

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 99 of 2024

Date of Decision: 24.04.2024

Shri. Adelbert Nongrum
Member, Meghalaya Legislative Assembly,
R/o Jaiaw, Shillong, East Khasi Hills

:::Petitioner

-Vs-

The Speaker,
Meghalaya Legislative Assembly

:::Respondent

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P. Yobin, Adv.

For the Respondent(s) : Mr. A. Kumar, AG with
Ms. S. Ain, GA
Ms. R. Colney, GA.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER (ORAL)

1. The petitioner who is a Member of the Meghalaya Legislative Assembly, has filed the instant writ petition under Article 226 of the Constitution of India, assailing the action of the Speaker, in not allowing the petitioner to move a Special Motion under Rule 130A of the Rules of Procedure and Conduct of Business in Meghalaya Legislative Assembly, to raise discussion in the House during the Budget Session 2024, on the CAG Report on the Social and Economic sectors for the year ending 31.03.2022, for the State of Meghalaya.

2. That at the outset, as there is a restriction on Courts to inquire into the proceedings of the legislature, as per Article 212 of the Constitution of India, the learned counsel for the petitioner was asked to satisfy the court, on the question of the maintainability of the writ petitioner.

3. Learned counsel for the petitioner, Mr. P. Yobin, while referring to Article 212 has submitted that the writ petition has not been filed on the ground of any alleged irregularity of procedure, which would surely bar the jurisdiction of the Court, but the challenge he contends, is directed against the action of the Speaker, in curtailing the right of the petitioner as given in Article 194(1) of the Constitution. He further submits that there is no rule regulating the procedure of the Meghalaya Legislative Assembly, that restricts or prohibits discussion on a report of the CAG in the House,

that would qualify as a condition subjecting the privilege of the members of the legislature, which has been guaranteed under Article 194(1) of the Constitution, to any restriction.

4. The further assertion of the learned counsel is that, the petitioner was denied reconsideration by the Speaker, on the decision to disallow a Special Motion to discuss the CAG Report, even though, Rule 130A of the Rules of Conduct and Procedure, provides that Special Motions were to get precedence over other motions of any matter of urgent importance. Though, he submits, a notice of Breach of Privilege submitted by the petitioner under Rule 159 of the Rules of Conduct and Procedure, was admitted by the Speaker and the same was then put to vote, but was defeated, and the decision to disallow the Special Motion, was made final, the decision arrived at was motivated and unconstitutional. He lastly submits that, the issue sought to be raised, in the Special Motion being of grave public importance, the same should have been allowed by the Speaker under Rule 130A of the Rules of Conduct and Procedure. He therefore prays that the writ petition be admitted, and be taken up for consideration. In support of his case, the learned counsel has relied upon the case of *Shri. Harish Chandra Singh Rawat vs. Union of India & Anr.* reported in *2016 SCC OnLine Utt 502:AIR 2016 (NOC 559) 269:2016 AIR CC 2455*, wherein at Para – 82, the judgment of the Constitution

Bench rendered in the case of ***Raja Ram Pal vs. Lok Sabha (2007) 3 SCC 184***, has been relied upon.

5. Mr. A. Kumar, learned Advocate General for the respondent has strongly refuted the submissions of the counsel for the petitioner, and submits that the writ petitioner by way of the instant writ petition is seeking to regulate the procedure of the legislature by the Court. Strong emphasis has been laid on the mandate of Article 212 of the Constitution, to drive home the point that what has been assailed in the writ petition is the decision of the Speaker, who has made the same in the course of business of the House, which cannot be questioned before the Courts. The learned Advocate General has further submitted that the reason for disallowing the discussion was that, the report in question was still under scrutiny before the Committee on Public Accounts, which had been constituted as per Rule 241 of the Rules of Procedure and Conduct of Business, and that nothing illegal or unconstitutional can be attributed to the action of the Speaker. In support of his arguments, reliance has been placed on two judgments of the Supreme Court, namely (i) ***Satish Chandra vs. Speaker, Lok Sabha & Ors.*** reported in ***(2014) 2 SCC 178*** and (ii) ***State of Punjab vs. Principal Secretary to the Governor of Punjab & Anr.*** reported in ***(2024) 1 SCC 384***.

6. On hearing the parties, the question before the Court therefore, is only limited to examining the maintainability of the writ petition, in view of the express bar of Article 212 of the Constitution, which for the sake of convenience, is reproduced herein below.

***“212. Courts not to inquire into proceedings of the Legislature.-
(1)The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.***

(2)No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.”

7. As can be seen, the Article has clearly put an embargo on Courts to look into the validity of any proceedings in the legislature of the State, on the ground of any alleged irregularity of procedure. In the instant case, the writ petitioner had invoked Rule 130A of the Rules, to press his demand for the Special Motion before the Speaker, and the same is quoted herein below.

“130A. Whenever any report or any matter of urgent public importance and of recent occurrence is brought before the House, any Member can move a motion of the discussion of that matter. Such a motion will get precedence over motions

under Rule 131. The Speaker shall fix the time and date for discussion of such a motion.”

8. The above quoted Rule, no doubt, allows any Member to move a motion for discussion on such matters of urgent public importance, and as matter of procedure, the request had been taken up, which however, was denied on the ground that, the subject matter was under the examination of the Public Accounts Committee of the Meghalaya Legislative Assembly, which is evidenced by the letter dated 19.02.2024, under the caption ‘Disallowed Motion’. Though, it is correct that the challenge is not on the ground of irregularity of procedure, the decision of the Speaker however on examination, cannot be said to be unconstitutional to warrant judicial review, notwithstanding the submission that, the subject matter involves a matter of grave public interest.

