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10.11.2017
C-1; I-54

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

[ORDER XXI RULE 3(1) (a)]

SPECIAL LEAVE PETITION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CIVIL) No. _____ OF 2017

Diary No. 34629 of 2017

[Against the impugned Order passed by the Hon'ble High Court of Kerala at Ernakulam in W.P.(C)No.15869 of 2017 dated 31.05.2017]

Conceded case: Joseph Shine vs. State of Kerala - Diary No. 36147 - 2017

IN THE MATTER OF: -

JOSEPH SHINE

...

PETITIONER

VERSUS

THE CHIEF MINISTER OF KERALA & ORS. ... RESPONDENTS

WITH

I.A. No. _____ of 2017

An Application for Permission to File Additional Document

WITH

I.A. No. _____ of 2017

An Application for Condoning the Delay in Filing SLP

WITH

I.A. No. _____ of 2017

An Application for Exemption from Filing OT

PAPER BOOK

[FOR INDEX PLEASE SEE INSIDE]

ADVOCATE FOR THE PETITIONER: **SUVIDUTT M.S.**
FILED ON: **30.10.2017**

SYNOPSIS

The Special Leave Petition is filed against the judgment dated 31.05.2017 in W.P (C) No.15869/2017 passed by the Hon'ble High Court of Kerala at Ernakulam challenging the dismissal of the Writ in the nature of public interest litigation.

The factual matrix of the present SLP is as follows:

- a) The Petitioner herein is a citizen of India presently residing in Italy and he is a law abiding citizen and had been taking keen interest in the political affairs of his home State i.e. the State of Kerala. The above said Writ Petition was filed by the Petitioner herein by being aggrieved of the series of derogatory statements made by the 2nd respondent.
- b) The 2nd respondent is leader of the Communist Party of India (Marxist) leader and presently holding the portfolio of the Minister for Electricity in the Government of Kerala.
- c) The petitioner herein is aggrieved by the shocking inaction on the part of the State Government and the 1st respondent (The Chief Minister of Kerala) in the matter, who failed to effectively curb such statements/ reactions from a Minister. The reputation of the polity of the nation is an issue of public interest. The 2nd respondent is causing damage to such reputation through his words and actions. He is thus violating the fundamental rights of the various sections of the society including the petitioner.
- d) It is pertinent to note that this Hon'ble Court has referred a matter to the Constitution Bench vide order dated 05.10.2017 in W.P.(Crl) No.113/2016 wherein the larger questions relating to the restrictions on freedom of speech of

the persons holding the responsible public offices are to be decided. This SLP involves similar and identical issues.

- e) In the past also, the 2nd respondent was notorious for making controversial statements in filthy and abusive language. From the very beginning of assuming the Office of the Minister, the 2nd respondent started to make such statements with added rigour, which go counter to the constitutional values. The statements which are made by him about a woman Principal of a polytechnic college in Kerala, the mother of a student who allegedly committed suicide due to the alleged harassment by the college authorities and the women labourers in tea plantation are in highly objectionable language. It is to be noted that the 2nd respondent, being a public servant made such derogatory statements without any basis. The said statements are not only derogatory but also unbecoming of a Minister holding an important portfolio in the State cabinet. The political party to which the 2nd respondent belongs has already issued a 'public censure' on 26.04.2017 in State Committee meeting held in Thiruvananthapuram in connection with the statement made by him about women labourers in tea plantation. But the same is not an action by the State or by the Hon'ble Chief Minister, who heads the Cabinet.
- f) The State, being the protector of the constitutional values, ought to have considered this incident seriously along with the previous derogatory statements made by the 2nd respondent and ought to have taken appropriate action in time. It is all the more unfortunate and dispiriting to see that

the first respondent who is bound to control and curtail the 2nd respondent in such situation, has openly justified the language of the 2nd respondent on the floor of state legislative assembly.

- g) It is incidentally submitted that the 2nd respondent is habitually making such statements from the very beginning of his political career. His controversial confession about three political murders which led to registration of an FIR is noteworthy. Registration of said FIR was upheld by the Hon'ble High Court of Kerala in *M. M Mani v. State of Kerala*, 2012 (3) KLT 118 (Crl. M.C No.2079/2012). Special Leave Petitions filed against the said judgment was dismissed by the Hon'ble Court on per order of the Hon'ble Court dated 20/03/2013 in W.P.(C) NO.15869 of 2017.
- h) Stating the above aspects about the breach of the oath committed by the 2nd respondent which he undertook as per Article 164(3) of Constitution of India read with Schedule III, the writ petition bearing W.P.(C) NO.15869 of 2017 was filed. In the said Writ Petition, the penal offences committed by the 2nd respondent were pleaded. The need to frame detailed guidelines with respect to the code of conduct for the Ministers was also emphasised upon in the writ petition.
- i) The Hon'ble High Court dismissed the said writ petition stating that the subject matter of the writ petition is not in the purview of the judicial review. The Hon'ble High Court erred in not considering that the public servants are bound by an implicit code of conduct, in the context by free speech, as held by this Hon'ble Court in *M.H. Devendrappa v.*

Karnataka Small State Industries, 1998 (3) SCC 732. The Hon'ble High Court ought to have found that the statements of the 2nd respondent infringed the fundamental rights of third persons. Therefore, the statements made by the 2nd respondent are actionable. The Hon'ble Court ought to have found that the act of the 2nd respondent constituted to an act of 'Constitutional Tort' as explained in *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy & Ors.*, (2011) 14 SCC 481.

- j) It is submitted that this case can even justify imposition of 'punitive damages' on the wrongdoer. The Hon'ble High Court also failed to appreciate the submission that there is a need to have reasonable restriction on the free speech rights of persons like the 2nd respondent as observed in *Subramanian Swamy and Ors. v. Union of India and Ors.*, 2016(7) SCC 221.
- k) Further, the Hon'ble High Court also erred in not appreciating the contention that the act of the 2nd respondent amounts to breach of the oath undertaken by him under Article 164(3). The Hon'ble High Court also failed to take note of the ratio in *Manoj Narula v. Union of India*, 2014(9) SCC 1 and in *Haridasan Palayil v. The Speaker, Kerala Legislative Assembly*, 2003 (3) KLT 119. The Hon'ble High Court also did not appreciate the ratio in *State of Karnataka v. Union of India*, 1978 AIR SC 68 wherein the need of high responsibility to be shown by the persons holding the Public Office in their conduct was explained. In the said judgment, the possibility of bias and malice when the Government is

conducting inquiry while its own Ministers are facing the allegations was explained.

