

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT APPEAL No. 239 OF 2016

22-03-2016

Between:

The State of Andhra Pradesh, rep., by its Principal Secretary,
Department of Legislative Affairs, Secretariat, Hyderabad

... Appellant

And

Smt. R.K. Roja and another

... Respondents

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HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE P. NAVEEN RAO

-
WRIT APPEAL No. 239 OF 2016

ORAL JUDGMENT: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

This writ appeal, under Clause 15 of the Letters Patent, is directed against the order dated 17-03-2016 passed in WPMP No.10932 of 2016 in Writ Petition No.8623 of 2016, whereby the impugned motion/resolution dated 18-12-2015, passed by the House of Legislature of the State of Andhra Pradesh (for short "the House"), has been suspended. Through the motion, respondent No.1 has been suspended from the service of the House for a period of one year. The prayer in WPMP No.10932 of 2016 was two fold, firstly, to suspend the resolution/motion passed by the House dated 18-12-2015, and secondly, to allow respondent No.1 to participate in the ongoing Session of the Legislative Assembly.

2. In the writ petition, respondent No.1 has prayed for a writ of mandamus declaring the action of respondent No.2, suspending her for a period of one year from the Assembly as arbitrary, illegal and is offending Article 14 of the Constitution of India, being violative of the principles of natural justice, contrary to law and *ultra vires* Rule 340 of the Rules of Procedure and Conduct of Business in the Andhra Pradesh Legislative Assembly (for short, 'the Rules'). She has also prayed for direction to respondent No.2 to allow her to perform duties as a Member of the Legislative Assembly and to participate in the proceedings of the House in the interest of justice.

3. The facts, *sans* unnecessary details, and that are relevant for deciding the appeal are as follows: respondent No.1 is a member of the Fourteenth Legislative Assembly of the State of Andhra Pradesh, having elected from Nagari Assembly Constituency, Chittoor District in the general elections held in the month of May, 2014. She belongs to Yuvajana Sramika Rythu Congress Party. In December, 2015, the Sixth Session of the Legislative Assembly was summoned to meet from 17-12-2015 onwards. It is alleged that when Leader of the House was making a statement on one of the issues raised in the Assembly on 18-12-2015, respondent No.1 and other Members of her party obstructed the proceedings of the House by raising slogans. It is further alleged that respondent No.1 made certain abusive remarks against Leader of the House and other Members of the Assembly. On that, a motion was moved by the Minister for Legislative Affairs on the same day seeking suspension of respondent No.1 for a period of one year. The motion was adopted and respondent No.1 came to be suspended from the service of the House for one year. As a result thereof, respondent No.1 was asked to leave the House on 18-12-2015. Consequent steps were also taken by respondent No.2. We are not making reference to the other details since they are not necessary for deciding the questions raised and argued in the appeal.

4. Respondent No.1 challenged her suspension by way of a writ petition bearing No.4602 of 2016. We are not making reference to the further events till a fresh writ petition, bearing Writ Petition No. 8623 of 2016, was filed by respondent No.1, except making reference to the order of the Supreme Court. When the fresh writ petition was filed by respondent No.1, after withdrawing the earlier writ petition (W.P No. 4602 of 2016), few objections were raised by the Registry, and as a result thereof, the petition was returned for re-presentation on 05-03-2016. Against the objections raised by the

Office and its decision to return the writ petition, respondent No.1 filed Writ Petition (Civil) No. 152 of 2016 before the Supreme Court. The Supreme Court disposed of the writ petition vide order dated 15-03-2016, with the following observations:

“We do not want to go into the legal question regarding the maintainability of the writ petition under Article 32 of the Constitution of India and the decision in the said case required to be applied in the fact situation to entertain the instant writ petition, particularly having regard to the fact that after withdrawal of the earlier Writ Petition No.4602/2016 questioning the very same suspension order by filing another writ petition as per the liberty given by the High Court, the Assistant Registrar of the High Court, instead of listing the said writ petition before the Roster Bench, has made endorsement, as stated supra, which is totally uncalled for on his part. **Therefore, we direct the petitioner herein to refile the said writ petition before the High Court by tomorrow and the Registry of the High Court shall place the matter before the learned Chief Justice to take necessary instructions for listing the petition before the appropriate Bench as deemed fit by him so that the matter is listed tomorrow i.e., on 16.03.2016 for hearing the petitioner and respondents, if they appear, and consider the interim prayer and pass appropriate order on the same day in accordance with law.**

The Registry of this Court is directed to communicate this Order by e-mail or telex with a direction to the Registrar of the High Court for placing the matter before the learned Chief Justice to take note of our observations.

Before concluding, we hold that the second petition filed by the petitioner is maintainable in law.”

(Emphasis supplied)

4.1 In view of the order of the Supreme Court, the writ petition was assigned to a Judge, before whom WPMP No.10932 of 2016 was placed for hearing on 17-03-2016. After hearing learned counsel for the parties and perusing the judgments cited, the learned single Judge disposed of the miscellaneous petition vide order dated 17-03-2016. The learned single Judge expressed his prima facie opinion on the following questions and granted interim relief as aforementioned: whether the House should have complied the principles of natural

justice while passing the motion?; whether the motion moved is *ultra vires* Rule 340?; whether the period of suspension exceeding remainder of the Session is sustainable in law?; and whether in the light of the judgment of the Supreme Court in ***Raja Ram Pal v. Hon'ble Speaker, Lok Sabha***^[1], this Court has the power of judicial review. According to the appellant, even the question whether on the facts and in the circumstances of the case, reference to Rule 340 (2) of the Rules in the motion was a mistake and in fact the House invoked its powers under Article 194 (3) of the Constitution was not considered independently in the light of facts and circumstances of the case though it was specifically argued.

