

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2527 of 2014**

Bhupesh Baghel S/o Shri Nand Kumar Baghel, Aged About 53 Years R/o Man Sarovar Colony, Bhilai -3, Thana Old Bhilai, Tehsil Patan District Durg C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Chief Secretary, Mantralaya, Mahanadi Bhawan, Raipur C.G.
2. Chhattisgarh Vidhan Sabha Through Chief Secretary Secretariat Vidhan Sabha Bhawan Raipur C.G.
3. Shri Gauri Shankar Agrawal, Honble Speaker Chhattisgarh Vidhan Sabha Speaker House, Shankar Nagar, Raipur C.G.

---- Respondents

For Petitioner	:	Shri Sudeep Shrivastava and Shri Harsh Wardhan, Advocates.
For Respondent/State	:	Shri Jugal Kishore Gilda, Advocate General with Shri R.K. Gupta, Dy.A.G.
For Respondent No.2	:	Shri Satpal Jain, Senior Advocate with Shri Ramakant Mishra and Shri A.S. Kachhawaha, Advocates.

C A V Order

[16/10/2015](#)

This Order shall dispose off preliminary objection to the maintainability of the petition raised by respondent No.1/State and respondent No.2-Chhattisgarh Vidhan Sabha.

1. By this petition under Article 226 of the Constitution of India, the petitioner has challenged legality and propriety of order dated 22nd July, 2014 passed by respondent No.3 by which the notice of motion of no confidence moved against respondent No.3 has been rejected by respondent No.3.
2. The petitioner is an elected member of Chhattisgarh Legislative Assembly.

Respondent No.3 is also an elected member of Chhattisgarh Legislative Assembly. He has been elected as Speaker of the House in January, 2014 and since then holding the office of the Speaker of the Assembly.

3. The petitioner and 35 other Members of the Legislative Assembly submitted a notice on 21.7.2014 to the Chief Secretary of the Secretariat of Chhattisgarh Vidhan Sabha seeking leave to move a resolution expressing no confidence motion against respondent No.3 on the allegation of breach of privilege and for his alleged conduct of unbecoming of Speaker of the Assembly. However, respondent No.3 rejected the request and disallowed the motion for leave to move no confidence resolution to be entered in the list of business. It is this order of respondent No.3 which is under challenge in this petition.
4. On 22.12.2014, the Advocate General entered appearance and sought time to file reply on behalf of respondents No. 1 & 2. It was also stated that an objection to maintainability of the petition is also proposed to be raised. This Court directed respondents No.1 & 2 to file its counter affidavit.
5. Learned counsel for respondents No. 1 & 2 raised preliminary objection to the very maintainability of the petition. Learned senior counsel appearing for respondent No.2 vehemently contended that the order impugned in this petition is immune from challenge in any proceedings in a Court of law in view of express bar under Article 212 of the Constitution of India. It was argued that under the constitutional scheme engrafted in Article 212 of the Constitution, the validity of any proceedings in the Legislature of a State cannot be called in question on the ground of any alleged irregularity of procedure. He contended that the Speaker, being an Officer of the Legislature of the State, passed the impugned order, therefore, under Article 212 (2), is not subject to jurisdiction of any Court in respect of exercise by him of his power under Rule 145 of the Chhattisgarh Legislative Assembly Rules of Procedure and Conduct of Business (for short hereinafter referred to as "*RPCB Rules*") framed by Chhattisgarh Legislative Assembly in exercise of powers under Article 208 (2) of the Constitution. Rule 145 (2) of the RPCB Rules expressly empowers the Speaker to deal with a notice of resolution under clause (c) of Article 179 of the Constitution, for the removal of the Speaker or the Deputy Speaker. It is within the province of the

Speaker alone to fix a date for consideration by the Assembly, of a motion for leave to move the no confidence resolution. Provision contained in Rule 145 (2) of the RPCB Rules mandates that the day so fixed shall be any date after fourteen days from the date of receipt of the resolution. The house was in session only for the period from 21.7.2014 to 25.7.2014. As notified vide Notification dated 19.6.2014, the petitioner had all the opportunity to give notice in accordance with Article 179 of the Constitution but the petitioner chose to give notice as late as on 21.7.2014 knowing fully well that session was drawing to a close on 25.7.2014 and there were left not enough days according to the mandate of Article 179 of the Constitution. Any day after fourteen days from the date of notice dated 21.7.2014, would fall on a date when the House would not be in session. Therefore, the Speaker was fully justified in rejecting the notice vide his ruling /impugned order dated 22.7.2014. Article 181 of the Constitution does not come in the way of the Speaker exercising powers expressly conferred under Rule 145 of the RPCB Rules as it is not a case where resolution for removal of the Speaker from his office was under consideration. It is urged that even when there is a notice for grant of leave to move a motion of removal against the Speaker, prior to the stage envisaged under Article 181 of the Constitution, the Speaker has been expressly conferred power to fix date for consideration of motion for grant of leave, be it a notice for grant of leave to move motion of his own removal. In the absence of any challenge to the constitutionality of provision under Rule 145 of the RPCB Rules, the ruling given by the Speaker to reject the notice is essentially a matter concerning proceedings in the Legislature of the State and the ground of challenge raised in the petition being one of alleged irregularity of procedure, the power under Article 212 (1) is squarely attracted. It is next contended that the Speaker is an Officer of the State Legislature as stipulated under Article 178 of the Constitution and even if the impugned ruling/order is stated to be an order, it being an order of the nature specified in Article 212 (2) of the Constitution, he is not subject to the jurisdiction of any Court in respect of the exercise by him of such power. Learned senior counsel appearing for respondent No.2 further contended that the bonafide exercise of statutory power by the Speaker in rejecting the notice and disallowing the notice to be entered in the list of business is sacrosanct and immune from any challenge.

