IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.12.2023

Pronounced on: 06.03.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.Nos.29203, 29204 & 29205 of 2023
& WMP.Nos.29853, 31023 31025 & 31026 of 2023

WP.No.29203 of 2023

Kishore Kumar ... Petitioner

Vs.

1.P.K.Sekar Babu,
S/o.P.Krishnasamy,
Hon'ble Minister for Hindu Religious &
Charitable Endowments,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009

2.The Secretary,
Tamil Nadu Legislative Assembly,
Secretariat, Fort St. George,
Chennai-600 009
(R2 amended vide this order) ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Quo Warranto calling upon the 1st respondent herein to show cause under what authority of law he is holding the post of the Minister of the Tamil Nadu State and also as an M.L.A.

WP.No.29204 of 2023

V.P.Jayakumar ... Petitioner

Vs.

1.A.Raja,
S/o.S.K.Andimuthu,
Member of Parliament,

No.3/125, Mariamman Koil Street,
Vellur Village & Post,
Perambalur-621 104.

2.The Secretary,
Lok-Sabha,
18, Parliament House,
103, Parliament House Annexe,
New Delhi-110 003 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Quo Warrantocalling upon the 1st respondent herein to show cause under what authority of law he is holding the post of the Member of Parliament.

WP.No.29205 of 2023

T.Manohar ... Petitioner

Vs.

1.Udhayanidhi Stalin,
S/o.M.K.Stalin,
Hon'ble Minister for Youth Welfare &
Sports Development,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009

2.The Secretary,
Tamil Nadu Legislative Assembly,
Secretariat, Fort St. George,
Chennai-600 009
(R2 amended vide this order) ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Quo Warranto calling upon the 1st respondent herein to show cause under what authority of law he is holding the post of the Minister of the Tamil Nadu State and also as an M.L.A.

Case Nos.	For Petitioners	For Respondents
WP.No.29203 of 2023	Mr.G.Karthikeyan for Ms.A.Jagadeswari	Mr.N.Jothi, Senior Counsel for Mr.K.Chandru (for R1) Mr.R.Shunmugasundaram, Additional Advocate General Assisted by Mr.K.M.D.Muhilan (for R2)
WP.No.29204 of 2023	Mr.G.Rajagopalan, Senior Counsel for Ms.A.Jagadeswari	Mr.Viduthalai, Senior Counsel (for R1) for M/s.P.Wilson Associates (for R1) Mr.K.Ramanamurthy, Central Government Standing Counsel (for R2)
WP.No.29205 of 2023	Mr.T.V.Ramanujan, Senior Counsel for Ms.A.Jagadeswari	Mr.P.Wilson, Senior Counsel for M/s.P.Wilson Associates (for R1) Mr.R.Shunmugasundaram, Additional Advocate General Assisted by Mr.K.M.D.Muhilan (for R2)

COMMON ORDER

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I. Introduction and brief description of parties

These Writ Petitions are filed by three individuals seeking Writ of Quo Warranto calling upon the first respondent in the Writ Petitions to show cause under what authority of law they are holding Constitutional posts in the Government of the State of Tamil Nadu.

2. The first respondent in W.P.No.29203 of 2023 is a Member of Legislative Assembly (in short 'MLA') holding the post of Minister for Hindu Religious and Charitable Endowments (in short 'HR & CE'), the first respondent in W.P.No.29204 of 2023 is a Member of Parliament (in short 'MP') and the first respondent in W.P.No.29205 of 2023 is an MLA holding the post of Minister for Youth Welfare and Sports Development. The first respondents in the three writ petitions are collectively referred to as 'individual respondents', and separately by name.

3. Heard the detailed submissions of Mr.T.V.Ramanujan, Mr.G.Rajagopalan and Mr.G.Karthikeyan, learned Senior Counsels appearing on behalf of Ms.A.Jagadeeswari, learned counsel on record for the petitioners in the Writ Petitions, Mr.N.Jothi, learned counsel for Mr.P.K.Sekar Babu/R1 in W.P.No.29203 of 2023, Mr.Viduthulai, learned Senior Counsel appearing for M/s.Wilson Associates for Mr.A.Raja/R1 in W.P.No. 29204 of 2023, P.Wilson, learned Senior Counsel appearing for M/s.Wilson Associates for Mr.Udhayanidhi Stalin /R1 in W.P.No.29205 of 2023, Mr.R.Shunmugasundaram, learned Advocate General, assisted by

Mr.K.M.D.Muhilan, learned Additional Government Pleader for the Special Secretary, Tamil Nadu Legislative Assembly/R2 in W.P.Nos.29203 and 29205 of 2023 and Mr.K.Ramanamurthy, learned Central Government Standing Counsel for the Secretary, Lok Sabha/R2 in W.P.No. 29204 of 2023.

II. <u>Background including relevant extract of the speeches</u>

4. The Petitioners are aggrieved by the participation of two of the individual respondents in a Convention entitled *'Sanatana Ozhippu Manadu'*, meaning, *'Convention for the destruction of Sanatana Dharma'* conducted by the Tamil Nadu Progressive Writers and Artists Association, a wing of the Communist Party of India, in Chennai on 02.09.2023 (in short 'Convention') and their statements making reference to, and comparing Sanatana Dharma to virulent diseases.

5. A copy of the invitation has been supplied in the course of the hearing revealing that the purport of the Convention was to deride Sanatana Dharma and discuss the continuous deleterious impact that, according to the individual respondents, it has had, and continues to have on society.

6. The purpose of the Convention was to deliberate on strategy for the destruction ('Ozhippu') of Sanatana Dharma. Mr.P.K.Sekar Babu was present in the Convention but did not deliver a speech there. His very participation in the Convention was questioned and he chosen explicitly to support the cause espoused in the Convention in a press conference conducted on 06.09.2023.

7. Mr.Udhayanidhi Stalin delivered a speech in the Convention on 02.09.2023. Mr.A.Raja was a speaker in a meeting conducted on 02.09.2023 under the ageis of Tamil Nadu Murpokku Ezhuthalar Kalaignargal Sangam entitled Sanatana Ozhippu Manadu.

8. Since the offending statements are fundamental to the lis, the text of the speeches to the extent to which they are relevant to decide these Writ Petitions, are extracted below.

Speech of Mr.Udayanidhi Stalin

I would like to express my salutations and gratitude to the organizing committee of the Tamil Nadu Progressive Writers and Artists Association for giving me the opportunity to deliver the felicitation speech at this Sanatana Abolition Conference. The title of this conference is very apt. My congratulations to you for calling it Sanatana Abolition Conference instead of Anti-Sanatana Conference.

Some we must abolish and cannot resist. We should not resist mosquitoes, dengue, fever, malaria, corona and so should we eradicate them That is how this sanatana is. The first thing we need to do is to eradicate Sanatana rather than oppose it.

Therefore, you have put the most suitable topic for this conference, so my best wishes for it. What is sanatana? The name Sanadhanam is derived from Sanskrit. Sanatanam is against equality and social justice. Sanatana means fixed and unchangeable. It means that no one can question it.

Communist movement and Dravida Munnetra Kazhagam have the principle that everything must be changed, nothing is fixed, we must question everything

……

The Dravidian model of government is implementing schemes that uplift the people. But the bjp government is trying to push our people backwards. Manipur is ruled by BJP. It has divided people into two groups in their own state and fueled riots This is Sanatana. Riots have been going on there for the past five months. More than two hundred people have been killed in the riots. Then our Chief Minister invited the athletes there to train in Tamil Nadu saying that I will take care of you. Eighteen swordsmen came here and trained for twenty days Our

Chief Minister provided food and accommodation for them here. Then they congratulated our Chief Minister that even in our state they do not treat us like this. This is Dravidianism.

Sanatana is spreading false news and inciting riots. A few months ago, the media spread false news that the North State workers were being killed here. But our Chief Minister handled it very well. Our officers went to Bihar and the officials there came here and inspected. Our Chief Minister shattered the fake news of fascism by ensuring that no untoward incident took place anywhere.

……..

We come up with the necessary programs for our children to study but fascists come up with many schemes to make sure that children are not allowed to study. Sanatanas plan is that we should not study.

……….

In the context of this war between Sanatana and Dravidianism, the Tamil Nadu Progressive Writers and Artists Association is organizing the Sanatana Abolition Conference very well. This is a very necessary conference, you are holding this conference once a year, but that is not enough, you should hold it as often as possible throughout the year, I request. Some of the Sanatanists will surely get upset while watching this conference. Let them burn, you must hold this conference continuously. The conference will start at 8.30 a.m. today and will be held for the entire day today. Many people here are going to speak on the topic against Sanatana. I convey my congratulations and best wishes to all those who attended here. We shouldn't talk here and go away like that. We have to take our ideas to the people.

……..

Here our Doctor Ezhilan said, On behalf of the youth wing of the Dravida Munnetra Kazhagam, we have conducted a training camp meeting on behalf of the DMK, the history of the Dravidian movement, the history of the language war, constituency-wise on behalf of our youth wing. The chief minister has given us an order and next we are going to conduct it union-wise area-wise. We will be conducting training camp 2.0 soon. I appeal to our Communist comrades to participate in it and exchange your views.

……..

I convey my best wishes for the success of this Sanatana Abolition Conference. Let Sanatanam fall and let the Dravidians win and I am saying goodbye by thanking you for the opportunity thank you.

Speech of Mr.A.Raja:

A huge gathering was held in Puducherry yesterday to inaugurate the statue of kalaignar. I have posted all my

condemnation there, but they are coming on social media, but I will address you briefly then leave. All those who spoke to me before me said that the speech made by Tamil Nadu Minister brother Udhayanidhi has become a topic of discussion across India today. This program is also a program that answers the topic of discussion. Because Sanatana and Vishwakarma are not different. But I find it strange that Udhayanidhi Stalin said it very gently. That it should be eradicated like malaria and dengue. Malaria and dengue don't have a social stigma that society doesn't look at as disgusting.

To compare sanatana with abomination, there was once leprosy and HIV. Therefore, sanatana should be seen as a miserable disease. Prime Minister says to follow Sanatana Dharma. If he had followed it, he would not have travelled abroad so much. Because a good Hindu should not cross the ocean. Your job is to roam around. What a scoundrel it is to say that a person who goes around in defiance of Sanatan should save Sanatan. For this scoundrel, call the cabinet today and talk well about Sanatan and spread it. I have challenged the Prime Minister and Amit Shah yesterday. If you want to know about the four varnas and sanatana or if you want to have a discussion, I will say on behalf of the Dravida Munnetra Kazhagam with the permission of our Chief Minister. Mr. Modi, Mr. Amit Shah, gather ten lakh people or one crore people in Delhi. Make your Shankaracharya sit above everyone else. Bring all your weapons, bow, arrow, knife, dagger and keep everything close at hand. I come with only Periyar and Ambedkar books.

The debate is in Delhi because the Prime Minister and all of you are Maha Vishwaguru, Jagat Guru in your view I am just a Panchama Shudra. I am coming to debate but I don't know Hindi. I only speak in English. I can't do anything if you don't know English. So I am saying on this stage that Udhayanidhi's speech is very soft and if you ask me, I will speak even more harshly. So if there is anyone among you to discuss Sanatana, I challenge you in front of Tamil Nadu leaders, mark the date anywhere in Delhi, I am ready for Raja to come. Subbiah said beautifully, Their job is to take this and add it to the caste. If we take it a step further, Ambedkar has said that in every country there is a carpenter and in every country there is a scavenger and in every country there is a barber. If you go to London, you have a barber shop and a goldsmith shop. They are not caste. A society needs separation of occupations. I had even spoken yesterday that if I had to put cotton on my shirt and weave myself on my shirt and sew it myself, we would all have to go around naked. Can't do that. Social Harmony requires another to work to fulfil our

needs Dr. Ambedkar meticulously studied that the religion here had done the strange thing that this division of labour was to be done in foreign countries and that this was what his son should do by tying it to a caste and clan occupation, in which he said that the ascending order of reference, defending order of contempt. When the caste is divided like that, the upper caste is a good job and the lower one is a socially disgraced job He said that this religion is the only religion in the world that inculcates this technique. So its not just their job here to save casteism. Their job is not just to save the industry, their aim is to keep it as a Hindu Rashtra. It won't be if everyone does all the business. So even Hitler did not do this delicate work, they are doing it. We have a compelling duty to overcome this and only we can. In another way, I want to thank the teacher K. Veeramani who has started here and all our struggle has ended here in South India. First of all I said that Sanatana Hindu is different from ordinary Hindu. They have translated it into twelve languages. That A. Raja divided Hinduism. Now he has started in Tamil Nadu, Karnataka, Kerala, you were saying Shudra. Now the whole of North India is on fire. They are going to call it Bharat. I see this platform as the starting point for a whole socialist secular country over the next ten years, not only in the sense of the Constitution, but also as a starting point for something that will consciously create it. I salute all of you and say that this struggle should continue. They have said that the government will also stand by you. I am saying good-bye to you only by conveying this message to you. Thank you.

Statements of Mr.P.K.Sekar Babu

9. Though Mr.P.K.Sekar Babu had not spoken at the convention, he has expressed solidarity with the sentiments expressed by Mr.Udhayanidhi Stalin and with the theme of the Convention in a press meet and the questions posed and his answers as widely reported in the media are as follows:

As far as we are concerned, Hindu religion and Sanatana Dharma can be equated to a banana. If Hindu religion is the fruit, the Sanatana Dharma can be said to be the skin of the fruit. The fruit can be eaten only after discarding the skin. Our policy is to protest against the unnecessary portions of Sanatana Dharma. It is not our policy to

either militate against or destroy those who refer to Sanatana. Our Hon'ble Minister Udayanidhi Stalin has explained this clearly. He has settled this dispute once and for all. As far as we are concerned, it is the principles of Sanatana we object to, it is the principles of Sanatana that we say should be destroyed and we have never said that Sanatana itself must be destroyed.

Q – What are your thoughts on the matter pending in the High Court?

A - The matter was subjudice and I am being represented by the counsel in the High Court. Any action that is required to be taken would be contemplated at a later stage.

Q- Do you regret having participated in the Sanata Dharma conference?

A – As far as the Dravida Munnetra Kazhagam is concerned, once a move is taken, they will not retract or take a step back. Since the matter is subjudice, I do not wish to elaborate further. Further actions will be taken once the matter was decided.

10. Paragraphs III (i) to (v) deal with the objection to maintainability of the writ petitions as raised in W.M.P.No.29853 of 2024 filed by Mr.Udhayanidhi Stalin.

III (i) Maintainability on the anvil of non-joinder and mis-joinder of necessary parties

11. Preliminary objections to maintainability are raised by Mr.Wilson who argues that the Writ Petitions are not maintainable for mis-joinder and non-joinder of necessary parties. R2 in W.P.Nos. 29203 and 29205 of 2023 is *'The Special Secretary, Tamil Nadu Legislative Assembly, Secretariat, Fort St. George, Chennai-600 009',* whereas, the appropriate authority to have been arrayed should have been '*Secretary of the Legislative Assembly'*.

12. Reliance is placed on a judgment of the Hon'ble Supreme Court in the case of *Chief Conservator of Forests Government of Andhra Pradesh V.*

Collectors and others[1]. Learned Advocate General supports the argument stating that the proper authority to have been arrayed would have been the Secretary, as Head of the Legislative Assembly. According to the respondents, this is not a curable or a formal defect but amounts to mis-joinder and non-joinder of necessary parties that goes to the root of the matter.

13. The petitioners for their part, state that that the array is liable to be amended and have filed an application in W.M.P.No.21023 of 2023 seeking amendment of the array of the second respondent in W.P.No.29205 of 2023 from 'Special Secretary' to 'Secretary'.

Conclusion

14. It is true that the array of R2 in W.P.Nos.29203 and 29205 of 2023 is Special Secretary. Learned Advocate General circulates S.O.(Ms.) No.23 dated 02.03.2018 which is a Special Order issued by the Legislative Assembly Secretariat. That Order notifies a Rule to the effect that the Rules applicable to the holders of permanent post of Secretary, Legislative Assembly, Secretariat (Category I Class I) of the Tamil Nadu Legislative Assembly Secretariat services shall apply to the holder of the post of Special Secretary in the Tamil Nadu Legislative Assembly Secretariat service, subject to modifications set out therein. The Rule is in force since 14.12.2017.

