

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 09th May, 2018

Judgment delivered on: 30th October, 2018

+ W.P.(C) 5629/2016 & CM No.23368/2016 (interim direction)

OM PRAKASH SHARMA

..... Petitioner

Versus

LEGISLATIVE ASSEMBLY OF THE NATIONAL
CAPITAL TERRITORY OF DELHI THR
SECRETARY AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Vibha Makhija, Sr. Advocate with Mr. Manik Dogra and
Ms. Aditi Mohan, Ms. Nitya Sharma and Ms. Disha Vaish, Advs.

For the Respondents : Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Gautam Narayan
and Mr. R.A. Iyer and Ms. Surya Rajappana and Ms. Mahamaya
Chatterjee, Advocates for GNCTD.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. Petitioner seeks setting aside of the Motion passed by the Legislative Assembly of National Capital Territory of Delhi on 31.03.2016 (communicated to the petitioner by letter dated 01.04.2016), whereby Petitioner has been suspended for two subsequent sessions of the Legislative Assembly. The petitioner further seeks a direction to the respondents to permit the petitioner to

attend the Legislative Assembly of the National Capital Territory of Delhi.

2. Petitioner who is a member of the Legislative Assembly of National Capital Territory of Delhi has filed this petition against Respondent No. 1 - Legislative Assembly of National Capital Territory of Delhi and Respondent No. 2 – Speaker of the Legislative Assembly.

3. The petitioner is a leader of Bhartiya Janta Party (in short BJP) and a member of Delhi Legislative Assembly, having been elected in 2015.

PETITIONER’S CONTENTIONS

4. It is contended that 66 out of 70 members of the Legislative Assembly belong to Aam Aadmi Party (hereinafter referred to as ‘AAP’) and three including the petitioner belong to BJP. It is contended that during the assembly session the MLAs representing AAP have actively and repeatedly provoked the petitioner and tried to instigate him.

5. It is contended that sometime around 10.08.2015, Ms. Alka Lamba, MLA of AAP vandalized a sweet shop in Kashmere Gate owned by the petitioner. The members of AAP have been targeting the petitioner on the pretext of leading an anti-drug abuse drive. It is contended that Ms. Alka Lamba has been making false statement that

she along with her supporters had been conducting an antidrug campaign during late night/early morning hours in her constituency.

6. On 24.11.2015, Mr. Vijender Gupta, Member of the BJP and also the Leader of the Opposition of the Legislative Assembly, invited attention of the House regarding shortage and mismanagement of night shelters in NCT of Delhi. Discussion was initiated on the issues of night shelter, excessive cold in NCT of Delhi and the resultant death of some persons in such night shelters. It was contended by Mr. Vijender Gupta that there was lack of Government empathy towards such citizens.

7. It is contended that to counter the allegations made by the Opposition against Ruling Party i.e. AAP, Ms. Alka Lamba, MLA belonging to AAP alleged that these deaths were not on account of severe cold for but were for the reason of excessive drug intake by such persons.

8. It is contended that there was heated discussion on the subject – allegations and counter allegations were levelled by both the Ruling Party as well as Opposition Party against each other. It is alleged that Ms. Alka Lamba and other MLAs of AAP launched an attack on the petitioner and contended that petitioner was a '*Nashe ka Saudagar*' (merchant of intoxicant) and '*Zahrila Prasad Bechne Wala*' (seller of poisonous sacrament).

9. It is contended that during the altercation, the petitioner allegedly, in the context of Ms. Alka Lamba's statement to the members that she visited night shelters during late night/early morning hours, stated that Ms. Alka Lamba was “रात भर घूमने वाली” (*raat bhar ghoomne wali*) (night walker.....).

10. It is contended that the petitioner was not allowed to complete the sentence and clarify the context. The words were uttered without any disrespect to Ms. Alka Lamba but were spoken in relation to her statement of visiting night shelters during late hours and early morning hours.

11. It is further contended that the petitioner said those words in retaliation to the allegations made by Ms. Alka Lamba that the petitioner was a ‘*Nashe ka Saudagar*’ and ‘*Zahrila Prasad Bechne Wala*’. It is contended that the members of AAP had attempted to even slap the petitioner.

12. It is submitted that the Speaker of the Assembly suspended the petitioner for a period of two days i.e. for the said date as well as for the next date i.e. 24.11.2015 and 26.11.2015 from the Legislative Assembly. On 26.11.2015 when the petitioner was serving his two days’ suspension, members of AAP made a demand to the Speaker to expel the petitioner from the Legislative Assembly.

13. It is contended that, contrary to rules, the Speaker, on a Motion tabled by members of ruling AAP suspended the petitioner from the

entire session i.e. second session of the Sixth Legislative Assembly and also referred the matter to the Ethics Committee.

14. It is contended that the Ethics Committee comprises of nine members, all of whom are MLAs belonging to AAP and there is no member of the Opposition as part of the Ethics Committee. The proceedings before the Ethics Committee were arbitrary, biased, malafide and contrary to principles of natural justice to target the petitioner.

15. It is contended that the petitioner participated in the proceedings of Ethics Committee. The members of the Ethics Committee were adamant that petitioner should submit an unconditional apology. It is contended that the petitioner's explanation was neither considered nor appreciated.

16. Ms. Alka Lamba in the sixth sitting of the Ethics Committee expressed regret and assured the Committee that she would be careful in future. The Ethics Committee recorded the statement of Mr. Sanjeev Jha, MLA of AAP and relied upon the same. It is submitted that Mr. Sanjeev Jha occupied Seat No. 81 whereas the petitioner was occupying Seat No. 99 and thus the testimony of Mr. Sanjeev Jha could not be relied upon as he was not in close proximity to the petitioner to hear and observe what transpired. The members of BJP who were sitting right next to the petitioner were not called upon by the ethics committee to depose.

17. The Ethics Committee in its report dated 24.02.2016 recommended expulsion of the petitioner's membership from the Sixth Legislative Assembly. The report of the Ethics Committee was tabled in the Legislative Assembly on 30.03.2016 and taken up for consideration on 31.03.2016.

18. The petitioner was called upon to submit his views on the report of the Ethics Committee. The petitioner denied having made any derogatory remarks against Ms. Alka Lamba. He contended that he was not permitted to make a complete statement or explain the context in which it was made.

19. It is contended that the petitioner also expressed his regret on the incident. It is contended that though the report dated 24.04.2016 recommended expulsion of the petitioner from the membership of the Legislative Assembly, however upon a Motion under Rule 107 of the Assembly Rules, by a member of the ruling AAP, the petitioner was suspended, by the impugned resolution dated 31.03.2016, for two subsequent sessions of the Legislative Assembly.

20. The petitioner contends that the suspension of the petitioner is contrary to the rules of the Assembly. It is contended that the impugned Motion has been passed under Rule 107 of the Rules of Procedure & Conduct of Business in the Legislative Assembly of NCT of Delhi 1993, which does not stipulate such an action.

21. It is contended that the impugned Motion is contrary to the principles of natural justice and in gross violation of the provisions of the Constitution of India.