According to learned senior counsel, per force provision contained in Rule 238 of the RPCB Rules, on the prorogation of the House, all pending notices, other than notices of intention to move for leave to introduce a Bill, shall lapse. Therefore, subject to the exception carved out therein, all the notices attain natural demise upon prorogation of the House. As there was no motion, resolution or amendment which could be said to have been moved and pending in the House, the notice is not saved under Rule 239 of the RPCB Rules. It is further submitted that another session of the Assembly was held from 15.12.2014 to 17.12.2014, but, neither the present petitioner nor any other Member of the House gave any notice of removal of the Speaker. In subsequent sessions of the House also, during the pendency of this petition, no notice under clause (c) of Article 179 of the Constitution for removal of the Speaker was moved. This clearly shows that in all sessions of Assembly, subsequent to Assembly session from 21.7.2014 to 25.7.2014, the Speaker enjoyed confidence. Having not availed any opportunity to move notice for removal of the Speaker in subsequent session of the Assembly, the present petition is rendered academic and petition is liable to be dismissed only on this count. In support of his submission, learned senior counsel for respondent No.2 relied upon plethora of decisions¹.

6. Learned Advocate General appearing for the State also joined learned senior counsel for respondent No.2 to contend that the petition is not maintainable in view of express bar engrafted under Article 194 and Article 212 and in the absence of there being any violation of such substantive provision contained in Rule 145 of the RPCB Rules, relying upon the authorities referred to above as also other decisions², on the submission similar to those advanced by learned senior appearing for respondent No.2.
7. Replying to the objection to the maintainability of the petition, learned counsel for the petitioner argued that the challenge to the impugned order/ruling by respondent No.3 is based on the grounds of illegality, absence of jurisdiction, want of authority and bias. It is contended that under Article 179 (c) of the Constitution, the jurisdiction and authority to

1 AIR 2014 SC 2051, AIR 1960 SC 1186, AIR 1970 Punjab & Haryana 379 (FB), AIR 1963 Allahabad 75, AIR 1993 Allahabad 334, AIR 1952 Orissa 234, AIR 1967 Madhya Pradesh 95, AIR 1954 Allahabad 319, AIR 1996 Bombay 10, AIR 1953 Orissa 111, AIR 1958 Assam 160 and AIR 1973 Madras 371 (FB)

2 AIR 1955 Nagpur 11, AIR 1952 SC 252 and AIR 1984 Kerla 1 (FB)

consider motion for leave to move the resolution for removal of Speaker exclusively vests with the House. Once a notice of intention to move the resolution is given by a Member of the Legislative Assembly, the Speaker cannot interdict and reject the notice on any ground whatsoever. The Speaker is enjoined by the statutory mandate of Rule 145 (2) to fix a date upon receipt of the notice of the resolution. Under the statutory scheme engrafted in Rule 145 (2) of the RPCB Rules, on receipt of a notice of motion for leave to move the resolution, it has to be entered in the list of business in the name of the Member concerned, on a day after fourteen days from the date of receipt of notice of the resolution. The provision does not empower the Speaker to reject the notice or disallow notice to be entered in the list of business. It is further contended that the spirit of the provision contained in Article 179 of the Constitution obligated the Speaker not to take any decision on notice of resolution as the notice was given of a motion for leave to move the resolution for the removal of respondent No.3. Therefore, respondent No.3 was suffering from personal bias and the impugned order is tainted with bias as respondent No.3 could not reject a notice for resolution of his own removal. It is then contended that the reason assigned for rejecting the notice is illegal and unsustainable in law because even if the session was coming to an end on 25th July , 2014, it could be extended for a further period so as to allow the motion of no confidence and removal to be considered by the House or it could be placed for consideration by the House in the following session. Prorogation of the House did not by itself, operated to render the notice invalid or incapable of being moved into the House for consideration. Therefore, it is contended, present is a case of illegality committed by respondent No.3 and so the grounds of challenge are based on illegality and not a mere irregularity of procedure. In such an eventuality, bar under Article 212 (1) of the Constitution would not be attracted. Further contention is that the order is not one of the nature specified in Article 212 (2) of the Constitution. Therefore, no immunity from judicial review could be claimed by the respondents. It is further submitted that decisions which have been relied upon in support of objection to the maintainability pertain to proceedings within the walls of the Legislature and not an order akin to the order which has been passed by the Speaker as impugned in the present case. It is also

submitted that even though it was open to extend the session of the House or to refer the matter to Business Advisory Committee as has been the past practice, rejection of the notice itself that too by respondent No.3, for whose removal the notice was given, suffers from absence of jurisdiction, authority, illegality and bias. In support of the aforesaid submission, learned counsel for the petitioner relies on catena of decisions³.