15. The Special Order clarifies that the post of Special Secretary is a temporary post unlike that of the Secretary, a permanent post. Learned

[1] AIR 2003 SC 1805

Advocate General also clarifies that the roles and responsibilities of the Special Secretary are different and distinct when compared with those of the Secretary. Hence, undoubtedly, the proper party to be arrayed ought to have been Secretary, Tamil Nadu Legislative Assembly, Secretariat.

16. In the case of *CCF, Government of Andhra Pradesh* (supra), the Hon'ble Supreme Court considered a challenge to maintainability by the respondents on the ground of misjoinder/non-joinder of necessary parties. That was a case where an appeal had been filed from a judgment of the Andhra Pradesh High Court. The plea of the petitioners was for a declaration of title with other reliefs including rendition of accounts.

17. Appeals had been filed by the Land Acquisition Officer that had resulted in adverse orders as against which further appeals have been filed before the Hon'ble Supreme Court. The pattadars/respondents in appeals raised a preliminary objection on the ground that the Government or the State shall sue or be sued only in the name of the State. Thus, it was not the Chief Conservator of Forests who ought to have been pursued the appeal. They relied on Article 300 of the Constitution, Section 79 as well as Order 27 Rule 1 of the Code of Civil Procedure in this regard.

18. The defence put forth was that the Chief Conservator of Forests had obtained specific orders in regard to the filing of the appeals and thus the appeals should be deemed to have been filed by the Government

notwithstanding that it was the Chief Conservator of Forests that was the appellant. After considering the matter, the Division Bench accepted the argument on maintainability holding that it was the State that ought to have filed the appeals in its own name.

19. Abdicating the responsibility to the Chief Conservator of Forests was a fatal error, as the proper array of parties is not merely a procedural formality but essentially a matter of substance and considerable significance. They made a distinct between mis-description or misnomer of the party on the one hand and mis-joinder or non-joinder of party on the other. If it is a case of mis-description, the Court may permit correction of the cause title, such that there is proper description of the parties before the Court.

20. In that case, the specific question was whether the array of Chief Conservator of Forests was a mis-description for the State of Andhra Pradesh or whether it would amount to a case of non-joinder of the State of Andhra Pradesh, which is a necessary party. Order 1 Rule 9 of the CPC was referred to which mandated that no suit should be defeated by the mere reason of mis-joinder or non-joinder of parties. However, the proviso thereto clarifies that nothing in that Rule would apply to non-joinder of a necessary party.

21. The Court held that it was the State that was a necessary party to that Writ Petition and ought to have been impleaded under the relevant provisions of the Constitution as well as CPC. In that view of the matter, they

concluded that it was not merely inappropriate but illegal for the Chief Conservator of Forests to have questioned the order of the Commissioner of Survey, Settlement and Land Record before the High Court at the first instance. This is for the reason that there is a complete distinction between the Chief Conservator of Forests and the State of Andhra Pradesh and thus the issue cannot be wished away as a mere mis-description.

22. In the present case, the Special Order that has been circulated by the learned Advocate General makes it clear that the relief that has been sought by the petitioners, even if granted by the Court, could have been practically enforceable only if the proper official respondent had been arrayed. The Special Order also makes apparent the fact that the posts of Secretary and Special Secretary are not interchangeable and their roles and responsibilities are different.

23. The petitioners have filed amendment petitions seeking correction in the array of parties. In the decision in the case of *CCF, Government of Andhra Pradesh* (supra), the Supreme Court has, while accepting the preliminary contest, observed that the High Court Could have, *'had it deemed fit so to do,……' added the State of Andhra Pradesh as a party'*. However, the High Court had proceeded as though the State of Andhra Pradesh had been the petitioner which the Supreme Court held was erroneous.

24. Thus and being the initial stage of litigation, it is very much for this Court to take a view regarding whether the proper party should be arrayed to regularize the litigation. Having considered the rival contentions, I am of the view that while the proper authority, the Secretary, must be arrayed as a party, the error committed in arraying the Special Secretary is not fatal to the cause of the petitioners, and can be corrected.

25. That apart, Rule 3 of the Madras High Court Writ Rules, 2021 sets out the form of Writ Petitions requiring, at paragraph 2 (c) that the Writ Petition shall contain the name, description and the address of the petitioner and the respondent. The Miscellaneous Petitions seeking amendment of cause title are thus ordered and the Registry is directed to amend the cause title to the Writ Petitions, such that R2 in W.P.Nos.29203 and 29205 of 2023 shall read *Secretary, Tamil Nadu Legislative Assembly, Secretariat, Fort St. George, Chennai – 600009*.

III (ii) Maintainability in the context of locus

26. Respondents argue that the Writ Petitions are filed by officials of the Hindu Munnani, are politically motivated and thus not maintainable. The Petitioners, while acceding to the position that they are members/office bearers of the aforesaid political party, retort that there is no bar in law against members of political parties engaging in litigation of the present nature.

Conclusion

27. A Writ Petition with the prayer for Quo Warranto assumes the nature of Public Interest Litigation. The respondents argue that the petitioners being members of a political party, these writ petitions are nothing but a political ploy. This very submission was raised in the case of *Hardwari Lal, Ex-M.P. (Lok Sabha) V. Ch.Bhajan Lal, Chief Minister, Haryana, Chandigarh*[2] and decided as follows:

> *3. The question, whether the petitioner has the locus standi to approach this Court, for the relief claimed need not detain us much although Shri Sibal, the learned Advocate-General, Haryana, appearing for the respondents, severely criticised the motive and purport behind this writ petition as political and only aimed at wreaking personal grievances by a political rival of the Chief Minister, yet we do not find that the locus standi of the petitioner to approach the court was seriously questioned. The substance of the respondent's contention in this regard is that the Court shall not exercise any discretion in favour of a person who has approached this Court only with oblique motives has his own axe to grind against the respondent and, therefore, could not be permitted to have access to the Court under the garb of public interest litigation. We think that the antecedents or status of persons lose all significance if the information conveyed to the Court even by such a person is such as may justly require the Court to exercise its jurisdiction to pass orders and directions to protect the rights and liberties of the citizens. A Full Bench of the Andhra Pradesh High Court in D. Satyanarayana v. N. T. Rama Rao, AIR 1988 Andhra Pradesh 144, observed that being politician by itself is no sin. In our democratic set up, Government is run by political parties voted to power by people. It is totally unrealistic to characterise any espousal of cause in a Court of law by a politician on behalf of the general public complaining of Constitutional and statutory violations by the political executive as a politically motivated adventure. If, however, the interests are not personal and the litigation appears to be for no personal gains, the person approaching the Court is not a busy body nor an interloper, the*

[2]1993 (1) SCC 184

> *relief may not be denied and the petition may not be thrown out simply because it is by a politician, We, however, leave the matter at that without commenting any further upon the petitioner's interest in approaching this Court and bringing to the Courts notice the acts of the Chief Minister which according to him do not deserve the continuance of respondent No. 1 in the office of the Chief Minister any further. We, however, express that spiteful allegations of personal nature and being politically mischievous may not be permitted to be made in the garb of public interest litigation and the Court must caution itself that it should protect its jurisdiction, authority and time from abuse of the process.*

Thus, whatever may be their political affiliations, the Petitioners cannot be estopped from pursuing the Writ Petitions for Quo Warranto as any citizen can question the authority under which a public post is held.

28. There have been vitriolic exchanges between the parties in regard to the political sentiments of the day. The Court has made it clear at the time of hearing, reiterated now, that its interest lies only in resolution of legal issues and not in the politicization of issues. I have thus eschewed all reference to political sentiments despite some grandstanding by the parties in the course of the hearing.

III (iii) Maintainability on the ground of apparent satisfaction of the provisions relating to qualification

29. Respondents submit that the prayer for quo warranto may be maintained only if the individual respondents do not hold the requisite qualifications as prescribed under Article 173 of the Constitution in the case of the MLAs or Article 84 of the Constitution in the case of the MP, or under the relevant provisions of the Representation of Peoples Act, 1951 (in short 'RP

Act'). In the present case, the individual respondents hold the requisite qualifications under Articles 173 and 84 and do not attract any disqualification as provided for under Articles 191 and 102 respectively.

30. Moreover there is an in built scheme in the Constitution that vests in the Governor (or the President in the case of an MP) the authority to decide on the question of disqualification. Hence, the present writ petitions are not maintainable as apparently, the individual respondents are qualified to hold their respective posts and for availability of an efficacious remedy as well.

31. A writ of quo warranto is a serious ingress into the personal liberty of an individual and such writ must not be sought lightly. The burden rests heavy upon the petitioners to establish even at the outset what the disqualification or bar is, that is sought to be mulcted upon the individual respondents. Maintainability of the Writ petition will have to be decided based on the factual and legal position that presents itself on an apparent reading of the writ petition and since the pleadings do not reveal any Constitutional or statutory bar, the Writ Petitions must be dismissed in limine.

32. The petitioners respond by stating that their prayer is premised on the position that the individual respondents have committed breach of their Oath and the offending statements amount to a fraud played on the Constitution. These issues go to the root of the matter. That apart, a writ of quo warranto is one of four Constitutional writ remedies and hence the question of disputing

maintainability does not arise in circumstances where the petitioners have raised disputes that are fundamental to the matter. The question of an efficacious alternate remedy is one which should be considered by the Court as part of its decision on judicial review and this process cannot be sought to be by passed or short circuited by the respondents.

Conclusion

33. I agree with the petitioners that rejecting the writ petitioners at this juncture would be premature and, in a way, putting the cart before the horse. The question of whether the individual respondents have the requisite authority to hold their posts can be determined only upon a proper analysis of the requisite provisions of the Constitution and other enactments including the RP Act. Respondents argue that they apparently possess the required qualifications and there is no need to look further. This may well be so.

34. However, the arguments of the petitioners do warrant a deeper study and appreciation and it would, in my considered view, be an over simplification of the matter to state that an apparent and peripheral reading of the provisions are all that is required in a matter of this nature. Casting the writ petitions away at this stage would be a miscarriage of justice. After all, if the Court is of the view, after hearing the parties, that the individual respondents do hold the requisite qualifications, they will succeed. This objection has no merit and is rejected.

III(iv) Admissibility of electronic evidence

35. The admissibility of the electronic evidence is challenged on the ground that it is sans certification under the provisions of the Evidence Act, 1872.The evidence is of two kinds, firstly, a pen drive containing three videos of the offending statements and transcripts thereof. The petitioners have remedied the position by filing certificates dated 14.10.2023 under Section 65 B of the Indian Evidence Act for admission of the pen drive. In fact, with this, the objections of the respondents stand addressed and redressed.

36. It is alleged that the digital evidence is truncated and incomplete, modified/digitally edited/doctored by a third party and constitute disputed questions of fact. The videos that have been filed contain the complete speeches of Mr.Udayanidhi Stalin and Mr.A.Raja and there is nothing to support the assertion that they have been digitally modified. In fact, the speeches and extracts therefrom have been available in public media ever since they were delivered in the convention and subsequent meeting and too much water has flown under the bridge for the individuals to raise a technical issue on this aspect now.

37. Moreover there has been no contra evidence produced by the individual respondents to support the allegation of tampering with the evidence. After all, the individual respondents are best equipped with the knowledge of what had been stated from the podium. Except for the bald allegations made,

there is nothing to commend the position that the offending statements have been doctored and the transcription filed is incorrect. No material has been placed before me in this regard. That apart, the statements alleged to have been made are available in public domain.

38. On an aside, in a matter of the present nature, there is nothing to be gained by being hyper technical. If the individual are adopting a position of principle it would have been preferably that they stick to that position and argue on the strength of that principle rather than succumb to hyper technical objections. Hence this court proceeds on the basis that the video clips as well as the texts represent a true version of what had transpired.

39. With this, the writ petitions are held to be maintainable and WMP No.29853 of 2023 is closed.

IV (i) Rival contentions and conclusion on (a) whether the offending speeches are in tune with the Constitutional scheme, or do they amount to mis/disinformation and hate speech (b) whether a Writ of quo warranto will lie in view of the prevailing Constitutional scheme

<u>Submissions of the Petitioners:</u>

40. Sanatana Dharma represents and expounds core values of Hinduism. The call for eradication of Sanatana Dharma is thus nothing but a call for eradication of Hinduism itself and this has been justified on the anvil of Dravidian ideology.

41. The individual respondents are well aware of the fact that Sanatana Dharma is the same as Hinduism, as one of the earlier speakers in that very conference had clearly stated the same, in as many words. Thus, if the speakers had been of the view that Sanatana Dharma connoted anything other than Hinduism, it was for them to have clearly expressed their divergence in view, which has not been done.

42. The speeches and participation of the ministers was clearly in their official capacity. They have not denied their statements anywhere and the only explanation put forth is reliance upon the speeches of Periyar and Ambedkar who had not held Constitutional posts.

43. They point out that the Varna or caste system is not one which operates based upon birth, but one which is attained by action and avocation. While the entire blame for the caste system in society is attributed to the Vedic varna system which is different from Sanatana Dharma, the State of Tamil Nadu has a list of 184 castes falling within backward and most backward categories[3] Such divisions do not arise from Vedic literature and are a creation of recent times.

44. If the individual respondents are truly interested in preventing divisions and fostering integration as they claim, it is for them to erase the distinction between the prevailing castes in the States and bring about equality.

[3] List of backward classes approved by Government of Tamil Nadu - bcmbcmw.tn.gov.in

Petitioners specifically point out that Tamil Nadu has a 69% reservation as against 50% reservation held by the rest of the Country and this is not a function of the varna system of Vedic times.

45. Petitioners refer to Article 51A under Part IV A of the Constitution that enumerates the fundamental duties cast upon all citizens. They emphasize that while it is the duty of every citizen to promote harmony and the spirit of common brotherhood amongst people of India transcending religious linguistic and regional or sectional diversities, all the more, is it the duty of Constitutional functionaries.

46. The statements made by the individual respondents amount to disinformation and hate speech prohibited both under Article 19 as well as Article 25 of the Constitution. The Right of free speech under Article 19 is not an absolute right as sub-Article (2) imposes reasonable restrictions on the exercise of the right in certain demarcated situations such as the protection of the sovereignty and integrity of India, security of the State, friendly relations with foreign states, public order, decency or morality in relation to contempt of Court, defamation or incitement to an offence.

47. The law protects against statements that would prove a danger to public order and the integrity of the Country. The statements made by the individual respondents openly promise to destroy and do away with Sanatana Dharma or Hinduism and thus threaten the sovereignty of the Country.

48. Sanatana Dharma references everything valuable and noble in Hinduism and by pledging to eradicate it like they would a virus, the individual respondents have spewed hate and vengeance on all practitioners of Hinduism. Article 25 of the Constitution protects the freedom of conscience and free profession as well as practice and propagation of religion. Hinduism or Sanatana Dharma is a religious faith, the practice of which is protected under Article 25.

49. Hence, the actions of the individual respondents who are functionaries under the Constitution constitute a fraud played upon the Constitution and an abuse of their high offices. They point out that a speech of a sitting Minister would amount to an actionable tort and rely on the judgment of the Supreme Court in *Kaushal Kishor V. State of U.P*[4]. in this context.

50. Mr.T.V.Ramanujan refers to Schedule III of the Constitution of India that deals with forms of *Oaths and Affirmations*. The text of the Oath to be made prior to assumption of office reads thus:

> *'1.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'.*

51. Since the text of the Oath requires an affirmation that the candidate should act in conscience with the Constitution, there is a Constitutional

[4] (2023) 4 SCC 1

requirement cast upon them to act without fear, favour, affection or ill-will, treating all persons equally irrespective of their faith. By their statements, the respondents have failed to uphold the principles of the Constitution violating the Oath taken by them under Schedule III of the Constitution of India.