22. It is contended that Rule 107 deals with “discussion on matters of public interest” and has no applicability in the facts of the present case. The respondents have disregarded the settled practice of the Legislative Assembly in connection with the procedure for introduction of a Motion by a private member.

23. It is contended that the pre-requisite of Rule 107 is that before a Motion, by a private member can be tabled in the Legislative Assembly, a notice of not less than 12 days must be given to the Secretary of the Legislative Assembly.

24. It is contended that the impugned Motion also violates the provisions of Article 194 of the Constitution of India and violates the petitioner’s fundamental right under Article 20 (2), in as much as, the petitioner was suspended for a period of two days immediately after the alleged incident and thereafter the suspension of the petitioner from the House for two sessions tantamounts to a second punishment for the same offence.

25. With regard to the objections as to maintainability of the present petition raised by the respondents, learned senior counsel for the petitioner relied on the judgments of ‘*In re: Special Reference No. 1 of 1964 (Keshav Singh’s case) 1965 (1) SCR 413*’, ‘*Raja Ram Pal*

Vs. Hon'ble Speaker of Lok Sabha (2007) 3 SCC 184' and 'Amarinder Singh Vs. Special Committee, Punjab Vidhan Sabha & Ors.' 2010 (6) SCC 113, to contend that under the Constitution, every action of every authority is subject to law, as nobody is above the law, and even the Parliament is not an exception to this rule. An aggrieved person can approach the Court raising grievance against the action of the Parliament and if the Court is satisfied within the limited parameters of judicial review, it is empowered to interfere.

26. Learned senior counsel for the petitioner relied on the decision of Supreme Court in '*Coimbatore District Central Coop. Bank v. Coimbatore District Central Coop. Bank Employees Assn.* 2007 (4) SCC 669', to contend that proportionately is a principle where the Court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision.

27. It is further contended that as the decision is of the Legislative Assembly, the Government of NCT of Delhi has no locus standi to defend the matter. It is contended that the counter affidavits filed on behalf of the Government of NCT of Delhi cannot be looked into.

RESPONDENTS' CONTENTIONS

28. Counter affidavit has been filed by the Additional Secretary, Department of Law, Justice & Legislative Affairs, Government of NCT of Delhi. It is contended that the present petition is not

maintainable as the Delhi Legislative Assembly and Speaker have been made a party. It is contended that correct person to defend the petition is Government of NCT of Delhi.

29. It is contended by the respondents that the present petition is not maintainable in view of Section 37 of the Government of National Capital Territory of Delhi Act 1991 which provides that Courts cannot enquire into the proceedings of the Legislative Assembly and no officer or member of the Legislative Assembly in whom powers are vested, by or under the Government of National Capital Territory of Delhi Act shall be subject to the jurisdiction of the court in respect of the exercise by him of those powers.

30. It is contended that Rule 293 of the Assembly Rules conferred absolute power in the Speaker in matters of allowing or disallowing of any resolution or questions in the House. The Speaker alone has the power to decide any doubt as to interpretation of any provision of the rule. Interpretation of rules and procedure by the Speaker cannot be subject matter of scrutiny in a court of law.

31. On merits, it is contended that the petitioner had, in the past also, indulged in unruly and unethical conduct. The petitioner was penalized for causing damage to microphones in the House. Cost of damage and such recoveries were recovered from the petitioner on a Motion moved under Rule 107 and adopted on 03.12.2015.

32. It is contended that the petitioner has also been '*named*' by the Speaker for the indecorous conduct in the House.

33. It is submitted that Motion dated 31.03.2016 was passed after granting petitioner numerous opportunities to defend himself. Principles of natural justice were duly complied with. The petitioner was also provided the video recordings of the proceedings as also the transcript of the proceedings. It is contended that the petitioner did not bother to respond before the Ethics Committee and the impugned Motion was passed after carefully scrutinizing the facts and circumstances.

34. It is submitted that Article 208 of the Constitution of India and Section 32 of the Government of National Capital Territory of Delhi Act provide for independence of Legislature in framing its own rules for regulating its own procedure and conduct of business.

35. It is contended that the rules as framed for the Delhi Assembly confer unlimited power on the Speaker so as to enable him to run the House smoothly depending upon ever changing dynamics of each House.

36. It is denied that the action of the Ethics Committee was biased against the petitioner or the recommendations were colourable exercise of power. It is contended that the action is clearly covered under Rule 107 of the Assemble Rules as it raises only one definite issue of recent occurrence.

37. It is submitted that an elected representative being indicted by the Committee on Ethics, unanimously for his gross misconduct on the floor of the House while discharging his duties as a legislator, is certainly a matter of public interest and the said issue was thus rightly taken up under Rule 107.

38. It is contended that the impugned Motion does not violate the provision of Article 19(4) of the Constitution of India. Article 19(4) of the Constitution, which guarantees freedom of speech and the protection to the members of Legislature from proceedings in Court, does not confer upon a member the right to abuse his fellow members on the floor of the House when the Assembly is in session and to engage in any sort of disrespectful and immoral conduct.

39. It is denied that the petitioner was suspended for a period of 2 days. On the contrary it is contended that in view of the statement of the petitioner, the Speaker asked the petitioner to withdraw from the House and was asked not to attend the session for one more date. The petitioner did not pay any heed to the direction and stayed put in the house. Thereafter the Speaker as a part of his effort to restore the order in the House, requested the Leader of Opposition Shri Vijender Gupta to send the petitioner out for five minutes and only on Shri Vijender Gupta's advise, did the petitioner leave the house.

40. It is contended that the petitioner was not punished on 24.11.2015 and as such Article 20 (2) of the Constitution of India was not violated.

41. It is submitted that when the House reassembled on 26.11.2015, the members sought immediate disciplinary action against the petitioner and accordingly on a Motion the matter was referred to the Ethics Committee for examination and a report. Shri Kailash Gehlot moved a Motion seeking suspension of the petitioner for making derogatory remarks against the Speaker in his interaction with the media, which Motion was adopted and the petitioner was suspended for the entire session.

42. It is contended that the suspension of the petitioner from the entire duration for the ongoing session was not on account of his derogatory remarks against Ms. Alka Lamba but on account of the derogatory remarks made by the petitioner, against the Speaker, both within the House as well as during his interaction with the media. It is contended that the petitioner has not been punished twice for his derogatory remarks against Ms. Alka Lamba.

ANALYSIS & DISCUSSION

43. In the facts of the case as noticed above, the question that arises for consideration is: *Under what circumstances and to what extent a High Court, exercising powers under Article 226 of the Constitution of India, can interfere in the decision taken on the Floor of the Legislative Assembly.*

44. The Supreme Court of India in *Keshav Singh – Special Reference No. 1 of 1964: (1965) 1 SCR 413*, held as under:

“37. The next question which faces us is that in the matter of privileges, the House is the sole and exclusive judge at all stages. But apart from this technical aspect of the matter, it is necessary that we should determine the basic question as to whether even in the matter of privileges, the Constitution confers on the House sole and exclusive jurisdiction

38. In dealing with this question, it is necessary to bear in mind one fundamental feature of a Federal Constitution. On the other hand, the essential characteristic of federalism is “the distribution of limited executive, legislative and judicial authority among bodies which are coordinate with and independent of each other”. The supremacy of the constitution is fundamental to the existence of a federal State in order to prevent either the legislature of the federal unit or those of the member States from destroying or impairing that delicate balance of power which satisfies the particular requirements of States which are desirous of union, but not prepared to merge their individuality in a unity. This supremacy of the constitution is protected by the authority of an independent judicial body to act as the interpreter of a scheme of distribution of powers.

