IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26 -04-2012

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

Writ Petition No.4149 of 2012

Vijayakant .. Petitioner

Vs.

1. Tamil Nadu Legislative Assembly
   rep. by its Secretary
   Secretariat, Fort St. George
   Chennai 600 009.

2. The Hon'ble Speaker
   Tamil Nadu Legislative Assembly
   Secretariat, Fort St. George
   Chennai 600 009. .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Declaration declaring the impugned resolution dated 02.02.2012 passed in the Tamil Nadu Legislative Assembly, which was communicated to the petitioner in the D.O.Lr.No.1626/2012-1/TNLA(O.P1) dated 03.02.2012 as unconstitutional, illegal, null and void.

For Petitioner : Mr.P.S.Raman, S.C.
For Dr.S.Manimaran

For Respondent-1 : Mr.Guru Krishnakumar
Addl. Advocate General
Assisted by Mr.S.Venkatesh
Government Pleader and'
Mr.N.Srinivasan, AGP

Mr.A.Navaneetha Krishnan
Advocate General as
Amicus Curiae

O R D E R

The petitioner is an elected Member of the Legislative Assembly from Rishivanthiyam Assembly Constituency. He is also the leader of the Opposition, by virtue of being elected as the leader of the D.M.D.K. party which has the largest number of elected members other than the party which formed the Government. He has come up with the above writ petition, challenging the resolution of the Tamil Nadu State Legislative Assembly, suspending him for a period of ten days.

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2. I have heard Mr.P.S.Raman, learned senior counsel representing Dr.S.Manimaran, learned counsel for the petitioner, Mr.Guru Krishna Kumar, learned Additional Advocate General appearing for the first respondent and Mr.A.Navaneetha Krishnan, learned Advocate General assisting the Court as Amicus Curiae.

3. On 01.02.2012, an incident happened in the House of the State Legislative Assembly, when the discussion on the motion of thanks to the Governor's address was in progress. Immediately, the Speaker evicted the petitioner and all the elected members belonging to his party viz., The Desiya Murpokku Dravida Kazhagam (in short "DMDK") from the House and referred the matter to the Privileges Committee. On the evening of the same day, namely, 01.02.2012, the Privileges Committee met and decided to call upon the petitioner to explain his conduct that was perceived by them as a misconduct. Accordingly, a notice was issued by the first respondent herein calling upon the petitioner to appear before the Privileges Committee on 02.02.2012 at 9 am to offer his explanation.

4. The petitioner did not appear in person before the Privileges Committee on 02.02.2012. Instead, he submitted a reply. After taking his reply on record, the Privileges Committee came to the conclusion that the petitioner and the other elected members belonging to the aforesaid party committed a breach of privilege of the House. Therefore, it appears that the Privileges Committee submitted a report immediately, recommending the suspension of the petitioner for a period of ten days from the service of the House. The report of the Committee was presented to the House immediately and a supplementary agenda was included in the listed business of the House for considering the report of the Privileges Committee. Thereafter, the House was informed that due to lack of time, sufficient printed copies of the report could not be circulated and that five copies of the report were made ready and placed in the Legislative Library for the perusal of the members. But, a copy was furnished to the Deputy Leader of the DMDK party in the House.

5. Thereafter, the Leader of the House moved a motion which was put to vote. It was carried by a voice vote. After it was carried by a voice vote, the Deputy Leader of the DMDK party demanded a discussion on the issue. But, the same was turned down and the Speaker of the Assembly announced that the petitioner was suspended from the service of the House for a period of ten days, part of which would be covered in the same Session and the remainder covered in the next session. It was also informed that during the period of suspension, the petitioner will not receive any of the benefits, salary, privileges or entitlements, as admissible to him in his capacity as a sitting member and as the Leader of the Opposition. The other members of the DMDK party were pardoned, on condition that they shall uphold the majesty and decorum of the House, in future. Therefore, challenging his suspension, the petitioner has come up with the above writ petition.

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6. The writ petition was admitted on 22-2-2012 by S.Rajeswaran,J. In M.P.No.1 of 2012 praying for interim stay of the impugned resolution, the learned Judge passed an order directing the matter to be listed on 2-3-2012 for arguments both on the question of maintainability and on the question of stay. Thereafter, the petition was stay was posted before me on 9-3-2012. On 9-3-2012, the learned Counsel on both sides sought adjournment to 14-3-2012. On 14-3-2012, the learned counsel wanted to argue the stay petition. But I pointed out that the arguments in the stay petition and the arguments in the main writ petition may broadly be the same and that since the respondents had already filed a counter affidavit, the writ petition itself could be argued. Therefore, both sides agreed to argue the matter on 28-3-2012. But by then the next session was summoned and an apprehension was raised that by the time the writ petition was argued and decided, the period of suspension would have been undergone. But I pointed out that I would not short circuit the matter by dismissing the writ petition simply on the ground that it had become infructuous. Therefore, both sides argued the writ petition on 29-3-2012 and orders were reserved.

