

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.8.2020
& 21.8.2020

DELIVERED ON : 25.8.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.24156, 24157, 24159 to 24171 and 24173 to 24176 of 2017
and

W.M.P.Nos.29458, 25527, 25534, 25495 to 25497, 25500 to 25517,
25519 to 25525, 25528 to 25532, 25518, 25533, 25535, 29445 to
29446, 29448 to 29457, 29459 to 29460, 29462 to 29465 of 2017

M.K.Stalin
S/o.Thiru.M.Karunanidhi
Leader of the Opposition
Tamilnadu Legislative Assembly
Fort St. George, Chennai 600 009

1. M.K.Stalin ..Petitioner in WP No.24156 of 2017
2. MA SUBRAMANIAN ..Petitioner in WP No.24157 of 2017
3. SABA RAJENDRAN ..Petitioner in WP No.24159 of 2017
4. B.RANGANATHAN ..Petitioner in WP No.24160 of 2017
5. KU.KA.SELVAM ..Petitioner in WP No.24161 of 2017
6. P.K.SEKAR BABU ..Petitioner in WP No.24162 of 2017
7. DR.GOV.CHEZHIAN ..Petitioner in WP No.24163 of 2017
8. S.PUGAZHENDI ..Petitioner in WP No.24164 of 2017
9. S.THANGA PANDIAN ..Petitioner in WP No.24165 of 2017
10. S.AMBEDKUMAR ..Petitioner in WP No.24166 of 2017
11. R.T.ARASU ..Petitioner in WP No.24167 of 2017

12.K.S.RAVICHANDRAN ..Petitioner in WP No.24168 of 2017
13. A.R.R.SRINIVASAN ..Petitioner in WP No.24169 of 2017
14. P.KARTHIKEYAN ..Petitioner in WP No.24170 of 2017
15. M.P.GIRI ..Petitioner in WP No.24171 of 2017
16.S.SUDHARSANAM ..Petitioner in WP No.24173 of 2017
17. N.KARTHIK ..Petitioner in WP No.24174 of 2017
18.P.N.P.UNBASEKARAN ..Petitioner in WP No.24175 of 2017
19. P.SIVAKUMAR @ THAYAGAM KAVI ..Petitioner in WP No.24176 of 2017

Vs

1. THE SPEAKER
Tamilnadu Legislative Assembly
Fort St. George Chennai 600 009
2 The Secretary
Tamilnadu Legislative Assembly
Fort St. George Chennai 600 009
3 Privileges Committee
rep. By its Chairman Tamilnadu Legislative
Assembly Fort St. George Chennai 600 009
4 Mr.V.Jayaraman
Chairman Privileges Committee Tamilnadu
Legislative Assembly Fort St. George
Chennai 600 009 ..Respondents in WP No.24156, 24157,
24159 to 24171 and 24173 to 24176/2017

Common prayer in WP No. 24156, 24157, 24159 to 24171 and 24173 to 24176/2017: Calling for the records pertaining to the impugned reference dated 19.7.2017 in Serial No.9 of the Tamilnadu Assembly Bulletin No.37 dated 19.7.2017 made by the 1st respondent to the 3rd respondent against the petitioner regarding Gutka issue and consequential notice Personal Appearance No.10100/2017-4 SAPASE (SAMU-3) dated 28.8.2017 issued by the 2nd respondent by referring to the decision said to have been made by the 3rd respondent in the meeting held on 28.8.2017 presided over by the 4th respondent and quash the same.

For Petitioner in : Mr.R.Shanmughasundaram
W.P.No.24156 of 2017 Senior Counsel
for M/s.R.Girirajan
and S.Manuraj

For Petitioners in : Mr.N.R.Elango
W.P.Nos.24157, 24159, Senior Counsel
24160, 24162 to 24167, for M/s.R.Neelakandan
24169 to 24171, 24173 R.Girirajan, P.Muthukumar
to 24176 of 2017 and S.Manuraj

For Petitioner in : Mr.Amit Anand Tiwari
W.P.No.24168 of 2017 assisted by
Mr.S.Mahesh Sahasranaman
and Ms.Devyani Gupta
for M/s.R.Neelakandan
and P.Muthukumar

For Petitioner in : Mr.B.Harikrishnan
W.P.No.24161 of 2017

For 2nd respondent in : Mr.Vijay Narayan
W.P.Nos.24159 to 24171 Advocate General
and 24173 to 24176 of assisted by
2017 Mr.S.R.Rajagopal, AAG-VI
assisted by
Mr.V.Jayaprakash Narayanan,
State Govt. Pleader

For respondents 3 and : Mr.A.L.Somayaji
4 in W.P.Nos.24159 to Special Senior Counsel
24171 and 24173 assisted by
24176 of 2017 Mr.K.Gowtham Kumar

COMMON ORDER

THE HON'BLE CHIEF JUSTICE

Twenty-one Members of the Opposition in the Tamil Nadu Legislative Assembly representing the DMK Party were put to notice by the Speaker for having allegedly breached the privilege of the House while conducting themselves on 19.7.2017, when they raised an issue of accountability of the Government regarding flourishing of the unlawful banned trade of Gutkha in

the State by physically displaying Gutkha sachets as well as photographs of certain shops where such items were being sold. It is the case of the petitioners that the sachets and photographs were exhibited in order to emphasize and impress upon the House as well as the Treasury Benches that action deserved to be taken, as the trade was being negotiated in the State of Tamil Nadu under the shadow of a particular Minister of the Government as well as high administrative officials, who were actively involved in the abetment of such unlawful trade.

2. It is their contention that no immediate action was either proposed or taken, but the incident dated 18.2.2017 and 22.8.2017 that had created a turmoil within the Ruling Party, prompted the Speaker to mala fide issue the notices dated 28.8.2017 that are impugned in the writ petitions. The allegation is that on 22.8.2017, 18 MLAs of the Ruling Party, namely, AIADMK, submitted a memorandum to His Excellency the Governor informing him about withdrawing support to the Government headed by the Chief Minister, Mr. Edappadi K. Palaniswami. On 24.8.2017, the Chief Whip of the Government tendered a petition before the Speaker alleging disqualification, on which the Speaker issued notices to all the 18 MLAs. This was followed by a letter written by the Leader of Opposition, Mr. M. K. Stalin, requesting the Governor to direct the Chief Minister to prove his majority on the floor of the House in view of the aforesaid developments.

3. The Speaker called for a meeting of the Privileges Committee on 28.8.2017 alleging breach of privilege of the House in respect of the incident referred to above on 19.7.2017, when the petitioners are alleged to have carried with them and displayed Gutkha sachets as well as photographs of the shops that had indulged in selling such banned items. On the very same day, the notices were issued to all the 21 DMK MLAs, whereupon the present writ petitions came to be instituted on 5.9.2017.

4. An interim order was passed by the High Court on 7.9.2017 restraining the Chairman of the Privileges Committee, namely the Deputy Speaker, third respondent herein, not to pass any order in respect of the impugned notices.

5. The Opposition DMK party moved the High Court through a separate petition seeking a direction for a trust vote, and on 18.9.2017 itself the Speaker disqualified 18 MLAs of the AIADMK party under the Tenth Schedule to the Constitution of India. The said disqualified MLAs filed their own writ petitions. When a Division Bench, on a split view taken, referred the matter to a third Judge, the disqualifications were upheld by a majority of 2:1.

6. The issue raised with regard to the Gutkha scam and the criminal proceedings relating thereto came to be heard by a Division Bench of this Court, where the investigation was transferred to the Central Bureau of Investigation by the order of the High Court on 26.4.2018. The said judgment was assailed before the Apex Court and was upheld by the Supreme Court in E.Sivakumar v. Union of India, (2018) 7 SCC 365. The officials of the Central Bureau of Investigation raided 40 places, including the premises of the Health Minister and the Director General of Police and the said proceedings are on.

7. It is in this background that a mention was made by the learned Advocate General, Government of Tamil Nadu to hear these petitions, as they have been pending for almost three years with an interim order operating in favour of the petitioners.

SUBMISSIONS:

8.1. Mr.R.Shanmughasundaram, learned Senior Counsel for the petitioners has advanced his submissions contending that the issuance of the impugned notices itself suffers from patent lack of jurisdiction and is inherently illegal, and therefore, the same deserves to be interfered with in the exercise of the power of judicial review by this Court under Article 226 of the Constitution of India, in as much as the very initiation of the proceedings is motivated by mala fides in the background above, when the Government was facing a trust motion with 18 disqualified MLAs.

8.2. He submits that it was in order to offset the balance by taking action against 21 MLAs of the Opposition, that the strength of the Ruling Party was sought to be restored as its status stood reduced to that of a minority government. The privilege motion notices were issued during the said period to the petitioners so as to somehow or the other prevent them from participating in the proceedings, either by way of suspending them or taking such action by curtailing their liberty to participate in the proceedings of the House, and consequently save the minority government from failing in the trust vote which was imminent.

8.3. He then contends that mandatory procedures having been grossly violated, the initiation of the notice itself was invalid and, therefore, the respondents cannot be permitted to proceed on the basis of such a notice. He contends that, as a matter of fact, the alleged incident of 19.7.2017 was in the view of the House and, therefore, the Speaker ought to have immediately placed the matter for discussion, as it would have precedence over any other subject matter, yet on the date of the incident, the Speaker did not choose to do so in spite of that

mandate being available in Paragraph 46 of the Practice and Procedure Manual adopted by the Tamil Nadu Legislative Assembly. Even otherwise, there was no cause for any breach of privilege, as all the 21 DMK MLAs were focusing on a major issue of mal-governance and they never intended to bring any disrepute either to the Chair or to the House. In all fairness, it was a criticism of the functioning of the Government, which ultimately had resulted in criminal prosecution and the matter being investigated by the Central Bureau of Investigation, as it was a huge scam, and therefore to construe it as an act of breach of privilege was preposterous.

8.4. It is then urged that the Speaker himself had already disclosed his mind in the proceedings dated 19.7.2017 itself that he considered the act of the 21 DMK MLAs to be an act of breach of privilege and had also assured taking of action. This, according to Mr. Shanmugasundaram, is an open declaration of the view of the Speaker himself, which was designed to indict 21 DMK MLAs and did not leave any manner of doubt that the Speaker was determined to get the 21 DMK MLAs punished for breach of privilege. He submits that such a mandate already pronounced in the Open House coupled with the suo motu exercise of power under Rule 226 of the Tamil Nadu Legislative Assembly Rules was clearly contrary to the settled conventions of the House, in as much as the issue ought to have been placed before the House then and there, but the Speaker after having taken a decision straightaway, proceeded to send it to the Privileges Committee that was absolutely uncalled for. With this predetermined move, a complete bias was reflected in the mala fide action taken against the 21 DMK MLAs, and that too even before a Privileges Committee that was constituted of members who were interested in the subject matter. He, therefore, contends that with such a composition of the Privileges Committee and with an imminently prejudged issue, there was no other option left to the 21 DMK MLAs except to challenge the notices impugned herein.

8.5. He has then submitted that the State Government had issued a notification on 23.5.2017 keeping in view the ill-effects of Gutkha being reported everyday, whereby the manufacture, storage, transport, distribution and sale of Gutkha was prohibited. The 21 DMK MLAs had raised the issue because in spite of this ban, Gutkha was being freely sold throughout the State of Tamil Nadu, but instead of appropriate action being taken, the Government was resisting the same and to the contrary while issuing the privilege notices to 21 DMK MLAs, made it a ground that 21 DMK MLAs had violated the said prohibitory notification by carrying with them Gutkha sachets inside the House. For this, the privilege notice appears to have taken recourse to items which are not permitted to be brought inside the House, including items prohibited by law. Thus, the

democratic exercise of freedom of speech by 21 DMK MLAs by virtue of they being the Members of the Legislative Assembly in exposing mal-governance of the Government by displaying Gutkha sachets was converted into an excuse for breach of privilege.

8.6. Mr. Shanmughasundaram submits that the action was completely empty of any legal formality and was clearly designed at the juncture when the Government was facing a trust motion and was falling short of MLAs to prove its majority. It, therefore, tried to reduce the majority of the Opposition by issuing a privilege notice calculatively to 21 MLAs.

8.7. He then invited the attention of the Court to the Speaker's statement in the House on the said day that had the 21 DMK MLAs taken permission from him, probably things would have been otherwise, and submitted that it is not understandable that if on the one hand Gutkha was a prohibited item and had been unlawfully displayed by the 21 DMK MLAs, then how could permission be granted by the Speaker to display a prohibited item. Taking advantage of this narrative in the Speaker's statement, Mr. Shanmughasundaram submits that neither does the notification dated 23.5.2017 prohibit the possession of Gutkha sachets for display in the Assembly, nor does it amount to an offence either relating to storage, transportation or sale of Gutkha by 21 DMK MLAs. Thus, even otherwise, the said display cannot be said to be a display of an item that has been prohibited to be displayed inside the House.

8.8. He then submits that the intention of the 21 DMK MLAs was only to inform the House that Gutkha is being made available freely and it was not intended for any other purpose that can even remotely lead to the conclusion that such a conduct amounted to an offence under the notification dated 23.5.2017. In essence, his contention is that Gutkha had been brought in, which in the above circumstances was not an item prohibited in law. He has buttressed his submission by citing the decision in the case of *Bijaya Kumar Agarwala v. State of Orissa and others*, (1996) 5 SCC 1, paragraphs (11) to (18), where in paragraph (18), the Apex Court relied on a judgment of the Orissa High Court to hold that all possession is not storage while delving into the meaning of the word "storage". It is urged by Mr. Shanmughasundaram that the possession of Gutkha by the petitioners was not for consumption, which is the intention of prohibition and ban imposed under the notification dated 23.5.2017. Thus, the possession was neither storage, nor was a transportation, nor intended to be utilized contrary to the ban imposed under the said notification.

8.9. He has then urged that Article 194 read with Article 212 of the Constitution of India does not in any way restrict

the powers of this Court to enter into the issue of a privilege notice issued, which is otherwise patently illegal, unsupported by law and is malicious. While explaining as to why this Court should interfere under Article 226 of the Constitution of India, he has cited three decisions, namely Powers, Privileges and Immunities of State Legislatures, Re., Special Reference No.1 of 1964, AIR 1965 SC 745, more popularly known as Keshav Singh's case and he has relied on paragraph (61) for the said purpose. He has then cited the judgment in the case of Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651, paragraphs 94 to 97, 111 and 143 to 148 to further his submissions. The third decision relied on by him is in the case of Rojer Mathew v. South Indian Bank Ltd. and others, 2019 SCC Online SC 1456, paragraphs 64 to 67, 70 to 72 and 83 to 106.