4.2. The following observations made by learned single Judge, after considering the relevant provisions of the Constitution of India, the rules and the judgments cited by learned counsel for the parties, are relevant:

“.....The motion to suspend the Member of the House beyond the session while invoking Rule 340 of the Rules is, in my opinion, *prima facie*, a case of substantial illegality but not a mere irregularity coming within the purview of Article 212 of the Constitution of India. Hence, I am of the *prima facie* opinion that the argument of the learned Additional Advocate General that the action of suspending the petitioner should not be traced to Rule 340 of the Rules, but should be traced to Article 194(3) of the Constitution of India, cannot be accepted at this stage.....”

“.....The Rules are framed in exercise of the powers conferred under Article 208 of the Constitution of India and it cannot be said that Rule 340 of the Rules has to be ignored and the power under Article 194(3) of the Constitution of India should alone be invoked. In this case we are not concerned with the privileges of the members of the House and it came out during the course of arguments that separate proceedings are pending for violation of the privilege of the members.....”

“.....Since this Court came to the *prima facie* conclusion that motion carried out was contrary to Rule 340 of the Rules of the House, this Court has to consider the balance of convenience in the instant case. The petitioner is an elected

member of the Assembly and in the normal course she is entitled to participate in the proceedings, subject to Rules made by the House. If the suspension is continued during the pendency of the Writ Petition, the right of participation would be affected and cannot be restored in the event of her success in the Writ Petition. Hence, there shall be an interim suspension of the motion to suspend the petitioner carried out on 18.12.2015 by the Andhra Pradesh Legislative Assembly, pending disposal of the Writ Petition.....”

“The issues with regard to the application of principles of natural justice in a case like this, whether the House possesses the power to suspend a member de hors the Rule made by it etc., have to be considered in detail in the Writ Petition.”

5. In this backdrop, we have heard learned counsel for the parties at considerable length. Mr. P.P. Rao, learned Senior Counsel for the appellant after inviting our attention to the proceedings dated 18-12-2015 and relevant provisions of the Constitution and Rule 340, submitted that learned Judge while dealing with the miscellaneous petition filed by respondent No.1 for interim order, did not make any distinction between the powers of a House and powers of Speaker. He submitted that merely because the Minister for Legislative Affairs committed mistake in quoting Rule 340 of the Rules while moving the resolution, does not mean that one can overlook powers, privileges and immunities of the House as contemplated under Articles 212 and 194 of the Constitution of India. Though there was a reference to Rule 340 in the resolution, the wording of the resolution and the facts and circumstances reflected in the proceedings dated 18-12-2015 clearly demonstrate that the House moved the motion and intended to suspend respondent No. 1 for a period of one year. He invited our attention to the observations made in the impugned order to contend that learned single Judge did not consider this argument, advanced by learned Additional Advocate General, on behalf of the appellant and respondent No.2 in proper perspective and as a result thereof took a

technical approach in holding that since powers under Rule 340 are invoked for suspending respondent No.1 for a period of one year, the resolution is illegal and that reference to the rule cannot be treated as irregularity within the meaning of Article 212 of the Constitution. In short, he submitted that this is not a case of grave illegality but it is a case of procedural irregularity. He then invited our attention to some of the judgments of the Supreme Court and submitted that wrong reference to the power under which the impugned action has been taken by the House would not *per se* vitiate the action, if it is traceable to some power, namely, Article 194(3) of the Constitution under which the House could lawfully pass such resolution.

5.1 Mr. P.P. Rao, further submitted that legislative privileges envisaged in Article 194 are sacrosanct and legislature is ultimate authority to enforce its privileges. The subject matter of the writ petition is one covered by the legislative privileges. The conduct of respondent No.1 on the face of the Legislative Assembly was contemptuous and when such serious misconduct was committed by a member of the legislature, it is permissible to suspend such member and suspension is a less severe action as compared to expulsion. He, therefore, submitted that the decision of the legislature is a valid exercise of the power vested under Article 194 (3) of the Constitution of India and the same cannot be subject to judicial review.

5.2 He then submitted that the question of compliance of principles of natural justice, in the present case also did not arise, since respondent No.1 committed contempt in the face of the House and, therefore, the House was within its power, as contemplated under Article 194 of the Constitution, to suspend its member for derogatory and defamatory utterances. Mr. P.P. Rao, lastly submitted that learned single Judge erred in not appreciating that the parameters to grant interim relief were not satisfied by respondent No.1 and balance of convenience was not in her favour. He further submitted that

parameters of judicial review against the decisions/resolutions in the legislative assembly are very limited and unless the Court comes to a conclusion that the action of the legislature was not valid, no order can be passed.

5.3 In support of his contentions, Mr. Rao placed reliance upon the following judgments: **Raja Ram Pal** (supra); **H.L. Mehra v. Union of India**^[2]; **Municipal Corpn. of the City of Ahmedabad v. Ben Hiraben Manilal**^[3]; **Kedar Shashikant Deshpande v. Bhore Municipal Council**^[4]; **Radha Mohan Lal v. Rajasthan High Court**^[5]; **S.L. Kapoor v. Jagmohan**^[6]; **V.C. Chandhira Kumar v. Tamil Nadu Legislative Assembly**^[7]; and **P. Sudhirkumar v. The Speaker, A.P. Legislative Assembly**^[8].

