

Priyamvada Shenoy  
**Raja Ram Pal vs. The Hon'ble Speaker,  
Lok Sabha and Ors<sup>1</sup>**

### **§1. Introduction**

Before we consider the facts, issues and the principles laid down in this case, it would be necessary to have a comparative analysis of the system of judicial pronouncements in relation to procedural and substantive aspects under different judicial systems. In India the judgments are generally very long unlike in the French and the German legal systems. The judgment of the Apex Court in the instant case is exhaustive and extends into approximately 175 pages. The judgment includes every fact pertaining to the case, the contentions raised by either parties, every law that is applicable, the opinion of the judge along with extracts from other relevant cases which forms the *obiter dicta*<sup>2</sup> and the principle laid down which is called the *ratio decidendi*<sup>3</sup>. Another distinct feature of the India Judicial systems is that judicial precedents of higher courts are binding on the subordinate courts and are a dynamic and constantly evolving source of law. In this case there is a reference of other pronouncements of the Supreme Court of India.

### **§2. Background and Context**

In the instant case the primary question before the court was whether in exercise of the powers, privileges and immunities of the members of the Parliament, are the Houses of Parliament competent to expel their respective Members from membership of the House. If such a power exists, is it

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<sup>1</sup> *JT2007(2)SC1 / (2007)3SCC184*

<sup>2</sup> “*obiter dicta*” in simple words is defined as the passing references, reflections and observations made by the judges which though are not directly incidental or pertinent to the material basis of a case but may be looked upon as guiding principles for better understanding of the facts and circumstances in a given context.”

<sup>3</sup> “*Ratio decidendi* is defined as the actual operative principles of law laid down by the judiciary while deciding a case which is binding upon courts in future cases.”

subject to judicial review and if so, the scope of such judicial review and whether the court has the jurisdiction to try such a case.

The aforesaid questions have arisen against the allegation that the Members of Parliament (MPs) indulged in unethical and corrupt practices of accepting monetary consideration in relation to their functions as MPs.

### §3. Brief Facts of the Case

The facts of this case proceed as follows. A private channel had telecast a program on 12th December, 2005 depicting 10 MPs of House of People (Lok Sabha)<sup>4</sup> and one of Council of States (Rajya Sabha)<sup>5</sup> accepting money, directly or through middleman, as consideration for raising certain questions in the House or for otherwise espousing certain causes for those offering the lucre. This led to extensive publicity in the media. The Presiding Officers of each House of Parliament instituted inquiries through separate Committees. Another private channel telecast a program on 19th December, 2005 alleging improper conduct of another MP of Rajya Sabha in relation to the implementation of Member of Parliament Local Area Development Scheme ('MPLAD' Scheme for short). This incident was also referred to a Committee.

The Report of the inquiry concluded, inter alia, that the evidence against the 10 members of Lok Sabha was incriminate; the plea that the video footages were doctored/morphed/edited had no merit; there was no valid reason for the Committee to doubt the authenticity of the video footage; the allegations of acceptance of money by the said 10 members had been established which acts of acceptance of money had a direct connection with the work of Parliament and constituted such conduct on their part as was unbecoming of Members of Parliament and also unethical and calling for strict action.

Such an act of the MP's of acceptance of money by MPs for raising questions in the House had eroded the credibility of Parliament as an institution and a pillar of democracy in this country and recommended expulsion of the 10 members from the membership of Lok Sabha finding that their continuance as Members of the House would be untenable.

On the Report of the Inquiry Committee being laid on the table of the House, a Motion was adopted by Lok Sabha resolving to expel the 10 members from the membership of Lok Sabha,

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<sup>4</sup> Lok Sabha and Rajya Sabha are the two houses of the Parliament. Article 83- Lok Sabha consists of members directly elected by the people from each constituency i.e. territorial divisions for a term of five years.

<sup>5</sup> Article 80 Rajya Sabha consists of members elected by the State legislative assemblies and persons nominated by the President from different fields like art, culture etc elected through indirect franchise.

In the Writ Petitions/Transfer Cases<sup>6</sup>, the expelled MPs have challenged the constitutional validity of their respective expulsions.

Almost a similar process was undertaken by the Rajya Sabha in respect of its Member. The matter was referred to the Ethics Committee of the Rajya Sabha. As per the majority Report, the Committee found that the Member had accepted money for tabling question in Rajya Sabha and the plea taken by him in defence was untenable in the light of evidence before it. The Report of the Ethics Committee found that after viewing the unedited footage, the Committee was of the view that it was an open and shut case as Member had unabashedly and in a professional manner demanded commission for helping the so-called NGO to set up projects in his home state/district and to recommend works under MPLAD Scheme. The Committee came to the conclusion that the conduct of the Member amounts to violations of Code of Conduct for Members of Rajya Sabha and it is immaterial whether any money changed hands or not or whether any commission was actually paid or not.

