

P.B.SURESH KUMAR, J.

**Unnumbered Writ Petitions (C) of 2021
(F.Nos.9031715 and 9031706 of 2021)**

Dated this the 31st day of August, 2021

ORDER

Unnumbered writ petition corresponds to file No.9031706 of 2021 is one instituted seeking, among others, a direction to the Chief Justice of this Court to comply with the In-House Procedure adopted by a Full Court Meeting of the Honourable Supreme Court in relation to a complaint against a Judge. Unnumbered writ petition corresponds to file No.9031715 of 2021 is one instituted seeking, among others, a direction to the Chief Justice of India and the Chief Justice of this Court to comply with the In-House Procedure in relation to a complaint against two Judges.

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2. When the writ petition corresponds to file No.9031706 of 2021 was instituted, the Registry entertained a doubt as to whether a writ petition could be instituted seeking relief aforesaid against the Chief Justice of this Court, and the counsel for the petitioner was required to clarify the position. In response to the said query of the Registry, the learned counsel for the petitioner clarified that a writ petition could certainly be instituted against the Chief Justice of this Court. The Registry, thereupon, sought a further clarification from the counsel for the petitioner as to whether the stand taken by him is correct, in the light of the decision of the High Court of Calcutta in AIR 1961 Calcutta 545 and the decision of the Apex Court in Civil Appeal No.485 of 1963. The counsel for the petitioner took exception to the said query pointing out that the Registry is not authorised to seek such clarification, for it is a pure question of law to be decided on the judicial side. Identical clarifications were sought by the Registry from the counsel for the petitioner

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in the writ petition corresponds to file No.9031715 of 2021 also, and identical stand was taken by the counsel for the petitioner in the said case as well.

3. Since the Registry was not impressed by the stand taken by the counsel for the petitioner, as required by the counsel for the petitioner, the matters were placed before the Court for appropriate orders.

4. When the matters were taken up, the learned counsel for the petitioner pointed out that though the Registry was justified in entertaining a doubt as to whether the writ petitions of the instant nature are maintainable, when the counsel for the petitioner clarified the doubt of the Registry in the affirmative, the matters should have been numbered and placed before the Court for decision as to the sustainability of the doubt entertained by the Registry on the judicial side. According to the learned counsel, it was highly improper for the Registry to conduct a further probe into the issue and seek

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further clarification in the matter, for, by such conduct, the Registry has entered the domain of judicial function. It was pointed out by the learned counsel that the practice of this nature is one that was deprecated by the Division Bench of this Court in **Ayub Khan P.A. v. State of Kerala and Another**, 2012 (1) KHC 615, and the Apex Court in **Surendran P. v. State by Inspector of Police**, 2019 (3) KHC 102.

5. When this Court required the learned counsel for the petitioner to make his submissions as to the sustainability of the doubt entertained by the Registry, after assuring the counsel that his objections against the conduct of the Registry would be considered, the stand taken by the learned counsel was that it is improper for this Court to require the counsel to address the court on the issue relating to the sustainability of the doubt entertained by the Registry before numbering the writ petition, for the same would legitimise the alleged improper conduct of the Registry. When this Court took

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the stand that there may not be any impropriety in hearing the counsel on the sustainability of the doubt raised by the Registry in an unnumbered matter, the counsel for the petitioner made submissions on the issue relating to the sustainability of the doubt raised by the Registry after taking strong exception to the view taken by the Court.

6. As regards the issue relating to the sustainability of the doubt raised by the Registry, the learned counsel for the petitioner pointed out that a writ petition is certainly maintainable against the Chief Justice of this Court and also against the Chief Justice of India in relation to their administrative functions, and writ petitions are being entertained by High Courts and the Apex Court in such matters. It was also pointed out by the learned counsel that in terms of the In-House Procedure prescribed to deal with the complaints against Judges, it is for the Chief Justice of this Court and also the Chief Justice of India to take appropriate actions and they

are therefore, necessary parties to the writ petitions.