41. There is another aspect of this matter which must also be mentioned; whether or not there is distinct and rigid separation of powers under the Indian Constitution, there is no doubt that the Constitution has entrusted to the Judicature in this country the task of construing the provisions of the Constitution and of safeguarding the fundamental rights of the citizens.

58. *Let us first take Article 226. This Article confers very wide powers on every High Court throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, certiorari, or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose. It is hardly necessary to emphasise that the language used by Article 226 in conferring power on the High Courts is very wide. Article 12 defines the "State" as including the legislature of such State, and so, prima facie the power conferred on the High Court under Article 226(1) can, in a proper case, be exercised even against the legislature.*

61. *Similarly, Article 212(1) makes a provision which is relevant. It lays down that 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) confers immunity on the officers and members of the legislature in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order, in the legislature from being subject to the jurisdiction of any court in respect of the exercise by him of those powers. 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.”

(underlining supplied)

45. The Supreme Court in *Keshav Singh (supra)* held that “State” includes the legislature of such State, and so, prima facie the power conferred on the High Court under Article 226(1) can, in a proper case, be exercised even against the legislature. Article 212(1) lays down that 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(1) makes 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.

46. In *Amarinder Singh v. Punjab Vidhan Sabha; (2010) 6 SCC 113*, the Supreme Court of India held as under:

10. After considering these findings, the Punjab Vidhan Sabha passed the impugned resolution on 10-9-2008 which is extracted below:

“After accepting the report submitted by the Special Committee appointed by this House, this August House recommends the following action:

(i) Captain Amarinder Singh is expelled for the remaining term of the Thirteenth Punjab Vidhan Sabha. The Secretary of the Vidhan Sabha is instructed to approach the Election Commission of India to have his seat declared as vacant.

(ii) The recommendations of the Privileges Committee have been tabled in the House on 18.12.2007 and they be forwarded to the Chief Secretary, Punjab Government with the undermentioned instructions:

Because this House does not possess any facility to investigate and find out where the accused have stashed away the ill-gotten wealth or how it has been distributed, it is essential to have custodial interrogation. The Director, Vigilance Department, Punjab which deals with corruption cases and is an arm of the Punjab Government be instructed to file an FIR keeping in mind the various instructions of CrPC.

The Vigilance Department is to investigate and submit its report to the Speaker of this House within two months from today.”

23. In light of the facts of this case and the contentions outlined above, the following questions arise for consideration:

I. Whether the alleged misconduct on part of the appellant and the petitioners warranted the exercise of legislative privileges under Article 194(3) of the Constitution?

- II. Whether it was proper for the Punjab Vidhan Sabha to take up, as a matter of breach of privilege, an incident that occurred during its previous term?
- III. Whether the impugned acts of the Punjab Vidhan Sabha violated the norms that should be respected in relation to sub judice matters?

52. In the present case, the respondents have cited the decision in Raja Ram Pal case [(2007) 3 SCC 184] in support of their contention that it was proper for the Punjab Vidhan Sabha to have exercised its power to punish for contempt [derived from Article 194(3) of the Constitution] in order to recommend the expulsion of the appellant. It was argued that the Vidhan Sabha was empowered to expel members on grounds other than those prescribed for disqualification of members under Article 191. However, an important consideration in that case was that the misconduct which was the ground for the MPs' expulsion had a direct connection with their legislative functions, namely, those of asking questions at the behest of vested interests and the improper allocation of funds under the MP LADS respectively. With respect to the allegations against the appellant in the present case, it is quite difficult to see how the improper exemption of a particular plot of land from an acquisition scheme caused an obstruction to the conduct of legislative business. If it is indeed felt that the allegations of misconduct on part of the former Chief Minister had brought disrepute to the entire House, then the proper course is to pursue criminal investigation and prosecution before the appropriate judicial forum.

53. At this juncture, we must reiterate the principles which guide judicial scrutiny of the exercise of legislative

privileges (including the power to punish for contempt of the House). In *Raja Ram Pal* case [(2007) 3 SCC 184], Y.K. Sabharwal, C.J. had framed the following guidelines: (SCC pp. 371-73, para 431)

“Summary of the principles relating to parameters of judicial review in relation to exercise of parliamentary provisions

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

- (a) *Parliament is a coordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;*
- (b) *The constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere coordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of actions which partake the character of judicial or quasi-judicial decision;*
- (c) *The expediency and necessity of exercise of power or privilege by the legislature are for the determination of the legislative authority and not for determination by the courts;*
- (d) *The judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature;*
- (e) *Having regard to the importance of the functions discharged by the legislature under the Constitution and the majesty and grandeur of its*

task, there would always be an initial presumption that the powers, privileges, etc. have been regularly and reasonably exercised, not violating the law or the constitutional provisions, this presumption being a rebuttable one;

- (f) The fact that Parliament is an august body of coordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power;*
- (g) While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;*
- (h) The judicature is not prevented from scrutinising the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens;*
- (i) The broad contention that the exercise of privileges by legislatures cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct;*
- (j) If a citizen, whether a non-member or a member of the legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this Court to examine*

the merits of the said contention, especially when the impugned action entails civil consequences;

- (k) There is no basis to the claim of bar of exclusive cognizance or absolute immunity to the parliamentary proceedings in Article 105(3) of the Constitution;*
- (l) The manner of enforcement of privilege by the legislature can result in judicial scrutiny, though subject to the restrictions contained in the other constitutional provisions, for example Article 122 or 212;*
- (m) Article 122(1) and Article 212(1) displace the broad doctrine of exclusive cognizance of the legislature in England of exclusive cognizance of internal proceedings of the House rendering irrelevant the case law that emanated from courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by the Constitution of India;*
- (n) Article 122(1) and Article 212(1) prohibit the validity of any proceedings in legislature from being called in question in a court merely on the ground of irregularity of procedure;*
- (o) The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the legislature;*
- (p) Ordinarily, the legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters,*

but if in a given case, the allegations to such effect are made, the court may examine the validity of the said contention, the onus on the person alleging being extremely heavy;

- (q) The rules which the legislature has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution;*
- (r) Mere availability of the rules of procedure and conduct of business, as made by the legislature in exercise of enabling powers under the Constitution, is never a guarantee that they have been duly followed;*
- (s) The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny;*
- (t) Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action;*
- (u) An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.”*

54. Hence, we are empowered to scrutinise the exercise of legislative privileges which admittedly

include the power of a legislative chamber to punish for contempt of itself. Articles 122(1) and 212(1) make it amply clear that courts cannot inquire into matters related to irregularities in observance of procedures before the legislature. However, we can examine whether proceedings conducted under Article 105(3) or 194(3) are “tainted on account of substantive or gross illegality or unconstitutionality”. The facts before us do not merely touch on a procedural irregularity. The appellant has contended that the Punjab Vidhan Sabha has committed a substantive jurisdictional error by exercising powers under Article 194(3) to inquire into the appellant's actions which were taken in his executive capacity. As explained earlier, the relevant fact here is not only that the allegations of wrongdoing pertain to an executive act, but the fact that there is no conceivable obstruction caused to the conduct of routine legislative business.