#### **§4. Legal Provisions in this Regard**

*Article 105 of the Constitution provides powers, privileges, etc. of the Houses of Parliament and of the members and committees thereof. They are as follows.*

All the members of the parliament shall have freedom of speech in Parliament. No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings. And such privileges as may from time to time be defined by Parliament by law.

These above mentioned provisions apply in relation to persons who as members of Parliament or otherwise have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

There is identical provision as contained in Article 194 of the Constitution relating to powers, privileges and immunities of State legislatures and of the members and committees thereof.

Article 105 of the Indian Constitution has its origin in the Common law. Article 105(3) underwent a change in terms of Section 15 of the Constitution (44th Amendment) Act, 1978. In Before the amendment in 1978, Clause (3) of Article 105 read as under:

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<sup>6</sup> Writ petition is a remedy under the constitution to approach the Supreme Court directly for the Violation of any fundamental rights under Article 32.

In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

#### **§5. Arguments Advanced by the Parties**

*The parties raised the following arguments during the course of the proceeding.* The petitioners submitted that all the powers, privileges or immunities, as vested on the date of commencement of the Constitution of India, in the House of Commons of the Parliament of United Kingdom had not been inherited by the legislatures in India under Article 105(3) of the Constitution.

The main contention urged is that power and privilege of expulsion was exercised by the House of Commons as a facet of its power of self-composition and since such power of such self-composition has not been given by the Constitution to Indian legislature, it did not inherit the power to expel its members. The contention is that expulsion is necessarily punitive in nature rather than remedial and such power vested in House of Commons as a result of its power to punish for contempt in its capacity as a High Court of Parliament and since this Status was not accorded to Indian Legislature, the power to expel could not be claimed by the Houses of Parliament under Article 105(3). It is also their contention that power to expel cannot be asserted through Article 105(3) also for the reason that such an interpretation would come in conflict with other constitutional provisions.

The contentions of the petitioners can be summarized thus:

- (i) The power of judicial review is an incident of and flows from the concept that the fundamental and higher laws are the touchstone of the limits of the powers of the various organs of State which derive power and authority under the Constitution of which the judicial wing is the interpreter;
- (ii) In a federal State with a written Constitution like India is, the supremacy of the Constitution is fundamental to its existence, which supremacy is protected by the authority of the independent judicial body that acts as the interpreter thereof through the power of judicial review to which even the Legislature is amenable and cannot claim immunity wherefrom;
- (iii) The legislative supremacy being subject to the Constitution, Parliament cannot determine for itself the nature, scope and effect of its powers which are, consequently, subject to the supervision and control of judicial organ;
- (iv) The petitioners would also point out that, the status of Legislature in India has never been that of a superior court of record and that even privileges of Parliament are subject to limits which must necessarily be

ascertainable and, therefore, subject to scrutiny by the Court, like any other right.

(v) The validity of any proceedings even inside a legislative chamber can be called in question before the Court when it suffers from illegality and unconstitutionality and there is no immunity available to Parliament from judicial review.

The petitioners further contended that the Houses of Parliament had no power of expulsion of a sitting member.

(i) The Legislature has no power to expel its member since the Parliament has not enacted any law which provides for expulsion of a member

(ii) The expulsions are illegal, arbitrary and unconstitutional, being violative of the provisions of Articles 83<sup>7</sup>, 84 and 101 to 103, 105 and 190 to 193 of the Constitution;

(iii) There is no provision either in the Constitution of India or in the Rules of Procedure and Conduct of Business of the Houses of Parliament for expulsion of a member by adoption of a motion and thus the impugned acts were beyond the jurisdiction of Parliament;

(iv) The expulsion of the petitioners from the Legislature through a motion adopted by simple majority was a dangerous precedent.

(v) The Constitutional law governing the democracies the world over, even in other jurisdictions governed by written Constitutions, would not allow the power of exclusion of the elected members unto the legislative chamber.

vi) Claiming that they were innocent and had been falsely trapped, by the persons behind the so-called sting operation who had acted in a manner actuated by mala fides and greedy intent for cheap publicity and wrongful gains bringing the petitioners into disrepute, the Petitioners question the procedure adopted by the two Houses of Parliament alleging that it suffered from gross illegality (as against procedural irregularity) calling for judicial interference.

The two Houses of Parliament, through their respective secretariats, have chosen not to appear in the matter. The impugned decisions are, however, sought to be defended by the Union of India. The actions of expulsions are matters within the inherent power and privileges of the Houses of Parliament. It is a privilege of each House to conduct its internal proceedings within the walls of the House free from interference including its right to impose disciplinary measures upon its members. The power of

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<sup>7</sup> Rajya Sabha is a permanent body, not subject to dissolution, its continuance being ensured by replacements of one third of the members who retire on the expiration of every second year.

the Court to examine the action of a House over outsider in a matter of privilege and contempt does not extend to matters within the walls of the House over its own members. That the Constitution is the Supreme lex in this Country is beyond the pale of any controversy. All organs of the State derive their authority, jurisdiction and powers from the Constitution and owe allegiance to it.

