

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

I.A.No.1 of 2018 IN/AND W.A.No.668 of 2018

Between:

Sri Vemula Prashanth Reddy and others.

.... Appellants

and

Komati Reddy Venkat Reddy and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 04.06.2018.

SUBMITTED FOR APPROVAL:

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reports/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

RAMESH RANGANATHAN, ACJ

*** HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN**
AND
*** THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**
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.... Respondents

! Counsel for Appellants: Sri C.S. Vaidyanathan; Learned Senior Counsel, Sri K. Ravinder Reddy

^ Counsel for respondents: Addl. Advocate General; Sri Ravi Shankar Jandhyala,

< GIST:

> HEAD NOTE:

? Citations:

- 1) (2007) 3 SCC 184
- 2) AIR 1967 MP 95
- 3) AIR 1988 MAD 275
- 4) (2018) SCC Online SC 128
- 5) (2010) 4 SCC 1
- 6) (1996) 3 SCC 52 = [1996] 2 SCR 906
- 7) 1984 (2) ALT 207
- 8) (2017) 5 SCC 533
- 9) (1965) 2 SCR 756 = AIR 1965 SC 1442
- 10) 1986 Supp SCC 401
- 11) AIR 1965 SC 1818
- 12) 2005 SCC Online P&H 1039 = (2006) 1 RCR (CRI) 442
- 13) (2000) 1 Guj LR 206
- 14) 2014 (4) ALD 260 (DB)
- 15) (1910) 11 Cal LJ 580
- 16) AIR (36) 1949 Bom. 141
- 17) (1894) 2 Ch 410
- 18) AIR 1971 SC 374
- 19) AIR 1985 Cal. 96
- 20) AIR 1985 Cal 422
- 21) (1961) II An.WR 204
- 22) (1977) 1 SCC 155
- 23) (1975) 2 SCC 702
- 24) (1998) 4 SCC 626 : 1998 SCC (Cri) 1108
- 25) AIR 1959 SC 395

- 26) AIR 1965 SC 745
- 27) (2010) 6 SCC 113
- 28) AIR 1973 Madras 371
- 29) 1959 Supp (2) SCR 316: AIR 1959 SC 725
- 30) 2002 (7) Supreme 437 = (2002) 8 SCC 237
- 31) AIR 1979 SC 1415
- 32) AIR 1993 SC 412
- 33) AIR 1958 Assam 160
- 34) AIR 1961 SC 613



THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

I.A.No.1 of 2018 IN/AND W.A.No.668 of 2018

COMMON JUDGMENT: (per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

I.A.No.1 of 2018 in W.A.No.668 of 2018 is filed by 12 members of the Telangana Legislative Assembly seeking leave of this Court to question the validity of the order passed in W.P.No.8812 of 2018 dated 17.04.2018. Respondents 1 and 2 in this application had filed W.P.No.8812 of 2018 to declare the action of the Telangana State Legislature in expelling them from the service of the House by resolution dated 13.03.2018, and in issuing the extra-ordinary gazette dated 13.03.2018 notifying the vacancies in the Nalgonda Assembly Constituency and the Alampur (SC) Assembly Constituency, as illegal, arbitrary, without authority and jurisdiction, in violation of principles of natural justice, in derogation of Rule 17 of the Procedure and Conduct of Business Rules in the Telangana Legislative Assembly, and ultra-vires Articles 175 and 176 of the Constitution of India.

By order dated 17.04.2018, the Learned Single Judge allowed W.P.No.8812 of 2018 and set aside the resolution of the Telangana Legislative Assembly expelling both the respondents-writ petitioners and the consequential notifications declaring the two legislative assembly constituencies vacant. The Learned Single Judge observed that there was automatic restoration and revival of the writ petitioners' respective membership in the Telangana Legislative Assembly, and they were entitled to be continued for their remaining tenure as duly elected MLAs for all purposes with

no order of expulsion, since it was set aside; and if any criminal action was to be taken, the order passed by him did not bar any such legal recourse which should be decided on its own merits.

The resolution adopted by the Telangana Legislative Assembly dated 13.03.2018 expelling the petitioners as Members of the House reads as under:

**“Telangana Legislative Assembly
Resolution Adopted by the House
Dated 13th March, 2018
Expulsion of Members**

“That this House expresses its severe anguish and deep shock at the incident that occurred during the Governor’s address on 12.03.2018. The unruly and contemptuous behaviour and actions of Members of Assembly namely (1) Sri Komatireddy Venkat Reddy and (2) Sri S.A. Sampath Kumar amount to violation of privileges of Legislators and contempt of Legislature affecting the dignity and decorum and their continuance as Members of the Assembly is untenable and in exercise of powers conferred under Clause (3) of Article 194 of Constitution of India resolves that they may be expelled from the membership of this Assembly”.

Pursuant thereto, notifications were issued, by the Secretary to the State Legislature, in the Telangana Gazette dated 13.03.2018 notifying that, consequent on the expulsion of both the respondents-writ petitioners as members elected from the respective Assembly Constituencies from the membership of the Telangana Legislative Assembly on a resolution adopted by the House, the said Assembly Constituencies had fallen vacant with effect from 13.03.2018. It is this resolution passed by the House (Telangana Legislative Assembly), and the consequential notifications declaring that both the assembly constituencies had fallen vacant, which were under challenge in W.P.No.8812 of 2018.

The State of Telangana, Law and Legislature Department was arrayed as the 1st respondent in the Writ Petition; the

Legislature Secretariat of the State of Telangana rep. by its Secretary, Legislature Assembly was arrayed as the 2nd respondent, and the Election Commission of India, rep. by the Chief Election Commissioner, was arrayed as the 3rd respondent in the Writ Petition. None of the three respondents in the Writ Petition have chosen, as on date, to prefer an appeal against the order passed by the Learned Single Judge in W.P.No.8812 of 2018 dated 17.04.2018. It is only 12 members of the Telangana Legislative Assembly who have filed the present application seeking leave of this Court to prefer an appeal against the said order.

In the affidavit filed in support of the application, it is stated that the applicants were duty bound to protect the decency and decorum of the House, which was lost due to the unruly behaviour of both the respondent-writ petitioners, which resulted in expelling them from the membership of the House; the respondents-writ petitioners were members of the Indian National Congress Legislature Party in the Telangana Legislative Assembly elected in 2014; on the commencement of the budget session for the year 2018-19 for the Telangana State, His Excellency the Governor had, as a Constitutional mandate, addressed members of the Legislative Assembly as well as the Legislative Council of the Telangana Legislature (Joint Session) on 12.03.2018; both the respondents-writ petitioners had behaved in a manner unbecoming of members of the Legislative Assembly; on 13.03.2018 the Minister for Legislative Affairs had moved a resolution to expel the respondents-writ petitioners for their unruly behaviour during the Governor's address on the previous day i.e. 12.03.2018, and the motion was carried out; extra-ordinary gazette dated 13.03.2018

was published notifying vacancies in both the Assembly Constituencies; questioning the same, the respondents-writ petitioners had filed W.P.No.8812 of 2018 which was allowed by order dated 17.04.2018; the order is based on surmises and conjectures, and primarily on the ground that the Legislative Assembly had not followed principles of natural justice; the Learned Single Judge ought to have seen that the respondents-writ petitioners had conducted themselves on the floor in a manner unbecoming of members of the Legislative Assembly; the conduct of the respondents-writ petitioners was witnessed by the members of the House, including the applicants-appellants; the conduct of the respondents-writ petitioners was contemptuous, and was in breach of privilege on the face of the House; the Minister for Legislative Affairs was left with no option but to move the resolution on 13.03.2018; the resolution was passed unanimously to expel both the respondents-writ petitioners from the membership of the House; the unruly behaviour of the respondents-writ petitioners occurred in the actual view of the House; it had degraded the image of the House; without considering the same, the Learned Single Judge had allowed the Writ Petition; if the said order was allowed to stand, it would result in failure of justice in the eye of law; the applicants were therefore constrained to prefer this appeal aggrieved by the unruly behaviour of the respondents-writ petitioners which had denigrated the majesty and decorum of the House, and was in utter disregard to the powers and privileges of the House as envisaged under Article 194(3) of the Constitution of India; and the applicants were, therefore, entitled to seek leave to prefer this

appeal, and to challenge the order passed in W.P. No.8812 of 2018 dated 17.04.2018.

Elaborate submissions, both oral and written, were put forth on behalf of the applicants-appellants and the respondent-writ petitioners including, albeit briefly, on the merits of the order under appeal. Sri C.S. Vaidyanathan, Learned Senior Counsel appearing on behalf of the applicants-appellants, would submit that on 12.3.2018, while the Governor was addressing the House, respondents 1 and 2 (Writ Petitioners) threw ear-phones on the dignitaries occupying the dais; the House expressed its severe anguish and deep shock at the incident that occurred during the Governor's address on 12.3.2018; a resolution was moved, in the exercise of the power conferred under clause (3) of Article 194 of Constitution of India, to expel the said two legislators from the membership of the House for their unruly and contemptuous behavior, which amounted to violation of the privileges of the Legislators, and contempt of the Legislature, affecting the dignity and decorum of the House; as their continuance as members of the Assembly was untenable, the resolution, moved on 13.3.2018, was unanimously adopted by the House, and the said two Legislators were expelled from the membership of the Assembly; the Secretary of the State Legislature had also issued a notification in the Telangana Gazette on 13.3.2018 notifying two Assembly Constituencies, namely 92-Nalgonda Assembly Constituency and 80-Alampur (SC) Assembly Constituency, as having fallen vacant w.e.f. 13.3.2018, consequent upon the resolution adopted by the House; aggrieved thereby, respondents 1 and 2 i.e Writ Petitioners 1 and 2 had filed W.P.No.8812 of 2018

before this Court; a Learned Single Judge of this Court had allowed the said Writ Petition by order dated 17.4.2018, setting aside the expulsion proceedings and the consequential notification; and the learned Judge had also declared that there was an automatic restoration and revival of the membership of the Writ Petitioners in the Telangana Legislative Assembly.