55. *Before commenting further on the merits of the contentions, we must draw attention to the specific guidelines in Raja Ram Pal case [(2007) 3 SCC 184] that advocate due deference to the actions of the legislature in the ordinary course of events. We do recognise that the threshold for exercising judicial review in a case such as the present one is indeed very high and we must begin with a presumption that the legislature's actions were valid. However, the counsel for the appellant and the petitioners have produced sufficient materials to demonstrate that it was not necessary for the Punjab Vidhan Sabha to have exercised its powers under Article 194(3) to recommend and then notify the expulsion of the appellant. We fail to see how the alleged misconduct on part of the appellant had the effect of obstructing the ordinary legislative functions of the Vidhan Sabha. In its role as a deliberative body which is expected to monitor executive functions in line with the idea of “collective responsibility”, the Punjab Vidhan Sabha was of course free to inquire into the alleged misconduct and examine*

its implications. However, the act of recommending the appellant's expulsion through the impugned resolution cannot be justified as a proper exercise of "powers, privileges and immunities" conferred by Article 194(3).

59. *At this juncture, we must clarify that if a sitting member of a legislature in India is found guilty of committing a statutory offence, then disqualification can be a consequence as per the scheme contemplated in the Representation of the People Act, 1951. The respondents have also referred to the table produced in para 582 of Raja Ram Pal case [(2007) 3 SCC 184] which surveys the exercise of privileges by the British House of Commons between 1667 and 1954. They have drawn our attention to some of the instances to contend that Members were indeed expelled for acts that took place outside the "four walls of the House" and had no direct bearing on legislative functions. However, as we have explained above, it is not appropriate to mechanically rely on all of these precedents*

62. *It would be safe to say that a breach of privilege by a member of the legislature can only be established when a member's act is directly connected with or bears a proximity to his duties, role or functions as a legislator. This test of proximity should be the rule of thumb, while of course accounting for exceptional circumstances where a person who is both a legislator and a holder of executive office may commit a breach of privilege. It is our considered view that such a breach has not occurred in the present case.*

63. *Even if we turn to parliamentary practice in India, it is quite apparent that the expulsion of members should only be sustained if their actions have caused*

obstructions to legislative functions or are likely to cause the same. The following examples have been discussed in Raja Ram Pal case [(2007) 3 SCC 184] : (SCC pp. 325-32, paras 301-17)

- *One can refer to the chain of events leading up to the resignation of Mr H.G. Mudgal from the Lok Sabha on 24-9-1951. Mr H.G. Mudgal was charged with having engaged himself in “certain dealings with the Bombay Bullion Association which included canvassing support and making propaganda in Parliament on problems like option business, stamp duty, etc. and receipt of financial or business advantages from the Bombay Bullion Association” in the discharge of his duty in Parliament. Subsequently, a Committee appointed by Parliament to inquire into the said Member's activities found his conduct to be derogatory to the dignity of the House and inconsistent with the standard which Parliament was entitled to expect from its Members. In pursuance of these findings, a motion for expulsion was brought before the House which prompted the Member to submit his resignation. [See Kaul and Shakhder, Practice and Procedure of Parliament, 5th Edn. (New Delhi: Metropolitan Book Co. Pvt. Ltd., 2001) at p. 262.] It is pertinent to note that the misconduct which triggered a recommendation for expulsion had a clear nexus with legislative functions.*
- *Another relevant instance is that of the expulsion of Mr Subramaniam Swamy from the Rajya Sabha. On 2-9-1976 the Rajya Sabha adopted a motion appointing a Committee to investigate the conduct and activities of Mr Swamy, within and outside the country, including alleged anti-India propaganda calculated to bring into disrepute Parliament and other democratic institutions of the country and*

generally behaving in a manner unworthy of a Member. The Committee presented its report on 12-11-1976 recommending expulsion and on 15-11-1976 the Rajya Sabha adopted a motion to expel the said Member. [See Subhash C. Kashyap, Parliamentary Procedure — Law Privileges, Practice & Precedents, Vol. 2 (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2000) at p. 1657.]

- *We can also invite attention to the instance when Mrs Indira Gandhi and two others were expelled from the Lok Sabha by way of a motion adopted on 19-12-1978. The background was that on 18-11-1977, a motion was adopted by the House referring to the Committee of Privileges a question of breach of privilege and contempt of the House against Mrs Gandhi and others regarding obstruction, intimidation, harassment and institution of false cases by Mrs Gandhi and others against certain officials. The Committee of Privileges recorded a finding that Mrs Indira Gandhi had committed a breach of privilege and contempt of the House by causing obstruction, intimidation, harassment and institution of false cases against the officers concerned who were collecting information for the purpose of an answer to a certain question that had been asked in the House. The nature of punitive action to follow was left to the wisdom of the House.*
- *On 19-12-1978, the House adopted a motion which recommended Mrs Gandhi's expulsion among other things. However, this expulsion was undone during the term of the Seventh Lok Sabha, wherein there was a substantive debate on whether the House had the power to expel its Members in the exercise of privileges. At that point of time, the*

majority of the House had resolved that there was no power of expulsion in such circumstances. However, the position has since been clarified in Raja Ram Pal case [(2007) 3 SCC 184] which has recognised the power of legislatures to expel their members, subject to the judicially prescribed guidelines. Nevertheless, what is relevant for the present case is that the initial recommendation for expulsion was triggered by conduct that bore a direct causal link to legislative functions.

- *Another comparable instance was noted by S.C. Agarwal, J. in his dissenting opinion in P.V. Narasimha Rao v. State [(1998) 4 SCC 626 : 1998 SCC (Cri) 1108] , wherein it was observed: (SCC p. 661, para 25)*

“25. It does not, however, constitute breach or contempt of the House if the offering of payment of bribe is related to the business other than that of the House. In 1974, the Lok Sabha considered the matter relating to offer or payment of bribe in the import licences case wherein it was alleged that a Member of Lok Sabha had taken bribe and forged signatures of the Members for furthering the cause of certain applicants. The question of privilege was disallowed since it was considered that the conduct of the Member, although improper, was not related to the business of the House. But at the same time it was held that as the allegation of bribery and forgery was very serious and unbecoming of a Member of Parliament, he could be held guilty of lowering the dignity of the House. (See Kaul and Shakhder at pp. 254-55).”

