

'No Case For Interference Under Article 226': Kerala High Court Dismisses Plea Seeking Former Minister Saji Cheriyan's Disqualification As MLA

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IN THE HIGH COURT OF KERALA AT ERNAKULAM
S. MANIKUMAR; CJ., SHAJI P. CHALY; J.
WP(C) NO. 24222 OF 2022; 8 December 2022

BIJU P. CHERUMAN @ AADI MARGI MAHA CHANDALA BABA
versus
ELECTION COMMISSION OF INDIA

Petitioner by Adv P.K. Pretheep Kumar

Respondents by Advocate General K. Gopalakrishna Kurup by Advs. Deepu Lal Mohan, SC, Election Commission of India, Manu S., ASG of India by Adv. Shri v. Manu, Senior Government Pleader

J U D G M E N T

S. Manikumar, CJ

Challenging the act of a speech allegedly defying the Constitution of India, by respondent No.4, an MLA representing Chengannur Constituency, in Alappuzha district, and a Minister then, in a political meeting, W.P.(C) No.24222 of 2022 is filed seeking for issuance of 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-Member of Kerala Legislative Assembly.

2. According to the petitioner, the act of respondent No.4 is clear violation of Articles 173(a) and 188 of the Constitution of India, and that a crime has also been registered against him as Crime No.600/22 by the Keezhvaipur Police Station, Pathanamthitta district.

3. W.P.(C) No.24233 of 2022 is filed being aggrieved by the inaction on the part of the respondents in taking stringent action against the former Culture, Cinema and Fisheries Minister and sitting MLA of Chengannur Constituency-respondent No.1, for issuance of a writ of *quo warranto* commanding the 1st respondent to forthwith resign or to restrain from the post of MLA. He has also sought for a direction to the 7th respondent – the Home Minister, Ministry of Home Affairs, New Delhi, represented by Assistant Solicitor General of India for the Kerala High Court, to make necessary reports regarding the Constitutional crisis occurring in the State and take proper action under Article 356 of the Constitution of India.

4. That apart, petitioner in W.P.(C) No.24233 of 2022 has also sought for a mandamus directing respondent Nos.5, 6, 8 and 9 to constitute a Special Team to register appropriate cases against the 1st respondent, expedite the investigation, and file a report before the competent Court, within one month.

5. For convenience of discussion, we deem it fit to refer to the facts in W.P.(C) No.24233 of 2022 as hereunder:

5.1 W.P.(C) No.24233 of 2022 is filed by the petitioner claiming that he is the President of Bahujan Dravida Party (BDP), which according to the petitioner is a national political movement for the weaker sections of the country, working with the proper registration number issued by the Election Commission of India.

5.2 At the outset, it is made clear that no documents are produced by the petitioner, to ensure that the political party is a registered one with the Election Commission of India.

5.3 The grievance highlighted by the petitioner in W.P.(C) No.24233 of 2022 is that, the respondents 2 to 10, viz., State Secretary, Communist Party of India (Marxist), Kerala State Committee, Thiruvananthapuram; Chief Minister of Kerala; Additional Chief Secretary, Department of Home Affairs; DGP & State Police Chief; the Home Minister, Ministry of Home Affairs, represented by the Assistant Solicitor General of India for Kerala High Court; Director General NIA, New Delhi; Superintendent of Police, Alappuzha District; and the Editor, Janam TV, Thiruvananthapuram, have failed to take appropriate action against the former Minister for Culture, Fisheries and Youth Affairs Minister and sitting MLA of Chengannur Municipality Mr. Saji Cherian – respondent No.1, a CPI(M) leader, against the derogatory remarks or crooked deliberate attack against the Constitution in his speech made on 3.7.2022.

5.4 According to the petitioners, the said speech was live telecasted through Facebook, a social media platform handled by the Area Committee of Pathanamthitta district, in which, the minister has clearly expressed disloyalty to the Constitution of India and thereby, violated the Oath administered to him as an M.L.A., that he will abide by the Constitution of India.