8. I have considered the rival submissions made by learned counsel for the parties and perused the records of the case.
9. The first and foremost ground urged against the very maintainability of this writ petition is founded on constitutional embargo and immunity embodied in Article 212 of the Constitution of India. To appreciate the submission in this regard, the constitutional provision and judicially evolved principles delineating scope, ambit and reach of Article 212 need to be examined. The relevant constitutional provision is extracted 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.”

10. The immunity against a judicial review is firstly with reference to proceedings in the Legislature of a State, as provided under Article 212 (1) of the Constitution and secondly, immunity of officers or Member of the Legislature of a State, as provided under Article 212 (2) of the Constitution.

As the provision provides in clear terms, the validity of any proceedings in the Legislature of a State is not open to challenge on the ground of any alleged irregularity of procedure. This constitutional embargo is, therefore, confined to the aspect of irregularity of procedure, as would be clear from the language of the provision contained in Article 212 (1) of the

3 (2011) 7 SCC 1, (2007) 3 SCC 184, AIR 2002 Gauhati 7, AIR 1965 SC 745 and (1992) Supp(2) SCC 651

Constitution.

11. Article 212 (2) of the Constitution provides immunity from challenge to an officer or Member of the Legislature in whom powers are vested by or under the Constitution; (a) for regulating procedure or the conduct of business; (b) for maintaining order in the legislature.

So long as exercise of power relates and confine to regulating of procedure or conduct of business or for maintaining order, the Constitution protect such an Officer or Member of the Legislature by providing that in respect of such matters, the Officers or the Members of the Legislature would not be subject to jurisdiction of any Court in respect of exercise by him of those powers.

12. The scope of judicial review and justiciability based on interpretation of Article 212 of the Constitution has been considered by Hon'ble the Supreme Court and several High Courts in catena of decisions. The Constitution Bench judgment of Hon'ble Supreme Court in the case of **Raja Ram Pal Vs. Hon'ble Speaker, Lok Sabha & Ors., (2007) 3 SCC 184**, is one of the most authoritative pronouncement on the legal issue concerning scope of judicial review vis-a-vis Article 212 of the Constitution wherein Hon'ble Supreme Court considered large number of decisions rendered by itself, English Courts and High Courts. It was observed in para -360 of the judgment (page 347 of SCC) thus:

“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 *Pandit Sharma (II)*. 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.

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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* 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 controls, in which scheme of things, this Court is entrusted with the duty to be watchdog of and guarantor of the Constitution.”

13. In an earlier Constitution Bench judgment of the Supreme Court in the case of **Kihoto Hollohan Vs. Zachillhu and Ors., 1992 Supp (2) SCC 651**, questions relating to parameters of judicial review of the exercise of a constitutional power on the face of constitutional bar and the jurisdiction of the Court, while examining challenge to the constitutional validity of provision contained in the *Tenth Schedule* of the Constitution arose for consideration. The matter was examined by Hon’ble the Supreme Court, with reference, amongst others, to the immunity under Article 122 of the Constitution, exclusivity of the jurisdiction vested in the authority enunciated in *Tenth Schedule* and the concept of “finality” in addition to an express bar making it a non-justiciable area. The observations made in the aforesaid

judgment in **Kihoto Hollohan** (supra), noted by Hon'ble Supreme Court in the case of **Raja Ram Pal** (supra) are pertinent and therefore extracted below:
(SCC pp 706 -08 and 710-11, paras- 96, 99, 101, 109 and 111)

'96. The fiction in para 6(2), indeed, places it in the first clause of Article 122 or 212, as the case may be. The words 'proceedings in Parliament' or 'proceedings in the legislature of a State' in para 6(2) have their corresponding expression in Articles 122(1) and 212(1) respectively. This attracts an immunity from mere irregularities of procedures.

* * *

99. 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. That authority is called a Tribunal, if it does not have all the trappings of a court. In *Associated Cement Cos. Ltd. v. P.N. Sharma* this Court said: (SCR pp. 386-87)

'... The main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power which the State Government exercises under Rule 6(5) and Rule 6(6) is a part of the State's judicial power.... There is, in that sense, a lis; there is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final and binding.'

* * *

101. In the operative conclusions we pronounced on 12-11-1991 we indicated in clauses (G) and (H) therein that judicial review in the area is limited in the manner indicated.