64. As outlined earlier, the respondents have also contended that the power of a legislature to punish for its own contempt should not be seen as incidental to its

power of self-composition and that it should have a wider import than the remedial power of preventing obstructions to legislative functions. It will be useful to refer to the following extract from the respondents' written submissions: (Raja Ram Pal case [(2007) 3 SCC 184] , SCC p. 323, para 292)

“292. ... even if the House of legislature has limited powers, such power is not only restricted to ex facie contempts, but even acts committed outside the House. It is 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. Thus, the petitioners' submission that the House only has the power to remove obstructions during its proceedings cannot be accepted.”

In pursuance of this line of reasoning, the respondents have argued that the appellant's actions have lowered the dignity of the House and the same amounts to conduct unbecoming of a Member of the House, even though such conduct had no bearing on legislative functions. It was urged that the underlying motive behind the expulsion was not merely that of punishment but also to remove a member who was seen as unfit to continue as a member of the legislature.

65. We are unable to agree with this line of reasoning presented on behalf of the respondents. 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. The various grounds for disqualification of Members of Legislative Assemblies

(MLAs) have been enumerated in Articles 190 and 191 of the Constitution. For most circumstances, there is an elaborate machinery in place to decide questions pertaining to the disqualification of members and the vacancy of seats. However, 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.

66. In *Raja Ram Pal* case [(2007) 3 SCC 184] the majority decision of this Court did recognise that the legislature's power to punish for its contempt could be exercised to expel legislators for grounds other than those prescribed in the Constitution, but it was not the intention of this Court to prescribe an untrammelled power. By laying down a clear set of guidelines for judicial review over the exercise of parliamentary privileges, this Court had made its intentions quite clear. Accordingly, we are of the view that 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.

67. There can of course be some exceptional circumstances where acts that take place outside the “four walls of the House” could have the effect of distorting, obstructing or diluting the integrity of legislative functions. An obvious example is that of legislators accepting bribes in lieu of asking questions or voting on the floor of the House. However, with respect to the facts before us, the respondents have failed to demonstrate how the alleged misconduct on part of the appellant and the petitioners could have a comparable effect. Using the route of legislative privileges to recommend the appellant's expulsion in the present case is beyond the legitimate exercise of the privilege power of the House.

86. *It is a settled principle that ordinarily the content of legislative proceedings should not touch on sub judice matters. As indicated in the extract quoted above, the rationale for this norm is that legislative debate or scrutiny over matters pending for adjudication could unduly prejudice the rights of the litigants. In the case at hand, the allegedly improper exemption of land (measuring 32.10 acres) from the Amritsar Improvement Scheme had already been questioned before the High Court of Punjab and Haryana. Thus, the Punjab Vidhan Sabha ought not to have constituted a committee to inquire into the same.”*

(underlining supplied)

47. In *Amarinder Singh* (supra), the Supreme Court of India reiterated the principles laid down in *Raja Ram Pal versus Hon'ble Speaker Lok Sabha* 2007 (3) SCC 184 held that *Parliament though is an august body of coordinate constitutional position however it does not mean that there can be no judicially manageable standards to review exercise of its power. While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error. The judicature is not*

prevented from scrutinising the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens. If a citizen, whether a non-member or a member of the legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this Court to examine the merits of the said contention, especially when the impugned action entails civil consequences. Article 122(1) and Article 212(1) prohibit the validity of any proceedings in legislature from being called in question in a court merely on the ground of irregularity of procedure. The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the legislature. Ordinarily, the legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the court may examine the validity of the said contention, the onus on the person alleging being extremely heavy. The threshold for exercising judicial review in such a case is very high and there is a presumption that the legislature's actions were valid. A breach of privilege by a member of the legislature can only be established when a member's act is directly connected with or bears a proximity to his duties, role or functions as a legislator. This test of proximity should be the rule of thumb, while of course accounting for exceptional circumstances where a person

who is both a legislator and a holder of executive office may commit a breach of privilege. Expulsion of members should only be sustained if their actions have caused obstructions to legislative functions or are likely to cause the same.

48. Guided by the above principles, let us now examine the rules and regulations of the Legislative Assembly of the National Capital Territory of Delhi that have been relied upon and the procedure followed and the decision that has been impugned herein.

49. In exercise of powers conferred under sub-section (1) of section 33 of the Government of National Capital Territory of Delhi Act, 1991, the Legislative Assembly of the National Capital Territory of Delhi made rules for regulating its procedure and conduct of business. The Rules are known as Rules of Procedure and Conduct of Business (hereinafter referred to as the Rules).

50. “*Motion*” has been defined by rule 2(z) to mean *a proposal made by a member for consideration of the Assembly and includes an amendment to a resolution or a motion.*

51. “*Naming a Member*” has been defined by rule 2(za) to mean *drawing by the speaker the attention of the House to the conduct of a member with a view to action being taken against him.*

52. “*Resolution*” has been defined by rule (zf) to mean *a proposal for the purpose of discussing a matter of general public interest*”

53. Chapter XI of the Rules deals with the “*Question Involving Breach of Privilege and Contempt*”. Under rule 70, if the speaker is of the opinion that the notice of breach of privilege or contempt is fit for giving consent and is admissible under the rules, he may refer the matter to the Committee of Privileges for examination, investigation and report. Rule 71 stipulates that if the Speaker is of the opinion that the matter given notice of is such as can be disposed of by the House without reference to the Committee of Privileges he may move that question be taken up for consideration forthwith or at some future date. Rules 72 to 76 lay down the procedure to be followed in either case for consideration and disposal of the motion and *inter alia* includes compliance with the principles of natural justice. Rule 77 stipulates the punishments that can be inflicted which *inter alia* include admonition, reprimand, suspension of member, fine and expulsion of member.

54. Chapter XII deals with “*Resolution*”. Rule 89 provides for a 12 days’ notice to the Secretary by a Private Member of his intention to move a resolution together with a copy of the Resolution.

55. Chapter XII deals with “*Motion*”. Rule 107 provides that *no discussion on a matter of public interest shall take place except on a motion made with the consent of the Speaker*. Rules 109 lays down the conditions for admissibility of a Motion and stipulates that it shall satisfy *inter alia* the condition that it raises substantially only one definite issue of recent occurrence; does not refer to the conduct or

character of persons except in their public capacity; does not raise a question of privilege.

56. Rules 277 deals with “*Peace and Order in the house*” and stipulates as under:

“277. Peace and Order in the house

(1) The Speaker shall preserve order and may direct any member whose conduct in his opinion is disorderly or is defiant to the Speaker to withdraw immediately from the House and the member so ordered to withdraw shall withdraw forthwith and shall absent himself during the remainder of the day's sitting.

(2) The Speaker may name a member in the following cases:

(a) if a member on being ordered by the Speaker under sub rule (1) to withdraw does not obey the order, or

(b) if the Speaker considers the power conferred under sub-rule (1) to be inadequate, or

(c) if a member willfully and persistently obstructs the proceedings of the House in a disorderly manner, or

(d) if action under this rule becomes necessary against him on successive occasions in the same session.

