2025 INSC 629

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2758 OF 2023

A. RAJA **…APPELLANT**

VERSUS

D. KUMAR **…RESPONDENT**

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

This is an appeal preferred under Section 116-A[1] of the Representation of the People Act, 1951 (hereinafter referred to as the 'Act') against the Final Judgment and Order dated 20.03.2023

[1] '***116-A. Appeals to Supreme Court.—(****1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the Supreme Court on any question (whether of law or fact) from every order made by a High Court under Section 98 or Section 99.*

(2) Every appeal under this Chapter shall be preferred within a period of thirty days from the date of the order of the High Court under Section 98 or Section 99:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.'

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VARSHA MENDIRATTA
Date: 2025.06.06
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Reason:

(hereinafter referred to as the 'Impugned Judgment')[2] passed by the High Court of Kerala at Ernakulam (hereinafter referred to as the 'High Court'), in Election Petition No.11 of 2021 (hereinafter referred to as the 'Election Petition'), filed by the Respondent (hereinafter also referred to as the 'Election Petitioner'), declaring the election of the Appellant to the Legislative Assembly of Kerala from the Devikulam Legislative Assembly Constituency 088 in Idukki District, Kerala, which is reserved for the Scheduled Castes, as void under Section 100(1)(a) and (d)(i)[3] of the Act.

FACTUAL PRISM:

2. General Elections to the Devikulam Assembly Constituency for membership of the Legislative Assembly of Kerala were to be

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[2] **2023:KER:16955 | 2023 SCC OnLine Ker 1643 | (2023) 2 KLT 716 | (2023) 2 KLJ 1**.

[3] '***100. Grounds for declaring election to be void.***—*(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—*

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or
(b) …
(c) …
(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
(i) by the improper acceptance of any nomination, or
(ii) …
(iii) …
(iv) …
the High Court shall declare the election of the returned candidate to be void.'

conducted in 2021. The Appellant filed his nomination papers before the Returning Officer on 17.03.2021 declaring therein that he belongs to the *Hindu Parayan* caste as per Caste Certificate dated 09.03.2021 issued by the Tehsildar, Devikulam. The said caste has been declared as a Scheduled Caste in relation to the State of Kerala in Part VIII of the Schedule to the Constitution (Scheduled Castes) Order, 1950 (hereinafter referred to as the '1950 Order') issued on 10.08.1950 by Hon'ble the President of India. Oral objections before the Returning Officer were raised by the Respondent contending that the Appellant was not a member of the Scheduled Castes from Kerala and instead, he was a Christian. The Returning Officer, after examining the nomination papers of the Appellant rejected the objections and accepted the nomination papers. Polling in the Constituency took place on 06.04.2021 and after counting, the result of the election was declared on 02.05.2021. The Appellant secured 59,049 votes and was declared elected by a margin of 7848 votes over the Respondent-defeated candidate who had secured 51,201 votes.

3. The election of the Appellant was challenged by the Respondent in Election Petition No.11 of 2021 before the High Court.

The ground of challenge laid therein was that the Appellant's paternal grandparents had migrated from Tamil Nadu to Kerala in 1951. They were of the '*Hindu Parayan*' caste in the State of Tamil Nadu. '*Parayan*' is included in the list of Scheduled Castes of both States *viz*. Tamil Nadu and Kerala in the 1950 Order, as originally brought into force. Since the Appellant's grandparents on the paternal side were persons who had migrated from Tamil Nadu, they and their successors were not entitled to claim that they belonged to '*Hindu Parayan*' of Kerala State. It was averred that hence, the Appellant is not entitled to contest from a Constituency reserved for candidates belonging to the Scheduled Castes from Kerala. The Appellant was born on 17.10.1984 to Mr Antony and Mrs Esther. Mr Antony and Ms Esther, it was asserted, were Christians baptized by the CSI's[4] Church in Kundala Estate by a pastor named Ebenezer Mani in the year 1982. The Appellant, born in 1984, also was baptized by the said Ebenezer Mani. Thus, the Appellant was a Christian and not entitled to contest from a Constituency reserved for the Scheduled Castes.

[4] Church of South India.

4. The High Court took up the Election Petition. It framed issues, examined witnesses, admitted documents and on consideration of the oral testimony and documentary evidence in trial proceeded to declare the election of the Appellant void, by way of the Impugned Judgment. The issues remaining[5] before the High Court and decided through the Impugned Judgment are as under:

> '*(I) Whether the returned candidate is a person belonging to Scheduled Caste among Hindus in the State of Kerala?*
>
> *(II) Whether the acceptance of nomination of returned candidate is proper?*
>
> *(III) Whether the election of returned candidate is liable to be set aside?*
>
> *(IV) Reliefs and cost.*'

5. This Court granted a conditional stay of the Impugned Judgment by Order dated 28.04.2023[6], which was continued on

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[5] By its Order dated 10.03.2022, the High Court had already rejected the Appellant's contentions that (a) the Election Petition was liable to be dismissed at the threshold under Order VII Rule 11 of the Code of Civil Procedure, 1908 for want of cause of action, and; (b) the Election Petition was barred by limitation.

[6] '…
Till the next date of hearing, there shall be a conditional stay of the impugned judgment and order to the following extent:
(i) The appellant shall be entitled to participate in the proceedings of the Legislative Assembly;
(ii) The appellant shall, however, not be entitled to vote on any motion in the Legislative Assembly. He shall also not be entitled to vote in his capacity as a Member of the Legislative Assembly on any other matter;
(iii) The appellant shall not be entitled to receive any allowance or monetary benefits in any other form which is admissible to a Member of the Legislative Assembly.
…'

different dates subsequently. *Vide* Order dated 15.05.2024, this Court directed that the interim relief would '*… continue till the final disposal of this Appeal.*'

APPELLANT'S SUBMISSIONS:

6. Learned senior counsel Mr. V. Giri, for the Appellant, submitted that the paternal grandparents of the Appellant started residing in the erstwhile State of Travancore (which subsequently became part of the State of Kerala) much prior to 1950 and that the paternal grandmother and grandfather of the Appellant came to Kundala Estate in Munnar with their respective families in 1940s before their marriage and both families started residing in Munnar. From then onwards, both families have been residents of Munnar. Antony, the Appellant's father, was born in 1952 at Kundala Estate, Devikulam, Munnar. It was submitted that the Appellant's paternal grandmother was an employee of Kannan Devan Hills Plantation in Munnar in the year 1949, as per Certificate dated 17.11.2021 issued by the Deputy General Manager, Kannan Devan Hills Plantation at Munnar.

7. Further, learned senior counsel submitted that the burden to prove that the Appellant's family had migrated to Travancore only after 1950 is entirely upon the Election Petitioner and relied on paragraph no.82 of ***M. Chandra v M. Thangamuthu*****, (2010) 9 SCC 712**, where this Court held that the burden of proof is on the Election Petitioner to prove the charges he alleges beyond reasonable doubt.

8. It was canvassed that the High Court took the view that even though the ancestors of the Appellant started residing in Travancore before 1950, their residence in Travancore can be only for the purpose of employment and they cannot be treated as permanent residents. This finding is assailed on the ground that this was neither pleaded, nor proved by the respondent.

9. It was further canvassed that the 1950 Order was subsequently amended in 1956 pursuant to the passing of the States Re-organization Act, 1956. As per the direction in the States Re-Organization Act, 1956 amendments were brought about to the 1950 Order in 1956 by the Constitution (Scheduled Castes) Order, 1956 (hereinafter referred to as the '1956 Order'). The date on which the

residence of the Appellant's grandparents changed to the State of Kerala on 01.11.1956, being the date when the then State of Travancore became part of the State of Kerala. It was the case in the Election Petition that the grandparents of the Appellant migrated to Kerala in 1951. If that be so, the Appellant's grandparents would be, without any doubt, '*Hindu Parayan*' of Kerala in 1956 as the State of Kerala, upon merger, was formed on 01.11.1956. The 1950 Order was again amended in 1976 by the Parliament and the date on which the '*residence*' is to be reckoned shifted to 01.05.1976. Even in the Impugned Judgment, the High Court finds that the family of the Appellant started permanently residing in Kerala from 1970. In that case also, it was urged, the Appellant is to be treated as a '*Hindu Parayan*' of Kerala.