6. On the other hand, Ms. Indira Jaisingh, learned Senior Counsel for respondent No.1 submitted that the impugned resolution is *ultra vires* Rule 340 of the Rules. She invited our attention to Rule 340 and submitted that even if it is assumed that the motion was carried by following the due procedure, and that principles of natural justice were not required to be complied in view of the peculiar facts and circumstances of the case, still the House could not have suspended respondent No.1 beyond the remainder period of the Sixth Assembly Session. She submitted that in any case respondent No.2 ought to have followed the principles of natural justice and passed the motion only after giving an opportunity of being heard to respondent No.1. She invited our attention to the proceedings dated 18-12-2015 and the resolution to contend that the action/resolution suspending respondent No.1 beyond the period of the Assembly Session, invoking the provisions of Rule 340 of the Rules, being illegal, the learned single Judge was right in entertaining the writ petition and granting interim

suspension of the motion. She submitted that it was conscious exercise on the part of the Minister in invoking the powers under Rule 340 of the Rules and, therefore, the resolution will have to be declared *ultra vires* the provision contained therein. It is not open to the appellant to contend that by mistake a wrong provision was referred in the Motion. Even if it is assumed that it was mistake, such a mistake can be corrected only by the House. She submitted that respondent No.2 has not come forward to state that it was their mistake.

6.1 This Court, she submitted, cannot go beyond the proceedings of the House and even learned counsel appearing for the appellant cannot submit that it was a mistake. She submitted that *ex post facto* legal defence in such case is not permissible. She submitted that the situation in the House as on 18-12-2015 is covered by Rule 340 and now it cannot be stated that the Minister invoked the rule by mistake and in fact he wanted to invoke Article 194 (3) of the Constitution. Lastly, she submitted that the appeal filed by the appellant is not maintainable, and it ought to have been filed on behalf of respondent No.2. She submitted that it is not open to the appellant to contend that it was a mistake of the House, in quoting rule 340 while passing the resolution. She also submitted that an order, such as the impugned order, can be interfered with only if it is perverse. There is absolutely nothing in the order to call it perverse. Lastly, she was submitted that the view taken by the learned single Judge, is a plausible one and cannot be interfered with in writ appeal.

6.2 Ms. Jaisingh placed reliance upon the following judgments in support of her contentions: **Alagaapuram R. Mohan Raj v. Tamil Nadu Legislative Assembly**^[9]; **Mohinder Singh Gill v. The Chief Election Commissioner**^[10]; and **Essel Sports Pvt. Ltd. (Indian Cricket League) v. Board of Control for Cricket in India**^[11].

7. Thus, the questions raised by learned Senior Counsel for the parties are as under:

1. Whether the resolution/motion dated 18-12-2015 passed by the House of Legislature, by which respondent No.1 has been suspended for one year, on the facts and in the circumstances, as reflected in the impugned proceedings, in purported exercise of the power under Rule 340 (2) of the Rules, is sustainable in law?, Or whether the resolution passed by the House is *ultra vires* Rule 340 of the Rules?
2. Whether the resolution/motion, suspending respondent No.1 for a period of one year, in the light of the language thereof and on the facts and in the circumstances stated in the proceedings dated 18-12-2015, reference to Rule 340 (2) therein was a mistake, and, in fact, the motion was moved and the resolution was passed by the House in exercise of the powers under Article 194 (3) of the Constitution?
3. Whether the mistake, as argued on behalf of the appellant, in referring to Rule 340 (2) of the Rules in the resolution, would amount to irregularity as contemplated by Article 202 (2) of the Constitution or substantial illegality as stated in the impugned order?
4. Whether non-compliance of the principles of natural justice before suspending respondent No.1 for one year would render the impugned action illegal?
5. Whether the writ appeal by the appellant is maintainable?

8. At the outset, we are making it clear that we are not going to

address questions 1 to 4 though we may express our *prima facie* opinion for the limited purpose of considering this appeal, and would leave it to the learned single Judge to ultimately deal with these questions or any other questions that would arise for consideration in the course of hearing of the writ petition on merits. In short, we are not expressing any final opinion on the first four questions.

9. Before we proceed further, it would be relevant to reproduce the proceedings containing motion/resolution to know and understand what exactly happened in the House and why the resolution was passed. The proceedings of the House, containing resolution, read thus:

“Mr.Speaker: Narendra garu, Rule position is clear and it is explained more than once. Therefore, on this issue not to discuss further. Please conclude in a word.

Sri Dhoolipalla Narendrakumar: Hon’ble Speaker, the reason why I am talking about the rules is

Mr. Speaker: Not necessary, that subject is over, please sit down.

Sri Dhoolipalla Narendrakumar: Mr.Speaker, why I am telling this rule position is because, how the member or a lady member should behave in the assembly. **Smt.R.K.Roja, the lady member being in the house, has used derogatory words on the leader of the house, with unparliamentary words by a respectable person. Therefore, please take action on the lady member and suspend her from the assembly.**

(Opposition party member Smt.R.K.Roja (without mike) had contended that it is unfair, illegal, as the mike is given to the ruling party members and not to the opposition party member while they are discussion on the women issues and the entire thing is being done at the behest of ruling party members)

Mr.Speaker: OK. Please be seated, Yes Minister for Legislative Affairs.

Sri Yanamala Ramakrishnudu: **Hon’ble Speaker, lot of respected members has raised the same issue pertaining to the usage of unparliamentary words on the Hon’ble Chief Minister and had used the words**

unnecessary and all the this has been recorded and further it is being discussed in the public in a bad manner. This house is there for speaking good language and the same is being used for speaking vulgar language. The words used by Smt.R.K.Roja against the Chief Minister is Horrible as she has used the words “call Chandra Babu, Money Chandra Babu, Kama Chandra Babu”. He is the Chief Minister of the State. The Lady Member has used such kind of language and the same is derogatory to the house. This kind of member being in the house is shameful. (the ruling party members shouted shame, shame) Therefore, the house is requesting to suspend Smt.R.K.Roja for a period of one year. (Clapping of Ruling party members)

Mr.Speaker: The house is meant for purity and discipline and usage of this kind of words is unfortunate. This is spoiling the dignity of the assembly. Yes, Minister for Legislative Affairs.