7. Mr.P.S.Raman, learned senior counsel appearing for the petitioner assailed the impugned resolution of the Assembly, communicated by the first respondent, by his letter dated 03.02.2012, on the following grounds:

(i) that a challenge to the impugned resolution is maintainable, inasmuch as the power of judicial review has now been recognised to be part of the Basic Structure of the Constitution;

(ii) that there was a gross violation of the principles of natural justice and hence, there is scope for intervention;

(iii) that the Privileges Committee, which is supposed to record only a finding on whether there was breach of privilege or not, went overboard and recommended what type of punishment was to be inflicted;

(iv) that the power of the House to suspend a member, can be exercised only to the extent of suspending him for the remainder of the Session and not for a period which would spill over to the next Session;

(v) that the power of the House to punish a person could be confined only to the precincts of the House and not beyond its four walls, and that therefore, the suspension for the period during which the Assembly is not in Session, virtually extends the arm of the Assembly beyond its four walls;

(vi) that by virtue of the suspension, the privileges enjoyed by the petitioner as the leader of the Opposition, has also been suspended, leading to a stalemate where there is virtually no leader of the Opposition in the State; and

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(vii) that therefore, the impugned resolution is nothing but

a mala fide exercise of power and amounts to gross or substantive illegality, in view of the fact that without even the report of the Privileges Committee being made available to the members of the House, a resolution was passed by a voice vote.

8. In response, Mr.Guru Krishna Kumar, learned Additional Advocate General appearing for the first respondent contended

(i) that by virtue of Article 212 of the Constitution, there is an express bar of jurisdiction of this Court to interfere with anything done or any decision taken within the four walls of the Legislature, merely on the ground of irregularity of procedure;

[ii) that the scope of judicial review in such cases is limited only to gross or substantive illegality or unconstitutionality, which is not satisfied in the case on hand;

(iii) that no mala fides can be attributed to an august body, such as the Legislature of a State;

(iv) that the power of the House to suspend or expel a person for breach of privilege or contempt of the House has now come to be well recognised and the same is not curtailed by any Rules of Procedure, such as Rule 121 of the Tamil Nadu Legislative Assembly Rules;

(v) that the case on hand is identical to a case earlier decided by this Court in A.K.Bose v. The Speaker and no new ground is available for the petitioner to challenge the impugned resolution; and

(vi) that the basic principles of natural justice were complied with and the petitioner did not even deny the incident in question that led to his suspension, and that therefore, the writ petition should be dismissed as not maintainable.

Contention No.(i) of the petitioner and contention Nos.(i) and (ii) of the Additional Advocate General

9. The first contention of the learned Senior Counsel for the petitioner is that the power of the judicial review forms part of the basic structure of the Constitution and that therefore, any punishment imposed either on a member or on a non-member by a House of elected representatives can be the subject matter of judicial review. This contention can be conveniently taken up along with the first and second contentions of the learned Additional Advocate General.

10. There is no difficulty in accepting the submission that the power of judicial review forms part of the basic structure of The Constitution. The Constitution Bench of the Supreme Court has made it clear in L.Chandrakumar v. Union of India (1994 (5) SCC 539) that the power of judicial review forms part of the basic structure of the Constitution. The Constitution Bench, in the said case, traced the history of the evolution of the power of judicial review, from the days of Marbury v. Madison (US Supreme Court).

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Therefore, it cannot disputed that this Court has the power of judicial review to examine the action of the Assembly in suspending or expelling or imposing any penalty on any member of the House or on an outsider. But, the fundamental question is as to how far the Court could go and as to when the Court would declare "thus far and no further".

11. On the scope of judicial review in such matters, four decisions and an advisory opinion of the Supreme Court constitute important milestones. The decisions are

(i) Searchlight I;
(ii) Searchlight II;
(iii) Raja Ram Pal v. Hon'ble Speaker, Lok Sabha ((2007) 3 SCC 184); and

(iv) Amarinder Singh v. Punjab Vidhan Sabha {(2010) 6 SCC 113}.

12. In Raja Ram Pal, the Supreme Court considered all issues and laid down in para 431 of its decision, the parameters of judicial review, as follows:

> "(a) Parliament is a coordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;
>
> (b) The 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 coordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of actions which partake 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;

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(f) The fact that Parliament is an august body of coordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power;

(g) 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 and manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;

(h) The judicature is not prevented from scrutinising the validity of the action of the legislature trespassing of fundamental rights or the constitutional provisions is not correct;

(i) 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;

(j) 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;

(k) There is no basis to the claim of bar of exclusive cognizance or absolute immunity to the parliamentary proceedings in Article 105(3) of the Constitution;

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(l) The manner of enforcement of privilege by the legislature can result in judicial scrutiny, though subject to the restrictions contained in the other constitutional provisions, for example Article 122 or 212;

(m) Article 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 the Constitution of India;

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(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."

13. Article 212 (1) of the Constitution, imposes a bar upon any Court to call in question, the validity of any proceedings in the Legislature of a State, on the ground of any alleged irregularity of procedure. Therefore if the petitioner had come to Court challenging the impugned action only on the ground of

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irregularity of procedure, the writ could have been easily thrown out on the basis of Article 212 (1). But in Raja Ram Pal, the Supreme Court has actually enlarged the scope of judicial review. Therefore, on the first contention of the learned Additional Advocate General that there cannot be a challenge merely on the ground of irregularity of procedure, there can be no serious dispute.

14. But on the second submission of the learned Additional Advocate General, there is some controversy. While it is the contention of the learned Additional Advocate General that the scope of judicial review is limited only to gross or substantive illegality or unconstitutionality, the contention of the learned Senior Counsel for the petitioner is that paragraph 431 of the decision in Raja Ram Pal lays down additional parameters. Mr.P.S.Raman, learned Senior Counsel for the petitioner placed emphasis on the expression "civil consequences" appearing in paragraph 431(j). He also relied upon paragraph 431(l) in Raja Ram Pal to contend that the manner of enforcement of privileges by the Legislature can also be the subject matter of judicial scrutiny. Strong reliance is placed by Mr.P.S.Raman, learned Senior Counsel even on the principle enunciated in paragraph 431(u) of the decision in Raja Ram Pal.

