinda Rao had filed a Writ Petition in the High Court under Article 226 of the Constitution praying for issue of a writ of quo warranto calling one Niya Gowda (respondent in the Writ Petition) to show cause as to under what authority he was holding the post of Research Reader in English in the Central College, Bangalore. High Court held that appointment of Niya Gowda was invalid. Appeal was filed by the University. The Constitution Bench examined the content and scope of writ of quo warranto and following was laid down in paragraph 6 and 7:

"6. The judgment of the High Court does not indicate that the attention of the High Court was drawn to the technical nature of the writ of quo warranto which was claimed by the respondent in the present proceedings, and the conditions which had to be satisfied before a writ could issue in such proceedings.

7. As Halsbury has observed:
"An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined."

Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

35. In ***Centre For PIL and another*** (supra), with regard to writ of quo warranto the following was laid down in paragraph 51 which is to the following effect:

> "51. The procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions. Before a citizen can claim a writ of quo warranto he must satisfy the Court inter - alia that the office in question is a public office and it is held by a person without legal authority and that leads to the inquiry as to whether the appointment of the said person has been in accordance with law or not. A writ of quo warranto is issued to prevent a continued exercise of unlawful authority."
>
> Thus writ of quo warranto is for a judicial enquiry in which a person holding public office is called upon to show by what right he hold the said office. If the enquiry reaches to the finding that the holder of the office has no valid title the issue of writ of quo warranto will oust him from that office. Court in the proceedings can enquire as to whether appointment of defendant is made contrary to the statutory provisions.

36. The Hon'ble Apex Court in *Rajesh Awasthi* (supra) has laid down the following in paragraph 19:

> "19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in Mor Modern Coop. Transport Coop. Transport Society Ltd. v. Govt. of Haryana, 2002 (6) SCC 269 held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In B. Srinivasa Reddy (supra), this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in Hari Bans Lal (supra) wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules."

(viii) As regards **Hari Bansh Lal v. Sahodar Prasad Mahto and Ors.** reported in (2010) 9 SCC 655 - 2010 KHC 4620, learned Senior

Government Pleader has referred to paragraphs 13, 16 and 21, which are extracted hereunder:

"13. In *B. Srinivasa Reddy v. Karnataka Urban Water Supply and Drainage Board Employees Assn. and Ors*. [(2006) 11 SCC 731], this Court held:

> 49. The law is well settled. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to whether a case has been made out for issuance of a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one which can only be issued when the appointment is contrary to the statutory rules.

It is clear from the above decisions that even for issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules. In the later part of our judgment, we would discuss how the appellant herein was considered and appointed as Chairman and whether he satisfied the relevant statutory provisions.

Suitability of a candidate for appointment

16. In ***State Bank of India and Ors. v. Mohd. Mynuddin*** (1987) 4 SCC 486, after adverting to earlier decision of this Court in The ***State of Mysore and Anr. v. Syed Mahmood and Ors***. (1968) 3 SCR 363, this Court held:

> ...The ratio of the above decision is that where the State Government or a statutory authority is under an obligation to promote an employee to a higher post which has to be filled up by selection the State Government or the statutory authority alone should be directed to consider the question whether the employee is entitled to be so promoted and that the court should not ordinarily issue a writ to the government or the statutory authority to promote an officer straightway. The principle enunciated in the above decision is equally applicable to the case in hand.

It is clear from the above decisions, suitability or otherwise of a candidate for appointment to a post is the function of the appointing authority and not of the court unless the appointment is contrary to statutory provisions/rules.

21. From the discussion and analysis, the following principles emerge:

(a) Except for a writ of quo warranto, PIL is not maintainable in service matters.

(b) For issuance of writ of quo warranto, the High Court has to satisfy that the appointment is contrary to the statutory rules.

(c) Suitability or otherwise of a candidate for appointment to a post in Government service is the function of the appointing authority and not of the Court unless the appointment is contrary to statutory provisions/rules.

Curiously, but unfortunately, the State Government which had defended the qualification, service and ultimate appointment of Mr. Lal (appellant herein) as Chairman of the Board before the High Court, changed their stand before this Court for the reasons best known to them and supported the order of the High Court."

(ix) In **Raju Puzhankara v. Kodiyeri Balakrishnan and Ors.** reported in 2009 KHC 244, a Hon'ble Division Bench of this Court, at paras 5 to 10, considered and held thus:

"5. The next question is whether a Minister is holding a public office, so that a quo warranto writ can be issued, if he is functioning as a Minister without any legal authority. Another incidental question is, even if his initial assumption is valid in law, whether if he subsequently disqualify to hold office, can a writ of quo warranto be issued. There is no dispute that if a Minister is holding his office against law, a quo warranto writ can be issued. In S.R. Chowdhury v. State of Punjab and Ors. A.I.R. 2001 S.C. 2707, quo warranto writ was issued by the Supreme Court. In that case, a person who was not a member of the legislative assembly was appointed as Chief Minister. The Hon'ble Supreme Court held that even though under Article 164(4) of the Constitution of India, he can be appointed for an initial period of six months, he cannot be repeatedly continued to hold the office beyond the period of six months and, therefore, after the first six months, he cannot be appointed

again and in that particular case quo warranto writ was issued. The Court also noticed that if he is repeatedly appointed to the above post, it will be flouting the constitutional scheme and mandate. In B.R. Kapur v. State of Tamil Nadu and Anr. A.I.R. 2001 S.C. 3435, the Hon'ble Supreme Court also held that even if a person is disqualified to become a member of the legislature, he cannot be appointed as a Minister or Chief Minister under the guise of Article 164(4) and a quo warranto writ can be issued to oust such person from office. In that case, Smt Jayalalitha, who was convicted and sentenced by a Court of law for imprisonment for more than two years, without becoming a member of the Legislative Assembly occupied office of Chief Minister of Tamilnadu by virtue of Article 164(4) of the Constitution. The Apex Court held that if she is not qualified to become a member of the Legislative Assembly, she cannot be appointed as a Minister or a Chief Minister. The Hon'ble Apex Court held as follows:

> 50. ...The Constitution prevails over the will of the people as expressed through the majority party. The will of the people as expressed through the majority party prevails only if it is in accord with the Constitution. The Governor is functionary under the Constitution and is sworn to 'preserve, protect and define the Constitution and the laws' (Article 159). The Governor cannot, in the exercise of his discretion or otherwise, do anything that is contrary to the Constitution and the laws. It is Anr. thing that by reason of the protection the Governor enjoys under Article 361, the exercise of the Governor's discretion cannot be questioned. We are in no doubt at all that if the Governor is asked by the majority party in the legislature to appoint as Chief Minister a person who is not qualified to be a member of the legislature or who is disqualified to be a member of the legislature or who is disqualified to be such, the Governor must having due regard to the Constitution and the laws, to which he is subject, decline and the exercise of discretion by him in this regard cannot be called in question.
>
> 51. If perchance, for whatever reason, the Governor does appoint as Chief Minister a person who is not qualified to be a member of the legislature or who is disqualified to be such, the appointment is contrary to the provisions of Article 164 of the Constitution, as we have interpreted it, and the authority of the appointee

> to hold the appointment can be challenged in quo warranto proceedings. That the Governor has made the appointment does not give the appointee any higher right to hold the appointment. If the appointment is contrary to the constitutional provisions it will be struck down. The submission to be contrary-unsupported by any authority-must be rejected.
>
> 52. The judgment of this Court in Shri Kumar Padma Prasad v. Union of India [(1992) 2 S.C.C. 428] is a case on point. One K.N. Srivastava was appointed a Judge of the Gauhati High Court by a warrant of appointment signed by the President of India. Before the oath of his office could be administered to him, quo warranto proceedings were taken against him in that High Court. An interim order was passed directing that the warrant of appointment should not be given effect to until further orders. A transfer petition was then filed in this Court and was allowed. This Court, on examination of the record and the material that it allowed to be placed before it, held that Srivastava was not qualified to be appointed a High Court Judge and his appointment was quashed. This case goes to show that even when the President, or the Governor, has appointed a person to a constitutional office, the qualification of that person to hold that office can be examined in quo warranto proceedings and the appointment can be quashed.

6. As far as the present case is concerned, the first Respondent was elected as the Member of the Legislative Assembly and he became the Home Minister after complying with all legal formalities. There is no dispute with regard to his initial appointment and there is no contention that he was disqualified under any of the provisions of the enactments or the Constitution. The only contention is that he has violated the oath of secrecy which was taken at the time of assumption of office. The form of oath of office to be taken at the time of assumption of office is as follows:

> I.....swear in the name of God/solemn affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a Minister for the (State of Kerala) and that I will do right to all

> manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will.
>
> The oath of secrecy to be taken is as follows:
> I.....swear in the name of God/solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the (State of Kerala) except as may be required for the due discharge of my duties as such Minister.

In this case, CBI prepared a final report after investigation. Two Government officers and one ex-Minister are arrayed as accused. C.B.I., has sought sanction to prosecute them and the Minister. It is stated in Ext. P-2 paper report that the first Respondent has stated that cases are not new to Pinarayi and they will fight the case politically. According to the Petitioner, by the above statement, the Minister has divulged the information that Pinarayi, an ex-minister, is an accused and thereby violated the oath. The violation of oath of office is a very serious matter. But the questions are whether there is any violation, and even if there is violation of oath, who is the authority to take action and whether writ of quo warranto will lie. When final report was filed levelling charges against an ex-Minister, a spontaneous reaction was made by the first Respondent. Whether such expression by the Home Minister before consideration of the issue by the Cabinet is improper is not a question to be considered by us. Impropriety of a statement by the Minister is nonjusticiable. Violation of oath is different from impropriety. In any event, a writ of quo warranto cannot be issued on the ground of impropriety and, in any view, for the impropriety in the conduct of a Minister writ of quo warranto will be issued by the Court sparingly in very special circumstances. It is a discretionary remedy. Even though the CBI has filed charges against the ex-Minister, unless he is found guilty by the Court, he is deemed to be innocent. Prima facie, we are of the opinion that the observations made by the Minister is not a violation of oath. This is only a prima facie opinion, as we are not called upon to give a verdict on that aspect in this proceedings.

