
(2008) 02 RAJ CK 0073
In the Rajasthan High Court

Kashi Purohit

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

Constitution of India, 1950 — Article 13, 164, 173, 188, 190
Representation of the People Act, 1951 — Section 10, 100, 10A, 123, 125

Citation : (2008) 2 RLW 1703

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—Kashi Purohit, a resident of Jaipur, claiming himself to be a public spirited person, has approached this Court by filing the present writ petition, praying for a mandamus to be issued to the Governor of the State of Rajasthan, to refer the question of disqualification of Ministers of the State of Rajasthan and the Members of the Legislative Assembly referred to in paras 10 to 16 of the petition for having committed breach of the oath of their office. Earlier than approaching this Court, the petitioner had filed a petition before the Governor of the State of Rajasthan under Article 192 read with Articles 173(a) 188 and 190 and 191 of the Constitution of India, inter alia, on the premises that the certain Ministers of his government, namely, Shri Kalu Lal Gurjar, M.L.A. & Minister of Development and Panchayati Raj; Shri Kanak Mal Katara, M.L.A. & Minister of Women and Child Development and Janjati Vikas; Dr.Kirori Lal Meena, M.L.A. & Minister for Food and Supplies, Shir Virendra Meena, M.L.A. & State Minister for Finance and members of Legislative Assembly, namely, Shri Ram Chandra Sarardhana, M.L.A.; Shri Prahlad Gunjal, M.L.A.; Shri Atar Singh Bhadana, M.L.A.; Shri Govind Singh Gurjar, M.L.A.; Shri Hargyan Singh Gurjar, M.L.A.; Shri Nathu Singh Gurjar, M.L.A.; Shri Data Ram Gurjar, M.L.A.; Shir Raghuveer Meena, M.L.A.; Shri Murari Lal Meena, M.L.A.; Shri Hemraj Meena, M.L.A.; Shri Nandlal Meena, M.L.A.; Shri Madan Mohan Singhal, M.L.A.; Smt.Divya Singh, M.L.A. and Shri Kanhaiya Lal Meena, M.L.A. be declared

disqualified for holding such office/s for having committed breach of the oath of office which they subscribed while taking oath as such, in view of the provisions contained in Article 191 of the Constitution of India, as, according to the petitioner, they have lost faith reposed in them by their constituencies. It was further prayed that their respective assembly constituencies should be declared as vacant and the Election Commission be directed to conduct fresh elections therefor.

2. According to the petitioner, India being a secular country, the spirit of equal respect for all religions and castes by the members of the Legislative Assembly, is the basic feature of its Constitution. This basic feature finds its pragmatic position in the form of Article 173 and 188 of the Constitution of India read with preamble of the Constitution and the form of oath prescribed in its Schedule III which is administered to the Members of the Legislative Assembly and the Ministers. It is contended that a citizen casts his vote believing that the candidates offering their candidature at the election to the office of Member of the Legislative Assembly will show no favour or affection to any caste, creed or religion, nor will they have any inclination for or ill-will against, any particular caste, creed or religion. This being the picture depicted before a voter at the time of elections, he opts to exercise his franchise of assigning the authority in a particular candidate to hold this office of public nature. Sole object, intention and rationale behind and reasons for the prescription of a form of the oath in the Constitution is to foster unity in diversity so as to preserve the integrity of India by making the elected representatives to subscribe to the oath of allegiance to the Constitution and to uphold sovereignty and integrity of the country as a Member of the Legislative Assembly or the Parliament. He is the spokesman of all the people belonging to his constituency and he must therefore stand for all, irrespective of their shades of faith and religion. He is the people's representative. He does not merely represent a particular caste. He is bound to inspire equal confidence in the minds of all, irrespective of their caste or creed, faith or religion, for he holds the office under an oath to maintain national harmony. According to the petitioner, the controversy began in the last week of May, 2007 when members of Gurjar community started agitation for their inclusion in the list of Scheduled Tribes at par with the others, in particular, Meena community. This agitation became violent and the situation became sporadic when in order to have an edge of this caste politics the local M.L.As in their respective regions through public platforms joined hands in support of this blood-splitting agitation which set the State ablaze. They even went to the extent of tendering their resignation if the demand of their community is not fulfilled. Various statements have been attributed to the Ministers and M.L.As. named above so as to substantiate all this. According to the petitioner, speech delivered and statements given by them were inflammatory which resulted in arson, treason, violence, blood-shed and huge and irreparable loss to the national property.