15. But a careful reading of all the parameters found in paragraph 431 of the decision in Raja Ram Pal shows that some of what is stated therein are traditional parameters of judicial review. For instance, non compliance with rules of natural justice, perversity or irrationality etc., have always been the grounds on which judicial review was available. But in paragraph 431(g), the Court made it clear that the area of powers, privileges and immunities of the Legislature are exceptional and extraordinary and hence, its acts are not to be tested on the traditional parameters of judicial review. The Court also held that it should confine itself only to acknowledged parameters and within the judicially discoverable and manageable standards. Therefore, the expression "civil consequences" appearing in paragraph 431(j) has to be read along with the first part of paragraph 431(j) where it is made clear that a complaint of infringement of fundamental right should always be examined both at the instance of a member of the House as well as at the instance of a non member, especially when it results in civil consequences. In other words, the expressions "fundamental right under Article 20 or 21" and "civil consequences" in para 431(j) go together.

16. What is stated in paragraph 431(u) are actually traditional parameters of judicial review. Paragraph 431(u) recognises the power of this Court review a decision on grounds of lack of jurisdiction, gross illegality, irrationality, violation of constitutional mandate, mala fides, perversity and non-compliance with the rules of natural justice. There cannot be a dispute about the fact that these are traditional parameters on which any judicial or administrative action may be scrutinised. Therefore, what is stated in paragraph 431(g) about the limitations of traditional parameters, has to be reconciled with

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what is stated in paragraph 431(u).

Contention No.(ii) of the petitioner and contention No.(vi) of the Additional Advocate General

17. According to the learned Senior Counsel for the petitioner, the impugned resolution was passed in gross violation of the principles of natural justice and hence, such a violation can always be looked into in view of paragraph 431(u) of the decision in Raja Ram Pal.

18. But the response of the learned Additional Advocate General is that the petitioner was served with a notice of breach of privilege and that he submitted an explanation, in which, he did not deny the allegations made against him in specific and concrete terms. Therefore, it is his contention that there was no violation of the principles of natural justice.

19. On facts, the allegation of violation of the principles of natural justice is made by the petitioner on the basis of the following facts:-

(i) In respect of the incident that allegedly happened on 1.2.2012, the Speaker referred the matter to the Committee of Privileges on the same day. The Committee met on the same day evening and served a notice calling upon the petitioner to appear before the Committee at 9 AM on the next day, namely 2.2.2012;

(ii) On 2.2.2012, the petitioner did not appear in person, but submitted a reply to the Committee. Within one hour, the Committee came to the conclusion that the petitioner was guilty of breach of privilege. They also submitted a report running to several pages instantaneously, though it was humanly impossible to type out a report of such a magnitude in such a short span of time, unless of-course the report was already prepared and kept ready even before the Committee met and took into account all the facts.

(iii) Immediately after the Committee recorded its findings and sent a report on the same day, namely 2.2.2012, a supplementary agenda was included in the listed business of the House, without even providing sufficient printed copies of the report to all the members of the House. After announcing that the copies of the report were available in the library of the Legislature, the resolution was put to voice vote. Ultimately, it was declared that the resolution was passed by a simple majority, rejecting the request of the Deputy Leader of the D.M.D.K. Party for a discussion on the issue.

20. It is on the basis of the above sequence of events that a complaint of violation of natural justice is made by the petitioner. Therefore, it is necessary to see as to whether the above sequence of events, allegedly rushed through by the Committee of Privileges and the House, would tantamount to a violation of natural justice, so as to enable this Court to interfere.

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21. It is true that the alleged incident happened on 1.2.2012, it was referred by the Speaker to the Committee on the same day, the Committee met in the evening on the same day and issued a notice, calling upon the petitioner to appear before the Committee at 9.00 A.M., on the next day.

22. If the Court is confronted with the case of a worker or a person who is at a disadvantageous position, it may not be difficult to conclude that things have happened in a hurry, if not in haste. But I am confronted with the case of a respectable elected member of the Assembly, who also happens to be the leader of the opposition. Therefore, I would not test the allegation of violation of natural justice in the case of the petitioner, on the same standards as I would do in respect of a person in a disadvantageous position. In other words, the speed with which things have happened on 1.2.2012, would not convince me to conclude that there was a violation of natural justice. The question as to whether something had happened merely on fast track or in haste, would depend upon two things viz., (i) how the person aggrieved reacted and (ii) what type of opportunities he sought and/or availed.

23. As stated by the Supreme Court in Shrikrishnadas Tikara vs. State Government of M.P. {1977 (2) SCC 741}, the principles of natural justice cannot be petrified or fitted into rigid moulds. They are flexible and turning on the facts and circumstances of each case. "Has there been any unfair deal by the authority? Has the party affected been hit below the belt? Has he had a just opportunity to state his plea?" are the issues on which the question of violation of natural justice is to be tested.

24. The allegation of violation of the principles of natural justice, cannot be examined in isolation, but depends on the facts and circumstances of each case, as held by the Supreme Court in several cases (for instance Sarojini Ramaswami (Mrs.) vs. Union of India {1992 (4) SCC 506}. Natural justice is "no unruly horse, no lurking land mine" and its unnatural expansion without reference to realities can be "exasperating" {Shiv Sagar Tiwari vs. Union of India-1997 (1) SCC 444}.

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25. The Supreme Court pointed out in Aligarh Muslim University vs. Mansoor Ali Khan {2000 (7) SCC 529}, that a party may be obliged to establish, in addition to breach of natural justice, that he was actually prejudiced by such non compliance. The old theory laid down in Ridge vs. Baldwin that breach of principles of natural justice is in itself a prejudice, has been diluted not only in England but also in our country.