- l) It is relevant to note that vide order dated 05.10.2017 in W.P.(CrI) No.113/2016 this Hon'ble Court has referred a matter to a Constitution Bench on the issue of restrictions to be imposed on a person holding responsible public office in exercise of his/her right to free speech and expression. Four questions have been framed by this Hon'ble Court in this regard. The present SLP also raises questions of similar nature.
- m) In the above said circumstances, the judgment of the Hon'ble High Court is illegal and unsustainable. Hence, this SLP is filed.

CHRONOLOGY OF EVENTS

| Date | Particulars |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2013 | The Central Government has issued 'Code of Conduct for Ministers'. The same is approved by the Union Government and it was sent to the State Governments for approval and adaptation. The Government of Kerala State has not adopted the same. The said code only focuses on curbing the corrupt practices by the Ministers. There is no comprehensive code of conduct framed or adopted in India for ministers addressing the public behaviour of the Ministers. |

February, 2016 The 2nd respondent who is holding the post of a public office as the Hon'ble Minister for Electricity in the State of Kerala made a statement with respect to an issue relating to a Principal of a polytechnic college in the State. The translation of the said statement made in Malayalam is as follows:

"It is our unit that functions at that polytechnic.. will go there and see... there... chair... after closing the door, was the Principal doing some other deal? There.. we have suspicion.. she is a lady... she has some kind of disease (perversion).. It is not teaching that happens here. It is something else, behind closed door..."

07.04.2017 The 2nd respondent again made comments about one Smt. Mahija, mother of Sri. Jishnu, a student who allegedly committed suicide because of harassment by the College Authorities. The translation of the said statement is as follows:

"Do not say that it is we who do things in such manner. They say that the chief minister will come and see that is, the Chief Minister should, after capturing the accused should meet her... how is it? On reaching there, if the doors are closed, it becomes some other activity. (The chief minister said) that he cannot meet (her) behind the closed doors therefore, it cannot be done so. She is in the hands of somebody else."

The above statements of the 2nd respondent made in broken sentences are not only derogatory but also violate the fundamental right to privacy of the person who are involved.

22.04.2017

The 2nd respondent made yet another statement at Idukki referring to women workers at Tea plantation. The translation of the said statement is as follows:

"There, along with him, the sub collector in the evening. Earlier Suresh Kumar, (the

then IAS officer in charge) was to come for drinking. Brandy was stored in several packs.. there? The cat.. our old cat in the government guest house the Pembile Oruma (a women's movement of plantation workers) occurred. At that time also drinking and all other dirty activities took place. Don't you understand..? The activities were in the nearby forest. There was a DYSP at that time, his name was Saji.. o..ah.. we know all this. Don't you understand..? I said yesterday that here (they) were living together then.. ah.. then.. then can he (Suresh Kumar) ever abandon.. ah.. something more also is heard. But I am not going to tell."

The above statement is made when the women labourers in tea plantations at Munnar were on protest seeking hike in daily wages. The above statement of the

2nd respondent had the potential to influence the decision making process with respect to the said issue. It adversely affected the right to due wages of the women labourers in tea plantations. Moreover, the statement is highly disparaging and in an objectionable language. On the same day, he further said as follows:

"Here, the cross, the church, the *trishul*, temple, mosque are in land without title deeds (*patta*). If the sub collector, a good for nothing fellow (konthan) ventures to demolish all this, he is simply mad and should be sent to mental asylum at Oolampara, in my opinion.. yes to Oolampara.. don't you understand.. he is not going to go straight. He is getting into all this.. the task force does not know all this. What kind of task force..? Who has given authority to the district collector and sub collector to

make such declarations?"

Though the above statements which are unbecoming of a public servant were made, no actions were taken against the 2nd respondent.

26.04.2017 The party to which the 2nd respondent belongs (Communist Party of India (Marxist)) issued a 'public censure' in its State Committee meeting held in Thiruvananthapuram. But the said action is not an action by the State or by the Hon'ble Chief Minister, who heads the Cabinet. The State, being the executor of the constitutional aspirations, ought to have considered this incident seriously along with the previous derogatory statements and ought to have taken appropriate action in time. It is pertinent to note that the above said serious allegations are made in disparaging language without any basis or proof. Instead of taking appropriate actions against the 2nd respondent, the first respondent has justified the actions of the 2nd respondent on the floor of the Legislative Assembly. The said act of the 2nd respondent amounts to breach of oath

which was undertaken as per Article 164(3) of Constitution of India. It is incidentally submitted that on earlier occasions also the 2nd respondent had made such controversial statements. His controversial confession about three political murders which led to registration of the an FIR is noteworthy. Registration of said FIR was upheld by this Hon'ble Court in *M. M Mani v. State of Kerala*, 2012 (3) KLT 118 (Crl. M.C No.2079/2012). The Special Leave Petitions filed against the said judgment was dismissed by this Hon'ble Court as per order dated 05.09.2014 in SLP(C) No. 13518-13519 of 2013.

01.05.2017 The petitioner has filed a complaint by email before the Sub Inspector of Police, Police Station, Adimaly, Idukki for initiating appropriate action against the 2nd respondent. Translated true copy of the said complaint dated 01.05.2017 submitted before the Sub Inspector of Police, Police Station, Adimaly is produced herewith and marked as **ANNEXURE P-1 (Pages 38 to 41).**

02.05.2017 The petitioner submitted another

representation with similar grievances, before the Chief Minister by email requesting immediate action. Translated true copy of the said petition dated 02.05.2017 filed before the Chief Minister of Kerala is produced herewith and marked as **ANNEXURE P-2 (Pages 42 to 47)**.

30.05.2017 The petitioner herein filed the Writ Petition in the nature of Public Interest Litigation bearing W.P.(C)No.15869 of 2017 before the Hon'ble High Court of Kerala at Ernakulam challenging the inaction on the part of the first respondent against the acts of the 2nd respondent and seeking a writ of mandamus directing the respondents to take steps to consider framing of an extensive code of conduct for Ministers in the State. True copy of the said Writ Petition dated 30.05.2017 is produced herewith and marked as **ANNEXURE P-3 (Pages 48 to 72)**.