8.10. While defending the challenge raised to the notice, he submits the principle of Quia timet will not be a bar to the maintenance of the writ petition at this stage in view of the fact that the entire action is tainted with mala fides, gross illegalities and unconstitutionality, violating fundamental rights of the 21 DMK MLAs enshrined under Articles 14, 19 and 21 of the Constitution of India.

9.1. The arguments of Mr.R.Shanmugasundaram have been supplemented by Mr.N.R.Elango, learned Senior Counsel, who submits that in the aforesaid background it is evident that the Speaker has not played a non partisan and impartial role, and rather he has acted solely for the benefits of the Ruling Party in the Government, which makes his role entirely questionable and reflects clear mala fides on his part.

9.2. He has adopted the arguments of Mr.Shanmugasundaram and in addition thereto he submits that instead of entrusting the matter to the House itself on the very same day, the exercise is only with a view to identify the MLAs by making a reference to the Privileges Committee, which is not the purpose of any alleged conduct of breach of privilege. He submits that as a matter of fact there was no such breach and in view of the substantive illegality, as already pointed out, this is not a case of mere procedural irregularity, but a clear unconstitutional act on the part of the Speaker which deserves to be interfered with through judicial review.

9.3. Advancing his submissions, he has invited the attention of the Court to the case in Raja Ram Pal v. Hon'ble Speaker, Lok Sabha and others, (2007) 3 SCC 184 to urge that the said case has also dealt with as to what is a privilege and also as to how far judicial review is permissible in such matters. He has invited the attention of the Court to paragraphs 360, 362, 377, 384, 386, 398, 417 and 431 of the said reported

decision in aid of his submissions.

9.4. He has then urged that the Leader of the Opposition, Mr.M.K.Stalin, had risen to speak by making a statement on an issue that was relevant to the context and has conducted himself in an absolutely parliamentary way, but to the contrary, he had been interrupted several times calling upon him to sit down and was not being allowed to speak on the issue.

9.5. It is also urged by Mr.N.R.Elango that if the Rules of Procedure of the Legislative Assembly require a procedure to be followed in a matter of breach of privilege, then it should have been done in that manner alone and no other, for which he relies on the decision in the case of Nazir Ahmad v. King Emperor, AIR 1936 PC 253 and the judgment in the case of Babu Verghese and others v. State of Kerala and others, (1999) 3 SCC 422.

9.6. He contends that neither Article 194, nor Article 212, nor any of the decisions do raise a doubt about the maintainability of the writ petitions that have been filed challenging the impugned notices, which are invalid on all scores.

9.7. While referring to paragraph 111 of the judgment in the case of Kihoto Hollohan (supra), he contends that the same is in the context of Tenth Schedule to the Constitution of India and, therefore, the bar expressed therein would not apply in the present context, where the entire issuance of notice is without jurisdiction. He has further illustrated his argument by contending that a breach of privilege can be brought against in broadly three situations, namely (i) where a non Member of the House commits a breach outside the House; (ii) where a Member of the Assembly commits any alleged breach outside the House; and (iii) where a Member allegedly commits a breach inside the House. He submits that none of these contingencies exist in the present case, as has been demonstrated with the aid of various paragraphs of the affidavits exchanged between the parties to urge that there was no intention, nor any act or conduct on the part of the 21 DMK MLAs so as to bring any prohibited item inside the House and thereby commit breach of privilege.

10.1. Mr.Amit Anand Tiwari, learned counsel for the petitioner in W.P.No.24168 of 2017 submits that the act of the Speaker being without jurisdiction in view of Paragraph 46 of the Practice and Procedure of Tamil Nadu Legislative Assembly read with proviso to Rule 221 of the Tamil Nadu Legislative Assembly Rules, clearly establishes that the Speaker could not have made any reference to the Privileges Committee. He submits that whatever alleged breach is said to have occurred was in the view of the entire House and, therefore, it was only the House

that could have taken up the matter immediately, for which there was no reason or occasion for a reference to the Privileges Committee that too after 45 days of the occurrence. He submits that the mala fide reason for sending it to the Privileges Committee after such a long time has already been argued by his predecessors, which he adopts.

10.2. Adding to the submissions raised by the other counsel, he submits that the Speaker while announcing his decision has virtually given a ruling which has been recorded in the Minutes of Proceedings No.37 of 19.7.2017, clearly stating that the matter is being referred as it is a breach of privilege to bring and exhibit prohibited items inside the Legislative Assembly. This amounts to a prejudging of the issue and creates an adverse impact on the Committee of Privileges.

10.3. He has then cited the Full Bench judgment of this Court in the case of S.Balasubramanian v. State of Tamil Nadu, 1994 (2) LW 424 (Mad), paragraphs 22 to 24, to contend that once the Speaker had already taken a decision and had announced that the 21 DMK MLAs were guilty of breach of privilege, then there was no occasion to take recourse to Rule 226 of the Tamil Nadu Legislative Assembly Rules for sending it to the Privileges Committee.

10.4. Mr.Tiwari had then argued that since the invalidity and the mala fides as well as the gross illegalities are established, they constitute a fundamental error and hence interference is warranted and would not be subject to the principle of Quia timet as indicated in Kihoto Hollohan (supra).

10.5. He submits that such a notice can be challenged and he has also invited the attention of the Court to Rule 228 of the Tamil Nadu Legislative Assembly Rules to contend that there being a clear violation thereof, the matter can be entertained by this Court under Article 226 of the Constitution of India.

10.6. To support his submission about the maintainability of the writ petition, he has cited the judgment in the case of Lokayukta, Justice Ripusudan Dayal (Retired) and others v. State of Madhya Pradesh and others, (2014) 4 SCC 473, paragraphs 35 to 42, to urge that in that case it was categorically held that writ petition under Article 32 of the Constitution of India before the Apex Court was maintainable keeping in view the fact that the petitioners therein could not have effectively challenged the issuance of the privilege motion notice issued by the Speaker of the Madhya Pradesh Legislative Assembly.

10.7. He has then supported his submission by the decision of Raja Ram Pal (supra), more particularly paragraph 431, to

contend that where there are fundamental breaches of law, violation of constitutional rights, as well as fundamental rights, then a writ petition would be maintainable and hence the said contention carries weight and deserves to be accepted by this Court.

10.8. He submits that lack of opportunity is clearly made out, as had the matter been entrusted to the House to proceed with the privilege notices issued, the 21 DMK MLAs would have had an opportunity to explain their conduct to the House itself and, therefore, this opportunity having been taken away, the principles of natural justice have been violated, thereby rendering the impugned notice invalid on the anvil of Article 14 of the Constitution of India. For this, he has invited the attention of the Court to paragraph (14) of the writ petition that such a foundation has been laid in the petition itself.

10.9. He then contends that the fundamental right to address the House has been taken away, thereby breaching Article 19(1)(a) of the Constitution of India that guarantees freedom of speech. In view of the provisions of Article 194 read with Article 212 of the Constitution of India, any proceedings inside the House are protected. For this, he submits that the decision of the Speaker to issue a notice is also perverse, as he has treated the display of Gutkha sachets to be an act in violation of the prohibition imposed by the notification dated 23.5.2017, whereas there is no violation made out by the conduct of the 21 DMK MLAs. He submits that the manner in which the Rules have been thrown overboard by the Speaker are not mere irregularities of procedure, but they are patent illegalities, for which he has relied on the judgment in the case of Rojer Mathew (supra), more particularly paragraph 304 thereof.

10.10. He submits that tainted mala fides amount to illegality and even otherwise, if the established Rules of Practice and Procedure have been violated, the same amounts to violation of the constitutional procedure and established conventions and, therefore, the action of issuing the notice is vitiated. For this proposition that the Practice and Procedure has taken a shape of permanent lawful conventions and is a constitutional mandate, he has relied on the following judgments: (i) Supreme Court Advocates-on-Record Association and others v. Union of India, (1993) 4 SCC 441, paragraphs 340, 341, 345, 346, 351, 353 and 357; (ii) S.R.Bommai and others v. Union of India and others, (1994) 3 SCC 1, paragraphs 230 to 232, and (iii) K.Lakshminarayanan v. Union of India, 2018 SCC Online SC 2730.

10.11. He has then contended that Rule 226 even though begins with a non-obstante clause, it is circumscribed by the

Practice and Procedure of the Assembly as contained in paragraph 46 of the Hand Book of Practice and Procedure, where the words used are that where a breach is alleged to have been committed in the view of the House, then the same shall be discussed by the House itself and there was no occasion to have referred the matter to the Privileges Committee, that too after 45 days of the incident.

10.12. He has then advanced his argument by adopting the illustration given by Mr.N.R.Elango that broadly in three situations a breach of privilege can be alleged and he submits that it is only in the third situation where a Member of the House allegedly commits a breach inside the House that such a motion can be undertaken and which obviously would be circumscribed by the Rules and governed by them only. To explain this, he submits that so far as Rule 226 is concerned, the same can be clearly attracted in a case of non Member or a Member of the House committing a breach outside the House, but when the Member commits a breach inside the House, then Rule 226 has to be read conjointly with Paragraph 46 of the Practice and procedure of the Tamil Nadu Legislative Assembly, which he submits if read together with Rule 220 of the Rules would make it clear that the matter ought to have been dealt with by the House itself instead of sending it to the Privileges Committee.

10.13. He has also adopted the same arguments about the meeting having been convened that was attended by interested persons and submits that, therefore, the meeting which resulted in the issuance of the notice was clearly tainted.

10.14. He has also urged that the word "transportation" occurring in the notification dated 23.5.2017 has to be read ejusdem generis, by correlating it to the words used in the statute and not beyond the same.

10.15. Mr.Amit Anand Tiwari continued his submissions urging that the action of the Speaker on 19.7.2017 was actuated by mala fide intentions. Secondly, the action of the Privileges Committee in issuing the notice subsequently on 28.8.2017 was also actuated by mala fides inasmuch as the AIADMK Party was in danger of loosing its majority status in the legislative assembly as on that date. In support of the submission that the Speaker cannot exercise jurisdiction under Rule 226 of the Tamil Nadu Legislative Assembly Rules, he referred to and relied upon the Full Bench judgment of this Court in C.Subramaniam v. The Hon'ble Speaker, AIR 1969 Madras 10. In particular, he adverted to paragraphs 3, 5, 6 and 24 of the said judgment and contended that the Full Bench of this Court concluded that once the Speaker decided that the publication of the cartoon amounted to a breach of privilege, he was no longer entitled to exercise suo

motu power under Rule 226 of the Tamil Nadu Legislative Assembly Rules to refer the matter to the Privileges Committee. He summarized his contentions, in conclusion, as herein under.

10.16. The power of judicial review is wide enough to enable interference with the action of the Speaker in referring alleged breach of privilege to the Privileges Committee. This is clear from paragraph 431 of the Judgment of the Hon'ble Supreme Court in Raja Ram Pal (supra). The reference is vitiated not only by a jurisdictional error but also by both personal and subject matter mala fide and bias. He reiterated that the fourth respondent had filed a defamation suit against Mr.M.K.Stalin and that Mr.O.Panneerselvam, who is the Member of the reconstituted Privileges Committee, has a personal grievance against the Petitioners on account of the cases filed by the petitioners.

11. Mr.N.R.Elango, learned Senior Counsel supplemented his earlier contentions by referring to the judgment of the Hon'ble Supreme Court in case of Mohinder Singh Gill and another v. The Chief Election Commissioner and others, (1978) 1 SCC 405 to emphasize that the minutes of the proceedings of the House dated 19.7.2017 and the notice of the Privileges Committee dated 28.8.2017 should be read on a "as is" basis. In other words, nothing should be added to the said documents while construing the same. It should be sustained or rejected by examining words of the documents and without permitting any subsequent qualification or extension thereto. He also pointed out that the AIADMK party continues to be apprehensive as regards their majority status in the legislative assembly on account of recent developments whereby the SLP relating to the failure to take action against 11 MLAs was disposed of by the Hon'ble Supreme Court on 14.02.2020. As a direct consequence thereof, the respondents mentioned the present writ petition so as to take up the same for hearing.

12.1. Mr.Vijay Narayan, learned Advocate General made submissions, in reply, on behalf of the second respondent. His first contention was that the document referred to by the petitioners, namely, the Practice and Procedure of the Legislative Assembly is no more than a handbook or guide for legislators. But it has no statutory basis. It certainly cannot be lifted to the status of a constitutional convention. In addition, it was published during the tenure of the 12th Assembly, whereas the 15th Assembly is presently in office. Accordingly, about 19 years have lapsed since the date of publication of the Handbook relating to the Practice and Procedure of the Legislative Assembly. By contrast, the Tamil Nadu Legislative Assembly Rules have been framed pursuant to powers conferred by Article 208(1) of the Constitution of India.

Therefore, these Rules have the status of constitutional rules. Hence, the Handbook of Practice and Procedure is liable to be disregarded in light of the Tamil Nadu legislative assembly rules, which would governed the situation. He submits that even otherwise a wrong practice cannot confer a legal right.

12.2. His second contention was that Practice and Procedure would be overridden by Tamil Nadu Legislative Assembly Rules and that even the principle of contemporaneo expositio would not save the Handbook of Practice and Procedure. In support of the contention that Rule 226 of the Tamil Nadu Legislative Assembly Rules was relied upon even in the factual context of a breach of privilege in face of the house, he referred to the judgment in the case of Vijayakant v. Tamil Nadu Legislative Assembly, 2012 (3) CTC 449, to point out that the alleged breach of privilege, in that case, was the act of rolling of the eye and sticking out of the tongue Mr.Vijayakant and although this happened while the assembly session was in progress, the Speaker referred the matter to the Privileges Committee by invoking Rule 226. Nonetheless, the Court upheld the invocation of Rule 226. For the same principle, he also relied upon the judgment in the case of V.C.Chandhira Kumar v. Tamil Nadu Legislative Assembly, 2013 SCC Online MAD 1671.

12.3. The third contention of the learned Advocate General was that the allegation that the actions of the Speaker and privilege committee was actuated by mala fide and bias is completely bereft of substance. In order to substantiate its contention, he pointed out that the AIADMK Party maintained its majority status in the Legislative Assembly during the entire period of controversy, i.e., between 21.05.2016 and 13.08.2020. According to him, in August, 2017, the AIADMK Government had 134 MLAs out of 233. Even in August, 2017 and 18.09.2017, the AIADMK had 116 Members with the casting vote of the Speaker. The AIADMK was in a comfortable position to succeed in a confidence motion. The position has, in fact, improved thereafter and AIADMK has 124 members in a 231 strength House as on 30.08.2020.