26. In Competition Commission of India vs. Steel Authority of India Ltd {2010 (10) SCC 744}, the Supreme Court pointed out that generally compliance or otherwise with the principles of natural justice can be classified under 3 categories. They are (i) cases where application of principles of natural justice is excluded by specific legislation, (ii) cases where the law contemplates strict compliance with the principles of natural justice and default in

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compliance therewith can result in vitiating not only the orders but even the proceedings taken against the delinquent and (iii) cases where the law requires compliance with the principles of natural justice, but an irresistible conclusion is drawn by the competent Court or forum that no prejudice has been caused to the delinquent and the non-compliance is with regard to an action of directory nature. The cases may fall in any of these categories and therefore, the Court has to examine the facts of each case in light of the Act or the Rules and Regulations in force in relation to such a case. It is not only difficult but also not advisable to spell out any straitjacket formula which can be applied universally to all cases without variation.

27. Keeping the above principles in mind, if we get back to the facts and the allegations in this case, it is seen that the Committee admittedly served a notice on the petitioner on the evening of 1.2.2012. The notice merely called upon the petitioner to appear at 9.00 A.M., on the next day. If the petitioner thought that the time afforded to him was not sufficient either to appear before the Committee or to submit a reply, he could have simply sought time either by appearing in person or by sending a request for time. If the Committee had rejected his request for grant of time, it would have then been possible for the petitioner to contend that there was a violation of natural justice, in the sense that adequate opportunity of hearing was not granted.

28. But the petitioner admittedly submitted a reply. The reply, whose translated version is given by the petitioner himself, reads as follows:-

> "I did not speak anything with ulterior motive, while participating in the discussion of the House in session, on the Resolution proposed for expressing thanks to the Governor's Address on 1.2.2012. The Hon'ble Members of the House, Hon'ble Ministers, Hon'ble Chief Minister, Journalists and the Reporters of the Media were witnessing all the happenings during the proceedings of the House. When the Members of the ruling party and Ministers uttered indecent and abusing words with raised hands towards me, I only attempted to give them a proper reply. I was denied permission to explain the justification on my part. I would like to appraise the Privileges Committee of the House, that I have never talked nor behaved in a manner so as to commit a breach of Privileges of the House."

29. The allegation contained in the notice dated 1-2-2012, in response to which the petitioner submitted the above reply, is that when the leader of the House was offering an explanation to certain issues raised by Mr.V.C. Chandrakumar, member of the D.M.D.K. Party, the petitioner (i) raised his hand (ii) rolled his tongue and (iii) attempted to move forward. These gestures were perceived by the Speaker to be threatening in nature. Unfortunately, the petitioner did not deny, in his reply dated 2.2.2012, that he ever made these gestures. His denial in his

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reply was only pointed towards (i) the absence of any motive (ii) the alleged provocation made by the ruling party members and (iii) the denial of permission to him to put forth his view points. The denial in the last line of the reply that he did not talk or behave in a manner amounting to any breach of privilege, was also only a general denial. Therefore, at the pre-hearing stage, the petitioner cannot allege violation of natural justice, (i) after having submitted a reply on merits and (ii) after having chosen only to make general denial and not a specific denial of the allegations which formed the basis for the initiation of proceedings.

30. Having considered the contention regarding violation of natural justice at the pre-hearing stage, let me now move on to the stage of hearing that took place before the Committee, to see if there was a violation at that stage.

31. In the proceedings that took place before the Committee, the petitioner did not appear in person. Though he was called upon to appear, he only sent his reply to the notice. The respondent has filed a copy of the report of the Committee dated 2.2.2012. The report discloses that apart from being the person against whom a charge of breach of privilege is made, the petitioner himself was a member of the Committee of Privileges, by virtue of being the leader of the opposition. The Committee comprises of a Chairman and 17 members, including the petitioner herein.

32. In the meetings of the Committee held on 1.2.2012 and 2.2.2012, 13 members were present apart from the Chairman. The proceedings disclose that a video recording of the proceedings of the House, in which the alleged incidents took place, was played to the Committee. Photographs also appear to have been shown to the members of the Committee.

33. Interestingly, even those members of the Committee who do not belong to the ruling party, appear to have raised only two issues viz., (i) that a lenient view should be taken and a lesser penalty imposed and (ii) that the gestures made by the petitioner indicate that there was provocation from the ruling party members and that therefore, the video recording of the whole proceedings are to be seen before reaching a conclusion.

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34. In other words, apart from the fact that the petitioner himself did not make a specific denial, in his reply to the show cause notice, of the gestures attributed to him, none of the members of the Committee also doubted the veracity of the allegations that the petitioner made certain gestures. Therefore, the core allegations that triggered the proceedings for breach of privilege against the petitioner, were not denied, both by the petitioner and by the members of the Committee, who do not belong to the ruling party. Moreover, the petitioner did not ask for any opportunity, from the Committee itself. It was one or two other members, who demanded that the video recording of the entire proceedings should be played. The reason given by those members for this demand was that if the video recording of the whole proceedings are played, it would reveal the gestures made by the

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ruling party members that provoked the petitioner to do what he did. In other words, the only opportunity demanded before the Committee (that too not by the petitioner but by others) was to show that apart from the petitioner, there were others who were also guilty of breach of privilege. The denial by the Committee of this demand made by third parties, cannot be taken to be an infringement of the principles of natural justice or a denial of reasonable opportunity. To come within the purview of "reasonable opportunity of being heard", the opportunity sought before the Committee should be (i) by the person charged and (ii) for the purpose of disproving the allegation of breach of privilege. Both these elements are absent in this case, since the petitioner never sought the playing of the entire video recording. It was sought by a few members of the Committee. Even the purpose of seeking the same is to show that there were other persons who were also guilty of breach of privilege. Therefore, the allegation of violation of natural justice in the proceedings before the Committee, cannot be raised by the petitioner.