5.5 The case projected by the petitioners is that the problem arising from the speech so made, does not end with the Minister's resignation, but the first respondent should resign from the post of Member of Legislative Assembly since he has violated the Oath while taking pledge of faith over the Constitution to become an MLA.

6. With the above background facts, the contention advanced is that first respondent MLA had not corrected his statements, even after his resignation as the Minister. He is still occupying the Constitutional post of MLA, to declare his disloyalty to the Constitution, which would adversely affect the utmost faith in the Constitution, become a regular habit of disrespecting it, and a significant threat to the national integrity.

7. Refuting the allegations raised by the petitioners, a statement dated 1.8.2022 has been filed for and on behalf of the State, contending as under:

A. Articles 191 and 192 of the Constitution of India constitute a composite machinery for the purpose of disqualifying a Member of the Legislature. Article 191 prescribes qualification and Article 192 provides the procedure for deciding disputes in respect of those qualifications.

B. The definition of the word 'disqualified', clearly states that a person can be disqualified from being a Member under the provisions of the said Chapter and / or on no other ground. The words 'no other ground' are of immense significance.

C. Apart from the grounds mentioned under Articles 191(1)(a) to 191(1)(d), the other grounds for disqualification from Membership of Legislature have been provided by the Parliament under Sections 8, 8A, 9, 9A, 10 and 10A of the Representation of the People Act, 1951. Section 8 deals with disqualification on conviction for certain offences; Section 8A provides for disqualification on ground of corrupt practices; Section 9 provides for the disqualification for dismissal for corruption or disloyalty; Section 9A deals with the situation where there is subsisting contract between the person and the appropriate Government; Section 10 lays down disqualification for office under Government Company; and Section 10A deals with disqualification for failure to lodge account of election expenses.

D. Apart from these disqualifications, there are no other disqualifications and, as is noticeable, there can be no other ground. Thus, the prescription as regards disqualification is complete in view of the language employed in Section 7(b) read with Sections 8 to 10A

of the Representation of the People Act, 1951. The Constitution, in Article 191, and Parliament, by way of Chapter-III of the Representation of the People Act, 1951, have very clearly enumerated the grounds for disqualification from Membership of the Legislature and the same leaves no room for any new ground to be added or introduced.

E. As to whether violation of oath of office can be a ground for disqualification of a Member of Legislature, learned Advocate General submitted that apart from the disqualifications mentioned in the Constitution under Article 191 and Chapter-III of the Act, 1951, breach of oath of office is not a qualification specified in the Constitution or under any law made by the Parliament. He contended that there is no express provision in the Constitution which attaches specifically any disqualification to the Legislator who commits breach of oath.

F. It is further contended that the Constitution has defined the disqualifications of a Member of the Assembly and that the Parliament has, by law made by it, added grounds for disqualification. He also pointed out that it is not in the power of any authority to change or further add an additional disqualification to the Constitutionally prescribed and legislatively mandated grounds for disqualification. To accept any breach of oath of office as a ground of disqualification from Membership of the Legislature, it will amount to adding to the grounds of disqualification provided under the Constitution and bye law made by the Parliament.

G. As regards maintainability of a writ petition for issuance of a writ of *quo warranto* on the ground of violation of oath of office, learned Advocate General has contended that it is trite and settled and no more *res integra* that writ of *quo warranto* cannot be issued on allegations of violation of oath. It is also trite law that the question of breach of oath of office is outside judicial review under Article 226 of the Constitution of India. In support of the same, learned Advocate General has relied on several decisions of the Hon'ble Supreme Court, as well as various High Courts

H. Learned Advocate General has further contended that satisfaction of the Hon'ble President, on receipt of report from the Hon'ble Governor of a State or otherwise, that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of Constitution of India, must necessarily precede invocation of the measure contemplated under Article 356. He contended that the satisfaction regarding existence of a situation in the State must be that of the Hon'ble President of India. This court under Article 226 of the Constitution of India, cannot encroach upon the Constitutional functions of the Hon'ble President of India. Moreover, the facts highlighted by the writ petitioner cannot by any stretch of imagination, give rise to even a faint inference that a situation has arisen in which the Government of a State cannot be carried on in accordance with the Constitutional provisions.