3. Petition submitted by the petitioner to the Governor of the State of Rajasthan,

however, was not entertained and a communication dated 31st July, 2007 was addressed to the petitioner by the Principal Secretary to the Governor, informing him that the issues raised in the petition are not covered as disqualification under Article 191(1) of the Constitution and, therefore, any reference of the subject for the opinion of the Election Commission under Article 192 does not appear warranted. It was, therefore, conveyed that his petition has been filed. It is this communication which is under challenge in the present writ petition with the prayers referred to hereinabove.

4. I have heard Shri Abhinav Sharma, learned Counsel for the petitioner and perused cited case laws and the material forming part of the record.

5. Shri Abhinav Sharma, learned Counsel for the petitioner, has argued that whether or not, the act of the concerned Ministers and M.L.As. attracted disqualification under Article 191 of the Constitution of India was a question on which the Governor, on his own, could not take any decision without obtaining opinion of the Election Commission as provided for by Article 192(2) of the Constitution of India. It was argued that the Governor in so doing, has usurped the jurisdiction which is the exclusive domain of the Election Commission of India. It was for the Election Commission to determine as to whether the persons concerned have disqualified themselves to continue as Members of the Legislative Assembly and/or Minister. The Governor by not referring the matter for the opinion of the Election Commission has exceeded his jurisdiction.

6. Learned Counsel, in support of his arguments, has relied on the Constitution Bench judgment of the Supreme Court in *Brundaban Nayak Vs. Election Commission of India and Another*, , especially, para 14 of the report and argued that the Supreme Court in that case held that any citizen is entitled to make a complaint to the Governor alleging that a Member of the Legislative Assembly has incurred one of the disqualifications mentioned in Article 191(1) and should, therefore, vacate his seat. Whole object of democratic elections is to constitute legislative chambers composed of members who are entitled to that status and if any member forfeits that status by reason of a subsequent disqualification, it is in the interest of the Constituency which a member represents that the matter should be brought to the notice of the Governor and decided by him in accordance with the provisions of Article 192(2). It was argued that the Governor is mandatorily required to refer such a dispute to the Election Commission for its opinion and act accordingly. The Supreme Court in *Brundavan Nayak's* case (supra) repelled the contrary argument that every question need not be referred to by the Governor to the Election Commission and held that though it is conceivable that in some cases, complaints made to the Governor may be frivolous and fantastic, but if they are of such character, the Election Commission will find no difficulty in expressing its opinion that they should be rejected straightaway. Learned Counsel further argued that in *Brundaban Nayak*, argument that the Governor has a right to hold an enquiry on his own, was specifically rejected in para 16 of the report where their Lordships held such

contention to be not well-founded and further held that the decision on the question raised under Article 192(1) is no doubt to be pronounced by the Governor, but that decision has to be in accordance with the opinion of the Election Commission. Object of this provision clearly is to leave it to the Election Commission to decide the matter, though the decision as such would formally be pronounced in the name of the Governor.

7. Shri Abhinav Sharma also referred to the judgment of the Supreme Court in Election Commission of India and another Vs. Dr. Subramanian Swamy and another, and argued that in that case too, the Supreme Court held that the Governor has no power to inquire into complaint made to him by any citizen and decision must be taken by him only after obtaining opinion of the Election Commission and not even by consulting the Council of Ministers. Thus, opinion of the Election Commission is decisive since the final order would be based solely on that opinion. Learned Counsel, therefore, argued that obtaining opinion of the Election Commission is the sine qua non for any decision that the Governor might take on the petition received from a citizen. In the present case, however, the Governor of the State of Rajasthan has proceeded to take a view in the matter by arriving at the conclusion that none of the disqualifications contained in Article 191(1) was attracted without obtaining any opinion from the Election Commission of India. The Governor has, thus, acted in a wholly unconstitutional manner and contrary to the scheme of the Constitution thereby transgressing the powers conferred on him. Such a decision, being nullity in law, is liable to be quashed and set aside. Learned Counsel also relied on the constitution bench judgment of the Supreme Court in The Election Commission of India Vs. N.G. Ranga and Others, and argued that their Lordships in N.G. Ranga's case reiterated the same view which was propounded by the Supreme Court in Brundavan Nayak (Supra) by holding that the President was not only bound to obtain the opinion of the Election Commission of India before giving decision on the petition, but was also bound to act according to such opinion.

