

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/8/2019

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR  
and  
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.24464 of 2019

S. Gunasekaran

Petitioner

Vs

1.The Ministry of Home Affairs  
rep. By its Principal Secretary  
North Block, Cabinet Secretariat  
Raisina Hill  
New Delhi.

2.L. Murugan

Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Quo warranto directed the above named, requiring him to show cause by what authority he retains the Constitutional post of Hon'ble Vice Chairman for National Commission for Scheduled Caste after usurping, misuse, abuse and neglect the Constitution of India.

For Petitioner ... Mr.P.Vijendran

सत्यमेव जयते

O R D E R

(Order of the Court was made by S.MANIKUMAR, J)

Petitioner has sought for a writ of Quo-warranto, directing the second respondent to show cause by what authority he retains the Constitutional post of Hon'ble Vice Chairman for National Commission for Scheduled Caste after usurping, misusing, abusing and neglecting Constitution of India.

2. In the supporting affidavit, petitioner has contended that when a dispute arose in a Village, regarding construction of fence, Vice Chairman, National Commission for Scheduled Caste, second respondent, caused inspection, without giving an

opportunity to the alleged victims, and submitted a report.

3. Petitioner, in the supporting affidavit has candidly admitted that second respondent has been appointed by the Hon'ble President of India as Vice Chairman of the National Commission for Scheduled Caste and Scheduled Tribes. It is the further contention of the petitioner that second respondent has not only usurped the poor and mis-used his office, in particular, violated Article 338 of the Constitution of India. Petitioner has also contended that second respondent has violated oath mentioned in III Schedule to the Constitution of India.

4. On the above grounds, petitioner has sought for issuance of writ of quo warranto, as stated supra.

5. Heard Mr.P.Vijendran, learned counsel for the petitioner and perused the materials available on record.

6. On the aspect of Writ of Quo-Warranto, reference can be made to few decisions,

(i) In J.A.Samaj vs. 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, 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 *University of Mysore v. Govind Rao*, reported in AIR 1965 SC 491, the Hon'ble Supreme Court has summed up the conditions to be satisfied for the issue of a writ of quo warranto, as follows:-

".... 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 enquiry 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."

(iii) In Mohammad Tafiuddin and Others vs. State of West Bengal and Others, 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 form 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, MANU/SC/0268/1963 : 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 of public office, to which he may have a right. As observed in the case of Statesman (P) Ltd. v. H.R. Deb, MANU/SC/0123/1968 : 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, MANU/MH/0030/1954 : 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 MANU/WB/0250/1951 : 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 MANU/WB/0366/1966 : 70 CWN 892, are whether 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 MANU/WB/0036/1953 : 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 in 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 warranto will not be in respect of office of 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 must 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.

16. In order to succeed in obtaining a writ or an order in the nature of Mandamus, which is the second prayer the petitioners must "establish that he has a legal right to the performance by the opposite party of legal duty imposed by a statute and such right must exist at the date of the petition.

A mandamus will not issue if the duty required to be performed is discretionary. A mandamus will also not issue to compel the performance of anything which an authority has the power to do unless the power becomes coupled with a duty.

It is not all wrong which can be cured by a writ of Mandamus. Mandamus literally means a command. It is a demand for some activity on the part of the body or persons to whom it is addressed. In view of the

character of entitlement and more particularly when the petitioners have a legal right to the performance of duty or obligation by the authority concerned in terms of Article 154, which in my view has not been duly discharged in the formation of the said Board or delegation of powers to the same, the same being neither a statutory body nor a body or authority under the Constitution of India, the petitioners can claim the issue of a Mandamus, requiring the notifications as impeached not to be given effect to. Thus, the second prayer of the petitioners should succeed."

(iv) In Arun Kumar vs. Union of India, 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 fulfil 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 petitioners 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 en-forcible right and the touch stone 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 injunction in the nature of quo-warranto would not be issued, and an injunction in lieu thereof could 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."