52. Article 164(3) states that it is mandatory for the Governor to administer the Oath of office and secrecy upon a Minister prior to his entering into office and such Oath is not an empty formality. He refers to the decision of the Division Bench of this Court in *Anbazhagan K., etc. V. The Secretary, The Tamil Nadu Legislative Assembly & 3 others*[5].

53. In that case, Legislators belonging to the D.M.K. Party, the present Ruling party to which the private respondents claim allegiance, had burnt a copy of the Constitution for which they had been expelled from the House by the Speaker. The expulsion was challenged before this Court and upheld, the Court holding that an elected representative who makes an Oath or affirmation under Article 188 is duty bound to bear true faith and allegiance to the Constitution of India. Burning a copy of the Constitution would constitute a breach of that Oath.

54. In the case of *All India Anna Dravida Munnetra Kazhagam V. State Election Commissioner & 4 others*[6], election to the Chennai Corporation was set aside in Writ Petition as it had been marred by violence. This relief was granted

[5] 1987 Writ L.R.668

[6] 2007 (1) CTC 705

despite the availability of the alternate remedy of an Election Petition under the provisions of the Chennai City Municipal Corporation Act, 1919.

55. The argument relating to breach of Oath was defended by the learned Advocate General citing several cases to the effect that quo warranto would not lie on the basis of an allegation that there had been violation of the Oath of office by the answering respondents, as the Constitution contained an in-built scheme to address this issue. Courts have uniformly concluded that an MLA held office at the pleasure of the Governor and hence it was only the Governor who was the competent authority to decide on the question of his disqualification.

56. Perhaps realising the vulnerability of the argument relating to breach of Oath, the petitioners then argue that the individual respondents have perpetrated fraud on the Constitution by virtue of their offensive statements and participation in the convention. Reference is made to the judgements in *Andhra Pradesh Scheduled Tribes Employees Association V. Aditya Pratap Bhanj Dev*[7] and *K.Venkatachalam V. A. Swamickan*[8].

57. Those judgments dealt with the concept of fraud played on a Statute and the Court states that the concept of fraud committed on the Constitution was very similar to fraud being played on a Statute. Any action which would subvert the object and purpose of the Constitution would amount to fraud on the

[7] (2001) 6 ALD 582
[8] (1999) 4 SCC 526

Constitution. Mr.T.V.Ramanujan argues that the comparison by Mr.Udhayanidhi Stalin and others of Sanatana Dharma to diseases like Corona, dengue, malaria, HIV and Leprosy is unconstitutional, in extremely bad taste and reveals the hatred of the individual respondents towards Hindus.

58. He makes reference to the Constitution Assembly Debates on 10.09.2019 in the context of the Article relating to right to property. Pandit Jawaharlal Nehru while referring to the basic principle that no person shall be deprived of his property save by the authority of law, refers to the fixation of compensation and the fact that there should be no challenge to the same except if there had been '*fraud committed on the Constitution'* in the following terms:

> *Naturally the judiciary comes in to see if there has been a fraud on the Constitution or not. But normally speaking one presumes that any Parliament representing the entire community of the nation will certainly not commit a fraud on its own Constitution and will be very much concerned with doing justice to the individual as well as the community.*

59. Mr.Ramanujan then refers to the speech of Dr.B.R.Ambedkar as follows:

> *Now, Sir, I come to the amendments of my honourable Friend, Friend, Kazi Syed Karimuddin. His first amendment which I propose to take for consideration is amendment No. 1152. By this amendment he wants to add treason, bribery and other high crimes and misdemeanours after the words, violation of the Constitution. My own view is this. The phrase violation of the Constitution is quite a large one and may well include treason, bribery and other high crimes or misdemeanours. Because treason, certainly, would be a violation of the Constitution. Bribery also will be a violation of the Constitution because it will be a violation of the Oath by the President. With regard to crimes, the Members will see that we have made a different provision with*

regard to the trial of the President for any crimes or misdemeanours that he may have made. Therefore, in my view, the addition of these words, treason and bribery, are unnecessary. They are covered by the phrase violation of the Constitution.

60. In *Andhra Pradesh Scheduled Tribes Employees Association* (supra), the principles of law in relation to fraud and misrepresentation have been summarized as follows:

> *1. In judicial proceedings, fraud renders a judgment of a Court a nullity and void. Either superior or inferior Court is bound to treat a judgment obtained by playing fraud on the Court a nullity.*
> *2. In proceedings other than judicial, an order obtained by fraud and misrepresentation and/or a determination as a result of fraud cannot be allowed to stand. Fraud unravels everything, and no person can keep an advantage or benefit or privilege obtained by playing fraud.*
> *3. In the field of private law, mere misrepresentation without proof of deceit or intention to deceit cannot vitiate the contract or render the contract void; it is only voidable. In the field of public law, however, fraud on public authorities is a special species of fraud, which without anything further must deny the person the benefit obtained by fraud. Whether intention or no intention, whether malafide or bona fide, public law does not permit a person to retain the advantage obtained by fraud.*
> *4. The concept of fraud on the statute and fraud on the Constitution has similarities more than one. Any action, which subverts the objects and purposes of the Constitution, amounts to fraud on the Constitution.*
> *5. A person who does not belong to SC/ ST/BC secures appointment to an office or post under the State or public employment by producing fake certificate must be held guilty of playing fraud on the Constitution, and such person shall not be entitled to plead doctrine of promissory estoppel or equitable estoppel.*
> *6. The principle of finality of litigation cannot be pressed when fraud is alleged to be the basis for the decision/ determination.*

7. Fraud, can be challenged in any Court even in collateral proceedings. The principle of estoppel and doctrine of res judicata have no application when fraud is the basis of judgment sought to be nullified under which right or privilege is claimed.
8. Fraud can either be proved by established facts or inference can be drawn from admitted and/or undisputed facts. When fraud is inferred under Section 44 of the Indian Evidence Act, 1872, the Court as well as the authority alleging fraud can ignore a decision obtained by fraud.

61. My attention is drawn to the conclusion at serial No.4 above, which states that any action which subverts the objects and purposes of the Constitution would amount to fraud on the Constitution. He thus impresses that the offending statements of the individual respondents amount to fraud on the Constitution, since they are in direct opposition to Constitutional principles of fraternity, secularism and equality of all faiths.

62. In the case of *A.Swamickan v. K.Venkatachalam and another*[9], *K.Venkatachalam v. A.Swamickan and Another*[10], the Madras High Court and thereafter the Hon'ble Supreme Court held that the whole of the election process was vitiated with fraud. The challenge to the election of K.Venkatachalam from Lalgudi Assembly Constituency was set aside on the factual basis that the appellant had impersonated another person with the same name as his, in the application form.

Cases cited by Mr.T.V.Ramanujan

(i)*Acharya Maharajshri Narendra PrasadjiAnandprasadji Maharaj and Others v. State of Gujarat and Others* [(1975) 1 SCC 11]

[9]1986 SCC OnLine Mad 114

[10](1999) 4 SCC 526

(ii)*Subhash Desai v. Sharad J.Rao and Others* [1994 Supp (2) SCC 446]
(iii)*Lily Thomas and Others v. Union of India and Others* [(2000) 6 SCC 224]
(iv)*State of Karnataka and Another v. Dr.Praveen Bhai Thogadia* [(2004) 4 SCC 684]
(v)*Dr.D.C.Wadhwa and Others v. State of Bihar and Others* [(1987) 1 SCC 378]
(vi)*Magesh Karthikeyan v. The Commissioner of Police, Police Commissionerate, Avadi, Chennai and another* [WP.No.30692 of 2023 dated 31.10.2023]
(vii)*K.C.Chandy v. R.Balakrishna Pillai* [1985 SCC OnLine Ker 198]
(viii)*Alappey Asharaf v. Chief Minister, Govt. Secretariat, Thiruvananthapuram-695 001 and others* [(2018) 1 KLT (SN 40) 30

63. Mr.G.Rajagopalan specifically refers to the statements by Mr.P.K.Sekar Babu as well as his presence and participation in the convention, pointing out that such acts are in violation of several guarantees set out under the Constitution. The Preamble guarantees liberty of thought, expression, belief, faith and worship and Article 25, the Right of Freedom of religion. Article 51(c) urges respect to International Law and Article 51A(f) to value and preserve the rich heritage of our composite National culture.

64. A distinction was drawn between the freedom of speech under Article 19(1)(a) which is subject to reasonable restriction under Article 19(2) and Article 25 which grants the right to freedom of religion which is absolute, except on the grounds of public order, morality and health. Article 25 requires to be implemented not only qua the State but qua co-citizens as well and any violation of this guarantee must be interfered with and set right. All the more if the violator is one holding Constitutional office.

65. The Constitutional guarantee of freedom of religion flows from obligations under International covenants and in this context, reference is made to the International Bill of Human Rights, 1948 and the International Covenant on Civil and Political Rights, 1966. Particular exception is taken to the offensive statements on the ground that Government in the State is expected to be secular. Members of all faiths are required to be treated equally and it is an aberration for an individual holding a Constitutional post to express an opinion against any one particular religion.

66. A specific argument is raised on the distinction between personal morality and Constitutional morality, in that, while a citizen may hold a set of morals that are general in nature or even coloured by personal prejudices, sitting ministers are expected to be above such prejudices. The offensive statements and participation of the Minister holding portfolio of Hindu Religious & Charitable Endowments Department in the convention for abolition of Sanatana Dharma reveals his deep seated prejudice as far Hinduism and Hindus are concerned.

67. The HR & CE Minister heads a department that supervises more than 30,000 temples in the State. The temples espouse Hinduism and Hindu philosophy that are based upon the core values of Sanatana Dharma. In fact, the officials of the HR & CE Department have to make an Oath as provided for

under the *'Manner of Proof of Professing Hindu Religion Rules, 1961'* issued under G.O.Ms.No.4055 Revenue dated 23.09.1961.

68. The Rule requires the pledge to be taken by the appointee in the immediate presence of the Executive Officer or Chairman, Board of Trustees of the religious institution before the presiding deity in the nearest Hindu Religions Institution selected, in the presence of two witnesses. Such pledge, once taken, should be reduced to writing and placed before the head of the office as a permanent record.

69. The form of pledge is as follows:

> *'Pledge to be in the form prescribed – Every person appointed or deemed to be appointed under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959), shall sign a pledge in the form appended to these rules.*
>
> *Form prescribed under rule 2 issued under section 116(2)(xxiv) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959).*
>
> *'I……. son of …… residing at…… village…… taluk…… district…… appointed to the post of…… do solemnly swear that I am a Hindu by birth and profess the Hindu Religion.*
>
> *Signature*
>
> *Witnesses:*
> *1.*
>
> *Sworn before me*
> *Signature and*
> *Designation of Officer*

70. The Hindu Religious Charitable and Endowments Act, 1959 (in short 'HR & CE Act') proceeds on the statutory premise under Section 10 that all appointees under that Act, such as the Commissioner and other servants of the HR & CE Department would be persons who profess the Hindu religion.

71. Section 25 of the HR & CE Act requires the appointees under the Act to observe the forms and ceremonies appropriate to religious institutions and hence it is all the more incumbent upon the individual holding portfolio of HR &CE to ensure that he does not speak against the very philosophy of the faith which he professes to oversee and protect.

72. The specific argument is that in this view of the matter, there is little need, and it is unnecessary, to restrict oneself to the specific stipulations of the RP Act. The obligations under the Constitution must be implemented in letter and spirit. The Directive Principles of State policy, especially Article 51A must be given meaning and purpose, especially the spirit of brotherhood. Such a requirement would have to be read into the law as in the alternative, there would be gross distortion of the Constitutional scheme.

73. Mr.Karthikeyan submits that Mr.A.Raja is an elected member of the Lok Sabha having contested the election in the Reserved Constituency for Scheduled Cases. Clause 3 of Scheduled Caste Order, 1950 states that '*Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu religion shall be deemed to be a member of a Scheduled Caste'*.

74. Thus this individual has necessarily to profess Hinduism, since he is admittedly part of the Scheduled Caste community. In such circumstances, his statements equating Sanatana Dharma to diseases like HIV AIDS and leprosy

are in total violation of Constitutional principles and constitute rank fraud played upon the Constitution.

75. As it is self-destructive for one who is expected to profess Hinduism to seek eradication of that very faith, clearly he is not a practitioner of that faith and loses his eligibility to contest the election in the Reserved Constituency. One way or the other, his statements amount to a fraud on Constitution attracting the writ of quo warranto.

Reply of the Respondents

76. In common, all individual respondents have referred, in extenso, to a publication of the year 1902 by the Board of Trustees of the Central Hindu College, Banaras titled *Sanatana Dharma – An Elementary Textbook of Hindu Religion and Ethics*[11]*'*. Mr.Wilson takes me through several pages of the publication and attempts to interpret what has been stated in the Book. He points out that as per that publication, the basis of Sanatana Dharma are the Vedas and other compendiums, the chief of which is what has been referred to in that publication, as Aryan Law by Manu.

77. Chapter VII of the publication refers to four castes and specific reference is made to a passage from the Rig Veda where the avocations to be followed by the four castes are set out.

> *'"The Brahmana was His mouth: the Rajanya was made His two arms; His two thighs the Vaishya; the Shudra was born from His two feet."*

[11] Published by Board of Trustees, Central Hindu College, Benares 1902

78. The above verse has been referred to point out the inequality in the caste system. According to them, it is this system of inequality that has perpetrated through the centuries leading to oppression of certain classes of societies, at the instance of the upper castes.

79. Several other portions of the book have also been referred to, such as reference to the Aryan invasion theory, all of which tie up with their stand relating to caste discrimination and domination of the Aryans from the North who imposed on the Dravidians. Their case is thus that Sanatana Dharma is nothing but Varna Dharma.

80. They submit that the Constitution endows them with wide powers to express their ideas and opinions. Being staunch followers of the Dravidian school of thought propounded over many decades by Periyar, Anna and Karunanidhi, they believe that there should be equality among the citizens in the State. According to them, Sanatana Dharma is the font of all inequality which the oppressed and depressed classes of societies have had to face over the years.

81. Learned Advocate General would, fairly, confirm the conduct of the convention and the contents of the statements of the individuals. He submits that there is no usurpation of public office which is the only premise upon which a quo warranto may be considered. As elected representatives, two of the individual respondents have been appointed to the seat of MLA by the Governor. Likewise, they hold such post at the pleasure of the Governor. Thus,

termination too can only be upon the cessation of such pleasure and not otherwise.

82. Learned Advocate General would also take me through Articles 173, 191, 192 and 193 of the Constitution, referring thereafter to the RP Act which sets out the relevant qualifications/disqualifications of elected representatives. Section 5 of the RP Act stipulates the qualification for membership in the Legislative Assembly. Clause (a) and (b) are inapplicable to the present Writ Petitions. Clause (c) states that the qualification required is that he be an elector for any Assembly Constituency in that seat.

83. Section 8 provides for disqualification upon conviction for various offences. The pre-requisite is thus that the candidate should have been convicted and in the present case, there is not even an FIR pending as against the individual respondents. This submission is not factually correct as the Court is given to understand by the Petitioners at the time of closure of submissions that several FIRs are pending as against the individual respondents.

84. That apart and even otherwise, the convictions referred to in Section 8 of the RP Act relate to specific offences alone and admittedly the individual respondents have not suffered any convictions on those scores. There is a presumption, as noticed by the Supreme Court in the case of *Y.S.Rajasekara Reddy* that the appointment of representative of the people is in order unless such a representative has usurped that office.

85. The Constitution provides for elected representatives to serve at the pleasure of the Governor. As, in this case, the eligibility criteria as per the Constitution as well as the RP Act have been met and the individuals do not attract any of the disqualifications under the Constitution or RP act, the questions of Quo Warranto does not arise. It is only the Governor who is the appointing authority who could decide on the continuance of their appointment.