12.4. He thereafter referred to judgments relating to the interpretation of Articles 194 and 212 of Constitution of India. The first judgment that he referred to is in the case of Pandit M.S.M.Sharma v. Shri Sri Krishna Sinha and others, AIR 1959 SC 395 otherwise known as the 1st Searchlight case. By referring to paragraphs 15, 22, 23 and 24 of the said judgment, he contended that the Hon'ble Supreme Court held categorically that judicial review of legislative proceedings, including matters of privilege, stands on a different footing from the judicial review of administrative actions. In respect of legislative proceedings, the Court would show due deference to a constitutional authority and decline to exercise jurisdiction

over matters that fall within the exclusive province of the legislature.

12.5. He also referred to the judgment in Pandit M.S.M.Sharma v. Shri Sri Krishna Sinha and others, AIR 1960 SC 1186 (Searchlight 2) which was decided by a Bench of 8 Judges. In the said judgment also, the Court refused to interfere with the issuance of show cause notice in relation to a breach of privilege.

12.6. The Five Judges Bench of this Court in the case of C.Subramaniam (supra) was referred to next. In this case, this Court concluded that a writ of prohibition would lie only if there is ab initio lack of jurisdiction. He also relied upon the judgment of the Division Bench of this Court in K.Anbazhagan v. The Secretary, Tamil Nadu Legislative Assembly, AIR 1988 MAD 275 and that of a Single Bench of this Court in A.Kamaraj v. The Secretary, Tamil Nadu Legislative Assembly, (2012) 6 CTC 593. By referring to paragraphs 20 to 24 of the judgment in the case of A.Kamaraj (supra), he pointed out that the court refused to interfere with the proceedings before the Privileges Committee.

12.7. The next contention of the learned Advocate General was that this Court should not interfere in the proceedings of the Privileges Committee even if it concludes that the notice issued by the Privileges Committee is procedurally defective. For this proposition, he relied upon the judgment in K.T.Plantation Private Limited and another v. State of Karnataka, (2011) 9 SCC 1, wherein the Hon'ble Supreme Court held that the Court should not interfere if the defect is curable. According to the learned Advocate General, any defect in the notice dated 28.8.2017 is a curable defect and no interference is warranted on that basis.

12.8. In conclusion, he referred to the judgment in Raja Ram Pal (supra). By referring to paragraphs 125 and 126 of the said judgment, he pointed out that the practices in privileges of the House of commons as on the date of commencement of the Constitution of India was incorporated by reference in to Article 194(3) as it stood then. Therefore, any changes in parliamentary privileges of the House of commons subsequently would not impact, the privileges available to members of the Indian Parliament or the State legislatures. With regard to the paragraph 431 of the said judgment, he contended that the present case does not come within the ambit of judicial review as per the principles formulated in the said paragraph 431.

13.1. Mr.A.L.Somayaji, the learned Special Senior Counsel made submissions thereafter on behalf of respondents 3 and 4. He

opened his submissions by referring to the prayer in the writ petitions. He pointed out that the Minutes of proceedings dated 19.7.2017 and the notice dated 28.8.2017 of the Privileges Committee are the subject matter of challenge in the writ petitions. Prior to the proceedings of the Legislative Assembly on 19.7.2017, he pointed out that other MLAs belonging to the DMK party were permitted to raise Gutkha issue in the Legislative Assembly that was discussed during zero hour on 29.6.2017. Therefore, it cannot be said that the members representing the DMK party in the legislative assembly were not permitted to raise Gutkha issue in the legislative assembly. It became necessary to initiate action against the 21 MLAs because they proceeded to bring and display a prohibited substance namely, Gutkha sachets in the Legislative Assembly, that too even when a request of grant was being discussed. He also pointed out that the Privileges Committee consists of Members of not only the AIADMK, but the DMK and the Indian National Congress also. He also referred to the counter filed by the Chairman of the Privileges Committee outlining the facts and circumstances in which the reference was made and proceedings were initiated by the privileges committee pursuant thereto. In particular, he pointed out that by notice dated 28.8.2017, the Privileges Committee had merely called for an explanation from the Members with regard to the alleged breach of privilege. Consequently, the writ petitions are premature. In support of the contention that a writ petitions are not maintainable at the pre-decisional stage on Quia timet basis, he referred to and relied upon the judgment of the Hon'ble Supreme Court in Searchlight 2 case. He also referred to the judgment in the L.N.Phukan and others v. Mohendra Mohan Choudhury and others, AIR 1965 Assam and Nagaland 74, in particular, he referred to paragraphs 20 and 26 thereof. He also referred to the judgment of the Five Judges Bench of this Court in C.Subramaniam (supra); the judgment of the Rajasthan High Court in Prithviraj Meena and others v. The Hon'ble Speaker, Rajasthan Legislative Assembly and others, [Division Bench Civil W.P.No.7451 of 2020, dated 24.7.2020], and that by this Court in A.Kamaraj case (supra). In all these cases, he pointed out that the Court refused to interfere with the proceedings of the Legislative assembly and in particular, the Privileges Committee.

13.2. Mr.Somayaji, learned Special Senior Counsel for the State of Tamil Nadu then urged that it is an admitted position that Gutkha is a prohibited product. Therefore, he contended that it constitutes a breach of privilege and that this issue should be decided by the Privileges Committee and not by this Court.

13.3. His next contention was that the Privileges Committee has been constituted to enquire into the breach of privilege and

not to examine whether the notification has been contravened by transporting or exhibiting these sachets.

13.4. With regard to the judgment of the Supreme Court in the case of Lokayukta, Justice Ripusudan Dayal (Retired) and others (supra), he submitted that the said judgment turned on the peculiar facts of the case. In order to substantiate this contention, he referred to paragraphs 4 to 8 of the said judgment, wherein the fact situation is narrated. In specific, he pointed out that the said case pertains to proceedings that had been initiated by the Lokayukta and to the vindictive retaliatory action on the part of the Legislative Assembly to take action against the Lokayukta for discharging his duties. In those unique and peculiar facts, he submitted that the Lokayukta, Justice Ripusudan Dayal (Retired) and others case (supra) was decided by the Hon'ble Supreme Court. Moreover, in that case, the foundation for a breach of privilege was completely absent. By contrast, in this case, the foundational facts for initiating of proceeding for breach of privilege is certainly present.

13.5. He thereafter referred to the recent judgment of the Rajasthan High Court in Prithviraj Meena and others v. The Hon'ble Speaker, Rajasthan Legislative Assembly and others, [Division Bench Civil W.P.No.7451 of 2020, dated 24.7.2020]. He pointed out that the Rajasthan High Court did not decide the case, but merely framed questions for consideration and admitted the writ petition for purposes of deciding the said questions.

13.6. He then referred to the judgment in the case of Harendra Nath Barua v. Dev Kanta Barua, AIR 1958 Assam 160 and to that in the case of K.Anbazhagan (supra). By referring to paragraphs 31 to 34 of Harendra Nath Barua (supra) and paragraphs 61 to 66 in K.Anbazhagan case (supra), he pointed out that the consistent position taken by Courts is not to interfere in matters relating to legislative proceedings and in particular proceedings for breach of privilege.

13.7. The next contention of Mr.Somayaji was that Paragraph 16(ix) of the Practice and Procedure of the Tamil Nadu Legislative Assembly does not permit a Member to bring any prohibited objects into the House.

13.8. By drawing reference to the proceedings of the Legislative Assembly on 19.7.2017, he pointed out that the Speaker had merely recorded that he considers it a breach of privilege. In other words, it was merely the expression of a prima facie view and not a definitive conclusion.

13.9. By referring to paragraphs 31 and 38 to 40 of the Ramdas Athawale (5) v. Union of India and others, (2010) 4 SCC 1, he pointed out that the Speaker is the guardian of the House and has, therefore, been vested with full powers to control and regulate the proceedings of the House. He also referred to the judgment of the Supreme Court in Amarinder Singh v. Punjab Vidhan Sabha, (2010) 6 SCC 113 and to the judgment in Satish Chandra v. Speaker, Lok Sabha and others, (2014) 2 SCC 178.

13.10. The next contention of Mr.Somayaji was that the petitioners have completely failed to establish that the action of the Speaker or that of the Privileges Committee was actuated by mala fide intentions. In fact, he pointed out that the AIADMK Party was in a comfortable majority throughout the entire relevant period and, therefore, the allegation of having acted out of a mala fide intention is completely baseless. For this proposition that the plea of mala fide should be made with sufficient particulars, he referred to the judgment of the Supreme Court which is reported in Parkash Singh Badal and another v. State of Punjab and others, (2007) 1 SCC 1 and in particular paragraph 61 thereof.

13.11. He also contended that bias had not even been pleaded. For this purpose, he referred to the affidavit filed in the writ petition of Mr.Ravichandran. In fact, he pointed out that Mr.Ravichandran had not even admitted that he was a Member of the Privileges Committee.

13.12. He next referred to the reply filed to the rejoinder of Mr.M.K.Stalin and Mr.Ravichandran, wherein the facts relating to the decision to refer the matter to the Privileges Committee and the proceedings of the meeting of the Privileges Committee were adverted to.

13.13. With regard to the suit filed by the Deputy Speaker against Mr.M.K.Stalin, he pointed out that the said suit was filed in the year 2020 and, therefore, has no bearing at all to the breach of privilege proceedings.

13.14. With regard to the contention that the Deputy Speaker should have recused from the Privileges Committee on account of being a person interested, he submitted that the Deputy Speaker is the Ex-officio Chairman of the Privileges Committee as per the Tamil Nadu Legislative Assembly Rules. Consequently, he is entitled to continue to hold the said position by virtue of the Doctrine of Necessity. In this regard, he relied upon the judgment in Election Commission of India and another v. Dr.Subramaniam Swamy and another, (1996) 4 SCC 104, in particular paragraph 16 thereof.

13.15. The last contention of Mr.Somayaji was that there was no delay in initiating proceedings by the Privileges Committee. He pointed out that the last date of the Legislative Assembly session was 19.7.2017 and therefore the issuance of a notice by the Privileges Committee on 28.8.2017 was not belated.

14. The learned Advocate General made brief submissions thereafter on the question as to what is meant by privileges. In this regard, he pointed out that privileges cannot be defined, but they come with corresponding responsibilities and duties. Consequently, if a person who has been conferred with privileges does not perform the corresponding duties or responsibilities, he is liable to be proceeded against for breach of privilege. In this connection, he referred to paragraphs 72 to 104 of Keshav Singh's case (supra).

15.1. Mr.Shanmughasundaram made brief submissions by way of rejoinder. He referred to Rule 92 of the Rules of the Legislative Assembly which deals with what is prohibited while a Member speaks on the floor of the Legislative Assembly. He pointed out that there is nothing in Rule 92 which prohibits a person from bringing and displaying Gutkha sachets on the floor of the House.

15.2. By once again drawing reference to the judgment of the Supreme Court in Bijaya Kumar Agarwala case (supra), he pointed out that the foundational facts for conducting proceedings in respect of breach of privilege are absent in this case.

15.3. He further contended that a speedy and fair enquiry has not been initiated and, therefore, this Court should interfere in the matter.

16.1. Mr.Amit Anand Tiwari submitted that it is necessary to examine the intention with which the Gutkha sachets were brought into the House and displayed so as to assess whether there is a breach of privilege. In other words, the act per se cannot be looked at in isolation to decide the question.

16.2. With regard to issue whether mala fide intention can be imputed to the Privileges Committee, he adverted to paragraphs 407, 408 and 431(b) of the Raja Ram Pal case (supra) and pointed out that the Supreme Court has categorically concluded that allegations of mala fide can be made even against the House, provided the person making such allegations discharges the heavy burden of establishing the same.

16.3. With regard to malice, he contended that both malice in law and malice in fact exist in the present case. With

regard to the proceedings on 19.7.2017, he pointed out that the Speaker initially did not threaten to take action for breach of privilege and instead stated that his permission should have been taken before bringing the Gutkha sachets into the House. Subsequently, based on the statements by the Hon'ble Chief Minister to the effect that the Members of the DMK Party were bringing disrepute to the Government by displaying the Gutkha sachets, he changed his stance and decided to initiate action for breach of privilege.

16.4. Similarly, with regard to the notice from the Privileges Committee, he pointed out that the said notice was issued on 28.8.2017, within four days from the date of issuance of notices to the dissenting MLAs. Therefore, he submitted that the sequence of events clearly establishes the malicious intent behind the initiation of proceedings for breach of privilege. In this connection, he referred to the judgment of the Supreme Court in *State of Punjab v. Gurdial Singh*, (1980) 2 SCC 471, wherein at paragraphs 7 and 9, the Supreme Court concluded that it amounts to a colourable exercise of power when power is used for a purpose different from that for which it was entrusted.

16.5. He next referred to the judgments in the Vijayakant case (supra) and V.C.Chandhira Kumar case (supra) so as to point out that in both those cases, the proceedings for breach of privilege were prosecuted expeditiously. By contrast, he pointed out that in this case, there was a long gap of about 40 days before notice was issued to the Members, who were accused of breach of privilege.

16.6. With regard to Practice and Procedure of the Legislative Assembly, he pointed out that it is an undisputed fact that this is an official publication of the Tamil Nadu Legislative Assembly. It has been in use from the year 1960. He contended that the respondents are probating and approbating with regard to the Practice and Procedure Handbook. On the one hand, it is contended by the respondents that it is no more than a handbook which should be disregarded, whereas on the other hand, the respondents rely upon paragraph 16(ix) so as to contend that prohibited objects should not be brought into the Legislative Assembly. In this connection, he referred to the judgment of the Supreme Court in *J.Mohapatra & Co. v. State of Orissa*, (1984) 4 SCC 103 and to the judgment in the case of *Express Newspapers (P) Ltd. v. Union of India*, (1986) 1 SCC 133.

16.7. He also referred to the judgment in *Indira Gandhi v. Raj Narain*, 1975 Supp SCC 1 for the principle that bias can be attributed even to the legislature.

17.1. Mr.N.R.Elango, learned Senior Counsel made submissions in rejoinder to the effect that Mr.M.K.Stalin did not interrupt the proceedings of the Legislative Assembly on 19.7.2017. To the contrary, he made statements upon being permitted to speak by the Hon'ble Speaker. In support of this contention, he referred to the proceedings of the Legislative Assembly on 19.7.2017 and in particular the record thereof at pages 101 and 102 of Volume II.

17.2. He also contended that the Rules of the Legislative Assembly deal specifically with the powers of the Speaker and the House, if the proceedings of the House are disrupted and if orderliness is not preserved. In particular, he referred to Rules 117 to 122 and pointed out that the said Rules specify the powers of the Speaker in such situations. Consequently, he contended that the Speaker should not have initiated proceedings for breach of privilege and instead should have taken recourse to Rules 117 to 122.