(v) In Dr.S.Mahadevan vs. Dr.S.Balasundaram and others, reported in (1986) 1 Mad LJ 31, at paragraph 21, this Court, held thus:-

"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 advertence 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 of 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 widen 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 wants of satisfaction of the

statutory provisions or conditions or procedure governing the appointment and which are mandatory. This Court, under Art. 226 of the Constitution, can issue a writ of quo warranto only if the salient conditions delineated above stand satisfied and not otherwise."

(vi) In K.C.Chandy vs. R.Balakrishna Pillai, reported in AIR 1986 Ker 116, the Full Bench of Kerala High Court, while considering, as to whether, High Court under Article 226 could review an alleged breach of Oath and at Paragraphs 6 to 15, held as follows:

"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 violation of the oath by the President. In the Judges transfer case, S.P. Gupta v. President of India. AIR 1982 SC 149 Pathak J., observed thus:

"When a Judge permits his judgments in a case to be influenced by the irrelevant consideration 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 Cls. (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).

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 Cl. & 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."

13. This statement of the law was approved in the leading case, *R. v. Speyer*, (1916) 1 KB 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 Ker LT 567 : (AIR 1986 Ker 122). 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 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."

(vii) In *Kallara Sukumaran v. Union of India* reported in AIR 1987 Kerala 212, there was an allegation of breach of Oath by a Minister and on that ground, a writ petition was filed, under Article 226 of the Constitution of India, to declare the same as disqualification and consequently, removal. Addressing the said aspect, a Hon'ble Division Bench of the Kerala High Court, at

Paragraphs 22 to 24, held as follows:

"22. The Full Bench has held that there is no express provision in the Constitution or the law made by the Parliament which attaches specifically any disqualification to the Minister who commits breach of his oath. Even then, it is pointed out that 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. In para 5 of the judgment, it is observed :

"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." (Underlining is ours)

Then the Full Bench proceeds to observe in para 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."

What has been held by the Full Bench, therefore, is that breach of oath may result in the deprivation of the office and there is no forfeiture of the office automatically whenever there is breach of oath. In other words, what is held is that deprivation of the office may be one of the consequences that the Minister, who commits breach of oath, may have to face. It is for the appointing authority to decide whether, in fact, there was a breach of oath and, if so, whether he should for that reason remove the Minister from the office. The Full Bench has in categorical terms held that it is not for this court to embark on any such enquiry. This is made further clear by what is stated in para 9 of the judgment :

"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."

The Full Bench had no hesitation in taking the view that termination of office on the ground of breach of oath is a power which could be exercised under the Constitution by the appointing authority and that the High Court has no jurisdiction under Article 226 of the Constitution to take action for the breach of oath of office committed by the Minister. This principle has been reiterated very clearly in para 10 of the judgment where it is stated :

"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." (Underlining is ours)

When the Full Bench held that the question as to whether there was breach of oath is outside judicial review under Article 226 of the Constitution, and that it is a question which is within the "discretionary domain" of the Chief Minister, and/or the Governor, that authority has the discretion to remove or not to remove the Minister on the ground of breach of oath. It is a matter left entirely to the discretion of the Chief Minister and/or the Governor as to what is the proper action to be taken, if he is satisfied that the Minister has committed a breach of oath. It is so held because the Minister holds his office at the pleasure of the Chief Minister and/or the Governor and neither the Constitution nor any law made by the Parliament either prescribes breach of oath as a disqualification for holding the office of a Minister or provides forfeiture of office as a penalty for breach of oath. It has been so held by the Full Bench in para 13 of the judgment, wherein it is observed :

"13. This statement of the law was approved in the leading case *R. v. Spey* (1916) 1 KB 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."

In para 14, the Full Bench observes :

"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 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 the Governor."

23. But it was contended on behalf of the petitioners that the observations in para 16 of the judgment of the Full Bench clearly show that the above findings are only obiter dicta. The observation relied upon reads :

"While no quo warranto will go from this court on the allegation that the Minister had committed breach of his oath, it would not be even expedient for this Court to exercise the discretion for issuance of the writ asked for when the Chief Minister is already seized of the matter."

