

A LATE BUT RIGHT CALL BY KERALA GOVERNOR

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Kerala Governor Arif Mohammed Khan | Photo Credit: The Hindu

Before finally agreeing to reinstate former Minister Saji Cherian into the Cabinet, Kerala Governor Arif Mohammed Khan had left everyone guessing when he decided to seek legal advice before arriving at the decision.

It is a requirement under Article 163 of the Constitution that there shall be a Council of Ministers headed by the Chief Minister to aid and advise the Governor in the exercise of his functions. The Chief Minister shall be appointed by the Governor, who shall also appoint the other Ministers on the advice of the Chief Minister. All Ministers shall hold office during the pleasure of the Governor (Article 164). Citing this, Mr. Khan had earlier threatened to drop the Ministers who had allegedly insulted him in public. Later on, it was pointed out that such a step cannot be taken, and the "pleasure doctrine" cannot be stretched too far.

Saji Cherian, elected from Chengannur constituency under a CPI(M) ticket, was inducted as the Minister for Fisheries, Culture and Youth Affairs into the second Pinarayi Vijayan government. He was made to resign from the Cabinet as a result of a speech he made to his party workers criticising the Constitution.

He had apparently said: "We claim that our Constitution is the most beautiful one. I would say that the Indian Constitution is something that can loot the maximum number of people in the country. Something that the British dictated was written down verbatim as the Indian Constitution."

Following strong inner party criticism, the party decided to reinstate Mr. Cherian as Minister and wrote to the Governor to allot time for the swearing-in ceremony. It was widely reported that Mr. Khan was reluctant to give a date and he was consulting his lawyers on this issue.

Can the Governor refuse to administer the oath to the Minister, and will it be justified? It is provided in Article 164(3) that the Governor shall administer the oaths of office and secrecy to a Minister before he assumes office. The Schedule III of the Constitution lays out the oath of office and oath of secrecy for a Minister of a State. For a person to become a Minister, he must be a Member of the Legislature of the State, and if the State has a legislative council, he can also be a member of that council and should not have suffered any disqualification provided under the Constitution.

It is also a requirement that the council of ministers shall be collectively responsible for the Legislative Assembly of the State. In this case, the concerned Minister had taken an oath (similar to that of a minister) when he got elected as an MLA from Chengannur and has not suffered any disqualification for his so-called anti-constitutional speech.

After the 1952 elections in the Madras Province, when the Congress Party did not have an absolute majority, and the legislature party also could not elect a leader, the high command announced the induction of Rajaji as the Chief Minister when he was neither MLA nor MLC.

However, the then Governor Sri Prakasa nominated him as an MLC and administered oath even without the convening of the legislative council. Though P. Ramamurthy, an Opposition leader, filed a writ petition before the High Court of Madras challenging the move, the petition was dismissed saying that he does not have locus standi to question it.

The oaths are prescribed under Schedule III for various constitutional posts, including Ministers and judges, and without it, one cannot assume office. If the authority empowered to administer the oath refuses to do so, what should subsequently happen is a question that has come up before the courts.

In April 1978, Vasantha Pai, a Senior Advocate got elected as a Member of the Tamil Nadu Legislative Council from the graduate constituency. It is a requirement under Article 188 that he be administered the oath by the Governor or a person appointed on his behalf under Schedule III.

For some reason, he did not want to take oath before the Pro tem Chairman who was nominated by the Governor. He met the then Governor of Tamil Nadu and informed him that he would like to be administered oath by him. As he did not get any answer, he sent a telegram asking him to fix a date for the oath.

Later on, the petitioner sent his oath in the form prescribed in Schedule III duly signed by him in duplicate to the Governor, along with a covering letter in which he stated that he is sending the oath in view of the delay in administering it. Referring to Article 188, he said it was the sacred Constitutional duty of the Governor to administer oath and stated that no red tape or bureaucracy should be permitted to obstruct it.

Thereafter he filed a writ petition before the Madras High Court seeking a declaration that he has complied with the constitutional requirement of having to take oath before assuming office. The court allowed his case and he entered the legislative council successfully (Vasantha Pai, July 1978).

Thus, had Arif Khan refused to administer oath to Saji Cherian, all he had to do was to write a registered letter to the Governor signing the oaths of office and secrecy and later move the High Court of Kerala for appropriate declaratory relief. Taking oath is a requirement under law, but should the Governor not give an audience, it does not prevent the office holder from entering office. After all, the procedure is only handmade.

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