Sri Yanamala Ramakrishnudu: (Minister for Legislative Affairs) Sir, with your permission, I beg to move:

“That under sub rule (2) of Rule 340 of the Rules of Procedure and conduct of Business in the Andhra Pradesh Legislative Assembly, the following Member named by the Hon’ble Speaker, be suspended from the service of the House for One year.

Smt.R.K.Roja

Mr.Speaker: Motion moved, Now, the Question is:

“That under sub rule (2) of Rule 340 of the Rules of Procedure and Conduct of Business in the Andhra Pradesh Legislative Assembly, the following member named by the Hon’ble Speaker, be suspended from the Service of the House for One year.

Smt.R.K.Roja

(Pause)

The motion was adopted and the Member was suspended from the Service of the House for One year.

Mr.Speaker: Now, I request the suspended Member to leave the House. The suspended Member may please leave the House.”

(Emphasis supplied)

10. To appreciate the contention, advanced by Mr. P.P. Rao and Ms. Indira Jaisingh, based on Rule 340 (2) and Article 194 and 212 of the Constitution, it would be relevant to reproduce these provisions which read thus:

Rule 340 of the Rules reads as follows:

“340. (1) The Speaker, 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 willfully obstructing the business thereof.

(2) If a member is so named by the Speaker, the Speaker shall on a motion being made, forthwith 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.”

(Emphasis supplied)

10.1 Articles 194, 208 and 212 of the Constitution of India read as follows:

“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.

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.”

11. From bare perusal of the proceedings, *prima facie* it appears that the motion was adopted by the House and that it was not carried at the instance of the Speaker in exercise of the power under Rule 340 of the Rules. Contents of the proceedings show that the motion was moved for the derogatory/defamatory remarks/utterances of respondent No.1 against the Chief Minister – Leader of the House and not for disregarding the authority of the Chair or abusing the rules of the House by persistently and wilfully obstructing the business thereof. When the resolution was passed on 18.12.2006, a group of members of the Legislative Assembly, including respondent No.1 tried to obstruct the business of the House. The action against respondent No.1 was not for the said disturbance. In other words, the motion was moved by the Minister for Legislative Affairs only against respondent No.1 for the bad/derogatory language used by her against the Chief Minister. It appears, that her utterances provoked the House to move the motion suspending her for a period of one year.

11.1 Rule 340 confers power on the Speaker to take action of suspension in the circumstances stated therein. However, for breach of the powers, privileges and immunities contemplated under Article 194 (3) of the Constitution, a House of the Legislature can initiate/take action against its members, such as in the present case against respondent No.1. Rule 340 provides that a member cannot be suspended from the service of a House by the Speaker for a period not exceeding the remainder of the session. Article 194 of the Constitution does not put any such restriction on the powers of a House. In other words, the powers, privileges and immunities of House under Article 194 of the Constitution cannot be either curtailed or restricted. In the present case, intention of the House seems to be clear. The House wanted to suspend respondent No.1 for a period of one year and that too for her derogatory remarks/utterances and not for disregarding the authority of the Chair or abusing the rules of the House by persistently and wilfully obstructing the business of the House.

12. In this backdrop, we would like to consider the submission that reference to Rule 340 in the motion was a mistake and that such a mistake cannot be stated to be a substantial illegality. In other words, it was submitted that reference to wrong provision or reference to wrong power under which action has been taken would not *per se* vitiate the action, if it is otherwise justifiable under some other provisions/power which the House could lawfully take. In this connection, we would like to make brief reference to three judgments of the Supreme Court on which

Mr. P.P. Rao placed reliance upon, namely, **H.L. Mehra**; **Ben Hiraben Manilal** and **Kedar Shashikant Deshpande** (supra).

12.1 In **H.L. Mehra** case (supra), the Supreme Court observed that it is well settled that “*when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision, if it can be shown to be within its power*”

under any other provision. If the power is otherwise established the fact that the source of the power has been incorrectly described in the order would not make it invalid". The Supreme Court also placed reliance upon, in support of this proposition, its judgment in **P. Balakotiah v. the Union of India**^[12] and **Afzal Ullah v. State of Uttar Pradesh**^[13].

12.2 The following observations made by the Supreme Court in **Ben Hiraben Manilal** (supra) are also relevant:

"It is well settled that the exercise of a power, if there is indeed a power, will be referable to a jurisdiction, when the validity of the exercise of that power is in issue, which confers validity upon it and not to a jurisdiction under which it would be nugatory, though the section was not referred, and a difference or a wrong section of different provisions was mentioned. See in this connection the observations in *Pitamber Vajirshet v. Dhondu Navlapa* (ILR (1988) 12 Bom, 486, 489). See in this connection also the observations of this Court in the case of *L. Hazari Mal Kuhiala v. I.T.O., Special Circle, Ambala Cantt* [(1961) 41 ITR 12, 16]. This point has again been reiterated by this Court in the case of *Humumchand Mills Ltd. v. State of M.P.*[(1964) 52 ITR 583] where it was observed that it is well settled that a wrong reference to the power under which action was taken by the Government would not *per se* vitiate that action if it could be justified under some other power under which Government could lawfully do that act. See also the observations of the Supreme Court in the case of *Nani Gopal Biswas v. Municipality of Howrah*^[14]."
(Emphasis supplied)