If the adjudicatory authority is a tribunal, as indeed we have held it to be, why, then, should its scope be so limited? The finality clause in para 6 does not completely exclude the jurisdiction of the courts under Articles 136, 226 and 227 of the Constitution. But it does have the effect of limiting the scope of the jurisdiction. The principle that is applied by the courts is that in spite of a finality clause it is open to the court to examine whether the action of the authority under challenge is ultra vires the powers conferred on the said authority. Such an action can be ultra vires for the reason that it is in contravention of a mandatory provision of the law conferring on the authority the power to take such an action. It will also be ultra vires the powers conferred on the authority if it is vitiated by mala fides or is colourable exercise of power based on extraneous and irrelevant considerations. While exercising their certiorari jurisdiction, 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. [See Administrative Law, H.W.R. Wade, (6th Edn.), pp. 724-26; *Anisminic Ltd. v. Foreign Compensation Commission*; *S.E. Asia Fire Bricks v. Non-Metallic Mineral*

Products Mfg. Employees Union.]

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109. In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman under para 6, 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 under para 6 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.

* * *

111. In the result, we hold on contentions (E) and (F):

That 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. The power to resolve such disputes vested in the Speaker or Chairman is a judicial power.

That para 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speakers/Chairmen is valid. But the concept of statutory finality embodied in para 6(1) 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.

That the deeming provision in para 6(2) of the Tenth Schedule attracts an immunity analogous to that in Articles 122(1) and 212(1) of the Constitution as understood and explained in U.P. Assembly case (Special Reference No. 1 of 1964) to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words 'be deemed to be proceedings in Parliament' or 'proceedings in the legislature of a State'

confines the scope of the fiction accordingly.

The Speakers/Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review.”

(emphasis supplied)

14. In the case of **Raja Ram Pal** (supra), the Supreme Court also referred to its decision in the matter of **UP Assembly Case (Special Reference No. 1 of 1964)**, AIR 1965 SC 745 as under:

“377. In U.P. Assembly case (Special Reference No. 1 of 1964) the issue was authoritatively settled by this Court, and it was held, at SCR pp. 455-56, as under: (AIR p. 768, para 62)

“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. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular.”

In later parts of its judgment it was further held :

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384. The prohibition contained in Article 122(1) does not provide immunity in cases of illegalities. In this context, reference may also be made to *Sarojini Ramaswami v. Union of India*. The case mainly pertained to Article 124(4) read with the Judges (Inquiry) Act, 1968. While dealing, inter alia, with the overriding effect of the rules made under Article 124(5) over the rules made under Article 118, this Court at SCR pp. 187-88 made the following observations: (SCC p. 572, para 94) “94. We have already indicated the constitutional scheme in India and the true import of clauses (4) and (5) of Article 124 read with the law enacted under Article 124(5), namely, the Judges (Inquiry) Act, 1968 and the Judges (Inquiry) Rules, 1969, which, inter alia contemplate the provision

for an opportunity to the Judge concerned to show cause against the finding of 'guilty' in the report before Parliament takes it up for consideration along with the motion for his removal. Along with the decision in *U.P. Assembly case (Special Reference No. 1 of 1964)* has to be read the declaration made in *Sub-Committee on Judicial Accountability* that 'a law made under Article 124(5) will override the rules made under Article 118 and shall be binding on both the Houses of 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 Judge concerned to the order of removal made by the President under Article 124(4) in the judicial review available after making of the order of removal by the President will be determined on these considerations." (emphasis supplied)

* * *

386. Article 122(1) thus must be found to contemplate the twin test of legality and constitutionality for any proceedings within the four walls of Parliament. The fact that *U.P. Assembly case (Special Reference No. 1 of 1964)* dealt with the exercise of the power of the House beyond its four walls does not affect this view which explicitly interpreted a constitutional provision dealing specifically with the extent of judicial review of the internal proceedings of the legislative body. In this view, Article 122(1) displaces the English doctrine of exclusive cognizance of internal proceedings of the House rendering irrelevant the case-law that emanated from courts in that jurisdiction. Any attempt to read a limitation into Article 122 so as to restrict the court's jurisdiction to examination of the Parliament's procedure in case of unconstitutionality, as opposed to illegality would amount to doing violence to the constitutional text. Applying the principle of "expressio unius est exclusio alterius" (whatever has not been included has by implication been excluded), it is plain and clear that prohibition against examination on the touchstone of "irregularity of procedure" does not make taboo judicial review on findings of illegality or unconstitutionality.

* * *

389. We find substance in the submission that it is always expected, rather it should be a matter of presumption, that Parliament would always perform its functions and exercise its powers in a reasonable manner. But, at the same time there is no scope for a general rule that the exercise of powers by the legislature is not amenable to judicial review.

This is neither the letter nor the spirit of our Constitution. We find no reason not to accept that the scope for judicial review in matters concerning parliamentary proceedings is limited and restricted. In fact this has been done by express prescription in the constitutional provisions, including the one contained in Article 122(1). But our scrutiny cannot stop, as earlier held, merely on the privilege being found, especially when breach of other constitutional provisions has been alleged.

* * *

393. 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. As has been noticed, in the context of Article 122(1), mere irregularity of the procedure cannot be a ground of challenge to the proceedings in Parliament or effect thereof, and while the same view can be adopted as to the element of “irrationality”, but in our constitutional scheme, illegality or unconstitutionality will not save the parliamentary proceedings.