Sri C.S. Vaidyanathan, Learned Senior Counsel, would submit that it is the case of the appellants that the Learned Single Judge had allowed the Writ Petition without properly considering the law laid by the Supreme Court in **Raja Ram Pal v. Hon'ble Speaker, Lok Sabha**¹; **Yeshwant Rao Meghawale v. Madhya Pradesh Legislative Assembly**²; **K. Anbazhagan v. The Secretary, Tamilnadu Legislative Assembly, Madras**³; and **Lok Prahari, through General Secretary S.N. Shukla v. Union of India**⁴; the Learned Single Judge had allowed the Writ Petition misconstruing that the Governor's address was not a 'session', contrary to the decision in **Ramdas Athawale v. Union of India**⁵; the Learned Single Judge failed to see that respondents 1 and 2- Writ Petitioners had admitted to have thrown the ear-phones; they had only disputed injuries having been caused to the Chairman thereby; their admission that they had thrown the ear-phones was, by itself, contempt in the face of the House; there was thus no need for an enquiry; the question of violation of principles of natural justice did not therefore arise; the appellants have been advised that there are good grounds for the appeal to be allowed, as the learned Single Judge had committed several errors in the

¹ (2007) 3 SCC 184

² AIR 1967 MP 95

³ AIR 1988 MAD 275

⁴ (2018) SCC Online SC 128

⁵ (2010) 4 SCC 1

judgment under appeal, both on facts and in law; the Learned Single Judge had gone to the extent of holding that the incident, that occurred on 12.3.2018, was in the House when it was not in 'session', and on the given date no business was transacted; Paras 6(1) and 6(b) of the learned Single Judge's order is contrary to the Judgment of the Supreme Court in **Ramdas Athawale**⁵; and therefore leave be granted to the appellants to challenge the order of the learned Single Judge, and the Writ Appeal be allowed.

On the other hand Dr. Abhishek Singhvi, Learned Senior Counsel appearing on behalf of the respondent-writ petitioners, would submit that the following questions arise for consideration in this Writ Appeal i.e (i) can a writ court judicially review the validity of the resolution of the Telangana Legislative Assembly, expelling two MLAs, allegedly passed in the exercise of the powers under Article 194 of the Constitution of India and, if so, the scope thereof?; (ii) can expulsion of Respondent No. 1 and 2 in this appeal, without any hearing and adherence to principles of natural justice, be sustained?; (iii) can the Legislative Assembly be said to be in "session" when the Governor addresses the "Assembly" under Article 174 of the Constitution of India, and whether parliamentary privileges apply at that stage i.e "before" the Speaker starts to preside over the Legislative Assembly "in session"?; and (iv) whether an intra-court appeal lies to the Division Bench at the instance of MLAs', who were not parties to the Writ Petition before the Learned Single Judge, where (a) the State Government and the Legislative Assembly were arrayed as Respondent Nos. 1 and 2 in the Writ Petition; (b) the State Government and the Legislative Assembly were represented by the Learned Advocate General, (as is

recorded in multiple speaking orders of the learned Single Judge), who gave concessions to the Court; the Learned Advocate-General's resignation has still not been accepted as on date by the authority under Article 165; and (c) the State Government and Legislative Assembly consciously and deliberately chose not to challenge the impugned order quashing the resolution.

In the present application filed by the applicants-appellants, seeking leave to prefer an appeal against the order of the Learned Single Judge in W.P.No.8812 of 2018 dated 17.04.2018, it is wholly unnecessary for us to examine the submissions made by Learned Senior Counsel on either side on the validity or otherwise of the order passed by the Learned Single Judge, for it is only if leave as sought for by the applicants-appellants is granted, and they are held entitled to prefer an appeal against the order passed by the Learned Single Judge, would we be required, thereafter, to examine the order of the Learned Single Judge in W.P.No.8812 of 2018 dated 17.04.2018 on its merits. In the present application, the question which necessitates examination is whether an intra-Court appeal under Clause 15 of the Letters Patent, filed by 12 Members of the Telangana Legislative Assembly, should be entertained though it is the Telangana Legislative Assembly which can claim to be aggrieved by the order of the Learned Single Judge setting aside the resolution passed by it on 13.03.2018.

While an appeal could, undoubtedly, have been preferred by respondents 1 and 2 in the Writ Petition (respondents 3 and 4 in this application) against the order passed by the Learned Single Judge, the question which we are called upon to answer is whether the applicants, who are members of the House, can prefer an

appeal against the order of the Learned Single Judge setting aside the resolution passed by the House (i.e the Telangana Legislative Assembly) on 13.03.2018. 12 members of the Telangana Legislative Assembly have filed this application seeking leave to appeal. It is only if this Court were to hold that any individual member of the House, and not the House as a collective body, is entitled to prefer an appeal against the order of the Learned Single Judge, setting aside the resolution passed by Telangana Legislative Assembly on 13.03.2018 expelling two members of the House (i.e both the respondent-writ petitioners), can leave, as sought for by the applicants, be granted.

We shall therefore confine our examination in the present application, to the rival submissions put forth by Learned Senior Counsel on either side, only to questions relating to whether or not the applicants-appellants are entitled for grant of leave to prefer an appeal against the order passed in W.P.No.8812 of 2018 dated 17.04.2018. The rival contentions in this regard shall be examined under different heads.

I. SCOPE OF CLAUSE 15 OF THE LETTERS PATENT:

Sri C.S. Vaidyanathan, Learned Senior Counsel appearing on behalf of the applicants-appellants, would submit that leave is sought to prefer an appeal under Clause 15 of the Letters Patent; it is not in dispute that the impugned judgment is appealable under Clause 15 of Letters Patent; Clause 15 does not specify the person who can appeal against the judgment, and it is not confined to a “*person aggrieved*”; the 12 MLAs, who have sought leave to appeal, are no way-farer of officious bystanders or persons unconnected with the Judgment; they are MLAs who were present in the

Legislative Assembly, and had voted in favour of the resolution to expel the two respondents.

On the other hand Dr. Abhishek Singhvi, Learned Senior Counsel appearing on behalf of the respondent-writ petitioners, would submit that, in the present application, the only question which necessitates examination is whether the applicants-appellants are entitled for grant of leave to prefer the present appeal before the Division Bench, and their lack of Locus; admittedly, the applicants-appellants were neither parties before the Learned Single Judge nor did they seek to implead themselves in the Writ Petition, though hearing of the Writ Petition went on for over a month; they have filed this appeal, seeking leave to appeal, to circumvent the legal process; the concessions given by the Advocate General are coming in the way of respondents 3 and 4 in filing an appeal; Respondent No. 3 and 4, who are and were parties before the learned Single Judge, have consciously chosen not to file any appeal; the petitioners are trying to bail out respondents 3 and 4 who are represented by the Advocate-General; it is the Secretary of the Legislature, acting for the Speaker and or the Chairman and for the entire assembly collectively, who passes/conveys the resolution and is fully empowered and able (if he so chooses) to file an appeal; a deliberate decision, not to file an appeal, imparts finality to the non-existence in law, and in fact, of the expulsion resolution; individual MLAs, sub-group of MLAs or a larger group of MLAs have no locus standi in this regard; if the individual MLAs, sub-groups of MLAs or larger groups of MLAs are recognized as having locus, chaos and unmanageable situations would arise; hypothetically the main house, that passes a

resolution, may consciously choose to accept its quashing, and not to appeal (as in the present case); one group of MLAs' may choose to appeal (as in the present case); another group of MLAs may well seek impleadment opposing such an appeal or such expulsion; it is inconceivable that a court would have to hear such desperate and opposing pleas; the present appeal, by a group of MLAs, has yet another absurd and anomalous feature which may be illustrated by an analogy; over the last decade, several new regulators for different sectors like Competition (CCI) or Telecom (TRAI) have been created; assuming for example, that CCI consists of three members, and assume that CCI gives a split 2:1 verdict in favor of party X; accepting the present appellants' stand would mean that the dissenting member who is a part of CCI, and who did not agree with the decision, can choose to appeal in his individual capacity, even if the institutional entity, has no such intention; and such absurd consequences should not be allowed to ensue by the self-serving interpretation adopted by the applicants-appellants.

Clause 15 of the Letters Patent reads thus:-

Appeal from the courts of original jurisdiction to the High Court in its appellate jurisdiction:

“And we do further ordain that an appeal shall lie to the said High Court of judicature at Madras from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction of one judge of the said High Court or one judge of any Division Court, pursuant to Section 108 of Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act made (on or after the 1st day of February 1929) in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of judges of the said High Court or of such Division

Court shall be to Us, Our Heirs of Successors in Our or Their Privy Council, as hereinafter provided.”

It is the internal working of the High court which splits it into different 'benches' and yet the court remains one. A letters patent appeal, as permitted under the Letters Patent, is normally an intra-court appeal whereunder the Letters Patent bench, sitting as a court of correction, corrects its own orders in the exercise of the same jurisdiction as was vested in the Single bench. (**Baddula Lakshmaiah v. Sri Anjaneya Swami Temple**⁶). In the exercise of the jurisdiction under Clause 15 of the Letters Patent, the judgment under appeal cannot be faulted on the ground that an alternative view, which might commend itself to the appellate court, was not accepted by the Learned Single Judge. At least, such review is not open to an appellate court hearing appeals against orders made under Article 226 of the Constitution which is a discretionary remedy. Interference can only be on an error of principle but not on re-evaluation of evidence; nor on the basis of preferential choice of alternatives. (**Royal Laboratories v. Labour Court, Hyderabad**⁷).