7. Even assuming that there is violation of oath, a Full Bench of this Court in K.C. Chandy v. R. Balakrishna Pillai (1985 K.L.T. 762 F.B.) held that quo warranto cannot be issued in such situation. The Court held that breach of oath is different from absence of

oath and if there is breach of oath, action has to be exercised by the appointing authority under the Constitution. Whether breach of oath of office and of secrecy committed by a minister is outside the judicial review under Article 226 of the Constitution of India. The Full Bench held as follows:

> 7. Breach of oath may thus be a betrayal of faith. The appointing authority, the Governor, in such cases, can consider whether there was, in fact, any breach of oath. It is not for this Court to embark on any such enquiry.
>
> 8. Breach of oath is different from absence of oath. Absence of oath prevents entry into office while breach affects the continuance after a valid entry. If no oath is taken before assumption of office as enjoined by the Constitution, there is no legal title to hold that office and a writ of quo warranto will naturally go from this Court. Similarly, a Minister, who, for any period of six consecutive months, is not a member of the Legislature of the State shall, at the expiration of that period, cease to be a Minister. This is the mandate of Article 164 of the Constitution. A person without authority cannot function; and the jurisdiction under Article 226 could be invoked to prevent that usurper in office from functioning.
>
> 9. Breach of oath requires a termination of the tenure of office. This power can be exercised by the appointing authority under the Constitution and according to the procedure, if any, prescribed therein. The termination of that tenure is not the function of a Court; and it would not be appropriate to exercise jurisdiction under Article 226 in such cases. Proceedings under Article 226 in such cases do not lie. It was Jefferson who said:
>
> > "Our peculiar security is in the possession of a written Constitution; let us not make it a blank paper by construction.(Government by Judiciary- Raoul Berger – p.304.)
> >
> > 10. The question as to whether there was breach of oaths of office and of secrecy committed by a Minister is outside judicial review under Article 226 of the Constitution. "

(x) In **Gurpal Singh v. State of Punjab and Ors.** reported in (2005) 5 SCC 136, relied on by the learned Senior Government Pleader, the Hon'ble Supreme Court, on the aspect as to when a PIL should be entertained, at para 5, 6 & 7, 10,

observed thus:

> "5. Learned counsel appearing for the Market Committee supported the stand of the appellant and submitted that there was nothing irregular in the appointment of the appellant and the same was in terms of the rules of appointment. Learned counsel for the respondent No. 4, writ petitioner however, submitted that merely because the writ petition was filed after fourteen years and because there was some personal differences that cannot dilute the public interest element involved in the writ petition. It was further submitted that notwithstanding the clear direction of the High Court to start the process of selection afresh within four months, nothing has been done and this amounts to contempt of Court.
>
> 6. The scope of entertaining a petition styled as a public interest litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this court in various cases. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.
>
> 7. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See *State of Maharashtra. v. Prabhu (1995) ILLJ 622 SC , and Andhra Pradesh State Financial Corporation v. GAR Re-Rolling Mills and Anr. : [1994] 1 SCR 857)*. No litigant has a right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. (See Dr. B.K. Subbarao v. Mr. K. Parasaran, JT

> 1996 7 265. Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.
>
> 10. It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and substantial rights and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to loose but trying to gain for nothing and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants."

42. Some of the decisions relied on by the learned Senior Government Pleader have been taken note of by a Hon'ble Division Bench of the Madras High Court. However, we deem it fit to extract the decisions considered by the Hon'ble Madras High Court in **S. Gunasekaran v. Ministry of Home**

Affairs [W.P.(C) No.24464/2019 dated 21.08.2019].

"(i) In **J. A. Samaj v. D.Ram**, reported in AIR 1954 Pat 297, election to the Working Committee of the Bihar Rajya Arya Pratinidhi Sabha, was challenged by a Writ of Quo Warranto, and the Hon'ble High Court of Patna, held thus:-

> "The remedy which article 226 contemplates is a, public law remedy for the protection and vindication, of a public right. It is essential in this connection to remember that there is a distinction between jus privatum and jus publicum which is the most fundamental distinction of corpus juris. This Roman distinction has been carried into modern law and the scope of public law in this context embraces all the rights, and duties, of which the State or some individual holding delegated authority under it, is one part and the subject is the other part. The language of the article 226 supports the inference that the remedy is provided only for the assertion of a public law right. Article 226 states that the High Court shall have power to issue to any person or authority, including it appropriate cases any Government, directions, orders or writs, including writs in the nature of habeas corpus, man damns, prohibition, quo warranto and certiorari. All these writs are known in English law as prerogative writs, the reason being that they are specially associated with the King's name. These writs were always granted for the protection of public interest and primarily by the Court of the King's Bench. As a matter of history the Court of the King's Bench, was held to be coram rege ipso and was required to perform quasi-governmental functions. The theory of, the English law is that the King himself superintends the due course of justice through his own Court—preventing cases of usurpation of jurisdiction and insisting on vindication of public rights and personal freedom of his subjects. That is the theory of the English law and our Constitution makers have borrowed the conception of prerogative writs from the English law. The interpretation of article 226 must therefore be considered in the background of English law and so interpreted, it is obvious that the remedy provided under article 226 is a remedy for the vindication of a public right."

(ii) In **Mohammad Tafiuddin and Ors. v. State of West Bengal and Ors.** reported in 1979 (2) CLJ 494, at paragraph Nos.13 to 16, the Hon'ble High Court of Calcutta, held thus:-

"13. In terms of the determinations in the case of Hamid Hasan Nomani v. Banwarilal Roy and Others, AIR 1947 P. C. 90 an information in the nature of quo warranto is the modern from of the obsolete writ of quo warranto , which lay against a peon, who claimed or usurped in office franchise or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined. It has also been observed to be a remedy to try the Civil right to a public office. In view of the determinations in the case of **University of Mysore v. Govinda Rao,** AIR 1965 SC 491 the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against statutory, provisions or statutes, it also protects a subject from being deprived or public office, to which he may have a right. As observed in the case of Statesman (P) Ltd. v. H.R. Deb, AIR 1968 SC 1495 the High Court in a proceeding for quo warranto should be also in its pronouncement unless there is a case of infringement of law.

14. A Writ of quo warranto is not the same as a Writ of Certiorari, or Prohibition or Mandamus and in a such a proceeding for quo warranto, it is not necessary for the applicant to establish that he has been prejudicially affected by any wrongful act of public nature or that his fundamental right is infringed or that he is denied any legal right or that any legal duty is owed to him. The scope of a proceeding for quo warranto is very limited and it is only for the determination, whether the appointment of the Respondent is by a proper authority and in accordance with law, if there is some express statutory provision. The High Court's power of interference in a proceeding for quo warranto is also limited and it cannot act as an appellate authority. Quo warranto, in terms of the determination in the case of **Bhaimlal Chunilal v. State of Bombay,** AIR 1954 Bom. 116 is a remedy given in law at the discretion of the Court and is not a proceeding or a writ of course. The High Court can in a proceeding for quo warranto, as observed in the case of Lalit Mohan Das v. Biswanath Ghosh AIR 1952 Cal. 868, issue an order not only prohibiting an officer from acting in an office to which he is not entitled, but can also declare the Office to be vacant. As observed in Hamid Hasans case (Supra) information in the nature of quo warranto is in nature of a Civil proceedings and such writ can be issued when a post created under or by a statute or a public office, is usurped wrongly, illegally or

without any authority. The tests of public office, as observed in the case of Sashi Bhusan Ray v. Pramatha Nath Bandopadhaya 70 CWN 892, are whether to the duties of office are of public nature and whether it is a substantive office under a statute. It has been held and observed in the case of Amarendra Chandra Aich v. Narendra Kumar Basu 56 CWN 449, that a writ of quo warranto will not be available in respect of an office of private nature.

15. Thus, in terms of the determinations an the case of University of Mysore v. Govinda (Supra) the first and foremost criteria for the issue of a writ of quo warranto should be that the office must be public and pursuant to the determinations in the case of Shyabudinsab Mohidinsate Akki v. Gadaj Belgeri Municipal Borough AIR 1975 SC 314, a proceeding for quo war-ranto will not be in respect of office ox a private charitable institution or of a private association and the test of a public office is whether the duties of the office are public nature. On the basis of the determinations as mentioned above, it can also be deduced that the office moist be substantive in character and must be, as mentioned hereinbefore created by statute or by Constitution itself. So neither the statutory nor constitutional character being satisfied in the instant case is so far the offices of Respondent Nos. 4 or 7 of 18 (a), I am of the view that even inspite of the determinations on merit, the petitioners would not be entitled to the issue of a writ of quo warranto."

(iii) In **Arun Kumar v. Union of India (UOI) and Ors.** reported in AIR 1982 Raj. 67, at paragraph Nos.4 to 6, the Hon'ble Rajasthan High Court, held thus:-

"4. Article 226 of the Constitution empowers the High Court to issue to any person or authority including the Government within its territorial jurisdiction, directions, orders or writs in the nature of mandamus, certiorari prohibition or quo-warranto for the enforcement of fundamental rights or for the enforcement of the legal rights and for any other purpose.

5. The founding fathers of the Constitution have couched the Article in comprehensive phraseology to enable the High Court to remedy injustice wherever it is found, but it is equally true that a person invoking the extraordinary jurisdiction of this Court should be an aggrieved person. If he does not fulfill the character of an aggrieved person and is a 'stranger' the Court will, in its discretion, deny him this

> extraordinary remedy save in very special and exceptional circumstances. The petitioner challenging the order must have some specialised interest of his own to vindicate, apart from a political concern, which belongs to all. Legal wrong requires a judicial and enforceable right and the touchstone to the justiciability is injury to legally protected right. A nominal, imaginary, a highly speculative adverse effect to a person cannot be said to be sufficient to bring him within the expression of "aggrieved person". The words "aggrieved person" cannot be confined within the bounds of a rigid formula. Its scope and meaning depends on diverse facts and circumstances of each case, nature and extent of the petitioner's interest and the nature and extent of the prejudice or injury suffered by him.
>
> 6. Any information in the nature of quo warranto would not be issued, and an injunction in lieu thereof would not be granted as a matter of course. It is in the discretion of the Court to refuse or grant it according to the facts and circumstances of each case. The Court would inquire into the conduct and motive of the applicant and where there are grounds for supposing that the relator was not the real prosecutor but was the instrument of other persons and was applying in collusion with stranger, the Court may refuse to grant a writ of quo warranto."

(iv) In **S. Mahadevan v. S. Balasundaram and Ors.** reported in (1986) 1 Mad LJ 31, at paragraph 21, the High Court of Madras held as follows:-

> "For the issuance of a writ of quo warranto, the Court asks the question-where is your warrant of appointment? It enjoins an enquiry into the legality of the claim which the party asserts to an office and if the appointment and holding on to the office are illegal and violative of any binding rule of law, then the Court shall oust him from his enjoying thereof. This Court, within the scope of the enquiry for the issuance of a writ of quo warranto, is not concerned with any other factor except the well laid down factors which require advertance to and adjudication. The existence of the following factors have come to be recognised as conditions precedent for the issuance of a writ of quo warranto: 1) The Office must be public; 2) The Office must be substantive in character, that is, an office independent in title; 3) the office must have been created by statute or by the Constitution itself; 4) the holder of the office

> must have asserted his claim to the office; and 5) the impugned appointment must be in clear infringement of a provision having the force of law or in contravention of any binding rule of law. This Court shall not frown upon an appointment to the office on the ground of irregularity, arbitrariness or caprice or mala fides and these features, even if they are present, could not clothe this Court with the power for the issuance of a writ of quo warranto. The scope of the enquiry is riveted to only the aforesaid factors. Prerogative writs, like the one for quo warranto, could be and should be issued only within the limits, which circumscribe their issuance. It is not possible to wider their limits. A writ of quo warranto is of a technical nature. It is a question to an alleged usurper of an office to show the legal authority for his appointment and holding on to it. If he shows his legal authority, he cannot be ousted from the office. The invalidity of the appointment may arise either for want of qualifications prescribed by law or want of authority on the part of the person who made the appointment, or want of satisfaction of the statutory provisions or conditions or procedure governing the appointment and which are mandatory. This Court, under Article 226 of the Constitution of India, can issue a writ of quo warranto only if the salient conditions delineated above stand satisfied and not otherwise.