The Constitution permits, through Article 118 and Article 208 and the Rules of Procedure and Conduct of Business in Lok Sabha”, the Legislature at the Centre and in the States respectively, the authority to make rules for regulating their respective procedure and conduct of business.

*Court's Jurisdiction to decide on the scope of Article 105(3)*

There was virtually a consensus from both parties that it lies within the powers and jurisdiction of this Court. Furthermore that dispute can never arise in this country for here it is undoubtedly for the courts to interpret the Constitution and, therefore, Article 194(3).

The plaintiff seemed to suggest that Ministers, answerable to a Legislature were governed by a separate law which exempted them from liabilities under the ordinary law. Our Constitution leaves no scope for such arguments, based on a confusion concerning the "powers" and "privileges" mentioned in Articles 105(3) and 194(3). Our Constitution vests only legislative power in Parliament as well as in the State Legislatures. The Parliament or State Legislature cannot try anyone or any case directly, as a Court of Justice can, but it can proceed quasi-judicially in cases of contempts of its authority and take up motions concerning its "privileges" and "immunities" because, in doing so, it only seeks removal of obstructions to the due performance of its legislative functions. But, if any question of jurisdiction arises as to whether a matter falls here or not, it has to be decided by the ordinary courts in appropriate proceedings.

The term 'privilege in law' is defined as immunity or an exemption from some duty, burden, attendance or liability conferred by special grant in derogation of common right. The term is derived from an expression 'privilegium' which means a law specially passed in favour of or against a particular person.

The Constitution-makers attached so much importance to the necessity of absolute freedom in debates within the legislative chambers that they thought it necessary to confer complete immunity on the legislators from any action in any court in respect of their speeches in the legislative chambers

In dealing with the effect of the provisions contained in Article 194, wherever it appears that there is a conflict between the said provisions and the provisions pertaining to fundamental rights, an attempt will have to be

made to resolve the said conflict by the adoption of the rule of harmonious construction.

It must, therefore, be held as beyond the pale of all doubts that neither Parliament nor State Legislatures in India can assert power to provide for or regulate their own constitution in the manner claimed by the House of Commons in United Kingdom. Having regard to the elaborate provision made elsewhere in the Constitution, this power cannot be claimed even, or least of all, through the channel of Articles 105(3) or 294(3).

In *UP Assembly Case* as mentioned above and which include "determining the qualifications of its members in cases of doubt". The House has a right to determine the qualifications "in case of doubt" which clearly shows that this statement does not mean unfitness to be a member by conduct

#### **§6. Power of Expulsion.**

Although the House of Commons has delegated its right to be the judge in controverted elections, it retains its right to decide upon the qualifications of any of its members to sit and vote in Parliament.

The expulsion of a member from the House of Commons is effected by means of a resolution, submitted to the House by means of a motion upon which the question is proposed from the chair in the usual way.

Halsbury,<sup>8</sup> made express mention of the sanctions that included reprimand, admonition and the power to commit to imprisonment for contempt but omitted reference to power of expulsion. The submission made is that this omission renders doubtful the plea that expulsion from the House of Commons is also within its penal jurisdiction and is imposed as a measure of punishment for contempt.

The House of Commons still retains the right to pronounce upon legal qualifications for membership, and to declare a seat vacant on such ground. The House of Commons cannot, of course, create disqualifications unrecognised by law, but it may expel any member who conducts himself in a manner unfit for membership. Expulsion is the only method open to the House of dealing with a member convicted of a misdemeanour.

The next question that we need to decide is whether the Indian parliament has the power of expulsion in relation to the power to punish for contempt. It is the contention of the petitioners that the Parliament cannot claim the larger punitive power to punish for contempt.

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<sup>8</sup> Third edition of Volume 28 (Part 7, Section 3), dealing with the "Penal Jurisdiction of the two Houses" in matters of "Breaches of Privileges and Contempts"

According to the Petitioners, the full, punitive power of the House of Commons is not available; rather the legislatures in India can exercise only limited remedial power to punish for contempt.

On the other hand, the Respondents have argued that the power to punish for contempt is available to the Parliament in India as they are necessary powers. It was submitted that the power to punish for contempt is a power akin to a judicial power and it is available to the Parliament without it being the High Court of Record. Further, it was submitted that the Parliament has all such powers as are meant for defensive or protective purposes.

The respondents have referred to the case of *Yeshwant Rao v. MP Legislative Assembly*, decided by the Madhya Pradesh High Court. This case involved the expulsion of two members of the State Legislative Assembly for obstructing the business of the House and defying the Chair. This expulsion was challenged in the High Court. It was argued that the House had no power to expel as the power to expel in England. It was also argued by the Petitioners in that case that the resolutions expelling them were passed without giving them an opportunity to explain the allegations. The High Court dismissed the petition holding that it had the limited jurisdiction to examine the existence of the power to expel and found that the House did in fact have this power.