Cases cited by the Advocate General

(i)*Samsher Singh v. State of Punjab and another* [(1974) 2 SCC 831]
(ii)*B.P.Singhal v. Union of India and Another* [(2010) 6 SCC 331]
(iii)*Manoj Narula v. Union of India* [(2014) 9 SCC 1]
(iv)*Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly and others* [(2016) 8 SCC 1]
(v)*U.N.R.Rao v. Indira Gandhi* [(1971 (2) SCC 63]
(vi)*K.R.Ramaswamy alias Traffic Ramaswamy v. State, rep. by the Chief Secretary, Government of Tamil Nadu, Fort St. George, Chennai-600 009 and others* [2012 (2) CTC 481]
(vii)*Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and others* [(2014) 1 SCC 161]
(viii)*Keisham Meghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly and others* [2020 SCC OnLine SC 55]
(ix)*Ramachandran v. M.G.Ramachandran, the Chief Minister of Tamil Nadu, Madras 9 and others* [1987 100 LW 178]
(x)*Dr.Y.S.Rajasekara Reddy and others v. Sri Nara Chandrababu Naidu and others* [AIR 2000 AP 142]
(xi)*Hardwari Lal, Ex-M.P. (Lok Sabha) v. Ch.Bhajan Lal, Chief Minister, Haryana, Chandigarh and others* [1993 (1) SCC 184]

86. Mr.Wilson also adopts the arguments of the learned Advocate General on the question of law, reiterating emphatically that it is only upon the candidate attracting the finite disqualifications mentioned in Section 8 of the RP Act that he could be disqualified. Such disqualifications must be construed

strictly and there could be no expansion or elaboration of the same at the instance of the Court.

Cases cited by Mr.P.Wilson

(i)*Navtej Singh Johar and Others v. Union of India* [(2018) 10 SCC 1]
(ii)*Dr.Ranjeet Suryakant Mohite and others v. Union of India and another* [PIL.No.139 of 2010 dated 23.09.2014]
(iii)*Indibily Creative Private Limited and others v. Government of West Bengal and Others* [(2020) 12 SCC 436]
(iv)*Union of India and another v. S.P.Anand and others* [(1998) 6 SCC 466]
(v)*Anna Mathews and others v. Supreme Court of India and others* [(2023) 5 SCC 661]
(vi)*ManikkaSundara Bhattar and others v. R.S.Nayudu, Executive Officer and trustee of Sri MinakshiSundareswarar Devasthanam at Madura and others* [(1945) 58 LW 113]
(vii)*Elangovan v. The Secretary, Home Department, Secretariat, Fort St.George, Chennai-600 009 and others* [WP.No.27398 of 2023 dated 15.09.2023]
(viii)*S.Khushboo v. Kanniammal and another* [(2010) 5 SCC 600]
(ix)*Supriyo @ Supriya Chakraborty and another v. Union of India* [2023 INSC 920]
(x)*Kaushal Kishor v. State of Uttar Pradesh and Others* [MANU/SC/0004/2023]
(xi)*Kedar Nath Singh v. State of Bihar* [1962 SCC OnLine SC 6]
(xii)*People's Union for Civil Liberties (PUCL) and another v. Union of India and another* [(2003) 4 SCC 399]
(xiii)*Shreya Singhal v. Union of India* [(2015) 5 SCC 1
(xiv)*S.Tamilselvan and other v. The Government of Tamil Nadu, rep. by the Secretary, Home Department, Fort St. George, Chennai 600 009* [(2016) 3 LW 577]
(xv)*Ramji Lal Modi v. State of U.P.* [AIR 1957 SC 620]
(xvi)*Retd. Armed Forces Medical Association and others v. Union of India and others* [(2006) 11 SCC 731]
(xvii)*Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and others* [(2014) 1 SCC 161]
(xviii)*University of Mysore and another v. C.D.Govinda Rao and another* [(1963) SCC OnLine SC 15]
(xix)*State of West Bengal v. Anindya Sundar Das and others* [(2022) SCC OnLine SC 1382]

(xx)*AIIMS Student's Union v. AIIMS and others* [(2002) 1 SCC 428]
(xxi)*Lily Thomas v. Union of India and others* [(2013) 7 SCC 653]
(xxii)*Manoj Narula v. Union of India* [(2014) 9 SCC 1]
(xxiii)*Arjun PanditraoKhotkar v. Kailash KushanraoGorantyal and others* [(2020) 7 SCC 1]
(xxiv)*S.Ramachandran v. The State of Tamil Nadu and Others* [MANU/TN/5011/2023]
(xxv)*Public Interest Foundation and others v. Union of India and another* [(2019) 3 SCC 224]
(xxvi)*Nand Kishore Garg v. Govt. Of NCT of Delhi and others* [MANU/DE/2640/2022]

87. Mr.Jothi would start by expressing his suspicion of the motives of the petitioners in approaching this Court. This aspect of the matter has been dealt with in the paragraphs touching upon maintainability. He would then argue that the Writ petition is malafide and would also chronicle in extenso the achievements of Mr.P.K.Sekar Babu after he had assumed the post of HR &CE Minister.

88. He has filed a compilation of the achievements of the HR & CE Minister, stating that he had inspected 271 Temples during the period June 2021 to 31.12.2022 and 29 temples in the year 2023. Several measures have been taken towards the betterment of the temples which are under the control of the HR & CE Department. Grants have been sanctioned to several temples that have benefitted both the temples as well as the devotees who visit. Thirupani work is in full swing in many temples and there is a concerted effort to survey the lands belonging to the temples and recover them from the clutches of encroachers.

89. The websites of various State departments of the state are being reconciled to reflect land holdings of the temples. Stolen idols have been recovered and strong rooms and icon centres are being set up on an on-going basis to protect the idols as well as precious items including jewellery. Training schools have been set up for Odhuvars and the conduct of festivals is grand throughout the State.

90. Benefits such as enhanced salaries and retirement benefits have been granted. Temple premises including the temple tanks and the quality of prasadams is not just being maintained, but is being improved consistently.

91. Mr.Jothi would impress upon the Court that his client is a religious person who is a devotee of Lord Ayappa and a Hindu. However, he does not practise Sanatana Dharma he asserts. To me, this statement only reveals total ignorance about the principles of Sanatana Dharma as elaborated in the paragraphs to follow. He too takes me in minute detail through the publication by Central Banaras University, attacking specific words, phrases and passages. He submits that the ideology perpetrated in the publication is based on the permanence of Dharma which he finds objectionable as, according to him, there is nothing eternal in the world.

92. He refers to extracts from a publication titled '*Manu Neethi (Smruti) Dharma Shasthiram*'[12]. In this book, the author has sought to translate couplets from the Manu Smruti and my attention is drawn to those verses which

[12] Extracts of Sanskrit Slokas – Tamil Transalated Version by Sr.VI.T.Mythili

emphasize and highlight divisions in society. He also refers to a publication of one, Swamy, titled *Hindu madham 1000 kelvibathilgal*[13] translated to read Hinduism - 1000 questions and answers.

93. Both these books illustrate the pitfalls of, and the inequality in the caste system, which is nothing but Sanatana Dharma. Referring to Vallalar, he talks of oneness among humans and universal principles of equality. He questions why the Manu Smruti must be taken to be the basis of Hinduism or Sanatana Dharma as Manu is only one among several Hindus. He argues that the caste system sounds a death knell to the dignity and fraternity assured by the Constitution and is in violation of Article 15 and 17. He cites and relies upon the following cases:

Cases cited by Mr.Jothi

(i)*Gopala Moopanar and others v. DharmakartaSubramaniyaIyer and others* [1 L.W. 675]
(ii)*Hadibandhu Behera v. Banamali Sahu* [1960 SCC OnLine Ori 53]
(iii)*SastriYagnapurushadji and others v. MuldasBhudardas Vaishya and another* [(1966) 3 SCR 242]
(iv)*Sardar Govindrao and Others v. State of Madhya Pradesh and others* [(1982) 2 SCC 414]
(v)*S.P.Mittal v. Union of India and others* [(1983) 1 SCC 51]
(vi)*All India Democratic Women's Association and Janwadi Samiti v. Union of India* [(1989) 2 SCC 411]
(vii)*Jai Singh and another v. Union of India and others* [AIR 1993 Rajasthan 177 Full Bench]
(viii)*State of Karnataka v. Appa BaluIngale and Others* [1995 Supp. (4) SCC 469]
(ix)*Pannalal Bansilal Pitti and others v. State of A.P. and Another* [(1996) 2 SCC 498]
(x)*A.S.NarayanaDeekshitulu v. State of A.P. and Others* [(1996) 9 SCC 548]

[13] Swami, reference unknown and not supplied

(xi)*F.GhouseMuhiddeen v. The Govt. of India and another* [2002-3-L.W. 136]
(xii)*N.Adithayan v. Travancore Devaswom Board and Others* [(2002) 8 SCC 106]
(xiii)*BhagwanDass v. State (NCT of Delhi)* [(2011) 6 SCC 396]
(xiv)*Arumugam Servai v. State of Tamil Nadu* [(2011) 6 SCC 405]
(xv)*Adi Saiva Sivachariyargal Nala Sangam and Others v. Government of Tamil Nadu and Another* [(2016) 2 SCC 725]
(xvi)*PaitabhiramaAyyar v. Michell* [Manu/TN/0105/1890] (Second Appeal No.1473 of 1888 dated 18.03.1890)
(xvii)*ThiruSabanatha Oil Sivachariyar v. The Commissioner, H.R. & C.E. Department, Uthamar Gandhi Salai, Chennai-34 and others* [2010 (2) CTC 867]

94. The above judgements cited by Mr.Jothi touch upon the evils of untouchability as deals with by the Courts over the years. I need hardly refer to them in detail as I am in solidarity with the sentiments that untouchability is to be severely eschewed and all measures must be taken to prevent this curse. This Court, and any Court with a conscience would state so. He adopts the arguments of the learned Advocate General on the question of law relying upon the judgements in the following cases:

(i)*K.C.Chandy v. R.Balakrishna Pillai* [1985 SCC Online Ker]
(ii)*Bijoe Emmanuel and Others v. State of Kerala and Others* [(1986) 3 SCC 615]
(iii)*K.R.Ramaswamy alias Traffic Ramaswamy v. State Rep. by the Chief Secretary and 2 Others* [2012 (2) CTC 481]
(iv)*Manoj Narula v. Union of India* [(2014) 9 SCC 1]
(v)*Joseph Shine v. The Chief Minister of Kerala and 4 others* [2017 SCC Online Kerala 6533]

95. Referring to Article 51A that has been relied upon by the petitioners, he would point out that fundamental duties are not legally enforceable, relying upon the decisions in *K.R.K.Vara Prasad v. Union of India]*[14], *Surya Narain*

[14] [AIR 1980 Andhra Pradesh 243]

Choudhary v. Union of India and others[15], *R.Venkateshwara Rao v. Union of India and Others*[16] *and Shyam Narayan Chouksey v. Union of India*[17].

Submissions of Mr.Viduthalai

96. Mr. Viduthulai submits that Mr.A.Raja is a representative of the Nilgiris Constituency comprising, in the majority, of persons from the most backward, suppressed and marginalised communities. He has served in the Union Cabinet and has been Member of Parliament for more than 20 years. Having been a witness to the marginalization of society that Sanatana Dharma propagates and encourages, he acutely feels the need to exercise his duty as a public servant to highlight social evils and archaic facets of Sanatana Dharma that militate against Constitutionally enshrined principles of equality and justice.

97. Sanatana Dharma is not a holy grail, he states, but is being used by many in society to perpetrate practices that are socially divisive. According to him, the original texts of Sanatana Dharma incorporate the idea of division of labour determined by one's birth. This division known as Varna, classifies individuals into four classes of which the last class is the class that serves the other three classes.

98. Historically, Sanatana Dharma relegates women to a subservient and less esteemed status. Thus, there is nothing untoward in his speech which was

[15] [A.I.R. 1982 Rajasthan High Court 1 (Jaipur Bench)
[16] AIR 1999 Andhra Pradesh 328
[17] [(2018) 2 SCC 574

made with the sole intention of achieving congruity amongst various fundamental rights enshrined in Articles 14, 15, 19 and 25 and to protest against unconstitutional ideologies as envisaged under the texts of Sanatana Dharma.

99. Mr.Raja is a student of the law and has recently authored an Article on '*The Constitutional Irrelevance of Sanatana Dharma*', in a weekly. That article, through which I am taken in detail, has this to say:

> *WHAT IS SANATAN Dharma really? The definitions and contents of Sanatana Dharma have never been placed for public scrutiny visibly in the land where it originated; so far, most explanations have come from non-indian, non-Hindu Indologists, especially European scholars. Yet, in twenty-first-century India, attempts are always being made to project any discussion on the subject as an object of fissiparous communal politics. The recent debates on Sanatana Dharma have also been marred by abominable remarks made by the Prime Minister and others, which were myopic and flagrant.....*

100. In this article too, reference is made to the 1916 publication by the Central Banaras University which all the individuals have adopted as a sort of a textbook primer on the subject. Detailed references are made to the Constitutional debates, writings of Dr.B.R.Ambedkar, Sarvepalli Radhakrishnan and Shyama Prasad Mukherjee. He speaks of Hindu Code Bill introduced by Dr.B.R.Ambedkar in February. 1949, while noticing which, Ambedkar is stated to have said:

> *'To leave inequality between class and class, between sex and sex which is the soul of Hindu society untouched and go on passing legislation relating to economical problem to make a farce of our Constitution'.*

101. On Sanatana Dharma itself he states:

> *'the Ashoka's wheel represents to us a wheel of the law, the wheel of the Dharma…. There are ever so many institution which are worked into our social fabric like caste and untouchability. Unless these things are scrapped, we cannot say that we either seek truth or practice virtue. This wheel, which is a rotating thing, which is a perpetually revolving thing, indicates to us there is death in stagnation. There is life in movement. Our Dharma is Sanatana, eternal not in the sense that is a fixed deposit, but in the sense that it is perpetually changing. Its uninterrupted continuity is its Sanatana Character. So even with regard to our social condition, it is essential for us to move forward…This flag tells us "be ever alert, be ever on move, go forward, flexible, compassionate, decent democratic society in which Christians, Sikhs, Musalmans, Hindus, Buddhists will all find a safer shelter".*
>
> *In addition to western scholars, Sir C P Ramasamy Iyer, in his work, Hindu Faith and Culture, acknowledges 'the fairly advanced civilisation of Dravidians in the South' and the 'commercial and cultural interaction of Aryans from the North with them'. He also noted that despite linguistic and racial differences, a comprehensive legal system prevailed throughout this region.*
>
> *In light of these historical contexts, also considering the materials of framing the Indian Constitution, Hindu customs and practices in existence and debates of the Constituent Assembly on Ambedkar's Hindu Code Bill, the nation has to revisit the relevancy of Sanatana Dharma in free India's written Constitution to preserve our secular values without fear and favour.*

102. The conclusion is that the traditional journey of orthodox Hindu customs, Shastras and other outdated sacred texts would have to be put to the test of reasoning set out under the Constitution. The principles enshrined under the Constitution are Liberty, Equality and Fraternity and they contain no room for *'shastrical interpretations'*. Thus, he cautions *'whosoever be at the exalted*

positions on the orbits of the Executive, Legislature and Judiciary of this great Nation, looking back and patronizing outdated 'Dharmas' in any form and in any nomenclature is not only legally irrelevant but also an attempt to defame and defile our Constitution'.

103. Mr.R.Viduthalai refers to Articles 84, 102 and 103 that provide for qualifications, disqualifications and the competent authority to take the step of disqualification in the case of an MP.

104. That apart, the grounds of disqualifications as derived from under Article102(1)(e) of the Constitution make specific reference to Sections 8, 8A, 9, 9A, 10,10A, 11 and 11A of the R.P.Act, 1951. Nowhere is there any disqualification in the nature as projected by the petitioners. A new disqualification cannot be read either into the Constitution or the RP Act. In light of the comprehensive and exhaustive framework that has been set out, there is no merit in this Writ Petition.

105. He refers to the Halsbury's Laws of England that clarify that a Writ of Quo Warranto and an injunction in lieu thereof cannot be granted as a matter of course. Reference is made to the *Henry Farran Darley v. Robert Kinahan*[18] to the effect that a Writ of Quo Warranto is a severe proceeding not normally favoured by law. It is contrary to the ordinary rule of law and such power must be sparingly exercised.