12.3 In **Kedar Shashikant Deshpande** (supra), the relevant observations find place in paragraph 59, which read thus:

"In catena of decisions, this Court has held that merely quoting wrong provisions of the statute while exercising power would not invalidate the order passed by the authority if it is shown that such order could be passed under other provisions of the statute. What is important to notice is that [Section 3](#) (1) (c) of the Act of 1986 inter-alia provides that a "nominated member in relation to a Panchayat

Samiti includes an associate member, referred to in Clause (c) of sub-Section (1) of Section 57 of the Maharashtra Zilla Parishads and Panchayat Samitis Act 1951. It is not the case of the appellants that they are either associate members or nominated members in relation to Bhore Municipal Council. Thus reference made by the Collector to [Section 3\(1\)](#) (c) will have to be regarded as mistake on his part because of difference in Vernacular and English version of the Act of 1986. On the facts and in the circumstances of the case this Court is of the firm view that the appellants had incurred disqualification under [Section 3\(1\)\(a\)](#) of the Act as pleaded by the respondent Nos.4 & 5 and not under [Section 3\(1\)\(c\)](#) of the Act as mentioned by the Collector.”

(Emphasis supplied)

12.4 It is thus clear from the judgments of the Supreme Court, that wrong reference or quoting wrong provision of the Statute while exercising power, under which action has been taken by the authority, would not *per se* vitiate that action or invalidate the decision, if it could be otherwise justified under some other provision/power under which such action could be lawfully taken. In other words, merely quoting wrong provisions of the statute while exercising power would not invalidate the decision/resolution made by the authority, including the authority such as the House, if it is shown that such decision/resolution could be traced to some other provision of the statute/Constitution.

13. In this backdrop, we would now like to have a close look at Article 194 (3) of the Constitution. It would be relevant to have a glance at Article 194 (3) before 44th amendment of the Constitution. Article 194 (3) before amendment was as under:

[“\(1\)](#)

[\(2\)](#)

[\(3\)](#) 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 the House of Commons of the Parliament of the United Kingdom and of its members**

and committees, at the commencement of this Constitution.

(4)"

(Emphasis supplied)

14. While considering the questions of powers, privileges and immunities of the House of Legislature, it is quite safe to base ourselves on the relevant statements which have been made in H.M. Seervai's "Constitutional Law of India, a critical commentary fourth edition". This commentary assumes the status of a classic on the subject and is usually regarded as an authoritative exposition of parliamentary legislative practice. The author in this commentary has considered Article 194 of the Constitution and the 44th amendment. We would like to reproduce paragraph 20.101 dealing with amendments in Article 105 (3) and Article 194 (3) by the 44th amendment deleting reference to the British House of Commons.

Paragraph 20.101 reads thus:

"20.101 Article 105 which dealt with the powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof and Art.194 which dealt with the powers, privileges, etc., of the House of Legislatures and of the members and committees thereof were amended first by the 42nd Amendment, but the 44th Amendment also Amended Atrs. 105 and 194. **The departure made from the original sub-clause (3) by the 42nd Amendment was to add that the privileges may also be such as may be evolved by the Houses of the Parliament or the State Legislatures. This was an attempt to create new privileges for Parliament and State Legislatures**, a thing which cannot be done in the United Kingdom as is clear from the following passage from May's Parliamentary Practice, 19th ed., p. 72:

"Neither House may create new privileges. Although, as stated above, either House may expound the law of Parliament, and vindicate its own privileges, it is agreed that by itself neither House can create a new privileges. In 1704, the Lords communicated a resolution to the Commons at a conference. 'That neither House of Parliament hath any power, by any vote, or declaration, to create to themselves any new privileges, that is not warranted by the known laws and customs of Parliament; which was assented to by the

Commons: C.J. (1702-04), 555, 560'."

The amendment made to Articles 105 and 194 by the 44th Amendment are merely "cosmatic". The Statement of Objects and Reasons with reference to clauses 15 and 26 states:

"These clauses seek to amend Article 105 and Article 194 (relating respectively to the privileges of Houses of Parliament and of State Legislature). **The amendments are for the purpose of omitting the reference to the House of Commons in these articles.**"

It will be seen that the reference to the House of Commons is omitted, so that they lay reader, reading the Articles, would not be aware that in fact, even today, the privileges of Parliament and of State Legislatures are the privileges of the House of Commons at the commencement of the Constitution. **But that conclusion necessarily follows from the language of Art. 105 and Art. 194, as amended by the 44th Amendment, because the amended Articles provide that until the privileges are defined, they "shall be those of that House and of its members and committees immediately before the coming into force of sec.15 of the Constitution (44th Amendment) Act, 1978". As the privileges "of that House" referred to above were those of the House of Commons, and as the power to evolve privileges has been repealed, the present position is the same as it was before the Amendment. One must turn to the privileges of the House of Commons to ascertain the privileges of our Parliament, and the same applies mutatis mutandis to the privileges of State Legislature. Neither Parliament nor any State Legislature has passed any law defining its privileges.**"

(Emphasis supplied)

15. It is not in dispute that after 44th amendment, Legislature has not passed any law defining its privileges and, therefore, until the privileges are defined, they shall be those of that House and of its members and committees immediately before the coming into force of the amended Article 194 (3) by the 44th amendment of the Constitution. As privileges, "of that house", referred to above, were those of the House of Commons and as the power to evolve privileges has been repealed, the present position is the same as it was before the amendment. One, therefore, must turn to the privileges of the

House of Commons to ascertain the privileges of the Parliament, for the House of State Legislature. In other words, the privileges of the House of Commons, to ascertain the privileges of the members of Legislature Assembly, would apply *mutatis mutandis* since the State Legislature has not passed any law defining its privileges. In paragraph 20.28 of the commentary, H.M. Seervai has stated that the power to enforce its privileges and to protect itself from insult, dignity or obstruction is itself a privilege of the House and consists in it the power to commit for contempt by a general or unspeaking warrant. The House of Commons asserted the power and the privilege to commit for contempt on an unspeaking warrant and that power was upheld.