A plain reading of clause 15 of the Letters Patent indicates that, except in the cases excluded, an appeal lies against the judgment of a Single Judge of the High Court to the High Court in the exercise of any other jurisdiction. (**Ram Kishan Fauji v. State of Haryana**⁸; **South Asia Industries (P) Ltd. v. S.B. Sarup Singh**⁹). When analysed and broken up into its component parts, Clause 15 reads as follows:- An appeal shall lie to the High Court (1) from a judgment; (2) of one Judge of the High Court; (3)

⁶ (1996) 3 SCC 52 = [1996] 2 SCR 906

⁷ 1984 (2) ALT 207

⁸ (2017) 5 SCC 533

⁹ (1965) 2 SCR 756 = AIR 1965 SC 1442

pursuant to Section 108 of the Government of India Act; (4) not being—(a) a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the High Court; (b) an order made in the exercise of revisional jurisdiction; (c) a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or (d) a sentence or order passed or made in the exercise of criminal jurisdiction. (**Umaji Keshao Meshram v. Radhikabai**¹⁰).

Under Clause 15 of the Letters Patent, there is no qualification or limitation as to the nature of the jurisdiction exercised by the Single Judge while passing his judgment, provided an appeal is not barred by any statute (for example, Section 100-A of the Code of Civil Procedure, 1908) and provided the conditions laid down by Clause 15 itself are fulfilled. Clause 15 of the Letters Patent gives a right of an intra-court appeal and, therefore, the decision of a Single Judge of that High Court, given in a petition under Article 226, would be appealable to a Division Bench of that High Court. (**Umaji Keshao Meshram**¹⁰). If the order made by a Single Judge is a “*judgment*”, an appeal shall lie from the judgment of the Single Judge under Clause 15 of the Letters Patent. (**Ram Kishan Fauji**⁸; **South Asia Industries (P) Ltd.**⁹). If, however, an appeal is barred under Clause 15 of the Letters Patent, no appeal will lie. (**Ram Kishan Fauji**⁸).

Clause 15 of the Letters Patent explicitly bars an appeal against an order passed in the exercise of criminal jurisdiction.

¹⁰ 1986 Supp SCC 401

Therefore only an appeal, against an order passed by the Learned Single Judge in the exercise of his civil jurisdiction, would lie under clause 15 of the Letters Patent to a Division Bench of the High Court. Proceedings under Article 226 of the Constitution would be treated as original civil proceedings only when it concerns civil rights. Afortiori, if it concerns a criminal matter, then such proceedings would be original criminal proceedings. Letters Patent would lie when the Single Judge decides the writ petition in proceedings concerning civil rights. On the other hand, if these proceedings are concerned with rights in the criminal law domain, then it can be said that the Single Judge was exercising his “*criminal jurisdiction*” while dealing with such a petition filed under Article 226 of the Constitution, and a letters patent appeal is not maintainable. (**Ram Kishan Fauji**⁸). The concept of “*criminal jurisdiction*”, as used in clause 15 of the Letters Patent, is not to be construed in the narrow sense. It encompasses, in its gamut, the inception and the consequence. The character of the proceeding depends not upon the nature of the tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed. (**Ram Kishan Fauji**⁸; **CIT v. Ishwarlal Bhagwandas**¹¹).

A proceeding under Article 226 is an original proceeding and when it concerns civil rights, it is an original civil proceeding. (**Adishwar Jain v. Union of India**¹²; **Umaji Keshao Meshram**¹⁰; and **Ram Kishan Fauji**⁸). The issue whether the proceedings are civil or not would depend upon the nature of the right violated and the appropriate relief which might be claimed. (**Ram Kishan**

¹¹ AIR 1965 SC 1818

¹² 2005 SCC Online P&H 1039 = (2006) 1 RCR (CRI) 442

Fauji⁸; Sanjeev Rajendrabhai Bhatt v. State of Gujarat¹³; Ishwarlal Bhagwandas¹¹). The expression “civil proceeding” is not defined in the Constitution, nor in the General Clauses Act. The expression covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief for breach thereof. (**Ram Kishan Fauji⁸; Ishwarlal Bhagwandas¹¹**). A civil proceeding is, therefore, one in which a person seeks to enforce, by appropriate relief, the alleged infringement of his civil rights against another person or the State, and which, if the claim is proved, would result in the declaration, express or implied, of the right claimed and relief such as payment of debt, damages, compensation, delivery of specific property, enforcement of personal rights, determination of status, etc. (**Ram Kishan Fauji⁸; Ishwarlal Bhagwandas¹¹**).

It is necessary for us, therefore, to ascertain whether the applicants-appellants’ civil rights have been infringed, on relief being granted by the Learned Single Judge, to the respondents herein, in the Writ Petition filed by them questioning the resolution of the House dated 13.03.2018 expelling them as members of the Legislative Assembly. It is only if the applicants-appellants are able to show, prima-facie, that any of their civil rights have been violated thereby, would they be entitled for grant of leave to prefer an appeal.

While the order under appeal is no doubt a “*judgment*” within the meaning of clause 15 of the Letters Patent, such a judgment cannot be subjected to challenge in proceedings under clause 15 of the Letters Patent other than by a person who claims that his civil

¹³ (2000) 1 Guj LR 206

rights have been infringed thereby; and which claim, if accepted, would result in a declaration of the right claimed by him. We must, therefore, examine whether or not the civil rights of the applicants-appellants have been infringed as a result of the order under appeal.

This question can be examined from another angle also. Clause 15 of the Letters Patent enables an appeal to be preferred against an order passed in connection with writ proceedings. As Rule 24 of the Writ Proceedings Rules of this Court has made the provisions of CPC applicable, the right to prefer an appeal, in writ proceedings, is governed by Section 96 of the Code of Civil Procedure. (**P. Chenga Reddy v. Kuppala Bala Subramanyam**¹⁴). A party in the proceedings has the right of appeal under Section 96 CPC but, with regards a third party, this provision has to be read with Order 41 of the CPC which provides for the methodology of preferring an appeal. (**P. Chenga Reddy**¹⁴).

There is no right of appeal vested, by any of the provisions of the Civil Procedure Code or by any other provision of law, on a person who is not a party to the proceedings, but is aggrieved by the decision and wants to appeal against it. The only remedy open to him, if his interests are adversely affected or if he is aggrieved by the decision of the Court, is to approach the appellate Court and ask for leave to appeal. (**Srinath Das v. Probodh Chunder Das**¹⁵; **The Province of Bombay v. Western India Automobile Association**¹⁶; **P. Chenga Reddy**¹⁴).

¹⁴ 2014 (4) ALD 260 (DB)

¹⁵ (1910) 11 Cal LJ 580

¹⁶ AIR (36) 1949 Bom. 141

While a party to the writ proceedings, aggrieved by the decision and judgment of the learned Single Judge, can prefer an appeal as of right to the appellate Court, a third party to the proceedings is not entitled to prefer an appeal as a matter of right. (**P. Chenga Reddy**¹⁴). A person who is a party can appeal without any leave, and a person who, without being a party, is either bound by the order or is aggrieved by it, or is prejudicially affected by it, cannot appeal without leave. It is only if a person, claiming to be aggrieved by an order, makes out a *prima facie* case why he should have leave, will he get it: but without leave he is not entitled to appeal. (**In Re: Securities Insurance Company**¹⁷; **P. Chenga Reddy**¹⁴).

A person who is not a party to the writ proceedings may prefer an appeal with the leave of the appellate Court, and such leave would be granted if he is prejudicially affected by the judgment. (**Jatan Kanwar v. Golcha Properties**¹⁸; **P. Chenga Reddy**¹⁴; **United Commercial Bank v. Hanuman Synthetics Ltd**¹⁹; **Mahindra Kumar Bose v. Biswanath**²⁰). Leave to appeal can be granted to a third party by the appellate Court, in an appropriate case, if the decision rendered in the original proceedings has adversely affected him. It is not in every case, where a person may be remotely or indirectly affected, that leave should be granted. (**Pullayya v. Nagabhushanam**²¹; **P. Chenga Reddy**¹⁴).

¹⁷ (1894) 2 Ch 410

¹⁸ AIR 1971 SC 374

¹⁹ AIR 1985 Cal. 96

²⁰ AIR 1985 Cal 422

²¹ (1961) II An.WR 204

A third party can make an application to the appellate Court demonstrating, *prima facie*, that his right has been affected, by the judgment/order of the first Court, and obtain prior leave to prefer an appeal. If no such *prima facie* case is established with reference to the judgment and decision of the Court, the appellate Court will not grant leave, for anyone and everyone, not being a party, cannot interfere with judicial proceedings without just cause. (**P. Chenga Reddy**¹⁴).

As noted hereinabove, none of the applicants-appellants are parties to W.P.No.8812 of 2018 and, because they are third parties to the said litigation, they have filed the present application seeking leave to appeal. It is only if the applicants-appellants are able to demonstrate, *albeit prima facie*, that their rights have been infringed by the judgment/order of the Learned Single Judge, would they be entitled for grant of leave to prefer an appeal against the said order. The contention, urged on behalf of the applicants-appellants that an appeal under Clause 15 of the Letters Patent is not confined to a person aggrieved, is not tenable. It is only a person, whose constitutional or statutory rights have been infringed by the order under appeal, who is entitled to invoke the jurisdiction of the Division Bench of the High Court under Clause 15 of the Letters Patent. As they do not even claim that any statutory right of theirs has been affected, it is only if the applicants-appellants can show that the order of the Learned Single Judge had adversely affected their constitutional rights, would they be entitled to seek leave to prefer an appeal against the order of the Learned Single Judge. Leave can neither be sought

nor granted on the specious claim of a person to be remotely or indirectly affected by the order under appeal.

While the applicants-appellants may have voted in favour of the resolution, the power or privilege to expel a member of a House, as shall be detailed hereinafter, is conferred only on the Legislative Assembly which expresses its collective will, to expel the member, by way of a resolution passed by the House and conveyed to the member either by the Speaker or by the Secretary of the Legislative Assembly. By casting his vote, a member of the Legislative Assembly only expresses his intention either to support the resolution moved to expel a member of a House or to oppose it. If a person who has cast a vote in favour of the resolution can be permitted to challenge the order of the Learned Single Judge, a member of Legislative Assembly who has cast his vote against the resolution to expel a member must necessarily also be held, (besides the expelled member), to be a “*person aggrieved*” by the decision of the Legislative Assembly, and to be entitled to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India questioning the resolution of the House expelling a member. As shall be elaborated hereinafter, since it is the Legislative Assembly, as an institution created under the Constitution, which has taken the decision to expel two members of the House by way of a resolution, on the expression of the collective wisdom of all those members of the Legislative Assembly present and voting, it is only the Legislative Assembly which can be said to be a “*person aggrieved*”, and not any individual member or group of members of the Legislative Assembly.