I. As regards the submissions of the petitioners in the respective writ petitions touching upon Articles 173(a) and 188 of the Constitution of India, learned Advocate General contended that Article 173(a), *inter alia*, mandates that a person wanting to be chosen to fill a seat in the legislature of a State must make and subscribe before an authorized person an oath or affirmation according to the form set out for the purpose in the Third Schedule of the Constitution. Form VII A provides for the form of oath or affirmation to be made by a candidate for election to the legislature of a State.

J. That apart, Article 188, *inter alia*, mandates that every member of the Legislative Assembly, before taking a seat, must take an oath or affirmation according to the form set out for the purpose in the Third Schedule. Form VII B provides for the form of oath or affirmation to be made by a Member of the Legislature of a State. Violation of the mandate

of Article 188 entails penalty contemplated under Article 193 and nothing more. At any rate, the petitioners do not have a case that the incumbent Member of Kerala Legislative Assembly from Chengannur had not subscribed to or affirmed to the oaths under Forms VII A and VII B of the Third Schedule to the Constitution.

K. As regards the submissions of the petitioners in the writ petitions, touching upon Section 9(1) of the Representation of the People Act, 1951, learned Advocate General submitted that Section 9 contemplates disqualification for dismissal for corruption or disloyalty. The disqualification shall be for a period of five years from the date of such dismissal. The incumbent Member of Kerala Legislative Assembly from Chengannur has not been dismissed for corruption or disloyalty to the State. In such circumstances, it cannot be said that he is liable to be disqualified under Section 9(1) of the Act, 1951. Any contrary interpretation of Section 9, as sought for in Writ Petition (Civil) No. 24233 of 2022, will go against the law laid down by the Constitutional Bench of the Hon'ble Apex Court in **Public Interest Foundation and Others v. Union of India and another** [(2019) 3 SCC 224].

L. As regards the prayer for issuance of a writ in the nature of mandamus direction constitution of a Special Team to register appropriate case against the incumbent Member of the Kerala Legislative Assembly from Chengannur, and to expedite the investigation monitored by this Court, with report to be filed before the competent court, within one month, learned Advocate General contended that as is discernible from Exhibit P2 in W.P(C) No. 24222 of 2022, a case has been registered under the Prevention of Insults to National Honour Act, 1971. The same is not a scheduled offence under the National Investigation Agency Act, 2008, for the Director General of National Investigation Agency, 8th respondent in W.(C) No. 24233 of 2022, to investigate in to the same. Further, the petitioner has not made out any grounds warranting constitution of a Special Investigation Team or a Court monitored probe. For the foregoing reasons, learned Advocate General prayed for dismissal of the writ petitions.

8. Heard Mr. Sonnymon and Mr. Pratheep Kumar, learned counsel for the petitioners, Mr. K. Gopalakrishna Kurup, learned Advocate General, Mr. N. Manoj Kumar, learned State Attorney, Mr. V. Manu, learned Special Government Pleader, Mr. Deepu Lal Mohan, learned standing counsel for the State Election Commission, Mr. S. Manu, Deputy Solicitor General of India, and C. Baiju, Central Government Counsel for the respective respondents and perused the material on record.

9. From Exhibit-P1 complaint, what we could gather is that the petitioners have filed a complaint before the Superintendent of Police, Alappuzha, seeking to take criminal action against the 1st respondent MLA. In W.P.(C) No.24233/2022, the petitioner seeks for issuance of a writ of *quo warranto* or other appropriate writ, order or order, commanding the 1st respondent to immediately resign from the post of MLA,; to issue a writ of mandamus, directing the Home Minister, Ministry of Home Affairs, New Delhi – 7th respondent, to make necessary reports regarding the Constitutional crisis occurred in the State and take appropriate action and other consequential reliefs, as stated above.

10. The sole question to be considered is, whether the petitioners are entitled to get any reliefs sought for invoking the powers conferred under Article 226 of the Constitution of India.