CONSIDERATIONS:

18. Twenty-one elected representatives of the Legislative Assembly of the State of Tamil Nadu (presently nineteen as two of them passed away during the pendency of these petitions) have been noticed by the Deputy Speaker of the Assembly, who is also the Ex-officio Chairman of the Committee of Privileges vide a communication dated 28.8.2017 calling upon them to explain their act of bringing "prohibited items" and exhibiting them in the Assembly on 19.7.2017 and as to why such act be not treated as a conduct amounting to a breach of the privilege of the House, which incident was reported by the Speaker to the Privileges Committee for being examined and reported.

19. All the petitioners have invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India praying for issuance of a writ of certiorari for quashing the reference made by the Speaker about the incident dated 19.7.2017 and also the consequential notice dated 28.8.2017, as the entire proceedings are illegal, being violative of Articles 14, 19(1)(a) and 21 of the Constitution of India, as well as in violation of the relevant law and the Rules applicable in this regard.

20. In order to appreciate the thrust of the challenge raised to the proceedings of breach of privilege, three relevant facts need to be recorded at the outset. The first is the record of proceedings dated 19.7.2017, which has been extracted in part and also translated on behalf of the petitioners. The said extract is part of what was stated by one of the petitioners, Mr.M.K.Stalin, who is the Leader of the Opposition in the House; the Leader of the House of the Ruling Party; the

Speaker; the Chief Minister, and one of the Members of the Assembly. These statements were made during the course of discussion on the request for grant that was on the agenda of the House on that date. The said statements as extracted are reproduced herein under:

"Annexure

Fair translation of relevant portions of the
proceedings of the Tamil Nadu Legislative Assembly
dated 19.7.2017

xxx	xxx	xxx
xxx	xxx	xxx

Thiru.M.K.Stalin: Please don't think that I am interfering in your ruling. It is my duty to indicate during the discussion on Demands for Grants on State Legislature and Governor and Council of Ministers. That's why I am asking. (Thumping of desks) What is the action taken by the Chief Secretary on the letter from the Governor? The Chief Secretary should have sent the letter to the State Vigilance Commission. By this time, a case should have been registered. Gutka was banned even during 2013. That banned substance ** ..investigation has to be conducted and suitable action should be taken. Just because promotion was given.....

Hon. Speaker: Hon. Leader of the House.

Hon. Thiru K.A.Sengottaiyan: Hon. Speaker Sir, Hon. Leader of Opposition while speaking said ** I want to know whether it would be proper to have such matters in the proceedings.

Hon. Speaker: Hon. Leader of Opposition (Interruption). Please conclude your speech early.

Thiru M.K.Stalin: Therefore, continuously ** sale is going on. I say one thing now.

Doing what is forbidden as well as not doing the obligatory, are both equally ruinous courses

Doing what is forbidden will bring ruin, leaving things which ought to be done will also lead to ruin, as told by Thiruvalluvar (Thumping of desks). Right from Koovathoor, you are continuously doing things which are unwarranted, but deferring things which ought to be done (interruptions). You will be thrown out by the people and go down in the history. The time is fast approaching.

Hon. Speaker: Hon. Leader of Opposition, please conclude your speech early.

Thiru M.K.Stalin: Finally, What I want to bring to this House is, **Gutka being openly sold in Chennai. I have brought this here.

(Majority of the DMK Members ** exhibited and also showed some photographs)

Hon'ble Speaker: Hon. Leader of Opposition, You finish your speech with that point. You should not exhibit such things in the House. You should not show such things without seeking my permission. This is not proper (Interruptions) I cannot allow. This will set a bad precedent. This is wrong cannot allow this. (Interruptions), sit down. Hon. Chief Minister.

Hon. Thiru Edappadi K.Palaniswami: Hon. Speaker Sir, How the Opposition Members got the banned substance? (Interruptions) How they got it? It is even wrong to bring such things to the House (Interruptions) No body should seize a banned substance. If they seize, they should take it to the Police Station and lodge a complaint. If that is the situation, bringing a banned substance to the House is itself an offence, a very grave offence. A banned substance should be produced in the Police station after lodging a complaint. Only, based on the complaint, they can take action. How action can be initiated if the Opposition Members show it in the Assembly? What is the proof that it was received only here? What is the proof that it was received only in this State? Opposition Members may have brought it from some other State. (Interruptions) If they really thought of banning the ** substance and if they legally lodged a suitable complaint in the Police Station, action would have been taken. This is really what they should do. Opposition Members deliberately in order to find fault with the Government, has brought and exhibited the same. I want to tell the Hon. Leader of Opposition through Hon. Speaker that this kind of finding fault with the Government is not correct.

(Majority of the DMK Members ** exhibited and also showed some photographs).

Hon'ble Speaker: I will not permit (Interruptions). Sit Down. Reply Hon. Finance Minister (Interruptions) I have no time for that. Sit down (Interruptions). When the proceedings of the Assembly is going in a smooth way it is not proper to show such kind of things unnecessarily. It is under my consideration. I will take necessary action. I assure that I will take suitable action for bringing banned substance into the Assembly (Thumping of desks).

This is not proper. By your behaviour, you are not cooperating with the House (Interruptions). I would have accepted if you have exhibited the thing, after getting permission from me. (Interruptions). I would take necessary early action for exhibiting it without proper permission. (Interruptions). Reply by Hon. Minister for Fisheries, Finance & Personnel and Administrative Reforms.

(DMK Members were continuously standing)

Hon. Thiru D.Jayakumar: Hon. Speaker (Interruptions)

Hon. Speaker: Hon. Minister, you may continue your speech (Interruptions). I have no time (Interruptions)

Hon. Thiru D.Jayakumar: As Hon. Chief Minister said, bringing a banned substance inside the Assembly itself is an offence. (Interruptions). The same has been recorded in the cameras (Interruptions). I request the Hon. Speaker to take action against such Members who have exhibited**

(DMK Members were continuously standing)

Hon. Speaker: Hon. Members sit down. (Interruptions). The view expressed in the speech of Hon. Leader of Opposition and the action of the Members in exhibiting a banned substance without seeking proper permission from me, feel that it is a breach of privilege. Therefore, I refer the matter to the Privilege Committee for investigation and take necessary action.

(DMK Members were continuously standing)

No (Interruptions). Everything has been recorded about the Members who exhibited in the Assembly. I will refer (Interruptions) Reply by Hon. Minister for Fisheries, Personnel and Administrative Reforms. (Interruptions). No time, Please sit down. (Interruptions)

(DMK Members were continuously standing)

Hon. Thiru D.Jayakumar: Hon. Speaker
Sir

(Hon. Deputy Speaker in the Chair)

(DMK Members were continuously standing)

Hon. Deputy Speaker: Hon. Members please sit down calmly (Interruptions)

Hon. Thiru D.Jayakumar
(Interruptions)

Hon. Deputy Speaker: Hon. Finance Minister. Please wait for a minute (Interruptions). Hon. Leader Opposition, whatever you want to say you say (Interruptions). First of all, all others sit down.

Thiru M.K.Stalin: Hon. Deputy Speaker **

Hon. Deputy Speaker: The speech made by Leader of Opposition is expunged (Interruptions) Hon. Chief Minister (Interruptions)

Hon. Thiru Edappadi K.Palaniswami: Hon. Speaker Sir, the Leader of Opposition is a responsible leader. It is not proper for him to speak without knowing how to speak (Interruptions). He says **is being sold. I want to point out that if that is true, he should go to the Police station with evidence for taking necessary action. Therefore, it is not proper to exhibit a banned substance. I want to say at this juncture that it is an offence.

(All the DMK Members staged a walk out)

** Expunged as ordered by the Speaker"

21. The next document is the minutes recorded by the Speaker regarding the aforesaid allegation of breach of

privilege at Item No.9 of Proceedings No.37 dated 19.7.2017, which is extracted herein under:

"Tamil Nadu Legislative Assembly
Minutes of Proceedings No.37
2017, July 19, Wednesday

.....

9. Breach of Privilege

The Hon'ble Speaker announced that he will send it to the Privilege Committee in accordance with the provisions of the Legislative Assembly Rules to take appropriate action, as it is a breach of privilege to bring and exhibit prohibited items inside the legislative assembly."

22. The third document, which is the impugned notice calling upon the petitioners to submit their reply and explanation on the alleged breach reported against them, is also reproduced herein under:

"Speed Post
Secretariat
Chennai-600 009.

Letter no.10100/2017 - 4 Sa.Ma.Pa (Sa.Mu.Va - 3)
dated 28.08.2017

Legislative Assembly Secretariat

Respected Sir,

Subject : Breach of Privilege issue - Your act on 19.07.2017 in the assembly, a breach of privilege - request for explanation - Reg.

Considering your act of bringing "prohibited items" and exhibiting them in the assembly on 19.07.2017 as breach of privilege, the speaker has sent the matter to the privileges committee to examine and to report.

This matter was taken up for examination in the meeting of the privileges committee on 28.08.2017. A decision by the committee was taken to first get an explanation from you regarding this matter.

Therefore, I have been asked to request you to send your explanation regarding the above mentioned matter through a written reply to the Secretariat by 05.09.2017.

Regarding this matter, until the committee presents its report to the assembly, all proceedings of the committee must be held confidentially. Therefore, I am informing you that you must not disclose anything regarding this matter in any manner.

Yours truly,
(K.Bhupathi)

To
Mr.M.K.Stalin
Leader of opposition."

23. The writ petitions were instituted immediately thereafter and under the orders of the then Hon'ble Chief Justice, the same was directed to be listed before the Bench having roster in the matter vide order dated 6.9.2017. The writ petitions were placed before a learned Single Judge who had the roster over the matter, who on 7.9.2017 passed the following interim order in respect of these petitions:

"Heard Mr.Kapil Sibal, learned senior counsel appearing for the petitioner in W.P.No.24156 of 2017, Mr.Amerendra Saran, learned senior counsel appearing for the petitioner in W.P.No.24157 of 2017, Mr.P.Wilson, learned senior counsel appearing for the petitioner in W.P.No.24158 of 2017, Mr.Shanmugasundaram, learned senior counsel appearing for the petitioners in W.P.Nos.24159 to 24165 of 2017 and Mr.N.R.Elango, learned counsel appearing for the petitioners in W.P.Nos.24166 to 24176 of 2017.

2. Mr.Vijayanarayanan, learned Advocate General takes notice for the 2nd respondent.

3. Notice to the respondents 1, 3 & 4 returnable by 14.9.2017.

4. After hearing the submissions made by the learned senior counsel for the petitioners, Mr.Vijayanarayanan, learned Advocate General wanted to make his submissions with regard to the maintainability of the Writ Petitions on 14.09.2017.

5. The learned Advocate General made a submission before this Court that he will advise the respondents not to pass any order until further orders of this Court. Further, the learned Advocate General submitted that he would advise the respondents to adjourn the proceedings, pending before the 3rd respondent, to some other date after

the matter is being listed on 14.09.2017.

6. The submissions made by the learned Advocate General is recorded. I make it clear that the 3rd respondent shall not fix the date for submitting the explanation of the petitioners without obtaining the orders of this Court. I also make it clear that the 3rd respondent shall not pass any order until further orders of this Court.

Post on 14.09.2017."

24. We may incidentally observe that there were other writ petitions also filed pertaining to the disqualification of 18 MLAs of the Ruling Party, the writ petitions pertaining to restraining or holding of the floor test to prove the majority in the trust motion, and writ petitions of quo warranto for restraining the Deputy Chief Minister and another Minister from functioning in view of the allegations made therein. We will very briefly refer to them, as the learned Senior Counsel for the petitioners have referred to the said disputes in order to substantiate their submissions with regard to the mala fides alleged in the writ petitions.

25. Affidavits were exchanged between the parties and submissions have been advanced. The first and foremost objection raised on behalf of Mr. Vijay Narayan, learned Advocate General and Mr. A.L. Somayaji, learned Special Senior Counsel, is to the maintainability of the writ petitions. They urged that the writ petitions ought not to have been entertained at this premature stage, as no prejudice has been caused, nor any rights affected that may warrant interference at the instance of the petitioners. They submit that the matter has been transmitted by the Speaker to the Committee of Privileges, which is the deliberating authority under the Tamil Nadu Legislative Assembly Rules, whereafter the matter has to be finally dealt with by the House itself. It is, therefore, submitted that whatever grounds have been taken in the writ petitions firstly do not fall for consideration at this stage of the issuance of show cause notice and secondly, even otherwise there is no merit at all in the grounds taken to support the writ petitions.

26. Before we embark upon dealing with this preliminary issue, it would be appropriate to set out the constitutional as well as the statutory scheme of the powers and privileges that are engrained in the Constitution itself. Article 194 of the Constitution of India is reproduced herein under:

"Article 194. Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof.—

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

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

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

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

27. It may be pointed out that by Section 34 of the Constitution (Forty-second Amendment) Act, 1976, a change was sought to be introduced that was as follows:

"(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 those of that House, and of its members and committees, at the commencement of Section 34 of the Constitution (Forty-second Amendment) Act, 1976, and as may be evolved by such House of the Legislature of a State, so far as may be, in accordance with those of the House of the People, and of its members and committees where such House is the Legislative Assembly and in accordance with those of the Council of States, and of its members and committees, where such House is the Legislative Council."

28. However, before the same could be introduced, Section 45 of the Constitution (Forty-fourth Amendment) Act, 1978 repealed the same. What is more important is that Section 26 of the Constitution (Forty-fourth Amendment) Act, 1978 deleted the following words that were there originally in Sub-clause (3) of Article 194. The same is extracted herein under:

"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"

29. The net result is the powers, privileges and immunities that existed immediately before coming into force of Section 26 of the Constitution (Forty-fourth Amendment) Act, 1978 was to continue and, therefore, the powers, privileges and immunities as those of the House of Commons of the Parliament of the United Kingdom continued to be the guiding principle, subject to any further powers to be defined by the Legislature by law from time to time. This position of law vis-a-vis Article 194(3) of the Constitution of India has been explained by the Constitution Bench decision in the case of Raja Ram Pal (supra), subject to the constitutional limitations, keeping in view the principle that the historical facts relating to the existence of the powers and privileges of the House of Commons and Parliament in England cannot be introduced in India by any legal fiction. Paragraph 86 of the said judgment is extracted herein under:

"86. In matters concerning the import of powers and privileges of the House of Commons unto the legislature in India, while examining the issue, albeit from the limited concern of the availability to the State Legislature under Article 194(3) of the power of commitment for contempt, this Court in U.P. Assembly case (Special Reference No. 1 of 1964) [AIR 1965 SC 745 : (1965) 1 SCR 413 sub nom Keshav Singh, In re] had administered a note of caution that must hold good even for the purposes at hand. At SCR p. 491 of the judgment, it was observed thus: (AIR p. 785, para 123)

'123. In this connection, it is essential to bear in mind the fact that the status of a superior court of record which was accorded to the House of Commons, is based on historical facts to which we have already referred. It is a fact of English history that Parliament was discharging judicial functions in its early career. It is a fact of both historical and constitutional history in England that the House of Lords still continues to be the highest court of

law in the country. It is a fact of constitutional history even today that both the Houses possess powers of impeachment and attainder. It is obvious, we think, that these historical facts cannot be introduced in India by any legal fiction. Appropriate legislative provisions do occasionally introduce legal fictions, but there is a limit to the power of law to introduce such fictions. Law can introduce fictions as to legal rights and obligations and as to the retrospective operation of provisions made in that behalf; but legal fiction can hardly introduce historical facts from one country to another.'"