10. Learned senior counsel relied on paragraph no.13 of ***Puducherry SC People Welfare Assn. v UT of Pondicherry*, (2014) 9 SCC 236** which states ' … *Once Presidential Order has been issued under Article 341(1) or Article 342(1), any amendment in the Presidential Order can only be made by Parliament by law as provided in Article 341(2) or Article 342(2), as the case may be, and in no other*

manner. The interpretation of "resident" in the Presidential Order as "of origin" amounts to altering the Presidential Order.' It was stated that the term '*resident*' therefore, assumes importance in the context. The evidence on record would show that the ancestors of the Appellant were residents of Kundala Estate in Munnar, a part of the erstwhile Travancore, before 10.08.1950, the date on which the 1950 Order came into force.

11. It was also argued that the High Court went beyond the pleadings of the parties and the evidence adduced and made out a third case, taking a view that even though the Appellant's ancestors started residing in Travancore before 1950, their residence in Travancore can be only for the purpose of employment and they cannot be treated as permanent residents. Such case was neither pleaded, nor proved by the respondent. Even when the Appellant was examined as RW2, not even a single suggestion was put to him in this regard.

12. Learned senior counsel also contended that there was no challenge to the Caste Certificate issued in the Appellant's favour. If

the Respondent's case is that the Appellant's Caste Certificate is not properly issued, it is for him to prove that the Caste Certificate issued is invalid and improper. Reliance in this context was placed on paragraph no.85 of ***M. Chandra*** (*supra*), where it was observed: '*There is nothing on record to show that the community certificate was issued illegally or in contravention of the valid procedure. The election petitioner should have examined the person in charge while the certificate was being issued to bring to light to alleged malpractice in issuance of the said Certificate. The validity of the issuance of the community certificate is presumed unless shown otherwise by Respondent 1, who clearly failed to do so. …*'[7] Hence, in the case at hand, the Respondent, who has not objected to acceptance of the Caste Certificate by the Returning Officer, though he makes a vague averment that he had orally objected to the acceptance of the Caste Certificate, which is disputed as being factually incorrect, has not chosen to examine either the Competent Authority, which issued the Caste Certificate, nor has he examined the Returning Officer to prove otherwise.

[7] Emphasis added by the Appellant.

13. It was contended that the case of the Respondent is that in the year 1982, Pastor Ebenezer Mani baptized the father and mother of the Appellant in CSI Church and thus, they became Christians in 1982. Thereafter in 1984, the Appellant was born and the Respondent alleges that the Appellant was also baptized by the said Ebenezer Mani. Ebenezer Mani was examined as PW8, as a witness of the Respondent, and deposed that he was born in 1968, which means that he was only about 14 years of age in 1982, the year when he, according to the Respondent, had allegedly baptized the parents of the Appellant. He further deposed that he became an Evangelist at the age of 24 and that an Evangelist cannot perform the rite of baptism. Even in the examination-in-chief of PW8, there was no attempt on the side of the Respondent to prove that Ebenezer Mani was instrumental in baptizing the Appellant's father and mother as also the Appellant.

14. Learned senior counsel contended that a totally new case was attempted to be developed while examining PW9, on 17.10.2022, on the strength of some alleged tampering in a Baptism Register and Family Register produced before the High Court by Church authorities. The case attempted to be projected was that in 1992, the Appellant's

father, mother and their children (including the Appellant) together converted to Christianity. It is submitted that entries in the so-called Baptism Register are not proved. In fact, since the said Baptism Register from 1997 to 2008 was marked through PW9, who admittedly joined as a pastor in the CSI Church concerned only in 2013, he is incompetent to prove any of the entries. The person who conducted the baptism ceremony was not identified or examined. Anybody knowing the handwriting and signature of the person/s who made those entries was also not examined. Above all, the dates of birth of the persons so baptized shown in the afore-mentioned Registers do not tally with the actual dates of birth of the Appellant's father, mother and their children, including the Appellant, as per official records.

15. It was further argued that as per Section 81[8] of the Act, dealing with the pleadings in an Election Petition, the petitioner should plead

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[8] '***81. Presentation of petitions.***—*(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.*

Explanation.—In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) [Omitted]

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.'

specifically, the ground(s) on which he claims the election is to be set aside, relying on the following decisions of this Court in support of above said proposition: paragraph no.33 of ***Gajanan Krishnaji Bapat v Dattaji Raghobaji Meghe*****, (1995) 5 SCC 347**; paragraph no.79 of ***M. Chandra*** (*supra*), and; paragraph no.19 of ***Kalyan Singh Chouhan v C. P. Joshi*****, (2011) 11 SCC 786**.

16. Learned senior counsel stressed that the specific case pleaded in the Election Petition was that the ancestors of the Appellant migrated to Kerala in 1951. Without even a whisper in the Election Petition or in the evidence adduced by the Respondent that the ancestors came for employment to Kerala, a completely new case was developed after the period of limitation to file an Election Petition that the Appellant's ancestors came for employment to Kerala. Learned senior counsel relied on ***Goka Ramalingam v Boddu Abraham*****, (1969) 1 SCC 24** and contended that after the period of limitation, a new contention, changing the whole nature of the case, can neither be raised nor pressed into service.

17. Learned senior counsel for the Appellant, further argued that the instant appeal be allowed, pointing out that in the Impugned

Judgment, the High Court held that the burden to prove that the Appellant is a member of the Scheduled Castes within the State of Kerala and that his family had migrated prior to 1950 was entirely cast upon the Appellant, which is contrary to the settled proposition of law in ***M. Chandra*** (*supra*). Emphasis was placed particularly on paragraphs no.81 & 82 thereof.

RESPONDENT'S SUBMISSIONS:

18. Learned senior counsel, Mr. Narender Hooda, for the Respondent submitted that the burden of proving the authenticity of the Caste Certificate was fully on the Appellant as per Section 10 of the Kerala (Schedule Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 (hereinafter referred to as the 'Kerala Act'), which reads as under:

> '***10. Burden of proof:-***
> *Where an application is made to the Competent Authority under Section 4 for the issue of a community certificate in respect of a Scheduled Caste or Scheduled Tribe or in any enquiry conducted by the Competent Authority, the Expert Agency, or the Scrutiny Committee or in any trial or offence under this*

Act, the burden of proving that he belongs to such Caste or Tribe shall be on the claimant.'[9]

19. Learned senior counsel laid emphasis on '*or in any trial*' to support the proposition that an Election Petition would fall within the ambit of the burden contemplated under Section 10 of the Kerala Act. It was argued that in the present case, it was rightly understood by all parties, based on the pleadings and the issues formulated by the High Court and evidence adduced, that the challenge was made to the Caste Certificate produced by the Appellant before the Returning Officer issued by the Competent Authority under the Kerala Act. The burden of proving the authenticity of the Caste Certificate was fully on the Appellant which he failed to discharge. It was urged that the Election Petitioner/Respondent had pleaded material facts and particulars, as laid down in ***Virender Nath Gautam v Satpal Singh*****, (2007) 3 SCC 617**.

20. Learned senior counsel submitted that the Caste Certificate issued to a returned candidate can be challenged in an Election

[9] Emphasis added by the Respondent.

Petition and he relied on ***Hari Shanker Jain v Sonia Gandhi*****, (2001) 8 SCC 233** and ***Punit Rai v Dinesh Chaudhary*****, (2003) 8 SCC 204**.