31.05.2017 The Hon'ble High Court dismissed the writ petition bearing W.P.(C)No.15869 of 2017 stating that the subject matter was not within the realm of judicial review.

05.10.2017 This Hon'ble Court in W.P.(Crl) No.113/2016 referred the issue as to what action could be taken against the persons holding responsible offices making derogatory and reckless statements to the Constitution Bench, with the following four questions:

"1. When a victim files an F.I.R. alleging rape, gang rape or murder or such other heinous offences against another person or group of persons, whether any individual holding a public office or a person in authority or in-charge of governance, should be allowed to comment on the crime stating that "it is an outcome of political controversy", more so, when as an individual, he has nothing to do with the offences in question?

2. Should the "State", the protector of citizens and responsible for law and order situation, allow these comments as they have the effect potentiality to create a distrust in the mind of the victim as regards the fair investigation and, in a way, the entire system?

3. Whether the statements do come

within the ambit and sweep of freedom of speech and expression or exceed the boundary that is not permissible?

4. Whether such comments (which are not meant for self-protection) defeat the concept of constitutional compassion and also conception of constitutional sensitivity?"

In the said matter, the Supreme Court is considering the said aspect in the background of the controversial statement made by Mr. Azam Khan, a cabinet Minister of State of Uttar Pradesh about the alleged gang rape. The true copy of the said order dated 05.10.2017 in W.P.(Crl) No. 113/2016 is produced herewith and marked as **ANNEXURE P-4 (Pages 75 to 78)**.

30.10.2017 Hence, this SLP.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.NAVANITI PRASAD SINGH
&
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 31ST DAY OF MAY 2017/10TH JYAISHTA, 1939

WP(C).No. 15869 of 2017 (S)

PETITIONER :

JOSEPH SHINE, AGED 40 YEARS,
S/O.JOSEPH, VIA DEI MUREDEI,
32-38122, TRENTO, ITALY,
KERALA ADDRESS: THEVADIYIL HOUSE,
KODATHAI BAZAR, KOZHIKODE,
KERALA-673 573.

BY ADVS.SRI.KALEESWARAM RAJ
KUM.A.ARUNA
SRI.VARUN C.VIJAY

RESPONDENTS :

1. THE CHIEF MINISTER OF KERALA
141, 3RD FLOOR, NORTH BLOCK,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
2. M.M. MANI,
MINISTER OF ELECTRICITY, 6TH FLOOR,
ANNEXE-II, SECRETARIAT,
THIRUVANANTHAPURAM-695001, PRESENTLY RESIDING
AT XANADU, VAZHUTHACAUD, THYCAUD P.O.,
THIRUVANANTHAPURAM, PERMANENTLY RESIDING AT
MUNDACKAL HOUSE, POTTENKADU P.O., IDUKKI.
3. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
SECRETARIA, THIRUVANANTHAPURAM-695001.
4. SUB INPSECTOR OF POLICE,
POLICE STATION, ADIMALY,
ADIMALY P.O., IDUKKI-685561.
5. STATE POLICE CHIEF,
THIRUVANANTHAPURAM-695001.

BY SRI.C.P. SUDHAKARA PRASAD, ADVOCATE GENERAL
SRI.V. MANU, SENIOR GOVERNMENT PLEADER.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31-05-2017, ALONG WITH WPC. 14712/2017, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

Navaniti Prasad Singh, C.J. & Raja Vijayaraghavan V., J.

W.P.(C) Nos. 15869 and 14712 of 2017

Dated this the 31st day of May, 2017

JUDGMENT

Navaniti Prasad Singh, C.J.

Both these writ petitions in public interest are co-related by the subject matter.

2. The writ petitioners are shocked by the alleged conduct of a Minister and his utterances in public. It is alleged that the utterances are not only derogatory to the stature and respect which women enjoy in this country, but they have a demoralising effect on the bureaucracy as well.

3. The prayer in W.P.(C) No.15869 of 2017 is for a direction to the Chief Minister to frame a Code of Conduct in respect of Ministers who have subscribed to the oath of office as prescribed by the Constitution and if they fail to live up to the oath, the Code must provide for suitable action. In the second writ petition, i.e. W.P.(C) No.14712 of 2017, the prayer is for a direction to the authorities to take action against the said Minister for his utterances.

4. Learned counsel appearing for the State took a stand that the utterances which have been referred in the pleading are not such as to constitute any misdemeanor punishable by law or cognizable by law. People should not be oversensitive in the matter and in any view of the matter, if they are so aggrieved, they have their statutory remedies which they could avail and which would be dealt with in accordance with law. Thus, there is no reason for this Court to interfere.

5. We have heard the arguments at length and considered the matter. We agree with the submission on behalf of the State that if the petitioners find that the alleged utterances by the Minister are such that Courts or the Police can take cognizance, then it is open for the petitioners to move appropriate forum in this regard and surely the appropriate authority would take action appropriate to the situation in accordance with law, but that cannot be preempted by this Court in any manner. In our view, it should not be and it cannot be preempted by this Court. The complaint is not that the authorities are not doing anything. But the complaint is that we must direct the authorities to do

WP(C) Nos. 15869 & 14712 of 2017

-:3:-

something. In our view, unless it is alleged that authorities are abdicating their statutory functions either under the influence of the person being a Minister or otherwise, this Court cannot interfere.

6. Learned Additional Director General of Prosecution, Sri.Suresh Babu Thomas points out that in the second writ petition, there was no formal complaint anywhere prior to the filing of the writ petition. It is subsequent thereto that a complaint was made to the Police Commissioner who has already enquired into the matter and has clearly opined that no cognizable offence has been committed. Learned counsel for the petitioner is unable to show whether the utterances amounted to a cognizable offence. That is the second part of the writ petition. For the reasons indicated, it would not be appropriate for this Court to interfere in the matter at this stage.

7. So far as the first writ petition is concerned, it is argued with some vehemence that the oath of office insisted upon under the Constitution is the prescription of a fundamental Code of Conduct in the discharge of the duties by the constitutional

WP(C) Nos. 15869 & 14712 of 2017

-:4:-

functionaries who subscribed to the oath. The oath has to serve some purpose. It is not an empty formality. Learned counsel has referred to the Third Schedule of the Constitution and the Vth format of the oath or affirmation as stipulated therein which is quoted hereunder :

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

"I, A.B., do swear in the name of God that I will bear solemnly affirm 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."