We do not agree. The Full Bench, in para 16 not only rejected the petitioner's request for adducing evidence in court but stated yet another ground to reject the prayer for the issuance of a quo warranto. The Full Bench, in fact, went into the whole question exhaustively and critically and decided the case on the merits, though there was a faint argument that the writ petition had become infructuous with the resignation of the Minister and no attempt was made to withdraw the writ petition.

24. Thus, we find that the Full Bench has clearly laid down the following propositions :

(1) That breach of oath of office taken by the Minister is not a disqualification constitutionally listed under Article 191 of the Constitution or specified under any law made by the Parliament;

(2) That the oath of office is the prescription of a fundamental code of conduct in the discharge of the duties of a Minister and not a mere moral obligation and binds him throughout his tenure of office.

(3) That the office of the Minister is held at the pleasure of the Governor/Chief Minister and

therefore termination at their will may be the possible outcome of breach of oath;

(4) That the question as to whether there was breach of oath can be considered by the appointing authority under Article 164(1) of the Constitution and not by the High Court under Article 226. It falls within the discretionary domain of the Governor and/or the Chief Minister.

(5) That breach of oath requires termination and this power can be exercised by the appointing authority at its discretion and not by the Court under Article 226 of the Constitution.

(6) That the court has no jurisdiction under Article 226 to oust a Minister on the ground that he has committed breach of oath."

(viii) In *Devi Prasad Shukla and Another vs. 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."

(ix) In *Hardwari Lal Ex-M.P. (Low Sabha) vs. Ch. Bhajan Lal, Chief Minister, Haryana, Chandigarh and others*, reported in AIR 1993 P&H 3, at paragraph Nos.1, 2, 8, 9, 13, 14, 15 and 16, the Hon'ble Punjab and Haryana High Court, held thus:-

"The question in this writ petition is whether this Court in the exercise of its jurisdiction under Article 226 of the Constitution can issue a writ of quo warranto against a Chief Minister of his allegedly committing breach of the oath administered to him at the time of assuming office of the Chief Minister?

2. After being duly elected as a member of the Haryana Legislative Assembly, Ch. Bhajan Lal, respondent No. 1, was lawfully appointed as the Chief Minister of the State of Haryana by the Governor of the State in exercise of the powers under Article 164 (1) of the Constitution. Other Ministers were likewise appointed on the advice of the Chief Minister. The

petitioner, Hardwari Lal, an Ex-Member of Parliament, has instituted an action through this writ petition against Ch. Bhajan Lal describing it as a public interest petition seeking in desperation to "exercise the realm of accountability" of a rapacious executive "to the people through the judiciary", with a prayer for the issuance of a writ of quo warranto, directing removal of respondent No. 1 from the office of the Chief Minister. Numerous allegations have been levelled quoting the alleged misdeeds of respondent No. 1 which, according to the petitioner, unfailingly demonstrate that the Chief Minister has violated the oath of his office which he took at the time of assuming that office. We need not go into the truth or otherwise of those allegations because after notice, respondent No. 1, reserving his right to meet the allegations and charges has chosen only to file a skeleton affidavit questioning the petitioner's right to approach this Court for the relief claimed and also the jurisdiction of this Court to issue a writ of quo warranto for the alleged breach of oath administered to him. Without, embarking, therefore, upon an enquiry as to the correctness of such allegations which for the purpose of present controversy may be assumed, we proceed to decide the legal question raised as a preliminary objection to the maintainability of this writ petition.

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 may be 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.