(v) In **Devi Prasad Shukla and Another v. State of Uttar Pradesh and Another**, reported in 1989 Lab IC 1086, at paragraph No.34, the Hon'ble Allahabad High Court, held thus:-

> "34. To illustrate the point, we may mention that in a writ petition even the person called upon to show whether he possesses the necessary qualifications prescribed for that office can also be asked whether the authority which he produces is by the person who is authorised to make appointment to the Office which he holds. By showing that he possesses the necessary qualifications by demonstrating that there is no legal impediment in the way of his appointment to the office and by showing that the person who issued the appointment or warrant of his appointment is authorised by law to do so, no writ of quo warranto will be issued against him. If all these things are demonstrated by him in his favour, he cannot be said to be a usurper."

(vi) In **Hardwari Lal v. Ch. Bhajan Lal and Ors.** reported in AIR 1993 P&H 3, at paragraph No. 16, the Hon'ble Punjab and Haryana High Court, held thus:-

> "15. As a necessary corollary of our aforesaid discussion it follows that this Court is not competent to issue a writ of quo warranto or any other kind of writ or direction removing the Chief Minister for his having committed the breach of oath. It is now well settled that when a post or office is held at pleasure no writ of quo warranto can issue. Once a person enters upon an office lawfully and is legally entitled to hold it and the continuance depends upon the pleasure doctrine, it will not be permissible to issue a writ by way of information in the nature of quo warranto or a writ of quo warranto. The reason is that such a writ can immediately and easily be defeated by the executive will as it shall be open to it to allow such a person to assume that office against. The Full Bench of the Kerala High Court in K. C. Chandy's case (supra) quoted a passage from Darley v. The Queen 12 Cl & F 520, as follows :--
> "This proceeding by information in the nature of quo warranto will lie for usurping an office whether created by charter alone, or by the Crown, with the consent of Parliament, provided the office be of a public nature, and a substantive office, not merely the function or employment of a deputy or servant held at the will and pleasure of others, for with respect to such an employment, the Court certainly will not interfere and the information will not properly lie." Expressing the same view, the Full Bench of the Andhra Pradesh High Court in D. Satyanarayana Ramachandran's case (supra) held that the Governor may have to tolerate the continuance in office of the Chief Minister so long as he enjoys the confidence of the majority of the Members of the Assembly unless, of course, he suffers any of the disqualifications to hold that office. Since the power to terminate the tenure of the Minister vests in the Governor, it will not be just for the Courts to assume limitless jurisdiction as that may lead to a state of functional anarchy which has to be avoided in the larger public interest itself, A Chief Minister is accountable to the electorates who hold a watching brief to prevent misperformance and misrule by the elected representatives. We may quote the Full Bench to say,--
> "No gratuitous advice, much less any specific direction, from this Court is necessary." The Court then expressed the

> definite view in paragraph 14 of the judgment that whatever be the merits of the allegations made, if and when found appropriate, the power to terminate the tenure of office of the Chief Minister being vested solely in the Governor under Art. 164(1) of the Constitution, no writ of quo warranto would issue from the Court. We have no reason to take a different view, nor could we be successfully persuaded to differ."

(vii) In **Waseem Abdullah v. J and K Academy of Art, Culture and Languages and others,** [2004 (3) JKJ 407], at para No.11, the Hon'ble High Court of Jammu and Kashmir at Jammu, held thus:-

> "11. In *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat* (2003) 4 SCC 712 Their Lordships of the Supreme Court opined that the High Court in exercise of its writ jurisdiction in a matter of the nature of the present case is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one and while issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors, which may be relevant for issuance of a writ of certiorari. In paragraph 23 of the judgment, their lordships have emphatically held that a writ of quo warranto can only be issued when the appointment is contrary to the statutory rules."

(viii) In **B.R. Kapur v. State of Tamil Nadu and Ors**. reported in (2001) 7 SCC 231, at paragraph Nos.79 to 81, the Hon'ble Supreme Court, held thus:-

> "79.....A writ of quo warranto is a writ which lies against the person, who according to the relator is not entitled to hold an office of public nature and is not an usurper of the office. It is the person, against whom the writ of quo warranto is directed, who is required to show, by what authority that person is entitled to hold the office. The challenge can be made on various grounds, including on the grounds that the possessor of the office does not fulfill the required qualifications or suffers from any disqualification, which debars the person to hold such office. So as to have an idea about the nature of action in a proceedings for writ of quo

warranto and its original form, as it used to be, it would be beneficial to quote from Words and Phrases, Permanent Edn., Vol. 35-A, p. 648. It reads as follows:

The original common-law writ of quo warranto was a civil writ at the suit of the Crown, and not a criminal prosecution. It was in the nature of a writ of right by the King against one who usurped or claimed franchises or liabilities, to inquire by what right he claimed them. This writ, however, fell into disuse in England centuries ago, and its place was supplied by an information in the nature of a quo warranto, which in its origin was a criminal method of prosecution, as well to punish the usurper by a fine for the usurpation of the franchise, as to oust him or seize it for the Crown. Long before our revolution, however, it lost its character as a criminal proceeding in everything except form, and was applied to the mere purposes of trying the civil right, seizing the franchise, or ousting the wrongful possessor, the fine being nominal only and such, without any special legislation to that effect, has always been its character in many of the States of the Union, and it is therefore a civil remedy only. Ames v. State of Kansas 4 S.Ct. 437, 442 : 111 US 449 : 1 Ed 482 (1884), People v. Dashaway Assn. 24 P 277, 278 : 84 Cal 114.

80. In the same volume of Words and Phrases, Permanent Edn., at p. 647 we find as follows:
The writ of 'quo warranto' is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. State Ex inf. McKittrick v. Murphy 148 SW 2d 527, 529, 530 : 347 Mo 484.

Information in nature of 'quo warranto' does not command performance of official functions by an officer to whom it may run, since it is not directed to officer as such, but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed. State ex inf. Walsh v. Thatche 102 SW 2d 937, 938 : 340 Mo 865.

81. In Halsbury's Laws of England, 4th Edn., Reissue Vol. I, p. 368, para 265 it is found as follows:

266. In general -- An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to inquire by what authority he supported his claim, in order what the right to the office or franchise might be determined."

(ix) In **P.L. Lakhanpal v. A.N. Ray and Ors.** reported in AIR 1975 Delhi 66, the Hon'ble Delhi High Court, held thus:-

"(7) Before I deal with the points raised, I will state what I understand to be the scope and ambit of a writ of quo warranto. A writ of quo warranto poses a question to the holder of a public office. In plain English language, the question is "where is your warrant of appointment by which you are holding this office? " In its inception in England such a writ was a writ of right issued on behalf of the Crown requiring a person to show by what authority he exercised his office, franchise, or liberty. Webster's Third New International Dictionary, Volume Ii, describes it as "a legal proceeding that is brought by the state, sovereign, or public officer, has a purpose similar to that of the ancient writ of quo warranto, is usually criminal in form and sometimes authorizes the imposition of a fine but is essentially civil in nature and seeks to correct often at the relation or on the complaint of a private person a usurpation, misuser, or nonuser of a public office or corporate or public franchise, and may result in judgments of ouster against individuals and of ouster and seizure against corporations."

(8) HALSBURY'S Laws of England, Third Edition, Volume 11, Para 281 (1) contains a summary of the decisions of English Courts with regard to the discretion of the Court in issuing a writ of quo warranto. It is said:-
"An information in the nature of a quo warranto was not issued, and an injunction in lieu thereof will not be granted, as a matter of course. It is in the discretion of the Court to refuse or grant it according to the facts and circumstances of the case..... the Court might in its discretion decline to grant a quo warranto information where it would be vaxatious to do so, or where an information would be futile in its

results, or where there was an alternative remedy which was equally appropriate and effective."

(9) The leading case on the subject of quo warranto from which many of the statements are derived is *R. v. Speyer : (1916) 1 K.B. 595*. Lord Reading, Chief Justice has observed:- "If the irregularity in the appointment of an office held at pleasure could be cured by immediate reappointment, the Court in the exercise of its discretion would doubtless refuse the information."
Lush, J. expressed the view that the Court would not make an order ousting the holders of public offices from their office if the existing defect, if there is one, could be cured, and they could be reappointed. *Rex v. Stacey*: 99 Engl Rep 938 holds that writ of quo warrant, is not a motion of course and it is in the discretion of the Court to issue it considering the circumstances of the case. *Frederic Guilder Julius v. The Right Rev. The Lord Bishop of Oxford* : *The Rev. Thomas Thellusson Carter*: 5 AC 214 (3) also states that the issue of writ of quo warranto is in the discretion of a Court. The Canadian view as stated in *The King excel Boudret v. Johnston*: (1923) 2 DLR 278 is that the Court has to take into consideration public interest, the consequences to follow the issue of a writ of quo warranto and all the circumstances of the case. These general propositions have been accepted in America as appears from the statements contained in sections 5, 9, 10 and 18 in American Jurisprudence, Second Edition, Volume 65.

(10) The above views and statements indicate and reflect the principles which have guided courts outside our country in issuing writs of quo warranto. There is abundant authority that these principles have been accepted and applied in this country. *University of Mysore and another v. C. D. Govinda Rao and another*: [1964] 4 SCR 575 affirms some of these principles. One is that a writ of quo warranto is a writ of technical nature. The following statement in Halsbury's Laws of England, Third Edition, Volume Ii, page 145 is quoted with approval :- "An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to inquire by what authority he supported his claim, in order that the right to the office or franchise might be determined." It is then stated:- "Broadly stated, the quo warranto proceeding affords a judicial remedy by which any

person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the judiciary a weapon to control the Executive from making appointments to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office, who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to the enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not."

(11) The other cases cited hereafter affirm and apply some other principles.