II. ARE THE APPLICANTS – PERSONS AGGRIEVED – ENTITLED FOR GRANT OF LEAVE TO PREFER THE APPEAL UNDER CLAUSE 15 OF THE LETTERS PATENT?

Sri C.S. Vaidyanathan, Learned Senior Counsel appearing on behalf of the applicants-appellants, would submit that, since the appellants are legislators of the Telangana State Assembly, and had participated in the process of passing the Resolution, they are aggrieved by the order of the Learned Single Judge, and have filed the present Writ Appeal; the applicants-appellants are asserting their right to say that the impugned Judgment has wrongly interfered with the collective decision of the Legislative Assembly; they are not seeking to enforce the privilege through the Court; and they have successfully asserted the privilege in the Legislature and that has been set aside, in their submission, wrongly; and as the applicants-appellants are part of the Telangana State Legislature and had participated in the proceedings, which resulted in the expulsion of two M.L.As, they have locus standi to challenge the decision of the Learned Single Judge setting aside the resolution of the assembly. Learned Senior Counsel would rely on the Judgments of the Supreme Court in **Maharaj Singh v. State of Uttar Pradesh**²²; and **Bar Council of Maharashtra v. M.V. Dabholkar**²³ in this regard.

On the other hand Dr. Abhishek Singhvi, Learned Senior Counsel appearing on behalf of the respondent-writ petitioners, would submit that the record placed before the Learned Single Judge bears witness to a deplorable approach adopted by

²² (1977) 1 SCC 155

²³ (1975) 2 SCC 702

Respondent Nos.3 and 4 as reflected in several docket orders passed by the Learned Single Judge; they clearly establish that the present appellants are acting as a proxy for Respondent Nos.3 and 4; Respondent Nos.3 and 4 are fully bound by the categorical statements made by the learned Advocate-General whose position is "sui generis" in nature; the judgments cited by the Appellants are in respect of a "*person aggrieved*"; reliance on **M.V. Dabholkar**²³ is wholly irrelevant, and hence inapplicable to the present case; **M.V. Dabholkar**²³ was a case of a statutory provision (Section 38 of the Advocates Act) which allowed appeals by aggrieved persons; the Supreme Court held, in **M.V. Dabholkar**²³, that the State Bar Council was a person aggrieved, and could therefore file an appeal; similarly, it is the Legislative Assembly, in the present case, which is a person aggrieved and can file an appeal; none of the judgments cited decide upon the issue that arises in the present case, viz where the only person, entitled to pass an order, accepts judicial nullification of that order, and chooses not to appeal, can a group or a sub-group of that institutional entity choose to appeal, and seek revival of the order which that Institutional entity has treated as validly nullified by the judicial authority?; the principle of **M.V. Dabholkar**²³ was applied in the case of **Maharaj Singh**²² which was, in fact, a reverse case wherein the main entity (viz State Government) filed an appeal but the subsidiary entity (Gaon Sabha) chose not to file an appeal; and the Supreme Court held that the wholesome object of the legislation would be frustrated, if the State, the watch dog of the whole project, was to be a helpless spectator of its purposeful bounty being wasted or lost.

Learned Senior Counsel would rely on the following docket orders recorded in the Order under appeal i.e (a) Docket order dated 16.03.2018; (b) Docket order dated 19.03.2018; (c) Docket Order dated 22.03.2018; (d) Docket order dated 27.03.2018 – the attempted volte face and somersault regarding Advocate General’s statement; and (e) Docket order reserving judgment dated 09.04.2018 – It is clear that the Advocate General repeatedly stated that he will produce the video on behalf of Respondent No. 4. He would also rely on Para.10 of the Judgment of the Learned Single Judge.

In **M.V. Dabholkar**²³, on which reliance is placed on behalf of the applicants-appellants, the question which arose for consideration before the Supreme Court was whether the Bar Council of a State is a “*person aggrieved*” entitled to maintain an appeal under Section 38 of the Advocates Act, 1961. The Bar Council of Maharashtra had received a compliant from the High Court against the respondent Advocates. This complaint was referred to the Disciplinary Committee of the State Bar Council, and three Advocates were elected as members of the Disciplinary Committee to enquire into the complaints. On the directions of the Disciplinary Committee, the State Bar Council issued notices under Section 35 of the Advocates Act to the respondents; evidence was adduced before the Disciplinary Committee which, thereafter, found the respondents guilty of conduct which seriously lowered the reputation of the Bar in the eyes of the public. The respondents were suspended, from practising as Advocates, for a period of three years. Aggrieved thereby, the respondents preferred an appeal to the Bar Council of India wherein they impleaded the

State Bar Council (i.e., the Bar Council of Maharashtra) as a respondent. The Disciplinary Committee of the Bar Council of India allowed the appeals, and set aside the order passed by the disciplinary committee of the Bar Council of Maharashtra, recording that the State Bar Council had not appeared before the Bar Council of India.

Before the Supreme Court it was contended, on behalf of the respondents, that the State Bar Council was not a “*person aggrieved*” and was therefore not entitled to maintain an appeal against the decision of the disciplinary committee of the Bar Council of India; neither did they suffer any legal grievances, nor could they claim to be deprived of any right; the State Bar Council could not be said to have any grievance even if the order of the disciplinary committee of the Bar Council of India was wrongfully made; in order to prefer an appeal, the person must be aggrieved by the order, and not by the consequences which ensue; no duty was imposed on the Bar Council of the State to attempt to set right any alleged error of the disciplinary committee of the Bar Council of India; a person can be said to be aggrieved by an order which is to his detriment-pecuniary or otherwise, or causes him some prejudice in some form or the other; the State Bar Council was subordinate to the Bar Council of India, and was therefore not competent to prefer an appeal against the order of the superior body; and an appeal could have been filed by the Advocate-General or the Attorney General of India who had the right to appeal, but they had chosen not to do so. It is in this context that the Supreme Court observed:

“.....The words “person aggrieved” are found in several statutes. **The meaning of the words “person aggrieved” will have to be ascertained with reference to the purpose and the provisions of the statute. Sometimes, it is said that the words “person aggrieved” correspond to the requirement of locus standi which arises in relation to judicial remedies.**

Where a right of appeal to courts against an administrative or judicial decision is created by statute, the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words “a person aggrieved” may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one “a person aggrieved”. Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words “a person aggrieved” is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. **The words “persons aggrieved” in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words “person aggrieved” include “a person who has a genuine grievance because an order has been made which prejudicially affects his interests”. It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.**

The Bar Council is “a person aggrieved” for these reasons. First, the words “person aggrieved” in the Act are of wide import in the context of the purpose and provisions of the statute. **In disciplinary proceedings before the Disciplinary Committee there is no lis and there are no parties. Therefore, the word “person” will embrace the Bar Council which represents the Bar of the State. Second, the Bar Council is “a person aggrieved” because it represents the collective conscience of the standards of professional conduct and etiquette.** The Bar Council acts as the protector of the purity and dignity of the profession. Third, the function of the Bar Council in entertaining complaints against advocates is when the Bar Council has reasonable belief that there is a prima facie case of misconduct that a Disciplinary Committee is entrusted with such inquiry. Once an inquiry starts, the Bar Council has no control over its decision. The Bar Council may entrust it to another Disciplinary Committee or the Bar Council may make a report to the Bar Council of India. **This indicates that the Bar Council is all the time interested in the proceedings for the vindication of discipline, dignity and decorum of the profession.** Fourth, a decision of a Disciplinary Committee can only be corrected by appeals as provided under the Act. When the Bar Council initiates proceedings by referring cases of misconduct to Disciplinary Committee, the Bar Council in the performance of its functions under the Act is interested in the “task of seeing that the advocates maintain the proper standards and etiquette of the profession. Fifth, the Bar Council is vitally” concerned with the decision in the context of the functions of the Bar Council. **The Bar Council will have a grievance if the decision prejudices the maintenance of standards of professional conduct and ethics.....”** (emphasis supplied).

In **M.V. Dabholkar**²³, the Supreme Court held that the meaning of the words “*person aggrieved*” would have to be ascertained with reference to the purpose and the provisions of the Statute; where a right of appeal to Courts against an administrative or judicial decision is created by a Statute, the right

is invariably confined to a *“person aggrieved”*, or a person who claims to be aggrieved; the meaning of the words *“a person aggrieved”* may vary according to the context of the Statute; normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one *“a person aggrieved”*; a person is aggrieved if a legal burden is imposed on him; the meaning of the words *“a person aggrieved”* is sometimes given a restricted meaning in certain Statutes requiring denial or deprivation of legal rights; a more liberal approach is required in the background of Statutes which do not deal with property rights but deal with professional conduct and morality; the words *“persons aggrieved”* in Sections 37 and 38 of the Advocates Act were of wide import, and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests; the test was whether the words *“person aggrieved”* included *“a person who has a genuine grievance because an order has been made which prejudicially affected his interests”*; the question which arose for consideration was whether the State Bar Council had a grievance in respect of an order or decision affecting the professional conduct and etiquette of its members; in disciplinary proceedings, before the Disciplinary Committee, there was no lis and there were no parties; therefore, the word *“person”* would embrace the Bar Council which represented the Bar of the State; the Bar Council was *“a person aggrieved”* because it represented the collective conscience of the standards of professional conduct and etiquette; this indicated that the Bar Council was all the time interested in the proceedings for the vindication of discipline, dignity and decorum of the profession, and the State Bar Council would have a grievance if the

decision prejudiced the maintenance of standards of professional conduct and ethics.