30. A privilege is a special advantage or immunity enjoyed by a favoured class. The Members of a Legislative Assembly enjoy certain rights inside the House, for example, the freedom of speech protecting them from being sued for libel or anything they say inside the House. It is a private and a peculiar prerogative with a special distinction beyond the common advantages of others. These privileges are not codified and are certainly not known to anyone except the legislature itself. This is a sort of an exemption or an indulgence usually against or outside law. The conduct, therefore, may not be actionable otherwise, as it continues to be a special freedom or benefit contrary to the common course of law. This authority, by itself, is invested by the Constitution in order to maintain the dignity of the House. Such dignified privileges may forbid or prohibit by law any act which can be termed as a breach of privilege. A breach, in this sense, would amount to a violation or an infraction of a norm of obligatory behaviour which interferes with the collective rights of a privileged body. An infringement or an inroad so as to rupture the dignity of the House or bring disrepute either to the Chair or the House may amount to a breach. To defend its dignity and to maintain its dignified authority, a legislature has been conferred with privileges, which almost remains uncoded in spite of the need to do so, as indicated in the Constitution itself.

31. The next provision is the limitation prescribed under Article 212 of the Constitution of India, which is extracted herein under:

"Article 212. Courts not to inquire into proceedings of the Legislature.—

(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity

of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers."

32. The power to frame laws in respect of the powers, privileges and immunities of the House, therefore, is contained in Article 194(3) of the Constitution of India itself, which has to be read with the general powers conferred on a State Legislature under Article 246 of the Constitution of India, which is extracted herein under:

"Article 246. Subject-matter of laws made by Parliament and by the Legislatures of States.—

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

33. The corresponding competence under Article 246 of the Constitution of India is contained in State List (List II), Entry 39, which is also extracted herein under:

"List II - State List

1 to 38 ****

39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of

persons for giving evidence or producing documents before committees of the Legislature of the State."

34. Then there is an important constitutional provision that directly empowers the Legislature of the State to frame Rules for regulating itself and its procedure as well as the conduct of business, which is Article 208 of the Constitution of India. The same is extracted herein under:

"Article 208. Rules of procedure.—

(1) A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the corresponding Province shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be.

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to communications between the two Houses."

35. Thus, the legislatures are comfortably insulated and empowered to frame laws as well as Rules of procedure under the aforesaid provisions and in the State of Tamil Nadu, such Rules have been framed by the State Assembly in exercise of powers under Article 208 of the Constitution of India known as the Tamil Nadu Legislative Assembly Rules. For the purpose of the present controversy, at this stage suffice would be to extract Rules 219 to 230 contained in Chapter XX(4) titled as Committee of Privileges. The same is extracted herein under:

"Rule 219. Raising of a question of privilege: A member may, with the consent of the Speaker, raise a question involving a breach of privilege, either of a Member or of the House or of a Committee thereof.

Rule 220. Notice of the matter proposed to be raised: Notice of a motion to raise a question of privilege together with a brief statement shall be

given at least one hour before the commencement of the sitting on the day on which the question is proposed to be raised to (i) the Speaker (ii) the Secretary and (iii) the Leader of the House. If the question raised is based on a document, the notice shall be accompanied by the document:

Provided that the notice intended for the Leader of the House may be handed over to the Secretary for being forwarded to the Leader of the House :

Provided further that if it is against any other Member of the House (including a Minister) a copy of such notice shall be given to him through the Legislative Assembly Secretariat :

Provided further that in respect of a matter of privilege arising during the sitting of the House the Speaker may waive such notice and deal with the matter as he deems fit.

Rule 221. Time of raising: On the Speaker giving his consent to raise a question of privilege it must be raised after the questions and before the list of business for the day is entered upon:

Provided that a question of privilege arising during the sitting of the House shall be entitled to immediate precedence over all other business.

Rule 222. Conditions for admissibility: The right to raise a question of privilege shall be governed by the following conditions, namely:-

(1) The question shall be restricted to a specific matter of recent occurrence;

(2) The matter, in the opinion of the Speaker requires the intervention of the House.

If these conditions are satisfied the Speaker may give his consent under rule 219.

Rule 223. Raising the matter after consent: The Speaker if he gives his consent under Rule 219 and holds that the matter proposed to be discussed warrants intervention of the House he may at his discretion call the Member concerned to make a short statement relevant thereto:

Provided that in a fit case before deciding whether the matter warrants intervention of the House, he may give an opportunity to the Member to explain briefly why the matter requires the intervention of the House :

Provided further the Speaker may give an opportunity to the Member against whom the matter is sought to be raised to briefly explain his case.

Rule 224. Refusal for consent: The Speaker, if he refuses consent or is of opinion that the matter does not warrant cognizance by the House, the same shall be communicated to the Member concerned and that the matter shall not be raised in the House in any form thereafter.

Rule 225. Moving of motion: If the Speaker, holds that the matter raised affects the privilege or amounts to a contempt of the House and requires the intervention of the House he may allow a motion to be made by any Member that the alleged breach of privilege be referred to the Committee of privileges or in the alternative that it be dealt with by the House itself.

Rule 226. Suo motu reference to Committee by Speaker: Notwithstanding anything contained in these rules, the Speaker may suo motu refer any question of privilege to the Committee of Privileges for examination, investigation and report.

Rule 227. Constitution of the Committee: (1) A Committee of Privileges shall be constituted which will consist of the Leader of the House and the Leader of the Opposition and the Deputy Speaker who shall be Members ex-officio and fourteen other members to be elected by the Assembly on a date to be fixed by the Speaker according to the principle of proportional representation by means of the single transferable vote and in accordance with the regulations framed in this behalf by the Speaker.

(2) The Members of the Committee so elected will cease to hold office at the end of each financial year but any member shall be eligible for re-election. There shall be a fresh election before the end of the financial year for constituting the Committee for the ensuing financial year. If under any circumstances such an election is not held the existing members of the Committee will continue to hold office until new members are elected.

(3) The Deputy Speaker shall be the ex-officio Chairman of the Committee.

(4) In order to constitute a meeting of the Committee the quorum shall be five including the Chairman or the member presiding.

Rule 228. Disabilities of Members of the Committee:

(1) A member of the Committee who has a personal or direct interest of such a character that it may prejudicially affect the consideration of the matter of privilege to be considered by the Committee shall not sit on the Committee when the matter is under consideration.

(2) Whether a member of the Committee has a personal or direct interest as stated in sub-rule (1) shall be decided by the Chairman of the Committee; if it involves the Chairman of the Committee himself the matter shall be referred to the Speaker and his decision shall be final.

Rule 229. Procedure after presentation of the report: (a) The report of the Committee of Privileges shall be presented to the Assembly by the Chairman of the Committee or by any member of the Committee so authorised;

(b) As soon as may be, after the report has been presented a motion in the name of the Chairman of the Committee or any member of the Committee may be made that the report be taken into consideration;

(c) Any member may give notice of amendment to the motion for consideration of the report referred to above in such form as may be considered appropriate by the Speaker:

Provided that an amendment may be moved that the question be recommitted to the Committee either without limitation or with reference to any particular matter;

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

Rule 230. Procedure to be followed in the Committee. Except as aforesaid the rules applicable to a Select Committee of the Assembly shall apply."

36. A perusal of the entire scheme and the Rules referred to above clearly indicates that if a motion of breach of privilege is to be brought about, then the same is to be proceeded with in the manner provided under the said Rules, where the final decision is to be taken straightaway either by the House itself in certain circumstances, particularly where the breach is alleged to have been committed in the view of the

House, or on the reference of such a breach to the Privileges Committee by the Speaker, either on the motion of a Member/Members, or even by a suo motu reference by the Speaker on any question of privilege. There is, therefore, no gainsaying that there is a procedure prescribed and consequently, the matter has to be routed through the said procedure.

37. To instruct the Members of the Legislative Assembly, a Handbook of Practice and Procedure, which is not a statutory rule and is only conventional also prescribes certain guidelines, a copy whereof has been placed on behalf of the petitioners contending that it has a binding effect. This position has been seriously disputed by the learned Advocate General contending that these are not statutory rules and are only a guideline for legislators who come to the House and have to be guided in having sufficient knowledge about the manner in which the House is conducted. These are however not statutory rules according to him and, therefore, have no binding effect. Yet, since it will have a bearing on what we are proceeding to decide, it is necessary to extract two of these provisions, namely Clause 16 and Clause 46(6). Clause 16 indicates the manners and certain other restrictions which have to be observed by every Member. Clause 16 is reproduced herein under:

"16. Rules to be observed by the Members while participating in the Assembly Meeting.

A Member present at a sitting of the House and not speaking-

(i) shall bow to the Chair when taking or leaving his seat;

(ii) shall not pass between the Chair and any Member who is speaking; If necessary a Member may go out from the House through the Gate near his seat;

(iii) shall maintain silence and during unavoidable circumstances, a Member may speak with other Member in low voice without interrupting the proceedings of the House;

(iv) when the Speaker enters the House during the commencement of Assembly meeting, all the Members should stand in their places till the Speaker takes his seat.

(v) shall not stand in the House or leave the House when the Speaker is addressing the House;

(vi) shall not interrupt a Member while speaking by disorderly expressions or noise or in any other disorderly manner;

(vii) shall not read any newspapers or books or magazines except in connection with the business of the House:

(viii) the Members who are present in the lobby should not obstruct the proceedings of the House by speaking or laughing loudly.

(ix) Members should not bring in to the House umbrellas, walking sticks or any other objects prohibited by law

(x) shall not obstruct the proceedings or interrupt and avoid making running commentaries when speeches are being made in the House."

38. Clause 46(4) is also relevant, as it has been pressed into service by the petitioners to demonstrate that if any alleged breach has taken place in the view of the House, then the matter cannot and should not be sent to the Privileges Committee at all. Clause 46(4) is also extracted herein under:

"46. Legislature Committees.

The Legislature transacts a great deal of business and discharges its responsibilities and over-seeing functions through its Standing Committees. These Committees are appointed by the House or by nomination by the Speaker. The system of Legislature Committees is very useful in dealing with matters, which could be considered in detail by a small number of Members rather than the House itself. Further the House does not have the necessary expertise or the time to discuss such matters in detail and decide. Hence recourse to the Committee system is made.

After the Constitution came into force, the Committees of the House have gained a major role in overseeing the various aspects of the Government. A Committee is called "Legislature Committee", if it is appointed or elected by the House or nominated by the Speaker. It works under the direction of the Speaker and presents its report to the House or to the Speaker. Secretarial assistance to the Committees is rendered by the Legislature Secretariat.

The Committees can be divided into 'Financial Committees' "Scrutiny Committees" and other "Permanent Committees" of the House. The Committee on Estimates, The Committee on Public Accounts and the Committee on Public Undertakings are the "Financial Committees".

(1) to (3) ***

(4) Committee of Privileges

The Committee of Privileges is constituted under Rule 227 of the Assembly Rules. The Committee of Privileges consists of the Leader of the House, the Leader of the Opposition and the Deputy Speaker who are members ex-officio and fourteen other members to be elected by the Assembly from amongst its members. The Committee shall hold office for each financial year or till a new Committee is constituted. The Chairman of the Committee is nominated by the Speaker from amongst the members of the Committee. By convention the Deputy Speaker is nominated as the Chairman of the Committee.

The functions of the Committee is to examine and report to the House about their findings on the cases of breach of privilege that are referred to it by the House or by the Speaker.

Notice of a motion to raise a matter of privilege together with brief statement shall be given at least one hour before the commencement of the sitting on the day on which the motion is proposed to be made to the Speaker, the Leader of the House and the Secretary and consent of the Speaker shall be obtained. The notices intended for the Leader of the House may be handed over to the Secretary for forwarding it to the Leader of the House, the Speaker may waive such notice and deal with the matter as he deems fit.

A matter of privilege must be raised after the questions and before the list of business for the day is entered upon. The matter of privilege arising during the sitting of the House shall be entitled to immediate precedence over all other business.

The Speaker, before giving his consent to the matter being raised in the House, must satisfy himself that the matter proposed to be raised is of recent occurrence and that it warrants the interference of the House. The Speaker is empowered to withhold his consent if the matter is of a trivial nature.

In the case of a breach of privilege committed in the actual view of the House, the matter shall be dealt with by the House immediately without reference to the Committee.

If the Speaker holds that a prima facie case has been made out, the matter is referred to the Privilege Committee on a motion moved by a Member.

After the presentation of the Report of the Committee on a matters referred to it, the House on a motion moved by the Chairman or any Member of the

Committee or any other Member, takes decision on its recommendation."

39. The question raised is that, can the validity of the notice itself be challenged at this stage when only a notice has been issued and the Committee of Privileges is yet to deliberate on the same. It would, therefore, be necessary to traverse on the authorities that have been relied on by the learned Senior Counsel for the respondents to understand the legal position dealt with by the High Courts and also the Apex Court in this regard.