8. The submission is that the oath clearly stipulates that the Minister will do right to all manner of people and therefore if the Minister contravenes this part by his utterances, surely some consequence must follow and as the Constitution does not provide for any consequence, the Chief Minister must provide a Code or must enunciate a Code to take care of the said contingency.

Againt
Arise p 4
↓

9. We have considered the submission. We would not like to comment as to the morality of conduct of a person. We, the Courts, are concerned with legality of the conduct and not mere morality. Morality has no punishment prescribed. Different set of people may react differently. Moral standards are not laid down like laws. It is for the society to lay and follow its standards. Moral values vary from place to place, from community to community, from locality to locality and it would be dangerous for the Courts to get involved in such a nebulous issue. Further, whether the Chief Minister should frame a Code of Conduct or not is the prerogative of the Chief Minister. There is nothing in the Constitution or any law for the time being in force which obliges the Chief Minister either by his position as the Chief Minister as a Constitutional functionary or as the political head to frame such a Code and in absence thereof, there cannot be a writ or a direction issued by a court in this regard. It may be a good thing, a good public policy, to have a Code of Conduct in place. But, surely, this Court in the jurisdiction it exercises, cannot issue such a direction.

WP(C) Nos. 15869 & 14712 of 2017

-6:-

We thus find no legal ground to interfere in the matter and both the writ petitions are accordingly dismissed. However, before closing we would like to add that dismissal of the writ petitions shall not be presumed to mean that we have sanctified or approved all the utterances as allegedly made by the Minister in any manner nor have we disapproved anything for, we have dealt with the matter only on the jurisdictional issue.

Sd/-
Navaniti Prasad Singh,
Chief Justice

Sd/-
Raja Vijayaraghavan V.,
Judge

ttb/31/05

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

[ORDER XXI RULE 3(1)(a)]

SPECIAL LEAVE PETITION

(Under Article 136 of the Constitution of India)

SPECIAL LEAVE PETITION (CIVIL) No. _____ OF 2017

| S.No. | IN THE MATTER OF: | POSITION OF PARTIES | |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|------------------------------|
| | | Before the Hon'ble High Court | Before this Hon'ble Court |
| 1. | Joseph Shine, Aged 40 Years, S/O. Joseph, Via Dei Muredei, 32-38122, Trento, Italy, Kerala Address: Thevadiyil House, Koodathai Bazar, Kozhikode, Kerala-673 573 | Petitioner No.1 | Petitioner No.1 |
| VERSUS | | | |
| 1. | The Chief Minister of Kerala 141, 3rd Floor, North Block, Government Secretariat, Thiruvananthapuram, Kerala - 695001 | Respondent No.1 | Respondent No.1 |
| 2. | M.M. Mani, Minister of Electricity, 6th Floor, Annexe-II, Secretariat, Thiruvananthapuram, Kerala - 695001, Presently Residing At: Xanadu, Vazhuthacaud, Thycaud P.O., | Respondent No.2 | Respondent No.2 |

Thiruvananthapuram
 Permanently residing at
 Mundackal house
 Pottenkadu PO, Idukki, Kerala

3. State of Kerala
 Represented by Chief Secretary
 Secretariat, Thiruvananthapuram
 Kerala-695001 Respondent No.3 Respondent No.3
4. Sub Inspector of Police
 Police Station, Adimaly
 Adimaly PO, Idukki
 Kerala -685 561 Respondent No.4 Respondent No.4
5. State Police Chief
 Thiruvananthapuram-695 001
 Respondent No.5 Respondent No.5

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
 AND HIS COMPANION JUDGES OF THE
 HON'BLE SUPREME COURT OF INDIA
 THE HUMBLE PETITION OF THE
 PETITIONER HEREIN

MOST RESPECTFULLY SHOWETH:

1. This Petition for seeking Special Leave to appeal is against the impugned judgment dated 31.05.2017 of the Hon'ble High Court of Kerala at Ernakulam passed in W.P. (C) No. 15869 of 2017, whereby the Hon'ble High Court of Kerala dismissed the petition filed by the petitioner herein.
- 1A. Although the Writ Petition (C) No. 14712 of 2017 is a connected matter before the Hon'ble High Court of Kerala, the petitioner herein is not challenging the said Writ Petition before this Hon'ble Court as he was not a party in the said Writ petition.

2. **QUESTIONS OF LAW:**

The following substantial questions of law arise for consideration of this Hon'ble Court.

- I. Whether the Hon'ble High Court of Kerala was right in not considering the law laid down in *M.H. Devendrappa v. Karnataka Small State Industries*, 1998 (3) SCC 732 wherein it is held that in the context of free expression, Government servants are governed by an implicit code of conduct?
- II. Whether the Hon'ble High Court was right in not appreciating that right to free speech guaranteed under Article 19(1)(a) is subject to the reasonable restrictions imposed under Article 19(2)?
- III. Whether the Hon'ble High Court was right in not finding that the statements made by the 2nd respondent constituted an act of 'constitutional tort' as an action which is 'improper abuse of public power' as explained in *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy & Ors.*, (2011) 14 SCC 481 and which can even justify imposition of punitive damages?
- IV. Whether the Hon'ble High Court was right in not finding that the act of the 2nd respondent infringed the fundamental rights of the citizens and the Government was responsible for the act of the 2nd respondent by virtue of Articles of 75(3) and 164(3) of Constitution of India?
- V. Whether the Hon'ble High Court was right in holding that the Court does not have jurisdiction to issue such

directions as sought in the writ petition regarding framing of an extensive code of conduct for ministers in the state?

- VI. Whether the Hon'ble High Court was right in not considering the contention that Hon'ble High Court can interfere in case of a breach of the oath undertaken by the 2nd respondent under Article 164(3) of Constitution of India?

3. **DECLARATION IN TERMS OF RULE 3 (2):**

The Petitioner herein states that no other petition seeking leave to appeal has been filed by him against the impugned Judgment dated 31.05.2017 of the Hon'ble High Court of Kerala at Ernakulam in W.P.(C) No.15869 of 2017.