8. Shri Abhinav Sharma, learned Counsel for the petitioner, argued that above named Ministers and M.L.As. were administered the oath firstly under Article 173(a) of the Constitution before the returning officer along with all other contesting candidates that they will bear true faith and allegiance to the Constitution as by law established and that they will uphold the sovereignty and integrity of India. Successful candidates were administered oath under Article 188 of the Constitution so as to entitle them to hold the office of MLA and thereafter such of those, who were appointed as Ministers by the Governor, were administered yet another oath that they will uphold the sovereignty and integrity of India and that they will faithfully and conscientiously discharge their duties as such Minister and that they will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will.

9. Learned Counsel Shri Abhinav Sharma argued that these MLAs, MPs, and Ministers while taking part in the caste war during Gurjar Meena agitation in the

State by openly siding with the community to which they belong have committed breach of the oath as prescribed by Schedule III to the Constitution. Correctness of this allegation could be gone into only by the Election Commission of India. This was not open to the Governor to prejudge the issues and pronounce upon the same, one way or the other.

10. Learned Counsel referred to the judgment of the Supreme Court in *Khaji Khanavar Khadirkhan Hussain Khan and Others Vs. Siddavanballi Nijalingappa and Another*, and argued that Article 173(a) requires the oath or affirmation in accordance with the proforma set out in the Third Schedule to the Constitution of India which is meant to remove the disqualification for being a candidate for election to the Legislature of the State. In other words, the learned Counsel wanted to convey that the candidates not subscribing to such oath would be disqualified to contest election and could not get elected to such office. In this connection, reference was also made to *Haridasan Palayil Vs. The Speaker, Kerala Legislative Assembly*, in which it was held that obvious intention of the oath was to ensure that the person concerned makes a commitment to live by the constitutional process. He has to owe allegiance to the Constitution. He has to uphold the sovereignty and integrity of the country. Once elected, he is people's representative. He is not free to cater to the belief of a sect or section of the society. He does not represent any particular religion and now he is duty bound to inspire equal faith in the minds of all. Learned Counsel therefore submitted that the oath prescribed in Schedule III to the Constitution of India is the law in view of its Article 13 and breach thereof would be a disqualification under Article 191(e) of the Constitution of India.

11. Learned Counsel lastly argued that not only the Governor cannot inquire into correctness of the allegations against the Ministers and the M.L.As., but even this Court cannot embark upon such an inquiry into the correctness of such allegations, which domain is exclusively reserved for the Election Commission of India. The Governor, therefore, has erred in law in transgressing that Constitutional limitations by taking that task upon himself and determining the correctness of the allegations. It is, therefore, prayed that the writ petition be allowed in terms of the prayers referred to above.

12. Decision of this petition would largely depend upon the interpretation of Articles 191 and 192 of the Constitution of India which for the facility of reference are reproduced hereunder:

Article 191. Disqualifications for membership.

(1) A person shall be disqualified for being chosen as and for being, a member of the Legislative Assembly or Legislative Council of a State

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

- (b) if he is of unsound mind and stands so declared by a competent court;
- (c) if he is an undischarged insolvent;
- (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State; or under any acknowledgment of allegiance or adherence to a foreign state;
- (e) if he is so disqualified by or under any law made by the Parliament.

Explanation - For the purposes of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.

Article 192. Decision on questions as to disqualifications of members

(1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in Clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.

13. 10th Schedule to the Constitution which was added by the Constitution (Fifty-Second Amendment) Act, 1985 provided for yet another category of disqualification and which is that in case a member of a House belonging to any political party has voluntarily given up his membership of such party or votes or abstains from voting in such House contrary to any direction issued by the said political party, without obtaining the prior permission of such party and such voting or abstention has not been condoned by such party within fifteen days thereof, he will be disqualified for being a member of the House.

14. While candidates seeking to contest the election to the Legislature of a State are required to subscribe to the oath given in proforma VII "A" of third Schedule, the candidate who gets elected has to take the oath as prescribed by Proforma VII "B" of third Schedule. A candidate for election to the Legislature of a State is required to swear or affirm that he will bear true faith and allegiance to the Constitution of India as by law established and that he will uphold the sovereignty and integrity of India. Similar oath/affirmation is again taken/made by the candidate who has been elected before entering his office as a Member of the Legislature of a State. Similarly, a Minister in the State has to subscribe to the oath of office and secrecy as prescribed by proformas V and VI of the third schedule. In the oath of office, the Minister swears in the name of God/solemnly affirm that he will faithfully and conscientiously discharge his duties as a Minister and will do right to all manner of people in accordance with the Constitution and

the law without fear or favour, affection or ill-will.