The case of *Hardwari Lal v. Election Commission of India etc.*<sup>9</sup> also related to expulsion of a sitting member from the legislative assembly of the State. The majority decision in that case held that the Legislative Assembly does not have the power to expel. The ratio in that case was identical to the arguments of the petitioners before us in the present case. The minority view in the case was, however, that the Legislative Assembly did have the power to expel as well as the power to punish for contempt. This view has been commended by the respondents to us as the correct formulation of law.

The case of *K. Anbashagan v. Tamil Nadu Legislative Assembly* It was held by Madras High Court that the power of expulsion is available as a method of disciplining members. However, at no point did the Court examine the power to punish for contempt. The Court upheld the power of expulsion independently of the contempt jurisdiction.

The House, and indeed all the Legislative Assemblies in India never discharged any judicial function and constitutional background does not support the claim that they can be regarded as Courts of Record in any sense.

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<sup>9</sup> ILR (1977) P&H 269

In the case of *State of Karnataka v. Union of India*, apart from an impeachment, which has become obsolete, or punishment for contempts of a House, which constitute only a limited kind of offences, the Parliament does not punish the offender. They are powers which depend upon and are necessary for the conduct of the business of each House. The Parliament as well as each Legislature of a State in India enjoys only such legislative powers as the Constitution confers upon it. A House of Parliament or State Legislature cannot try anyone or any case directly, as a Court of Justice can, but it can proceed quasi-judicially in cases of contempts of its authority and take up motions concerning its "privileges" and "immunities" because, in doing so, it only seeks removal of obstructions to the due performance of its legislative functions.

The petitioners also relied on the case of *Hardwari Lal* that the resolution adopted on 7th May 1981 by *Lok Sabha* clearly shows that resort to expulsion of a sitting elected member of the House was against parliamentary rules, precedents and conventions and an act of betrayal of the electorate and abuse by brute majoritarian forces. The learned Counsel would submit that *Lok Sabha* had itself resolved that the proceedings of the Privileges Committee and of the House in the case of expulsion of Mrs. Gandhi, the then Prime Minister shall not constitute a precedent in the law of parliamentary privileges. They argue that in the teeth of such a resolution, it was not permissible for the Parliament to have again resolved in December 2005 to expel the petitioners from the membership of the two Houses

If Article 21<sup>10</sup> applies, Article 20<sup>11</sup> may conceivably apply, and the question may arise, if a citizen complains that his fundamental right had been contravened either under Article 20 or Article 21, can he or can he not move this Court under Article 32? For the purpose of making the point which we are discussing, the applicability of Article 21 itself would be enough. If a citizen moves this Court and complains that his fundamental right under Article 21 had been contravened, it would plainly be the duty of this Court to examine the merits of the said contention, and that inevitably raises the question as to whether the personal liberty of the citizen has been taken away according to the procedure established by law. In fact, this question was actually considered by this Court in the case of *Pandit*

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<sup>10</sup> Fundamental right of Life and Personal Liberty. No person shall be denied his right to life and personal liberty except by procedure prescribed by law. Post 1978, the courts have given wide amplitude to article 21 and interpreted it to include numerous rights not enshrined categorically under the part III of the constitution.

<sup>11</sup> Protection against ex-post facto laws, double jeopardy and self-incrimination.

*Sharma*.<sup>12</sup> The answer was made in favour of the legislature. In our opinion, therefore, the impact of the fundamental constitutional right conferred on Indian citizens by Article 32 on the construction of the latter part of Article 194(3) is decisively against the view that a power or privilege can be claimed by the House, though it may be inconsistent with Article 21. In this connection, it may be relevant to recall that the rules which the House has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution under Article 208(1).

The hollowness of the proposition of total immunity of the action of the legislatures in such matters is brought out vividly in the following words:

It would indeed be strange that the Judicature should be authorised to consider the validity of the legislative acts of our legislatures, but should be prevented from scrutinising the validity of the action of the legislatures trespassing on the fundamental rights conferred on the citizens. This is not to say that the courts have no role to play in the debate which arises where individual rights are alleged to conflict with parliamentary privilege.

When the cases of *Pandit Sharma* and *UP Assembly* were decided, Article 21 was construed in a limited sense, mainly on the strength of law laid down in *A.K. Gopalan v. State of Madras*<sup>13</sup>, in which a Constitution Bench of this Court had held that operation of each Article of the Constitution and its effect on the protection of fundamental rights was required to be measured independently. The law underwent a total transformation when a Constitution Bench (11 Judges) in *Rustom Cavasjee Cooper v. Union of India* held that all the provisions of the Constitution are required to be read conjointly as to the effect and operation of fundamental rights of the citizens when the State action infringed the rights of the individual.