(12) Now, one of the main heads in the contention of the Attorney General, as is pointed out later, is based on *R v. Speyer* (supra) and it is that a writ of quo warranto will not issue if it is found that the issuance of such a writ will be futile where the alleged usurper could be immediately re-appointed to the very post. It is contended on behalf of the petitioners that this principle has not been accepted in this country, that the limitations mentioned for the issue of a writ of quo warranto are not applicable here and that the scope of quo warranto as also of other writs which can be issued by the High Courts and the Supreme Court is wider in view of the words "in the nature of" appearing in Articles 32 and 226 of the Constitution. These words do not justify the argument because these very words preface the words "a Quo Warranto" as is apparent from para 273 at page 145 of Halsbury's Laws of England, Third Edition, Volume II. Certain cases have been cited to support this proposition. I do not think any of them supports it. The first case is Statesman (Private) Ltd. v. H. R. Dev and others:[1968]3SCR614 . The question in this case was whether a Sub-Deputy Collector vested with magisterial powers could be said to have held a

judicial office within the meaning of section 7(3)(d) of the Industrial Disputes Act, 1947 so as to make him eligible for appointment as the Presiding Officer of a Labour Court. The case started by way of a writ of certiorari under Article 226 of the Constitution against the order of the Presiding Officer. It was held that a Magistrate holds a judicial office. Sub-section (1) of section 9 of the Act conferred finality to orders Constituting Boards etc. It was in the context of this section that a passing observation was made by the Supreme Court that "although the provisions of s. 9 cannot shut out an inquiry (if there is a clear usurpation) for purposes of a writ of quo warranto but at least in an unclear case the intent of the legislature is entitled to great weight ..... The High Court in a quo warranto proceeding should be slow to pronounce upon the matter unless there is a clear infringement of the law." In effect, these observations are no different than those in *University of Mysore and another v. C. D. Govinda Rao and another, (supra)*. It was further observed that it may be open in a quo warranto proceeding to challenge the appointment of persons employed on multifarious duties and in addition performing some judicial functions on the ground that they do not hold essentially a judicial office because they primarily perform other functions. This case is not relevant to the argument of the wider scope of writs issuable under Articles 226 of the Constitution. It was a case to which the principle "could be re-appointed" would not apply. In *Mrs. Priti Prabha Goel v. Dr. C. P. Singh and others: (1969) 2 Lab Indu Cas 913* the appointment of the respondent as Professor in the University of Jodhpur was challenged on the ground that such an appointment could be made by the Syndicate only on the recommendation of the selection committee and in the absence of such recommendation, the Syndicate is incompetent and has no power to appoint any one as a teacher in the University. It was held by the Rajasthan High Court that there is a public policy behind the salutary provision of selection committee prescribed in the Statutes and as the University is a State under Article 12 of the Constitution, every citizen has a right to be considered for these posts if he is duly qualified as otherwise there will be violation of Article 16 of the Constitution. No argument of futility of the writ was advanced in this case because it was irrelevant. In *M. S. Mahadeokar v. The Chief Commissioner, Union Territory, Chandigarh and others: (1973) 1 SLR 1042* the appointment of two of the

respondents was challenged by a writ of quo warranto. One of the respondents did not fulfill the qualifications under the service rules and was not eligible for the posts while the other was junior to the petitioner. A contention was raised by the respondents that a writ of quo warranto cannot be issued if the defect can be remedied by the authority who committed the mistake by amending the rules with retrospective effect. The principle of "could be reappointed" is entirely different. It does not contemplate a change in the existing law. It proceeds on the basis that there is no legal impediment to a re-appointment according to the law as it stands. A possibility of change in the law with retrospective effect, as suggesed in this case, would not come within the principle of futility of the writ. By reason of lacking in qualifications or being junior, there was an existing legal impediment to re-appointment. The next case relied upon is Prabhudutt Sharma v. State of Rajasthan and others: 1971 Lab Indu Cas 556. This case, rather than support the petitioners, goes against their contention. It is clearly stated that the conditions for the issue of a writ of quo warranto are similar to those for laying an information in the nature of a quo warranto in England. Then it specifies the four requisites for a writ of quo warranto namely, (1) the office must be held under the State or have been created by a statute, (2) it should be an office of a substantive character, (3) its duties must be of a public nature and (4) it should have been usurped by some person. Then it proceeds to state what is more important that even when these requirements are fulfilled, it is in the discretion of the Court to refuse or grant the writ after taking into consideration the circumstances of the case and the consequences which would follow if it is allowed and that it should be in the public interest to grant the writ. These are some of the limitations which obtained in England as to a writ of quo warranto. In fact, this case refers to and relies on R v. Speyer (supra) and the statements made in paragraph 281, Volume Ii in the Third Edition of Halsbury's Laws of England which have been already quoted. In this case it was alleged that the appointments of two of the respondents were in violation of the statute as they were ineligible for appointment as they did not posses the necessary qualifications. The Rajasthan High Court found as a fact that the two holders of the office lacked the essential qualifications and were not eligible for appointment. If the holder of a public office is ineligible for appointment to that office and remains ineligible

up to the date of the hearing of the writ petition, he is undoubtedly a usurper and the application of the principle of futility of writ by re-appointment or of in the circumstances of the case or of the discretion of the Court would not arise. It is, Therefore not, possible to see how this case advances the contention of the petitioners that the scope of a writ of quo warranto in India is wider than that in England. In fact, in Hari Shankar Prasad Gupta v. Sukhdeo Prasad and another : Air 3954 All 227 R v. Speyer (supra) was referred and the principle of futility of issue of a writ of quo warranto was applied. The writ of quo warranto was refused as the holder of the office though not qualified on the date of his appointment thereto acquired the necessary qualification during the pendency of the petition. With respect, I agree with this view rather than with the view expressed in Govinda Panicker v. K. Balakrishna Marar and another : Air 1955 TC 42. If the view of the Travancore-Cochin High Court is to be accepted, it will mean that the principle "could be re-appointed" does not apply. In my view it does. In Narayan Keshav Dandekar v. R. C. Rathi and another: AIR1963MP17 . Apart from holding that the appointment was in violation of the provisions of a statute, it was held that the appointment had been made contrary to Article 16 of the Constitution as before making the appointment, the post was not regularly advertised nor were any applications invited from persons qualified to hold the post. No argument of futility was addressed in this case possibly because the appointment was held to be in violation of Article 16 of the Constitution thereby depriving other person from applying for the post. This case can, Therefore, be no authority for the proposition now being considered. In Puranlal Lakhanpal v. Dr. P. C. Ghosh and others: AIR1970Cal118 the question was whether a writ of quo warranto should issue to a person who had resigned from his office. I do not at all see the relevancy of this case to the contention being discussed now. None of these cases, Therefore, supports the argument that scope of Articles 32 and 226 is wider in so far as the writ of quo warranto is concerned.

(13) On the other hand, in Janardan Reddy and others v. The State of Hyderabad and others: 1951 Supreme Court Reports 344 (14) it has been observed that the power given to it under Part Iii of the Constitution is not wider than it is in England and courts in this with well established principles. In

> T. C. Basappa v. T. Nagappa and another: [1955]1SCR250 the same principle has been repeated but it has been clarified that the procedural technicalities of the English law do not apply. These cases help me to re-affirm the view that the scope of the power of the High Court to issue a writ of quo warranto under Article 226 of the Constitution is not wider than it is in England and courts in this country have followed the principles including the limitations which have been well established in England. In fact, in University of Mysore and another v. C. D. Govinda Rao and another (supra), the Supreme Court has observed that a writ of quo warranto is a writ of technical nature and has approved the statements made in Halsbury's Laws of England in that behalf."

43. Added further, it is also worthwhile to consider few other decisions on writ of quo warranto:

(i) In **N. Kannadasan and Ors. v. Ajoy Khose and Ors.** reported in (2009) 7 SCC 1, the Hon'ble Supreme Court observed thus:

> "148. Concedingly, judicial review for the purpose of issuance of writ of Quo Warranto in a case of this nature would lie:
>
> (A) in the event the holder of a public office was not eligible for appointment ;
>
> (B) Processual machinery relating to consultation was not fully complied.
>
> 149. The writ of quo warranto proceedings affords a judicial remedy by which any person who holds an independent substantive public office is called upon to show by what right he holds the same so that his title to it may be duly determined and in the event it is found that the holder has no title he would be directed to be removed from the said office by a judicial order. The proceedings not only give a weapon to control the executive from making appointments to public office against law but also tend to protect the public from being deprived of public office to which it has a right.
>
> 150. It is indisputably a high prerogative writ which was reserved for the use of Crown.

151. The width and ambit of the writ, however, in the course of practice, have widened and it is permissible to pray for issuance of a writ in the nature of quo warranto.
152. In Corpus Juris Secundum [74 C.J.S. Quo Warranto § 14], `Quo Warranto' is defined as under:

Quo warranto, or a proceeding in the nature thereof, is a proper and appropriate remedy to test the right or title to an office, and to remove or oust an incumbent.

It is prosecuted by the State against a person who unlawfully usurps, intrudes, or holds a public office. The relator must establish that the office is being unlawfully held and exercised by respondent, and that realtor is entitled to the office.

153. In the Law Lexicon by J.J.S. Wharton, Esq., 1987, `Quo Warranto' has been defined as under:
QUO WARRANTO, a writ issuable out of the Queen's Bench, in the nature of a writ of right, for the Crown, against him who claims or usurps any office, franchise, or liberty, to enquire by what authority he supports his claim, in order to determine the right. It lies also in case of non-user, or long neglect of a franchise, or mis-user or abuse of it; being a writ commanding the defendant to show by what warrant he exercises such a franchise having never had any grant of it, or having forfeited it be neglect or abuse.

154. Indisputably a writ of Quo Warranto can be issued inter alia when the appointment is contrary to the statutory rules as has been held by this Court in High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat, (supra) and R.K. Jain v. Union of India and Ors. (1993) 4 SCC 119. See also Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy. [2002] SUPP 1 SCR 87 .

155. In Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors. (1998)IILLJ1013SC, this Court has stated that it is not for the court to embark upon an investigation of its own to ascertain the qualifications of the person concerned. [See also Arun Singh alias Arun Kr. Singh v. State of Bihar and Ors. AIR 2006 SC 1413]

156. We may furthermore notice that while examining if a person holds a public office under valid authority or not, the

> court is not concerned with technical grounds of delay or motive behind the challenge, since it is necessary to prevent continuance of usurpation of office or perpetuation of an illegality. [See Dr. Kashinath G. Jalmi and Anr. v. The Speaker and Ors. [1993] 2 SCR 820].
>
> 157. Issuance of a writ of quo warranto is a discretionary remedy. Authority of a person to hold a high public office can be questioned inter alia in the event an appointment is violative of any statutory provisions.
>
> 163. It was held that a Writ of Quo Warranto can be issued even when the President or the Governor had appointed a person to a constitutional office. It was furthermore held that the qualification of that person to hold that office can be examined in a quo warranto proceedings and the appointment can be quashed."