21. It was submitted that a 5-Judge Bench of this Court in ***Action Committee on Issue of Caste Certificate to SCs/STs v Union of India*****, (1994) 5 SCC 244** has interpreted the word '*Resident*' as used in the 1950 Order to mean '*permanent resident*'.

22. It was further argued by learned senior counsel that the marriage of the Appellant was also conducted according to Christian rituals and customs. None of the Hindu rituals or customs were followed during the marriage function of the Appellant. Thus, when these are the special facts within the knowledge of the Appellant, the burden shifts to the Appellant, and it becomes his duty to explain such facts within his knowledge. It was canvassed that simple denial of material facts is not sufficient discharge of the burden under Section 106 of the Evidence Act, 1872 (hereinafter referred to as the 'Evidence Act'), nor rebuts the presumption under Section 114 of the Evidence Act.

23. Learned senior counsel further contended that a person claiming the status of a Schedule Caste in a particular State has to demonstrate his/his ancestors' permanent residence in that particular State on the date of the Presidential Order. In India, a Hindu inherits his caste from his father. In the instant case, the Appellant would inherit his caste from his father i.e., Mr. Anthony, who, in turn, would get his caste from his father Lachmanan. To claim the benefit of reservation for Schedule Castes in relation to the State of Kerala, the Appellant had to establish that his grandfather Lachmanan was a permanent resident of Kerala much prior to the 1950 Order as per ***Action Committee*** (*supra*). The High Court in paragraph no.17 of the Impugned Judgment has recorded a categorical finding of fact, after meticulous examination of the entire documentary as well as oral evidence before it, that the Appellant's grandfather was not a permanent resident of the State of Kerala before the 1950 Order.

24. It was further argued that when the Appellant himself admitted the fact of migration of his grandparents from Tamil Nadu to Kerala, it was his responsibility to prove that his grandparents migrated before independence to the erstwhile State of Travancore-Cochin from Tamil

Nadu and were permanent residents of Travancore-Cochin on 10.08.1950 i.e., the date the Presidential Order was issued.

25. It was submitted that since the Appellant was a minor when he converted, the doctrine of eclipse followed him till he became a major. The Appellant ought to have converted to Hinduism by following any custom/ritual which was otherwise prescribed to be followed by the community at large. The case of the Appellant that he never converted to Christianity cannot be accepted since it was proved that the parents converted to Christianity. The minor has no right to claim any religion or caste so long as the parents have converted to another religion along with the family. This being the factual position, it would be the Appellant's responsibility to prove that he had come out of the eclipse by explaining the facts in his personal knowledge under Section 106 of the Evidence Act. As long as the Respondent had discharged his initial burden of proving the allegation against the Appellant, unless the presumption is rebutted, under Section 114 of the Evidence Act, it would be presumed that the circumstances and evidence are conclusive *qua* the allegations made in the Election Petition.

26. Learned senior counsel in support of his proposition apropos the doctrine of eclipse relied on ***K. P. Manu v Scrutiny Committee for Verification of Community Certificate*****, (2015) 4 SCC 1**.

27. Learned senior counsel summed up his arguments and contended that even though it is not mandatory under the Kerala Act to obtain a certificate from the Scrutiny Committee, but if any challenge to such Caste Certificate comes before any enquiry conducted by the Competent Authority, the Expert Agency, or the Scrutiny Committee or in any trial or offence under the Kerala Act, the burden will be on the claimant (in this case, the Appellant herein) to prove that he belongs to such caste or tribe. It was urged that the appeal be dismissed, and the Impugned Judgment be upheld.

ANALYSIS, REASONING AND CONCLUSION:

28. Having heard learned senior counsel for the parties at length and bestowed our anxious consideration to the rival contentions assiduously advanced at the Bar, we are of the opinion that the judgment impugned warrants interference.

29. Article 341 of the Constitution of India, 1950 (hereinafter referred to as the 'Constitution') reads as under:

> '***341. Scheduled Castes***.—*(1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.*
> *(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.*'

30. In exercise of power conferred under Article 341(1) of the Constitution, Hon'ble the President issued the 1950 Order. The central issue in the entire controversy is whether the Appellant belongs to the *Hindu Parayan* caste in the State of Kerala and is covered by the 1950 Order insofar as it relates to the State of Kerala. The twin conditions needing to be satisfied would be (i) being of the *Hindu Parayan* caste, and; (ii) being, himself/herself or through one's ancestors, permanent resident of the State of Kerala as on the date of the 1950 Order. Upon

fulfilment of both these conditions, a person can claim a legal right to derive any benefits available to *Hindu Parayan* caste in the State of Kerala. In the instant case, fulfilment of the same would enable the Appellant to become eligible to contest from the Devikulam Legislative Assembly Constituency 088 in Idukki District, Kerala, reserved for the Scheduled Castes.

31. There is no dispute on the factum that, originally, the grandparents of the Appellant belonged to the *Hindu Parayan* caste in the erstwhile State of Travancore-Cochin having migrated from the State of Tamil Nadu but prior to 1950. In this regard, there is sufficient evidence available on the record. The next relevant question which would arise would be as to whether the Appellant had still retained the *Hindu Parayan* caste, as a member of the Hindu religion, when he contested from the Devikulam Legislative Assembly Constituency?

32. This is hotly contested between the parties. The Respondent-Election Petitioner contends that the Appellant's parents had converted to Christianity and the entire family, including the Appellant, were baptized. In this regard, certain registers of the CSI Church were

produced before the High Court. However, from the evidence, it is also apparent that the entries in such registers were not very specific, inasmuch as the name of the Appellant was not mentioned and other details with regard to the age of his siblings also did not match. Even some names of the siblings were different. Were this an ordinary civil suit at trial, we could have possibly applied the 'preponderance of probabilities' yardstick, which may have resulted in some leeway and latitude in favour of the Respondent and against the Appellant. However, as per the *dicta* in ***J. Chandrasekhara Rao v V. Jagapathi Rao*, 1993 Supp (2) SCC 229** and ***M. Chandra*** (*supra*), Election Petitions, including those wherein no allegations of corrupt practices are levelled, have to be treated akin to criminal proceedings and the Election Petitioner has to prove the charges levelled beyond reasonable doubt. This enunciation of the law has guided our decision-making.

33. Most importantly, Ebenezer Mani/PW8, from the Respondent's side, who claimed to have baptized the Appellant and his family, during evidence, admitted that he was aged 54 years on the date of deposition, which meant he was aged only 14 years in the year 1982,

when he purportedly baptized the Appellant's parents. This is, clearly, unbelievable and unsustainable.

34. It is relevant to observe that mere observance/performance of a ritual of/associated with any religion does not *ipso facto* and necessarily mean that the person '*professes*' that religion. That is why the term used in the 1950 Order is '*professes*', signifying that a person although born in a particular religion can profess another religion, *inter alia*, by practicing the rituals of that other religion as the basic tenets of his beliefs and lifestyle. Adherence merely to some ritual of another religion would not tantamount to giving-up the original religion, unless the person concerned makes such belief explicit. In ***Sapna Jacob v State of Kerala*, 1992 SCC OnLine Ker 233**, a learned Single Judge of the (Kerala) High Court (as he then was) observed:

> '***6.*** *… It may be true that the court cannot test or gauge the sincerity of religious belief; or where there is no question of the genuineness of a person's belief in a certain religion, the court cannot measure its depth or determine whether it is an intelligent conviction or ignorant and superficial fancy. But a court can find the true intention of men lying behind their acts and can certainly find from the circumstances of a case whether a pretended conversion was really a means to some further end. …*'

(emphasis supplied)[10]

35. The term '*professes*' has been examined by five of our learned predecessors in ***Punjabrao v D. P. Meshram*, 1964 SCC OnLine SC 76** in like background:

> '***13.*** *What clause (3) of the Constitution (Scheduled Castes) Order, 1950 contemplates is that for a person to be treated as one belonging to a Scheduled Caste within the meaning of that Order, he must be one who professes either Hindu or Sikh religion. The High Court, following its earlier decision in Karwadi v. Shambharkar [AIR 1958 Bom 296] has said that the meaning of the phrase "professes a religion" in the aforementioned provision is "to enter publicly into a religions state" and that for this purpose a mere declaration by a person that he has ceased to belong to a particular religion and embraced another religion would not be sufficient. The meanings of the word "profess" have been given thus in Webster's New World Dictionary:"to avow publicly; to make an open declaration of … to declare one's belief in : as, to profess Christ. To accept into a religious order". The meanings given in the Shorter Oxford Dictionary are more or less the same. It seems to us that the meaning "to declare one's belief in: as to profess Christ" is one which we have to bear in mind while construing the aforesaid order because it is this which bears upon religious belief and consequently also upon a change in religious belief. It would thus follow that a declaration of one's belief must necessarily mean a declaration in such a way that it would be known to those whom it may interest. Therefore, if a*

[10] The afore-extract recently found this Court's approval in ***C. Selvarani v Special Secretary-cum-District Collector*, 2024 SCC OnLine SC 3470**.

public declaration is made by a person that he has ceased to belong to his old religion and has accepted another religion he will be taken as professing the other religion. In the face of such an open declaration it would be idle to enquire further as to whether the conversion to another religion was efficacious. The word "profess" in the Presidential Order appears to have been used in the sense of an open declaration or practice by a person of the Hindu (or the Sikh) religion. Where, therefore, a person says, on the contrary, that he has ceased to be a Hindu he cannot derive any benefit from that Order.'

(emphasis supplied)

36. From the evidence available, it is not possible to hold that the Appellant '*professes*' Christianity. In the factual setting of the present *lis*, the evidence adduced from the side of the Appellant would reveal that the Caste Certificate(s) issued in his favour by the Competent Authority till date hold the field. The Appellant's Caste Certificate has not been interfered with, either by the Impugned Judgment or by the authority(ies) concerned. In ***Madhuri Patil v Commr., Tribal Development*, (1994) 6 SCC 241**, the Court stated, in the context of fake certificate(s) having been obtained to secure admissions in educational institutions:

'***13.*** *The admission wrongly gained or appointment wrongly obtained on the basis of false social status*

certificate necessarily has the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a State for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the Scrutiny Committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinised at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of social status certificates, their scrutiny and their approval, which may be the following:

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the Officer, Taluk or Mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the Directorate concerned.

3. Application for verification of the caste certificate by the Scrutiny Committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the State Governments shall constitute a Committee of three officers, namely, (I) an Additional or Joint Secretary or any officer high-er in rank of the Director of the department concerned, (II) the Director, Social Welfare/Tribal Welfare/Backward Class Welfare, as the case may be, and (III) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of the Scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the

pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the castes or tribes or tribal communities concerned etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgement due or through the head of the educational institution concerned in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not more than 30 days from the date of the receipt of the notice. In case, the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the Director on receipt of such representation/reply shall convene the committee and the Joint/Additional Secretary as Chairperson who shall give reasonable opportunity to the candidate/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence may be given to him/it. After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider the claims vis-à-vis the objections raised by the candidate or opponent and pass an

appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case candidate is minor to appear before the Committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post, is getting expired, the candidate be admitted by the Principal or such other authority competent in that behalf or appointed on the basis of the social status certificate already issued or an affidavit duly sworn by the parent/guardian/candidate before the competent officer or non-official and such

admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the Committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The High Court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a Single Judge, then no further appeal would lie against that order to the Division Bench but subject to special leave under Article 136.

14. In case, the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgement due with a request to cancel the admission or the appointment. The Principal etc. of the educational

institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post.

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15. *The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately record the finding. Each case must be considered in the backdrop of its own facts.*'

(emphasis supplied)

37. A perusal of the decision by 2 learned Judges in ***Madhuri Patil*** (*supra*) would indicate that a Caste Certificate could be invalidated, in the first instance, by the Caste Scrutiny Committee, whose decision could be challenged in writ proceedings under Article 226 of the

Constitution. A 3-Judge Bench in ***Dayaram v Sudhir Batham*, (2012) 1 SCC 333**, ruled as under:

> '***17.*** *The directions issued in Madhuri Patil [(1994) 6 SCC 241: 1994 SCC (L&S) 1349: (1994) 28 ATC 259] were towards furtherance of the constitutional rights of the Scheduled Castes/Scheduled Tribes. As the rights in favour of the Scheduled Castes and Scheduled Tribes are a part of legitimate and constitutionally accepted affirmative action, the directions given by this Court to ensure that only genuine members of the Scheduled Castes or Scheduled Tribes were afforded or extended the benefits, are necessarily inherent to the enforcement of fundamental rights. In giving such directions, this Court neither rewrote the Constitution nor resorted to "judicial legislation". The judicial power was exercised to interpret the Constitution as a "living document" and enforce fundamental rights in an area where the will of the elected legislatures have not expressed themselves.*
>
> XXX
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> ***22.*** *Therefore, we are of the view, that Directions 1 to 15 issued in exercise of power under Articles 142 and 32 of the Constitution, are valid and laudable, as they were made to fill the vacuum in the absence of any legislation, to ensure that only genuine Scheduled Caste and Scheduled Tribe candidates secured the benefits of reservation and the bogus candidates were kept out. By issuing such directions, this Court was not taking over the functions of the legislature but merely filling up the vacuum till the legislature chose to make an appropriate law.*
>
> XXX

> ***44.*** *In view of the above, we hold that the second sentence of Direction 13 of Madhuri Patil [(1994) 6 SCC 241: 1994 SCC (L&S) 1349: (1994) 28 ATC 259] providing that where the writ petition is disposed of by a Single Judge, no further appeal would lie against the order of the Division Bench (even when there is a vested right to file such intra-court appeal) and will only be subject to a special leave under Article 136, is not legally proper and therefore, to that extent, is held to be not a good law. The second sentence of Direction 13 stands overruled. As a consequence, wherever the writ petitions against the orders of the Scrutiny Committee are heard by a Single Judge and the State law or Letters Patent permits an intra-court appeal, the same will be available.*'

38. We may, in the interest of completeness take note of the decision by another 3-Judge Bench in ***Food Corporation of India v Jagdish Balaram Bahira*****, (2017) 8 SCC 670**, which while noticing that the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 had been enacted to provide a statutory mechanism to answer the concerns expressed in ***Madhuri Patil*** (*supra*), re-affirmed the guidelines laid down thereunder, albeit innocent of the modification(s) effected thereto *via* ***Dayaram*** (*supra*). Pertinently, one of us (Abhay S. Oka, J.) speaking for a 3-Judge Bench

of this Court in ***Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti v State of Maharashtra*****, (2023) 16 SCC 415** has conclusively held that once the competent Legislature passes/had passed legislation, such legislation would govern the field and not the ***Madhuri Patil*** (*supra*) guidelines. *Ergo*, the Kerala Act assumes special relevance.

39. For proper appreciation, it is apt to re-reproduce the concerned provision from the Kerala Act:

> '***10. Burden of proof:-***
> *Where an application is made to the Competent Authority under Section 4 for the issue of a community certificate in respect of a Scheduled Caste or Scheduled Tribe or in any enquiry conducted by the Competent Authority, the Expert Agency, or the Scrutiny Committee or in any trial or offence under this Act, the burden of proving that he belongs to such Caste or Tribe shall be on the claimant.*'

40. The Kerala Act, attention to which was drawn by the learned senior counsel for the Respondent, was enacted after ***Madhuri Patil*** (*supra*). It provides, *vide* Section 10 thereof, that the burden of proof would be on the claimant (which would be the Appellant herein), but in a scenario '*Where an application is made to the Competent Authority*

under Section 4 for the issue of a community certificate in respect of a Scheduled Caste or Scheduled Tribe or in any enquiry conducted by the Competent Authority, the Expert Agency, or the Scrutiny Committee or in any trial or offence under this Act…'[11] Contextualised thus, Section 10 of the Kerala Act does not aid the Respondent's case. On deeper perusal of the Kerala Act, it is obvious that an elaborate scheme has been laid down covering Caste/Community Certificates[12], from issuance to verification to cancellation *et al*. We are unable to accept the contention of Mr. Hooda, learned senior counsel that '*in any trial*' would encompass within its fold an Election Petition.