40. One of the earliest judgments that have been cited on behalf of the respondents is in the case of L.N.Phukan and others v. Mohendra Mohan Choudhury and others, AIR 1965 Assam and Nagaland 74, particularly paragraphs 20 and 21, which are extracted herein under:

"20. In the above case it was clearly laid down that even if the powers and privileges claimed and the immunities conferred by Article 194(3) of the Constitution are repugnant to the fundamental right, they will not be void to the extent of the repugnancy. The contention raised in this case on behalf of the Petitioner was that he had a fundamental right under Article 19 of the Constitution and by issuing a notice calling upon him to show cause as to why he should not be dealt with for the breach of the privilege of the House his fundamental right has been affected. This was repelled. Even in the majority opinion of the Supreme Court it has been held that the observations in the case of AIR 1959 SC 395 were confined to the case of a fundamental right under Article 19 of the Constitution. Once it is found that the House has got a right to deal with its own contempt or breach of privilege, the notice issued by the Privileges Committee cannot be said to be without jurisdiction and thus the Petitioners will not be entitled to any writ of prohibition. In our opinion thus the Petitioners are not entitled to any relief at this stage of the proceedings both on the ground that the quashing of the notice will amount to the quashing of the proceedings of the House which the courts of the land are precluded from doing in view of the provisions of Articles 212 and 194(2) of the Constitution and also on the ground that the House having the power to take action for the breach of its privileges, it must be left to the House itself to determine whether there has in fact been any breach of its privileges and

the court will not at this stage interfere with the exercise of such a power by the Privileges Committee. In this view of the matter it is not necessary for us to go into the question whether the report or the Commissioner in the circumstances of the present case can or cannot be said to be a proceeding or a document of the House and further whether on the face of it the publication constitutes the contempt of the House or not.

13. Regarding the question raised as to the right of the Petitioners to approach this Court under Article 226 of the Constitution it is sufficient to point out that if we had held that the notice was without jurisdiction, obviously the Petitioners against whom the notice was issued, had every right to approach this Court under Article 226 of the Constitution for the quashing of the proceedings arising out of the said notice. In the result, therefore, we reject these petitions. But in the circumstances the parties will bear their own costs."

41. The next decision cited by the respondents is in the case of C.Subramaniam (supra), where a Full Bench of this Court, while dealing with a case where a writ of prohibition had been prayed for, held that a prohibition would not lie as the Speaker has jurisdiction over the subject matter and the noticee therein would have to show cause as to whether a breach of privilege was committed by him or not.

42. It was also pointed out that such a premature exercise was also not approved of by the Constitution Bench in the case of Raja Ram Pal (supra), paragraphs 54 and 55, which are extracted herein under:

"54. The case of Pandit Sharma did not end there. Subsequently, the Legislative Assembly of Bihar came to be prorogued several times and the committee of privileges was also reconstituted. This led to a fresh notice being issued to Pandit Sharma in the wake of which he brought another writ petition under Article 32 of the Constitution, substantially raising the same questions and contentions as had been agitated in the earlier proceedings by him before this Court. This writ petition was dismissed by the Constitution Bench (eight Judges). The judgment is reported as M.S.M. Sharma v. Dr. Shree Krishna Sinha [AIR 1960 SC 1186 : (1961) 1 SCR 96 (Eight Judges)] hereinafter referred to as Pandit Sharma (II).

55. In para 10 of the judgment, this Court observed thus: [Pandit Sharma (II) case [AIR 1960 SC 1186 : (1961) 1 SCR 96 (Eight Judges)] , AIR pp. 1190-91]:

"10. ... It was contended that the procedure adopted inside the House of the Legislature was not regular and not strictly in accordance with law. There are two answers to this contention, firstly, that according to the previous decision of this Court, the petitioner has not the fundamental right claimed by him. He is, therefore, out of Court. Secondly, the validity of the proceedings inside the legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. Article 212 of the Constitution is a complete answer to this part of the contention raised on behalf of the petitioner. No court can go into those questions which are within the special jurisdiction of the legislature itself, which has the power to conduct its own business. Possibly, a third answer to this part of the contention raised on behalf of the petitioner is that it is yet premature to consider the question of procedure as the Committee is yet to conclude its proceedings. It must also be observed that once it has been held that the legislature has the jurisdiction to control the publication of its proceedings and to go into the question whether there has been any breach of its privileges, the legislature is vested with complete jurisdiction to carry on its proceedings in accordance with its rules of business. Even though it may not have strictly complied with the requirements of the procedural law laid down for conducting its business, that cannot be a ground for interference by this Court under Article 32 of the Constitution. Courts have always recognised the basic difference between complete want of jurisdiction and improper or irregular exercise of jurisdiction. Mere non-compliance with rules of procedure cannot be a ground for issuing a writ under Article 32 of the Constitution:

vide Janardhan Reddy v. State of Hyderabad
[AIR 1951 SC 217 : 1951 SCR 344 : 1951 Cri
LJ 736] .”

43. The next decision which has been relied on by the learned Senior Counsel for the respondents is in the case of A.Kamaraj (supra), where also, at the stage of notice, where some article published in a Tamil Biweekly was raised as an issue of breach of privilege by a Member of the State Legislative Assembly, the Court upon examination of the facts of that case in paragraphs 48 and 49 held as under:

“48. Once it is seen that what is provided by Section 7 is only a presumption and not an absolute protection, it follows as a corollary that the question raised by the Petitioner would be a mixed question of fact and law. In other words, if a person wants to take advantage of a presumption, on the basis of the indication contained in the magazine itself, it is axiomatic that the opposite party will be entitled to rebut the presumption. Such rebuttal can take place only on a factual foundation. If it can be done only on a factual foundation, the opportunity to do so cannot be deprived to the other party who wishes to dislodge the presumption.

49. Merely because the notices issued by the Committee of Privileges do not contain any factual foundation for rebutting the presumption arising under Section 7, it cannot be concluded that the initiation of proceedings itself would amount to gross illegality or unconstitutionality. The law of pleadings as contained in the Code or the rules of evidence as contained in the Evidence Act would not apply *stricto sensu* to the proceedings before the Legislative Assembly or the Committee of Privileges. Therefore, the Petitioner cannot contend that in the absence of any factual detail connecting him to the articles in question, Section 7 would afford an absolute immunity to him.”

The Court heavily relied on paragraph 431 of the decision in the case of Raja Ram Pal (supra) to the effect that the threshold for exercising judicial review in a case of that nature was indeed very high and that the Court must begin with a presumption that the Legislature's actions were valid.

44. Another decision of a learned Single Judge of the Rajasthan High Court in the case of Ratna Gupta v. The Secretary, Rajasthan Legislative Assembly Secretariat, Jaipur

and others, 2012 (2) WLN 488, was also relied on to urge that it would be premature to interfere at the threshold of the proceedings. Paragraph 8 of the said judgment is extracted herein under:

"8. It is of course trite that this Court in exercise of its power of judicial review, can examine validity of any final decision even on the question of breach of privilege in the scope of Article 194(3) of the Constitution of India but law is also well settled that the Legislative Assembly is free to regulate its own procedure and this Court will not decide the manner in which the Assembly or its Committees have to proceed. It will be premature to presume that report of the Privilege Committee would in all probability be adverse to the petitioner and if at all adverse to her, what final view would be taken by the House on such report."

45. It is emphasized by the learned Senior Counsel for the respondents that there is no such contingency in the present case, nor do the facts even disclose the existence of any interim precipitate action that may warrant an exercise of power at this stage under Article 226 of the Constitution of India, in view of the clear pronouncement in the case of Kihoto Hollohan (supra), as extracted in paragraph 111 to the following effect:

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

However, having regard to the Constitutional Schedule in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairmen. Having regard to the constitutional intendment and the status of the repository of the adjudicatory power, no quia timet actions are permissible, the only exception for any interlocutory interference being cases of interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequence."

46. Faced with this challenge having been raised to the maintainability of the writ petitions on behalf of the respondents, a common argument has been mounted by Mr. Shanmugasundaram, learned Senior Counsel; Mr. N.R. Elango, learned Senior Counsel, and Mr. Anand Amit Tiwari, learned counsel for the petitioners that the very foundational facts that have been set out for the issuance of the notice do not make out any case of breach of privilege looking to the

background of the entire incident; the action is prompted by mala fides and motivated by purely political considerations; the procedure has been flagrantly violated by the Speaker, who has made the reference with a premeditated and predetermined mind; the alleged incident having taken place in the full view of the House, ought to have been dealt with by the House immediately as per the Rules and, therefore, the reference to the Committee of Privileges is without jurisdiction, and finally the subject matter of reference of ascribing the act of bringing and exhibiting a prohibited item is manifestly preposterous, in as much as the possession or display of the item inside the Assembly that was brought in is not prohibited by any law, nor the act is in violation of any law for the time being in force. It is, therefore, submitted that in the background above, if the very exercise of authority of issuance of notice is mere political rivalry to douse the privilege of a Member to raise a valid question inside the House, then there is no privilege which has been breached, and rather it is the privilege of the petitioners to raise an issue of vital importance that is sought to be throttled for extraneous political considerations. In essence, there is law which can define the act so as to construe it as a breach of privilege, as the object which was exhibited or displayed inside the House did not constitute a conduct of violating any prohibitory order engrained in any law. It is, therefore, submitted that where there is a patent lack of authority, based on a total misconstruing of an incident as a breach of privilege, then this Court is not denuded of its authority in interfering in the matter at this stage.

47. All the learned counsel have traversed the arguments on merits to substantiate their submissions, but on the issue of law they have heavily relied on a Three Judges decision in the case of Lokayukta, Justice Ripusudan Dayal (Retired) and others (supra), paragraphs 35 to 41, and more particularly paragraphs 37 and 41, which are extracted herein under:

"37. There is no dispute that all the impugned proceedings or notices/letters/complaints made by various Members of the Madhya Pradesh Assembly claimed that the writ petitioners violated the privilege of the House. Ultimately, if their replies are not acceptable, the petitioners have no other remedy except to face the consequence, namely, action under the Madhya Pradesh Vidhan Sabha Procedure and Conduct of Business Rules, 1964. If any decision is taken by the House, the petitioners may not be in a position to challenge the same effectively before the court of law. In Bengal Immunity Co. Ltd. v. State of Bihar [AIR 1955 SC 661 : (1955) 2 SCR 603] , seven Hon'ble Judges of this Court accepted a similar writ

petition.

....

41. It is clear from the above decisions that if it is established that the proposed actions are not permissible involving infringement of Articles 14 and 21 of the Constitution, this Court is well within its power to pass appropriate order in exercise of its jurisdiction under Articles 32 and 142 of the Constitution. Further, if the petitioners are compelled to face the privilege proceedings before the Vidhan Sabha, it would cause prejudice to them. Further, if the petitioners are compelled to face the privilege motion in spite of the fact that no proceeding was initiated against the Hon'ble Speaker or Members of the House but only relating to the officers in respect of contractual matters, if urgent intervention is not sought for by exercising extraordinary jurisdiction, undoubtedly, it would cause prejudice to the petitioners."

48. Having considered the aforesaid judgments, we find the ratio thereof appears to be that unless there is a pure question of law involved, then in a matter which may involve a question of fact and law, an interference by the High Court under Article 226 of the Constitution of India would be a premature exercise, as held in the case of A.Kamaraj (supra). It has also been held that a writ of prohibition would not lie over a subject matter, where the authority under the Rules has the jurisdiction. In Raja Ram Pal (supra), the Constitution Bench of the Apex Court did make an observation that if it is a question of procedure, it would be premature to consider the issue, as the Committee of Privileges is yet to conclude its proceedings. It was then further held in the case of Ratna Gupta (supra), that it would be premature to presume that the report of the Privileges Committee in all probability would be adverse to the petitioners and, therefore, interference is not called for. Finally, in the case of Kihoto Hollohan (supra) the exceptions carved out was with regard to interference in matters of imminent interlocutory disqualifications or suspensions, which may have grave, immediate and irreversible repercussions and consequences.

49. The legal position as brought forth through various pronouncements of the Apex Court, while exercising the powers of judicial review in such matters did not completely dissolve the legal immunity in proceedings as presently involved and rather resolved it by laying down parameters that came to be formulated in paragraph 431 of the judgment in the case of Raja Ram Pal (supra) which is extracted hereinunder:

"Summary of the Principles relating to Parameter of Judicial Review in relation to exercise of Parliamentary Provisions

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

a. Parliament is a co-ordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;

b. 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 co-ordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of action which part-take 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 co-ordinate 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 & 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 scrutinizing 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 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. Articles 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 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."

50. Applying the aforesaid principles, this is not a case where there was any imminent threat of any suspension or interlocutory disqualification, but at the same time, we find one issue which may deserve consideration in the light of the observations made in the case of A.Kamaraj (supra). In that case, a legal issue was also raised contending that Section 7 of the Press and Registration of Books Act did provide for an immunity, but it could not be an absolute immunity in the absence of the facts indicated in the show cause notice. Further, a presumption raised in favour of the petitioners about immunity was a rebuttable presumption and then the Court went on to hold that since it was a mixed question of fact and law, therefore, it would not like to interfere. In the case of L.N.Phukan and others (supra), it was observed that if the notice was without jurisdiction, one could approach under Article 226 of the Constitution of India.

51. In the instant case, from the pleadings on record, there is no dispute on this fact between the parties that some Gutkha sachets and photographs of some shops allegedly selling Gutkha were brought inside the House and during the discussion, on the request for grant, the Leader of the Opposition rose and raised this question alleging that the Government had failed to take appropriate action and Gutkha was being freely sold in the State of Tamil Nadu. The exact averments are already extracted herein above, which speak for themselves. The fact of displaying the Gutkha sachets and the photographs has not been denied. The notices and the action proposed to be taken is based on the Minutes of the Speaker recorded on 19.7.2017 to the effect that the act of bringing in and exhibiting prohibited items raises an issue of breach of privilege and the same was referred to the Committee of Privileges. There is no other fact and the facts alleged are not disputed. In such a situation, the question of bringing in and exhibiting not being disputed, the only question is as to whether Gutkha could be treated as a prohibited item in law for the purpose of display inside the House.

52. The stand taken by the respondents through their counter affidavit and the pleadings is clearly to the effect that Gutkha is a banned item and for the purpose of ban, reliance has been placed on the notification dated 23.5.2017, which prohibits the manufacture, transportation, storage and sale of Gutkha, as it is injurious to human life on consumption. The words possession, consumption and display are not mentioned in the said notification. The cause for treating it to be a prohibited item, therefore, emanates from the prohibition contained in the notification dated 23.5.2017 issued under the Food Safety and Standards Act, 2006 and a violation of Clause 16 (ix) of the Practice and Procedure Handbook. The extract of the

notification dated 23.5.2017 relating to the subject matter is reproduced herein under:

"THE COMMISSIONER OF FOOD SAFETY AND DRUG
ADMINISTRATION, TAMIL NADU.

BAN OF MANUFACTURE, STORAGE, SALE OR DISTRIBUTION OF PANMASALA, GUTKHA CONTAINING TOBACCO AND NICOTINE AS INGREDIENTS IN THE STATE OF TAMIL NADU FOR FURTHER PERIOD OF ONE YEAR FROM 23RD MAY 2017 UNDER THE FOOD SAFETY AND DRUG ADMINISTRATION ORDER.

(No. 1418/2013/S1/FSSA.)