(iii) In **Renu and Ors. v. District and Sessions Judge, Tis Hazari and Ors.** reported in (2014) 14 SCC 50, the Hon'ble Supreme Court held as follows:

> "15. Where any such appointments are made, they can be challenged in the court of law. The quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the Judiciary a weapon to control the Executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo

warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it. (Vide: The University of Mysore and Anr. v. C.D. Govinda Rao and Anr. AIR 1965 SC 491; Shri Kumar Padma Prasad v. Union of India and Ors. AIR 1992 SC 1213; B.R. Kapur v. State of Tamil Nadu and Anr. AIR 2001 SC 3435; The Mor Modern Co-operative Transport Society Ltd. v. Financial Commissioner and Secretary to Govt., Haryana and Anr. AIR 2002 SC 2513; Arun Singh v. State of Bihar and Ors. AIR 2006 SC 1413; Hari Bansh Lal v. Sahodar Prasad Mahto and Ors. AIR 2010 SC 3515; and Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and Ors. (2014) 1 SCC 161)."

(iii) In **Premkumar T.R. v. Mahatma Gandhi University and Ors.** Reported in ILR 2018(1) Kerala 993, this Court held thus:

"27. Well established is the legal proposition that a writ of quo warranto lies when the appointment is made contrary to the statutory provisions. True, the University and Dr. Sebastian, too, have questioned Premkumar's locus standi to file the writ petition. Dr. Sebastian has, in fact, alleged that Premkumar was fielded by persons unhappy with his appointment as the Vice Chancellor. But this objection to the suitor's standing in a writ of quo warranto cannot detain us for long. Legion are the judicial precedents.

28. If we examine this prerogative writ--quo warranto--from the judicial perspective of England, the place of its origin, the writ's primary object is to shield the sovereignty of the Crown from invasion, and to prevent abuse of public office, by a usurper or intruder. So every subject is deemed to be interested and may institute quo warranto proceedings. [Halsbury's Laws of England (4th Edn.) Vol. 1, paras 179-80, as quoted in V.G. Ramachandran's Law of Writs, EBC (2006), p. 1355]

29. In India, too, any person may challenge the validity of an appointment to a public office, whether or not that person's fundamental or other legal right has been infringed. But the Court must be satisfied that the person so applying is bona fide, and there is a necessity in public interest to declare judicially that there is a usurpation of public office. [Id., 1355] Indisputably, a writ of quo warranto questioning a usurper's occupying public office, according to the Supreme Court, can be maintained even by a busybody (N. Kannadasan v. Ajoy

Khose 2009 KHC 4424 : 2009 (2) KLT SN 70 : (2009) 7 SCC 1 : 2009 (8) SCALE 351).

30. A citizen can claim a writ of quo warranto, for he stands in the position of a relater. He need not have any special or personal interest. The real test is to see whether the person holding the office is authorised to hold the same under law. Delay and laches, according to the Supreme Court in Rajesh Awasthi v. Nand Lal Jaiswal 2012 KHC 4631 : 2012 (4) KLT SN 94 : AIR 2013 SC 78 : (2013) 1 SCC 501 : (2013) 1 SCC (Cri) 521 : 2013 (1)(L & S) 192, constitute no impediment for the Court to deal with the lis on merits.

31. In Central Electricity Supply Utility of Odisha v. Dhobei Sahoo 2013 KHC 4873 : 2013 (4) KHC SN 31 : 2013 (13) SCALE 477 : AIR 2014 SC 246 : (2014) 1 SCC 161 : 2014(1) KLT SN 58 the Supreme Court has pointed out that the concept of locus standi, which strictly applies to service jurisprudence, should have no entry, for such allowance is likely to exceed the limits of Quo Warranto. The basic purpose of a Writ of Quo Warranto, it was pointed out, is to confer jurisdiction on the Constitutional Courts to see that the public office is not held by a usurper, a person with no legal authority.

(iv) In **Bharati Reddy v. The State of Karnataka and Ors**. reported in 2018(6) SCC 162 the Hon'ble Supreme Court held as follows:

"26. In **K. Venkatachalam v. A. Swamickan** AIR 1999 SC 1723 : (1999) 4 SCC 526, the challenge was to the election of the Appellant to the Legislative Assembly in Tamil Nadu by way of a writ Under Article 226 of the Constitution filed by the contesting candidate (Respondent therein) for a declaration that the Appellant was not qualified to be a Member of Tamil Nadu Legislative Assembly, since he was not enrolled as an elector in the electoral roll in the concerned constituency for the general elections in question. The Court analysed the factual matrix which pointed out that, admittedly, the incumbent was not an elector of the concerned constituency and that he blatantly and fraudulently impersonated himself as another elector in the constituency. Accepting that indisputable position, the Court proceeded to conclude that the Appellant was not eligible to contest elections from the concerned constituency, not being a voter in that constituency. It thus held that the Appellant therein lacked the basic qualification under Clause (c) of Article 173 of the Constitution

of India read with Section 5 of the 1951 Act, which was quintessential to be elected from the constituency. On such finding, the Court entertained the writ petition Under Article 226 and declared the Appellant to be occupying the public office without legal authority and issued a writ of quo warranto. In other words, the matter was decided on the basis of indisputable and established facts. This judgment will be of no avail to the writ Petitioners in the present case, so long as the Income and Caste Certificate issued to the Appellant is in force.

27. In **Kurapati Maria Das v. Ambedkar Seva Samajan** (2009) 7 SCC 387 the Court distinguished the decision in K. Venkatachalam (supra) being on the facts of that case and reversed the judgment of the High Court under challenge, whereby a writ of quo warranto was issued against the Appellant therein. The reason for doing so may have some bearing on the matter in issue as in that case, there was dispute about the caste status of the Appellant. The Court opined that the issue regarding the caste status can be decided only by the Competent Authority under the relevant enactment and not by the High Court. The Court accepted the contention of the Appellant that continuance of the post of Chairperson depended directly on his election, firstly, as a ward member and secondly as the Chairperson, which election was available only to the person belonging to the Scheduled Caste. In paragraph 32 of the reported decision, the Court while accepting the contention of the Appellant noted that the question of caste and his election are so inextricably connected that they cannot be separated and therefore, when the writ Petitioners challenged the continuation of the Appellant on the ground of his not belonging to a particular caste what they actually challenged was the validity of the election of Appellant though, apparently, the petition was for a writ of quo warranto.

(v) In **Mahesh Chandra Gupta v. Union of India,** (2014) 1 SCC 161

Hon'ble Supreme Court in Para No. 26 held as follows:-

"26. ..... writ of quo warranto can be issued only when person holding public office lacks eligibility or when appointment is contrary to statutory rules and held as under in paragraph 21:-

> "21. From the aforesaid exposition of law it is clear as noonday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority."

44. Decisions relied by the learned Senior Government Pleader, in order to contend that PIL instituted by the petitioner is not maintainable, are **Gurpal Singh**'s case (cited supra), **Manohar Lal Sharma**'s case (cited supra) and **Mythri Residents Association v. Secretary, Tripunithura Municipality and Others**, [2019 KHC 832]. In **Mythiri Residents Association'** case (cited supra), this Court considered a catena of judgments on Public Interest Litigation, which are extracted hereunder:

(i) In **S.P.Anand v. H.D.Deve Gowda** reported in (1996) 6 SCC 734, the Hon'ble Supreme Court, at Paragraph 18, held as follows:

> "It is of utmost importance that those who invoke this Court's jurisdiction seeking a waiver of the locus standi rule must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed. Such a litigant must not succumb to spasmodic sentiments and behave like a knight-errant roaming at will in pursuit of issues providing publicity. He must remember that as a person seeking to espouse a public cause, he owes it to the public as well as to the court that he does not rush to court without undertaking a research, even if

he is qualified or competent to raise the issue. Besides, it must be remembered that a good cause can be lost if petitions are filed on half-baked information without proper research or by persons who are not qualified and competent to raise such issues as the rejection of such a petition may affect third party rights. Lastly, it must also be borne in mind that no one has a right to the waiver of the locus standi rule and the court should permit it only when it is satisfied that the carriage of proceedings is in the competent hands of a person who is genuinely concerned in public interest and is not moved by other extraneous considerations. So also the court must be careful to ensure that the process of the Court is not sought to be abused by a person who desires to persist with his point of view, almost carrying it to the point of obstinacy, by filling a series of petitions refusing to accept the Court's earlier decisions as concluding the point. We say this because when we drew the attention of the petitioner to earlier decisions of this Court, he brushed them aside, without so much as showing willingness to deal with them and without giving them a second look, as having become stale and irrelevant by passage of time and challenged their correctness on the specious plea that they needed reconsideration. Except for saying that they needed reconsideration he had no answer to the correctness of the decisions. Such a casual approach to considered decisions of this Court even by a person well-versed in law would not be countenanced. Instead, as pointed out earlier, he referred to decisions having no bearing on the question, like the decisions on cow slaughter cases, freedom of speech and expresssion, uniform civil code, etc., we need say no more except to point out that indiscriminate of this important lever of public interest litigation would blunt the lever itself."

(ii) In **Narmada Bachao Andolan v. Union of India and Others**, [(2000) 10 SCC 664], the Hon'ble Apex Court observed as follows:-

"232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the Court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The Court has come down heavily whenever the executive has sought to impinge upon the Court's jurisdiction.

233. At the same time, in exercise of its enormous power, the Court should not be called upon to or undertake governmental duties or functions. The Courts cannot run the

> Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under values of the Constitution and the rights of Indians. The Courts must therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the Court itself is not above the law."

(iii) In **Balco Employees' Union (Regd.) v. Union of India** reported in (2002) 2 SCC 333, the Hon'ble Supreme Court, held that,

> "Public interest litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is primarily the judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversial in nature and was to be a cooperative and collaborative effort of the parties and the court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz. "litigation in the interest of the public....
>
> 97. Judicial interference by way of PIL is available if there is injury to public because of dereliction of constitutional or statutory obligations on the part of the Government. Here it is not so and in the sphere of economic policy or reform the court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of constitutional or statutory provisions or non-compliance by the State with its constitutional or statutory duties. None of these contingencies arise in this present case."