The validity of the State action must be adjudged in the light of its operation upon the rights of the individuals or groups of individuals in all their dimensions. It is the effect of the law and of the action upon the right which attracts the jurisdiction of the court to grant relief. In *Maneka Gandhi case*<sup>14</sup> it was held that different articles in the chapter of fundamental rights of the Constitution must be read as an integral whole, with possible overlapping of the subject-matter of what is sought to be protected by its various provisions particularly by articles relating to fundamental rights contained in Part III of the Constitution do not represent entirely separate streams of rights which do not mingle at many points. They are all parts of

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<sup>12</sup> (1959) Supp. 1 SCR 806.

<sup>13</sup> 1950 SCR 88

<sup>14</sup> (1978) 1 SCC 248

an integrated scheme in the Constitution. The fundamental rights protected by Part III of the Constitution, out of which Articles 14, 19 and 21 are the most frequently invoked to test the validity of executive as well as legislative actions when these actions are subjected to judicial scrutiny.

It is to be remembered that the plenitude of powers possessed by the Parliament under the written Constitution is subject to legislative competence and restrictions of fundamental rights and that in case a member's personal liberty was threatened by imprisonment of committal in execution of Parliamentary privilege, Article 21 would be attracted.

It is the contention of the learned Counsel for Union of India that it should be left to the wisdom of the legislature to decide as to on what occasion and in what manner the power is to be exercised especially as the Constitution gives to it the liberty of making rules for regulating its procedure and the conduct of its business. He would refer to Article 122(1) to argue that the validity of proceedings in Parliament is a matter which is expressly beyond the gaze of, or scrutiny by, the judicature. It has been the contention on behalf of the Union of India that the principle of exclusive cognizance of Parliament in relation to its privileges under Article 105 constitutes a bar on the jurisdiction of the Court which is of equal weight as other provisions of the Constitution and, therefore, the manner of enforcement of the privilege cannot be tested on the touchstone of other such constitutional provisions, also in view of the prohibition contained in Article 122.

The validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. Article 212 of the Constitution is a complete answer to this part of the contention raised on behalf of the petitioner. No Court can go into those questions which are within the special jurisdiction of the Legislature itself, which has the power to conduct its own business.

Our legislatures have undoubtedly plenary powers, but these powers are controlled by the basic concepts of the written Constitution itself and can be exercised within the legislative fields allotted to their jurisdiction. legislative supremacy of our legislatures including the Parliament is normally controlled by the provisions contained in Part III of the Constitution. If the legislatures step beyond the legislative fields assigned to them, or acting within their respective fields, they trespass on the fundamental rights of the citizens in a manner not justified by the relevant articles dealing with the said fundamental rights, their legislative actions are liable to be struck down by courts in India. In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign. It is no doubt true that the Constitution itself can be amended by the Parliament, but that is possible because Article 368 of the Constitution itself makes a provision in that behalf, and the amendment of

the Constitution can be validly made only by following the procedure prescribed by the said article.

The case of *Sub-Committee on Judicial Accountability v. Union of India*

But where, as in this country and unlike in England, there is a written Constitution which constitutes the fundamental and in that sense a "higher law" and acts as a limitation upon the legislature and other organs of the State as grantees under the Constitution, the usual incidents of parliamentary sovereignty do not obtain and the concept is one of 'limited government'. Judicial review is, indeed, an incident of and flows from this concept of the fundamental and the higher law being the touchstone of the limits of the powers of the various organs of the State which derive power and authority under the Constitution and that the judicial wing is the interpreter of the Constitution and, therefore, of the limits of authority of the different organs of the State.

Article 311 relates to the dismissal, removal etc. of persons employed in civil capacities under the Union or a State. The second proviso to Article 311(2) empowers the President or the Governor, as the case may be, to dispense with the enquiry generally required to be held, upon satisfaction that in the interest of the security of the State it is not expedient to hold such enquiry. Article 311(3) gives finality to such decision in the following manner:

If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

In *Kihoto Hollohan* Where there is a lis - an affirmation by one party and denial by another - and the dispute necessarily involves a decision on the rights and obligations of the parties to it and the authority is called upon to decide it, there is an exercise of judicial power. This attracts an immunity from mere irregularities of procedures.

The finality clause does not completely exclude the jurisdiction of the courts under Articles 136, 226 and 227 of the Constitution. The courts have applied the test whether the impugned action falls within the jurisdiction of the authority taking the action or it falls outside such jurisdiction. An ouster clause confines judicial review in respect of actions falling outside the jurisdiction of the authority taking such action but precludes challenge to such action on the ground of an error committed in the exercise of jurisdiction vested in the authority because such an action cannot be said to be an action without jurisdiction. An ouster clause attaching finality to a determination, therefore, does oust certiorari to some extent and it will be effective in ousting the power of the court to review the decision of an inferior tribunal by certiorari if the inferior tribunal has not acted without jurisdiction and has merely made an error of law which does

not affect its jurisdiction and if its decision is not a nullity for some reason such as breach of rule of natural justice.