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398. We are of the view that the manner of exercise of the power or privilege by Parliament is immune from judicial scrutiny only to the extent indicated in Article 122(1), that is to say the court will decline to interfere if the grievance brought before it is restricted to allegations of “irregularity of procedure”. But in case gross illegality or violation of constitutional provisions is shown, the judicial review will not be inhibited in any manner by Article 122, or for that matter by Article 105. If one was to accept what was alleged while rescinding the resolution of expulsion by the Seventh Lok Sabha with the conclusion that it was “inconsistent with and violative of the well-accepted principles of the law of parliamentary privilege and the basic safeguards assured to all enshrined in the Constitution”, it would be a partisan action in the name of exercise of privilege. We are not going into this issue but citing the incident as an illustration.”

15. The Hon’ble Supreme Court finally summed up the principles relating to parameters of judicial review in relation to exercise of parliamentary provision in para -431 of its judgment as below:
(SCC page 371 para 431)

431. We may summarise the principles that can be culled out from the above discussion. They are:

- (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;
- (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 on the fundamental rights conferred on the citizens;
- (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;

(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;

(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.”

16. The aforesaid authoritative pronouncement of the Constitution Bench of the Supreme Court in the case of **Raja Ram Pal** (supra) clearly hold in para-431 n & s) that Article 122 (1) and Article 212 (1) prohibits the validity of any proceedings in legislature from being called in question in a Court merely on the ground of irregularity of procedure and that the proceedings

which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny.

17. Learned counsel for the petitioner as also learned Advocate General and learned senior counsel of respondent No.2 referred to large number of decisions of the Hon'ble Supreme Court and various High Courts rendered prior to the judgment in the case of **Raja Ram Pal** (supra) which need not be gone into at this stage as most of those decisions have been considered by the Supreme Court in the case of **Raja Ram Pal** (supra), except 3 decisions, one in the case of **Balchandra L. Jarkiholi and Ors. Vs. B.S. Yeddyurappa & Ors.** (2011) 7 SCC 1, **Mohd. Saeed Siddiqui Vs. State of U.P. and another**, AIR 2014 SC 2051 and **Nipamacha Singh and Ors. Vs. Secretary, Manipur Legislative Assembly**, AIR 2002 Gauhati 7.

In the case of **Balchandra L. Jarkiholi** (supra) while examining legality and validity of order passed by the Speaker of Karnataka State Legislative Assembly on disqualification, it was held :

“153. On the question of justiciability of the Speaker's order on account of the expression of finality in Para 6 of the Tenth Schedule to the Constitution, it has now been well settled that such finality did not include the powers of the superior courts under Articles 32, 226 and 136 of the Constitution to judicially review the order of the Speaker.”

18. In **Mohd. Saeed Siddiqui** (supra), dealing with a writ petition under Article 32 of the Constitution of India seeking a writ of *quo-warranto* against Lokayukta in the State of Uttar Pradesh and examining the constitutional validity of Uttar Pradesh Lokayukta and Up-Lokayukta (Amendment) Act, 2012, the Supreme Court had an occasion to examine the scope and ambit of Article 212 of Constitution of India. It was held in para-33 as under:

“33. The above provisions make it clear that the finality of the decision of the Speaker and the proceedings of the State Legislature being important privilege of the State Legislature viz. freedom of speech, debate and proceedings are not to be

inquired by the courts. The “proceeding of the legislature” includes everything said or done in either House in the transaction of the parliamentary business, which in the present case is enactment of the Amendment Act. Further, Article 212 precludes the courts from interfering with the presentation of a Bill for assent to the Governor on the ground of non-compliance with the procedure for passing Bills, or from otherwise questioning the Bills passed by the House. To put it clear, proceedings inside the legislature cannot be called into question on the ground that they have not been carried on in accordance with the Rules of Business. This is also evident from Article 194 which speaks about the powers, privileges of the Houses of the Legislature and of the members and committees thereof.”

In para 34 of its decision, the Supreme Court also examined the scope of Article 199 (3) to hold:

“34. We have already quoted Article 199. In terms of Article 199(3), the decision of the Speaker of the Legislative Assembly that the Bill in question was a Money Bill is final and the said decision cannot be disputed nor can the procedure of the State Legislature be questioned by virtue of Article 212.”.....

At the same time, the parameters on which judicial review was permissible was also considered by the Supreme Court in the same paragraph, noticing its judgment in the case of **Raja Ram Pal** in following words :

“34.....We are conscious of the fact that in the decision of this Court in *Raja Ram Pal v. Lok Sabha*, it has been held that the proceedings which may be tainted on account of substantive or gross irregularity or unconstitutionality are not protected from judicial scrutiny.”

In that case, it being a case of decision of the Speaker of the Legislative Assembly that the Bill in question was a Money Bill, was held to be final holding that it cannot be disputed nor can the procedure of State Legislature be questioned by virtue of Article 212.

In view of its observation in para -34 of the judgment, the aforesaid

decision on facts, does not help the respondents in the present case and is distinguishable .