No.VI(1)/155(a)/2017.

WHEREAS regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011, made by the Food Safety and Standards Authority of India in exercise of the powers conferred by clause (i) of sub-section (2) of section 92, read with section 26 of the Food Safety and Standards Act, 2006 (Central Act 34 of 2006) provides that tobacco and nicotine shall not be used as ingredients in any food products, as they are injurious to health;

AND WHEREAS, Gutkha and Panmasala are food products in which tobacco and nicotine are widely used as ingredients now-a-days;

AND WHEREAS, it is expedient to prohibit Gutkha and Panmasala in the State of Tamil Nadu, being food products in which tobacco and nicotine are widely used as ingredients;

AND WHEREAS Chewing Tobacco is processed by the manufactures along with the eatables and the same is meant for chewing purpose and the said product is supposed to be used by keeping it inside the mouth and chewing it. The act of chewing ensures that chemicals go in to the saliva and becomes part of the human digest system, the said food article if consumed will endanger human health and well-being and whereas if consumption of these food articles is allowed with out prohibition the well-being of current and future generations will be compromised and hence it is to be prohibited.

NOW, THEREFORE, in exercise of the powers conferred by clause (a) of sub-section (2) of section 30 of the Food Safety and Standards Act, 2006 (Central Act 34 of 2006), the Commissioner of Food Safety of

the State of Tamil Nadu, in the interest of public health, hereby prohibits the manufacture, storage, transport, distribution or sale of Gutkha, Panmasala, Chewing Tobacco and any other food products containing tobacco or nicotine as ingredients, by whatsoever name it is available in the market, in the whole of the State of Tamil Nadu for a further period of one year with effect from 23rd May 2017.

Chennai-600 006,
23rd May 2017.
Safety."

P. AMUDHA,
Commissioner of Food

53. The sachets of Gutkha that were being displayed along with photographs was not a display of consumption, nor the possession of it was denied. What has been urged by the learned counsel for the petitioners is that possession per se itself is not storage and for that heavy reliance has been placed on the judgment in the case of Bijaya Kumar Agarwala case (supra). There is also no allegation either in the proceedings or in the affidavits filed by the respondents that the Gutkha sachets were torn and consumed. There is also no allegation of any injury being caused on account of consumption of Gutkha sachets, so as to attract any penal provision. There is no evidence or allegation of the petitioners having been either subjected to any prosecution or proceedings for having allegedly breached the prohibition as contained in the notification dated 23.5.2017. On the other hand, any allegation on that count cannot be a matter of examination or trial by the Committee of Privileges or the House. The question is that based on the notification dated 23.5.2017, can it be said that the conduct of the 21 MLAs in displaying the Gutkha sachets within the Assembly was prohibited under the provisions of the notification dated 23.5.2017 so as to constitute it to be an act to be construed as a conduct prohibited in law.

54. As observed above, on the basis of these undisputed facts, can this Court at this stage of show cause notice render an opinion about the prohibition contained in the notification dated 23.5.2017 or of any breach of privilege having committed by the Members or not. In our considered opinion, the said question has to be answered in two parts. The first is the question of law as posed by us herein above vis-a-vis the conduct of the petitioners of displaying Gutkha sachets being prohibited in law. We find this to be a pure legal question and for which the Court is empowered to answer.

55. The constitutional bar contained under Article 212 makes it impermissible for the Courts to enquire into

"irregularity of procedure". The power of the Courts to exercise judicial review in such matters have been dealt with in various cases that have already been referred to, but fundamentally there is a jurisprudential role of the Courts, which is their duty, to be exercised in order to discipline the exercise of power and to keep public authorities within due bounds. The length and breadth of judicial review available, particularly in the matter of privileges of the House of legislature, have been discussed in a large number of decisions that have been cited at the bar, including the decision in the case of Pandit M.S.M.Sharma (supra) and in the case of Raja Ram Pal (supra).

56. It would be apt to remember Marbury v. Madison, 5 U.S. 137 (1803), where a landmark constitutional case arising out of a dispute with regard to the appointment of Justices of Peace gave rise to a broad question of governance of society on established binding principles with powers to the Courts to decide basic and fundamental principles of the Constitution. The power of judicial review was exercised by the U.S. Supreme Court holding that if the Constitution was a superior law, then an act repugnant to it must be invalid. In arriving at this conclusion, the Court found that the reviewing of laws to judge their conformity with the Constitution was the essence of the Courts judicial duty. There cannot be an abdication by the Courts of such duty and, therefore, in our opinion, the issue raised is one of the freedom of expression of the Members of the House inside the House, which stands guaranteed under Article 194 of the Constitution of India, which cannot be breached under the garb of any law prohibiting the rights of the Members to express themselves inside the House in a manner which does not amount to breach of any law.

57. To curb the power of the Court is to suffocate the freedom and independence which the Constitution confers on superior Courts in the tripartite federal arrangement, representative of the doctrine of separation of powers. Lawfulness of action is a judicial function and it is, therefore, the Court that has to perform this function, as it is an integral part of its function. Judicial review is not supposed to be viewed as policing, but rather conserving and preserving the rule of law so as to ensure that all authorities act within the confines of their power in an accountable way. Wherever the law is wrongly construed or applied, the power and authority of Courts to interpret and pronounce on the same steps in. They do not usurp power, rather exercise it constitutionally conferred on them. Law should have a degree of predictability that is ensured through judicial review.

58. There are no facts in dispute pertaining to this issue

nor are we entering into an issue of irregularity in procedure except for the pure legal issues raised. The exhibition of gutkha sachets and the photographs, whether can be treated as being prohibited from exhibition inside the House in terms of the Notification dated 23.5.2017 is not a question of procedural irregularity in the proceedings of the House for breach of privilege, but is an allegation of substantive illegality where the petitioners are alleged to have acted and conducted themselves by such act that can be termed as prohibited in law. A judicial review would therefore be permissible in terms of the legal propositions that have been pointed out by the learned counsel for the petitioners and to illustrate the same, one can refer to paragraph 304 of the judgment in the case of Roger Mathew (supra) which is extracted herein under:

"304. The fundamental constitutional basis for the distinction between an irregularity of procedure and an illegality is that unlike in the United Kingdom where Parliamentary sovereignty governs, India is governed by constitutional supremacy. The legislative, executive and judicial wings function under the mandate of a written Constitution. The ambit of their powers is defined by the Constitution. The Constitution structures the powers of Parliament and the state legislatures. Their authority is plenary within the field reserved to them. Judicial review is part of the basic structure of the Constitution. Any exclusion of judicial review has to be understood in the context in which it has been mandated under a specific provision of the Constitution. Hence the provisions contained in Article 122 which protect an alleged irregularity of procedure in the proceedings in Parliament being questioned cannot extend to a substantive illegality or a violation of a constitutional mandate."

Then, whether the issue can be raised at this stage so as to violate the quia timet rule or whether it is answered finally, does not matter on the facts of the present case as whether the conduct of the petitioners is prohibited by law is within the scope of judicial review without the same being a mixed question of law and fact or even involving questions of fact. The position in this case is therefore distinct from the issue of qualification or disqualification under the Tenth Schedule which was the issue involved in Kihoto Hollohans's case (supra).

59. To understand that the present case is being entertained by us only on a question of law on the admitted facts, we may extract paragraph 51 of our Division Bench judgment in the case of Ravisam v. Government of Tamil Nadu,

rep. by its Secretary to Government Housing and Urban Development, Chennai, (2020) 5 MLJ 720, where we had the occasion to discuss as to whether the High Court is competent to investigate questions of fact and also as to the distinction between law and fact. The said paragraph is extracted herein under:

"The question of appreciating bare minimum facts which at times may be disputed, have to be assessed once non-consideration of relevant material is taken as a ground or any patent perversity is pointed out. From this angle, we would like to extract the following paragraph from Halsbury's Laws of England, which is extracted herein under:

'613. The distinction between law and facts. The distinction between what will be treated as a question of law and what will be treated as a question of fact is one of importance. In general, where a body makes an error of law in reaching a decision, it will act without jurisdiction or power, and the court may quash that decision on an application for judicial review. By contract the court will generally not intervene on the ground that a body has reached an erroneous finding of fact unless the finding is manifestly unreasonable or a mistake has been made as to an established and material fact that gives rise to unfairness or the finding of fact was otherwise reached through an error of law or is a precedent fact.

There is often difficulty in deciding whether a question should be classified as one of law or as one of fact (or fact and degree). Determination of the primary facts is not a matter of law, but to make a finding unsupported by any evidence is an error of law. Drawing inferences from the facts fall within the ambit of a statutory description, within the ambit of a statutory description, are potentially classifiable as questions of mixed law and fact. The method of classification may be important, for judicial review of findings of law may entail an independent determination of the matter

already decided, whereas a review of findings of fact is likely to be more limited. It has been said that if the question is one which only a trained lawyer can be expected to decide correctly, there is a presumption that it will be categorised as one of law. Otherwise the question is usually treated as one of mixed law and fact, so that the range of meanings that can reasonably be ascribed to a statutory expression is a question of law; but whether the facts as found fall within the ambit of that expression will be held to be a question of fact, on which the decision of the competent authority will not be disturbed unless it is perverse (or is such that no reasonable authority properly instructed in the law could have arrived at it), or is erroneous because a wrong legal approach has been adopted.

A court will generally be reluctant to disturb the findings of a tribunal with specialised knowledge of technical subject matter, irrespective of whether these findings be classified as law or fact."

Applying the said principles we are convinced that in the present case we are called upon to determine a pure question of law on the admitted facts relating to the ramifications of the Notification dated 23.5.2017.

60. To add to the aforesaid conclusion drawn by us, we may also record that even at the interim stage the existence of a prima facie case has to be examined as the power of judicial review carves out exceptions as in the case of Kihoto Hollohan (supra) where the acts of interim suspension or interim disqualification were taken to be exceptions to the Quia Timet Rule. We may mention that this case waited at the threshold for almost three years with the interim order operating and the same was not even challenged before the higher forum. The Court as well as the parties therefore had enough time in brooding over the cause in order to cross the hunch of the Quia Timet Rule. This fact itself may be sufficient for us to examine the question as to whether any further continuance of this position without attempting a resolve would be justified. Litigation should be resolved at the earliest and if possible at the

threshold itself in the event a priority is required in the decision-making process particularly in such disputes that are unnecessarily rendered infructuous by passage of time. More so, when the lawmakers themselves have invoked our jurisdiction to declare the law.

61. In the instant case, the contention raised by the petitioners is of a clear defective foundational fact having been made the basis of the notice, namely, treating the conduct of the petitioners to be prohibited by law, namely the notification dated 23.5.2017, as Gutkha was a banned commodity under a valid law. It is the case of the petitioners that the approach is absolutely perverse, as the assumption of authority to issue the notice is clothed in a manner which reflects a colourable exercise of power and, therefore, malice in law, as no such prohibition can be gathered in respect of the conduct of the petitioners from the notification dated 23.5.2017.

62. We may also point out that at the stage of issuance of show cause notice, a Division Bench of the Rajasthan High Court in Prithviraj Meena and others (supra), on an analysis of the submissions made in respect of the infirmities in a show cause notice on account of mala fides and gross illegalities and the constitutional and legal issues involved, prima facie found the matter to be entertainable and entertained the writ petition holding it to be maintainable.

63. The second question as to whether otherwise there was a breach of privilege or not is a matter, in our opinion, within the realm of the House, for which the Privileges Committee can proceed to answer the same. This may also involve an issue of propriety or impropriety of diction or of conduct that may be just unsuitable, unseemly or unbecoming and may not cross the barriers of the principles of breach of privilege. The question of pure illegality can however be examined by the Court for the reasons set out herein under.

64. However, to understand the aforesaid split propositions indicated by us herein above, we find that in our scheme of the Constitution, constitutional supremacy reigns. The Legislative, the Executive and the Judiciary are all creatures of the Constitution and the laws made thereunder. They are governed by laws and not by an unwritten Constitution as in England. The doctrine of separation of powers in our federal structure has time and again been held to be a core value under the Constitution and the functions of the three organs of the State are delicately balanced.

65. An issue of law which requires interpretation after the legislature has framed it can be interpreted by the Courts alone

and in this view we are supported by a long line of decisions and a few of them require mention.

66. Once the Parliament makes a law and it walks out of the Parliament, then the Apex Court, through the Constitution Bench decision in the case of *Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Limited and another*, (1983) 1 SCC 147, enunciated that it is only for the Courts to say what the legislature has said. Reference be made to paragraphs 16 and 25 of the said report.

67. The second decision which follows the same is in the case of *Sushma Sharma and others v. State of Rajasthan and others*, 1985 Supp SCC 45, where a brief reference of the said principle has been made in paragraph 36 of the said report. We are also reminded of Bishop Benjamin Hoadly, 1759 who said:

"Whoever hath an absolute authority to interpret
any written or spoken laws,
it is he who is truly the Law-giver
to all intents and purposes, and not the person
who first wrote or spoke them."

68. The third judgment is in the case of *P.V.Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 626, where in paragraph 114, the Court referred to an earlier Constitution bench judgment in the case of *State of Karnataka v. Union of India*, (1977) 4 SCC 608, and referring to paragraph (63) of the said judgment, held as under:

"114. The last of the cases to which reference need be made is *State of Karnataka v. Union of India* [(1977) 4 SCC 608 : (1978) 2 SCR 1]. It was held there that the Constitution vested only legislative power in Parliament and in the State Legislatures. A House of Parliament or State Legislature could not try anyone or any case directly, as a court of justice could. It could proceed quasi-judicially in cases of contempt of its authority and take up motions concerning its privileges and immunities because, in doing so, it sought removal of obstructions to the due performance of its legislative functions. If any question of jurisdiction arose, it had to be decided by the courts in appropriate proceedings. Beg, J. added: (SCC p. 656, para 63)

"For example, the jurisdiction to try a criminal offence, such as murder, committed even within a House vests in ordinary criminal courts and not in a House of Parliament or in a State Legislature."

69. Thus, there is no ouster or exclusion of the authority of the Court to examine the question of a pure legality of an issue involved with the jurisdictional issue of the issuance of a notice. The law relating to prohibition of a Gutkha sachet being possessed by an individual, which in the peculiar facts is not alleged to be for consumption inside the House, nor was it meant to be stored, transported or possessed for sale resulting in consumption, cannot be construed to be an act prohibited under the notification dated 23.5.2017. There is no law, nor was any shown to us that a mere display of a Gutkha sachet which was with the clear intention of drawing the attention of the entire Assembly towards an alleged apathy of the Government in not tackling the menace of free sale of Gutkha in Tamil Nadu was a conduct prohibited under the notification dated 23.5.2017. There is neither a penumbral or fringe doubt about the same in the absence of any law to the contrary at present, or as on the date when the incident took place.