In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman, the scope of judicial review under Articles 136, and 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.

The Tenth Schedule does not, in providing for an additional grant (sic ground) for disqualification and for adjudication of disputed disqualifications, seek to create a non-justiciable constitutional area. But the concept of statutory finality does not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution insofar as infirmities based on violations of constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity, are concerned.

In answer to the above submissions, the learned Counsel for Union of India would argue that the actions of Houses of Parliament in exercise of their powers and privileges under Article 105 cannot be subjected to the same parameters of judicial review as applied to other authorities. In the case of *Kihoto Hollohan* that the authority mentioned in the Tenth Schedule was a Tribunal and the proceedings of disqualification before it are not proceedings before the House and thus the decision under Para 6(1) of the Tenth Schedule is not a decision of the House nor is it subject to the approval of the House and rather operates independently of the House. He would submit that the decision of the House in regulating its own proceedings including in the matter of expulsion of a member for breach of privilege cannot be equated to the decision of such authority as mentioned in the Tenth Schedule and the House in such proceedings is not required to act in a quasi-judicial manner. He would, in the same breath, concede that the House does act even in such matters in conformity with rules of natural justice.

In our considered view, the principle that is to be taken note of in the aforementioned series of cases is that notwithstanding the existence of finality clauses, this Court exercised its jurisdiction of judicial review whenever and wherever breach of fundamental rights was alleged. President of India while determining the question of age of a Judge of a High Court under Article 217(3), or the President of India (or the Governor, as the case may be) while taking a decision under Article 311(3) to dispense with the ordinarily mandatory inquiry before dismissal or removal of a civil servant, or for that matter the Speaker (or the Chairman, as the case may be) deciding the question of disqualification under Para 6 of the Tenth Schedule may be acting as authorities entrusted with such jurisdiction under the constitutional provisions. Yet, the manner in which they exercised the said

jurisdiction is not wholly beyond the judicial scrutiny. In the case of Speaker exercising jurisdiction under the Tenth Schedule, the proceedings before him are declared by Para 6 (2) of the Tenth Schedule to be proceedings in Parliament within the meaning of Article 122. Yet, the said jurisdiction was not accepted as non-justiciable. In this view, we are unable to subscribe to the proposition that there is absolute immunity available to the Parliamentary proceedings relating to Article 105(3). It is a different matter as to what parameters, if any, should regulate or control the judicial scrutiny of such proceedings.

Article 212(1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality.

Article 122 of the Constitution prevents this Court from going into any question relating to irregularity of proceedings "in Parliament".

A violation of such a law would constitute illegality and could not be immune from judicial scrutiny under Article 122(1). The scope of permissible challenge by the concerned Judge to the order of removal made by the President under Article 124(4)

The Additional Solicitor General submitted that having regard to the jurisdiction vested in the judicature under Articles 32 and 226 of the Constitution on the one hand and the tasks assigned to the legislature on the other, the two organs must function rationally, harmoniously and in a spirit of understanding within their respective spheres for such harmonious working of the three constituents of the democratic State alone will help the peaceful development, growth and stabilization of the democratic way of life in the country. We are in full agreement with these submissions.

The Additional Solicitor General has further submitted that while having regard to the importance of the functions discharged by Parliament under the Constitution and the majesty and grandeur of its task, it being the ultimate repository of the faith of the people, it must be expected that Parliament would always perform its functions and exercise its powers, privileges and immunities in a reasonable manner, the reasonableness of the manner of exercise not being amenable to judicial review. His submission is that if Parliament were to exercise its powers and privileges in a manner violative or subversive of, or wholly abhorrent to the Constitution, a limited area of judicial scrutiny would be available, which limited judicial review would be distinct from the area of judicial review that is available when administrative exercise of power under a statute falls for consideration. His argument is that such limited judicial review is distinct from the exercise of powers coupled with a purpose and also distinct from judicial scrutiny on the ground of mala fides. It is his contention that the courts of judicature in India have the power of judicial review to determine the existence of privilege but once privilege is shown to exist, the exercise of that privilege

and the manner of exercise that privilege must be left to the domain of Parliament without any interference. Further, learned Additional Solicitor General submits that while what takes place within the walls of the Parliament is not available for scrutiny and even when the Parliament deals with matters outside its walls, in a matter supported by an acknowledged privilege, there would be little scrutiny and very limited and restricted judicial review.

It has been submitted by the Additional Solicitor General that judicial review is the ability of the courts to examine the validity of action. Validity can be tested only with reference to a norm. It is seen that the submissions substantially correct but not entirely correct. Non-existence of standards of judicial review is no reason to conclude that judicial scrutiny is ousted.