19. In the case of **Nipamacha Singh** (supra), facts of which are more or less similar to the present case, as in that case also rejection of notice of resolution of removal of the Speaker was under challenge. It was held that the petition cannot be held to be not maintainable by application of immunity clause under Article 212 of the Constitution in following words:

“It is true as has been submitted by Mr. Ashok Patsangbum that the Speaker has been granted immunity under clause (2) of Article 212 of the Constitution in respect of exercise of powers by him vested by or under the Constitution for regulating the procedure or the conduct of business or maintaining order in the Legislature. It is also true as has been submitted by Mr. Postsangbum and Mr. R. Gogoi that deviation from the procedure laid down in Rules of Procedure and Conduct of Business in Manipur Legislative Assembly including the procedure laid down in Rules 307, 308 309 and 310 thereof cannot call for interference from this Court under Article 226 of the Constitution. But in the present case, as has been held above, the power to consider or to reject a motion for removal of the Speaker from his office did not vest in the Speaker but in the Legislative Assembly under Articles 179 and 181 of the Constitution and correspondingly the petitioners as members of the Manipur Legislative Assembly had the Constitutional right to move a motion for removal of the Speaker from his office in the Legislative Assembly. The Speaker has thus exceeded his powers under the provisions of the Constitution and violated the constitutional rights of the petitioners. Clause (2) of Article 212 of the Constitution as per its very language protects only exercise of powers vested in an officer or the member of a Legislature under the Constitution and will not protect from challenge before the Court exercise of any power by such officer or member of a Legislature of a State which is not vested in him under the Constitution.”

20. In the present case, the challenge to the impugned order/ruling of the Speaker rejecting the notice of motion resolution under clause (c) of Article 179 of the Constitution has been assailed not on the ground of mere irregularity but on twin grounds of substantive illegality, absence of jurisdiction and authority and also on the ground that it is tainted with bias. The principal submission has been that the notice being one relating to a motion for leave to move resolution of removal against the Speaker himself, the Speaker ought not to have dealt with the said notice at all. The bone of contention has been that the Speaker, by rejecting the notice at the threshold has acted with bias so as to thwart the motion, by not allowing it to even reach the House for its consideration, whether or not leave is to be granted in terms of constitutional provision contained in Article 179 read with Rule 146 of RPCB Rules. Irrespective of whether this contention is liable to be accepted or rejected, certainly this ground cannot be said to be confined only to the aspect of mere irregularity of procedure.
21. Likewise, the argument that once a notice of resolution under clause (c) of Article 179 of the Constitution for removal of the Speaker is submitted in writing to the Secretary of the Legislature, it is outside the scope of authority of the Speaker to reject it, also, is a ground of attack to the impugned order/ruling, not based on any allegation of irregularity but substantive illegality. Again, it has to be clarified that at this stage while considering the maintainability of the petition, this Court has not given any final verdict on this aspect, but then the grounds on which challenge is made, cannot be said to be a challenge based on mere irregularity of procedure.
22. Therefore, taking into consideration the grounds on which the challenge to the impugned order is made in the petition, applying the principle judicially involved by Hon'ble the Supreme Court in the case of **Raja Ram Pal** (supra), the first ground cannot be made a basis to hold that the petition is not maintainable.
23. The objection to the very maintainability of the writ petition is also founded on constitutional immunity provided under Article 194 of the Constitution. Article 194 of the Constitution, for ready reference, extracted here below:

“194. Powers, privileges, etc., of the House of Legislatures

and of the members and committees thereof :- (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 26 of the Constitution forty fourth Amendment Act, 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature”

24. While Article 194 (1) provides for freedom of speech in the Legislature of every State, subject to the provisions of the Constitution and to the Rules and standing orders relating to procedure of legislature, the immunity provided in sub Article (2) to a Member of the Legislature of State against any proceedings in any Court is essentially in respect of anything said or any vote given by him in the Legislature or any committee thereof.

As far as immunity by application of sub-Article (3) of Article 194 is concerned, learned counsel for the respondents could not bring to the notice of this Court, any law of the legislature defining immunity against an order of the nature impugned in the present petition.

25. Present is not a case of any proceedings relating to claim of immunity in

respect of anything said or any vote given by respondent Speaker in the Legislature or any committee thereof. The decision impugned in the present petition is of rejection of a notice even before it could be taken up for consideration for grant of leave by the House itself.

Irresistible conclusion is therefore is that on this count also maintainability of the petition cannot be questioned.

26. One of the submissions made by learned counsel for the respondent No.2 raising objection to the maintainability of the petition is that provision contained in Rule 145 (2) of RPCB Rules expressly empowers the Speaker alone to fix the date which impliedly includes power to reject the motion. Therefore, it is contended, in the absence of any challenge to the constitutionality of this statutory provision, challenge to the action on the ground that the Speaker himself could not deal with a notice of resolution of removal against himself, deserves rejection at the threshold without further inquiry.
27. True it is that in this petition, constitutional validity of Rule 145 of the RPCB Rules as being contrary to constitutional scheme of Article 179, Article 180 & Article 181 is not under challenge, however, on the face of challenge to order of the Speaker on the ground of absence of authority and jurisdiction to reject the notice, which pertains to a challenge on the ground of illegality and not mere irregularity of procedure, it does not come to the aid of respondents in support of their objection to the maintainability.
28. Having considered the aforesaid three objections to the maintainability, the objection to the maintainability of the petition in the light of provision contained in Rule 238 of RPCB Rules needs to be examined to find out whether per force Rule 238 of the RPCB Rules, the notice having attained its natural demise, no relief can be granted by issuing any direction for placing the notice for consideration of the House for grant of leave as provided under Rule 145 & 146 of the PCB Rules. In order to appreciate the submission, examination of the statutory scheme engrafted in Rule 238 of the RPCB Rules is necessary. for this purpose, it would be apposite to extract the said provision hereinbelow:

“238- On the prorogation of the House, all pending notices,

other than notices of intention to move for leave to introduce a Bill, shall lapse and fresh notices shall be given for the next session:

Provided that a fresh notice shall be necessary of intention to move for leave to introduce any Bill in respect of which sanction or recommendation has been granted under the Constitution if the sanction or recommendation, as the case may be, has ceased to be operative.”

29. Rule 238 is placed in Chapter XXIII – “General Rules of Procedure”. While Part (A) of Chapter deals with language of Vidhan Sabha, Part (B) deals with notices. It only deals with the notices as is also clear from provision contained in Rule 236, which is also reproduced hereinbelow:

“236(1) Unless otherwise provided for, every notice required by the rules shall be given in writing addressed to the Secretary and shall be left at the Vidha Sabha Office, which shall be open for this purpose between 11:00 Hrs. to 16:00 Hrs. on every day except Sunday or a public holiday.

2) Notices left or received when the office is closed shall be treated as given on the next working day.

236-A. A notice shall not be given publicity by any member or other person until has been admitted by the Speaker and circulated to members:

Provided that a notice of a question shall be given any publicity until the day on which the question is answered in the House.”

30. The words “every notice required by the rules”, leaves no scintilla of doubt that the provision contained in Part-B of Chapter XXIII- General Rules of Procedure deals with every notice including a notice contemplated under Rule 145 of the RPCB Rules.
31. If that be so, a notice of resolution under clause (c) of Article 179 of the Constitution, for removal of the Speaker shall also be subject to the rigor and eventually meet the fate contemplated under Rule 238 of the RPCB Rules. On

a plain reading, aforesaid Rule ordains, in no unambiguous words, that on the prorogation of the House, all pending notices shall lapse and fresh notices shall be given in the next session. The only exception is in respect of a notice of intention to move for leave to introduce a Bill. Except such a notice, all pending notices have to meet the fate accomplished on the prorogation of the House. There is nothing either expressly provided or by necessary implication that a notice of a resolution under clause (c) of Article 179 of the Constitution, for removal of Speaker is excluded from rigor of Rule 238 of the RPCB Rules. Neither any of the provision contained in the Constitution much less in Article 179, Article 180, Article 181 nor any of the provision contained in RPCB Rules save a notice of resolution under clause (c) of Article 179 from the rigor of Rule 238. The Legislature in its wisdom, has chosen to exclude from the mischief of Rule 238, only a notice to move for leave to introduce a Bill and nothing more. Proviso to Rule 238 of the RPCB Rules only deals with situation when a fresh notice shall be necessary of intention to move for leave to introduce any Bill.

32. Rule 239 of the RPCB Rules only save a motion, resolution or amendment by providing as below:

“239- A motion, resolution or an amendment, which has been moved and is pending in the House, shall not lapse by reason only of the prorogation of the House.”

33. A rational and logical interpretation of the aforesaid Rule would mean that where a motion, resolution or amendment which has been moved and is pending in the House, shall not lapse only because before a final decision in that regard could be taken by the House, House is prorogued.
34. A conjoint reading of Rules 238 & 239 of the RPCB Rules which deals separately with notice on one hand and a motion, resolution or amendment moved and pending in the House, on the other hand, is indicative of intention of the Rule making authority i.e. Legislature itself. While the pending notices are not intended to be saved upon prorogation of the House except notice of intention to move for leave to introduce a Bill, motion resolution or amendment which has already been moved and pending in the House, is also expressly saved.
35. If the aforesaid conclusion of law based upon analysis of the provision

contained in Rules 238 & 239 of the RPCB Rules is applied to the facts and circumstances of present case, irresistible conclusion is that the notice which was rejected by the Speaker, has otherwise attained its natural demise, having lapsed upon prorogation of the House. It is not a case that upon notice having been given to the Secretary of Vidhan Sabha, the motion for grant of leave was moved in the House of the Legislature so as to say that it is saved under Rule 239. The notice, is a preliminary stage prior to the stage when a motion can be said to have been moved and pending in the House. What is of significance is that in order to attract Rule 239 of the RPCB Ruls, a notice alone is not sufficient but it must travel beyond and attain a status that it is a motion, resolution or amendment which has been moved and is pending in the House.