[18] (1846) 12 Cl.F 520, 8 E.R. 1513

106. It is only in situations where a holder of public office does not possess requisite qualifications or, having incurred a statutory or Constitutional disqualification, is still continuing in office that such a writ would lie. The appropriate authority to be approached in this matter, as clarified in De Smith's Judicial Review of Administrative Action, is the Constitutional functionary as the question of qualification falls within the scope of Parliamentary privilege and is not a question which can be taken cognizance of by Courts. The respondents distinguish Venkatachalam's case maintaining that there has been no fraud committed in this case.

107. That apart, all citizens enjoy the freedom of speech, a positive right, encompassing the right to critique, negate and differ. It provides for constructive criticism and encourages contrary views. Such elements serve as fundamental pre-requisites for nurturing meaningful dialogue among the citizenry for development of the State and the economy itself.

108. Legislative intent has been highlighted time and again by Courts and the consistency and uniform conclusion is that there would be no progress without freedom to speak, freedom to write, freedom to think, freedom to experiment, freedom to criticize (including criticism of the Government) and freedom to dissent.

109. Reference is made to *Handy side V. The United Kingdom*[19], highlighting the following paragraph:

> *The supervisory functions of a Court oblige it to pay the utmost attention to the principles characterising a democratic society & Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.*
>
> *Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society. This means, amongst other things, that every formality condition restriction or penalty imposed in this sphere must be proportionate to the legitimate aim pursued.*
>
> *From another standpoint, whoever exercises his freedom of expression undertakes duties and responsibilities the scope of which depends on his situation and the technical means he uses. The Court cannot overlook such a person duties responsibilities it enquires, as in this case, whether restrictions or penalties were conducive to the protection of morals which made them in a democratic society.*

Cases cited by Mr.Viduthalai

(i)*Indian Young Lawyers Association and others (Sabarimala Temple, In Re v. State of Kerala and others* [(2019) 11 SCC 1]

(ii)*Henry Farran Darley v. Robert Kinahan* [(1846) 12 Cl. & F. 520, 8 E.R. 1513]

(iii) *Bharati Reddy v. The State of Karnataka and Ors*. [(2018) 6 SCC 162]

(iv)*University of Mysore v. C.D.Govinda Rao and another* [AIR 1965 SC 491]

(v)*Dr.Y.S.Rajasekara Reddy and others v. Sri Nara Chandrababu Naidu and others* [AIR 2000 AP 142]

(vi)*Vidadala Harinadha babu and etc. v. N.T.Ramarao, Chief Minister, State of Andhra Pradesh, Hyderabad and others* [AIR 1990 AP 20]

(vii)*P.N.Dubey v. Union of India and Others*. [AIR 1989 MP 225]

[19]European Court of Human Rights – Application No.5493/72 dated 07.12.1976, Strasbourg

(viii)*B.Premanand and Others. V. Mohan Koikal and Others* [(2011) 4 SCC 266]
(ix)*Aswini Kumar Ghose and another v. Arabinda Bose and another* [(1952) 2 SCC 237]
(x)*Rohitash Kumar & Others v. Om Prakash Sharma & Others* [(2013) 11 SCC 451]
(xi)*Kallara Sukumaran v. Union of India and Others* [AIR 1986 Ker 122]
(xii)*Government of Andhra Pradesh and Others V.P.Laxmi Devi* [(2008) 4 SCC 720]
(xiii)*Baldev Singh Gandhi v. State of Punjab and Others* [(2002) 3 SCC 667
(xiv)*Handyside v. The United Kingdom* [European Court of Human Rights – Application No.5493/72 dated 07.12.1976, Strasbourg]
(xv)*S.Rangarajan v. P.Jagjivan Ram and others* [(1989) 2 SCC 574]
(xvi)*Supriyo @ Supriya Chakraborty and another v. Union of India* [2023 SCC OnLine SC 1348]
(xvii)*Indira Nehru Gandhi v. Raj Narain and another* [1975 (Supp.) SCC 1]
(xviii)*Dr.Ashwani Kumar v. Union of India and another* [(2020) 13 SCC 585]
(xix)*Divisional Manager, Aravali Golf Club and another v. Chander Hass & Another* [(2008) 1 SCC 683]

IV.(b) Conclusions on the question of whether the offending statements amount to dis/misinformation and hate speech

110. While not intending this to be a paper on theology or religion, I would necessarily have to discuss and arrive at conclusions on certain concepts related to religion, as a precursor to the discussion and conclusions on legal issues. This assumes all the more importance as the individual respondents are Constitutional functionaries.

111. The term '*Sanatana'* means eternal, timeless and perpetual. It is an adjective and would hence normally, qualify a noun or a pronoun. In this instance, the word '*Sanatana'* qualifies the noun 'Dharma', which means

principles/or a value system. The phrase 'Sanatana Dharma' thus means an 'eternal or perpetual, value system or code of conduct'.

112. As an incidental observation, the use of the word '*Sanatana'* as a standalone expression is thus confusing as, it is only if both terms are used together, as Sanatana Dharma, that the phrase would have the desired meaning. It is timeless and pervades all life forms irrespective of barriers, divisions or differences.

113. A instructional book on Sanatana Dharma entitled *Sanatana – Dharma Catechism*[20], and used for moral instruction of students contains the following questions and answers:

> *Q. 1. What is the meaning of the words Sanatana Dharma?*
> *A.. 1. Sanatana means eternal; Dharma means religion.*
> *Q. 2. To what religion is this name given?*
> *A. It is given to the Hindu religion, which is the oldest of the religions now in the world.*
> *Q. 3. Is this the only reason for giving to it the name eternal?*
> *A. No. It is also given because the great truths taught in it are eternal.*

114. Simultaneous with creation, Rta, meaning 'truth' or 'order' in Sanskrit, leading to the doctrines of dharma (duty) and karma (accumulated effects of good and bad actions) pervaded the Universe and all life forms. Rta is the physical order of the universe and the moral law of the world. Rta is a central concept in early Vedic philosophy, Satya, in the mid vedic periods and Dharma in post vedic period. In each phrase, Rta, Satya and Dharma were

[20] Published by Theosophical Publishing House (First Edition 1949)

fundamental and responsible for the proper functioning of natural, moral, religious and sacrificial orders.

115. Dharma is universal in application, irrespective of the faith of an individual. Universal values, such as honesty, integrity, respect for elders and compassion, to name a few, elevate the quality of society in general and are virtues that are timeless in application.

116. The core principles of Dharma are those that do not admit of divergence of opinion and thus impress all form of living beings without division. What then is this Dharma which is proscribed as being timeless, perennial, perpetual and eternal. Answers are found in the Yajnavalkya Smriti[21] and Manu Smriti[22] to describe Dharma as,

> *"Self-possession, patience, self-control, integrity, purity, restraint, intelligence, learning, truthfulness, absence of anger- these ten are the marks of dharma."*
> *"Harmlessness, truth-speaking, refraining from theft, control of the senses such is the essence of the dharma that Manu declared for all the four castes."*
> *"Truthfulness, absence of theft, absence of anger, modesty, purity, intelligence, self-possession, self- control, restraint of the senses, learning-this is declared to be the whole of dharma."*

117. The derision felt by the respondents towards Sanskrit was quite palpable. The clear impression conveyed by the individual respondents is that Sanskrit is elitist, exclusionist and being on the brink of extinction, irrelevant

[21] Yajnavalkya, iii.66
[22] Manusmriti, vi.92

today. However, as the principles of Sanatana Dharma are contained in the Vedic texts that are in Sanskrit, the effort to understand, at least peripherally, the primary texts with the assistance of authentic commentaries by Skandaswamy, Sayanar, Bhattabhaskar or other respected commentators should have been undertaken if one is to have a proper understanding of the principles. Translations and unauthenticated commentaries will just not do.

118. The submissions put forth by the individual respondents make it clear that no such effort has been taken. Instead popular notions such as the Aryan invasion theory and others are being mechanically articulated without any real, in-depth study to back them. As regards the term 'Aryan', that term only denotes a qualification and means 'noble'. It can thus be used to reference any individual holding that qualification.

119. That apart, the universal and eternal code of morality advocated by Sanatana Dharma is not circumscribed by a medium, such as a language and such exalted values would, in Tamil be referred to as Aram (அறம்). The principles of 'Aram' have been expounded in Tamil literature, both religious and spiritual such as the Tholkapiyam, Agananuru, Purananuru, Thirukkural, Prabhandham and Thevaram, that contain reference to concepts meaning virtuous and moralistic living, equivalent to Dharma. Book I of Thirukkural is entitled Aram (Righteousness) and contains kurals 31 to 40, all extolling the traits of virtuous living, and is extracted below:

31	Righteousness yields good reputation and wealth; is there anything more precious?	சிறப்பு ஈனும் செல்வமும் ஈனும் அறத்தினூஉங்கு ஆக்கம் எவனோ உயிர்க்கு.
32	Rectitude is the most precious possession; there is nothing more pernicious than straying from it.	அறத்தினூஉங்கு ஆக்கமும் இல்லை அதனை மறத்தலின் ஊங்கில்லை கேடு.
33	Keep doing the morally right things, in every possible manner, wherever you go.	ஒல்லும் வகையான் அறவினை ஓவாதே செல்லும்வாய் எல்லாஞ் செயல்.
34	True moral integrity lies in being flawless in your thoughts; everything else is loud and blatant posturing.	மனத்துக்கண் மாசிலன் ஆதல் அனைத்து அறன் ஆகுல நீர பிற.

35	Righteousness is all about removing the four flaws – envy, desire, anger and harmful words.	அழுக்காறு அவாவெகுளி இன்னாச்சொல் நான்கும் இழுக்கா இயன்றது அறம்.
36	Do the righteous deeds now without waiting for senility to set in; they will remain your permanent companions then.	அன்றறிவாம் என்னாது அறஞ்செய்க மற்றது பொன்றுங்கால் பொன்றாத் துணை.
37	One man lifting another on a palanquin, can't be justified as the fruit of any prior moral deeds.	அறத்தாறு இதுவென வேண்டா சிவிகை பொறுத்தானோடு ஊர்ந்தான் இடை.
38	Never let a day pass without a good deed; it makes this life fulfilling and the next unnecessary.	வீழ்நாள் படாஅமை நன்றாற்றின் அ:தொருவன் வாழ்நாள் வழியடைக்கும் கல்.

39	True joy blossoms only due to righteous deeds; all else cause unhappiness and disrepute.	அறத்தான் வருவதே இன்பம் மற் றெல்லாம் புறத்த புகழும் இல.
40	A righteous deed deserves to be done; an evil deed ought to be avoided to protect oneself from infamy.	செயற்பால தோரும் அறனே ஒருவற்கு உயற்பால தோரும் பழி.

120. The references are thus copious enough to lead to the unambiguous conclusion that both Tamil and Sanskrit literature congregate to point to a unified set of rules for a way of life that involves simple living and high thinking with unimpeachable morals.

121. At the Court's request, a sample study of the original vedic texts was undertaken by senior professors in the Kuppuswami Sastri Research Institute, Madras, that confirm, prima facie, the position that the phrase Sanatana Dharma has always been used in the context of high moral values and virtuous living. My thanks to them for this timely assistance. There is absolutely no material to lead to the conclusion that that phrase was used only in the context of the Varna system or to propagate unfair and inequitable divisions of society in any manner.

122. Some instances where the phrase Sananta Dharma is used in Vedic literature are

Itihāsas

Vālmīkirāmāyaṇa

1. राज्य भार नियुक्तानाम् एष धर्मः सनातनः।

अधर्यम् जहि काकुत्स्थ धर्मो हि अस्याम् न विद्यते ||*VR.* I. 25. 19

To the nominee who bears the burden of kingdom, this is the age-old duty, and hence oh, Rama, the legatee of Kākutstha, eliminate this infamy, as goodness is in evident in her, isn't it?

2. भरतः पालयेद् राज्यम् शुश्रूषेच् च पितुर् यथा।

तहा भवत्या कर्तव्यम् स हि धर्मः सनातनः ||*VR.*II. 19. 26

While ruling the kingdom, see that Bharata serves our father well. It is indeed an age-old practice.

3. कृते च प्रतिकर्तव्यमेष धर्मः सनातनः।

सोऽयं त्वत्प्रतिकारार्थी त्वत्तः सम्मानमर्हति ।।*VR* . V. 1.114

When a service is done, a return service needs to be rendered. This is an ancient tradition. Such this ocean who wants to do a return service to the Raghu dynasty, is suitable for respect by you.

Mahābhārata

1. *M. Bh.* III. 86. 22

ये च वेदविदोविप्राये चाध्यात्मविदोजनाः

ते वदन्ति महात्मानंकृष्णं धर्मं सनातनम्॥

The purport is that one who has studied the *Vedas* perfectly, who is a perfect *vipra*, or knower of the *Vedas*, who knows what spiritual life is, speaks about Krsna, the Supreme Person, as one's *Sanātana-dharma.*

2. *M. Bh.* XII. 56.11

लोकरञ्जनमेवात्र राज्ञां धर्मः सनातनः।

सत्यस्य रक्षणं चैव व्यवहारस्य चार्जवम्।।

The eternal duty of a king is to please/ or take care of one's subjects, protect the truth and maintain law and order.

3. *M. Bh.* XII. 56.15

चातुर्वर्ण्यस्य धर्माश्च रक्षितव्या महीक्षिता।

धर्मसंकररक्षा च राज्ञां धर्मः सनातनः।।

The king should protect the dharmas of the divisions of the society and also see to it that the dharmas are not messed up.

4. *M. Bh.* XII. 56.37

न यस्य कूटं कपटं न माया न च मत्सरः।

विषये भूमिपालस्य तस्य धर्मः सनातनः।।

The king should be free from prejudice, deceit, jugglery and jealousy. This is the eternal law for the kings.

5. *M. Bh.* XII. 56.42

तद्राज्ये राज्यकामानां नान्यो धर्मः सनातनः।

ऋते रक्षां तु विस्पष्टां रक्षा लोकस्य धारिणी।।

The eternal duty of the king is to protect the country.

6. *M. Bh.* XII. 115. 62

सत्यं वदत मासत्यं सत्यं धर्मः सनातनः ।

हरिश्चन्द्रश्चरति वै दिवि सत्येन चन्द्रवत् ॥

Speak the Truth, never (speak) untruth; this is the eternal Dharma; because of Truth Hariścandra still moves in the sky like the Moon.

7. *M. Bh.* XII.126.4

सत्यम् सत्सु सदा धर्मः सत्यम् धर्मः सनातनः ।

सत्यम् एव नमस्येत सत्यम् हि परमा गतिः ॥

Among the good, Truth is always the Dharma; Truth is the eternal Dharma; Adhere (literal meaning --Salute) to the Truth; Truth is the ultimate resort. (Note: Here the emphasis is on Truth.)

Purāṇas

BhāgavataPurāṇa

1. *Bhāgavata P.* 8.14.4

चतुर्युगान्ते कालेन ग्रस्तान्श्रुतिगणान्यथा ।

तपसा ऋषयोऽपश्यन्यतो धर्मः सनातनः ॥

At the end of every four yugas, the great saintly persons, upon seeing that the eternal occupational duties of mankind have been misused, reestablish the principles of religion.

Smṛtis

Manu-Smṛti

1. *M. Smṛ.*4.138

सत्यं ब्रूयात् प्रियं ब्रूयान्न ब्रूयात् सत्यमप्रियम् ।

प्रियं च नानृतं ब्रूयादेष धर्मः सनातनः ॥ ॥

He shall say what is true; and he shall say what is agreeable; he shall not say what is true, but disagreeable; nor shall he say what is agreeable, but untrue; this is the eternal law.

The Khanapur plates of Madhavavarma[23]contains the phrase Sanatanadharma (‘the eternal religion’). The Glossary of Historical Tamil Vaishnava Prose (up to 1800 AD)[24] contains the following definition:

ஸநாதந த[4]ர்மம்-(பெ) மிகப் பழைய அறம். ''ப்ரதா[4]
நோபாயத்வ நிரபேக்ஷத்வ ஸர்வ ப[2]ல ப்ரத[3]த்வாதி[3]
விஶிஷ்டமுமான ஸநாதந த[4]ர்மத்தை'' (தே.4).