In **Maharaj Singh**²², the question which arose for consideration was whether the State of Uttar Pradesh could prefer an appeal to the High Court in the absence of it being a “*party aggrieved*” having regard to the provisions of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 . The State of Uttar Pradesh had extinguished all Zamindari estates by the said Act, and had implemented a scheme of settlement of lands. The Suit land was part of the State owned land which was under the possession of the defendant-Zamindarini. Consequent on abolition of the Zamindari by the Act, a notification was issued by the State vesting certain lands in the Gaon Sabha. This resulted in possessory disputes between the Gaon Sabha and the defendant-Zamindarini. In proceedings under Section 145 Cr.P.C, the defendant-Zamindarini’s possession was upheld resulting in the State of Uttar Pradesh and the Gaon Sabha filing a Suit for declaration of title, and for consequential injunction and ejection. The defendant-Zamindarini contended that the entire estate was enjoyed as a unum quid, and the vacant land was necessary for the meaningful running of the cattle fair as the structures themselves. On the Suit being decreed in part, the Gaon Sabha did not prefer an appeal, and only the Government of Uttar Pradesh challenged the order to the extent the Suit was dismissed.

It was contended by the respondent-defendant before the High Court that, since a notification was issued under the Act vesting the land in the Gaon Sabha, the State had no surviving interest in the property and had, therefore, forfeited the position of

a “*person aggrieved*” who alone could competently appeal against the decree. This contention was negated by the High Court and, on the respondent before the High Court carrying the matter in appeal, the Supreme Court observed:

“.....**There is thus authority for the position that the expression 'vest' is of fluid or flexible content and can if the context so dictates, bear the limited sense of being in possession and enjoyment.** Indeed, to postulate vesting of absolute title in the Gaon Sabha by virtue of the declaration under Section 117(1) of the Act is to stultify Section 117(6). Not that the legislature cannot create a right to divest what has been completely vested but that an explanation of the term 'vesting' which will rationalise and integrate the initial vesting and the subsequent resumption is preferable, more plausible and better fulfils the purpose of the Act. **We hold that the State has title to sustain the action in ejectment.**

Aside from this stand, it is easy to take the view that the 1st plaintiff is a person aggrieved and has the competence to carry an appeal against the dismissal of the suit. **Of course, he who has a proprietary right, which has been or is threatened to be violated, is surely an 'aggrieved person'. A legal injury creates a remedial right in the injured person. But the right to a remedy apart, a larger circle of persons can move the court for the protection of defence or enforcement of a civil right or to ward off or claim compensation for a civil wrong, even if they are not proprietarily or personally linked with the cause of action. The nexus between the lis and the plaintiff need not necessarily be personal although it has to be more than a wayfarer's allergy to an unpalatable episode. 'A person aggrieved' is an expression which has expanded with the larger urgencies and felt necessities of our times. Processual jurisprudence is not too jejune to respond to societal changes and challenges:**

"Law necessarily has to carry within it the impress of the past traditions, the capacity to respond to the needs of the present and enough resilience to cope with the demands of the future. A code of law, especially in the social fields, is not a document for fastidious dialectics; properly drafted and rightly implemented it can be the means of the ordering of the life of a people."

The classical concept of a 'person aggrieved' is delineated in **Re : Sidebotham ex p. Sidebotham (1880 14 Ch.D.258)**. But the amplitude of 'legal grievance' has broadened with social compulsions. **The State undertakes today activities whose beneficiaries may be the general community even though the legal right to the undertaking may not vest in the community. The State starts welfare projects whose effective implementation may call for collective action from the protected group or any member of them.** New movements like consumerism, new people's organs like harijan or mahila samajams or labour unions, new protective institutions like legal aid societies operate on the socio-legal plane, not to beat 'their golden wings in the void' but to intervene on behalf of the weaker classes. Such burgeoning of collective social action has, in turn, generated gradual processual adaptations. Test suits, class actions and representative litigation are the beginning and the horizon is expending, with persons and organisations not personally injured but vicariously concerned being entitled to. invoke the jurisdiction of the court for redressal of actual or imminent wrongs.

In this wider perspective, who is a 'person aggrieved'? Dhabolkar (1974 1 SCR 306) gives the updated answer: "The test is whether the words 'person aggrieved' include a person who has a genuine grievance because an order has been made which prejudicially affects his interests'." (p. 315)

"American jurisprudence has recognised, far instance, the expanding importance of consumer protection in the economic system and permitted

consumer organisations to initiate or intervene in actions, although by the narrow rule of 'locus standi', such a course could not have been justified (see p. 807--New York University Law Review, Vol. 46, 1971). In fact, citizen organisations have recently been campaigning for using legal actions for protection of community interest, broadening the scope of 'standing' in legal proceedings (see p. 403--Boston University Law Review, Vol.51. 1971).

In the well-known case of **Attorney-General of the Gambia v. Peirra Sarr N. 'Jie** : 1961 A.C. 617), Lord Denning observed about the Attorney-General's standing thus:

" The words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busy body who is interfering in things which do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests." (p. 324-325)

Where a wrong against community interest is done, 'no locus standi' will not always be a plea to non-suit an interested-public body chasing the wronged off in court. **In the case before us, Government, in the spacious sense of 'person aggrieved' is comfortably placed. Its, right of resumption from the Gaon Sabha, meant to be exercised in public interest, will be seriously jeopardised if the estate slips into the hands of a trespasser. The estate belonged to the State, is vested in the Gaon Sabha for community benefit, is controlled by the State through directions to the Land Management Committee and is liable to be divested without ado any time. The wholesome object of the legislature of cautiously decentralised vesting of estates in local self-governing units will be frustrated, if the State, the watchdog of the whole project, is to be a helpless. spectator of its purposeful bounty being wasted or lost. It must act, out of fidelity to the goal of the statute and the continuing duty to salvage public property for public use.** Long argument is otiose to make out a legal grievance in such a situation of peril and, after all, the star of processual actions pro bono publico has to be on the ascendant in a society where supineness must be substituted by activism if the dynamic rule of law is to fulfil itself. 'Locus standi' has a larger ambit in current legal semantics than the accepted, individualistic jurisprudence of old. The legal dogmas of the quiet past are no longer adequate to assail the social injustices of the stormy present. Therefore, the State, in the present case, is entitled to appeal under s. 96 of the Code of Civil Procedure....." (emphasis supplied).

In **Maharaj Singh**²², the Supreme Court held that the expression 'vest' was of fluid or flexible content and could, if the context so dictated, bear the limited sense of being in possession and enjoyment; title over the lands continued to vest with the State, notwithstanding enjoyment of these lands being given by the State of U.P. to the Gaon Sabha; the State of U.P. had title to sustain the action in ejectment; he who has a proprietary right, which has been or is threatened to be violated, is an '*aggrieved person*'; a legal injury creates a remedial right in the injured person; the right to a remedy apart, a larger circle of persons can move the court for protection of the defence or enforcement of a civil right, or

claim compensation for a civil wrong; the nexus between the lis and the plaintiff need not necessarily be personal although it has to be more than a wayfarer's allergy to an unpalatable episode; in the case before it, the Government's right of resumption of land from the Gaon Sabha, meant to be exercised in public interest, would be seriously jeopardised if the estate slipped into the hands of a trespasser; the estate belonged to the State, was vested in the Gaon Sabha for community benefit, was controlled by the State through directions to the land management committee, and was liable to be divested, without ado, any time; the wholesome object of the legislation would be frustrated if the State, the watchdog of the whole project, was to be a helpless spectator of its purposeful bounty being wasted or lost; and it must act out of fidelity to the goal of the statute and the continuing duty to salvage public property for public use.

In both **M.V. Dabholkar**²³ and **Maharaj Singh**²², the Bar Council of Maharashtra and the State of Uttar Pradesh respectively were held to be "*persons aggrieved*" as they had a genuine grievance against the order which prejudicially affected the maintenance of the standards of professional conduct and etiquette of its members in the former, and to ensure that its purposeful bounty was not wasted or lost and to salvage public property for public use in the latter. In the present case, it is neither the Speaker nor the Secretary to the Telangana Legislative Assembly who have preferred the appeal, but merely some of the members of the Legislative Assembly. While the State Legislature could, in the light of the expanded definition of a "*person aggrieved*" in **M.V. Dabholkar**²³ and **Maharaj Singh**²², possibly claim to be a "*person*

aggrieved”, even in cases where the powers and privileges of any one of its members under Article 194 is interdicted by the Court, the present application has been filed not by the State Legislature, but by a few of its members seeking leave to prefer an appeal against the order of the Learned Single Judge setting aside the resolution passed by the Telangana Legislative Assembly expelling the respondents-writ petitioners from the membership of the House.

While the Telangana State Legislature, represented either by its Speaker or its Secretary, has, undoubtedly, the right to prefer an appeal against the order of the Learned Single Judge, not only because the State Legislature is a party to the Writ Petition, but also because it is a “*person aggrieved*” by the order of the Learned Single Judge whereby its power and privilege to expel a member of the Legislative Assembly has been interdicted; the question which we are called upon to answer is whether, even in the absence of the State Legislature preferring an appeal, any one or more of the members of the Legislative Assembly, can prefer an appeal against the order of the Learned Single Judge setting aside the resolution of the Legislative assembly expelling the respondents-writ petitioners as members of the Telangana Legislative Assembly. It is necessary, in this context, to examine whether any one or more of the members of the Legislative assembly have the power and privilege, under Article 194(3) of the Constitution, to have another member expelled?

III. ARE THE POWERS AND PRIVILEGES OF THE LEGISLATIVE ASSEMBLY DISTINCT FROM THOSE OF ITS MEMBERS?

Sri C.S. Vaidyanathan, Learned Senior Counsel appearing on behalf of the applicants-appellants, would submit that the

privileges and immunities of the Legislature of a State under Article 194(3) are not just of the collectivity ie., the House; each member of the House, and the Committee of the House of such Legislature, are entitled to exercise the privileges and immunities conferred on them; the privileges and immunity provided under Article 194(3) of Constitution of India are conferred on each of the member of the House of the State Legislature; the three possible situations which need to be spelt out are: (1) where a member is expelled by the Legislature, he can move the Court asserting his fundamental rights; (2) where a member asserts his privilege before the Speaker, but is rejected, perhaps that may not be judicially remediable; (3) where a resolution has been passed asserting the right of privilege, and the same is set aside by the High Court, the persons who voted for the resolution will be persons aggrieved and have a right to appeal; Article 194(3) confers the privilege not just on the collectivity, but also on individual members of the legislature; and if, as is conceded, the Legislature has a right to Appeal, the members equally have.