9. It may further be noticed that such breach of oath is not a permanent disqualification or a permanent disability for a Member under the Constitution or under a law. Even in terms of Article 191 the disqualification lasts so long as the conditions exist and no further. Reference in this regard may be usefully made to the Division Bench decision of the Kerala High Court in Kallara Sukumaran

v. Union of India [A.I.R. 1986 Kerala 122.] . A situation was rightly conceived where a person enters an office as an unqualified person to continue so by operation of the disqualification provisions of the Constitution as in a case where a person becomes a Minister without being a Member of the Legislature of the State. In that event he can function as such for six months whereafter he would cease to be a Minister in case at that time he is not a Member of the Assembly. Similarly a person duly elected as a Member of the Assembly may become subsequently disqualified in any of the modes mentioned under Article 191. In that event, his existing Membership is extinguished and operates as a bar for further or a further choice of a person as a Member of the Legislative Assembly. The Court also noticed that an authority to take a decision as to disqualification referred to under Article 191 of the Constitution is the Governor who has to act in the manner specified under Article 192. We are in complete agreement with the view taken by the Division Bench that these provisions forcefully suggest that the Constitution exhaustively deals and provides for heads of disqualification. We are also in agreement with the view taken by the Division Bench that it is not for the Courts to expand the scope of disqualification or increase the heads of disqualification. As in that case, so also here, as we have noted above, the contention is that violation of oath by the Chief Minister (in that case by the Minister) operates as disqualification. The contention has to be rejected as in our opinion that will tantamount to adding grounds of disqualification provided under the Constitution. That certainly is not our function.

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.

14. The matter can be looked from yet another angle. We have seen that it is the Governor who appoints the Chief Minister holds office during the pleasure of the Governor and that before entering upon his office, the Chief Minister has to take oath of office and secrecy which oath is administered to him by the Governor. During the Constituent Assembly Debates, Dr. Ambedkar, in his speech while discussing this provision said that undoubtedly, the Ministry is to hold office during such time as it holds the confidence of the majority. It is on this principle

that the Constitution has to work. All the same, the reason stated for not working the provision in that fashion is stated by Dr. Ambedkar in these words,—

"The reason why we have not so expressly stated is because it has not been stated in that fashion or in those terms in any of the Constitutions which lay down a parliamentary system of government. 'During pleasure' is always understood to mean that the 'pleasure' shall not continue notwithstanding the fact that the Ministry has lost the confidence of the majority. The moment the Ministry has lost the confidence of the majority it is presumed that the President will exercise his 'pleasure' in dismissing the Ministry and therefore it is unnecessary to differ from what I may say the stereotyped phraseology which is used in all responsible governments." (Constituent Assembly Debates Volume 8, page 520)

In *K.C. Chandy v. R. Balakrishna Pillai* [A.I.R. 1986 Kerala 116.] , the Full Bench of the Kerala High Court also took the view that the appointing authority being the Governor, it is he who can consider whether there was in fact any breach of oath. Termination of the tenure of a Minister is not the function of a Court. The Full Bench also noted an earlier Division Bench decision of that Court in *Kallara Sukumaran's case*(supra) and held that because of the pleasure doctrine applicable to the time and office of a Minister, the office was held at the disposal of the Chief Minister or the Governor. Elucidating the matter further, another Division Bench of that Court in *Kallara Sukumaran v. Union of India* [A.I.R. 1987 Kerala 212.] , held that what is conferred on the Governor/Chief Minister is a discretion and not power coupled with duty. Appointing authority has not duty to act. It has unfettered discretion to react to the situation in the manner it deems fit, but domain being one of pleasure and discretion there is no scope for any judicial intervention. After quoting at length the Constituent Assembly Debates Volume 7, pages 1159 to 1160, the learned Chief Justice who delivered the judgment for the Court opined that it appears to be the intention of the founding Fathers of the Constitution to leave such matters to the good sense of the Chief Minister (in this case, the Governor) and to the good sense of the Legislature with the general public holding a watching brief. It was further observed that in the absence of a prescription by law that breach of oath shall necessarily entail forfeiture of office, the Governor and/or the Chief Minister may either remove the Minister or may take

such other action according to his discretion as the situation may demand. In its ultimate analysis it was held,—

“The decision is not required to be taken on the basis of a satisfaction on objective criteria. The matters which are entirely within the realm of pleasure and unfettered discretion of the appointing authority are not amenable to the jurisdiction of the High Court under Article 226 of the Constitution.”