(3)(a) As soon as a member is named, the Leader of the House or the Minister for Parliamentary Affairs or in his absence any other member shall forthwith make a motion to the effect that the member so named be suspended from the service of the House and the question on such motion shall be put before the House without any amendment, debate or adjournment proceeding.

(b) On a member being so suspended, the period of suspension shall be for the first occasion for three sittings, for the second occasion for seven sittings and on subsequent occasions unless otherwise decided by the House, for the remainder of the session:

Provided that any period of suspension shall in no case be longer than the remainder of the session.

(c) The member suspended by the House shall forthwith withdraw from the precincts of the House. But on his not doing so and on the attention of the House being drawn by the Speaker to the fact that recourse to force has become necessary, the suspended member shall stand suspended for the remainder of the session without any further action.

(d) The member suspended from the service of the house shall stand debarred from entering the precincts of the House and from taking part in the proceedings of the House and the Committees:

Provided that the Speaker may allow a suspended member to enter the precincts of the House for any particular purpose on a request being made to that effect.

(4) The House may at any time, on a motion being made order that any punishment of suspension under sub-rule (3) aforesaid or the unfinished part thereof may be rescinded.

(5) The Speaker shall have full authority to carry out his order or the decisions of the house and may employ, or authorise the employment of, necessary force, at any stage of the proceedings.

(6) The Speaker may, in the case of grave disorder arising in the House, suspend a sitting for a time to be determined by him."

57. Rules 278 deals with “*Suspension of a member in certain circumstances*” and stipulates: “*If during any sitting of the House, any member after entering into empty space in the Chamber of the House snatches or tries to snatch the papers kept on the table of the servants of the House or tears or tries to tear them or throws or tries to throw any paper, file, etc. towards the Speaker's chair, or climbs or tries to climb the Speaker's chair, such member shall on being named by the Speaker or presiding member, be deemed to have been suspended from the services of the House for the said sitting.*”

58. Under the rules if the speaker is of the opinion that the notice of breach of privilege or contempt is fit for giving consent and is admissible under the rules, he may refer the matter to the Committee of Privileges for examination, investigation and report. Rules 72 to 76 lay down the procedure to be followed in either case for consideration and disposal of the motion and inter alia includes compliance with the principles of natural justice. Rule 77 stipulates the punishments that can be inflicted which inter alia include admonition, reprimand, suspension of member, fine and expulsion of member. Under Rule 277 The Speaker is to preserve order and may direct any member whose conduct in his opinion is disorderly or is defiant to the Speaker to withdraw immediately from the House and the member so ordered to withdraw shall withdraw forthwith and shall absent himself during the remainder of the day's sitting. The Speaker may name a member under circumstances mentioned in Rule 277(2). Under Rule 278 a member can be suspended in certain circumstances.

59. The Supreme Court in *Amarinder Singh (supra)* has recognised the power of the legislative assembly to take action inter alia of suspension and expulsion, against a member of the legislative assembly. However, such power can be exercised only if such a conduct has the effect of obstructing the ordinary legislative function of the House.

60. Respondents have contended that the petitioner had, in the past also, indulged in unruly and unethical conduct. Petitioner was penalized for causing damage to microphones in the House. Cost of damage and such recoveries were recovered from the petitioner on a Motion moved under Rule 107 and adopted on 03.12.2015. Petitioner had also been ‘*named*’ by the Speaker for the indecorous conduct in the House.

61. In the present case on 24.11.2015 the Petitioner uttered the words “रात भर घूमने वाली” (*raat bhar ghoomne wali*) (*night walker*) with respect to a lady member of the Assembly. After the petitioner uttered said words the Speaker asked the petitioner to withdraw from the House and also asked him not to attend the Session for one more day. But the petitioner did not leave the House. The House remained agitated. The Speaker, as part of his efforts to restore order in the House, requested the Leader of Opposition Shri Vijender Gupta to send the petitioner out for five minutes. On Shri Vijender Gupta's advice the petitioner left the House. The House could not transact any business on that day for the remaining period because majority of the

Members in the House and women Members in particular were demanding immediate action against petitioner.

62. Thereafter, when the House re-assembled on 26.11.2015, again many Members sought immediate disciplinary action against the petitioner and they came into the well to protest his mis-conduct. Shri Kapil Mishra, Minister, moved a Motion for referring the matter of mis-conduct to the Committee on Ethics for examination and report. Motion being accepted by the House the matter was referred by the House to the Ethics Committee.

63. Another Member of the House Shri Kailash Gahlot moved another Motion seeking suspension of the petitioner from the service of the House “*for the entire duration of the on-going session*” in relation to alleged derogatory remarks made by the petitioner both within the House as well as during his interaction with the media against the Speaker. Both the Motions were adopted by the House. For two days proceedings of the House were disrupted.

64. The Ethics Committee in its report dated 24.02.2016 concluded and made its recommendations as under:

“CONCLUSIONS

The Committee relied on following facts and observations to arrive at its conclusions in the matter:

31. The Committee, in all, had ten sittings spread over a period of ninety days. The meetings were spaced-out in such a manner and held in such an atmosphere that all

the concerned could take part in the proceedings without any inconvenience whatsoever.

32. Mr. Om Prakash Sharma deposed before the Committee in five of the ten sittings it had held in the matter. After the seventh sitting, Mr. Sharma was asked in writing to convey to the Committee if he wished to bring before the Committee any other evidence/facts. To the said communication, there was no response from Mr. Sharma.

33. Mr. Om Prakash Sharma was supplied with all the materials that he had asked for. Mr. Sharma had asked from the Committee only those materials that were available with the Secretariat of the Assembly.

- Mr. Om Prakash Sharma was given complete audio-visual recording of the proceedings of the House as was telecast live on 24 November, 2015, on the very day he had asked for it, i.e. on 30 November, 2015.*
- Mr. Om Prakash Sharma was handed over complete verbatim transcript of the proceedings of 24 November, 2015, on 03 December, 2015, i.e. just a day after he had asked for It.*
- Mr. Om Prakash Sharma. was also allowed time of 15 days so as to enable him to gather evidence from private Channels etc.*

34. Mr. Om Prakash Sharma was given full and reasonable opportunity to defend his actions in the House on 24 November 2015.

35. Mr. Om Prakash Sharma, though asked for and was allowed time of 15 days to gather evidence from channels etc., in his deposition before the Committee in

its fifth sitting, made it dear that he did not wish to utilise that option.

36. Mr Om Prakash Sharma, in his very first appearance before the Committee, had accepted that he used the words “रात भर घूमने वाली” (raat bhar ghoomne wali) to describe Ms. Alka Lamba on the floor of the House on 24 November, 2015 when the House was in Session. He had been consistent in admitting throughout the proceedings of the Committee that he had used the words “रात भर घूमने वाली” (raat bhar ghoomne wali) to describe Ms. Alka Lamba

37. In the first sitting of the Committee Mr. Om Prakash Sharma described his utterances against Ms. Lamba as alleged remarks against him. He also tried to draw a connection between the happenings in the House on 24 November, 2015 and alleged vandalism of his shop by, Ms. Lamba in August, 2015. This explanation is totally untenable. Citing an incident, which allegedly happened away from the House more than two months before, to justify his utterances in the House on 24 November, 2015, to say the least, is an exercise in futility.