41. In ***Poppatlal Shah v State of Madras*, 1953 1 SCC 492**, it was held '*It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself.*'[13] We are quite cognizant that it is not for us to add or read words into a statute, nor should we venture into the legislative arena, in respectful concurrence with ***B.***

[11] Emphasis supplied by us.
[12] The Kerala Act uses these terms interchangeably.
[13] Emphasis supplied by us.

***Premanand v Mohan Koikal*, (2011) 4 SCC 266**; ***Mukund Dewangan v Oriental Insurance Co. Ltd.*, (2017) 14 SCC 663**, and; ***DDA v Virender Lal Bahri*, (2020) 15 SCC 328**. In this context, the principles of *noscitur a sociis* and *ejusdem generis* merit closer scrutiny. In ***State of Bombay v Hospital Mazdoor Sabha*, 1960 SCC OnLine SC 44**, the Court commented:

> '***9.*** *It is, however, contended that, in construing the definition, we must adopt the rule of construction noscuntur a sociis. This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in Words and Phrases (Vol. XIV, p. 207):"Associated words take their meaning from one another under the doctrine of noscuntur a sociis the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim Ejusdem Generis." In fact the latter maxim "is only an illustration or specific application of the broader maxim noscuntur a sociis". The argument is that certain essential features or attributes are invariably associated with the words "business and trade" as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition though their normal import may be much wider. We are not impressed by this argument. It must be borne in mind that noscuntur a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the*

wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service. As has been observed by Earl of Halsbury, L.C., in Corporation of Glasgow v. Glasgow Tramway and Omnibus Co. Ltd. [(1898) AC 631 at p. 634] in dealing with the wider words used in Section 6 of Valuation of Lands (Scotland) Act, 1854, "the words 'free from all expenses whatever in connection with the said tramways' appear to me to be so wide in their application that I should have thought it impossible to qualify or cut them down by their being associated with other words on the principle of their being ejusdem generis with the previous words enumerated". If the object and scope of the statute are considered there would be no difficulty in holding that the relevant words of wide import have been deliberately used by the legislature in defining "industry" in Section 2(j). The object of the Act was to make provision for the investigation and settlement of industrial disputes, and the extent and scope of its provisions would be realised if we bear in mind the definition of "industrial dispute" given by Section 2(k), of "wages" by Section 2(rr), "workman" by Section 2(s), and of "employer" by Section 2(g). Besides, the definition of public utility service prescribed by Section 2(m) is very significant. One has merely to glance at the six categories of public utility service mentioned by Section 2(m) to realise that the rule of construction on which the appellant relies is inapplicable in interpreting the definition prescribed by Section 2(j).'

(emphasis supplied)

42. 5 learned Judges in ***Amar Chandra Chakraborty v Collector of Excise, Govt. of Tripura*, (1972) 2 SCC 442** held:

> '***9.*** *Before dealing with the contention relating to Article 19 we consider it proper to dispose of the argument founded on the ejusdem generis rule and Article 14 of the Constitution. It was contended by Shri Sen that the only way in which Section 43 can be saved from the challenge of arbitrariness is to construe the expression "any cause other than" in Section 43(1) ejusdem generis with the causes specified in clauses (a) to (g) of Section 42(1). We do not agree with this submission. The ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration and (v) there is no indication of a different legislative intent. In the present case it is not easy to construe the various clauses of Section 42 as constituting one category or class. But that apart, the very language of the two sections and the objects intended respectively to be achieved by them also negative any intention of the legislature to attract the rule of ejusdem generis.*'
>
> (emphasis supplied)

43. In ***U.P.SEB v Hari Shankar Jain*, (1978) 4 SCC 16**, it was held:

'***15.*** *The High Court expressed the views that the expression "any other rules or regulations" should be read ejusdem generis with the expressions "Fundamental and Supplementary Rules", "Civil Services, Control, Classification and Appeal Rules" etc. So read, it was said, the provisions of Section 13-B could only be applied to industrial establishments in which the workmen employed could properly be described as Government servants. We are unable to agree that the application of the ejusdem generis rule leads to any such result. The true scope of the rule of "ejusdem generis" is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified. But the rule is one which has to be "applied with caution and not pushed too far". It is a rule which must be confined to narrow bounds so as not to unduly or unnecessarily limit general and comprehensive words. If a broad-based genus could consistently be discovered, there is no warrant to cut down general words to dwarf size. If giant it cannot be, dwarf it need not be. It is true that in Section 13-B the species specifically mentioned happen to be Government servants. But they also possess this common characteristic that they are all public servants enjoying a statutory status, and governed by statutory rules and regulations. If the Legislature intended to confine the applicability of Section 13-B to industrial undertakings employing Government servants only nothing was easier than to say so instead of referring to various rules specifically and following it up with a general expression like the one before us. The words 'rules and regulations' have come to acquire a special meaning when used in statutes. They are used to describe subordinate legislation made by authorities to whom the statute delegates that function. The words can have no other meaning in Section 13-B. Therefore, the expression "workmen. . . to whom ... any other rules or regulations*

that may be notified in this behalf" means, in the context of Section 13-B, workmen enjoying a statutory status, in respect of whose conditions of service the relevant statute authorises the making of rules or regulations. The expression cannot be construed so narrowly as to mean Government servants only; nor can it be construed so broadly as to mean workmen employed by whomsoever including private employers, so long as their conditions of service are notified by the Government under Section 13-B.'

(emphasis supplied)

44. In ***Rohit Pulp and Paper Mills Limited v CCE*****, (1990) 3 SCC 447**, it was explained:

'***12.*** *The principle of statutory interpretation by which a generic word receives a limited interpretation by reason of its context is well established. In the context with which we are concerned, we can legitimately draw upon the "noscitur a sociis" principle. This expression simply means that "the meaning of a word is to be judged by the company it keeps."*

…

This principle has been applied in a number of contexts in judicial decisions where the court is clear in its mind that the larger meaning of the word in question could not have been intended in the context in which it has been used. The cases are too numerous to need discussion here. It should be sufficient to refer to one of them by way of illustration. In Rainbow Steels Ltd. v. CST [(1981) 2 SCC 141: 1981 SCC (Tax) 90] this Court had to understand the

meaning of the word 'old' in the context of an entry in a taxing traffic which read thus:

"Old, discarded, unserviceable or obsolete machinery, stores or vehicles including waste products....."

Though the tariff item started with the use of the wide word 'old', the court came to the conclusion that "in order to fall within the expression 'old machinery' occurring in the entry, the machinery must be old machinery in the sense that it has become non-functional or non-usable". In other words, not the mere age of the machinery, which would be relevant in the wider sense, but the condition of the machinery analogous to that indicated by the words following it, was considered relevant for the purposes of the statute.