35. Coming to the third stage viz., the stage at which the House considered the report of the Committee and passed a resolution imposing a penalty upon the petitioner, the allegation of violation of natural justice is made on two counts viz., (i) that the proceedings before the Committee, the preparation of the report of the Committee, the listing of additional agenda before the House and the passing of the resolution all happened in a span of few hours at break-neck speed and (ii) that even without furnishing copies of the report to all the members of the House, the motion was carried through.

36. On the first count, I do not think there is much to be said. It was represented by the learned Additional Advocate General that normally a battery of stenographers keep recording the proceedings of the House and its Committees, simultaneously. This is with a view to make a record of the proceedings contemporaneously. Therefore, the speed with which the report of the Committee was made ready, cannot lead to an inference as though everything was pre-planned and prepared in advance. While speedy action can be criticised on the ground that it was a product of pre-meditated plans, a slow paced action can be criticised on the ground that it was a product of inefficiency and lethargy. In fact, the Supreme Court answers this contention of the petitioner in paragraphs 446 and 447 of its decision in Raja Ram Pal, in the following words:-

> "Regarding non-grant of reasonable opportunity, we reiterate what was recently held in Jagjit Singh vs. State of Haryana {2006 (11) SCC 1} that the principles of natural justice are not immutable but are flexible; they cannot be cast in a rigid mould and put in a straitjacket and the compliance therewith has to be considered in the facts and circumstances of each case.
>
> 447. We outrightly reject the argument of denial of reasonable opportunity and also that proceedings were concluded in a hurry. It has become almost

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fashionable to raise the banner of "justice delayed is justice denied" in case of protracted proceedings and to argue "justice hurried is justice buried" if the results are quick. We cannot draw inferences from the amount of time taken by the Committees that inquired the matters as no specific time is or can be prescribed. Further such matters are required to be dealt with utmost expedition subject to grant of reasonable opportunity, which was granted to the petitioners."

Therefore, the first count is liable to be rejected, since I cannot draw an inference that the proceedings were pre-planned, merely because the report was made ready in a record time. An allegation of lack of adequate opportunity of being heard cannot be made on presumptions and surmises.

37. On the second count, it is an admitted fact that the copies of the report of the Committee of Privileges was not circulated to all the members of the House. It is also an admitted fact that 5 copies were made available in the Library of the Assembly, for the perusal of any member who wanted to peruse the same.

38. But it is equally an admitted fact (i) that the Deputy leader of the party to which the petitioner belongs, was supplied with a copy of the report and (ii) that none of the members demanded copies of the report, before the resolution was put to vote.

39. The report of the Committee can be compared to the report of an Enquiry Officer. Till the advent of the decision in E.C.I.L. vs. Karunakar, the non-furnishing of a copy of the report was held to vitiate the outcome of the proceedings. But in E.C.I.L., the Supreme Court made it clear that the delinquent should also establish the prejudice caused to him on account of the non-furnishing of the copy of the report.

40. The case of the petitioner is much worse than that of an employee whose case will be governed by the ratio in E.C.I.L. vs. Karunakar. The reasons are:-

(i) The requirement to furnish a copy of the enquiry report, is always an obligation to the delinquent and not to others. In this case, the petitioner is not complaining that he was not furnished with a copy of the report. His complaint is that the copies of the report were not furnished to the other members of the House. The only person who could have effectively defended the petitioner, is the Deputy leader of his own party. To him, the copy of the report was furnished. Therefore, the requirement actually stands fulfilled on first principles.

(ii) In any event, the petitioner has not established the other limb viz., the prejudice caused to him on account of non-supply of the copies of the report to the other members of the House.

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41. Therefore, the second contention of the petitioner that the proceedings of the House were vitiated for non-compliance of the principles of natural justice, cannot hold water.

Contention No.(iii) of the petitioner

42. The third contention of the learned Senior Counsel for the petitioner is that the Committee of Privileges is only a fact finding authority and that they committed a gross illegality in recommending the punishment to be inflicted upon the petitioner.

43. It is true that apart from recording a finding that the petitioner was guilty of breach of privilege, the Committee also recommended the nature of the penalty to be imposed on him. It was recommended by the Committee that the petitioner should be suspended for a total period of 10 days, to be spent partly during the current session and partly during the next session. Therefore, the question to be considered is as to whether the Committee was right in recommending the penalty to be imposed.

44. The Tamil Nadu State Legislative Assembly has framed a set of rules known as "Tamil Nadu Legislative Assembly Rules", under Clause (1) of Article 208 of the Constitution. Rules 219 to 230 of these rules govern the procedure to be followed by the Committee of Privileges. Rule 226 empowers the Speaker to refer any question of privilege, even suo motu. The power under Rule 226 is notwithstanding anything contained in any other rule. In the case on hand, the reference to the Committee was by the Speaker suo motu. Therefore, it was in accordance with Rule 226.

45. Rule 229(d) gives a clue as to whether the Committee of Privileges should merely record a finding and submit a report to the House or whether the Committee is entitled to make recommendations. It reads as follows:-

> "(d) After the motion for consideration of the report has been carried, the Chairman or any member of the Committee or any other member as the case may be, move that the Assembly agrees or disagrees, or agrees with amendments, with the recommendations contained in the report."