15. Question which arises for determination of this Court, therefore, is that even if the Court proceeds on the footing that the statements ascribed to various Ministers and different members of the Legislative Assembly, are assumed to be correct for the sake of argument, and even if they would have been proved in the inquiry that might have been held by the Election Commission, had any such a reference been made to it by the Governor of State, could that form the basis for declaring that they have incurred disqualification for being member of the Legislative Assembly by virtue of the provisions contained in Article 191 of the Constitution? This argument is founded on the premise that the above referred to Ministers and M.L.As, having subscribed to the oath that they will bear true faith and allegiance to the Constitution and will uphold the sovereignty and integrity of India and will do right to all manners of people in accordance with the Constitution or law without fear or favour, affection or ill-will, by openly displaying partisan approach in favour of the community to which they belong and against another community to which they do not, have violated the oath of office they subscribed thereby attracting the disqualification prescribed in Clause (e) of Article 191(1) which, inter alia, provides that a person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly if he is so disqualified under any law made by the Parliament. Argument is that in view of Article 13 of the Constitution, the word law as mentioned in Clause (e) supra, also includes the law contained in the body of the Constitution itself, namely, third Schedule, which being part thereof, the oath of office as contained therein shall also be construed as law, infraction of which would attract disqualification as envisaged by Article 191 of the Constitution. But this argument has to be examined with reference to the law made by the Parliament which occupies field on the subject, which is the Representation of the People Act, 1951 (hereinafter referred to as "the Act of 1951"). Various disqualifications in the Act of 1951 are enumerated in Sections 8, 8A, 9, 9A and 10, 10A. It is not in dispute that none of these provisions includes breach of oath by either the Minister or a Member of the Legislative Assembly as one of the grounds on which he/she can be declared disqualified to continue in office. Thus, whether the Governor was mandatorily required to refer the question for opinion of the Election Commission in view of Sub-article (2) of Article 191, even though the alleged breach of oath was not mentioned as one of the grounds for such disqualification either in Sub-article (1) of Article 191 of the Constitution or in any of the Laws made by the Parliament, including the Representation of the People Act, 1951 is the core of the issue which calls for determination in this matter.

16. Contention that the Governor had no option but to refer the matter for opinion of the Election Commission, is sought to be supported primarily from the ratio of the judgment of the constitution bench of the Supreme Court in Brundaban Nayak's case (supra) and also another constitution bench judgment in N.G.Ranga's case (Supra). While in Brundaban Nayak, Supreme Court was dealing with a matter where alleged disqualification was one u/s 7(d) of the Act

of 1951 which according to Article 191(1)(e) of the Constitution, disqualified the concerned person to continue as the member of the Legislative Assembly. It was with specific reference to the provisions contained in Section 7 of the Act of 1951 that the elected representative was sought to be disqualified to continue as Member of the Legislative Assembly. It is in that context that observations were made by the Supreme Court that complaint made to the Governor "may be frivolous or fantastic, but if they are of such a character, the Election Commission will find no difficulty in expressing its opinion that they should be rejected straightaway". But those observations cannot be read in support of a complaint where the alleged disqualification does not fall in any of the Clauses (a) to (e) of Sub-article (1) of Article 191 or even in any of the provisions of the Act of 1951 or for that matter, any other law made by the Parliament. Observations of the Supreme Court in *Brundaban Nayak* that whenever a question arises as to subsequent disqualification of member of the Legislative Assembly, this has to be forwarded by the Governor to the Election Commission for its opinion and it is the Election Commission alone which is competent to hold the inquiry, though the decision thereupon has to be pronounced by the Governor, has to be therefore understood in the context of the fact situation of that case.

17. Similar observations of the Supreme Court in *N.G. Ranga* (Supra) that the President is bound to obtain the opinion of the Election Commission before giving a decision on the question were also made in the fact situation of that case where the specific allegation was that *Shri N.G. Ranga* who was declared elected to Lok Sabha, had suffered disqualification u/s 10A of the Act of 1951. In *Dr. Subramaniam Swamy's* case (Supra), the allegation was that *Ms. J. Jayalitha*, the then Chief Minister of Tamil Nadu, had incurred the disqualification for being a Member of the Legislative Assembly under Article 191(1)(e) of the Constitution read with Section 9A of the Act of 1951 and in that context, it was observed by the Supreme Court that the decision on the question must be taken by the Governor only after obtaining the opinion of the Election Commission.