On the other hand Dr. Abhishek Singhvi, Learned Senior Counsel appearing on behalf of the respondent-writ petitioners, would submit that, under Article 12 of the Constitution of India, the expression “*State*” includes the State Legislature as fortified by the judgments of the Supreme Court in **P.V. Narasimha Rao v. State (CBI/SPE)**²⁴; **M.S.M. Sharma v. Sri Krishna Sinha**²⁵; **In Re under Article 143, of the Constitution of India, Special Reference No.1 of 1964**²⁶ and **Amarinder Singh v. Punjab**

²⁴ (1998) 4 SCC 626 : 1998 SCC (Cri) 1108

²⁵ AIR 1959 SC 395

²⁶ AIR 1965 SC 745

Vidhan Sabha²⁷; Article 178 to 187 deal with the officers of the legislature; the Speaker, Dy. Speaker, Legislative Council Chairman and Dy. Chairman are officers of the State Legislature; Article 187 deals with the secretariat of legislature; the Secretary is also an officer of the legislature; the impugned resolution was passed by an institution collectively known as the “Telangana Assembly”; it is a recognized constitutional entity under Part VI Chapter III of the Constitution of India; it alone has the power to suspend/expel a member of the House; the State Legislature must be deemed to have accepted the judgment of the Single Judge, quashing the expulsion resolution, as they have not filed an appeal; no individual MLA, or a group of MLAs, or a sub-group of MLAs have the power to suspend/expel another member; the power lies only and solely with the institutional entity known as the assembly, which has imparted finality to the quashing of its resolution by consciously deciding not to file an appeal; the privileges, as claimed under Article 194(3) by the applicants-appellants, have been exhausted by them when they have collectively passed a resolution expelling respondents 1 and 2 in this appeal; the same powers and privileges that are available to them inside the House cannot be carried all over the world; while imposing the punishment of expulsion, the Legislature functions as a Judicial body; the present appeal, by the applicants-appellants is like a Public Interest Litigation to defend a judicial order passed by a judicial body consisting of the same applicants-appellants which is not permissible under Law; as only the Legislative Assembly could have passed the expulsion resolution in

²⁷ (2010) 6 SCC 113

the first place, acceptance of the order of the Learned Single Judge by the Legislative Assembly not only renders the resolution null and void, but constitutes finality as regards the only entity which has the constitutional power to deal with the subject; and the application, seeking leave to appeal, is liable to be dismissed with exemplary costs as the applicants-appellants are acting as proxies for respondents 3 and 4 to circumvent the legal process which is nothing but an abuse of the process of the Court. Dr. Abhishek Singhvi, Learned Senior Counsel, would rely on **K.A. Mathialagan v. P. Srinivasan**²⁸, in this regard.

Before examining whether or not the power and privilege to expel a member of the Legislative Assembly is conferred only on the House, and not on its individual members, it is necessary for us to consider whether or not the State Legislature is an institution created by the Constitution. The “State”, by virtue of the definition of that term in Article 12 of the Constitution, includes the State Legislature. (**K.K. Kochunni v. State of Madras**²⁹). Part-VI Chapter III of the Constitution of India relates to the State Legislature. Article 168 relates to the constitution of Legislatures in States and, under clause (1)(a) thereunder, there shall be a Legislature for every State which shall consist of the Governor, and in the State of Andhra Pradesh (now Telangana and Andhra Pradesh) two Houses. Article 168(2) stipulates that where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly. Article 170 relates to the composition of the Legislative Assembly and under clause (1) thereof, subject to the provisions of Article

²⁸ AIR 1973 Madras 371

²⁹ 1959 Supp (2) SCR 316: AIR 1959 SC 725

333, the Legislative Assembly of each State shall consist of not more than 500, and not less than 60, members chosen by direct election from territorial constituencies in the State. Article 172 relates to the duration of the State Legislature and, under clause (1) thereof, every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting, and no longer; and the expiration of the said period of five years shall operate as a dissolution of the Assembly. Clause (2) of Article 172 provides that the Legislative Council of a State is a permanent body which is not subject to dissolution.

Article 173 of the Constitution of India prescribes the qualification for membership of the State Legislature, and thereunder a person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he fulfils the conditions stipulated in clauses (a) to (c) thereunder. Since the Legislative Council is a permanent body, it cannot be dissolved and, therefore, the expression 'House' does not find place in Clause (2)(b) of Article 174. Wherever the Constitution makers wanted to confer power, duties or functions or wanted to make similar provisions both for the Legislative Council and the Legislative Assembly, they have referred to both the institutions under Part VI Chapter III of the Constitution as 'two Houses', 'each House', 'either House & 'both Houses'. Employment of expressions "the House or "either House" do not refer to different bodies other than the Legislative Assembly or the Legislative Council, as the case may be, and have no further significance. **(In the matter of Special Reference No.1 of 2002³⁰)**. There is, in fact, no distinction between the 'House' and

³⁰ 2002 (7) Supreme 437 = (2002) 8 SCC 237

the 'Legislative Assembly'. (**In the matter of Special Reference No.1 of 2002**³⁰). The term 'legislature', in the context, means the House or the Houses of Legislature as the case may be. (**Union of India v. V. Basavaiah Chowdhary**³¹). The Legislative Assembly, an institution under Article 168(1)(a) of the Constitution and a “State” within the meaning of Article 12, is, under Article 170(1), to consist of the specified number of members who must possess the qualification prescribed under clauses (a) to (c) of Article 173 to be chosen to fill up the seats in the State Legislature. The Legislative Assembly, an institution created by and under the Constitution, is to continue for five years unless sooner dissolved, unlike a Legislative Council which is a permanent body not subject to dissolution.

Article 176 relates to special address by the Governor and, under clause (1) thereunder, at the commencement of the first session after each general election to the Legislative Assembly, and at the commencement of the first session of each year, the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons. Article 176(2) stipulates that provision shall be made by the rules, regulating the procedure of the Houses or either House, for the allotment of time for discussion of the matters referred to in such address. Article 177 relates to the rights of Ministers and the Advocate-General as respect the Houses, and thereunder every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the

³¹ AIR 1979 SC 1415

Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this Article, be entitled to vote.

Under the head “*Officers of the State Legislature*”, Article 178 relates to the Speaker and Deputy Speaker of the Legislative Assembly. Thereunder every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be, respectively, the Speaker and Deputy Speaker thereof. Article 187 relates to the Secretariat of the State Legislature and, under clause (1) thereof, the House or each House of the Legislature of a State shall have a separate secretarial staff. Article 187(2) stipulates that clause (1) may not be construed as preventing the creation of posts common to both Houses of such Legislature. Article 189 relates to voting in Houses, the power of Houses to act notwithstanding vacancies and quorum. Under clause (1) thereof, save as otherwise provided in the Constitution, all questions, at any sitting of a House of the Legislature of a State, shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or persons acting as such.

The Speakers/Chairmen hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. (**Kihota Hollohon v. Zachilhu**³²). As stated by May in his work “Parliamentary Practice”, “the Speaker of the House of Commons” is the

³² AIR 1993 SC 412

representative of the House itself in its powers, proceedings and dignity", and one of his main functions is to preside over the debates of the House of Commons and enforce the observance of all rules for preserving order in the proceedings. (**Harendra Nath Barua v. Dev Kanta Barua**³³). The Speaker as the chief custodian of the powers and privileges of the State Legislature is not merely the constitutional head of the Legislature, but also the chief functionary thereof. (**Harendra Nath Barua**³³). It is evident, therefore, that the Legislative Assembly is a Constitutional institution which consists of elected members, and the Speaker is the custodian of the powers and privileges of the Legislative Assembly.

As Sri C.S. Vaidyanathan, Learned Senior Counsel, would trace the right of the applicants-appellants to prefer this appeal to Article 194(3), and contend that the order under appeal is an infringement of their privilege to have decency and decorum maintained in the House, it is necessary to examine the scope and ambit of various clauses of Article 194 of the Constitution. Articles 194 and 195 fall under the head "*Powers, privileges and immunities of State Legislatures and their Members*". Article 194 relates to the powers, privileges etc, of the House of Legislatures and of the members and committees thereof and under clause (1) thereunder, subject to the provisions of the 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. Article 194(2) stipulates that no member of the Legislature of a State shall be liable to any proceedings in any Court in respect of anything

³³ AIR 1958 Assam 160

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. Article 194(3) stipulates that, 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. Prior to its amendment by Section 26 of the Constitution (Forty-fourth Amendment) Act, 1978, with effect from 20.06.1979, Article 194(3) read as under:

“(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.”

Article 194(4) stipulates that the provisions of clauses (1) to (3) shall apply in relation to persons who, by virtue of the 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.