38. The very fact that he did make an attempt to offer explanation and thereby justify his utterances against Ms. Lamba as a mere, reaction is proof enough to deduce that Mr. Om Prakash Sharma himself was fully conscious of the gross misdemeanor that he had committed on the floor of the House by uttering such highly objectionable words against Ms. Alka Lamba.

39. In a subsequent deposition before the Committee, Mr. Om Prakash Sharma reiterated that he had used the words “रात भर घूमने वाली” (raat bhar ghoomne wali) to describe Ms. Alka Lamba. He also made it clear that he did not regret using the said words. He found a new

explanation to offer before the Committee. Mr. Om Prakash Sharma said he had described Ms. Lamba as she allegedly claims herself to be. This was clearly an afterthought which is at total variance with the 'action-reaction' argument that he had advanced in his very first deposition before the Committee.

40. In his last deposition before the Committee, Mr. Om Prakash Sharma had added another dimension to his defence. This time it was 'conspiracy'. He said he was being targeted and a conspiracy was hatched against him by hon'ble Chief Minister. When cornered as to why there was outrage in the House and from the Chair when he made those remarks against Ms. Alka Lamba, Mr. Sharma told the Committee that hon'ble Speaker and the Committee on Ethics were biased. This was yet another afterthought which is inconsistent with his earlier afterthought as well as with the first round of defence that he had offered. Mr. Om Prakash Sharma had no plausible explanation to give when asked by the Committee as to why the other two Members belonging to party in Opposition were not charged with being unruly ever.

41. Mr. Om Prakash Sharma had been equally inconsistent in his views on materials supplied by the Secretariat of the Legislature. After receiving the audio-visual recording, he had asked for the transcript to adequately defend himself. After receiving the transcript, Mr. Sharma felt it was incomplete and wanted to rely on evidence that he had proposed to gather from private Channels etc. In his last deposition before the Committee, his wide ranging accusations included supply of censored audio-visual recordings and verbatim transcript to him by the Secretariat. These accusations were made nearly eighty days after the said materials were supplied to him. When asked to pin-point the alleged inaccuracies/deficiencies in the materials

supplied by the Secretariat, Mr. Om Prakash Sharma did not respond.

42. Mr. Om Prakash Sharma in his depositions remained consistently defiant and unrepentant. Yet the Committee tried to reason with him all through with the hope that he would realize his mistake and would express regrets so that the Committee could take a lenient view. Unfortunately, he was not amenable to the very thought of being regretful. Instead, in the last sitting he had turned accusatory. He made sweeping and unsubstantiated charges against Hon'ble Speaker, Committee on Ethics, Hon'ble Chief Minister and the Secretariat of Legislature.

43. From the proceedings of 24 November, 2015, it is abundantly clear that Mr. Om Prakash Sharma used the words “रात भर घूमने वाली” (raat bhar ghoomne wali) in most derogatory and defamatory sense against Ms. Alka Lamba.

44. It is also clear from the reactions in the House at the instant - be it from the Chair who warned Mr. Sharma against highly indecorous conduct, be it from the Leader of the Opposition who tried to restrain Mr. Sharma, be it from all other Members of the House, who reacted with shock and outrage - that the words “रात भर घूमने वाली” (raat bhar ghoomne wali) uttered by Mr. Om Prakash Sharma comprised most undignified and uncivilised expression aimed at denigrating a woman Member. It amounted to, in plain and simple terms, character-assassination. This happened in full view of the House, media persons and general public who were present in visitors' galleries when the House was transacting serious business of public interest by way of Calling Attention.

45. Through his highly irresponsible and contemptuous conduct Mr. Om Prakash Sharma made a mockery of the House. He not only brought disrepute to himself but also denigrated the dignity of a fellow woman Member in particular and other Members in general and that of the Legislative Assembly of NCT of Delhi as a whole. While resorting to such gross misconduct he did not think of the dignity of his electors either.

46. Hence the Committee unanimously concluded that Mr. Om Prakash Sharma is found guilty of conduct unbecoming of a Member of the Legislative Assembly.

47. The Committee also took note of the fact that many of the agitated Member rushed to the well when the said incident happened on 24 November, 2015, an action which, had the potential to aggravate the situation further. The Committee, though fully aware of the circumstances in which they rushed to the well of the House, felt that the Members could have avoided such a reaction. The Committee hopes that the Members henceforth would strictly abide by the rules of the House even in the face of gravest of provocations.

RECOMMENDATIONS

48. Given the fact that Mr. Om Prakash Sharma, in addition to being found guilty in the very serious matter under investigation now, also:

- has to his credit the record of being named by Hon'ble Speaker most number of times for indecorous conduct in the House,
- has the history of repeatedly Interrupting the proceedings of the House,

- *is imprudent enough to rush menacingly towards the Leader of the House when he was addressing the House with the permission of the Chair,*
- *has the record of being fined and warned against unruly behaviour by the House after duly found guilty by the Committee on Ethics once earlier for damaging the mic in the House,*
- *has shown neither remorse nor sign of learning from his past mistakes*
and
- *is a habitual offender;*

the Committee is left with no choice but to recommend expulsion of Mr. Om Prakash Sharma from the Membership of the sixth Legislative Assembly of National Capital Territory of Delhi.”

65. The Ethics Committee in its report has noted that it had ten sittings spread over a period of ninety days. The meetings were held in a manner so that all concerned could take part in the proceedings. The Petitioner deposed before the Committee in five of the ten sittings. He was supplied with all the materials including the audio-visual recording and complete verbatim transcript of the relevant proceedings. He was also granted time to gather evidence to defend himself.

66. The Committee in its report has recorded that the petitioner in his very first appearance before the Committee, had accepted that he used the words “रात भर घूमने वाली” (*raat bhar ghoomne waali*) to

describe Ms. Alka Lamba on the floor of the House on 24 November, 2015 when the House was in Session. He had been consistent in admitting throughout the proceedings of the Committee that he had used the words “रात भर घूमने वाली” (*raat bhar ghoomne wali*) to describe Ms. Alka Lamba. The Petitioner tried to draw a connection between the happenings in the House on 24th November, 2015 and alleged vandalism of his shop by, Ms. Lamba in August, 2015. The committee found the explanation untenable on the ground that he was citing an incident, which allegedly happened away from the House and more than two months before his utterances in the House.

67. The committee has recorded that in a subsequent deposition the petitioner reiterated that he had used the words “रात भर घूमने वाली” (*raat bhar ghoomne wali*) to describe Ms. Alka Lamba. He also made it clear that he did not regret using the said words. He gave an explanation that he had described Ms. Lamba as she allegedly claims herself to be.

68. The committee has recorded that in his last deposition before the Committee he took the defense of ‘conspiracy’ and that he was being targeted and a conspiracy was hatched against him by the Chief Minister.