While we agree that contempt of authority of Parliament can be tried and punished nowhere except before it, the judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature.

In other words, in respect of proceedings, if a member is offered immunity, Parliament too is offered immunity. The actions of Parliament, except when they are translated into law, cannot be questioned in court.

*Bachan Singh v. State of Punjab*<sup>15</sup>. In the case of Bachan Singh, this Court, inter alia, held, that "Article 14 enacts primarily a guarantee against arbitrariness and inhibits State action, whether legislative or executive, which suffers from the vice of arbitrariness" and that "Article 14 ...was primarily a guarantee against arbitrariness in State action". It was held in the context of Article 21 that:

The third fundamental right which strikes against arbitrariness in State action is that embodied in Article 21.

Article 21 affords protection not only against executive action but also against legislation and any law which deprives a person of his life or personal liberty would be invalid unless it prescribes a procedure for such deprivation which is reasonable, fair and just. The concept of reasonableness, it was held, runs through the entire fabric of the Constitution. Every facet of the law which deprives a person of his life or personal liberty would therefore have to stand the test of reasonableness, fairness and justness in order to be outside the inhibition of Article 21.

*T. Venkata Reddy*,- the question is whether the validity of an Ordinance can be tested on grounds similar to those on which an executive or judicial action is tested. The legislative action under our Constitution is subject only to the limitations prescribed by the Constitution and to no

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<sup>15</sup> AIR 1982 SC 1582

other. they are precluded from inquiring into the propriety of the exercise of the legislative power. The propriety, expediency and necessity of a legislative act are for the determination of the legislative authority and are not for determination by the courts.

*State of Rajasthan v. Union of India* This Court has never abandoned its constitutional function as the final Judge of constitutionality of all acts purported to be done under the authority of the Constitution. But, it cannot assume unto itself powers the Constitution lodges elsewhere or undertake tasks entrusted by the Constitution to other departments of State which may be better equipped to perform them. The scrupulously discharged duties of all guardians of the Constitution include the duty not to transgress the limitations of their own constitutionally circumscribed powers by trespassing into what is properly the domain of other constitutional organs.

The existence of the circumstances in question are open to judicial review though the opinion formed by the Government is not amenable to review by the Courts.

Democracy and federalism are the essential features of our Constitution. The power vested de jure in the President but de facto in the Council of Ministers under Article 356 has all the latent capacity to emasculate the two basic features. Confining themselves to the acknowledged parameters of the judicial review as discussed above, viz., illegality, irrationality and mala fides. Such scrutiny of the material will also be within the judicially discoverable and manageable standards.

Judicial review is a basic feature of the Constitution. This Court/High Courts have constitutional duty and responsibility to exercise judicial review as sentinel on the qui vive. Judicial review is not concerned with the merits of the decision, but with the manner in which the decision was taken.

It is necessary to reiterate that the court must be conscious while examining the validity of the Proclamation that it is a power vested in the highest constitutional functionary of the Nation. The court will not lightly presume abuse or misuse. The court would, as it should, tread wearily, making allowance for the fact that the President and the Union Council of Ministers are the best judges of the situation, that they alone are in possession of information and material - sensitive in nature sometimes - and that the Constitution has trusted their judgment in the matter. But all this does not mean that the President and the Union Council of Ministers are the final arbiters in the matter or that their opinion is conclusive.

**§7. Summary of the Principles Relating to Parameter of Judicial Review in relation to Exercise of Parliamentary Provisions**

- a. Parliament is a co-ordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;
- b. Constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere co-ordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of action which part-take the character of judicial or quasi-judicial decision;
- c. The expediency and necessity of exercise of power or privilege by the legislature are for the determination of the legislative authority and not for determination by the courts;
- d. The judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature;
- e. Having regard to the importance of the functions discharged by the legislature under the Constitution and the majesty and grandeur of its task, there would always be an initial presumption that the powers, privileges etc have been regularly and reasonably exercised, not violating the law or the Constitutional provisions, this presumption being a rebuttable one;
- f. While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable & manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;
- . The Judicature is not prevented from scrutinizing the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens;
- h. The broad contention that the exercise of privileges by legislatures cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct;
- i. If a citizen, whether a non-member or a member of the Legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this Court to examine the merits of the said contention, especially when the impugned action entails civil consequences;
- j. There is no basis to claim of bar of exclusive cognizance or absolute immunity to the Parliamentary proceedings in Article 105(3) of the Constitution;

- m. Articles 122(1) and Article 212(1) displace the broad doctrine of exclusive cognizance of the legislature in England of exclusive cognizance of internal proceedings of the House rendering irrelevant the case law that emanated from courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by Constitution of India
- n. Article 122(1) and Article 212(1) prohibit the validity of any proceedings in legislature from being called in question in a court merely on the ground of irregularity of procedure;
- o. The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the legislature;
- p. Ordinarily, the legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the Court may examine the validity of the said contention, the onus on the person alleging being extremely heavy.
- q. The rules which the legislature has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution;
- r. Mere availability of the Rules of Procedure and Conduct of Business, as made by the legislature in exercise of enabling powers under the Constitution, is never a guarantee that they have been duly followed;
- s. The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny;
- t. Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action;
- u. An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.