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46. A reading of the above Rule shows that the report of the Committee may contain recommendations, with which, the House may agree with or without amendments or even disagree. Therefore, the power of the Committee to make a recommendation is explicitly recognised in Rule 229(d). In other words, the Committee is not merely a fact finding body, but a Committee invested with the power to make recommendations. It is upto the House to accept or reject those recommendations. The House may even accept the recommendation with amendments. Therefore, it cannot be contended that the Committee has no power to recommend the nature of the penalty to be imposed.

Contention (iv) of the petitioner and contention (iv) of the respondent

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47. The fourth contention of the petitioner is that the power of the House to suspend a member, is limited only to the extent of suspending him for the remainder of the session and not for a period that would spill over to the next session. This contention is raised by the petitioner on the basis of Rule 121 (2) of the Tamil Nadu Legislative Assembly Rules. The response of the learned Additional Advocate General to this contention is that the power of the House to suspend or expel a member is not curtailed by the rules.

48. Interestingly, the Constitution does not speak specifically of the suspension or expulsion of a member of the House. Neither the Parliament in terms of Article 105(3) nor the State Legislature in terms of Article 194(3) has defined, by any statute, the powers and privileges of the Houses of Representatives. But there are certain rules which appear to give a clue.

49. Rule 117 of the Tamil Nadu Legislative Assembly Rules recognises that the "Speaker shall have all powers necessary for the purpose of enforcing the rules and preventing disorder." Rule 118 empowers the Speaker to direct a member to discontinue his speech, if he finds that the member persists in irrelevance or in tedious repetition of his own arguments or the arguments of others in debate or if he is speaking for the purpose of obstructing the business of the House. Rule 119 empowers the Speaker to expunge defamatory or indecent or unparliamentary or undignified or incriminatory words used by a member.

50. Rules 120 to 122 empower the Speaker (i) to order the withdrawal of the member (ii) to name a member and suspend him and (iii) to suspend or adjourn the House. These rules read as follows:-

> "120. The Speaker may direct any Member whose conduct is, in his opinion, grossly disorderly to withdraw immediately from the House, and any Member so ordered to withdraw shall do so, forthwith and absent himself during the remainder of the day's meeting. If any Member is ordered to withdraw a second time in the same session the Speaker may direct the Member to absent himself from the meetings of the Assembly for any period not longer than the remainder of the session, and the Member so directed shall absent himself accordingly. If such Member refuses to withdraw, the Speaker may order his removal by force by the Sergeant of the Assembly. The Member so directed to be absent shall not be deemed to be absent for the purposes of clause (4) of Article 190 of the Constitution.
>
> 121.(1) The Speaker may, if he deems it necessary, name a Member who disregards the authority of the Chair or abuses the rules of the House by persistently and wilfully obstructing the business thereof.

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(2) If a member is so named by the Speaker, the Speaker, shall, on a motion being made forthwith without any discussion put the question that the member (naming him) be suspended from the service of the House for a period not exceeding the remainder of the session:

Provided that the House may, at any time, on a motion being made resolve that such suspension be terminated.

(3) A member suspended under this rule shall forthwith withdraw from the precincts of the House and shall do so till the expiry of the period of suspension.

If such member refuses to withdraw, the Speaker may order his removal from the House or prevent his entry into the House by force by the Sergeant of the Assembly.

122. The Speaker may in case of grave disorder arising in the House, adjourn the House to the next sitting or suspend a sitting until a specified hour on the same day."

51. A reading of the above Rules discloses that the Speaker has the following powers:-

(i) To direct under Rule 120, any member to withdraw immediately from the House, so as to make that member absent himself during the remainder of the day's meeting.

(ii) To direct under Rule 120, any member who is ordered to withdraw a second time in the same session, to be absent from the meetings of the Assembly for a period not longer than the remainder of the session.

(iii) To name a member under Rule 121(1), if that member disregards the authority of the Chair or abuses the Rules of the House by persistently and wilfully obstructing the business thereof.

(iv) To put a question under Rule 121(2) that the member named under sub-rule (1) be suspended from the service of the House for a period not exceeding the remainder of the session.

(v) To adjourn the House to the next sitting or suspend a sitting till a specified hour on the same day under Rule 122.

52. A careful perusal of Rule 121 (1) and (2) would show that they cover only cases where a member disregards the authority of the Chair or abuses the Rules of the House by persistently and wilfully obstructing the business thereof. Rule 121(1) and (2) would not govern a case of breach of privilege of the nature that

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has arisen in the case on hand. Sub-rule (1) of Rule 121 covers only two out of several situations under which proceedings for breach of privilege may be initiated. Cases where members are alleged to have behaved in a manner bringing disrepute to the House, may not be covered by Rules 120 to 122. As a matter of fact, Rules 120 to 122 deal with the action that could be taken by the Speaker without any reference to the Committee of Privileges. Therefore, the circumcision on the power of the Speaker under Rules 120 and 121(2) would not apply to the power of the House.

53. Two important aspects may have to be taken note of. One is that while directing a member to absent himself from the meetings of the Assembly under Rule 120 for a period not longer than the remainder of the session, the Speaker does not get the concurrence of the House, as seen from the language employed in Rule 120. Similarly, the power of the Speaker under Rule 121(2) is also made subject to the proviso under sub-rule (2) which enables the House to terminate the suspension by a resolution passed on a motion made in that behalf. Therefore, the limitation that a member cannot be suspended for a period longer than the duration of the remainder of the session, may be a limitation on the power of the Speaker, but not a limitation on the power of the House.