(iv) In **Guruvayoor Devaswom Managing Committee and Another v. C.K.Rajan and others,** reported in (2003) 7 SCC 546**,** the Hon'ble Supreme Court observed as follows:

> "41. The courts exercising their power of judicial review found to their dismay that the poorest of the poor, the depraved (sic), the illiterate, the urban and rural unorganized labour sector, women, children, those handicapped by "ignorance, indigence and illiteracy" and other downtrodden persons have either no access to justice or had been denied justice. A new branch of proceedings known as "social action litigation" or "public interest litigation" was evolved with a view to render complete justice to the aforementioned classes of persons. It expanded its wings in course of time. The courts in pro bono publico granted relief to inmates of prisons, provided legal aid, directed speedy trials, maintenance of human dignity and covered several other areas. Representative actions, pro bono publico and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass real issues on merits by suspect reliance on peripheral procedural shortcomings. [See **Mumbai Kamgar Sabha v. Abdulbhai Faizullabhai** (1976) 3 SCC 832)]
>
> 46. But with the passage of time, things started taking different shapes. The process was sometimes abused. Proceedings were initiated in the name of public interest litigation for ventilating private disputes. Some petitions were publicity-oriented.
>
> 50. The principles evolved by this Court in this behalf may be suitably summarized as under:
>
> (i) The Court in exercise of powers under Article 32 and Article 226 of the Constitution of India can entertain a petition filed by any interested person in the welfare of the people who is in a disadvantaged position and, thus, not in a position to knock the doors of the Court.
>
> The Court is constitutionally bound to protect the fundamental rights of such disadvantaged people so as to direct the State to fulfill its constitutional promises. (See **S.P.Gupta v. Union of India** [1981 Supp SCC 87], **People's Union for Democratic Rights v. Union of India** [(1982) 2 SCC 494 : 1982 SCC (L&S) 262], **Bandhua Mukti Morcha v. Union of India** [AIR 1963 SC 1638 : (1964) 1 SCR 561] and **Janata Dal v. H.S. Chowdhary** [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] .)
>
> (ii) Issues of public importance, enforcement of fundamental rights of a large number of the public vis-à-vis the constitutional

duties and functions of the State, if raised, the Court treats a letter or a telegram as a public interest litigation upon relaxing procedural laws as also the law relating to pleadings. (See **Charles Sobraj v. Supdt., Central Jail** [(1978) 4 SCC 104 : 1978 SCC (Cri) 542] and **Hussainara Khatoon (I) v. Home Secy., State of Bihar** [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] .)

(iii) Whenever injustice is meted out to a large number of people, the Court will not hesitate in stepping in. Articles 14 and 21 of the Constitution of India as well as the International Conventions on Human Rights provide for reasonable and fair trial.

(v) In **Ashok Kumar Pandey v. State of W.B.**, reported in (2004) 3 SCC 349, the Hon'ble Apex Court, after considering few decisions, on the aspect of public interest litigation, observed as follows:

"4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". If not properly regulated and abuse averted it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant or poke ones into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in **The Janta Dal v. H.S.Chowdhary** [(1992) 4 SCC 305] and **Kazi Lhendup Dorji v. Central Bureau of Investigation** (1994 Supp (2) SCC 116). A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and

clean objective. See **Ramjas Foundation v. Union of India** (AIR 1993 SC 852) and **K.R.Srinivas v. R.M.Premchand** [(1994) 6 SCC 620].

5. It is necessary to take note of the meaning of expression 'public interest litigation'. In Strouds Judicial Dictionary, Volume 4 (IV Edition), 'Public Interest' is defined thus:

> "Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."

6. In Black's Law Dictionary (Sixth Edition), "public interest" is defined as follows :

> "Public Interest something in which the public, or some interest by which their legal rights or liabilities are affected. It does not mean anything the particular localities, which may be affected by the matters in question. Interest shared by national government...."

7. In ***Janata Dal*** *case* (supra) this Court considered the scope of public interest litigation. In para 52 of the said judgment, after considering what is public interest, has laid down as follows :

> "The expression 'litigation' means a legal action including all proceedings therein initiated in a Court of law for the enforcement of right or seeking a remedy. Therefore, lexically the expression "PIL" means the legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

8. In paras 60, 61 and 62 of the said judgment, it was pointed out as follows:

> "Be that as it may, it is needless to emphasis that the requirement of locus standi of a party to a litigation is mandatory, because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."

9. In para 96 of the said judgment, it has further been pointed out as follows:

> "While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that Courts should not allow its process to be abused by a mere busy body or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."

10. In subsequent paras of the said judgment, it was observed as follows:

> "109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have as locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly a vexatious petition under the colour of PIL, brought before the Court for vindicating any personal grievance, deserves rejection at the threshold".

11. It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, un-represented and unheard; yet we cannot avoid but exp ress our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal

gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they loose faith in the administration of our judicial system.

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

13. The Council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows:

> "Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

14. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of

information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

15. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See **State of Maharastra v. Prabhu** [(1994) 2 SCC 481] and **Andra Pradesh State Financial Corporation v. M/s.GAR Re-Rolling Mills and Another** [AIR 1994 SC 2151]. No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. [See **Buddhi Kota Subbarao (Dr.) v. K.Parasaran**, [(1996) 7 JT 265]. Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in **Dr.Duryodhan Sahu and Ors., v. Jitendra Kumar Mishra and Ors.,** (AIR 1999 SC 114), this Court held that

in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

19. In **State of H.P. v. A Parent of a Student of Medical College, Simla and Ors**. [(1985) 3 SCC 169], it has been said that public interest litigation is a weapon which has to be used with great care and circumspection.

20. Khalid, J. in his separate supplementing judgment in **Sachidanand Pandey v. State of W.B.**, [(1987) 2 SCC 295, 331] said:

"Today public spirited litigants rush to courts to file cases in profusion under this attractive name. They must inspire confidence in courts and among the public. They must be above suspicion. (SCC p. 331, para 46)

* * *

Public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions. (SCC p.334, para 59)

* * *

I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are

always open for anyone to walk in. It is necessary to have some self- imposed restraint on public interest litigants." (SCC p.335, para 61)

21. Sabyasachi Mukharji, J. (as he then was) speaking for the Bench in **Ramsharan Autyanuprasi v. Union of India** (1989 Supp (1) SCC 251), was in full agreement with the view expressed by Khalid, J. in *Sachidanand Pandey's case* (supra) and added that 'public interest litigation' is an instrument of the administration of justice to be used properly in proper cases. [See also separate judgment by Pathak, J. (as he then was) in **Bandhua Mukti Morcha v. Union of India** [(1984) 3 SCC 161].

22. Sarkaria, J. in **Jasbhai Motibhai Desai v. Roshan Kumar** [(1976) 1 SCC 671] expressed his view that the application of the busybody should be rejected at the threshold in the following terms: (SCC p. 683, para 37)

> "It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories : (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold."

23. Krishna Iyer, J. in **Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India** [(1981) 1 SCC 568] in stronger terms stated: (SCC p.589, para 48)

> "48. If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him."

24. In **Chhetriya Pardushan Mukti Sangharash Samiti v. State of U.P.,** [(1990) 4 SCC 449], Sabyasachi Mukharji, C.J. observed: (SCC p.452, para 8)

> "While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental rights being considered by the court."

25. In **Union Carbid Corporation v. Union of India** [(1991) 4 SCC 584, 610], Ranganath Mishra, C.J. in his separate judgment while concurring with the conclusions of the majority judgment has said thus: (SCC p.610, para 21)

> "I am prepared to assume, nay, concede, that public activists should also be permitted to espouse the cause of the poor citizens but there must be a limit set to such activity and nothing perhaps should be done which would affect the dignity of the Court and bring down the serviceability of the institution to the people at large. Those who are acquainted with jurisprudence and enjoy social privilege as men educated in law owe an obligation to the community of educating it properly and allowing the judicial process to continue unsoiled."

26. In **Subhash Kumar v. State of Bihar**, [(1991) 1 SCC 598] it was observed as follows:

> "Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the court, preventing speedy remedy to other genuine petitioners from this Court. Personal interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the

> vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is the duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation".
>
> 27. In the words of Bhagwati, J. (as he then was) "the courts must be careful in entertaining public interest litigations" or in the words of Sarkaria, J. "the applications of the busybodies should be rejected at the threshold itself" and as Krishna Iyer, J. has pointed out, "the doors of the courts should not be ajar for such vexatious litigants"."

(vi) In **Dr.B.Singh v. Union of India**, reported in (2004) 3 SCC 363, the Hon'ble Supreme Court held as follows:

> "Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, courts must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

(vii) On the aspect of a Public Interest Litigation purely based on newspaper report, in **Vikas Vashishth v. Allahabad High Court**

reported in (2004) 13 SCC 485, the Hon'ble Supreme Court held as follows:

> "At the very outset, we put it to the petitioner that a bare perusal of the petition shows that it is based entirely on newspaper reports and asked him whether before filing the petition he has taken care to verify the facts personally. His answer is in the negative. In the writ petition all the 21 High Courts have been included as respondents and Union of India has also been impleaded as the 22nd respondent. We asked the petitioner what has provoked him to implead all the High Courts as respondents and he states that it is his apprehension that similar incidents may occur in other High Courts though there is no factual foundation for such appreciation.
>
> 5. After affording the full opportunity of hearing, we are satisfied that what purports to have been filed as a public interest litigation is nothing more than a "publicity interest litigation". It is writ large that it has been filed without any effort at verifying the facts by the petitioner personally."

(viii) In **R & M.Trust v. Koramangala Residents Vigilance Group** [(2005) 3 SCC 91], the Hon'ble Apex Court, at paragraphs 23 and 24, observed as follows:

> "23. Next question is whether such Public Interest Litigation should at all be entertained & laches thereon. This sacrosanct jurisdiction of Public Interest Litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends.
>
> 24. Public Interest Litigation is no doubt a very useful handle for redressing the grievances of the people but unfortunately lately it has been abused by some interested persons and it has brought very bad name. Courts should be very very slow in entertaining petitions involving public interest in a very rare cases where public at large stand to suffer. This jurisdiction is meant for the purpose of coming to the rescue of the down trodden and not for the purpose of serving private ends. It has now become common for unscrupulous people to serve their private ends and jeopardize the rights of innocent people so as to wreak vengeance for their personal ends. This has become very handy to the developers and in matters of public contracts. In order to serve their professional rivalry they utilize the service of the innocent people or organization in filing public interest litigation. The Courts are sometimes persuaded to

issue certain directions without understanding implication and giving a handle in the hands of the authorities to misuse it. Therefore, the courts should not exercise this jurisdiction lightly but should exercise in a very rare and few cases involving public interest of large number of people who cannot afford litigation and are made to suffer at the hands of the authorities."

(ix) In **Gurpal Singh v. State of Punjab** reported in (2005) 5 SCC 136, the Hon'ble Supreme Court, while considering the scope of a petition styled as a public interest litigation, held as follows:

"5. The scope of entertaining a petition styled as a public interest litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this court in various cases. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

6. .....

7. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, High Courts are entertaining such petitions and wasting valuable judicial time which, as noted

above, could be otherwise utilized for disposal of genuine cases. Though in ***Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors.*** (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

8. .....

9. It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and substantial rights and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except for personal gain or private profit either of

themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to loose but trying to gain for nothing and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants.

10. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

(x) In **Rohit Pandey v. Union of India** reported in (2005) 13 SCC 702, Hon'ble Apex Court held as follows:

"1. This petition purporting to be in public interest has been filed by a member of the legal fraternity seeking directions against the respondents to hand over the investigation of the case pertaining to recovery of light machine gun, which is said to have been stolen from the army according to reports published in two newspapers, to the Central Bureau of Investigation for fair investigation to ensure that the real culprits who are behind such theft of army arms and ammunition endangering the integrity and sovereignty of the country may be brought to book and action may

be taken against them in accordance with law. The only basis for the petitioner coming to this Court are two newspaper reports dated 25-1-2004, and the other dated 12-2-2004. This petition was immediately filed on 16-2-2004 after the aforesaid second newspaper report appeared. On enquiry from the learned counsel, we have learnt that the petitioner is a young advocate having been in practice for a year or two. The Union of India, the State of Uttar Pradesh and the Chief Minister of the State of Uttar Pradesh, have been arrayed as party respondents. In the newspaper reports, there is no allegation either against the Union of India or against the Chief Minister.

2. We expect that when such a petition is filed in public interest and particularly by a member of the legal profession, it would be filed with all seriousness and after doing the necessary homework and enquiry. If the petitioner is so public-spirited at such a young age as is so professed, the least one would expect is that an enquiry would be made from the authorities concerned as to the nature of investigation which may be going on before filing a petition that the investigation be conducted by the Central Bureau of Investigation. Admittedly, no such measures were taken by the petitioner. There is nothing in the petition as to what, in fact, prompted the petitioner to approach this Court within two-three days of the second publication dated 12-2- 2004, in the newspaper Amar Ujala. Further, the State of Uttar Pradesh had filed its affidavit a year earlier i.e. on 7-10-2004, placing on record the steps taken against the accused persons, including the submission of the charge-sheet before the appropriate court. Despite one year having elapsed after the filing of the affidavit by the Special Secretary to the Home Department of the Government of Uttar Pradesh, nothing seems to have been done by the petitioner. The petitioner has not even controverted what is stated in the affidavit. Ordinarily, we would have dismissed such a misconceived petition with exemplary costs but considering that the petitioner is a young advocate, we feel that the ends of justice would be met and the necessary message conveyed if a token cost of rupees one thousand is imposed on the petitioner."

(xi) In **DIVISIONAL MANAGER, ARAVALI GOLF CLUB AND ANOTHER** (2008) 1 SCC 683, in paragraphs 17, 19, 20 and 22, the Hon'ble Supreme Court held thus:-

"17. Before parting with this case, we would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are

repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative functions. In our opinion this is clearly unconstitutional. In the name of judicial activism judges cannot cross their limits and try to take over functions which belong to another organ of the State.

19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily, it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State – the legislature, the executive and the judiciary – must have respect for the other and must not encroach into each other's domains.

22. In *Tata Cellular v. Union of India* (vide AIR para 113 : SCC para 94), this Court observed that the modern trend points to judicial restraint in administrative action. The same view has been taken in a large number of other decisions also, but it is unfortunate that many Courts are not following these decisions and are trying to perform legislative or executive functions. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimisation of the Judges' preferences. The Court must not embarrass the administrative authorities and must realise that administrative authorities have expertise in the filed of administration while the Court does not. In the words of Neely VJ (Scc p.681, para 82).

> "82.... I have very few illusions about my own limitations as a Judge ... I am not an accountant, electrical engineer, financier, banker, expect Judges intelligently to review a 5000 page record addressing the intricacies of a public utility operation." It is not the function of a Judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator."

> It is not the function of a Judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator."

(xii) In **Common Cause (A Regd. Society) v. Union of India** reported in (2008) 5 SCC 511, Hon'ble Mr. Justice Markandey Katju (as he then

was), held as follows:

> "40.The justification given for judicial activism is that the executive and legislature have failed in performing their functions. Even if this allegations is true, does it justify the judiciary in taking over the functions of the legislature or executive? In our opinion it does not: firstly, because that would be in violation of the high constitutional principle of separation of powers between the three organs of the State, and secondly, because the judiciary has neither the expertise nor the resources for this. If the legislature or executive are not functioning properly it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfill their expectations, or by other lawful means e.g., peaceful demonstrations and agitations, but the remedy is surely not by the judiciary in taking over the functions of the other organs."
>
> .....
>
> "59. Unfortunately, the truth is that PILs are being entertained by many courts as a routine and the result is that the dockets of most of the superior courts are flooded with PILs, most of which are frivolous or for which the judiciary has no remedy. As stated in *Dattaraj Nathuji Thaware v. State of Maharastra* reported in AIR 2005 SC 540, public interest litigation has nowadays largely become 'publicity interest litigation', 'private interest litigation', or 'politics interest litigation' or the latest trend 'paise income litigation'. Much of P.I.L. is really blackmail.
>
> 60. Thus, Public Interest Litigation which was initially created as a useful judicial tool to help the poor and weaker section of society who could not afford to come to courts, has, in course of time, largely developed into an uncontrollable Frankenstein and a nuisance which is threatening to choke the dockets of the superior courts obstructing the hearing of the genuine and regular cases which have been waiting to be taken up for years together."

In the same judgment, concurring with the view of his Brother Judge, Hon'ble Mr. Justice H.K.Sema (as he then was), further added, as follows:

> "69. Therefore, whether to entertain the petition in the form of Public Interest Litigation either represented by public-spirited person; or private interest litigation in the guise of public interest litigation; or publicity interest litigation; or

political interest litigation is to be examined in the facts and circumstances recited in the petition itself. I am also of the view that if there is a buffer zone unoccupied by the legislature or executive which is detrimental to the public interest, judiciary must occupy the field to subserve public interest. Therefore, each case has to be examined on its own facts."

(xiii) In **Villianur Iyarkkai Padukappu Maiyam v. Union of India**, reported in (2009) 7 SCC 561, the Hon'ble Apex Court held thus:

> "168. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.
>
> 169. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily notamenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.
>
> 170. Normally, there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or against public interest because there are large number of considerations, which necessarily weigh with the Government in taking an action."

(xiv) In **State of Uttranchal v. Balwant Singh Chaufal**, reported in (2010) 3 SCC 402, the Hon'ble Apex court held as follows:

"(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

(xv) In **Adarsh Shiksha Mahavidyalaya v. Subhash Rahangdale** reported in 2012 (2) SCC 425, the Hon'ble Supreme Court observed thus:

"57. In the light of the above, we shall first consider whether the High Court committed an error by entertaining the writ petition filed by Subhash Rahangdale as public interest litigation. This Court has, time and again, laid down guiding principles for entertaining petitions filed in public interest. However, for the purpose of deciding the appellants' objection it is not necessary to advert to the plethora of precedents on the

subject because in State of Uttaranchal v. Balwant Singh Chaufal (2010) 3 SCC 402, a two-Judge Bench discussed the development of law relating to public interest litigation and reiterated that before entertaining such petitions, the Court must feel satisfied that the petitioner has genuinely come forward to espouse public cause and his litigious venture is not guided by any ulterior motive or is not a publicity gimmick.

58. In paragraphs 96 to 104, the Bench discussed Phase-III of the public interest litigation in the context of transparency and probity in governance, referred to the judgments in *Vineet Narain v. Union of India* (1998) 1 SCC 226, *Centre for Public Interest Litigation v. Union of India* (2003) 7 SCC 532, *Rajiv Ranjan Singh "Lalan" (VIII) v. Union of India* (2006) 6 SCC 613, *M.C. Mehta v. Union of Union of India* (2008) 1 SCC 407 and observed:

> "These are some of the cases where the Supreme Court and the High Courts broadened the scope of public interest litigation and also entertained petitions to ensure that in governance of the State, there is transparency and no extraneous considerations are taken into consideration except the public interest. These cases regarding probity in governance or corruption in public life dealt with by the courts can be placed in the third phase of public interest litigation."

59. Reference also deserves to be made to the judgment of the three Judge Bench in **Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi** (1987) 1 SCC 227 in which a new dimension was given to the power of the Superior Courts to make investigation into the issues of public importance even though the petitioner may have moved the Court for vindication of a private interest. In that case the High Court had entertained a writ petition filed by Assistant Medical Officer of K.E.M. Hospital, Bombay questioning the assessment of answer sheets of the Post Graduate Medical Examinations held by the Bombay University in October 1985. He alleged malpractices in the evaluation of the answer sheets of the daughter of the appellant who, at the relevant time, was Chief Minister of the State. The learned Single Judge held that altering and tampering of the grade sheets was done by Dr. Rawal at the behest of the Chief Minister. The Division Bench affirmed the order of the learned Single Judge with some modification.

60. While rejecting the objection raised on behalf of the appellant that the writ petition filed by the respondent cannot be treated as a petition filed in public interest, this

Court observed:

> "The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the Court, it was the duty of the Court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an enquiry cannot be avoided if it is necessary and essential for the administration of justice."
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> (emphasis supplied)

(xvi) The Hon'ble Supreme Court in **Kishore Samrite v. State of Uttar Pradesh** reported in (2013) 2 SCC 398, once again laid down the principles governing obligations of the litigants while approaching the Court and the consequences for abuse of process of law while filing the Public Interest Litigation.

(xvii) In **Ayaaubkhan Noorkhan Pathan v. State of Maharashtra and others** reported in (2013) 4 SCC 465, the Hon'ble Supreme Court held that in a public interest litigation, the Court must ensure that there is an element of genuine public interest is involved.

(xviii) In **State of Jaipur Shahar Hindu Vikas Samiti v. State of Rajasthan and Others**, reported in (2014) 5 SCC 530, the Hon'ble Supreme Court held as follows:

> 47. The scope of public interest litigation is very limited, particularly, in the matter of religious institutions. It is always better not to entertain this type of public interest litigations simply on the basis of affidavits of the parties. The public trusts and religious institutions are governed by particular legislation which provide for a proper mechanism for adjudication of disputes relating to the properties of the trust and the

management thereof. It is not proper for the court to entertain such litigation and pass orders. It is also needless to mention that the forums cannot be misused by the rival groups in the guise of public interest litigation.