This view of the Kerala High Court is also shared by the Madras High Court in Ramachandran v. M.G. Ramachandran [A.I.R. 1987 Madras 207.] , and D. Satyanarayana v. N.T. Rama Rao [A.I.R. 1988 Andhra Pradesh 62.] . We unhesitatingly concur with the view so expressed by the aforesaid three High Courts. We may also add that no decision of any other Court was placed before us taking a contrary view.

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 again. The Full Bench of the Kerala High Court in K.C. Chandy's case (supra) quoted a passage from Darley v. The Queen [A.I.R. 1988 Andhra Pradesh 62.] , 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 please 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 electorate 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, muchless 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 Article 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.

16. Our conclusion, therefore, is that the mere breach of oath administered to the Chief Minister does not render him disqualified to continue to hold that office which is held by him at the pleasure of the Government. A writ in the nature of quo warranto cannot issue for the breach of such oath and this Court has no jurisdiction under Article 226 of the Constitution to issue any direction for the removal of the Chief Minister on that account. In this view of the matter this writ petition has to be dismissed."

(x) In Waseem Abdullah vs. J and K Academy of Art, Culture and Languages and others, reported in 2004 (3) JKJ 407, at paragraph 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 MANU/SC/0214/2003 : (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."

(xi) In B.R.Kapur vs. State of Tamil Nadu, 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 only a 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 fulfil 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 the 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 as 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 : 28 L 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 the nature of 'quo warranto' does not command performance of official functions by any 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. Thatcher [102 SW 2d 937, 938 : 340 Mo 865] ." (emphasis supplied)

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

"265. 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 that the right to the office or franchise might be determined." (emphasis supplied)

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

These four writ petitions were heard together. Substantially, they raise the same questions. Primarily the writ petitioners have prayed for a writ of quo warranto to challenge the appointment on April 25, 1973 with effect from April 26, 1973 of Justice A.N. Ray, one of the respondents herein, Judge of the Supreme Court of India, as the Chief Justice of India on the retirement of Justice S.M. Sikri, the then Chief Justice of India.

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 judgements of ouster against individuals and of ouster and seizure against corporations."

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 vexatious 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."

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 English Reports 938 (2) 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 Appeal Cases 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 exrel Boudret v. Johnston, (1923) 2 Dominion Law Reports 278 (4) 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.

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 v. C.D. Govinda Rao, (1964) 4 Supreme Court Reports 575 (5) 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 11, 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."

In University of Mysore v. C.D. Govinda Rao, (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*, (1969) 2 Labour and Industrial Cases 913 (7) 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*, (1973) 1 Services Law Reporter 1042, (8) the appointment of two of the respondents was challenged by a writ of quo warranto. One of the respondents did not fulfil 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 re-appointed" 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 suggested 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*, 1971 Labour & Industrial Cases 556, (9). 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 11 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 possess 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*, A.I.R. 1954 Allahabad 227, (10) *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*, A.I.R. 1955 Travancore-Cochin 42, (11). 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*, A.I.R. 1963 Madhya Pradesh 17, (12). 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*, A.I.R. 1970 Calcutta 118, (13) 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.

On the other hand, in *Janardan Reddy v. The State of Hyderabad*, 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*, (1955) 1 Supreme Court Reports 250 (15) 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 v. C.D. Govinda Rao* (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.

7. As stated supra, petitioner himself has candidly admitted that second respondent has been appointed by the Hon'ble President of India. Part XVI of the Constitution of India deals with the Special Provisions Relating to Certain Cases. Article 338 of the Constitution of India deals with National Commission for Scheduled Castes.

8. Though the petitioner has contended that there is a breach of violation of oath, going through III Schedule of the Constitution of India, we do not find anything to indicate that the form of oath to be administered for the Minister of a State is applicable to the Vice Chairman of National Commission for Scheduled Castes and Scheduled Tribes. III Schedule refers to the forms of oath or Affirmation and the same reads as under:-

Third Schedule  
[Articles 75 (4), 99, 124 (6), 148 (2), 164 (3), 188  
and 219]

I

Form of oath of office for a Minister for the Union:

"I, A.B., do swear in the name of God/solemnly 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 Union 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."