54. In so far as the power of the House in relation to a report of the Committee of Privileges is concerned, the Rule to be applied is only Rule 229 and not Rule 121 as argued by the learned Senior Counsel for the petitioner. As we have seen earlier, Rule 229(d) enables the House to agree with or without amendments or to disagree with the recommendations contained in the report of the Committee of Privileges. The phrase "not longer than the duration of the remainder of the session" is found only in Rules 120 and 121 and not in Rule 229 (d). Therefore, the contention that the House is not entitled to suspend a member for a period exceeding the remainder of the session is ill-conceived, in view of the fact that the Rule to be applied in cases of this nature is Rule 229 and not Rule 121.

55. In Raja Ram Pal, one of the primary contentions raised was as to whether the House has the power of expulsion of a member at all, in the absence of any law enacted therefor. After holding in paragraphs 145 and 147 that the power of expulsion is not inconsistent with Articles 101 and 102 of the Constitution, the Court held in paragraph 150 that the power of expulsion is not negated by any of the constitutional or statutory provisions. In paragraph 162, the Court went on to hold that the power of expulsion is not contrary to a democratic process, but part of the guarantee of a democratic process. Therefore, it was held that the power does not even violate the right of the Constituency or any other democratic principles.

56. It is needless to say that suspension is less serious than expulsion. Therefore, once it is accepted that the House has the power even to expel a member, then it follows as a corollary that suspension spilling over two sessions is also permissible. Perhaps, the logic behind the recognition of such power is that a member who is guilty of a conduct unacceptable to the House in

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entirety, is unfit to represent the Constituency. In Para 697 of the decision in Raja Ram Pal, C.K.Thakker,J., observed that "if a constituency goes unrepresented as a result of the act of an elected member inconsistent with the dignity and derogatory of the conduct expected of an elected member, then it is the voters who alone will have to take the blame for electing a member who indulges in conduct which is unbecoming of an elected representative". Moreover, the collective wisdom of the House as a whole, supersedes the wisdom of the electorate of the Constituency in such cases. Therefore the contention that suspension cannot be for a period extending beyond the remainder of the session cannot be accepted.

Contention (v) of the petitioner

57. The next contention of the learned Senior Counsel for the petitioner is that the power of the House to suspend a member, cannot go beyond the precincts of the House. The suspension of a member for a duration which would spill over 2 consecutive sessions, would have the effect of keeping him out of office even during the period when the House is not in session. This according to the learned Senior Counsel for the petitioner, is grossly illegal.

58. But the above contention proceeds on a presumptive dichotomy, between the status of a member when the House is in session and his status when it is not in session. I do not think any such distinction exists. An elected representative continues to be so irrespective of whether the House is in session or not. Inside the House he performs certain functions. He performs certain other functions outside the House. The payment of his salary and other perquisites, do not depend upon whether the House is in Session or not.

59. Under Article 172(1) of The Constitution, the Legislative Assembly, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting. The expiration of the period of five years will operate as a dissolution of the Assembly automatically. It is not as though the Assembly is always in session during this entire period of five years. The Assembly meets from time to time only upon being summoned by the Governor. Under Article 174 (1), the Governor is entitled to summon the House to meet at such time and place, subject to the requirement that a period of six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session. Under Clause (2), the Governor has the power to prorogue or dissolve the Assembly.

60. Therefore, from the date on which a member of the Legislative Assembly takes his seat in terms of Article 188 after making and subscribing an oath or affirmation as per the form set out in the Third Schedule, he starts discharging his duties as an elected member, both within and outside the House. His entitlement to function as an elected member, inside or outside the House, is by virtue of his holding the office. It is this entitlement of the member that is actually made subject to the prerogative of the House, when the House passes a resolution to place him under

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suspension.

61. In other words, placing an elected member under suspension is the cause and all other things are its consequences. As a matter of fact, Article 195 entitles the elected members of the Assembly to receive such salaries and allowances as may be determined by the Legislature of the State, by law. Therefore, a contention was raised in Raja Ram Pal that the provisions of The Constitution relating to salary and term of office, are Constitutional rights, which cannot be infringed by expulsion. But, this contention was answered from paragraphs 151 to 159 of the decision in Raja Ram Pal. After holding that the right acquired by an elected member is not a Constitutional right, the Supreme Court held in paragraph 158 that "salaries are obviously dependent upon membership." Therefore, it is clear that the validity of the suspension cannot be judged merely by the consequences that flow out of the same. An elected member who is debarred by virtue of an order of suspension, from discharging his duties and functions, may have to suffer all the consequences that go with the office. Therefore, the fifth contention of the learned Senior Counsel for the petitioner that suspension for a period spilling over to two sessions, would tantamount to the exercise of a power beyond the four walls of the Legislature and that therefore it is impermissible, cannot be accepted.

Contention (vi) of the petitioner :

62. The next contention of the learned Senior Counsel for the petitioner is that as a result of the suspension, the privileges enjoyed by the petitioner as the Leader of the Opposition have also been taken away resulting in a stalemate, with the State Assembly having no Leader of Opposition.

63. But unfortunately, The Constitution does not recognise any such office as the Leader of the Opposition. The offices of Speaker, Deputy Speaker, etc., are recognised by The Constitution, but not the office of the Leader of Opposition. But Parliament has enacted the Salaries and Allowances of Leaders of Opposition in Parliament Act, 1977. Similarly, some States have passed Acts, providing for payment of salary and allowances to the Leader of the Opposition. Therefore, it is clear that the status of a person as the Leader of the Opposition in a Legislative Assembly, should be statutorily recognised by that particular State.