18. It is trite law that a precedent is an authority for what it actually decides and not what can be logically deduced therefrom. It is also well-settled that ratio of a judgment must be understood having regard to fact situation obtaining therein. In order therefore to cull out the ratio of a judgment, the law laid down therein has to be ascertained by analyzing the material facts and the issues involved in the case and argument of both the sides. What is held in a given case should be read with reference to fact situation of that case in the context of particular statutory provision interpreted by the court. It has therefore been often reiterated as a principle on the law of precedents by the Supreme Court that a decision cannot be relied on in support of a proposition which it did not actually decide and that the courts should not place reliance on decisions without discussing as to how the factual situation of the case before it fits in the fact situation of the decision on which reliance has been placed. A little variance and difference between facts as also in the position of law and the relevant rules may make a whole deal of difference in the precedential value of the judgment cited

before the Court.

19. On the question of breach of oath, reliance has been placed by the learned Counsel on the Division Bench judgment of Kerala High Court in *Haridasan Palayil v. The Speaker of 11th Kerala Legislative Assembly (Supra)*, wherein it has been held as under:

54.3 The forms of oath have been prescribed for the President, the Prime Minister, the Chief Justice of India, the Controller and Auditor General, and the Members of Legislature etc. The obvious intention was to ensure that the person concerned makes a commitment to live by the Constitutional process. He has to owe allegiance to the Constitution. He has to uphold the sovereignty and integrity of the country. A member of the legislature, Union or State, represents a constituency. He is the spokesman of all the people belonging to the area. He has to stand for all, irrespective of their shade of faith and religions. He is the people's representative. He is not free to cater to the belief of a sect or section of the society. He does not represent the Christians, Hindus or Muslims only. But even the Buddhists, Jains and all others. By the very nature of his office, he is bound to inspire equal confidence and faith in the minds of all. This is essential to ensure that he represents everyone, irrespective of the caste or creed, faith or religion. It is meant to help in maintaining national harmony. It is intended to foster Unity in Diversity so as to preserve the integrity of India. That is the apparent rationale and reason for the prescription of a "Form" or the "Oath" in the Constitution. Thus, every person has to conform to the "form" as prescribed. The constitution does not permit any deviation or variation. For if any deviation were permitted, we may not know where to stop. In case, the person chooses to take the oath, he has to swear in the name of "God". None else.

20. The Supreme Court in *Hussain Khan's case (supra)* held that the purpose of Article 173(a) in prescribing the oath as one of the qualifications for members of the State Legislature is to ensure that any person who wants to be such member must bear true faith and allegiance to the Constitution as by law established and undertake to uphold the sovereignty and integrity of India. Once he takes such oath, he becomes bound by that oath or affirmation. Oath taken for one of the constituencies would be sufficient if the same candidate contests election from another constituency.

21. Issue with regard to breach of oath came to be deliberated upon by Division Bench of the Kerala High Court in *Kallara Sukumaran Vs. Union of India (UOI) and Others*, . It was alleged that Ministers in the State of Kerala while participating in the party convention in their speech aggressively exhorted agitation against the central Government which, according to the petitioner, was result of anti-centre conspiracy hatched by them. Their speech undermined sovereignty and integrity of the Indian Union and, therefore, subverted the Constitution and thus, they have violated the oath taken by them under Article 164(3) of the Constitution as also as the member of Legislative Assembly under Article 188 of the Constitution. The Division Bench, upon noticing various

provisions referred to above, in paras 9 and 10 of the judgment, observed as under:

9. xxx xxx xxx xxx xxx xxx xxx

xxx xxx xxx xxx xxx xxx xxx.

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 superadd 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 Court to change or superadd to them, there being no power either expressly conferred or inferable by necessary implication by the Constitution.

10. Yet another aspect pressed in this connection, which according to the appellants, operates as disqualification, is the violation of the oaths taken by respondents 3 to 6. To accept this contention would be to add to the grounds of disqualification provided under the Constitution. For the reasons aforesaid, we hold that it is impermissible for the Court to import an additional ground, or to imply an additional disqualification in the manner suggested by the appellants.

22. When another petition came up for decision before the Single Bench of the Kerala High Court, on allegations similar to the one which were made in the case of Kallara Sukumaran (*Supra*), the same was referred to the Full Bench. The Full Bench in *K.C. Chandy Vs. R. Balakrishna Pillai*, held as under:

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.