36. Even if it would have been a case where notice was not rejected, but merely entered in the list of business in the name of Member concerned and fixed on a day by the Speaker, as envisaged under Rule 145 (2), it would not have been saved from the rigor of Rule 238 and fate accompli upon prorogation of the House because mere entry in the list of business and fixation of date by the Speaker would not render it a motion which can be said to have been moved and pending in the House. This would be clear from provision contained in Rule 146 of the RPCB Rules which clearly provides as to how the motion has to be moved in the House. The aforesaid provision being relevant for this limited purpose, is extracted herein below:

“146 (1) Subject to the provisions of Article 181 of the Constitution, the Speaker or the Deputy Speaker or such other person as is referred to in clause (2) of Article 180 of the Constitution, shall preside when a motion under sub-rule (2) of rule 145 is taken up for consideration.

(2) The member in whose name the motion stands in the list of business shall, except when he wishes to withdraw it, move the motion when called upon to do so, but no speech shall be permitted at this stage.

(3) The Speaker or the Deputy Speaker or the person presiding, as the case may, be shall, thereupon place the motion before the House and shall request those members- who are in

favour of leave being granted to rise in their places. If not less than one-tenth of the total number of members rise accordingly, the Speaker or the Deputy Speaker or the person presiding, as the case may be, shall say that leave been granted and that the resolution will be, taken up on such day, not being more than then days from the date on which the leave is asked or, as he may appoint. If less than the required number of members rise, the Speaker or the Deputy Speaker or the person presiding, as the case may be , shall inform the member that he has not the leave of the House.”

37. The aforesaid provision clearly provides that the Member in whose name the motion stands in the list of business shall, except when he wishes to withdraw it, move motion when called upon to do so, but no speech shall be permitted at this stage.

This certainly is a stage where the motion has actually been taken in the House in session. This further demonstrates as to how and in what manner a motion is actually placed before the House. It is only when this stage is arrived at but before decision is taken, as provided in Rule 146 (3), House is prorogued that the motion would be saved under Rule 239 and not otherwise.

38. Learned counsel for the petitioner could not satisfy this Court as to how the notice would be saved from the teeth of Rule 238 of the RPCB Rules.

The submission, however, is that if this interpretation is given to the scheme of Rule 238 & 239, the Rule itself will become unconstitutional as it may, if not in all cases, but in many cases, have the effect of nullifying the Constitutional scheme and make redundant and meaningless the right of a Member to move a resolution for removal by resolution. It is contended that in all cases where the session of the House is for a period less than 14 days, which at times, may be designed to avoid any motion for removal. it would be ultra vires the constitutional scheme of Article 179.

39. The aforesaid submission, I am afraid, cannot be gone into in this petition, in the absence of there being any challenge to the constitutionality of provision contained in Rule 145 or 238 of the RPCB Rules. The constitutional power of the legislature to frame Rule to regulate procedure and conduct of business cannot be questioned. If the Legislature, has provided by the Rules the consequences with

regard to pending notices of House, unless the Rule itself is declared unconstitutional, no direction can be issued even if it is held that rejection of notice by the Speaker, as in the present case, was illegal or without authority of law. In other words, even if this Court accepts the submission of learned counsel for the petitioner that the Speaker could not have rejected the notice, in view of provision contained in Rule 238 of the RPCB Rules, the notice meets fate accompli. It lapses upon prorogation of the House. No provision of the Constitution or the Rules of RPCB Rules were brought to the notice of this Court to satisfy that in an eventuality where the day after expiry of fourteen days falls beyond the last date of the session of the House, it has to be dealt with in a particular manner by the Speaker. Neither anything contained in Article 174 or 179 of the Constitution or any other provision contained in RPCB Rules deals with such an eventuality. Though provisions have been made with regard to commencement of and conclusion of sitting of Vidhansabha, adjournment of House and restriction on adjournment of House in Chapter-IV containing Rules 11, 12-A, 12-B and 12-C, none of these provisions indicate either expressly or by necessary implication that where a notice of a resolution under clause (c) of Article 179 of the Constitution is given, it would not lapse by rigor and application of Rule 238.

40. Learned counsel for respondent No.2 also questioned the bonafides of the petition by submitting that though Hon'ble Governor summoned the House on 21st July, 2015 vide its Notification dated 19th June, 2014, no notice was moved thereafter. He has submitted that had a notice been given at that time, fulfilling the requirement of minimum fourteen days of notice, petitioner could have always moved a motion for grant of leave in the House before its prorogation on 25th July, 2014, but no such steps were taken. Referring to subsequent notice issued by the Governor in exercise of powers under Article 174 (1) of the Constitution, it has been submitted that there was always enough time to submit a notice keeping in view the requirement of minimum fourteen days in all subsequent sessions, the petitioner had repeated opportunity to again give notice but it was not done.

41. Be that as it may, having held hereinabove that even if it is held that order issued by the Speaker suffers from an illegality, in view of the provision contained in Rule 238 of the RPCB Rules, now no direction can be issued by this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution for consideration of the notice given by the petitioner. In other words, it would be an academic exercise. For reasons stated above, as no direction can be issued as

held above, due to lapse of the notice under Rule 238 of the RPCB Rules, the petition is held not maintainable on that count alone, though not on other grounds discussed hereinabove. The result, therefore, is that the petition has to be dismissed and is accordingly dismissed as not maintainable.

Sd/-
(Manindra Mohan Shrivastava)

Judge