4. **DECLARATION IN TERMS OF RULE 5:**

The Annexures P 1 to P 4 produced along with this special leave petition are true copies of the pleadings/ documents which formed part of the records of the case in the courts below against whose order the leave to appeal is sought for in this petition.

5. **GROUND(S):**

The Petitioner herein begs to seek leave to appeal on the following *inter alia* grounds:

- A. BECAUSE the court below erred in not appreciating that the public servants, government officials and government employees do not have right to free speech in power with allotters. In the context of government service, in *M.H. Devendrappa v. Karnataka Small State Industries*, 1998 (3) SCC 732, this Hon'ble Court has held as follows:

"In the present case, joining Government service has, implicit in it, if not explicitly so laid down, the observance of a certain code of conduct necessary for the proper discharge of functions as a Government servant. That code cannot be flouted in the name of other freedoms."

In the said case, this Hon'ble Court was considering an action of the Government employee of respondent Corporation in addressing a letter to the Governor throwing light on the maladministration taking place in the corporation while he was the president of Employees Association. This Court categorically observed that the public servants are bound to be disciplined and such discipline cannot be flouted in the guise of exercising any freedom. However, in the given facts, the action of the employee was valid. In the instant case, the 2nd respondent has an obligation to conduct himself in a manner befitting to his status as a minister and corresponding to his constitutional duty. His behaviour was not in consonance with his constitutional responsibilities and status as a public servant. The statements made by the 2nd respondent do not fall under the permissible limits and the same is actionable and liable to be restricted under Article 19(2).

B. BECAUSE the court below erred in not taking the view that the right to free speech also has to be examined from the point of view of the audience and other circumstances. The court below failed to take note of the fact that every individual has a basic right to live with dignity and reputation

and the 2nd respondent, does not have any authority or right to interfere with this right. This proposition applies with all the more force in the case of a government servant holding a responsible position i.e., the portfolio of Minister for Electricity in the state cabinet. In *M. H. Devendrappa* (supra) this Court has held:

"16. The fundamental freedoms enumerated under Article 19 are not necessarily and in all circumstances mutually supportive, although taken together they weave a fabric of a free and equal democratic society, e.g., the right to reside and settle in any part of the country can be put in jeopardy by a vociferous local group freely expressing its view against persons from another part of the country. Freedom of speech of one affects the freedom of movement of another. Exercising the right to form an association may curtail the freedom to express views against its activities. For example, a person joining an association to promote adoptions cannot express anti-adoption views. He may lose his membership. Some restriction on one's rights may be necessary to protect another's rights in a given situation. Proper exercise of rights may have, implicit in them, certain restrictions. The rights must be harmoniously construed so that they are properly promoted with the minimum of such implied and necessary restrictions..."

Therefore, the 2nd respondent who is holding a responsible office cannot make such statements which violate the fundamental rights of the third persons guaranteed to them under Article 21 of Constitution of India. *D. C Saxena (Dr.) v. Hon'ble the Chief Justice of India*, (1996) 5 SCC 216 was cited in *Subramanian Swamy and Ors. v. Union of India and Ors.* 2016(7) SCC 221 in the following words:

"It has been held in D.C. Saxena (Dr) v. Hon'ble The Chief Justice of India, though in a different context, that if maintenance of democracy is the foundation for free speech, society equally is entitled to regulate freedom of speech or expression by democratic action. The reason is obvious, viz., that society accepts free speech and expression and also puts limits on the right of the majority. Interest of the people involved in the acts of expression should be looked at not only from the perspective of the speaker but also the place at which he speaks, the scenario, the audience, the reaction of the publication, the purpose of the speech and the place and the forum in which the citizen exercises his freedom of speech and expression. The Court had further observed that the State has legitimate interest, therefore, to regulate the freedom of speech and expression which liberty represents the limits of the duty of restraint on speech or expression not to utter defamatory or libellous speech or

expression. There is a correlative duty not to interfere with the liberty of others. Each is entitled to dignity of person and of reputation. Nobody has a right to denigrate others' right to person or reputation."

C. BECAUSE the Hon'ble High Court failed to appreciate that the statement by the 2nd respondent which is violative of the constitutional rights of a citizen, can lead to a 'constitutional tort' thereby actionable in damages. In *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy & Ors.*, (2011) 14 SCC 481, this Hon'ble Court has explained the concept of 'Constitutional Tort' as under:

"Development taking place in UK has been highlighted only to show the uncertainty that one faces while deciding claims against public bodies and its officials. But when we look at the issues from the point of violation of fundamental rights, such as personal liberty, deprivation of life, etc. there is unanimity in approach by the courts in India, UK and USA and various other countries, that the constitutional courts have a duty to protect those rights and mitigate the damage caused. Violation of such rights is often described as constitutional torts."

The statements made by the 2nd respondent infringed the right of personal liberty of third persons and thus constituted an action of 'constitutional tort'. In the same case, this

Hon'ble Court has observed that in all the cases of the Constitutional torts it is not possible to measure and award monetary damages. It is further stated that in appropriate cases, even 'punitive damages' can be imposed. It is held:

"105. Compensatory damages are intended to provide the claimant with a monetary amount necessary to recoup/replace what was lost, since damages in tort are generally awarded to place the claimants in the position he would have been in, had the tort not taken place; which are generally quantified under the heads of general damages and special damages. Punitive damages are intended to reform or to deter the wrongdoer from indulging in conduct similar to that which formed the basis for the claim. Punitive damages are not intended to compensate the claimant which he can claim in an ordinary private law claim in tort. Punitive damages are awarded by the constitutional court when the wrongdoer's conduct was egregiously deceitful."

The instant case is the one where this Hon'ble Court can even impose punitive damages as the statements of the 2nd respondent are *egregiously deceitful* and violates the fundamental rights of the citizens of different sections in the society at different occasions.