48. We feel that it is apt to quote the views expressed by this Court in *Guruvayoor Devaswom Managing Committee* [(2003) 7 SCC 546] wherein this Court observed: (SCC pp. 574-75 & 578, paras 60, 64 & 76)

> "60. It is possible to contend that the Hindus in general and the devotees visiting the temple in particular are interested in proper management of the temple at the hands of the statutory functionaries. That may be so but the Act is a self-contained code. Duties and functions are prescribed in the Act and the Rules framed thereunder. Forums have been created thereunder for ventilation of the grievances of the affected persons. Ordinarily, therefore, such forums should be moved at the first instance. The State should be asked to look into the grievances of the aggrieved devotees, both as parens patriae as also in discharge of its statutory duties.
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> ***
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> 64. The Court should be circumspect in entertaining such public interest litigation for another reason. There may be dispute amongst the devotees as to what practices in should be followed by the temple authorities. There may be dispute as regards the rites and rituals to be performed in the temple or omission thereof. Any decision in favour of one sector of the people may hurt the sentiments of the other. The courts normally, thus, at the first instance would not enter into such disputed arena, particularly, when by reason thereof the fundamental right of a group of devotees under Articles 25 and 26 may be infringed. Like any other wing of the State, the courts also while passing an order should ensure that the fundamental rights of a group of citizens under Articles 25 and 26 are not infringed. Such care and caution on the part of the High Court would be a welcome step.
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> ***
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> 76. When the administration of the temple is within its control and it exercises the said power in terms of a statute, the State, it is expected, normally would itself

> probe into the alleged irregularities. If the State through its machinery as provided for in one Act can arrive at the requisite finding of fact for the purpose of remedying the defects, it may not find it necessary to take recourse to the remedies provided for in another statute. It is trite that recourse to a provision to another statute may be resorted to when the State finds that its powers under the Act governing the field are inadequate. The High Courts and the Supreme Court would not ordinarily issue a writ of mandamus directing the State to carry out its statutory functions in a particular manner. Normally, the courts would ask the State to perform its statutory functions, if necessary within a time-frame and undoubtedly, as and when an order is passed by the State in exercise of its power under the statute, it will examine the correctness or legality thereof by way of judicial review."
>
> 49. The concept of public interest litigation is a phenomenon which is evolved to bring justice to the reach of people who are handicapped by ignorance, indigence, illiteracy and other downtrodden people. Through the public interest litigation, the cause of several people who are not able to approach the court is espoused. In the guise of public interest litigation, we are coming across several cases where it is exploited for the benefit of certain individuals. The courts have to be very cautious and careful while entertaining public interest litigation. The judiciary should deal with the misuse of public interest litigation with iron hand. If the public interest litigation is permitted to be misused the very purpose for which it is conceived, namely, to come to the rescue of the poor and downtrodden will be defeated. The courts should discourage the unjustified litigants at the initial stage itself and the person who misuses the forum should be made accountable for it. In the realm of public interest litigation, the courts while protecting the larger public interest involved, should at the same time have to look at the effective way in which the relief can be granted to the people whose rights are adversely affected or are at stake. When their interest can be protected and the controversy or the dispute can be adjudicated by a mechanism created under a particular statute, the parties should be relegated to the appropriate forum instead of entertaining the writ petition filed as public interest litigation."

(xix) In **Tehseen Poonawalla v. Union of India** [(2018) 6 SCC 72], the Hon'ble Supreme Court, at paragraphs 96 to 98, held as follows:

"96. Public interest litigation has developed as a powerful tool to espouse the cause of the marginalised and oppressed. Indeed, that was the foundation on which public interest jurisdiction was judicially recognised in situations such as those in *Bandhua Mukti Morcha v. Union of India [Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : 1984 SCC (L&S) 389]*. Persons who were unable to seek access to the judicial process by reason of their poverty, ignorance or illiteracy are faced with a deprivation of fundamental human rights. Bonded labour and undertrials (among others) belong to that category. The hallmark of a public interest petition is that a citizen may approach the court to ventilate the grievance of a person or class of persons who are unable to pursue their rights. Public interest litigation has been entertained by relaxing the rules of standing. The essential aspect of the procedure is that the person who moves the court has no personal interest in the outcome of the proceedings apart from a general standing as a citizen before the court. This ensures the objectivity of those who pursue the grievance before the court. Environmental jurisprudence has developed around the rubric of public interest petitions. Environmental concerns affect the present generation and the future. Principles such as the polluter pays and the public trust doctrine have evolved during the adjudication of public interest petitions. Over time, public interest litigation has become a powerful instrument to preserve the rule of law and to ensure the accountability of and transparency within structures of governance. Public interest litigation is in that sense a valuable instrument and jurisdictional tool to promote structural due process.

97. Yet over time, it has been realised that this jurisdiction is capable of being and has been brazenly misutilised by persons with a personal agenda. At one end of that spectrum are those cases where public interest petitions are motivated by a desire to seek publicity. At the other end of the spectrum are petitions which have been instituted at the behest of business or political rivals to settle scores behind the facade of a public interest litigation. The true face of the litigant behind the façade is seldom unravelled. These concerns are indeed reflected in the judgment of this Court in State of *Uttaranchal v. Balwant Singh Chaufal [State of Uttaranchal v. Balwant Singh Chaufal, (2010) 3 SCC 402 : (2010) 2 SCC (Cri) 81 : (2010) 1 SCC (L&S) 807]*. Underlining these concerns, this Court held thus: (SCC p. 453, para 143)

"143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and nonmonetary directions by the courts."

98. The misuse of public interest litigation is a serious matter of concern for the judicial process. Both this Court and the High Courts are flooded with litigations and are burdened by arrears. Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine causes. This Court has a long list of pending cases where the personal liberty of citizens is involved. Those who await trial or the resolution of appeals against orders of conviction have a legitimate expectation of early justice. It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda. This has spawned an industry of vested interests in litigation. There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention. Worse still, such petitions pose a grave danger to the credibility of the judicial process. This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law. This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive market for goods and services. Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office. Courts resolve disputes about legal rights and entitlements. Courts protect the rule of law. There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space."

45. Placing reliance on the above decisions, the learned Senior Government Pleader submitted that a public interest writ petition which lacks bona fides, lack of particulars satisfying the requirements of a PIL, deserves to be dismissed with costs. Having regard to decisions considered in **Mythri Residents Association's** case (cited supra), it has been summarised by the journal thus:

> "(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.
>
> (2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.
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> (3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.
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> (4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.
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> (5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.
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> (6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.
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> (7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.
>
> (8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar

novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.

(9) The misuse of public interest litigation is a serious matter of concern for the judicial process.

(10) Both this Court and the High Courts are flooded with litigations and are burdened by arrears.

(11) Frivolous or motivated petitions, ostensibly invoking the public interest detract from the time and attention which courts must devote to genuine causes.

(12) This Court has a long list of pending cases where the personal liberty of citizens is involved.

(13) Those who await trial or the resolution of appeals against orders of conviction have a legitimate expectation of early justice.

(14) It is a travesty of justice for the resources of the legal system to be consumed by an avalanche of misdirected petitions purportedly filed in the public interest which, upon due scrutiny, are found to promote a personal, business or political agenda.

(15) This has spawned an industry of vested interests in litigation.

(16) There is a grave danger that if this state of affairs is allowed to continue, it would seriously denude the efficacy of the judicial system by detracting from the ability of the court to devote its time and resources to cases which legitimately require attention.

(17) Worse still, such petitions pose a grave danger to the credibility of the judicial process.

(18) This has the propensity of endangering the credibility of other institutions and undermining public faith in democracy and the rule of law.

(19) This will happen when the agency of the court is utilised to settle extra-judicial scores. Business rivalries have to be resolved in a competitive market for goods and services.

(20) Political rivalries have to be resolved in the great hall of democracy when the electorate votes its representatives in and out of office.

(21) Courts resolve disputes about legal rights and entitlements.

(22) Courts protect the rule of law.

(23) There is a danger that the judicial process will be reduced to a charade, if disputes beyond the ken of legal parameters occupy the judicial space.

(24) In **Bharat Singh and Others v. State of Haryana and others** reported in AIR 1988 SC 2181, the Hon'ble Apex Court held that party raising the point must plead and annex to the petition not only the facts but also evidence in proof of the facts. When a point which is, ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. Para 13 of the said decision reads as follows:

> "13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter, affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written

> statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us PG NO. 1060 by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit."

46. In the pleadings, on more than one occasion, the petitioner has stated that the Commission has refused to act, and quite contrary to the same, has alleged refusal to act by the Chairperson. As rightly contended by the learned Senior Government Pleader, nowhere in the writ petition, the petitioner has mentioned the qualifications for the office of a member or Chairperson of the Kerala Women's Commission, and whether the 2nd respondent lacks the same. Besides, the provisions make it clear that it is the Commission, which is empowered to act on any complaint regarding unfair practice.

47. The petitioner has not furnished any information to the Commission. The contention that though many complaints were given, the 2nd respondent has not taken action on the same, is not supported with any materials. Writ petition has been filed on newspaper reports. Though the petitioner has contended that he is a social worker, he has not preferred any information to the Commission. Instead, in his representation, he has alleged that the 2nd respondent has not taken any action or refused to act and therefore, he has

submitted the representation.

48. As rightly contended by the learned Senior Government Pleader, if the petitioner has made any representation to the 2nd respondent or furnished information, he can certainly approach the 1st respondent for necessary action. Exhibit-P3 is not a statutory representation. In the light of the decisions considered by this Court, writ petition does not satisfy the parameters for issuance of a writ of *quo warranto*. In the absence of any pleading and proof, the 2nd respondent cannot be said to be lacking in qualification, for the office of a Chairperson. Hon'ble Supreme Court has deprecated the practice of entertaining a public interest writ petition solely on newspaper reports. Therefore, reliance placed on the newspaper reports that the 2nd respondent has committed breach of Oath of office, cannot be accepted. Even taking it for granted that there is a breach of Oath of office, in the light of the decisions considered, it would not be a cause for issuing a writ of *quo warranto*.

49. Having gone through the material on record, we are of the view that the instant public interest writ petition has been filed, just for the sake of seeking a prayer, for issuance of a writ of *quo warranto*. The petitioner has not pleaded or proved that the appointment of 2nd respondent is contrary to the statutory provisions. Though, Mr. R.Krishna Raj, learned counsel for the petitioner, pleaded that no costs be imposed, for the reasons stated above and taking note of the decisions of the Hon'ble Supreme Court, extracted above,

and on the facts and circumstances considered, we are not inclined to accept the submission of the learned counsel. Writ petition deserves to be dismissed with costs, which we quantify at Rs.10,000/- to be paid to the 2nd respondent within a period of two weeks from the date of receipt of a certificate copy of this judgment, failing which it is open for the 2nd respondent to enforce the same, in accordance with law.

In the light of the above discussion and decisions, petitioner is not entitled to the reliefs sought for. Writ petition is dismissed.

S.MANIKUMAR
CHIEF JUSTICE

SHAJI P.CHALY
JUDGE

krj

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1 COPY OF THE MEDIA REPORT. (THE WEEK)

EXHIBIT P2 COPY OF THE MEDIA REPORT. (HINDUSTAN TIMES)

EXHIBIT P3 COPY OF THE COMPLAINT DATED 08.06.2020.

RESPONDENTS' EXHIBIT:-NIL

//TRUE COPY//

P.A. TO C.J.