

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

Tuesday, the 26th day of July 2022 / 4th Sravana, 1944
WP(C) NO. 24222 OF 2022(S)

PETITIONER:

BIJU P. CHERUMAN @ AADI MARGI MAHA CHANDALA BABA,
AGED 37, S/O.T.P KANNAN, PADUVANTHODI HOUSE, KUNNUKAVU P.O.,
ELAMKULAM CHERUKARA, MALAPPURAM, KERALA, PIN-679 340.

RESPONDENTS:

1. ELECTION COMMISSION OF INDIA,
NIRVACHAN SADAN ASHOKA ROAD, NEW DELHI, PIN-110 001.
2. STATE ELECTION COMMISSION, VIKAS BHAVAN, JANA HITHAM,
NEAR LEGISLATURE, THIRUVANANTHAPURAM-695 033.
3. MEMBER OF KERALA LEGISLATIVE ASSEMBLY,
CHENGANNUR CONSTITUENCY, M.L.A OFFICE,
CHENGANNUR, KERALA, PIN-689 121.
4. SAJI CHERIYAN, S/O. T.T.V CHERIYAN, THENGUMTHARAYIL HOUSE,
KOZHUVALLUR. P.O, MULAKKUZHA, CHENGANNUR, ALAPPUZHA-689 521.
5. UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
SECRETARY TO GOVERNMENT OF INDIA, SHASTHRI BHAVAN,
NEW DELHI-110 021.
6. GOVERNMENT OF KERALA, REPRESENTED ITS CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM-695 001.

P.T.O.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to:

1. To issue a writ of Quo warranto or any other appropriate writ, order or direction declaring that the 4th respondent is not entitled to hold the office of the post of 3rd respondent.

2. To grant other relief as this Honourable Court may deem fit in the circumstance of this case.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of SRI.P.K.PRETHEEP KUMAR, Advocate for the petitioner, SRI.DEEPU LAL MOHAN, STANDING COUNSEL for R1 and of SRI.K. GOPALAKRISHNA KURUP, ADVOCATE GENERAL, the court passed the following:

P.T.O.



S. MANIKUMAR, C. J. & SHAJI P. CHALY, J.

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W. P. (C) No. 24222 of 2022

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Dated this the 26th day of July, 2022

ORDER

S. Manikumar, C. J.

Instant writ petition has been filed seeking the following relief:-

“To issue a writ of quo warranto or any other appropriate writ, order or direction declaring that the 4th respondent is not entitled to hold the office of the post of 3rd respondent.”

2. Short facts leading to the filing of the writ petition are as hereunder:-

a) According to the petitioner, Mr. Saji Cherian, the 4th respondent MLA representing Chengannur constituency, on 04.07.2022, publicly insulted the Constitution of India, in a public speech at his political meeting. It was published in the daily newspaper namely Mathrubhumi dated 06.07.2022.

b) Petitioner has submitted that the act of the 4th respondent is a clear violation of Articles 173(a) and 188 of the Constitution of India. A crime has also been registered against the 4th respondent as crime No.

0600/22 by the Keezhvaipur Police Station, Pathanamthitta District. Petitioner has submitted representations dated 07.07.2022 to the Election Commission of India, New Delhi, the 1st respondent and the State Election Commission, Thiruvananthapuram, the 2nd respondent.

c) Being aggrieved that the 4th respondent is holding the post of MLA of the Kerala Legislative Assembly under Articles 173 (a) and 188 of the Constitution of India, petitioner has filed the instant writ petition.

3. Though Mr. P. K. Pretheep Kumar, learned counsel for the petitioner, relied on Article 173 of the Constitution of India in support of the contentions, going through the same, we are of the view that the said Constitutional provision deals with the qualification for membership of the State Legislature.

4. Article 173 of the Constitution of India is reproduced:-

“A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set

out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.”

5. Inasmuch as, the said provision deals with qualification for membership of State Legislature and in the case on hand, being qualified, Mr. Saji Cherian, the 4th respondent, had already been elected as a member of the State Legislature, prima facie, we are of the view that the said Constitutional provision may not be applicable.

6. However, Article 188 of the Constitution of India, speaks about oath or affirmation by members of the Legislative Assembly or the Legislative Council of a State, as the case may be.

7. Article 188 of the Constitution of India is reproduced:-

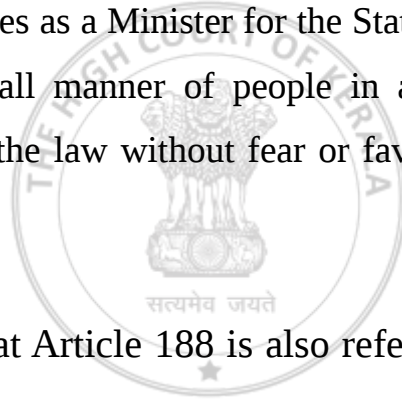
“188. Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form

set out for the purpose in the Third Schedule.”

8. Schedule III(V) [Articles 75(4), 99, 124(6), 148(2), 164(3), 188 and 219], deals with the form of oath of office for a Minister for a State.

Said Schedule is reproduced:

“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 ofand 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.”



9. Inasmuch that Article 188 is also referred to in Schedule III of the Constitution of India, we are of the view that the statement or speech made by Mr. Saji Cherian, the 4th respondent, would attract disqualification of being a member of the Assembly, has to be gone into.

10. Material on record discloses that on the allegations that Mr. Saji Cherian, the 4th respondent, has made statements against the Constitutional provisions, it appears that a crime has been registered

under the provision of Insults to National Honour Act, 1971, by Keezhvaipur, Police Station, Pathanamthitta District.

11. Going through the material on record, we do not find any reference to the provisions of the Representation of the People Act, 1951, as regards disqualification of a Member of a Legislative Assembly.

12. Material on record also discloses that a representation has been made to the Election Commission of India, the 1st respondent, to declare Mr. Saji Cherian, the 4th respondent, as ineligible and disqualified. Here again, no provisions are referred to, in the averments filed in support of the writ petition.

13. However, inviting the attention of this Court to Articles 191 and 192 of the Constitution of India, Mr. K. Gopalakrishna Kurup, learned Advocate General, submitted that to disqualify a member of the Legislative Assembly or the Legislative Council of a State, Constitution of India envisages certain parameters and also the procedure to be followed.

14. Articles 191 and 192 of the Constitution of India are

extracted:-

“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 is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by 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.

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.”

15. In addition to the above, by inviting the attention of this Court to a Hon'ble Full Bench decision of this Court in **K. C. Chandy v. R. Balakrishna Pillai [1985 KHC 170]**, Mr. K. Gopalakrishna Kurup, learned Advocate General, submitted that even if there is a breach of oath by a Minister, that would not call for disqualification as a member of the Assembly or the Legislative Council, as the case may be, and the reliefs sought for in the instant writ petition cannot be granted under Article 226 of the Constitution of India.

Mr. P. K. Pretheep Kumar, learned counsel for the petitioner is

directed to place the relevant provisions of the Representation of the People Act, 1951 / election laws / any orders issued by the Election Commission of India, in this regard.

Post on 27.07.2022.

Sd/-
S. MANIKUMAR
CHIEF JUSTICE



Sd/-
SHAJI P. CHALY
JUDGE

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