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 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 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).

23. Subsequently, Kallara Sukumaran filed yet another writ petition with the prayer that in view of the breach of oath by the various Ministers of the State, Union of India and the Governor be directed to consider whether there is a break down of the constitutional machinery in the State. Referring to the earlier Division Bench and Full Bench decision of the same Court, the Division Bench of the Kerala High Court in paras 25 and 30 of the judgment in Kallara Sukumaran Vs. Union of India (UOI) and Others, held as under:

25. xxxx xxxxxx xxxxx

xxxx xxx The solemn assurance contemplated by the oath is of the widest amplitude to bring within its ambit very large number of acts and omissions. In the discharge of his duties the Minister is bound to take thousands of decisions and make speeches. What then constitutes breach of oath. Neither the Constitution nor the law made by the Parliament explains as to what constitutes breach of oath. Many wrong decisions honestly taken may not result in doing right to all manner of people. In such an event his action would be inconsistent with the oath. If that necessarily constitutes breach of oath, it would be impossible for a Minister to take decisions in the fear of violating the oath and losing his office. Thus, the functioning of the Minister may stand paralysed. Such could not have been the intention of the makers of the Constitution.

30. In view of the categorical decision of the Full Bench, the answer to the question formulated by the learned Single Judge can only be that the High Court cannot, in exercise of its power under Article 226 of the Constitution, declare the appointment of Shri Balakrishna Pillai as Minister, made under Article 164 of the Constitution, as unconstitutional on the ground that he committed a breach of oath of office.

24. Full Bench of Andhra Pradesh High Court in Dhronamrajti Satyanarayana Vs. N.T. Rama Rao and Others, while concurring with the view expressed by the Full Bench of Kerala High Court in K.C. Chandy Vs. R. Balakrishna Pillai, refused to issue a writ of co-warranto for removal of the Chief Minister while repelling the argument that he has forfeited his right to continue in office for having breached the oath on account of various allegations of misuse of the authority. When a similar petition was filed before the Madras High Court in Ramachandran Vs. M.G. Ramachandran, The Chief Minister of Tamil Nadu and Others, with a similar

prayer for issuance of a writ of quo warranto on the ground that he has committed the breach of the office and secrecy, that court while relying on the Full Bench Judgment of the Kerala High Court in K.C. Chandy [supra] dismissed the writ petition.

25. An identical question came to be considered by the Punjab and Haryana High Court in Hardwari Lal Vs. Ch. Bhajan Lal and others, in which the petitioner alleged that the Chief Minister of the State had violated the oath of his office by his misdeeds, the Division Bench, while rejecting the argument, held in paras 8, 12 and 13 of the report as under:

8. Articles 191 and 192 of the Constitution exhaustively deal with and furnish a composite machinery regarding the disqualification of a Member of the Legislative Assembly. It is significant to notice that breach of oath as a Minister, an oath which he takes before entering the office is not such a disqualification either under the Constitution (Article 191) or even under any other law made by Parliament including the Representation of the People Act. Violation of oath maybe betrayal of faith reposed in the person taking oath which unfailingly indicates and demonstrates a fundamental Code of Conduct. Nevertheless to hold violation of oath as a disqualification would mean adding another clause in Article 191 of the Constitution which obviously is neither desirable nor permissible.

12. It may also be noticed that consequences of a disqualification from Membership are mentioned in Article 193. If he is disqualified from Membership on the grounds mentioned in Article 191, and if he still sits or votes as a Member of the Legislative Assembly or a Legislative Council of a State before complying with the requirements of Article 188, he is visited with penalty as mentioned in Article 193. It is significant that the Constitution makes no express provision as to the consequences of a breach of oath by a Minister. In that event, as we have noted above, the only course to be adopted is as indicated under article 192 of the Constitution.

13. For the aforesaid reasons, we are of the opinion that the alleged violation/ breach of oath by the respondent Chief Minister who was admittedly qualified to occupy that office on taking the prescribed oath has not rendered him disqualified to continue to hold that office of the Chief Minister.