123. While it is correct to state that the Rig Veda provides for a division of castes, such classification is based on avocation and not on the birth of a person. A pointed query was put to the individual respondents as to what

[23] (vide *EpigraphiaIndica* vol.27, p. 312) assigned to the 6th century A.D

[24] Vol. III Published by Santissadhana, Chennai

material they had based their conclusions on, that Sanatana Dharma meant only Varna Dharma. Apart from the publication of the Central Banaras University, a book entitled *The Law code of Manu*[25], the books referred to by Mr.Jothi, there are no authoritative texts, commentaries or any material to indicate that the individual respondents had undertaken any study worth its name to come to that conclusion.

124. The restrictive meaning attributed to the phrase Sanatana Dharma is clearly erroneous as Sanatana Dharma connotes that eternal, perpetual and universal code of conduct that is uplifting, noble and virtuous. This is the first of my conclusions on this aspect.

125. The second issue is as to whether Sanatana Dharma is different and distinct from Hinduism. Swami Vivekananda in the book Hinduism[26] In his seminal paper presented at the World Parliament of Religions on 19.09.1983 commences stating '*three religions now stand in the World which have come down to us from time pre-historic – Hinduism, Zoroastrianism and Judaism. They have all received tremendous shocks and all of them proved by their survival their internal strength'*

126. On Hinduism, Vivekananda goes on to say,

> *The Hindus have received their religion through revelation, the Vedas. They hold that the Vedas are without beginning and without end. It may sound ludicrous to this audience, how a book*

[25] A new translation based on the critical edition by Patrick olivelle Published by Oxford University Press

[26] Published by Sri Ramakrishna Mutt, Mylapore Thirtieth print

> *can be without beginning or end. But by the Vedas no books are meant. They mean the accumulated treasury of spiritual laws discovered by different persons in different times. Just as the law of gravitation existed before its discovery, and would exist if all humanity forgot it, so is it with the laws that govern the spiritual relations between soul and soul and between individual spirits and the Father of all spirits were there before their discovery, and would remain even if we forgot them. The discoverers of these laws are called Rishis, and we honor them as perfected beings. I am glad to tell this audience that some of the very greatest of them were women.*

127. While Sanatana Dharma, is understood as the universal and perpetual code of virtuous conduct propagated from times immemorial, the term 'Hindu' is a development far later in time. Sarvepalli Radhakrishnan says in *Hindu View of Life*[27], that the term Hindu originally had territorial significance, implying residence in a well-defined geographical area.

128. Those who lived on the banks of the river Sindhu (Indus), were practitioners of Sanatana Dharma. The word 'Sindhu' came to be modified over the years by foreign invaders to 'Hindu' and in time, became associated with the people living in that area. As the Hindus/practitioners of Sanatana Dharma expanded their area of residence, they carried with them the tenets of Sanatana Dharma as well[28]. Sanatana Dharma thus forms the very core of Hinduism and the two, Sanatana Dharma and Hinduism are immutable, one and the same. This is the second conclusion on this aspect.

[27] Published by Harper Collins Publishers India 13th Impression

[28] The Hindu view of life S.Radhakrishnan – Harper Collins Publishers India

129. This is not to say that those that lived elsewhere were bereft of a virtuous code of conduct. As discussed in the paragraphs supra, Tamil literature has enough and more reference to 'Aram', celebrated and practiced diligently by the people. The principles of Sanatana Dharma and Aram are thus premised on similar value systems of high thinking and a virtuous way of life.

130. Aurobindo has elaborately addressed the principles of Sanatana Dharma. He states, in a collection of his works[29], as follows:

> *What is this religion which we call Sanatana, eternal? It is the Hindu religion only because the Hindu nation has kept it, because in this peninsula it grew up in the seclusion of the sea and the Himalayas, because in this sacred and ancient land it was given as a charge to the Aryan race to preserve through the ages. But it is not circumscribed by the confines of a single country, it does not belong peculiarly and for ever to a bounded part of the world. That which we call the Hindu religion is really the eternal religion, because it is the universal religion which embraces all others. If a religion is not universal, it cannot be eternal A narrow religion, a sectarian religion, an exclusive religion can live only for a limited time and a limited purpose. This is the one religion that can triumph over materialism by including and anticipating the discoveries of science and the speculations of philosophy*
>
> ……
>
> *This Hindu nation was born with the Sanatana Dharma, with it it moves and with it it grows. When the Sanatana Dharma declines, then the nation declines, and if the Sanatana Dharma were capable of perishing, with the Sanatana Dharma would perish. The Sanatana Dharma, that is nationalism*[30]

131. By seeking to eradicate Sanatana Dharma, the respondents, in effect, undertake to eradicate much that is virtuous in society. This assumes

[29] Sanatana Dharma AnAurobindonian Perspective 1 – RY.Deshpande – 1st Edition

[30] Complete Works of Sri Aurobindo 8

importance, since they are utterances by persons holding Constitutional posts and the apprehension is that the full power of the State machinery would be utilised for this purpose. In fact, Mr.Udhayanidhi Stalin indicates so, in as many words, stating …. *On behalf of the youth wing of the Dravida Munnetra Kazhagam, we have conducted a training camp meeting on behalf of the DMK, the history of the Dravidian movement, the history of the language war, constituency-wise on behalf of our youth wing. The chief minister has given us an order and next we are going to conduct it union-wise area-wise. We will be conducting training camp 2.0 soon…'*

132. This is indeed an alarming situation. While there may be ideological differences between persons holding power, the differences are expected to be based on a thorough understanding of the system being critiqued and importantly, to be constructive and not destructive of any Faith. Statements made in public by sitting Ministers and MPs must be factually and historically accurate.

133. Whatever may be their personal ideology, members holding Constitutional positions can espouse only one morality and that is, the morality propounded by the Constitution. The participation in the convention, and subsequent statements of the HR & CE Minister are particularly exceptionable. The factum of participation by itself, connotes endorsement of the theme and purpose of the convention which militates violently with his Constitutional

position as well as his position as the avowed benefactor of Hindu religious endowments.

134. By equating Sanatana Dharma to HIV AIDS, Leprosy, malaria and corona, the individual respondents have revealed an alarming lack of understanding of Hinduism. Their statements are perverse, divisive and contrary to Constitutional principles and ideals and tantamount to gross dis or misinformation.

135. In the article penned by Mr.A.Raja there is a reference to a publication titled *'Hindu Faith and culture'* attributed to C.P.Ramasami Aiyar. The Court was unable to find a publication by that name. However there is a publication entitled *Speeches of Sachivottama Sir C.P. Ramaswami Aiyar, Dewan of Travancore*[31] wherein a series of lectures delivered by Dr.C.P.Ramaswami Aiyar have been compiled. This is what he has to say in a lecture delivered in Bangalore on the political spirit and self-discipline that it must place upon itself:

> *The political spirit described as characteristic of modern society has its own place but it should not be allowed to trespass into domains that have least to do with politics. In order to achieve these ends, every attempt should be made not to succumb to the scientific and technological creeds which are apt to become dangerous idolatories but to remember that the main implication of culture and the true end of education are the creation of a sense of proportion and a realisation of ultimate human values which alone will contribute to humane thinking and humane living.*

[31] Published by Government Press, Trivandrum, 1944

136. Swami Vivekananda in his publication on *Hinduism*[32], refers to Hinduism as a universal religion. After setting out a short sketch of the religious ideas of the Hindus, he says,

> *The Hindu may have failed to carry out all his plans, but if there is ever to be a universal religion, it must be one which will have no location in place or time; which will be infinite like the God it will preach, whose sun will shine upon the followers of Krishna and of Christ, on saints and sinners alike; which will not be Brahmanic or Buddhistic, Christian or Mohammedan, but the sum total of all these, and still have infinite space for development; which in its catholicity will embrace in its infinite arms, and find a place for every human being, from the lowest grovelling savage not far removed from the brute, to the highest man towering by the virtues of his head and heart almost above humanity, and making society stand in awe of him and doubt his human nature. It will be a religion which will have no place for persecution or intolerance in its polity, which will recognize divinity in every man and woman, and whose whole scope, whose whole force will be centred in aiding humanity to realize its own true and divine nature.*

137. The effort of any reasonable, fair and well intentioned leader must be aimed towards identifying the commonalities of different sections of the people so as to unite, rather than divide them. Though criticism is essential for growth, it must be constructive to ensure that progress, rather than destruction, is the destination.

138. This Court agrees unequivocally that there are inequities based on caste, present in society today and that they are to be eschewed. However, the categorization of castes as we know them today, is a far more recent and

[32] Published by Sri Ramakrishna Mutt (First edition, January 1946)

modern phenomenon[33]. The State of Tamil Nadu has 184 registered castes and the State is a cacophony of pulls and pressures by groups of persons claiming allegiance to one caste or the other.

139. This ferocity among persons belonging to different castes is also, in part, on account of the benefits made available to them. Can one lay the blame for these torturous circumstances entirely on the ancient Varna system? The answer is emphatically in the negative. If the leaders in a State wish to lead an egalitarian land with equal sharing of resources among all the people, they must set an example by exhibiting fairness in approach, moderation in speech and a sincere desire to understand the differences between their people.

140. Divisions based on caste are deeply entrenched in State of Tamil Nadu and the State must undoubtedly do all in its power to eliminate such evils. Instead the individuals are seen to be fanning casteist passions which is not in the interests of the State or its people.

141. It is a matter of record that there have been severe ravages by fellowmen, at differing points in time, to different sections of society, all in the name of supremacy and perceived domination of caste as well as a response to perceived domination by certain castes. I refrain from chronicling the details, as not being directly relevant to the subject matter of this order and also for the reason that there is no benefit to be gained in re-visiting past events and

[33] Moments in a History of Reservation – Bhagwan Das – Economic and Political Weekly, October.21-November 3, 2000, Vol.35 No.43/44

episodes that have been the source of pain, trauma and deep sadness to sections of people at different points in time.

142. Suffice it to say that such events must be deprecated and this Court does so unequivocally. There must be repair and damage control on an ongoing basis to correct the unfairness of the past. There must, consequently, also be sincere introspection on the methods that can be evolved to correct injustices and foster equality, today and going forward.

143. The varna system does not contemplate or suggest division on the basis of birth, but based on avocation. The system was designed to work towards the smooth functioning of society centuries ago where the chief avocations were identified based on the then needs of society. The relevance of such a system today, is itself moot.

144. On the aspect of hate speeches, three Judges of the Supreme Court first considered the issue of hate speeches in *Pravasi Bhalai Sangatha V. Union of India and others*[34]. The prayer was for mandamus declaring hate or derogatory speeches made by political or religious leaders on religion, caste, region and ethnic lines violative of various Articles under the Constitution.

145. At that time, the Court was of the view that the law had not developed enough to enable passing of guidelines in rem, to deal with issue of hate speeches. Judicial review or judicial intervention, they felt, must be restricted to those cases that were capable of being addressed specifically and in

[34] AIR 2014 SC 1591

a focussed manner. After all, they state, if there were any arbitrary or unreasonable action taken by any person, it would attract the existing provisions of law including the Indian Penal Code calling for appropriate action. It was thus proper, they felt, that matters be addressed on a case to case basis rather than general guidelines be issued.

146. The burning issue of hate speech was then dealt with by the Supreme Court in the case of *Tehseen S.Poonawalla V. Union of India*[35]. The Court was concerned with animal vigilantism perpetuated on the basis of differences between groups of citizens of religion and thought processes. The Court categorically says that hate, as a product of intolerance, ideological dominance and prejudice ought not to be tolerated lest it leads to a reign of terror. The individual respondents in this matter will do well to heed this note of caution

147. There is a fine balance between speaking one's mind and having the freedom to do so, and such freedom constituting an infraction on the ideological preferences, views, opinions and practices of others. Paragraphs 20 and 21 of the judgment is apt when it says:

> *20. Hate crimes as a product of intolerance, ideological dominance and prejudice ought not to be tolerated; lest it results in a reign of terror. Extra judicial elements and non-State actors cannot be allowed to take the place of law or the law enforcing agency. A fabricated identity with bigoted approach sans acceptance of plurality and diversity results in provocative sentiments and display of reactionary retributive attitude transforming itself into*

[35] AIR 2018 SC 3354

dehumanisation of human beings. Such an atmosphere is one in which rational debate, logical discussion and sound administration of law eludes thereby manifesting clear danger to various freedoms including freedom of speech and expression. One man's freedom of thought, action, speech, expression, belief, conscience and personal choices is not being tolerated by the other and this is due to lack of objective rationalisation of acts and situations. In this regard, it has been aptly said:-

> *"Freedom of speech is a principal pillar of a free government; When this support is taken away, the Constitution of a free society is dissolved and tyranny is erected on its ruins."*

21. Freedom of speech and expression in different forms is the élan vital of sustenance of all other rights and is the very seed for germinating the growth of democratic views. Plurality of voices celebrates the Constitutionalist idea of a liberal democracy and 6 Benjamin Franklin, On Freedom of Speech and the Press, from the Pennsylvania Gazette, November, 1737 ought not to be suppressed. That is the idea and essence of our nation which cannot be, to borrow a line from Rabindranath Tagore, "broken up into fragments by narrow domestic walls" of caste, creed, race, class or religion. Pluralism and tolerance are essential virtues and constitute the building blocks of a truly free and democratic society. It must be emphatically stated that a dynamic contemporary Constitutional democracy imbibes the essential feature of accommodating pluralism in thought and approach so as to preserve cohesiveness and unity. Intolerance arising out of a dogmatic mindset sows the seeds of upheaval and has a chilling effect on freedom of thought and expression. Hence, tolerance has to be fostered and practised and not allowed to be diluted in any manner.

148. India is a democracy and the Constitution propounds a secular Government with equal freedom to all its citizens. Hate and divisiveness, particularly from the hands of the Government, is anathema to such freedom, and assume a seriousness bordering on danger. The freedom of speech guaranteed under Article 19(1) is not absolute in that it is tempered by a set of

reasonable restrictions set out under Article 19(2). The nature and dimensions of the restrictions will have to be tested on the anvil of situations as and when they occur.

149. The Supreme Court, in *Poonawalla's* case, states that in a rights based approach to Constitutional legitimacy, democratic governance must propel and drive towards stronger foothold for liberties so as to ensure sustenance of higher values of democracy, paving the way for spontaneous Constitutional order.

150. The State has a positive obligation to protect the fundamental rights and freedoms of all individuals irrespective of race, caste, class or religion. '*The State has a primary responsibility to foster a secular, pluralistic and multi-culturalistic social order so as to allow free play of ideas and beliefs and co-existence of mutually contradictory perspectives*'. *'Stifling free voices,* they say, *'can never bode well for a true democracy and it is essential to build societies which embrace diversity in all spheres and re-build trust of the citizenry in the State machinery'*(Paragraph 23 of the judgment in *Poonawalla's* case).

151. A series of guidelines have been issued in *Poonawalla's* case to formulate preventive measure to prevent incidences of hate speech and crimes. There has also been a general direction issued to the police to initiate action suo

motu if the police detect incidents of hate speech. There has been some consequence of this in the present matter.

152. As a counter blast to the conduct of the convention, certain other groups had organised a meeting to discuss the concepts and philosophy of Hindutva. There was a challenge to the conduct of that meeting in W.P.No.25907 of 2023, which had been disposed on 05.09.2023 permitting the conduct of the meeting. This was followed by W.P.No.30692 of 2023, wherein the prayer was for a direction to the respondents therein, being the Commissioner of Police, Chennai and Inspector of Police, M-2 Milk Colony Police Station, to give permission to the petitioner in light of the orders of this Court in W.P.No.25907 of 2023 on 05.09.2023, to organize a conference to debate on Dravidian ideologies and other social issues on 29.10.2023 between 10 am. and 6 p.m. at the closed auditorium in Madhavaram Milk Colony by considering the petitioner's representation dated 26.09.2023.