13. *The maxim of noscitur a sociis has been described by Diplock, C.J. as a "treacherous one unless one knows the societas to which the socii belong" (vide Letang v. Cooper [(1965) 1 QB 232: (1964) 2 All ER 929]). The learned Solicitor General also warns that one should not be carried away by labels and Latin maxims when the words to be interpreted is clear and has a wide meaning. We entirely agree that these maxims and precedents are not to be mechanically applied; they are of assistance only insofar as they furnish guidance by compendiously summing up principles based on rules of common sense and logic. As explained in CCE v. Parle Exports (P) Ltd. [(1989) 1 SCC 345, 357: 1989 SCC (Tax) 84] and Tata Oil Mills Co. Ltd. v. CCE [(1989) 4 SCC 541, 545-46: 1990 SCC (Tax) 22] in interpreting the scope of any notification, the court has first to keep in mind the object and purpose of the notification. All parts of it should be read harmoniously in aid of, and not in derogation of, that purpose. In this case, the aim and*

object of the notification is to grant a concession to small scale factories which manufacture paper with unconventional raw materials. The question naturally arises: Could there have been any particular object intended to be achieved by introducing the exceptions set out in the proviso? Instead of proceeding on the premise that it is not necessary to look for any reason in a taxing statute, it is necessary to have a closer look at the wording of the proviso. If the proviso had referred only to 'coated paper', no special object or purpose would have been discernible and perhaps there would have been no justification to look beyond it and enter into a speculation as to why the notification should have thought of exempting only 'coated paper' manufactured by these factories from the purview of the exemption. But the notification excepts not one but a group of items. If the items mentioned in the group were totally dissimilar and it were impossible to see any common thread running through them, again, it may be permissible to give the exceptions their widest latitude. But when four of them — undoubtedly, at least three of them — can be brought under an intelligible classification and it is also conceivable that the government might well have thought that these small scale factories should not be eligible for the concession contemplated by the notification where they manufacture paper catering to industrial purposes, there is a purpose in the limitation prescribed and there is no reason why the rationally logical restriction should not be placed on the proviso based on this classification. In our view, the only reasonable way of interpreting the proviso is by understanding the words 'coated paper' in a narrower sense consistent with the other expressions used therein.'

(emphasis supplied)

45. Adopting and applying the afore-referred precedents, it is clear that '*in any trial*' would refer only to a trial under the Act. The terms preceding and succeeding '*in any trial*' also fortify our conclusion. Even the start and end of Section 10 are hemmed in by reference to the Kerala Act itself. The meaning of '*any trial*' has to be '*judged by the company it keeps.*' The Kerala Act in Section 24 bars the jurisdiction of Civil Courts, but Section 21 establishes Special Courts to try offences thereunder. As such, *arguendo*, even if we brush aside the *noscitur a sociis* and *ejusdem generis* principles, on a harmonious reading of the Kerala Act as a whole, we are not able to countenance that the Legislature intended '*any trial*' occurring in Section 10 to include an Election Petition. In the wake of the above discussions, we have no hesitation to hold that a Caste/Community Certificate cannot be assailed in an Election Petition. Exception to the above proposition can only be by way of legislative carve-out in the State concerned, which will be determinative. *Exempli gratia*, if the legislation permits challenge to Caste/Community Certificate in an Election Petition, then the ***Madhuri Patil*** (*supra*) guidelines cannot come in the way. In the absence of which, the ***Madhuri Patil*** (*supra*) guidelines, as modified per ***Dayaram*** (*supra*), will prevail, under which challenge to a Caste

Certificate cannot be mounted in an Election Petition. Obviously, the guidelines issued in ***Madhuri Patil*** (*supra*) were in exercise of power under Article 142 of the Constitution. As elucidated by the 5-Judge Bench in ***Supreme Court Bar Assn. v Union of India*****, (1998) 4 SCC 409**, '*Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject.*' It was further stated '*… the power is used with restraint without pushing back the limits of the Constitution so as to function within the bounds of its own jurisdiction. To the extent this Court makes the statutory authorities and other organs of the State perform their duties in accordance with law, its role is unexceptionable but it is not permissible for the Court to "take over" the role of the statutory bodies or other organs of the State and "perform" their functions.*'

46. Our endeavour cannot conclude at this stage. A Coordinate Bench's view in ***Sobha Hymavathi Devi v Setti Gangadhara Swamy*****,**

(2005) 2 SCC 244, the relevant paragraph wherefrom reads as below, is to be dealt with:

> '***11.*** *What remains is the argument based on the certificates allegedly issued under the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993. The High Court has not accepted the certificates as binding for the reason that the evidence showed that the certificates were issued based on the influence exercised by the appellant as a member of the Legislative Assembly, one after another, immediately on an application being made and without any due or proper inquiry. We are impressed by the reasons given by the High Court for not acting on these certificates. That apart, a reference to Section 3 of the Act would indicate that a certificate thereunder, insofar as it relates to elections, is confined in its validity to elections to local authorities and cooperative institutions. It does not embrace an election to the Legislative Assembly or to Parliament. Therefore, in any view of the matter, it cannot be said that the High Court, exercising jurisdiction under the Representation of the People Act in an election petition is precluded from going into the question of status of a candidate or proceeding to make an independent inquiry into that question in spite of the production of a certificate under the Act. At best, such a certificate could be used in evidence and its evidentiary value will have to be assessed in the light of the other evidence let in, in an election petition. Therefore, nothing turns on the factum of a certificate being issued by the authority concerned under the Act of 1993. We are also satisfied as the High Court was satisfied, that no proper inquiry preceded the issuance of such a certificate and such a certificate was issued merely on the say-so of the appellant. We have,*

therefore, no hesitation in overruling this argument raised on behalf of the appellant.'

(emphasis supplied)

47. The Court in ***Sobha Hymavathi Devi*** (*supra*) proceeded on the premise that a certificate under Section 3 of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (hereinafter referred to as the 'Andhra Pradesh Act') [Section 3 of the Andhra Pradesh Act is mostly identical to Section 3 of the Kerala Act] '*insofar as it relates to elections, is confined in its validity to elections to local authorities and cooperative institutions. It does not embrace an election to the Legislative Assembly or to Parliament.*' While the Caste/Community Certificates are undoubtedly issued by the State/UT authorities, a candidate contesting elections to the Parliament or to the State Legislative Assembly/Council is permitted to file the same with Nomination Papers, under instructions of the Election Commission of India. By virtue of Section 5 of the Kerala Act, a detailed procedure is laid down for issuance of the Community Certificate by the Competent Authority. It would not be out of place to emphasise that, as such, the

Competent Authority functions akin to a quasi-judicial authority. Section 11 of the Kerala Act enables any person to seek the cancellation of a false Community Certificate – the Scrutiny Committee established under Section 8 of the Kerala Act is empowered to cancel the Community Certificate issued under Section 5 thereof. Appellate, review, stay and revisionary provisions can also be found in Sections 12 and 13 of the Kerala Act. Section 14 of the Kerala Act confers the powers of a Civil Court on the Competent Authority, the Expert Agency and the Scrutiny Committee. As noted above, Section 21 of the Kerala Act establishes Special Courts to try offences thereunder, and Section 24 ousts the jurisdiction of Civil Courts *qua* any order passed by any officer/authority thereunder. What is evincible from a conjoint reading of the Kerala Act is that it is a complete code in itself. The Kerala Act mirrors the Andhra Pradesh Act, but ***Sobha Hymavathi Devi*** (*supra*) has not examined the statute as a whole. As such, what is observed in paragraph 11 of ***Sobha Hymavathi Devi*** (*supra*) cannot be said to be a binding precedent. We are, therefore, unhesitant to state that paragraph no.11 is of no precedential value being *sub-silentio*, in view of our afore-evaluation.

48. In ***Municipal Corpn. of Delhi v Gurnam Kaur*, (1989) 1 SCC 101**, 3 learned Judges opined:

> '***11.*** *Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case [Writ Petitions Nos. 981-82 of 1984] and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words:*
>
> > *A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided*

in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

12. *In Gerard v. Worth of Paris Ltd. (k). [(1936) 2 All ER 905 (CA)], the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. [(1941) 1 KB 675], the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be*

treated as an ex cathedra statement, having the weight of authority.'

(emphasis supplied)

49. The principle in ***Gurnam Kaur*** (*supra*) found reiteration in ***State of U.P. v Synthetics and Chemicals Ltd.*****, (1991) 4 SCC 139** and ***A-One Granites v State of U.P.*****, (2001) 3 SCC 537**. We derive no pleasure in refusing to be bound by the *dicta* in ***Sobha Hymavathi Devi*** (*supra*), but upon careful analysis, we are clear that the observation in question therein was rendered *sub-silentio*.