The Supreme Court held that the impugned resolutions of Lok Sabha and Rajya Sabha cannot be questioned before us on the plea of proportionality. We are not sitting in appeal over the decision of the Legislative chambers with regard to the extent of punishment that deserved to be meted out in cases of this nature. That is a matter which must be left to the prerogative and sole discretion of the legislative body. So long as the orders of expulsion are not illegal or unconstitutional, we are not concerned with the consequences for the petitioners on account of these expulsions.

On perusal of the Inquiry reports, we find that there is no violation of any of the fundamental rights in general and Articles 14, 20 or 21 in

particular. Proper opportunity to explain and defend having been given to each of the petitioners, the procedure adopted by the two Houses of Parliament cannot be held to be suffering from any illegality, irrationality, unconstitutionality, violation of rules of natural justice or perversity. It cannot be held that the petitioners were not given a fair deal

In view of above, we find no substance in the pleas of the petitioners. Resultantly, all the Petitions and Transferred Cases questioning the validity of the decisions of expulsion of the petitioners from the respective Houses of Parliament, being devoid of merits are dismissed.

### §8. Concluding Remarks

Article 118 of the Constitution mandates the Parliament to frame its own rules of procedure for conduct of business. The president of India in consultation with the Speaker of Lok sabha and the Chairman of the Rajya sabha shall formulate such rules of procedure and the speaker of the Lok sabha and the Chairman of the rajya sabha are responsible for ensuring the conduct of business in the respective houses in accordance with such rules. Further the courts as per article 122 Courts not empowered to inquire into proceedings of the Parliament and the validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

Moreover no officer or member of Parliament in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.<sup>16</sup>

In the case of *P.V. Narasimha Rao v. State*<sup>17</sup> the Supreme Court had laid down that a member of Parliament did not enjoy immunity under Article 105 (2) or 105 (3) from being prosecuted before Criminal Court for offence involving offer or acceptance of bribe for purpose of speaking or giving his vote in Parliament or in any committees thereof. The Supreme Court had observed :

The word "anything is of the widest import and is equivalent to 'everything'. The only limitation arises from the words 'in Parliament' which means during the sitting of Parliament and in the course of the business of Parliament. We are concerned only with speeches in Lok Sabha. Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any court. This immunity is not only complete but is as

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<sup>16</sup> Article 122(2) of the Constitution of India.

<sup>17</sup> AIR1998SC2120, 1997(1)BLJR263, 1998CriLJ2930, 1998(3)SCALE53, (1998)4SCC626.

it should be. It is of the essence of parliamentary system of Government that people's representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The courts have no say in the matter and should really have none."

Thus in light of the authorities cited and the decision of the Supreme Court in the instant case as well as previous pronouncements of the Apex Court it is substantially evident that the courts have adopted a no interference stand so far as disciplinary action or administrative action in relation to the conduct of business in either Houses of the Parliament is concerned.

### **Cited Jurisprudence**

*Yeshwant Rao v. MP Legislative Assembly*, AIR1967MP95

*Hardwari Lal v. Election Commission of India etc.* ILR (1977) P&H 269

*K. Anbhashagan v. Tamil Nadu Legislative Assembly* AIR 1988 Mad 275

*Pandit Sharma.* (1959) Supp. 1 SCR 806.

*A.K. Gopalan v. State of Madras* 1950 SCR 88,

*Rustom Cavasjee Cooper v. Union of India* AIR 1970 SC 564, [ 1970 ] 40

CompCas 325 ( SC ), ( 1970 ) 1 SCC 248 , [ 1970 ] 3 SCR 530

*Sub-Committee on Judicial Accountability v. Union of India* AIR 1992 SC

320, JT 1991 ( 6 ) SC 184, 1991 ( 2 ) SCALE 844, ( 1991 ) 4 SCC 699,

[ 1991 ]Supp 2 SCR 1

*Bachan Singh v. State of Punjab* AIR 1982 SC 1582

*Kihoto Hollohan* 1992 Supp(2) SCC 651

*T. Venkata Reddy* AIR 1985 SC 724, 1986 LabIC 357, 1985 ( 1 ) SCALE

613, ( 1985 ) 3 SCC 198, [ 1985 ] 3 SCR 509, 1985 ( 1 ) SLJ 561 ( SC ),

1985 ( 17 ) UJ 991 ( SC )

*State of Rajasthan v. Union of India*

*P.V. Narasimha Rao v. State* AIR1998SC2120, 1997(1)BLJR263,

1998CriLJ2930, 1998(3)SCALE53, (1998)4SCC626