153. While disposing that Writ Petition on 31.10.2023, Dr.Jayachandran,J had made a distinction between the earlier Writ Petition and the one that he was dealing with, pointing out that the earlier Writ Petition dealt with the conduct of a peaceful meeting, whereas the present Writ Petition had destructive overtones. He also indicated that the offensive statements that are the subject matter of the present Writ Petitions, in fact, attracted application of

the guidelines of the Supreme Court to the police regarding suo motu intervention. However, no specific directions were issued.

154. As against this Writ Petition, R1 filed a Writ Appeal that came to be closed by the First Bench of this Court noting that there had been no action taken by the police subsequent to the order of Dr.Jayachandran,J and hence there was no prejudicial cause of action. Liberty was granted to R1 to approach the Court should it become necessary, at a later date.

155. The purpose of faith is to unify and not divide. There are, in Hinduism, two concepts, Vyapyagnanam and Vyapakagnanam, the former referring to focused and pointed study of a subject matter, and the latter, wider in approach and encompassing a great deal more of that subject, albeit peripherally. While the proper approach for study of any subject would be the former, that is to say, any subject matter must be addressed in a focussed and in-depth manner, in the interests of unity and cohesiveness, it is sometimes, preferable for the study to be peripheral and broad based.

156. The logic is that the latter would enable identification of points of commonality and similarity leading to unification at some level, whereas deep and in-depth study would only throw up points of differences and division between the subject matters.

157. Contemporary discourse amongst vedic scholers addresses the crying need for compatibility amongst the various schools of thought within the

Hindu religion itself, such that the religion is not fragmented or divided. This scenario is not unique to Hinduism alone and I dare say that most faiths accommodate several branches within their fold, with marked differences in their philosophy and procedures. Leaders in all the faiths will do well to identify broad points of unity among the branches of their faiths rather than focus on the narrow differences between them. It is no different in the case of a State. The effort must be to unite rather than divide and it is this effort that decides the bonafides of the leadership.

158. It is well settled that it is Constitutional morality that binds a Constitutional functionary. Such morality enjoins the individual respondents to be neutral and fair in their dealings with the people. The individual respondents have undoubtedly acted contrary to Constitutional principles and ideals and their statements amount to disinformation and hate against members of a specific community.

159. Seen in this backdrop, the question that arises is as to whether it is contrary to Constitutional ideals principles for Constitutional functionaries to vow to annihilate a section of their own people who follow a particular faith, and whether such statements violate the promise of secular values under the Constitution? The answer is unambiguously in the affirmative.

Conclusions on the question of law

160. The scope of writ of quo warranto has been discussed in *Attorney General V.Barstow*[36]in the following terms:

> *It is foreign to the objects and functions of the writ of quo warranto to direct any officer what to do. It is never directed to an officer as such, but always to the person – not to dictate to him what he shall do in his office, but to ascertain whether he is Constitutionally and legally authorized to perform any act in, or exercise any functions of the office which he lays claim.*

161. Reference in this regard may also be made to the decision in *Darley V. The Queen*[37] and the King's Bench in *R v. Speyer*[38].

162. Chapter II of the Constitution deals with the Executive and Article 154 vests the Executive power of the State in the Governor. The Governor is appointed by the President by warrant and Articles 155 and 156 state that he holds office during the pleasure of the President.

163. He is assisted in the rendition of his duties by the Council of Ministers with the Chief Minister at its head, who aid and advice the Governor in the exercise of his functions except in those situations where, under the Constitution, he is required to exercise his functions at his discretion. Article 164 relates to other provisions as to Ministers and the relevant portions are extracted below:

> ***164. Other provisions as to Ministers.—***
>
> *(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the*

[36]4 Wis 659 at Page 773
[37]12, Cl & Fin. 520
[38](1916) 1 KB 595

advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:

. . . .

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the Oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) 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.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

.....

164. Article 164 states that the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister. Such Ministers, once appointed, hold office during the pleasure of the Governor. Article 164(3) enjoins a Minister prior to entering upon his office to be administered an Oath by the Governor. The Oath of office and of secrecy is as per the forms set out for that purpose in the III Schedule.

165. The Constitution requires, under Article 173, the candidate to be a citizen of India above the age of 25, to have subscribed before a person authorised in that behalf, an Oath or Affirmation as set out under the Third Schedule and to satisfy all other qualifications as prescribed by law made by Parliament. Likewise, Article 84 requires an MP to be a citizen above 30 years in the case of a seat in the Council of States and 25 years in the case of a seat in

the House of the People, to have subscribed before a person authorised in that behalf, an Oath or Affirmation as set out under the Third Schedule and to satisfy all other qualifications as prescribed by law made by Parliament.

166. The disqualifications for a candidate to be an MLA are prescribed under Article 191 (1) of the Constitution as being, holding of an office of profit under the Government of India or State Government, being of unsound mind as declared by a competent Court, being an undischarged insolvent, not being a citizen of India/voluntarily acquiring citizenship of a foreign State/being under acknowledgement of allegiance or adherence to a foreign State or being disqualified by or under a Central Law.

167. Under Article 191(2), a person shall be disqualified from being an MLA if he attracts any disqualification as under the Tenth Schedule providing for defection. Similar disqualifications are provided under Article 102 (1) and (2) for being chosen as an MP. Moreover, there is an efficacious remedy available under Article 192 and the Governor shall decide if the member concerned has incurred any of the disqualifications under Article 191(1) after consultation with the Election Commission, his decision in that respect being final. There is a penalty for sitting and voting prior to making Oath or Affirmation or when not qualified or when disqualified as provided under Article 193. Likewise Articles 84, 102, 103 and 104 set out a similar scheme in respect of MPs.

168. Article191, 192 and 193 read 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. 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.
193. Penalty for sitting and voting before making Oath or affirmation under article 188 or when not qualified or when disqualified*.—If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of article 188, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament or the Legislature of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.*

169. Article 84, 102, 103 and 104 relating to MPs read thus:

84. Qualification for membership of Parliament.—*A person shall not be qualified to be chosen to fill a seat in Parliament 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 Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and

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

102. Disqualifications for membership.—*(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—*

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament 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. 2 [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 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 either House of Parliament if he is so disqualified under the Tenth Schedule.

103. Decision on questions as to disqualifications of members.— *(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.*

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

104. Penalty for sitting and voting before making oath or affirmation under article 99 or when not qualified or when disqualified.—

If a person sits or votes as a member of either House of Parliament before he has complied with the requirements of article 99, or when he

knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Union.

170. The RP Act, under Section 5 prescribes the qualifications for membership of the Legislative Assembly and states that a person shall not be qualified to fill such a seat unless, in the case of a seat reserved for the Scheduled Caste or Scheduled Tribe of that State, he is himself a member of any of those castes or tribes and is an elector for any assembly constituency in that State. There is a prescription likewise for the autonomous district of Assam. In the case of any other seat, he should be an elector for any assembly constituency in that State.

171. The other disqualifications under Chapter III of the RP Act are conviction under certain laws under Section 8, guilt of corrupt practice under Section 8-A dismissal for corruption or disloyalty to the State having held office under the Government of India or any State under Section 9, a Government contractor under section 9-A, any person holding office under a Government company or Corporation under Section 10 and failure to lodge corrupt accounts of election expenses under Section 10-A. The disqualifications are set out under the RP Act and are specific and finite and there is no scope for expansion of the same.

172. Section 8 enumerates conviction for certain specified convictions and reads thus:

> ***8. Disqualification on conviction for certain offences**.—(1) A person convicted of an offence punishable under—*
>
> *(a) section 153A (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) or 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 section 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) or 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 or 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);],

and sentenced to imprisonment for not less than six months, 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.

173. The question of whether a violation of Oath by a Minister could attract the writ of quo warranto is no longer res integra and has been the subject matter of consideration in several writ petitions.

174. In *Hardwari Lal, Ex-M.P. (Lok Sabha) V. Ch.Bhajan Lal, Chief Minister, Haryana, Chandigarh*[39], the Supreme Court was of the opinion that

[39] 1993 (1) SCC 184

violation of Oath would not attract such disqualification as it was not within the enumerated grounds of disqualification provided under the Constitution. They say, at paragraph 9 as follows:

> *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, AIR 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.*

175. While an Oath of office or secrecy is not an empty formality and has great Constitutional significance, intervention on account of disqualification would have to relate to disqualifications enumerated under the Constitution alone.

176. In the case of *Dr.Y.S.Rajasekara Reddy and others v. Sri Nara Chandrababu Naidu and others*[40], writ of quo warranto was sought as against Nara Chandrababu Naidu. In that case too, it was reiterated that quo warranto can be issued only to a person who usurps office or to one who has forfeited his right to office by indicating disqualification. The Bench also refers in that regard to a presumption of continued existence of qualification necessary for the appointment of a holder of office. Referring to various decisions, they re-affirm the position that Chief Minister and Ministers hold office during the pleasure of the Government, and it is only the Governor, the appointing authority in whom the power to dismiss vests.

177. They go so far as to say that on the principle of joint and several liability of the Cabinet in the Parliamentary system of democracy, the Governor too would not be competent to dismiss either the Chief Minister or Ministers in the Cabinet for breach of Oath.

178. In *Ramachandran V. M.G.Ramachandran, the Chief Minister of Tamil Nadu, Madras*[41], a learned single Judge of this Court considered a plea for

[40] [AIR 2000 AP 142]

[41] 1987 100 LW 1783

quo warranto against the then Chief Minister alleging that he had advocated that members of the Mandram that bore his name could carry a knife with them for security purposes. It was thus alleged that he had breached the Oath of office taken by him which would be a Constitutional impediment for his continuance in office.

179. This Writ Petition came to be dismissed, this Court making a distinction between breach of Oath and absence of Oath itself. While the latter would result in Constitutional disqualification for continuance in office, as Article 163 requires a Minister prior to assume of office to take Oath of office and of secrecy, a breach of Oath does not form part of the list of disqualifications under the Constitution.

180. In *Keisham Meghachandra Singh* (three Judges of the Supreme Court considered questions relating to the X Schedule of the Constitution of India in the context of the 11th Manipur Legislative Assembly. On the question of disqualification, they reiterated that the question of disqualification would arise only in the context of the disqualifications enumerated and none other. They also reiterated that the power to resolve such a dispute would vest in the Constitutionally appointed authority only.

181. In the case of *Dhobei Sahoo*[42], the Orissa High Court had issued a quo warranto. In appeal, the Bench reiterated that '*it is clear as noon day that the jurisdiction of the High Court while issuing a writ of quo warranto is a*

[42] (2014) 1 SCC 161

limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules.'

182. In *K.R.,Ramaswamy alias Traffic Ramaswamy*[43] quo warranto had been sought as against the then Minister for Forests, on the ground that there was a violation of the Chennai City Municipal Corporation Act prohibiting erection of digital banners. The Court, referring to several judgments, reiterated the applicability of the pleasure doctrine and the fact that a complete machinery has been provided in the Constitution for that purpose.

183. In the case of *Manoj Narula*[44], the point raised was whether a person with a criminal background or one who had been charged with offences involving moral turpitude could be appointed as Minister for the Central and State Governments. The litigation was instituted as probono publico on the ground that there has been unfettered appointments of Ministers who were involved in serious and heinous crimes.

184. After dealing with the concept of Democracy, the Court noted the purity and the importance of the election process referring to the judgment in the case of *Mohinder Singh Gill and another v. Chief Election Commissioner, New Delhi and others*[45]. They also refer to *Union of India v. Association for Democratic Reforms and another*[46] wherein judicial note was taken of the fact

[43] 2012 (2) CTC 481
[44] (2014) 9 SCC 1
[45] 1978 (1) SCC 405
[46] 2002 (5) SCC 294

that money power is gathered from black sources and once elected to power, is used for retention of power and re-election.

185. In *Manoj Narula's* case judicial note was taken note of the criminalization of politics. The conclusion however, was that in the absence of a Constitutional impediment or statutory prohibition, no additional prohibition could be imposed by way of judicial interpretation, as the functionaries designated with the necessary power under the Constitution are the sole repositories of power.

186. The relations between the Governor, Executive and Legislature have been constitutionally cast and well settled and do not brook intervention by judicial process. In *Narula's* case every party and stakeholder before the Court was unanimous that politics must not be criminalized. However, even the prayer for framing of possible guidelines for appointment of a Minister in the Central or the State was declined by the Court, which felt that it was only for the appropriate Legislature to decide whether such Guidelines are necessary and frame the same. The conclusions are as follows:

> *133. The discussion leads to the following conclusions:*
>
> *133.1. To become a legislator and to continue as a legislator, a person should not suffer any of the disqualifications mentioned in Section 8 of the Representation of the People Act, 1951;*
> *133.2 There does seem to be a gap in Section 8 of the Representation of the People Act, 1951 inasmuch as a person convicted of a heinous or a serious offence but awarded a sentence of less than two years imprisonment may still be eligible for being elected as a Member of Parliament;*

133.3 While a debate is necessary for bringing about a suitable legislation disqualifying a person from becoming a legislator, there are various factors that need to be taken into consideration;
133.4 That there is some degree of criminalization of politics is quite evident;
133.5 It is not for this Court to lay down any guidelines relating to who should or should not be entitled to become a legislator or who should or should not be appointed a Minister in the Central Government;

134. The range of persons who may be elected to a Legislature is very wide and amongst those, who may be appointed a Minister in the Central Government is also very wide, as mentioned above. Any legislator or non- legislator can be appointed as a Minister but must quit as soon as he or she earns a disqualification either under the Constitution or under Section 8 of the Representation of the People Act, 1951.[84] In B.P. Singhal this Court observed that "a Minister is hand-picked member of the Prime Minister's team. The relationship between the Prime Minister and a Minister is purely political."

135. In addition to the above, how long a Minister should continue in office is best answered by the response to a question put to the British Prime Minister John Major who was asked to "list the circumstances which render Ministers unsuitable to retain office." His written reply given to the House of Commons on 25th January, 1994 was:

> *"There can be a variety of circumstances but the main criterion should be whether the Minister can continue to perform the duties of office effectively."*

187. In *Nebam Rebia and Bamang Felix* [47] a Constitution Bench of the Supreme Court decided the ambit of power of the Governor under Article 163, reiterating the rule of Cabinet responsibility. Referring to the judgment in *Samsher Singh's* case to the effect that our Constitution does not accept any

[47] (2016) 8 SCC 1

parallel administration or diarchy, they also referred to the Constitution Bench judgement in *U.N.R. Rao V. Smt. Indira Gandhi*[48], where these principles were reiterated. Thus, while discretion is only available to the Governor under Article 163, it is not all pervasive but circumscribed by the power under the Constitution itself.

188. Great reliance has been placed by the petitioners on the judgment in the case of *K.Venkatachalam*[49]. The facts of that case are that one K.Venkatachalam had been declared as elected as MLA for the Lalgudi Assembly Constituency. His election was contested and this Court allowed the Writ Petition on the ground that he did not possess the basic qualifications prescribed under clause (c) of Article 173 of the Constitution read with Section 5 of the RP Act.

189. Venkatachalam challenged the judgment. The Supreme Court found, as a fact that there was an elector in the electoral roll for Lalgudi Assembly Constituency by the same name, and that Venkatachalam had been fraudulently representing to be an elector of that Constituency using the similarity in the name of that person.

190. The question that arose for consideration was whether, in those circumstances, the jurisdiction of the Court under Article 226 of the Constitution can be exercised and the Court declare that he was disqualified to

[48] (1971) 2 SCC 63

[49] (1999) 4 SCC526

be an MLA. The Court held that Venkatachalam had, in his nomination form, impersonated a person known as '*Venkatachalam Son of Pethu'* taking advantage of the fact that the first name was the same. In such circumstances, they held that the appellant would be criminally liable as he has filed his nomination on an affidavit impersonating himself and that if he were to allowed to sit and vote in the assembly it would be a fraud on the Constitution. At paragraph 27, they state as follows:

> *Article 226 of the Constitution is couched in widest possible term and unless there is clear bar to jurisdiction of the High Court its powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law or violative of Constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. In circumstances like the present one bar of Article 329(b) will not come into play when case falls under Articles 191 and 193 and whole of the election process is over. Consider the case where the person elected is not a citizen of India. Would the Court allow a foreign citizen to sit and vote in the Legislative Assembly and not exercise jurisdiction under Article 226 of the Constitution?*

191. The decision of the High Court in declaring that he was not entitled to sit in the Assembly was upheld. This decision has been bulwark of the petitioner's arguments to say that commission of fraud against Constitution can well be taken to be a disqualification.