11. Learned counsel for the petitioners have advanced arguments on the basis of the pleadings discussed above.

12. Learned Advocate General and other learned counsel representing the State Officials submitted that the writ petitions are not maintainable in law for the reasons assigned above.

13. The issue with respect to disqualification for membership is dealt under Article 191 of the Constitution of India and it reads thus:

“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.”

14. Clause (1) of Article 191 of the Constitution adumbrates the disqualification of a person for being chosen as, and for being a member of the Legislative Assembly or Legislative Council of a State. The provisions are specific and clear, without leaving an iota of doubt that the disqualification can only be the ones recited thereunder. Reading of Article 191 of the Constitution makes it clear that unless and until the disqualification prescribed therein is available, a member who has already been elected as a Member of Legislative Assembly is not liable to be proceeded on the ground of disqualification for being a member of Legislative Assembly.

15. Yet another disqualification prescribed is under clause (2) of Article 191 of the Constitution of India for being a member of the Legislative Assembly of State Government, if he is disqualified under the Tenth Schedule, of the Constitution incorporated as per the powers vested under Articles 102(2) and 191(2), dealing with disqualification on the grounds of defection. There is no case of any defection, in the instant case.

16. Further, Article 192 of the Constitution of India deals with decisions on the question of the disqualification of members. Clause (1) thereto clearly specifies that 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. Clause (2) of Article 192 of the Constitution specifies the manner in which the Governor has to deal with any such reference.

17. On a close reading of Articles 191 and 192 of the Constitution of India, we have no doubt to say that there is a clear procedure prescribed, in order to deal with any circumstance under the said Constitutional mandates, if there are any. Hence, there is no scope for considering the subject issue under Article 226 of the Constitution of India, and

that too, in a case where writ petitions were filed after making a complaint to the Superintendent of Police; Election Commission of India; Election Commission of Kerala, etc.

18. However, material on record discloses that the petitioner in W.P.(C) No.24222 of 2022 has made a representation to the Hon'ble Governor of Kerala dated 7.7.2022, and the said writ petition was filed before this Court on 25.07.2022, even without seeking any relief against it, and without making the statutory authority a party.

19. That apart, Representation of Peoples Act, 1951, which is an Act to provide for the conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections are prescribed.

20. Section 7(b) under Chapter III, which deals with disqualifications for membership of Parliament and State Legislatures, defines the word "disqualified" to mean disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State, under the provisions of the said Chapter, and on no other ground.

21. Section 8 of Act, 1951 deals with disqualification on conviction for certain offences and it reads as under:

"8. Disqualification on conviction for certain offences. [(1) A person convicted of an offence punishable under-

(a) section 153-A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860); or

(b) the Protection of Civil Rights Act, 1955 (22 of 1955) which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

(c) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or

(d) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(e) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or

(f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(g) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(h) section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(i) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) of clause (a) of sub-section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act; or

(j) section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991; or

(k) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971), or

(l) the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or

(m) the Prevention of Corruption Act, 1988 (49 of 1988); or

(n) the Prevention of Terrorism Act, 2002 (15 of 2002),] 5 [shall be disqualified, where the convicted person is sentenced to—

(i) only fine, for a period of six years from the date of such conviction;

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.]

(2) A person convicted for the contravention of—

(a) any law providing for the prevention of hoarding or profiteering; or

(b) any law relating to the adulteration of food or drugs; or

(c) any provisions of the Dowry Prohibition Act, 1961 (28 of 1961);

xxxxx

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.]

[(4)] Notwithstanding anything 8 [in sub-section (1), sub-section (2) or sub-section (3)] a disqualification under either subsection shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

Explanation. —In this section, —

(a) "law providing for the prevention of hoarding or profiteering" means any law, or any order, rule or notification having the force of law, providing for—

(i) the regulation of production or manufacture of any essential commodity;

(ii) the control of price at which any essential commodity may be bought or sold;

(iii) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity;

(iv) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;

(b) "drug" has the meaning assigned to it in the Drugs and Cosmetics Act, 1940 (23 of 1940);

(c) "essential commodity" has the meaning assigned to it in the Essential Commodity Act, 1955 (10 of 1955);

(d) "food" has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954 (37 of 1954)."