64. In so far as the State Assembly is concerned, the Tamilnadu Legislative Assembly Rules, issued under Article 208(1) of The Constitution contain a reference to the Leader of the Opposition. The expression is defined in Rule 2(k) of the said Rules to mean the Leader of a Legislature Party, having the largest number of members other than the Party, which has formed the Government and having more than the quorum strength prescribed and recognised by the Speaker as such. There are two provisos to the said Rule, about which, we are not concerned. These Rules do not confer any extra privilege upon a person recognised as the Leader of the Opposition. Other than being entitled by virtue of Rule 227(1) to be a member of the Committee of Privileges, no other privilege appears to have been conferred by the Rules upon a

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person recognised as the Leader of the Opposition.

65. In Karpoori Vs. State (AIR 1983 Patna 86), it was held that a member is entitled to salary and allowances under the Statute, if he is recognised by the Speaker or the Chairman as the Leader of the Party in Opposition and that the Speaker's decision on this point would be final and non justiciable under Article 212, so long as it is not controlled by the specific provisions of any Statute.

66. Therefore, it is clear that the contention of the petitioner in this regard, is not based upon any Statutory provision. In the absence of any Constitutional or Statutory protection, the contention that the Assembly is left without a Leader of the Opposition does not carry any weight.

Contention (vii) of the petitioner and contention (iv) of the Additional Advocate General :

67. The next contention of the learned Senior Counsel for the petitioner is that the resolution passed by the House without even furnishing copies of the report of the Committee of Privileges, is nothing but a mala fide exercise of power. The response of the learned Additional Advocate General to this argument is that no allegation of mala fides can be sustained against an august body such as the Legislative Assembly.

68. The non furnishing of the copies of the report of the Committee of Privileges to all the members of the House, has already been dealt with by me in an earlier paragraph. I have held therein that it did not vitiate the resolution passed. Therefore, the non furnishing of the copies cannot also lead to an allegation of mala fide exercise of power. Moreover, the Assembly has a membership of 234. The resolution has been passed by a simple majority as required by the Rules. Therefore, no allegation of mala fide can be made against a body comprising of huge number of members. Hence, the last contention is also rejected.

69. Thus none of the contentions raised by the petitioner are acceptable and I find that the parameters laid down by the Apex court in Raja Ram Pal for the exercise of the power of judicial review are not satisfied. Therefore, the writ petition is liable to be dismissed. Accordingly, it is dismissed. There shall be no order as to costs.

Sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar

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kpl/RS
To

1.The Secretary
Tamil Nadu Legislative Assembly
Secretariat, Fort St. George
Chennai 600 009.

2.The Hon'ble Speaker
Tamil Nadu Legislative Assembly
Secretariat, Fort St. George
Chennai 600 009.

+ 1 C.C. TO MR. S. Manimaran, Advocate Sr.28195/12

+ 1 C.C. To the Government Pleader High Court, Madras Sr.104

+ 1 C.C. To Mr. R.C. Manoharan, Advocate Sr.28227/12

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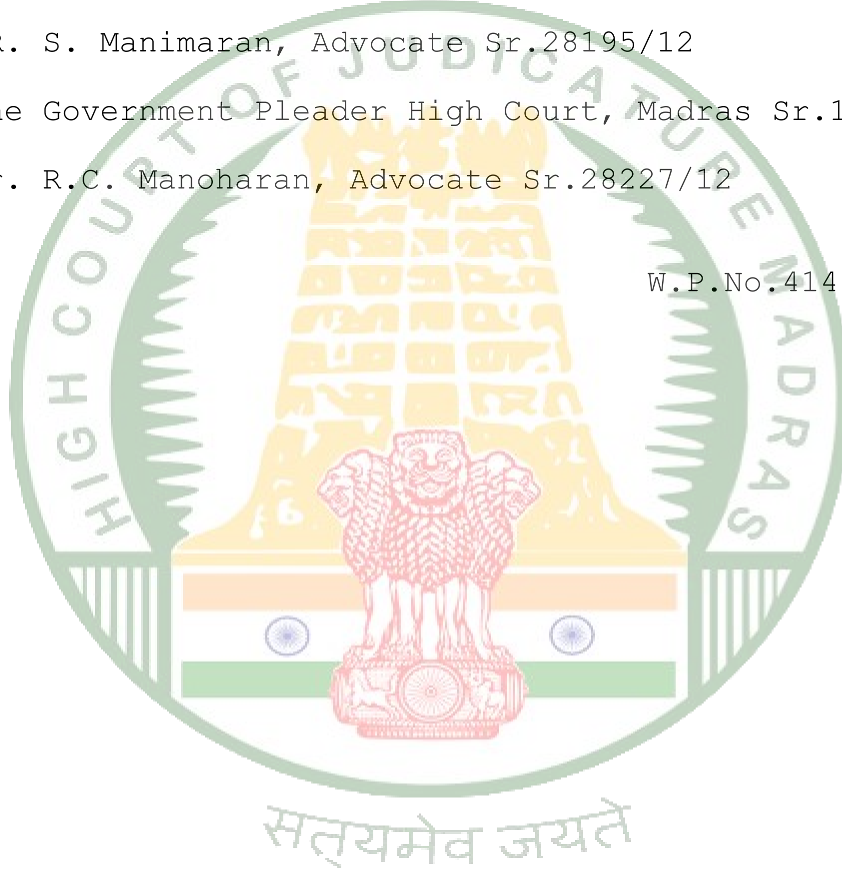

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