192. In the case of *Anbazhagan K*, declaration had been sought on the ground that the resolution passed by the Tamil Nadu Legislative Assembly

expelling that petitioner and nine other Members who had burnt a copy of the Constitution, was incorrect.

193. The First Bench of this Court concurred that the burning of the Constitution or defiling the same in any manner would be contrary to the Constitution and that it would be for the House to decide how to deal with such a Member. An elected representative who makes an Oath or Affirmation is duty bound to bear true faith and allegiance to the Constitution of India and uphold the sovereignty and integrity of India.

194. Burning a part of the Constitution unquestioningly constitutes a breach of that Oath. However, the resolution of expulsion did not take effect on the ground that the members had incurred disqualification for committing a breach of Oath but rather, it was founded on the conduct of elected members which the Assembly considered derogatory to the dignity of the Constitution as well as the dignity of the Assembly. To be noted, that the relief sought there was not judicial intervention by way of a disqualification and quo warranto but a challenge to the order of expulsion itself.

195. In the present case, my conclusions in the paragraphs supra are unambiguous that the offending statements spew hate against a particular community, the Hindus and constitutes dis/misinformation. However, these conclusions cannot be stretched so as to justify a writ of quo warranto as I would then be reading into the Constitution and the provisions of the RP Act,

the disqualification of hate speech and perpetration of mis/disinformation. The line of judgments cited by the individual respondents, some referred to supra, have held this to be impermissible. The definition of the word 'disqualified' under Section 7(b) of the RP Act is as follows:

> *7. Definitions.—In this Chapter,—*
> *(b) "disqualified" means 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 4 [under the provisions of this Chapter, and on no other ground.*

196. Hence, a disqualification fastened upon a candidate can be under the list of disqualifications enumerated under Sections 8 to 11A only *'and on no other ground'*.

197. There is no dispute on the question that the individuals do hold the requisite qualifications under the Constitution and RP Act. A combined reading of the Constitution and RP Act would thus permit no other disqualifying situations to be considered save those situations mentioned therein.

198. The relevant provisions of the R.P. Act identify specific instances of conviction which would attract disqualification. Section 153-A deals with the offence of promoting enmity between different groups of people on the ground of religion, race, place of birth, residence or language and doing acts prejudicial to maintenance of harmony.

199. The allegations of the petitioners as against the individual respondents are exactly on point. While FIRs are stated to be pending in various

States in regard to the offending statements, admittedly, there has been no conviction as on date. Thus, the relief of quo warranto as sought for by the petitioners is premature as no cause of action arises at this juncture of time for such issuance. The relief sought thus cannot be granted.

On the Judgement in re. Kaushal Kishor

200. A Constitution Bench of the Hon'ble Supreme Court considered the following questions in *Kaushal Kishor* (supra)

> *1.Are the grounds specified in Article 19(2) in relation to which reasonable restrictions on the right to free speech can be imposed by law, exhaustive, or can restrictions on the right to free speech be imposed on grounds not found in Article 19(2) by invoking other fundamental rights?*
>
> *2.Can a fundamental right Under Article 19 or 21 of the Constitution of India be claimed other than against the 'State' or its instrumentalities?*
>
> *3.Whether the State is under a duty to affirmatively protect the rights of a citizen Under Article 21 of the Constitution of India even against a threat to the liberty of a citizen by the acts or omissions of another citizen or private agency?*
>
> *4.Can a statement made by a Minister, traceable to any affairs of State or for protecting the Government, be attributed vicariously to the Government itself, especially in view of the principle of Collective Responsibility?*
>
> *5.Whether a statement by a Minister, inconsistent with the rights of a citizen under Part Three of the Constitution, constitutes a violation of such Constitutional rights and is actionable as 'Constitutional Tort"?*

201. The judgment has been authored by two Hon'ble Judges and their views are found in tabular form as below:

180……..

Questions	*His Lorship's views*	*B.V.Nagarathna's views*
1) Are the grounds specified in Article 19(2) in relation to which reasonable restrictions on the right to free speech can be imposed by law, exhaustive, or can restrictions on the right to free speech be imposed on grounds not found in Article 19(2) by invoking other fundamental rights?	*The grounds lined up in Article 19(2) for restricting the right to free speech are exhaustive. Under the guise of invoking other fundamental rights or under the guise of two fundamental rights taking a competing claim against each other, additional restrictions not found in Article 19(2), cannot be imposed on the exercise of the right conferred by Article 19(1)(a) upon any individual.*	*I respectfully agree with the reasoning and conclusion of His Lordship, in so far as Question No. 1 is concerned.*
2) Can a fundamental right Under Article 19 or 21 of the Constitution of India be claimed other than against the 'State' or its instrumentalities?	*A fundamental right Under Article 19/21 can be enforced even against persons other than the State or its instrumentalities.*	*The rights in the realm of common law, which may be similar in their content to the Fundamental Rights Under Article 19/21, operate horizontally; However, the Fundamental Rights Under Articles 19 and 21, do not except those rights which have also been statutorily recognised. Therefore, a fundamental right Under*

		Article 19/21 cannot be enforced against persons other than the State or its instrumentalities. *However, they may be the basis for seeking common law remedies.* *But a remedy in the form of writ of Habeas Corpus, if sought against a private person on the basis of Article 21 of the Constitution can be before a Constitutional Court i.e., by way of Article 226 before the High Court or Article 32 read with Article 142 before the Supreme Court.* *As far as non-State entities or those entities which do not fall within the scope of Article 12 of the Constitution are concerned, a writ petition to enforce fundamental rights would not be entertained as against them. This is primarily because such matters would involve disputed questions of fact.*
3) Whether the State is under a duty to affirmatively protect the	*The State is under a duty to affirmatively protect the rights of a person*	*The duty cast upon the State Under Article 21 is a negative duty not to*

rights of a citizen Under Article 21 of the Constitution of India even against a threat to the liberty of a citizen by the acts or omissions of another citizen or private agency?	*Under Article 21, whenever there is a threat to personal liberty even by a private actor.*	*deprive a person of his life and personal liberty except in accordance with law.* *The State however has an affirmative duty to carry out obligations cast upon it under Constitutional and statutory law. Such obligations may require interference by the State where acts of a private party may threaten the life or liberty of another individual. Hence, failure to carry out the duties enjoined upon the State under Constitutional and statutory law to protect the rights of a citizen, could have the effect of depriving a citizen of his right to life and personal liberty. When a citizen is so deprived of his right to life and personal liberty, the State would have breached the negative duty cast upon it Under Article 21.*
4) Can a statement made by a Minister, traceable to any affairs of State or for protecting the Government, be attributed vicariously to the Government itself,	*A statement made by a Minister even if traceable to any affairs of the State or for protecting the Government, cannot be attributed vicariously to*	*A statement made by a Minister if traceable to any affairs of the State or for protecting the Government, can be attributed vicariously to the Government by*

especially in view of the principle of Collective Responsibility?	*the Government by invoking the principle of collective responsibility.*	*invoking the principle of collective responsibility, so long as such statement represents the view of the Government also. If such a statement is not consistent with the view of the Government, then it is attributable to the Minister personally.*
5) Whether a statement by a Minister, inconsistent with the rights of a citizen under Part Three of the Constitution, constitutes a violation of such Constitutional rights and is actionable as 'Constitutional Tort'	*A mere statement made by a Minister, inconsistent with the rights of a citizen under Part-III of the Constitution, may not constitute a Violation of Constitutional rights and become actionable as a Constitutional tort. But if as a consequence of such a statement, any act of omission or commission is done by the officers resulting in harm or loss to a person/citizen, then the same may be actionable as a Constitutional tort.*	*A proper legal framework is necessary to define the acts or omissions which would amount to Constitutional torts, and the manner in which the same would be redressed or remedied on the basis of judicial precedent.* *It is not prudent to treat all cases where a statement made by a public functionary resulting in harm or loss to a person/citizen, as Constitutional torts.* *Public functionaries could be proceeded against personally if their statement is inconsistent with the views of the Government. If, however, such views are consistent with the views of the Government, or are endorsed by the*

		Government, then the same may be vicariously attributed to the State on the basis of the principle of collective responsibility and appropriate remedies may be sought before a court of law.

202. The relief sought for by the petitioners in that case is different from the relief sought for in these Writ Petitions. The facts in that case are that the Minister for Urban Development of Government of U.P. had made certain unacceptable statements in a press conference. The petitioners had been travelling on a National Highway to attend the death ceremony of a relative when they were waylaid by a gang who snatched away their cash, and jewellery and gang raped his wife and minor daughter.

203. The Minister concerned claimed in a press conference that it was a political conspiracy. The petitioner thus prayed for a impartial enquiry into the matter convinced that no justice could be obtained from the police department where the Minister had revealed such insensitivity.

204. This judgment has been cited by Mr.Viduthulai to highlight the Bench's conclusion that it is for the Legislature to adopt a voluntary model code of conduct for persons holding public offices which was in tandem with and would reflect Constitutional morality as well as values of good governance.

The Bench has also suggested the creation of an appropriate mechanism like an Ombudsman to deal with such violations, as and when they arise.

205. The petitioners request that, in the event the Court is not persuaded to issue quo warranto, the prayer may be suitably moulded. It has been reiterated time and again that the quality of the people's representatives is in the hands of the people alone, and it is the vox populi that will ultimately prevail. In *Kallara Sukumaran v. Union of India and Others*[50], a Division Bench of the Kerala High Court says this:

> *12. The morality or propriety of an undesirable person continuing as a Minister is essentially a political question to be eminently dealt with and at any rate initially, at the political level, such as by the Chief Minister, by the Legislature, and 'the general public holding a watching brief over them', and later by the Constitutional functionaries as provided in the Constitution itself. Such was the reaction of Dr. Ambedkar when he referred to this topic. (Constituent Assembly Debates Vol. VII, page 1160). If that be so, that is an area where the High Court's jurisdiction under Article 226 is hardly attracted. This view has the support of the decision of the Delhi High Court in Inder Mohan v. Union of India, MANU/DE/0089/1979 : AIR 1980 Delhi 20. Whether Sri. Bahuguna could with propriety continue as a Minister of the Union Government was not a matter for the Court to decide -- it was held. The idea is cogently and forcefully expressed by Frankfurter J. in Charles W. Baker v. Joe C. Carr (1962) 369 US 186 : 7 Led 2 663 :*
>
> > *.....there is not under our Constitution a judicial remedy for every political mischief..... In this situation, as in others of like natures, appeal for relief does not belong here. Appeal must be to an informed, civically militant electorate. In a democratic society like ours, relief must come through an aroused popular conscience that sears the conscience of the people's representatives.*

[50] AIR 1986 Ker 122

206. The limits of judicial intervention are limited and useful reference in this regard may be had to the following paragraphs of the judgment in *Divisional Manager, Aravali Golf Club and another v. Chander Hass & Another*[51]

> *31. If the legislature or the executive are not functioning properly it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfill their expectations, or by other lawful methods e.g. peaceful demonstrations. The remedy is not in the judiciary taking over the legislative or executive functions, because that will not only violate the delicate balance of power enshrined in the Constitution, but also the judiciary has neither the expertise nor the resources to perform these functions.*
>
> *32. Of the three organs of the State, the legislature, the executive, and the judiciary, only the judiciary has the power to declare the limits of jurisdiction of all the three organs. This is a great power and hence must never be abused or misused, but should be exercised by the judiciary with the utmost humility and self-restraint.*
>
> *33. Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the State. It accomplishes this in two ways. First, judicial restraint not only recognizes the equality of the other two branches with the judiciary, it also fosters that equality by minimizing inter-branch interference by the judiciary. In this analysis, judicial restraint may also be called judicial respect, that is, respect by the judiciary for the other coequal branches. In contrast, judicial activisms unpredictable results make the judiciary a moving target and thus decreases the ability to maintain equality with the co-branches. Restraint stabilizes the judiciary so that it may better function in a system of inter- branch equality.*

[51] (2008) 1 SCC 683

> *34. Second, judicial restraint tends to protect the independence of the judiciary. When courts encroach into the legislative or administrative fields almost inevitably voters, legislators, and other elected officials will conclude that the activities of judges should be closely monitored. If judges act like legislators or administrators it follows that judges should be elected like legislators or selected and trained like administrators. This would be counterproductive. The touchstone of an independent judiciary has been its removal from the political or administrative process. Even if this removal has sometimes been less than complete, it is an ideal worthy of support and one that has had valuable effects.*

In *Dennis V. United States*[52], Mr.Frankfurther, J observed as follows:

> *Courts are not representative bodies. They are not designed to be a good reflex of a democratic society. Their judgment is best informed, and therefore, most dependable, within narrow limits. Their essential quality is detachment, founded on independence. History teaches that the independence of the judiciary is jeopardized when courts become embroiled in the passions of the day and assume primary responsibility in choosing between competing political, economic and social pressure.*

207. Clearly, the individual respondents have engaged in the vice of disintegration and fomenting of fissiparous tendencies and thus the anxiety of the Writ Petitioners to safeguard the integrity of the nation and its Constitutional values is understandable. However, even in such a situation, the Court is bound by the letter of law while considering the prayer for quo warranto. The list of enumerated disqualifications becomes sacrosanct and constitutes a Lakshman rekha that cannot be breached.

208. The doctrine of separation of powers would require that Judges perform the Constitutional function of safeguarding the supremacy of the

[52] 341 US 494-592:95 L Ed 1137 (1951)

Constitution while exercising the power of judicial review in a fair and even handed manner. Thus, while checking the encroachment of power, the Judiciary must itself guard against encroaching beyond its own bounds.

209. The Court is given to understand that the petitioners and other as seriously concerned as they are, have initiated multifarious actions as against the offending statements. The matter has been raised before the Hon'ble Supreme Court, which has issued notice to the respondents. A petition seeking disqualification is also stated to be pending before the Governor. All the more for the reason that the appropriate authority under the Constitution has been approached in this matter, it must be left to that authority to decide the issue on disqualification having regard to all appropriate parameters.

210. The respondents have urged that the freedom to practice religion guaranteed under Article 25 is subservient to other freedoms including freedom of speech as guaranteed under Article 19. This cannot, however, be taken as a sanction for unconstitutional, insensitive and erroneous statements, derogatory of particular faith, particularly from those holding Constitutional posts. Indeed, this argument cannot be seen to be advanced by holders of high Constitutional posts to justify offensive statements made against persons of a particular religious faith.

211. I conclude this point once again quoting Vivekananda in *Hinduism* as follows: *'Enough!' There has been enough of criticism, there has been*

enough of fault-finding. The time has come for the rebuilding, the reconstructing; the time has come for us to gather all our scattered forces, to concentrate them into one focus, and through that, to lead the nation on its onward march, which for centuries almost, has been stopped. The house has been cleansed; let it be inhabited anew.

212. Whatever be one's faith, language or allegiance, the laws of the universe guarantee that *Dharmo Rakshati Rakshitah* (Dharma protects those who protect it). With this, these Writ Petitions stand disposed. Barring those MPs that have been ordered specifically in the course of this order, all other connected Miscellaneous Petitions are closed. No costs.

06.03.2024

Index : Yes / No
Speaking Order
Neutral Citation: Yes
Sl

To
1.The Secretary,
Tamil Nadu Legislative Assembly,
Secretariat, Fort St. George, Chennai-600 009

2.The Secretary,
Lok-Sabha,
18, Parliament House,
103, Parliament House Annexe,
New Delhi-110 003

DR.ANITA SUMANTH, J.

sl

WP.Nos.29203, 29204 & 29205 of 2023

& WMP.Nos.29853, 31023 31025 & 31026 of 2023

06.03.2024