50. Back to the facts, the records from the school where the Appellant's children study show them as members of the *Hindu-Parayan* caste. In the present time, which is a day and age of intrusive media, including social media, where public figures, including Judges, politicians and bureaucrats are under constant public gaze, it is not easy to hide one's religion or caste. The production of some photographs or some rituals which may have been performed by the Appellant, *nay*, even assuming they were actually performed by the Appellant, at the cost of repetition, can, in no manner, take the place of

evidence, especially when matters of the like herein are being considered by the Courts. In this regard, the High Court seems to have erred by shifting the burden of proof on the Appellant to prove in the negative the allegations. Further, even the entries in the Register are not conclusively established in the sense that they relate to the Appellant or his family members. Apropos this, the High Court has noticed many overwritings, edits and deletions *re* the purported names of the Appellant and his parents as alleged to have appeared in the Register. This has prompted the High Court to note that '*fabrication and correction*' were made to the entry(ies) in the Register(s). The High Court, on the whole, accepted whatever was presented by the Respondent and in such approach, disregarded and ignored the material lacuna in the pleadings of the Election Petition as also the evidence brought in by the Respondent. As far as marriage rites are concerned, *per se*, assuming a practice associated with one religion was followed/observed, the same, *ceteris paribus*, would not mean the person '*professes*' the said other religion.

51. The Respondent has relied on ***Hari Shanker Jain v Sonia Gandhi*** (*supra*) [3-Judge Bench], where it was held:

'***20.*** *Thus, looking at the scheme of the Citizenship Act, as also the judicial opinion which has prevailed ever since the enactment of the Citizenship Act, 1955, we are unhesitatingly of the opinion that in spite of a certificate of registration under Section 5(1)(c) of the Citizenship Act, 1955 having been granted to a person and in spite of his having been enrolled in the voters' list, the question whether he is a citizen of India and hence qualified for, or disqualified from, contesting an election can be raised before and tried by the High Court hearing an election petition, provided the challenge is based on factual matrix given in the petition and not merely bald or vague allegations.*

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34. *To sum up, we are of the opinion that a plea that a returned candidate is not a citizen of India and hence not qualified, or is disqualified for being a candidate in the election can be raised in an election petition before the High Court in spite of the returned candidate holding a certificate of citizenship by registration under Section 5(1)(c) of the Citizenship Act. A plea as to constitutional validity of any law can, in appropriate cases, as dealt with hereinabove, also be raised and heard in an election petition where it is necessary to decide the election dispute. The view of the law, stated by the learned designated Election Judge of the High Court of Allahabad cannot be sustained. To say the least, the proposition has been very widely stated in the impugned order of the High Court. However, in spite of answering these questions in favour of the appellants yet the election petitions filed by them cannot be directed to be heard and tried on merits as the bald and vague averments made in the election petitions do not satisfy the requirement of pleading material facts within the meaning of Section 82(1)(a) of RPA, 1951 read with the requirements of Order 7 Rule 11 CPC. The decision of the High Court dismissing the*

two election petitions at the preliminary stage, is sustained though for reasons somewhat different from those assigned by the High Court. The appeals are dismissed but without any order as to the costs.'

(emphasis supplied)

52. Interestingly, the specific answer in ***Hari Shanker Jain v Sonia Gandhi*** (*supra*) rested on what 5-Judge Benches (same *coram*) speaking through the learned A K Sarkar, J. (as he then was) had held in quick succession in ***State of A.P. v Abdul Khader*****, 1961 SCC OnLine SC 149** [14]; ***Ghaurul Hasan v State of Rajasthan*****, 1961 SCC OnLine SC 3**[15], and; ***Akbar Khan Alam Khan v Union of India*****, 1961 SCC OnLine SC 4**[16]. These three cases pertained to the Citizenship Act, 1955 (hereinafter referred to as the 'Citizenship Act'). ***Hari Shanker Jain v Sonia Gandhi*** (*supra*) at paragraph no.11 has noted ***Bhagwati Prasad Dixit v Rajeev Gandhi*****, (1986) 4 SCC 78**. In ***Bhagwati Prasad Dixit*** (*supra*), it was held held:

'***12.*** *In the circumstances it is difficult to agree with the view of the High Court that when a question whether a person has acquired the citizenship of another country arises before the High Court in an election petition filed under the Representation of the People Act, 1951 it would have jurisdiction to decide the said question*

[14] Decided on 04.04.1961.
[15] Decided on 05.04.1961.
[16] Decided on 05.04.1961.

notwithstanding the exclusive jurisdiction conferred on the authority prescribed under Section 9(2) of the Citizenship Act, 1955 to decide the question. Whatever may be the proceeding in which the question of loss of citizenship of a person arises for consideration, the decision in that proceeding on the said question should depend upon the decision of the authority constituted for determining the said question under Section 9(2) of the Citizenship Act, 1955.'

(emphasis supplied)

53. Undoubtedly, the 3-Judge Bench in ***Hari Shanker Jain v Sonia Gandhi*** (*supra*) was not bound by the 2-Judge Bench in ***Bhagwati Prasad Dixit*** (*supra*). However, there is a difference between a Certificate of Registration issued under Section 5(1)(c) of the Citizenship Act and a Community Certificate issued under Section 5 of the Kerala Act. The distinction being that under Section 5(1) of the Citizenship Act, the Central Government can register persons enumerated under clauses (a) to (g) thereof, as citizens of India. However, for a Caste/Community Certificate issued under Section 5 of the Kerala Act, before the issuance of such Certificate, the Competent Authority is obligated to follow the '*prescribed procedure*'. This '*prescribed procedure*' can be found in the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates

Rules, 2002, Rule 4 whereof mandates that the Competent Authority conduct '*such enquiry, as it may deem fit*'. As can be seen from Section 14 of the Kerala Act, the Competent Authority has powers of a Civil Court, including to record oral evidence as also order production of documents.

54. Therefore, the view in ***Hari Shanker Jain v Sonia Gandhi*** (*supra*) about the permissibility of going into the citizenship of a candidate in an Election Petition will have no applicability to an Election Petition wherein the candidate possesses a Caste/Community Certificate issued after the observance of the due process of law, including but not limited to an enquiry, as prescribed under the relevant statute.

55. Insofar as ***Punit Rai*** (*supra*) is concerned, it turned on its set of facts and does not aid the Respondent's case. It is desirable, at this juncture, to notice certain observations by this Court in ***M. Chandra*** (*supra*):

> '***79.*** *It is a settled legal position that an election petition must clearly and unambiguously set out all the material facts which the petitioner is to rely upon during the trial, and it must reveal a clear and complete picture of the circumstances and should*

disclose a definite cause of action. In the absence of the above, an election petition can be summarily dismissed. To see whether material facts have been duly disclosed or whether a cause of action arises, we need to look at the averment and pleadings taken up by the party.

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82. *An election petition challenging the election of a returned candidate on the grounds of corrupt practices is not a criminal proceeding; but it is no less than a criminal proceeding with regard to the proof required to be furnished to the court by the petitioner (see J. Chandrasekhara Rao v. V. Jagapathi Rao [1993 Supp (2) SCC 229]). Though, in the present case, the charges are not those of corrupt practices, they are not any lesser in terms of seriousness; hence the burden of proof is on the election petitioner to prove the charges he has made beyond reasonable doubt. This is done so that the purity of the election process is maintained.*

83. *The testimonies of the witnesses for the election petitioner do not qualify the test laid down in the Evidence Act, to make the evidence admissible. It does not inspire any confidence. The evidence is clearly hearsay. As stated above, the opinion of the High Court is heavily relied on the fact that the burden of proof had been discharged and shifted to the appellant to prove that she had indeed renounced Christianity. We do not approve of the reasoning of the High Court to adopt this line of thinking. The burden of proof lay squarely on the election petitioner to show that the appellant indeed practised and professed Christianity. In any event, the evidence put forward by the appellant is consistent and reliable as it has relied on the testimony of the people who have actually visited the house of the appellant or attended her*

wedding or been in close proximity with her and her husband's family.