26. Desirability, propriety and morality of undeserving person continuing either as a Member of the Legislative Assembly or as a Minister is thus essentially a political question to be eminently dealt with at the political level by the Legislature, the Chief Minister, and above all the general public holding and watching brief over them. The State Cabinet has the collective responsibility and there cannot be any statutory remedy or legal sanction for ensuring that. This can be ensured only through the authority of the Chief Minister in a State and the Prime Minister in the Union Government. This was the reaction of Dr. B.R. Ambedkar while responding to the question raised by Prof. K.T. Shah in the debate of the Constituent Assembly (Constituent Assembly Debates Vol VII,

Pages 1159 to 1160):

The only sanction through which collective responsibility is enforced is through the Prime Minister. In my judgment collective responsibility is enforced by the enforcement of two principles. One principle is that no person shall be nominated to the Cabinet except on the advice of the Prime Minister. Secondly no person shall be retained as a Member of the Cabinet if the Prime Minister says that he shall be dismissed. It is only when Members of the Cabinet both in the matter of their appointment as well as in the matter of their dismissal are placed under the Prime Minister, that it would be possible to realise our ideal of collective responsibility. I do not see any other means or any other way of giving effect to that principle.

27. Remedy for such a malady therefore lies in the power of the Prime Minister or the Chief Minister, as the case may be, to nominate for appointment and recommend for dismissal, a Minister to the President/Governor, which in essence means that a minister having been appointed as such by the President/Governor on the recommendation of the Prime Minister/Chief Minister holds such office at the pleasure of the recommending/appointing authority. This being a matter entirely in the realm of unfettered discretion and pleasure of the appointing authority, who has to necessarily act as per the advise of the Prime Minister or the Chief Minister, as the case may be, is not amenable to jurisdiction of this Court under Article 226 of the Constitution of India.

28. Another remedy for this malady as suggested by Dr. B. R. Ambedkar in the self-same debate was that if the Prime Minister does happen to appoint a Minister who is not worthy of the post, it would be perfectly possible for the Legislature to table a motion of no-confidence either in that particular Minister or in the whole Ministry and thereby get rid of the Prime Minister or of the Minister if the Prime Minister is not prepared to dismiss him on the call of the Legislature.

29. There is, in my view, hardly any scope for interference by this Court in this matter in the realm of judicial review under Article 226 of the Constitution either by issuing a writ of mandamus as has been prayed for or otherwise by way of writ of quo warranto. This is essentially a political question, which needs to be answered in the political arena. This was most pertinently and forcefully expressed by Frankfurter J. in *Charles W. Baker v. Joe C. Carr* (1962) 369 US

186 : 7 L ed 2nd 663 at p. 716: ...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 representative.

30. 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, cognizable 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.

31. What is to be, therefore, examined is whether the alleged infraction or violation of oath, if at all that can be accepted so, if proved, could attract any of the disqualifications provided for by the Constitution or any law made by the Parliament and whether the Governor upon receiving such complaint, was mandatorily required to refer the same to the Election Commission of India for its opinion, regardless of the fact that the allegation contained therein did not attract any of the provisions relating to disqualification contained either in the Constitution or the Act of 1951 or for that matter, any other law made by the Parliament. In other words, even if the complaint did not contain any specific allegation with reference to disqualifications enumerated in Clauses (a) to (e) of Article 191(1) and Sections 8, 8A, 9, 9A and 10, 10A of the Act of 1951, was the Governor still in view of the provisions contained in Article 190(2) of the Constitution, required to forward it to the Election Commission for its opinion? In my considered view, the answer to this question lies in the fact that even if the Election Commission would have eventually returned the finding proving such allegations, could on that basis, the concerned Ministers and M.L.As. be declared disqualified to continue as such? When alleged disqualification is not specified as one such disqualification either in the Constitution or in the Act of 1951, action of the Governor in refusing to refer it to the Election Commission cannot be described as either exceeding the jurisdiction or transgressing the limits of powers envisaged in the Constitution. A complaint alleging disqualification having been incurred by one or more number of Members of the Legislative Assembly, was required to be referred to Election Commission for its opinion as per Sub-clause (2) of Article 192 only if such member has become subject to any of the disqualifications mentioned in Clause (1) of Article 191. The alleged infraction or violation of the oath by a member of the Legislative Assembly not being mentioned in Clause (1) of Article 191, the Governor could not be expected to act mechanically by still referring the matter for opinion of the Election Commission. This would be an exercise in futility and Governor of a State cannot be expected to engage in such meaningless activity.