D. BECAUSE the court below erred in not appreciating that free speech has constitutional limits as prescribed by Article 19(2) of the Constitution and the 2nd respondent does not have an

unlimited right to speak offending the principles of decency and morality. The 2nd respondent has crossed all permissible limits in his speech, in uttering derogatory words against specific individuals, Government Officials and against the society, in general. In *Subramanian Swamy and Ors. (supra)*, this Hon'ble Court elaborated on the need to have reasonable restrictions on speech. It was held as follows:

"The test of reasonableness cannot be determined by laying down any abstract standard or general pattern. It would depend upon the nature of the right which has been infringed or sought to be infringed. The ultimate "impact", that is, effect on the right has to be determined. The "impact doctrine" or the principle of "inevitable effect" or "inevitable consequence" stands in contradistinction to abuse or misuse of a legislation or a statutory provision depending upon the circumstances of the case. The prevailing conditions of the time and the principles of proportionality of restraint are to be kept in mind by the court while adjudging the constitutionality of a provision regard being had to the nature of the right. The nature of social control which includes public interest has a role. The conception of social interest has to be borne in mind while considering reasonableness of the restriction imposed on a right. The social interest principle would include the felt needs of the

society. As the submissions would show, the stress is given on the right to freedom of speech and expression in the context of individual growth, progress of democracy, conceptual respect for a voice of dissent, tolerance for discordant note and acceptance of different voices. Right to say what may displease or annoy others cannot be throttled or garroted. There can never be any cavil over the fact that the right to freedom of speech and expression is a right that has to get ascendance in a democratic body polity, but at the same time the limit has to be proportionate and not unlimited."

- E. BECAUSE the Hon'ble High Court did not appreciate that the statement made by the 2nd respondent is attributable to the Government in the light of Articles 75(3) and Article 164(2) of the Constitution of India. Article 75(3) states that the Council of Ministers shall be collectively responsible to the House of the People and Article 164(2) states the same in case of Legislative Assembly of the State. Therefore, the Government is responsible for the statements made by the 2nd respondent.
- F. BECAUSE the Hon'ble High Court of Kerala did not consider the aspect that a person holding public office under Article 164(3) read with Schedule III of the Constitution of India is invested with significant constitutional duties. The 2nd respondent is holding a public office, entrusted to him by administering the oath

as per Article 164(3) read with Schedule III of the Constitution of India. The oath as per III schedule reads:

"I, A.B., do swear in the name of God that I will bear true faith solemnly affirm and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a Minister for the State ofand that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will."

Such oath, undertaken as per the constitutional provision is certainly binding on the 2nd respondent and he cannot act against the spirit of the same. Several statements made by the 2nd respondent at different occasions as stated in the paragraph no. 2 apparently amounts to breach of the oath. The 2nd respondent has made disparaging remarks in public against women, civil servants and other public personalities. In the Preamble to Constitution of India, 'fraternity' assuring the 'dignity of the individual' is sought to be achieved by the citizens of India. The statements made by the 2nd respondent show total disregard and contempt to the dignity of individuals. All the statements are made irresponsibly and in objectionable abusive language. The said statements are in apparent contrast with the constitutional values as embodied in the Preamble.

G. BECAUSE the Hon'ble High Court of Kerala erred in failing to hold that the conduct of the 2nd respondent of making baseless allegations without any material basis was liable to be interdicted. The 2nd respondent has, on several occasions, made reckless allegations without any material basis. Moreover, such baseless allegations are made without any responsibility or commitment. The same is unbecoming of a Minister holding the public office. Now, it might be a settled position that a writ of quo warranto cannot be sought against the authority alleging that the oath has been breached. This position was established in a series of cases by the Hon'ble High Court of Kerala as well as several other High Courts. (For a profitable reference, see *K.C. Chandy v. Balakrishna Pillai*, AIR 1986 Ker 116 and in *Kallara Sukumaran v. Union of India and Ors*, AIR 1987 Ker 212, *Raju Puzhankara v. Kodyeri Balakrishnan and Ors*, 2009 KHC 244). However, the said cases were keen to underline the importance of the constitutional oath and its legal nature. This is because oath is essentially a legal declaration and under Articles 226, the High court ought to have examined the question regarding its breach. In *K.C. Chandy* (Supra) the Full bench of the Hon'ble High Court of Kerala held:

"5. The oath of office insisted upon under the Constitution is the prescription of a fundamental code of conduct in the discharge of the duties of these high offices. The oath binds the person throughout his tenure in that office, and he extricates himself from the bonds of the

oath only when he frees himself from the office he holds. Breach of this fundamental conduct of good behaviour may result in the deprivation of the very office he holds. When posts are held, not at the pleasure of the President or the Governor, but during 'good behaviour' breach of the oaths of office and of secrecy may attract the impeachment clauses and when posts are held at the pleasure of the President or the Governor, the termination, at their will, of the tenure may be the possible outcome of such breach.

6. Oath of office is not an empty formality with no constitutional significance. In the debates in the Constituent Assembly on Article 56, Dr. Ambedkar is reported to have said that the phrase "violation of the Constitution" is a large one and may well include treason, bribery or other high crimes and misdemeanours, because treason is certainly violation of the Constitution and bribery will be violation of the Constitution because it will be violation of the oath by the President. In the Judges' transfer case, S.P. Gupta v. President of India, AIR 1982 SC 149 Pathak J., observed thus:

"When a Judge permits his judgments in a case to be influenced by the irrelevant consideration of caste and creed, of relationship or friendship, of hostility or enmity, he commits a

breach of his oath. It is a case where justice is not done and is denied. It is a case of misbehaviour to which the provisions of Article 218 read with Clauses (4) and (5) of Article 124 are attracted.

7. Breach of oath may thus be a betrayal of faith. The appointing authority, the Governor, in such cases, can consider whether there was, in fact, any breach of oath. It is not for this Court to embark on any such enquiry.

8. Breach of oath requires a termination of the tenure of office. This power can be exercised by the appointing authority under the Constitution..."

In the said case, the writ petition was filed against a Minister of Kerala who was said to have delivered a hate speech. In the above case, though the Hon'ble High Court of Kerala refused to interfere, it was clearly held that breach of faith is betrayal of faith and the appropriate authority has to inquire into such fact. It was also held that the oath of office is not an empty formality. In the present case, there is clear breach of oath by the 2nd respondent. But the 1st and the 3rd respondent have not even initiated any steps to inquire into the whole episode.

H. BECAUSE the Hon'ble High Court of Kerala did not consider the ratio in *Haridasan Palayil* (infra). Moreover, in *Haridasan Palayil v. The Speaker, Kerala Legislative Assembly, 2003* (3) KLT 119 , it was held in clear terms that:

"The people who are riot punctilious in the matter of ceremonial observances are likely to be neglectful in performing the higher duties of the office or observing the principles. It is to ensure this that the Constitution lays down the form. The oath is not a matter of formality. Nor a superstition. It is not a mere ritual. It is a constitutional mandate.... The person has to demonstrate his 'allegiance' to the Constitution of India by scrupulously abiding by the form..... The constitutional boundaries cannot be crossed. The Constitution does not condone the violation."