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85. *There is nothing on record to show that the community certificate was issued illegally or in contravention of the valid procedure. The election petitioner should have examined the person in charge while the certificate was being issued to bring to light any alleged malpractice in the issuance of the said certificate. The validity of the issuance of the community certificate is presumed unless shown otherwise by Respondent 1, who clearly failed to do so. It is also baffling to note that the conversion certificate from the Arya Samaj was not examined in detail by the respondents in spite of the High Court making a strong observation in this regard. No proof by way of documents or oral evidence was provided to show how the certificate was granted and what procedure was followed. It is also pertinent to mention that no one raised any objection to the appellant filing her nomination for the assembly elections in 2006 from the reserved constituency. All the issues have been raised after the appellant won the election from Rajapalayam Constituency.*'

(emphasis supplied)

56. In ***Kalyan Singh Chouhan*** (*supra*), the Court stated, after noticing various earlier pronouncements:

'***19.*** *Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the*

parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide Sri Mahant Govind Rao v. Sita Ram Kesho [(1897-98) 25 IA 195], Trojan & Co. v. Nagappa Chettiar [(1953) 1 SCC 456: AIR 1953 SC 235], Raruha Singh v. Achal Singh [AIR 1961 SC 1097], Om Prakash Gupta v. Ranbir B. Goyal [(2002) 2 SCC 256: AIR 2002 SC 665], Ishwar Dutt v. Collector (L.A.) [(2005) 7 SCC 190: AIR 2005 SC 3165] and State of Maharashtra v. Hindustan Construction Co. Ltd. [(2010) 4 SCC 518: (2010) 2 SCC (Civ) 207])

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***28.** Therefore, in view of the above, it is evident that the party to the election petition must plead the material fact and substantiate its averment by adducing sufficient evidence. The court cannot travel beyond the pleadings and the issue cannot be framed unless there are pleadings to raise the controversy on a particular fact or law. It is, therefore, not permissible for the court to allow the party to lead evidence which is not in the line of the pleadings. Even if the evidence is led that is just to be ignored as the same cannot be taken into consideration.*'

(emphasis supplied)

57. From the totality of the afore-extracts, it is vivid that an Election Petitioner is obligated to plead and prove his case beyond reasonable

doubt. In the case at hand, the Competent Authority who issued the Caste Certificate was not examined – this should have been sought for by the Respondent, moreso *per* ***M. Chandra*** (*supra*). Although even that would not take the Respondent's case too far, adjudged on the anvil of the afore-scrutiny undertaken by us. Admittedly, no prayer was made in the Election Petition to set aside the Caste Certificate(s) of the Appellant.

58. The Respondent's Election Petition falls short of the standards prescribed, *inter alia*, in ***M. Chandra*** (*supra*) and ***Kalyan Singh Chouhan*** (*supra*). We hold that the Appellant, therefore, retained the *Hindu Parayan* caste, as a member of the Hindu religion, when he contested from the Devikulam Legislative Assembly Constituency.

59. As a result, the appeal is allowed. The Impugned Judgment rendered by the High Court is set aside; the Election Petition shall stand dismissed. The Appellant is entitled to all consequential benefits as a Member of the Legislative Assembly for the entire period from the date of oath.

60. Upon serious deliberation, we refrain from passing any order apportioning costs. As the appeal has been finally decided, pending I.A.s stand consigned to records.

61. Registry to forthwith act in terms of Section 116-C(2) of the Act.

62. We clarify that we have not opined on the legality or otherwise of the Caste/Community Certificate(s) held by the Appellant. Our view herein is not determinative of its validity or invalidity. Any challenge thereto, if and when raised in accordance with law, shall be considered on its own merits.

63. In ***Lillykutty v Scrutiny Committee, SC & ST*****, (2005) 8 SCC 283** [2-Judge Bench], the appellant therein, who had gotten elected to the Thannithode Gram Panchayat as a 'Scheduled Caste' candidate, was found, ultimately, to not be a member of the Scheduled Castes by the Scrutiny Committee constituted under Section 8 of the Act. The Division Bench of the High Court upheld the decision of the Scrutiny Committee. Before this Court in appeal, an additional point was raised which was left open as under:

'***16.*** *As late as on 2-9-2005, the appellant filed IA No. 2 permitting her to raise additional grounds. Apart from relying on certain decisions of this Court, the appellant sought leave to raise the contention that in view of Article 243-O of the Constitution and Section 153(14) of the Kerala Panchayat Raj Act, 1994, it was not open to Respondents 1, 2 and 4 to enquire into the eligibility or status of the appellant. It was also contended that the only remedy available to Respondent 3 was to file an election petition. The counsel submitted that the order passed by the Scrutiny Committee for verification of community certificates and confirmed by the High Court requires to be set aside on these additional grounds also.*

17. *The learned counsel for the respondents objected to the application submitted by the appellant at this stage. It was stated that these grounds were neither taken before the Scrutiny Committee nor before the High Court. At this stage, such new plea should not be allowed to be raised. Even otherwise, the appellant is not right in relying on Article 243-O of the Constitution or Section 153(14) of the Kerala Panchayat Raj Act as they do not apply to the present case. According to the respondents, the order passed by the Scrutiny Committee was legal, lawful and in accordance with law, which was confirmed by the High Court and this Court is considering whether those orders are in consonance with law.*

18. *From the orders impugned, it is clear that the plea sought to be taken by the appellant now was never taken earlier. There is, therefore, no pleading on the point, nor finding recorded on such plea. We are prima facie of the view that learned counsel for the respondents are right in submitting that the issue was whether the appellant belonged to the Hindu Pulayan Scheduled Caste Community. Once it is held that she did not belong to the Scheduled Caste, the action of*

cancellation of certificate could not be held illegal. Consequential actions can be taken thereafter in pursuance of cancellation of caste certificate.

19. *In the facts and circumstances of the case, however, it is not necessary to deal with the contention sought to be raised by the appellant since it was never raised earlier. The application, accordingly, stands disposed of without expressing final opinion on applicability or otherwise of Article 243-O*[17] *of the Constitution or Section 153(14)*[18] *of the Kerala Panchayat Raj Act, 1994.*'[19]

(emphasis supplied)

64. We deem it appropriate to clarify the position in the wake of the present Judgment. A duly issued Caste/Community Certificate would be amenable to challenge only under the provisions of the statute concerned, and not in an Election Petition. In case no statute governing the field in a State/Union Territory is operative, the ***Madhuri Patil*** (*supra*) guidelines, as modified in ***Dayaram*** (*supra*), shall be followed.

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[17] ***243-O. Bar to interference by courts in electoral matters***.—*Notwithstanding anything in this Constitution,—*

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-K, shall not be called in question in any court;
(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

[18] ***153. Election of President and Vice-President.***
…
(14) Where a dispute arises as to the validity of an election of President or Vice-President of a Panchayat, any member of that Panchayat may file a petition.
…

[19] The learned Thakker, J. wrote for the Court, which was supplemented by the learned Sinha, J.

65. Insofar as the constitutional bar, or any analogous provision thereto, adverted to in ***Lillykutty*** (*supra*) is concerned, we feel no need to dwell thereupon inasmuch as the interplay between such bar(s) and the exercise of writ jurisdiction under Article 226 of the Constitution or by this Court has been dealt with in a number of precedents, referred to in ***Union Territory of Ladakh v Jammu and Kashmir National Conference*****, 2023 INSC 804**, specifically at paragraph no.36 thereof.

.....J.
[ABHAY S. OKA]

.....J.
[AHSANUDDIN AMANULLAH]

.....J.
[AUGUSTINE GEORGE MASIH]

NEW DELHI
MAY 06, 2025