9. Though, reference has been made to Article 194(1) of the Constitution, to try and impress upon the Court that, the right of the writ petitioner had been curtailed by the Speaker, thereby making the decision unconstitutional, it is to be noted that Article 194(1), though providing for freedom of speech in the Legislature of every State, the same is however subject to the Constitution and to the Rules and Standing Orders regulating the procedure of the Legislature. As such, there being no palpable denial of

the rights of the petitioner, in any manner, the decision of the Speaker therefore, based on valid considerations and as per procedure, no illegality or unconstitutionality can be attributed to the same.

10. Before concluding this judgment, reference can be made to the decision in the case of ***Raja Ram Pal. vs. Lok Sabha(supra)***, cited by the petitioner, wherein distinction has been drawn between ‘procedural irregularity’ in contrast to ‘substantive illegality’, which assists us in discerning the scope of Article 212 and 122 of the Constitution. Paragraphs – 360 and 366 thereof, which are relevant are quoted herein below.

“360. The question of extent of judicial review of parliamentary matters has to be resolved with reference to the provision contained in Article 122 (1) that corresponds to Article 212 referred to in M.S.M. Sharma v. Shree Krishna Sinha AIR 1960 SC 1186 [Pandit Sharma (2)]. On a plain reading, Article 122 (1) prohibits 'the validity of any proceedings in Parliament' from being 'called in question' in a court merely on the ground of 'irregularity of procedure'. In other words, the procedural irregularities cannot be used by the court to undo or vitiate what happens within the four walls of the legislature. But then, 'procedural irregularity' stands in stark contrast to 'substantive illegality' which cannot be found included in the former. We are of the considered view that this specific provision with regard to check on the role of the judicial organ vis-à-vis proceedings in Parliament uses language which is

neither vague nor ambiguous and, therefore, must be treated as the constitutional mandate on the subject, rendering unnecessary search for an answer elsewhere or invocation of principles of harmonious construction.

* * *

*366. The touchstone upon which parliamentary actions within the four walls of the legislature were examined was both the constitutional as well as substantive law. The proceedings which may be tainted on account of substantive illegality or unconstitutionality, as opposed to those suffering from mere irregularity thus cannot be held protected from judicial scrutiny by Article 122 (1) inasmuch as the broad principle laid down in *Bradlaugh v. Gossett* (1884) [L.R.] 12 QBD 271 acknowledging exclusive cognizance of the legislature in England has no application to the system of governance provided by our constitution wherein no organ is sovereign and each organ is amenable to constitutional checks and control, in which scheme of things, this Court is entrusted with the duty to be watchdog of and guarantor of the Constitution.”*

11. With regard to the instant case however, as no situation exists to hold that, there has been substantive illegality, no judicial review is called for. The decision cited by the respondent in the case *State of Punjab vs. Principal Secretary to the Governor of Punjab & Anr.(supra)*, however is useful, with regard to the exercise of powers by the Speaker to regulate the

procedure of the House, and the binding nature, the decision of the Speaker has on every member of the House. Paragraphs – 40, 41 and 42 thereof of this case, are quoted herein below.

“40. The Constitution and established legislative practice distinguish between adjournment sine die and prorogation of the session of the House. In the case before us the Vidhan Sabha was adjourned on 22-3-2023 without prorogation. Therefore, the Speaker was empowered to reconvene the sittings of the House within the same session.

2. Exclusive domain of the Speaker to regulate the procedure of the House

41. Article 178 of the Constitution provides for the office of the Speaker and Deputy Speaker of a Legislative Assembly. Article 212 of the Constitution precludes the courts from inquiring into the proceedings of the legislature of the State. A corresponding provision with regard to the Parliament is contained in Article 122. The decision in Ramdas Athawale is significant in that it dwells on the role of the Speaker of the House and interprets Article 122 of the Constitution. The Constitution Bench observed: (SCC pp. 12-13, para 31)

“31. The Speaker is the guardian of the privileges of the House and its spokesman and representative upon all occasions. He is the interpreter of its rules and procedure, and is invested with the power to control and regulate the course of debate and to maintain order. The powers to regulate the procedure and conduct of business of the House

of the People vests in the Speaker of the House. By virtue of the powers vested in him, the Speaker, in purported exercise of his power under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha got issued Notice dated 20-1-2004 through the Secretary General of the Lok Sabha directing resumption of sittings of the Lok Sabha which was adjourned sine die on 23-12-2003. Whether the resumed sitting on 29-1-2004 was to be treated as the second part of the fourteenth session as directed by the Speaker is essentially a matter relating purely to the procedure of Parliament. The validity of the proceedings and business transacted in the House after resumption of its sittings cannot be tested and gone into by this Court in a proceeding under Article 32 of the Constitution of India.”

42. The Court observed that under Article 122(2), the decision of the Speaker in whom powers are vested to regulate the procedure and conduct of business is final and binding on every Member of the House. Hence, this Court held that the validity of the Speaker adjourning the House sine die and the later direction to resume sittings could not be inquired into on the ground of any irregularity of procedure. The Court reaffirmed that the business transacted and the validity of proceedings after the resumption of sittings of the House pursuant to the direction of the Speaker cannot be inquired by the courts. This follows the fundamental principle that it is the right of each House of the legislature to be the sole Judge of the lawfulness of its own proceedings so as to be immune from challenge before a court of law.”

12. As such, in view of the discussions made herein above, the decision of the Speaker in not allowing the Special Motion, cannot be held to be illegal or unconstitutional, notwithstanding the fact that the subject matter involves a matter of grave public importance. Judicial review therefore, not being available by virtue of the application of Article 212 of the Constitution, this writ petition is not entertained and is accordingly dismissed.

13. No order as to costs.

Judge

Meghalaya
24.04.2024
“D.Thabab-PS”