I. BECAUSE the Hon'ble High Court of Kerala erred in failing to hold that the statements by the 2nd respondent represents a pattern and was liable to be interfered with. In the present case, the statements made by the second respondent cannot be dismissed as a lone incident without significance. The pattern of the statements is continuous and consistent. The whole body of ministers is collectively responsible to the legislative assembly for the acts of each individual minister. Therefore, it cannot be said that the responsibility for making disparaging comments rests solely on the 2nd respondent. The political executive consisting of the body of council of ministers is collectively responsible for the act. The principle

of collective responsibility was held to be the heart of the parliamentary form of democracy. (Please see *Dattaji Chirandas v. State Of Gujarat*, AIR 1999 Guj 48.)

- J. BECAUSE the Hon'ble High Court of Kerala erred in failing to appreciate the ratio of the judgment of this Hon'ble Court in *Manoj Narula v. Union of India*, 2014(9) SCC 1. In *Manoj Narula (supra)*, the following was also emphasised by the Hon'ble Supreme Court in the context of allegiance to the oath of office by ministers:

"Allegiance to the Constitution of India, faithful and conscientious discharge of the duties, doing right to people and all these without fear or favour, affection or ill-will, carry heavy weight. 'Conscientious' means "wishing to do what is right, relating to a person's conscience" (Ref.: Concise Oxford English Dictionary). The simple question is, whether a person who has come in conflict with law and, in particular, in conflict with law on offences involving moral turpitude and laws specified by the Parliament under Chapter III of The Representation of the People Act, 1951, would be in a position to conscientiously and faithfully discharge his duties as Minister and that too, without any fear or favour?"

When does a person come in conflict with law? No quarrel, under criminal jurisprudence, a person is presumed to be innocent until he is convicted. But is there not a stage when a person is presumed to

be culpable and hence called upon to face trial, on the court framing charges?

Under Section 228 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.PC'), charge is framed by the court only if the Judge (the Magistrate – under Section 240 Cr.PC) is of the opinion that there is ground for presumption that the accused has committed an offence, after consideration of opinion given by the police under Section 173(2)Cr.PC (challan/police charge-sheet) and the record of the case and documents. It may be noted that the prosecutor and the accused person are heard by the court in the process. Is there not a cloud on his innocence at that stage? Is it not a stage where his integrity is questioned? If so, is it not a stage where the person has come in conflict with law, and if so, is it desirable in a country governed by rule of law to entrust the executive power with such a person who is already in conflict with law? Will any reasonably prudent master leave the keys of his chest with a servant whose integrity is doubted? It may not be altogether irrelevant to note that a person even of doubtful integrity is not appointed in the important organ of the State which interprets law and administers justice; then why to speak of questioned integrity! What to say more, a

candidate involved in any criminal case and facing trial, is not appointed in any civil service because of the alleged criminal antecedents, until acquitted.

Good governance is only in the hands of good men. No doubt, what is good or bad is not for the court to decide: but the court can always indicate the constitutional ethos on goodness, good governance and purity in administration and remind the constitutional functionaries to preserve, protect and promote the same. Those ethos are the unwritten words in our Constitution. However, as the Constitution makers stated, there is a presumption that the Prime Minister/Chief Minister would be well advised and guided by such unwritten yet constitutional principles as well. According to Dr. B. R. Ambedkar, as specifically referred to by my learned brother at paragraph-70 of the leading judgment, such things were only to be left to the good sense of the Prime Minister, and for that matter, the Chief Minister of State, since it was expected that the two great constitutional functionaries would not dare to do any infamous thing by inducting an otherwise unfit person to the Council of Ministers. It appears, over a period of time, at least in some cases, it was only a story of great expectations. Some of the instances

pointed out in the writ petition indicate that Dr. Ambedkar and other great visionaries in the Constituent Assembly have been bailed out. Qualification has been wrongly understood as the mere absence of prescribed disqualification. Hence, it has become the bounden duty of the court to remind the Prime Minister and the Chief Minister of the State of their duty to act in accordance with the constitutional aspirations."

(Emphasis added).

The penal offences registered against the 2nd respondent one of such nature involving moral turpitude. This aspect is crucial for a constitutional functionary like the Minister.

K. BECAUSE the Hon'ble High Court of Kerala failed to appreciate that in the instant case, the statements and the actions of the 2nd respondent in effect have a detrimental effect on the principle of good governance. In *Manoj Narula (supra)*, it was emphatically held that "institutional responsibility and adoption of precautions for the sustenance of constitutional values would include reverence for the constitutional structure." It was further held:

"In a democracy, the citizens legitimately expect that the Government of the day would treat the public interest as primary one and any other interest secondary. The maxim Salus Populi Suprema Lex, has not only to be kept in view but also has to be revered. The faith of the people is embedded in the root of the idea of good

governance which means reverence for citizenry rights, respect for Fundamental Rights and statutory rights in any governmental action, deference for unwritten constitutional values, veneration for institutional integrity, and inculcation of accountability to the collective at large. It also conveys that the decisions are taken by the decision making authority with solemn sincerity and policies are framed keeping in view the welfare of the people, and including all in a homogeneous compartment. The concept of good governance is not an Utopian conception or an abstraction. It has been the demand of the polity wherever democracy is nourished. The growth of democracy is dependant upon good governance in reality and the aspiration of the people basically is that the administration is carried out by people with responsibility with service orientation." (On the importance of good governance, please see A. Abdul Farook v. Municipal Council, Perambalur and others, (2009) 15 SCC 351, M. J Shivani and Ors v. State of Karnataka and Ors., (1995) 6 SCC 289, Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh and Ors, (2001) 3 SCC 594 , State of Maharashtra v. Jalgaon Municipal Corporation and ors, (2003) 9 SCC 594).