15.1 In this connection, we would also like to reproduce relevant portion of paragraph 1502 of the Halsbury Laws of England, Volume – 34, which reads thus:

“**1502. Proceedings generally.** If a contempt is committed in the sight of either House of Parliament, the House may proceed to punish the offender at once, without hearing him, otherwise than by way of apology or to manifest his contrition.”

16. At this stage, it would also be relevant to look into the judgment of the Constitution Bench of the Supreme Court dated 30-09-1964 in **Special Reference No.1 of 1964**^[15]. The President of India had made a reference under Article 143 (1) of the Constitution in which the whole dispute was pertaining to the constitutional relationship between the High Court and the State Legislature including the questions on the facts of the case from which the reference was made. The relevant observations made by the Supreme Court in this reference judgment, for our purpose, read thus:

“In coming to the conclusion that the content of Art.194 (3) must ultimately be determined by courts and not by the legislatures, we are not unmindful to the grandeur and majesty of the task which has been assigned to the Legislatures under the Constitution. Speaking broadly, all the legislative chambers in our country today are playing a significant role in the pursuit of the ideal of a Welfare State which has been placed by the

Constitution before our country, and that naturally gives the legislative chambers a high place in the making of history today. The High Courts also have to play an equally significant role in the development of the rule of law and there can be little doubt that the successful working of the rule of law is the basic foundation of the democratic way of life. **In this connection it is necessary to remember that the status, dignity and importance of these two respective institutions, the Legislature and the Judicature are derived primarily from the status, dignity and importance of these two respective causes that are assigned to their charge by the Constitution. These two august bodies as well as the Executive which is another important constituent of a democratic State, must function not in antinomy nor in a spirit of hostility, but rationally, harmoniously and in a spirit of understanding within their respective spheres, for such harmonious working of the three constituents of the democratic State alone will help the peaceful development, growth and stabilisation of the democratic way of life in this country.**

But when, as in the present case, a controversy arises between the House and the High Court, we must deal with the problem objectively and impersonally. There is no occasion to import heat into the debate or discussion and no justification for the use of strong language. The problem presented to us by the present reference is one of construing the relevant provisions of the Constitution and though its consideration may present some difficult aspects, we must attempt to find the answers as best we can. In dealing with a dispute, like the present which concerns the jurisdiction, the dignity and the independence of two august bodies in a State, we must remember that the objectivity of our approach itself may incidentally be on trial. It is, therefore, in a spirit of detached objective enquiry which is the distinguishing feature of judicial process that we propose to find solutions to the questions framed for our advisory opinion.....”

(Emphasis supplied)

16.1 Further, the Supreme Court observed as follows:

“While considering the question of the powers, privileges and immunities of the English Parliament it would, we think, be quite safe to base ourselves on the relevant statements which have been made in ***May’s Parliamentary Practice***. This work has assumed the status of a classic on the subject and is usually regarded as an authoritative exposition of parliamentary practice; and so, we think it would

be an exercise in futility to attempt to deal with this question otherwise than by reference to May. **Parliamentary privilege, according to May, is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.** Thus, privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law. The particular privileges of the House of Commons have been defined as “the sum of the fundamental rights of the House and of its individual Members as against the prerogative of the Crown; the authority of the ordinary courts of law and the special rights of the House of Lords”. There is a distinction between privilege and function, though it is not always apparent. On the whole, however, it is more convenient to reverse the term “privilege” to certain fundamental rights of each House which are generally accepted as necessary for the exercise of its constitutional functions. The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights, which are “absolutely necessary for the due execution of its powers”. They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity.”

(Emphasis supplied)

16.2 Thus, the Legislatures and the Judiciary must function not in antinomy nor in a spirit of hostility, but rationally, harmoniously and in a spirit of understanding within their respective spheres. While dealing with a dispute, like the present, which also concerns the jurisdiction, the dignity and independence of two august bodies in a State, should be not only respected but maintained.

17. Parliamentary privilege, according to May, in Chapter 5 in Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament – Twenty Second Edition, reads thus:

“Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by

members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its Members. **Other such rights and immunities such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity.** Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members.

When any of these rights and immunities is disregarded or attacked, the offence is called a breach of privilege and is punishable under the law of Parliament. Each House also claims the right to punish as contempts actions which, while not breaches of any specific privilege, obstruct or impede it in the performance of its functions, or are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its Members or its officers. The power to punish for contempt has been judicially considered to be inherent in each House of Parliament not as a necessary incident of the authority and functions of a legislature (as might be argued in respect of certain privileges) but by virtue of their descent from the undivided High Court of Parliament and in right of the *lex et consuetudo parliamenti*."