7. In **Ayub Khan P.A.**, it was held by this Court that maintainability is essentially a matter which needs to be addressed by the Court on the judicial side, while clarifying that the Registry is free to consider the maintainability of the matter. It was clarified in the said case that if it is found by the Registry that the case is not maintainable, it is free to record the reason for the same and refuse to number the matter and if the party or counsel filing the case requires maintainability to be adjudicated by the Court on judicial side, the Registry has to place the unnumbered matter to the concerned Judge or Bench for consideration of maintainability, and for numbering, if ordered by the Judge or Bench. The learned counsel for the petitioner does not dispute the said proposition. As such, the stand taken by the learned counsel for the petitioner that the issue relating to the sustainability of the doubt raised by the Registry cannot be decided by this court on the judicial side

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without numbering the matter is not one accepted by this court even in **Ayub Khan P.A.** relied on by the learned counsel himself. In other words, the Registry cannot be found fault with for having placed the matter before the court to decide the issue relating to the sustainability of the doubt without numbering the writ petition. It is all the more so since the numbering of the writ petition being purely an administrative function, the authority of the court in addressing an issue relating to the sustainability of the doubt raised by the Registry on judicial side cannot be dependent on the numbering of the matter. Similarly, the stand that once a query raised by the Registry on an issue is answered by the counsel, the conduct of the Registry in raising further queries on the same issue based on the decisions of the court would amount to judicial function cannot also be accepted, for if the issue raised is covered by a decision of the court, the Registry cannot be blamed for bringing the decision on the issue to the notice of the counsel.

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Of course, this will not stand in the way of the party or counsel requiring the matter to be placed before the Judge or Bench concerned for a decision on the issue on judicial side and in that event, the Registry will have no option but to place the matter before the Judge or Bench concerned for decision on the issue on judicial side.

8. **Surendran P.** relied on by the learned counsel for the petitioner is a case where the Apex Court considered the question whether the conduct of the Registry of the Madras High Court in refusing to number an application for Anticipatory Bail and not placing it before the appropriate Bench for a decision on the question of maintainability was correct. The said decision may not be of any relevance in the context of the present case, for the Registry has placed the matter before the court for a decision on judicial side on the issue relating to the sustainability of the doubt raised by it as to the maintainability of the writ petition against the Chief Justice.

9. Coming to the issue relating to the sustainability of the doubt raised by the Registry, as noted, the stand taken by the learned counsel for the petitioner is that the subject matter of the writ petition being one relating to the administrative function of the Chief Justice of this Court and the Chief Justice of India, a writ petition can certainly be instituted seeking reliefs against the Chief Justice of this court as also the Chief Justice of India. It is seen that though the question whether a writ petition would lie against the Chief Justice of a High Court has come up before the Apex court in **Pradyat Kumar Bose v. Chief Justice of Calcutta High Court**, AIR 1956 SC 285, no opinion was given on the question by the Apex Court. However, the following observation was made by the Apex Court in the said case.

“We consider it however desirable to say that our view that the exercise of the power of dismissal of a civil servant in the exercise of administrative power may not necessarily preclude the availability of remedy under Art.226 of the Constitution in

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an appropriate case.”

Later, following the said observation, in **Pramatha Nath Mitter and others v. Hon'ble The Chief Justice of the High Court at Calcutta in the State of W.B.**, AIR 1961 Calcutta 545, the Calcutta High Court took the view that when an action of the Chief Justice is of an administrative nature, there may be a remedy available under Article 226 in appropriate cases. It is in the light of this case that the Registry sought clarification from the counsel for the petitioner as to whether the writ petition would lie against the Chief Justice. Later, a Full Bench of this court, after analysing the aforesaid two judgments, clarified in **K.Prabhakaran Nair v. State of Kerala**, 1969 KLT 444 that there is nothing in the wording of Article 226 of the Constitution which warrants the imposition of a limitation that the jurisdiction of the High Court under the said Article cannot be invoked for the purpose of calling in question orders passed by the Chief Justice or by the High Court itself on

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administrative side. In the light of the aforesaid discussion, there is no legal basis for the doubt raised by the Registry in the matters.

The Registry is, therefore, directed to number the writ petitions and list them for admission.

P.B.SURESH KUMAR, JUDGE

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