II

Form of oath of secrecy for a Minister for the Union:

"I, A.B., do 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 Union except as may be required for the due discharge of my duties as such Minister."

III

A

Form of oath or affirmation to be made by a candidate for election to Parliament:

"I, A.B., having been nominated as a candidate to fill a seat in the Council of States (or the House of the People) do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India."

B

Form of oath or affirmation to be made by a member of Parliament:

"I, A.B., having been elected (or nominated) a member of the Council of States (or the House of the People) do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I

will faithfully discharge the duty upon which I am about to enter."

#### IV

Form of oath or affirmation to be made by the Judges of the Supreme Court and the Comptroller and Auditor-General of India:

"I, A.B., having been appointed Chief Justice (or a Judge) of the Supreme Court of India (or Comptroller and Auditor General of India) do swear in the name of God/solemnly 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 duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

#### V

Form of oath of office for a Minister for a State:

"I, A.B., do swear in the name of God/solemnly 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 ---- 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."

#### VI

Form of oath of secrecy for a Minister for a State:

"I, A.B., do 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 ----- except as may be required for the due discharge of my duties as such Minister."

#### VII

##### A

Form or oath or affirmation to be made by a candidate for election to the Legislature of a State:

"I, A.B., having been nominated as a candidate to

fill a seat in Legislative Assembly (or Legislative Council), do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India."

B

Form or oath or affirmation to be made by a member of the Legislature of a State:

"I, A.B., having been elected (or nominated) a member of the Legislative Assembly (or Legislative Council), do swear in the name of God/solemnly 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 and that I will faithfully discharge the duty upon which I am about to enter."]

VIII

Form or oath or affirmation to be made by the Judges of a High Court:

"I, A.B., having been appointed Chief Justice (or a Judge) of the High Court at (or of) ... do swear in the name of God/solemnly 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 duly and faithfully and to the best of my ability, knowledge, and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

9. Petitioner has alleged misuse and abuse of power by the second respondent and consequently, submitting a report, on the issue of putting up of a fence. In the supporting affidavit, petitioner has not even stated as to the qualifications for office of the Vice-Chairman of National Commission for Scheduled Caste and Scheduled Tribe. Petitioner has not averred that the 2nd respondent does not possess the required qualifications. However, we deem it fit to extract the qualifications required for the office of Vice-Chairman.

"(1). The Chairperson, the Vice-Chairperson and the Member shall be appointed from amongst persons of ability, integrity and standing who have had record of selfless service to the cause of justice for the Scheduled Tribes.

(2). Subject to the provisions of sub-rule (1)

(a). the Chairperson shall be appointed from amongst eminent socio-political workers belonging to the Scheduled Tribes, who inspire confidence amongst Scheduled Tribes by their very personality and record of selfless service;

(b). the Vice-Chairperson and other Members out of whom at least two shall be appointed from amongst persons belonging to the Scheduled Tribes;

(c). at least one other Member shall be appointed from amongst women.

10. There is no averment that the 2nd respondent does not possess the required qualification. Without going into the merits of the allegations made against the 2nd respondent, and even taking it for granted that there is any misuse of power, and consequentially submission of a report, that would only enable the aggrieved to challenge the same, in the manner known to law, if permissible, and mere submission of a report would not attract a writ of quo-warranto. Breach of Oath cannot be subject to judicial review.

11. In the light of the above discussion and decisions, prayer sought for quo-warranto is not maintainable. Accordingly, writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(DR CJ conf)

//True Copy//

Sub Assistant Registrar

mvs.

To

1.The Principal Secretary  
Ministry of Home Affairs  
North Block, Cabinet Secretariat  
Raisina Hill  
New Delhi.

+1cc to Mr.P.Vijendran, Advocate SR.71559

Writ Petition No.24464 of 2019

MP (CO)  
CB (10/10/2019)