18. Keeping these principles in view, we would like to record our prima facie opinion on the question whether reference to Rule 340 of the Rules could be treated as a mistake. From the proceedings as observed earlier, it is clear that the resolution of suspension was passed not on the ground or allegations that the conduct of respondent No.1 was unruly and/or disregarding the authority of the Chair or against the rules of the House by persistently and willingly obstructing the business thereof, but it was for the derogatory utterances made by her against the Leader of the House. From bare perusal of the

utterances, we find that they are not only derogatory but also defamatory and scandalous. The question whether such utterances were made or not will have to be considered by learned single Judge at the stage of hearing of the writ petition. We would not like to enter into controversy whether respondent No.1 made such utterances. But fact remains that the proceedings dated 18-12-2015 record such utterances. Though Mr. Rao, learned Senior Counsel submitted that respondent No.1 has not denied the utterances in the writ petition, we would not like to examine his submission, at this stage. We, however, observe that at one point of time, we asked Ms. Indira Jaisingh, learned Senior Counsel whether respondent No.1 is prepared to withdraw the utterances and tender apology to the House to put an end to this controversy, she simply stated that 'at this stage it is not possible'. In fact Mr. Rao, learned Senior Counsel submitted that if she tenders apology, the House may accept the apology and withdraw the resolution. Ms. Jaisingh, however, chose to contest the matter on merits.

19. Rule 340 of the Rules, provides that the Speaker, 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 and he shall on a motion being made, forthwith put the question to the House that the member (naming him) be suspended from the service of the House for a period not exceeding the remainder of the session. Intention of the Legislature, *prima facie*, is clear, from the contents of the proceedings and the language of the motion that the House, in view of the utterances made by respondent No.1, decided to suspend her for a period of one year. It is true that the Minister committed not only mistake, but a blunder in quoting wrong provision while moving the resolution, but that by itself cannot be a ground to overlook the powers, privileges and immunities of the House. When we look at the immunities, powers and privileges of a

House of the Legislature, as contemplated under Articles 194 and 212 of the Constitution, they are untrammelled and unquestionable. The Legislature which is an important constituent of a democratic state, has wide powers under the provisions of the Constitution to take its own decision. It cannot be questioned in the Court of Law unless they are patently illegal, perverse and pregnant with mala fides. We, therefore, prima facie observe that merely because Rule 340 was wrongly referred in the resolution passed by the House suspending respondent No.1 for one year, does not mean that the House has no jurisdiction to suspend its member for one year for the reasons, such as reflected in the proceedings dated 18-12-2015, in exercise of the powers under Article 194 (3) of the Constitution.

19.1 In **Raja Ram Pal** (supra), the Supreme Court dealt with the issue with regard to the Constitution (44th amendment) Act, 1978 and held that the power of expulsion is not diluted or negated by any of the constitution or statutory provisions and further held that when the power of expulsion is available under Article 194 (3), to Legislative Assembly even to expel a member, it has got power to suspend a member, which is of temporary in nature, and admittedly, less severe than a punishment of expulsion.

19.2 At this stage we would also like to look into a judgment of the Supreme Court in **Mohinder Singh Gill** (supra) relied upon by Ms. Indira Jaisingh. In this judgment the Supreme Court observed that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning, by the time it comes to Court on account of a challenge, cannot be validated by additional grounds later brought out. This observation, in view of the peculiar facts and circumstances of this case, more particularly the facts and circumstances as reflected in the proceedings, including

resolution, is of no avail to respondent No.1. On the contrary, the reasons reflected in the proceedings for moving the motion, prima facie, demonstrate that it was on account of abusive and derogatory utterances of respondent No.1 and the action was taken not by the Speaker under Rule 340, but it was by the House.

20. In our opinion, learned single Judge, while dealing with the application for interim order did not consider this aspect in proper perspective and was impressed with the reference made to Rule 340 in the motion, to hold that it amounts to substantial illegality. He did not deal with the submission advanced by learned Additional Advocate General that reference to rule 340 was a mistake and in fact the House invoked its power to suspend respondent No.1 for one year under Article 194 (3) of the Constitution and reference to the rule was a mere irregularity. The facts and circumstances against which the motion was carried were not examined to prima facie find out the intention of the House. In our opinion, this requires consideration and the learned Judge may have to deal with this situation, after allowing the parties to complete the proceedings. Moreover, we do not find any distinction having been made by learned single Judge in the impugned order between the powers of Speaker under Rule 340 of the Rules and powers of House under Articles 194 and 212 of the Constitution. The facts and circumstances, in our prima facie opinion, show that it was the House which passed the motion in exercise of its power under Article 194 (3) and that too, for the derogatory utterances of respondent No.1, which not only hurt the feelings of the House but was also direct attack on the privileges of the House and its members.

20.1 At this stage, we would like to look into the judgment in **Essel Sports Pvt. Ltd.** (supra), of the Delhi High Court, relied upon on behalf of respondent No.1. In this case, the High Court has observed, the appellate Court would be justified in interfering with the order

passed by learned single Judge only if it is perverse. Further, it is observed that if the view of the learned single Judge, at the lowest, a plausible one should not be interfered with in appeal. In an appeal against the discretionary order passed by the Court of the first instance, the appellate Court is not expected to substitute its own discretion except where the discretion is shown to have been exercised arbitrarily, capriciously or perversely or where the Court has ignored settled position of law. In that case, the appeal before the appellate High Court was arising from the order of the single Judge granting interim injunction in exercise of the powers under Order 39 Rules 1 and 2 of the Code of Civil Procedure. In view of the observations made in paragraph-20, in our opinion, this judgment is of no avail to respondent No.1.

20.2 Apart from the prima facie opinion expressed in the foregoing paragraphs, we cannot overlook the fact that if the interim order is allowed to continue, that would not only amount to allowing the writ petition, but overlooking the authority of the House without examining the case, on merits and without appreciating the question whether reference to rule 340 could be a mistake and in fact the House invoked its power under Article 194 (3) of the Constitution, for suspending respondent No.1 for one year for her utterances against the Chief Minister. Though we have framed the questions, we are once again make it clear that our observations are only prima facie in nature and they may not be taken as answers to the first four questions.