The first three material clauses of Article 194 deal with three different topics. The provisions of the Constitution, subject to which freedom of speech has been conferred on the legislators under Article 194(1), are not the general provisions of the

Constitution but only such of them as relate to the regulation of the procedure of the Legislature. The rules and standing orders may regulate the procedure of the Legislature, and some of the provisions of the Constitution may also purport to regulate it; these are, for instance, Articles 208 and 211. By making this clause subject only to the specified provisions of the Constitution, the Constitution-makers wanted to make it clear that they thought it necessary to confer on the legislators freedom of speech separately and, in a sense, independently of Article 19(1)(a). **(In Reference, under Article 143, of the Constitution of India²⁶).**

Having conferred freedom of speech on the legislators, clause (2) emphasises the fact that the said freedom is intended to be absolute and unfettered. Similar freedom is guaranteed to the legislators in respect of the votes they may give in the Legislature or any committee thereof. In other words, even if a legislator exercises his right of freedom of speech in violation, say, of Article 211, he would not be liable for any action in any Court. He may be answerable to the House for such a speech, and the Speaker may take appropriate action against him in respect of it, but that is another matter. Clause (1) of Article 194 confers freedom of speech on the legislators within the legislative chamber, and clause (2) makes it plain that the freedom is literally absolute and unfettered. **(In Reference, under Article 143, of the Constitution of India²⁶).**

The first part of clause (3) of Article 194 empowers the Legislatures of States to make laws prescribing their powers, privileges and immunities; the latter part provides that, until such laws are made, the Legislatures in question shall enjoy the same

powers, privileges and immunities which the House of Commons enjoyed at the commencement of the Constitution. **(In Reference, under Article 143, of the Constitution of India²⁶).** The powers, privileges and immunities which are contemplated by clause (3), are incidental powers, privileges and immunities which every Legislature must possess in order that it may be able to function effectively, and that explains the purpose of the latter part of clause (3). **(In Reference, under Article 143, of the Constitution of India²⁶).**

The subject matter of each of the four clauses of Article 194 is different. Clause (1) confers on the members freedom of speech in the Legislature, subject, of course, to certain provisions therein referred to. Clause (2) gives immunity, to the members or any person authorised by the House to publish any report etc from legal proceedings. Clause (3) confers certain powers, privileges and immunities on the House of the Legislature of a State, and on the members and the committees thereof, and finally Clause (4) extends the provisions of cls. (1) to (3) to persons who are not members of the House, but who, by virtue of the Constitution, have the right to speak and otherwise to take part in the proceedings of the House or any committee thereof. **(M.S.M. Sharma²⁵).**

Article 194(3) of the Constitution vouchsafes to the State Legislatures, their members and their committees, in the absence of any legislation on the point, the same powers, privileges and immunities, as those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees. **(Harendra Nath Barua³³).** As long as the State Legislature does

not crystallise the legal position by its own legislation, the privileges, powers and immunities of a House of a State Legislature or of its members are the same as those of the House of Commons. (**Jatish Chanera Ghosh v. Harisadhan Mukherjee**³⁴). Clause (4) of Article 194 extends the provision prescribed by the three preceding clauses to certain persons therein described. (**In Reference, under Article 143, of the Constitution of India**²⁶). Sub-article (4) gives the protection, of the sub-articles that preceded it, to all who have the right to address the House, for example, the Attorney General (or the Advocate-General). (**P.V. Narasimha Rao**²⁴).

It is not even contended on behalf of the applicants-appellants, by Sri C.S. Vaidhyanathan, Learned Senior Counsel, that each member of the House of Commons of the Parliament of the United Kingdom had the power or privilege of decency and decorum being maintained in the House at the commencement of our contention (i.e., 26.01.1950), and the Supreme Court in **Amarinder Singh**²⁷ has held that expressions such as “*lowering the dignity of the House*”, “*conduct unbecoming of a Member of the House*” and “*unfitness of a Member*” are openly worded and abstract grounds which, if recognised, will trigger the indiscriminate and disproportionate use of legislative privileges by incumbent majorities to target their political opponents as well as dissidents; and it is for the purpose of tackling unforeseen and novel impediments to legislative functioning that the “*powers, privileges and immunities*” contemplated by Article 194(3) of the Constitution have not been codified.

³⁴ AIR 1961 SC 613

Even if any such power or privilege existed, at the time of commencement of our Constitution, with any member of the House of commons requiring each of the other members to maintain the dignity and decorum of the House, any grievance in this regard could only have been addressed, by a member of the House, to the Speaker, and not to the Court in view of the prohibition under Clauses (1) and (2) of Article 212 of the Constitution of India. Article 212 of the Constitution of India provides that Courts should not inquire into proceedings of the Legislature. Under Clause (1) thereunder, 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. Article 212(2) stipulates that no officer or member of the Legislature of a State, in whom powers are restricted by or under the 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.

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. **(Raja Ram Pal¹)**. 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 Reference, under Article 143, of the Constitution of India²⁶).**

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, judicial review will not be inhibited in any manner by Article 122 (or Article 212), or for that matter by Article 105 (or Article 194). **(Raja Ram Pal¹).** Any act of a member of the Legislative Assembly, which affects the decency and decorum of the House, would be in violation of the procedure prescribed for conduct of the House and must be addressed to the Speaker of the House, and cannot be redressed in proceedings before the High Court under Article 226 of the Constitution of India.

Even otherwise, the contention of Sri C.S. Vaidyanathan, Learned Senior Counsel, that the order under appeal denies the petitioners-appellants their powers/rights as members of the Legislative Assembly under Article 194(3) of the Constitution, regarding maintenance of decency and decorum in the House, and they are therefore entitled to prefer an appeal against the said order under Clause 15 of the Letters Patent, does not merit acceptance as what was under challenge in the Writ Petition was the exercise of its powers and privileges by the Legislative Assembly to expel two of its members, for contempt of the House; and, in an appeal filed under Clause 15 of the Letters Patent, it is only the validity of the exercise of power by the Legislative Assembly, to expel two of its members from the membership of the House, which would be subjected to examination. The question whether the applicants-appellants have the power or privilege of

having other members of the house, maintaining decency and decorum in the House, does not arise for consideration in these writ proceedings.

In examining whether the power and privilege to expel a member of the Legislative Assembly is conferred only on the House i.e., the Legislative Assembly, or whether such powers and privileges also inheres in each of its members, it must be borne in mind that Article 194(3), (by the use of the expression “*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*”), makes a distinction with respect to the powers, privileges and immunities of the State Legislature on the one hand, and the powers, privileges and immunities of the members of such Houses on the other. While certain powers, privileges and immunities conferred on a House may also be conferred on the members of the House, certain other powers, privileges and immunities may be conferred only on the House, and not on its members. As noted hereinabove, in the present case, exercise of the power and privilege by the Legislative Assembly, to expel its member, was under challenge in the Writ Petition filed by the expelled members. The question which, therefore, necessitates examination is not whether the powers and privileges of members of the Legislative Assembly, for decency and decorum to be maintained in the House, has been infringed by the order under appeal, but whether the power and privilege to expel a member of the House is conferred only on the House or also on its members.

Till defined by the State Legislature by enactment, the powers, privileges and immunities under Article 194(3) are such as

were enjoyed before the Constitution came into force, that is to say, they are such as were enjoyed by the House of Commons just before 26-1-1950. For it to be established that any power, privilege or immunity exists under clause (3) of Article 194, it must be shown that that power, privilege or immunity had been recognised as inhering in the House of Commons at the commencement of the Constitution. So important was the freedom to speak and vote in Parliament or the State Legislature thought to be, that it was expressly provided for, not left to be gathered, as other powers, privileges and immunities were, from the House of Commons. In so far as the immunity that attaches to what is spoken in the State Legislature, and to a vote given therein is concerned, provision is made in clause (2) of Article 194. It is only in other respects that clause (3) of Article 194 applies. **(P.V. Narasimha Rao²⁴)**.

Parliamentary privilege in England was defined in May's Parliamentary Practice as "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". **(P.V. Narasimha Rao²⁴; M.S.M. Sharma²⁵)**. The privileges of the House of Commons, as distinct from those of the House of Lords, were defined as "the sum of the fundamental rights of the House and of its individual Members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords". **(P.V. Narasimha Rao²⁴; M.S.M. Sharma²⁵)**.

The powers and privileges conferred on the State Legislatures under Article 194 are akin to those conferred on the

Union Parliament by Article 105. Therefore, the principles and precedents relatable to the exercise of parliamentary privileges are relevant. (**Amarinder Singh**²⁷). Express provision made for freedom of speech in the Parliament or the State Legislature, in clause (1) of Article 105 (or Article 194(1)), suggests that this freedom is independent of the freedom of speech, and is a recognition of the fact that members need to be free of all constraints in the matter of what they say in Parliament if they are to effectively represent their constituencies in its deliberations. clause (2) of Article 105 (or Article 194(2)) puts negatively what clause (1) states affirmatively. (**P.V. Narasimha Rao**²⁴).

Both clauses (1) and (2) of Article 105 (or Article 194) must be read together to determine their content. A vote, whether cast by voice or gesture or the aid of a machine, is treated as an extension of speech or a substitute for speech and is given the protection that the spoken word has. What has protection, under the first part of clause (2), is what has been said and a vote that has been cast. The protection is broad, being "*in respect of*". The protection is absolute against court proceedings that have a nexus with what has been said, or a vote that has been cast in Parliament. (**P.V. Narasimha Rao**²⁴). While Articles 105 and 194 explicitly refer to the freedom of speech in the House and the freedom to publish proceedings without exposure to liability, other legislative privileges have not been enumerated. (**Amarinder Singh**²⁷).

As noted hereinabove, as regards other privileges, Article 194(3) as originally enacted, was amended in 1978 by Section 26 of the Constitution (Forty-fourth Amendment) Act, 1978 (w.e.f. 20-6-

1978). This amendment has, in fact, made only verbal changes by omitting all references to the British House of Commons but the substance remains the same. In other words, each House, its committees and members in actual practice, shall continue to enjoy the powers, privileges and immunities (other than those specified in the Constitution) that were available to the British House of Commons as on 26-1-1950. (**Subhash C. Kashyap, in Parliamentary Procedure—The Law, Privileges, Practice and Precedents, Vol. 2 (New Delhi, Universal Law Publishing Co. Pvt. Ltd., 2000) at p. 1555; Amarinder Singh²⁷**). In every case where the power under Article 194(3) is claimed, it is necessary to enquire whether it was an existing power at the relevant time. It must also appear that the said power was not only claimed by the House of Commons, but was recognised by the English Courts. (**In Reference, under Article 143, of the Constitution of India²⁶**).

Since the scope of “*powers, privileges and immunities*”, available under Articles 194(3), has not been codified by way of a Statute till date, it is open for Courts to consider the principles and precedents relatable to the British House of Commons. (**Amarinder Singh²⁷**). Sir Erskine May has answered the question “What constitutes privilege?” in the following manner. 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 ordinary law. [**Erskine May, Parliamentary Practice,**

16th Edn. (London: Butterworths, 1957) in “Chapter III: General View of the Privilege of Parliament” at p. 42; Amarinder Singh²⁷).