69. The committee has recorded that the petitioner in his depositions remained consistently defiant and unrepentant. The Committee has recorded that it tried to reason with him all through

with the hope that he would realize his mistake and would express regrets so that the Committee could take a lenient view, however he was not amenable to the very thought of being regretful, instead, in the last sitting he had turned accusatory.

70. The committee thus concluded that the petitioner used the words “रात भर घूमने वाली” (*raat bhar ghoomne wali*) in most derogatory and defamatory sense against Ms. Alka Lamba.

71. The Committee was of the view that the words “रात भर घूमने वाली” (*raat bhar ghoomne wali*) uttered by the petitioner comprised most undignified and uncivilised expression aimed at denigrating a woman Member and amounted to character-assassination. This the committee noted happened in full view of the House, media persons and general public who were present in visitors’ galleries when the House was transacting serious business of public interest by way of Calling Attention.

72. The Committee concluded that Mr. Om Prakash Sharma was guilty of conduct unbecoming of a Member of the Legislative Assembly.

73. The Committee while noticing the earlier conduct of the petitioner recommended expulsion of the petitioner from the Membership of the sixth Legislative Assembly of National Capital Territory of Delhi.

74. When the report of the Ethics Committee was placed before the House, on 31.03.2016, a Motion was moved before the House that the petitioner be expelled from the membership of the Assembly. The Brief summary of proceedings as record for the said Motion are as under:

“4.35 P.M. Motion under Rule 107:-

Ms. Bhavna Gaur moved the following Motion under Rule-107 with the leave of the House :

“In pursuance to the recommendation made by the Committee on Ethics in its second report tabled in this House on 30 March, 2016 this House agrees to expel Sh. Om Prakash Sharma from the Membership of the Legislative Assembly of NCT of Delhi with immediate effect.”

4.42 P.M. Sh. Vijender Gupta, Leader of Opposition questioned the propriety of the aforesaid Motion and walked out of the House in protest alongwith other Members of Bhartiya Janta Party.

4.43 P.M. The following Members participated in the debate:

- 1. Ms. Sarita Singh*
- 2. Sh. Nitin Tyagi*
- 3. Sh. Amanatullah Khan*
- 4. Sh. Somnath Bharti*
- 5. Sh. Jarnail Singh (Tilak Nagar)*
- 6. Ms. Rakhi Birla*

5.05 P.M. Sh. Arvind Kejriwal, Hon'ble Chief Minister during his speech requested the Members to pardon Sh. Om Prakash Sharma if he apologised to Ms. Alka Lamba and the House and agreed to not to resort to such misconduct in future.

- 5.09 P.M. *Sh. Vijender Gupta, Leader of Opposition came back into the House and expressed his views on the Motion under consideration.*
- 5.52 P.M. *Smt. Bandana Kumari, Hon'ble Dy. Speaker in-chair.*
- 5.54 P.M. *Sh. Om Prakash Sharma, Hon'ble Member of Bhartiya Janta Party while justifying his utterances in the House on 24 November 2015, expressed his regrets.*
- 5.55 P.M. *Hon'ble Speaker in-Chair*
Sh. Om Prakash Sharma concluded his speech.
- 5.59 P.M. *Sh. Manish Sisodia, Deputy Chief Minister also expressed his views and requested Sh. Om Prakash Sharma to apologize to the House and also assure that he will not repeat such misbehaviour.*
Sh. Om Prakash Sharma walked out.
Deputy Chief Minister proposed that Sh. Om Prakash Sharma be suspended for the next two sessions of the Legislative Assembly.
- 6.06 P.M. *The House agreed to extend the sitting for 30 Minutes.*
- 6.07 P.M. *Ms. Bhavna Gaur moved the following amendment in the Motion under Rule - 107*
“Keeping in view the sentiments expressed by the Members in the House and magnanimity and forgiveness displayed by Hon'ble Chief Minister; Giving equal respect to all the Members of the House and upholding the dignity of the House; With the hope that Sh. Om Prakash Sharma will not resort to such behaviour in future;

Taking a lenient view, this House agrees to suspend Sh. Om Prakash Sharma from the service of the House for the next two sessions.”

The Motion was adopted by voice-vote.”

75. The summary of proceedings of the House of 31.03.2016, show that when the report and the recommendation of the Ethics Committee – that the petitioner be expelled from the House – were considered by the House, petitioner while justifying his utterances in the House on 24.11.2015, expressed his regrets. When the Deputy Chief Minister expressed his views and requested the petitioner to apologize to the House and to assure that he would not repeat such misbehavior, the Petitioner walked out of the House. The House thereafter suspended the petitioner from the service of the House for the next two sessions.

76. Petitioner had uttered the words “रात भर घूमने वाली” (*raat bhar ghoomne wali*) (*night walker*) with respect to a lady member of the Assembly in the House in presence other members of the House, media persons and general public who were present in visitors’ galleries. The words were uttered when the House was transacting serious business of public interest by way of Calling Attention. The conduct of the petitioner led to disruption of two days proceedings of the House. The matter was referred to the Ethics Committee, which after complying with the principles of natural justice submitted its report and recommendations. Action of suspension of the Petitioner

was taken by the House after the receipt of the report of the Ethics Committee.

77. No person can be permitted to speak in a derogatory fashion against another. The Petitioner not only used (if one may use the expression) *unparliamentary language* but made derogatory remarks against a lady member of the House during a debate on a public issue in the legislative assembly. Petitioner not only used derogatory remarks but has stood by it and sought to justify the same. The Ethics Committee in its report has recorded that the petitioner in his depositions remained consistently defiant and unrepentant. The Committee has recorded that it tried to reason with him all through with the hope that he would realize his mistake and would express regrets so that the Committee could take a lenient view, however he was not amenable to the very thought of being regretful, instead, in the last sitting he had turned accusatory. Further, when he was asked by the Deputy Chief Minister to apologize to the House and to assure that he would not repeat such misbehavior, the Petitioner walked out of the House.

78. The conduct of the Petitioner satisfies the test laid down by the Supreme Court in *Amarinder Singh* (supra). The derogatory remarks were made on the floor of the House during a debate on a public issue. It has a direct connection and bears proximity to the duties, role and functions of the petitioner as a legislator. His conduct caused

obstruction of the legislative function of the House as it led to disruption of the proceedings of the House for two days.

79. Petitioner on 31.03.2016 was suspended for two subsequent sessions of the Legislative Assembly. There was no interim stay of the Motion of the Legislative Assembly dated 31.03.2016. The period of suspension got over during pendency of the present petition and thereafter the Petitioner attended the Sittings of the Assembly in the subsequent sessions. Since, the period of suspension got over during the pendency of the present petition, I am not examining the questions raised by the petitioner with regard to second punishment and proportionality of punishment and leave the same open.

80. In view of the above discussion, I am of the view, that the facts of the present case do not justify any interference, by this Court, in exercise of powers under Article 226 of the Constitution of India. The Petition is accordingly dismissed. There shall be no orders as to costs.

81. Order *Dasti* under the signatures of the Court Master.

October 30, 2018
rs/HJ

SANJEEV SACHDEVA, J