21. Insofar as the contention that the principles of natural justice were not complied with before passing the resolution is concerned, we are not impressed with this argument, since it appears from the proceedings that the contempt was committed by respondent No.1 in the face of the House and the procedure does not contemplate any hearing, if the house passes a resolution suspending a member for

having committed breach of privilege of the members of the House.

21.1. In this connection, we would like to look into the judgment in **Alagaapuram R. Mohan Raj** (supra). The Supreme Court in this case dealt with the petition filed by six members of the Legislative Assembly, who, by resolution of the Assembly were suspended from the House for remainder period of the then current session. Subsequently a Privilege Committee was constituted to enquire into whether the conduct of the members during the incident amounted to breach of privilege. The Privilege Committee held that the actions of the six petitioners were in breach of privilege and recommended action to be taken against them. By passing the resolution, the Assembly, suspended the MLAs for a period of ten days of the next session of the House. This judgment was heavily relied upon to contend that the principles of natural justice were not complied for suspending respondent No.1. It is true that the Supreme Court in this judgment held that non-compliance with the principles of natural justice is one of the limited grounds on which judicial review could be undertaken against the internal proceedings of the legislative bodies in appropriate cases. But it is clear from the facts that the Supreme Court was referring to violation of principles of natural justice in respect of the proceedings of the Privilege Committee and not in respect of the initial suspension of the MLAs for the remainder period of the then current session.

21.2 In **P. Sudhir Kumar** (supra), this Court while dealing with a petition for writ of Habeas Corpus considered whether the Assembly was prorogued and, therefore, the detenus were entitled to be released forthwith, and whether the action of the detenus would amount to contempt within the four walls of the House or in the face of the Assembly. This judgment was cited in support of the contention that the principles of natural justice were not required to be followed in view of the fact that the contempt was committed by respondent No.1

in the face of the House. This Court after considering all the relevant provisions and some judgments of the Supreme Court including the judgment in **MSM Sharma vs. Sri Krishna Sinha**^[16], observed that *“for contempt committed within the four walls of the House, the House itself may proceed to take action and pass a resolution without referring it to any Committee. No statutory provision or any precedent has been pointed out by which the Assembly is required to refer such a matter to a Committee before it takes the matter for consideration. It cannot also be disputed that a person who has committed such a contempt can be immediately detained. The controversy, is therefore, is whether such a person should be called to the Bar of the House or given an opportunity before the resolution finding him guilty and imposing the sentence is passed. No specific procedural required for this is brought to our notice.”* In other words, it was held that opportunity before passing such resolution is not necessary. Therefore, the question posed was answered holding that the Assembly in passing the unanimous resolution was in accordance with its practice and privileges and cannot be termed as unfair to the detenus or in violation of Article 21 of the Constitution.

22. Lastly, we would like to consider the submission of Ms. Indira Jaisingh that the writ appeal by the present appellant is not maintainable since it is not open to the appellant to state before the Court on behalf of the House of Legislature that reference to Rule 340 of the Rules is a mistake. It is true that in the appeal filed by original respondent No.1 and respondent No.2, which is the Legislative Assembly, is added as respondent No.2. That by itself, in our opinion, cannot be the ground to dismiss the appeal as not maintainable. It is not in dispute that the learned Additional Advocate General appeared before learned single Judge on behalf of both the respondents in the writ petition i.e., the appellant and the Legislative Assembly and he made submission on behalf of both, which were recorded by learned

single Judge in the order at two-three places. It was specifically submitted that reference to Rule 340 was a mistake and what the House intended was to pass a resolution under Article 194 (2) of the Constitution of India. That apart, the appellant is a party - respondent No.2 in the writ petition and, therefore, it cannot be said that they have no right to file appeal against the order, if they are aggrieved by the impugned order.

23. With these observations, we allow the appeal and set aside the order dated 17-03-2016, impugned in the present appeal.

24. Mr. P.P. Rao, learned Senior Counsel in the course of hearing of the appeal, on instructions, submitted that the appellants are prepared to file counter affidavit within three days and are also prepared to argue the writ petition for final disposal, as per the convenience of the learned single Judge.

24.1 In view thereof, we direct the appellant to file their counter affidavit on or before 31-03-2016 with an advance copy thereof to respondent No.1. It is open to respondent No.1 to request learned single Judge to prepone the date of hearing of the writ petition for final disposal. We are sure that learned single Judge, having regard to over all facts and circumstances of the case, shall hear and dispose of the writ petition at the earliest.

Miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE, ACJ

P. NAVEEN RAO, J

22-03-2016
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- [\[1\]](#) (2007) 3 SCC 184
- [\[2\]](#) (1974) 4 SCC 396
- [\[3\]](#) (1983) 2 SCC 422
- [\[4\]](#) (2011) 2 SCC 654
- [\[5\]](#) (2003) 3 SCC 427
- [\[6\]](#) (1980) 4 SCC 379
- [\[7\]](#) 2013 (6) CTC 506
- [\[8\]](#) 1989 (2) ALT 124 D.B
- [\[9\]](#) 2016 Law Suit (SC) 138
- [\[10\]](#) AIR 1978 SC 851 (1)
- [\[11\]](#) MANU/DE/0995/2011
- [\[12\]](#) AIR 1958 SC 232
- [\[13\]](#) AIR 1964 SC 264
- [\[14\]](#) AIR 1958 SC 141
- [\[15\]](#) AIR 1965 SC 745
- [\[16\]](#) AIR 1959 SC 395