The term ‘privilege’ is reserved 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 (or the State Legislature) are rights which are “absolutely necessary for the due execution of its powers”. **[Erskine May, Parliamentary Practice, 16th Edn. (London: Butterworths, 1957) in “Chapter III: General View of the Privilege of Parliament” at p. 42; Amarinder Singh²⁷).**

Parliamentary privilege is the special dignity and authority and enjoyed by each House in its corporate capacity, such as its right to control its own proceedings and to punish both members and strangers for contempt. **(Amarinder Singh²⁷).** A close parallel is provided by the powers of the Superior Courts to punish for contempt. If you try to interfere with the administration of justice, you will be liable to be proceeded against for contempt. Once again, a body whose functions are of paramount importance can be seen making certain that outside interference is reduced to a minimum. **(Amarinder Singh²⁷).**

The privilege of freedom of speech, comprising the right of exclusive control by the House over its own proceedings, is a composite privilege which includes the power to discipline its own members; the power to regulate its own procedure—the right of the House to be the sole judge of the lawfulness of its own proceedings; and the right to exclude the jurisdiction of the courts. **(Prititosh**

Roy : Parliamentary Privilege in India; Raja Ram Pal¹; Amarinder Singh²⁷).

The power of the House to inflict punishment for contempt on members or strangers is a power akin to the powers possessed by the Superior Courts of justice to punish for contempt. It includes: (i) the power to commit a person to prison, to the custody of its own officers or to one of the State prisons (the keystone of parliamentary privilege), the commitment being for any period not beyond the date of the prorogation of the House; (ii) the incompetence of the courts of justice to admit a person committed by the House to bail; (iii) when the person is committed by the House upon a general or unspeaking warrant, which does not state the particular facts constituting the contempt, the incompetence of the courts of justice to inquire into the nature of contempt; (iv) the power of the House to arrest an offender through its own officers or through the aid and power of the civil government; (v) the power of the officers of the House to break open outer doors to effect the execution of the warrant of arrest; (vi) the power of the House to administer reprimand, or admonition, to an offender; (vii) the power of the House to secure the attendance, whether in custody or not, of persons whose conduct is impugned on a matter of privilege; (viii) the power of the House to direct the Attorney General (or the Advocate-General) to prosecute an offender where the breach of privilege is also an offence at law, and the extent of the power of the House to inflict punishment is not considered adequate to the offence; (ix) the power of the House to punish a member by (a) suspension from the service of the House, or (b) expulsion, rendering his seat vacant. **(Prititosh Roy :**

Parliamentary Privilege in India; Raja Ram Pal¹; Amarinder Singh²⁷).

The purpose of expulsion is not so much disciplinary as remedial, not so much to punish members, as to rid the House of persons who are unfit for membership. It may justly be regarded as an example of the House's power to regulate its own constitution. But it is more convenient to treat it as among the methods of punishment at the disposal of the House. At the present time expulsion is practically reserved for the punishment of persons convicted of grave misdemeanours, whose seats are not, as in the case of Members convicted of treason or felony, automatically vacated. (**Amarinder Singh²⁷; Erskine May, Parliamentary Practice, 15th Edn. (1950)**). Members have been expelled, among others, for conduct unbecoming the character of an officer and a gentleman; and contempt, libels and other offences committed against the House itself. (**Erskine May, Parliamentary Practice, 15th Edn. (1950); Amarinder Singh²⁷**). The legislature's power to punish for its contempt can be exercised to expel legislators for grounds other than those prescribed in the Constitution, but it is not an untrammelled power. The power of a legislative chamber to punish for its own contempt should broadly coincide with the legislature's interest in protecting the integrity of its functions. (**Amarinder Singh²⁷; Raja Ram Pal¹**).

The House of Commons in England has certain well defined rights and privileges, honoured and sanctified by tradition and custom, one of the most important of them being the right to commit a person for contempt of its high authority and dignity and for breach of its privileges. By virtue of the Indian Constitution,

these powers and privileges are enjoyed by the Houses of Parliament in India, and the Houses of the State Legislature. **(Harendra Nath Barua³³)**. The House of Commons enjoyed the power and privilege of expulsion of a member of the House, at the commencement of our Constitution. The power of expulsion can be read within Article 105(3) (or 194(3)), and this power is not inconsistent with the other provisions of the Constitution. **(Raja Ram Pal¹)**.

Expulsion concerns the House itself as the punishment of expulsion cannot be inflicted on a person who is not a member of the House. **(Raja Ram Pal¹)**. Even if the House of the legislature has limited powers, it has the power to punish for ex facie contempt. It is also open to the Assembly to use its power for "protective" purposes, and the acts that it can act upon are not only those that are committed in the House, but upon anything that lowers the dignity of the House. **(Raja Ram Pal¹)**. Even if the Parliament/State Legislature has only the limited remedial power to punish for contempt, the power to expel would be well within the limits of such remedial contempt power. There is no reason why legislatures, established in India by the Constitution, should be denied the claim to the power of expulsion arising out of the remedial power of contempt. **(Raja Ram Pal¹)**. Given an undoubted privilege, it is for the House to be a judge of the occasion and of the manner of exercise of a privilege. The judgment of the House is expressed by its resolution, and by the warrant of the Speaker. **(Harendra Nath Barua³³)**.

As the decision to expel a member has been taken by the Legislative Assembly, it is for the Legislative Assembly, if it so chooses, to prefer an appeal against the order of the Learned Single Judge setting aside its decision. In the absence of any power or privilege being conferred on an individual member of the House, to have another member expelled from the House, the applicants-appellants cannot claim to have the constitutional right under Article 194(3) to have another member of the Legislative Assembly expelled.

The power and privilege to expel a member from the House is conferred only on the Legislative Assembly under Article 194(3) of the Constitution of India which is expressed by the collective will of the members of the Legislature passing a resolution in this regard. This power and privilege, of the Legislative Assembly as a Constitutional institution expressed through a resolution passed by all the members of the House present and voting, is not conferred on any individual member or a group of members of the Legislative Assembly.

It is thus evident that the power of expulsion is regarded as an example of the right of the Legislative Assembly to regulate its own constitution; it is among the methods of punishment at the disposal of the House for conduct unbecoming of a member; and the power of the Legislative chamber, to punish for its own contempt, broadly coincides with the Legislature's interest in protecting the integrity of its functioning. One of the important rights and privileges of the House of Commons in England was to commit a person for contempt of its high authority and dignity, and for breach of its privileges. This power of expulsion was a

privilege conferred on the House of Commons at the commencement of our Constitution and could, therefore, be exercised by the Legislative Assembly under Article 194(3) of the Constitution.

As held in **Amarinder Singh**²⁷ the privilege to punish its members for contempt is enjoyed by the Legislative Assembly in its corporate capacity, and a close parallel thereto is provided by the power of Superior Courts to punish for contempt. Likewise, as held in **Raja Ram Pal**¹, expulsion concerns the House itself, and it is open to the Legislative Assembly to use its powers for protective purposes, and to ensure that the dignity of the House is not lowered. While the power and privilege of expulsion of a member is conferred on the Legislative Assembly, an institution created by and under the Constitution, this power is exercised in the form of a resolution passed collectively by the members of the House. It is the Legislative Assembly, as a Constitutional entity, which expels its members for contempt, and is a power collectively exercised by all the members of the House, and not individually. The right to expel a member from the House is conferred on the Legislative Assembly as a body created under the Constitution, and no member can claim any individual right, power or privilege to have another member expelled from the House.

Accepting the submission of Sri C.S. Vaidyanathan, Learned Senior Counsel, that, besides the Legislative Assembly, each of its members have the power and privilege to expel another member, would mean that an individual member of the Legislative Assembly would also have the right to invoke the jurisdiction of the High Court, under Article 226 of the Constitution of India, seeking

expulsion of another member. It is only because such powers and privileges have been conferred only on the Legislative Assembly, would this Court not entertain any such Writ Petition filed by an individual member of the Legislative Assembly, in effect, seeking expulsion of another. It is the power and privilege of the House, both as an institution created by and under the Constitution, and representing the collective will of all the Legislators, to expel a member from the House. It is only the State Legislature which can prefer an appeal, if it is aggrieved by the order of the Learned Single Judge interdicting its decision to expel the respondent-writ petitioners as members of the House. The possibility of the applicants-appellants being remotely or indirectly affected by the order under appeal, as they had voted in favour of the resolution passed by the House, would not justify an appeal being entertained at their behest.

As noted hereinabove, Article 194(4) makes the provisions of Article 194(3) applicable to persons who 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 the members of that Legislature. Article 177 confers on the Advocate-General the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State, but he is not entitled to vote. The Advocate-General of the State also has, by virtue of Article 194(4), the power and privilege conferred on the members of the State Legislature under Article 194(3) of the Constitution of India, except the power to vote. Accepting the submission of Sri C.S. Vaidyanathan, Learned Senior Counsel, that an individual member of the State Legislature

or a group of Legislators can invoke the jurisdiction of this Court under Clause 15 of the Letters Patent, would also enable the Advocate-General to prefer an appeal against the order of the Learned Single Judge, even if the Legislative Assembly, represented either by its Speaker or its Secretary, does not choose to prefer an appeal. Just as any such appeal, if preferred by the Advocate-General, would not be entertained, we see no justification in entertaining an appeal, against the order of the Learned Single Judge in W.P. No.8812 of 2018 dated 17.04.2018, preferred by twelve members of the Telangana Legislative Assembly.

The application in I.A.No.1 of 2018, seeking leave to prefer an appeal against the order of the Learned Single Judge in W.P. No.8812 of 2018 dated 17.04.2018, is accordingly dismissed. Consequently W.A. No.668 of 2018, filed by the applicants-appellants, stands dismissed. The miscellaneous petitions pending, if any, shall stand closed. However, in the circumstances, without costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

Date: 04-06-2018.

Note: L.R. copy to be marked.

B/o
MRKR/CS