32. At the same time, however, there can be no quarrel with the proposition that a member having been elected to the Legislative Assembly of the State and even appointed as a Minister has to necessarily uphold the oath of office and bear true faith and allegiance to the Constitution and uphold the sovereignty and integrity of India and do right to all manners of the people in accordance with the Constitution and the law without fear or favour, affection or ill-will. That is the confidence reposed in him not only by people of the constituency he represents, but also founding fathers of the nation, for he does not represent any particular sect or section of society, caste and community or any particular religion. He by

his conduct must inspire equal confidence and faith in the mind of the people cutting across caste and religion since he represents everyone in his constituency. This is the underlying philosophy and sanctity of the oath. But breach of the oath, when it has not been specifically enumerated as one of the disqualifications in any of the Clauses (a) to (e) of Article 191(1) or any other provisions of the Act of 1951, cannot be read therein only because it is desirable to do so.

33. The Supreme Court in *Shrikant Vs. Vasantrao and Others*, was considering validity of the judgment vide which election of a returned candidate was set aside by the High Court on the ground that he incurred disqualification u/s 9A of the Act of 1951. Section 9A provides that a person having a subsisting contract with the appropriate Government either for supply of goods to or for execution of any works undertaken by, that Government, would be disqualified. It was however held that persons who have such contracts with any other authority would not be so disqualified. The Supreme Court in para 7 of the judgment noted as under:

7. Article 191 of the Constitution prescribes the disqualifications for a person being chosen as, and for being, a Member of the Legislative Assembly or Legislative council of a State. Apart from specifying four grounds of disqualifications, it provides that a person can be disqualified by or under any law made by Parliament. The Representation of the People Act, 1951, a law made by Parliament, has introduced six disqualifications for a person being chosen as and for being Member of Legislative Assembly or the Legislative Council of a State under Sections 8, 8A, 9, 9A and 10, 10A of the Act.

34. And, in para 23 of the judgment, it was held by the Court that Section 9A provides for subsistence of a contract with the appropriate Government (either for supply of goods or for execution of any work undertaken by that Government) will disqualify candidate for being elected as a Member of the Legislative Assembly or Legislative Council, the expression appropriate Government merely refers to the State Government, alone and not to any instrumentality of the State. While repelling the argument to the contrary in para 11 of the judgment, their Lordships held as under:

11. A person cannot, therefore, be disqualified unless he suffers a disqualification laid down in Article 191 of the Constitution or under Sections 8, 8A, 9, 9A and 10, 10A of the Act. It is not possible to add to or subtract from the disqualifications, either on the ground of convenience, or on the grounds of equity or logic or perceived legislative intention. A combined reading of Article 191 of the Constitution and Chapter III of the Representation of the People Act, 1951 makes it clear that a person can be held to be disqualified for being chosen as, and for being, a Member of the Legislative Assembly or Legislative Council of a State only on the grounds mentioned therein

35. Section 125 of the Act of 1951, inter alia, provides that any person who in

connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both. This is also described as one of the corrupt practices in Section 123. Section 100(i)(b) prescribes the corrupt practice as a ground on which election of a returned candidate can be declared void upon a petition by the High Court. Section 123(3) and (3-A) of the Act of 1951, inter alia, provides that appeal and promotion of, by a candidate or his agent or by any other person, with the consent of the candidate or his election agent, to vote or refrain from voting for any person, on the ground of his religion, race, caste, community or language for furtherance of the prospects of the election of that candidate or for prejudicially effecting the election of any candidate, shall be deemed to be a corrupt practice for the purposes of the said Act. And that pious hope was echoed in the legislative intent of this central legislation soon after "WE, THE PEOPLE OF INDIA" gave unto ourselves, the Constitution of India. While therefore it may be a matter for consideration of the Parliament, but surely, it is not for this Court to comment as to how far on ground realities that hope has been realized. But this Court cannot be called upon to answer the question why breach of oath subsequent to the date of election, on proven allegations, either analogous or akin to the ones described both as offence and corrupt practice in above referred to provisions of the Act of 1951 or otherwise, has not been made a ground to disqualify an elected member of the Legislative Assembly or the Parliament. This is basically an issue touching upon the legislative policy of the Parliament.

36. It is, therefore, for the Parliament to consider whether breach of the oath of office should also be included as one such disqualification with reference to Clause (e) of Article 191(1) of the Constitution in the Representation of the People Act or otherwise so prescribed by a separate enactment. This Court cannot on the grounds of equity or logic or perceived legislative intention add to or subtract from what has been specifically provided for therein.

37. In view of the foregoing discussion, in my considered view, the impugned order / communication does not suffer from any legal infirmity so as to warrant interference by this Court in exercise of its power of judicial review. The writ petition, which is devoid of merit, is therefore, dismissed.