22. Section 8A of the Act, 1951 deals with disqualification on the ground of corrupt practices and it reads as under:

"8A. Disqualification on ground of corrupt practices.—(1) The case of every person found guilty of a corrupt practice by an order under section 99 shall be submitted, 2 [as soon as may be, within a period of three months from the date such order takes effect], by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period: Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under section 99 takes effect.

(2) Any person who stands disqualified under section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.

(3) Before giving his decision on any question mentioned in sub-section (1) or on any petition submitted under subsection (2), the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion."

23. Section 9 deals with disqualification for dismissal for corruption or disloyalty and it reads as under:

"9. Disqualification for dismissal for corruption or disloyalty. —(1) A person who having held an office under the Government of India or under the Government of any State has been dismissed for corruption or for disloyalty to the State shall be disqualified for a period of five years from the date of such dismissal.

(2) For the purposes of sub-section (1), a certificate issued by the Election Commission to the effect that a person having held office under the Government of India or under the Government of a State, has or has not been dismissed for corruption or for disloyalty to the State shall be conclusive proof of the fact:

Provided that no certificate to the effect that a person has been dismissed for corruption or for disloyalty to the State shall be issued unless an opportunity of being heard has been given to the said person."

24. Section 9-A of the Act, 1951, deals with disqualification for Government contracts, etc., and it reads as under:

"9A. Disqualification for Government contracts, etc. —A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.

Explanation.— For the purposes of this section, where a contract has been fully performed by the person by whom it has been entered into with the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part."

25. Section 10 of the Act, 1951 deals with disqualification for office under Government company and it states that a person shall be disqualified if, and for so long as, he is a managing agent, manager or secretary of any company or corporation (other than a

cooperative society) in the capital of which the appropriate Government has not less than twenty-five per cent. share.

26. Section 10A of the Act, 1951 deals with disqualification for failure to lodge account of election expenses and it reads thus:

“10A. Disqualification for failure to lodge account of election expenses.— If the Election Commission is satisfied that a person—

(a) has failed to lodge an account of election expenses within the time and in the manner required by or under this Act; and

(b) has no good reason or justification for the failure, the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.”

27. Having gone through Sections 8, 8A, 9, 9A, 10, and 10A of the Representation of Peoples Act, 1951, dealing with disqualifications, we could not locate any law under the said provisions to attribute disqualification against the M.L.A., by invoking the powers conferred under Article 226 of the Constitution; the provisions being transparent with respect to the disqualifications.

28. It is true that under Article 188 of the Constitution of India, every member of the Legislative Assembly before taking his seat, make and subscribe before the Governor, or some other person appointed in that behalf by him, an oath or affirmation by the form set out for the purpose in the Third Schedule.

29. Whether the 1st respondent has violated the Oath of office, on the basis of the subject matter, is a matter which could be identified or deciphered only by a fact finding body, taking into account the attendant circumstances. So also, Article 173 of the constitution of India deals with the qualifications of a person to become a member of a Legislative Assembly, which has nothing to do with the case projected by the petitioners. Therefore, we are of the view that, if at all the allegations have any intrinsic relationship with the disqualifications deliberated above, there is a straightforward remedy specified under the Constitution of India.

30. It is not for this Court to go to the contentions, decipher the truth of it, and grant the reliefs sought by the petitioners under Article 226 of the Constitution of India; much less, the relief of a writ of *quo warranto*. Moreover, the issue of violation of Oath, is a matter to be taken care of under Article 193 of the Constitution of India, which again is a factual circumstance.

Considering the facts and circumstances; the provisions of the Constitution and the laws; and the provisions of Representation of People Act, 1951, discussed above, we do not think that the petitioners have made a case for interference under Article 226 of the Constitution. Needless to say, the writ petitions fail; accordingly, they are dismissed.