In Manoj Narula (supra), the Hon'ble Supreme Court enunciated the principle of 'constitutional

trust'. The Nolan Committee (committee on Standards in Public Life, UK) was referred to by the court stating "public is entitled to expect very high standards of behaviour from ministers, as they have profound influence over the daily lives of us all" It was further observed that "The individual responsibility of ministers illustrates further Professor Munro's continuum theory. Ministers are individually accountable for their own private conduct, the general running of their departments and acts done, or omitted to be done, by their civil servants."

L. BECAUSE the Hon'ble High Court of Kerala failed to appreciate the lacunae in the country as regarding code of conduct for ministers. In India, there is no comprehensive code framed or adopted regulating the Conduct of the Ministers. In other countries, there are separate Acts, Commissions and Codes of Conduct regulating the conduct of the Ministers. The 'Ministerial Code' for the year 2016 adopted in U.K. is an extensive code covering various aspects of the conduct of the Ministers. Strict guidelines are issued with respect to the media interviews, speeches etc of Ministers under the head "Ministers and the Presentation Policy" in Chapter 8. Clause 8.3 therein reads:

"8.3 In all cases other than those described in paragraph 6.6, the principle of collective responsibility applies (see also paragraph 2.1). Ministers should ensure that their statements are

consistent with collective Government policy. Ministers should take special care in referring to subjects which are the responsibility of other Ministers."

There are separate clauses dealing with the publication of articles, books and carrying out of journalism by the Ministers. There is a specific guideline not to write and publish the book on their ministerial experience. A perusal of the said guidelines will make it clear that the Ministers should observe a high degree of restraint while making the public speeches and presentations. There is even an indication that a Minister is not expected to speak something which is not related to his ministry, in public. In the present case, the 2nd respondent not only makes the statements out of his domain but also makes it in a disgraceful manner. A code of conduct in the lines of the U.K. guidelines is instructive.

- M. BECAUSE the Hon'ble High Court of Kerala failed to appreciate the submission that there exist similar mechanisms in advanced democratic countries and India should take cue for drafting a similar instrument. Australia has adopted "Statement of Ministerial Standards" for the regulation of Conduct of Ministers. The importance given for the conduct of the Ministers will be explicit from the foreword to the same. Forward to the Statement of Ministerial Standards – September, 2015 reads:

"Ministers and Assistant Ministers are entrusted with the conduct of public business and must act

in a manner that is consistent with the highest standards of integrity and propriety.

They are required to act in accordance with the law, their oath of office and their obligations to the Parliament.

In addition to those requirements, it is vital that Ministers and Assistant Ministers conduct themselves in a manner that will ensure public confidence in them and in the government."

The detailed statement also touches upon various facets of the regulation of the conduct of the ministers including the appointment of the special advisors to the Ministers for the purpose of compliance of the statement. In Canada, New Zealand and Ireland also, there are regulatory laws with respect to the conduct of the Ministers, even though there is no documentation of all such laws into single instrument. There is no such instrument available in India. The brief code of conduct for ministers adopted by the cabinet in 2013 also has not been adopted by the State of Kerala. Unless and until this Hon'ble Court directs the 1st or other respondents, they will not act upon the issue. The 2nd respondent or others may also repeat such deplorable conduct. In the absence of such comprehensive code, the political leaders like the 2nd respondent will keep on acting against the aspirations of the Constitution and the rights of the citizens will be infringed on a massive scale. Interference by the Hon'ble High Court by virtue of being the guardian of the Constitutional values and virtues is inevitable in the present case.

N. BECAUSE the Hon'ble High Court of Kerala failed to appreciate the ratio in *State of Karnataka v. Union of India* 1978 AIR SC 68. The importance of the conduct of the authorities in higher places is been discussed in detail in *State of Karnataka (supra)* where it was held:

"For the success of the policies of any State or Government in it, in any part of the country over which its authority runs, it should be shown to be capable of carrying out the constitutional mandates contained in Part IV of the Directive Principles of State Policy so as to make the basic human rights guaranteed by our Constitution a reality and not a mirage. That, for the masses of our people, is the basic purpose of the whole Constitution which cannot be allowed to be frustrated. If the basic rights of the people are not to be stultified and to appear chimerical, those in charge of the affairs of the State, at the highest levels, must be above suspicion. This is only possible if their own bona fides and utterly unquestionable integrity are assured and apparent in the context of the high purposes of our Constitution and the dire needs of our poverty stricken masses. We cannot view allegations or corruption lightly."

In *State of Karnataka (supra)*, the suit was filed by the State of Karnataka under Article 131 of Constitution of India against the act of Central Government notifying an inquiry to

be set up against the then Chief Minister and other Ministers of Karnataka. Though the said case dealt with the issues related to Article 131, the need for a fair inquiry, where a person holding the Office has alleged to have committed an offence, was emphasized. The act of the Central Government probing into the said issue was held valid. The ratio in the said case indicates two aspects:

- i. The high responsibility which is to be shown by the persons holding the Public Office in their conduct.
- ii. The possibility of the bias and malice when the Government sets its Inquiry when its own Ministers are facing the allegations

If the matter is left to the discretion of the political executive, there is every possibility of bias in the decision making process. Therefore, the interdiction of this Hon'ble Court is *sine qua non* in the present case.

- O. BECAUSE the Hon'ble High Court of Kerala failed to appreciate that the statements made by the 2nd respondent would amount to various offences defined and punishable under various penal laws. The words spoken against the Collector and the Sub Collector would amount to offence u/s.186 of the IPC. The speech against the women as extracted above would constitute offences u/s.509 of the IPC and Section 119 of the Kerala Police Act. Thus, the inaction on the part of the first and third respondent is highly objectionable and against the public interest.
- P. Any other ground that may be raised with the permission of this Hon'ble Court.

6. **GROUND FOR INTERIM RELIEF**

Nil

7. **MAIN PRAYER**

In view of the above, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Grant special leave to appeal against the impugned Judgment passed by the Hon'ble High Court of Kerala at Ernakulam in W.P.(C)No.15869 of 2017 dated 31.05.2017;
- b) Pass any other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

8. **PRAYER FOR INTERIM RELIEF**

Nil

AND FOR THIS ACT OF KINDNESS THE PETITIONER HEREIN AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY

FILED BY

KALEESWARAM RAJ,

SUVIDUTT M.S.

THULASI K. RAJ &

ADVOCATE FOR PETITIONER

MAITREYI HEGDE

Drawn on: 28.10.2017

Filed on: 30.10.2017