70. The presumption that the item is prohibited may be true for the purposes as defined in the notification dated 23.5.2017, but in the present case, any element of such intended act which may amount to a breach of the said Government Order has not been established. Even otherwise, as per the decisions cited above, it is also clear that the Legislature is not empowered to try any substantive offence that may be triable by a Court of law and justice. This is entirely preserved in Courts and, therefore, had there been any alleged offence committed by the petitioners in terms of the notification dated 23.5.2017, the same would be a matter for the Courts to try, but that by itself would not amount to a conduct prohibited in law resulting in breach of privilege of the House.

71. What we intend to clarify is that carrying of Gutkha sachets simpliciter may or may not be a breach of privilege, which is still open to examination by the Committee of Privileges, but to hold that the passage of the Gutkha sachets inside the House amounted to transportation or storage or possession for consumption is certainly not made out on the facts, as are admitted between the parties and also from the Minutes recorded by the Speaker on 19.7.2017 as well as from a perusal of the impugned notice dated 28.8.2017. A perusal of the notification dated 23.5.2017 would leave no room for doubt that the words used are ban of manufacture, storage, sale or distribution of Pan Masala. The reason given in the preamble of

the notification is that since Gutkha and Pan Masala are food products which are supposed to be used by keeping it inside the mouth and chewing it, the same becomes part of the human digestive system, as the chemicals go into the saliva while chewing and consequently, its consumption may endanger human health and well-being. It is for this reason and for the well-being of the current and future generations that prohibition of manufacture, storage, transport, distribution or sale has been imposed. As already noted above, the petitioners were not carrying out any such activity with the intention of promoting chewing and consumption of Pan Masala, but were rather raising their voice in support of the notification and for its rigorous implementation. As explained in the case of Bijaya Kumar Agarwala (supra), every possession is not storage, nor can it amount to a transport at least in terms of the notification on the facts of the present case, as it is not the case of the respondents that Gutkha was being brought inside the House for consumption. The words used in the notification, in our opinion, have to take colour from the purpose and the conduct of the petitioners, in order to construe as to whether such an act will qualify as prohibition or not. The intendment in the notification is to ban trade of Gutkha and not to ban the freedom of speech, if it is utilized for the purpose of promoting the ban. The notification entails penal consequences and, therefore, it has to be construed strictly to achieve the purpose of the notification, namely, the ultimate protection of human life through a ban on its manufacture, sale, etc.

72. This has to be understood in contrast to the possession of narcotics or banned liquor or prohibited arms, the possession whereof, per se, may amount to a breach what is prohibited by law. This is not the case here. On a reading of the notification dated 23.5.2017, which we are interpreting on the peculiar facts of this case, the petitioners are not being prosecuted under the prohibition clause as contained in the notification, but are being treated to have brought in something and displayed, which otherwise is prohibited under the notification dated 23.5.2017. The purpose for which it was being displayed was to register a protest to highlight and expose the vulnerability of law and the law enforcing agencies in their alleged failure to enforce the same. The right to freedom of expression and using the Gutkha sachets and photographs as a tool of such expression is the intent and purpose that can be clearly culled out from the proceedings of the House dated 19.7.2017. As has already been held in Keshav Singh's case (supra) and other cases thereafter, including the case of Raja Ram Pal (supra), the restrictions on the freedom of expression as understood under Article 19(1)(a) of Part III of the Constitution of India are not available inside the House. Such an expression of protest by virtue of the notification

dated 23.5.2017 cannot be said to be prohibited under the said notification.

73. There is yet another dimension of pragmatism and to an extent commonsense as well. This element in the process of judging can be supported both by the theorists of Legal Realism and Legal Formalism, which may happen in unique circumstances as in the present case. We may point out that the Formalists have described a judicial opinion being capable of being broken down into a three part equation consisting of the Rule of Law - 'R'; the Facts of the case - 'F'; and the Decisions of the Judge - 'D', represented as $R \times F = D$. The Realists, on the other hand, suggest their own formula, viz. the Judicial hunch or Stimuli - 'S' x the Judge's Personality - 'P' = the Decision - 'D'. [Jerome Frank and others, as discussed by Timothy J. Capurso in his article on Theories on Judicial Decision-making, 1998, University of Baltimore Law Forum]. Practical wisdom and natural intelligence are the foundation of commonsense which is regarded by the philosophers of commonsense as an impression of unity at the center of the five senses of human beings. This power or faculty is described by philosophers to be a moderator or a judge of all actions to discern differences by which a human being can test the truth of knowledge and morality of actions. It is this power of the mind which perceives truth and commands belief. When a person possesses those perceptions, associations and judgments, in relations to persons and things, which agree with those of the generality of mankind, he is said to possess commonsense (1 Chit.Med.Jur.334). Applying the principles of commonsense, the conduct of the petitioners was obviously not to advertise or to foster or encourage the consumption of Gutkha nor was it an attempt at obscenity. In the words of Justice Stevenson of the U.S. Supreme Court in *Mc Intyre v. Ohio Elections Commission*, 514 U.S. 334 (1995) what has to be seen is "was it pernicious or a honourable tradition of advocacy and of dissent". Judging the legality on the anvil of the Notification dated 23.5.2017 coupled with public interest that counterbalances any claim of privilege, we find that the conduct of the petitioners on this reasoning as well may not be a prohibited act in terms of the Notification dated 23.5.2017.

74. This can be viewed from the angle of the doctrine of *Wednesbury* unreasonableness as well. A reasonable action means which is rational and not excessive or immoderate. Reasonableness is a facet of Article 14 of the Constitution of India. However, before an action is struck down, the Court must be satisfied that a case has been made out for exercise of the power of judicial review. We have already indicated above our reasons for treating the action initiated on the basis of the Notification dated 23.5.2017 as being without any basis and, therefore, we are also of the opinion that the same does not

pass the test of reasonableness thereby clearly violating Article 14 of the Constitution of India. The reference of prohibition in the impugned notice traceable to the Notification dated 23.5.2017 was irrelevant and therefore, the application of Wednesbury principles are apt on the facts of the present case.

75. In the above background, the argument on behalf of the petitioners that the foundational facts of treating the petitioners conduct as prohibited in law suffers from a totally erroneous approach and leads to a jurisdictional fault to that extent has to be accepted.

76. The action of the Committee of Privileges in issuing the impugned notices dated 28.8.2017 treating the conduct of the petitioners to be one that is prohibited by law, in the present case by the Notification dated 23.5.2017, is erroneous and violates the constitutional rights of the petitioners under Article 194 of the Constitution entailing civil consequences. The recital in the impugned notices suffers from the gross illegality of a fundamental error as observed above and therefore a step in that context in furtherance of the show cause for a breach of privilege is unwarranted on the facts of the present case.

77. The petitioners have laid special emphasis on the breach of Rules by the Speaker in processing the matter. We have quoted the Rules as also the Practice and Procedure Handbook on which reliance has been placed. We may clarify at the outset that the Handbook of Practice and Procedure does not appear to have been framed in exercise of any constitutional or statutory power, but it appears to have been framed for the guidance of the own Members of the Assembly. They may not be mandatory in character, but they do have a role in understanding the conduct of the Members of the House. The argument that has been raised on behalf of the petitioners that on the one hand the respondents are treating the Handbook as also one of the basis for taking action for breach of privilege by relying on violation of Clause 16(ix) of the said Handbook, but when it comes to Clause 46(4), where a mention has been made that a breach committed in full view of the House can be laid before the House without reference to the Privilege Committee, then the argument is advanced that the Handbook does not indicate an established convention and may amount to a wrong practice. The legal position on a wrong practice, as pointed out by the learned Advocate General, has been reflected upon in the case of Rohitash Kumar and others v. Om Prakash Sharma and others, (2013) 11 SCC 451, where it has been held that in a clear case of error, the Court should without hesitation refuse to follow an erroneous construction for the reason that wrong practice does not make the law. The Court further went on to hold in

paragraph (15) as follows:

"In D. Stephen Joseph v. Union of India & Ors., (1997) 4 SCC 753, the Court held that, 'past practice should not be upset provided such practice conforms to the rules' but must be ignored if it is found to be de hors the rules."

78. However, on the other side, we find that there are certain conventions that have taken the shape of a customary practice and may amount to an established convention. This issue is open to the House to decide, but the argument on behalf of the petitioners has to be taken into account that the respondents cannot be allowed to probate and approbate by contending that part of the Handbook is mandatory and its violation will entail breach of privilege, and on the other hand contend that part of the Handbook may amount to a wrong practice contrary to the statutory rules. There is no doubt, however, that statutory rules framed under Article 208 of the Constitution of India would govern the field so long as they are in force. The respondents, therefore, cannot ignore this aspect when proceeding to take a decision on an issue of breach of privilege which has civil consequences.

79. Clause 16 of the said Practice and Procedure, under Sub-Clause (ix) mentions that Members should not bring into the House umbrellas, walking sticks or any other objects prohibited by law. As conceded by the learned Advocate General, the same does not have any statutory force, but the words "prohibited by law" used in the said Clause appears to have been made the basis of issuance of notice. If the same does not have any statutory force, then an exercise of power in the absence of a statutory backing may indicate an incorrect recital in the notice. This is what emanates from the arguments of the respondents themselves. However, we are of the opinion that even if it is not a statutory rule, it cannot be contended by any Member that they can bring into the House an object prohibited by law. A Member, therefore, cannot walk into the House with a prohibited weapon or any obnoxious material or any such thing which may be considered in law to be prohibited. At the same time, we may also emphasize that there are many items which are not prohibited by law, for example, umbrellas and walking sticks as mentioned in the Clause referred to herein above. This can be further illustrated by the example given by the learned counsel for the respondents that if a pair of slippers which is supposed to be worn in the feet inside the House is carried in the hands to raise any protest against tax on slippers, such an act may not be prohibited by law, but the showing of the slippers on the face of the House or to the Chair may amount to a breach of privilege.

80. In this regard, the reference made by the learned counsel for the respondents to the decision in Vijayakant case (supra) deserves reference. A Member, who was the then Leader of the Opposition, was suspended for his alleged gestures of raising his hand, rolling his tongue and attempting to move forward. A challenge raised to the same was rejected by a learned Single Judge of this Court. The distinction between disregard to the authority of the Chair and breach of privilege was discussed in the said case and it was held that the same was a conduct unacceptable, which will amount to a breach of privilege.

81. The other argument based on Clause 46(4) of the Practice and Procedure Handbook is that if a breach of privilege has been committed in the actual view of the House, then the matter has to be dealt with by the House immediately without reference to the Committee. We find this recital contained in the Practice and Procedure Handbook to be not contrary to the Rules. Rule 221 may be referred to, where it is provided that the Speaker can give consent to raise a question of privilege after the questions and before the list of business for the day is entered upon, provided the question of privilege arising during the sitting of the House shall be entitled to immediate precedence over all other business. The House can, therefore, as a matter of precedence discuss a question of privilege giving it priority over all other business. The question of without reference to the Committee, as referred to in Clause 46(4) of the Practice and Procedure Handbook, may not be in clear conformity with the said Rule, but its implications may have to be assessed.

82. What the petitioners contend is that if the breach has been committed in the actual view of the House, then it should be dealt with immediately, without reference to the Committee. Firstly, the Practice and Procedure Handbook is not a Rule and, therefore, it cannot override the provisions of Rules 219 to 230 contained in Chapter XX(4) of the Tamil Nadu Legislative Assembly Rules, referred to herein above, which have been framed in exercise of the powers under Article 208 of the Constitution of India. The same gives an overriding power to the Speaker under Rule 226, which, notwithstanding anything contained in the Rules, empowers the Speaker to refer any question of privilege suo motu to the Committee of Privileges for examination, investigation and report. We find from the records and pleadings that the Speaker had announced this on 19.7.2017 itself, which also stands recorded in his Minutes of the same date. Thus, the House has not been denuded of its authority in dealing with the matter and it has to come back to the House after the Committee of Privileges submits its report, as the final and ultimate decision has to be taken by the House.

83. The Practice and Procedure Handbook will, therefore, have no overriding effect over the Rules so as to bypass the Privileges Committee in the exercise of its statutory functions and the purpose for which it has been constituted to ensure fairness in matters of privilege for a pre-exercise being undertaken before the House finally resolves it. This in no way takes away the power of the House, which can still choose to agree or disagree with the report of the Committee of Privileges and pass a resolution as per its own wisdom.

84. Learned counsel have also relied on the judgment in the case of Nazir Ahmad (supra) and the judgment of the Apex Court in the case of Babu Verghese and others (supra), to contend that if a particular procedure has been provided and that act has to be done in that manner, then it should be done in that manner alone and not otherwise. As already indicated above, we do not find the procedure undertaken by the Speaker to send the matter to the Committee of Privileges to be vitiated by any Rule, rather it is in conformity with the same. The aforesaid decisions, therefore, do not come to the aid of the petitioners.

85. The question whether the Speaker enjoys any residuary power to exercise his prerogative or not has to be understood in the context of Rule of Law inasmuch as every exercise of authority is constitutionally ordained. Thus, the concept of Constitutional Supremacy in India as against Parliamentary Sovereignty in the United Kingdom is to be understood in this context. However, even in England the Law was understood to be above the Sovereign right from the days of Magna Carta and was explained by the House of Lords by Lord Atkinson in the case of Attorney General v. De Keyser's Royal Hotel Limited, 1920 AC 508, as under:

"It is quite obvious that it would be useless and for the Legislature to impose restrictions and limitations upon, and to attach conditions to, the exercise by the Crown of the powers conferred by a statute, if the Crown were free at its pleasure to disregard these provisions, and by virtue of its prerogative do the very thing the statutes empowered it to do. One cannot in the construction of a statute attribute to the Legislature (in the absence of compelling words) an intention so absurd. It was suggested that when a statute is passed empowering the Crown to do a certain thing which it might theretofore have done by virtue of its prerogative, the prerogative is merged in the statute. I confess I do not think the word "merged" is happily chosen. I

should prefer to say that when such a statute, expressing the will and intention of the King and of the three estates of the realm, is passed, it abridges the Royal Prerogative while it is in force to this extent: that the Crown can only do the particular thing under and in accordance with the statutory provisions, and that its prerogative power to do that thing is in abeyance. Whichever mode of expression be used, the result intended to be indicated is, I think, the same – namely, that after the statute has been passed, and while it is in force, the thing it empowers the Crown to do can thenceforth only be done by and under the statute, and subject to all the limitations, restrictions and conditions by it imposed, however unrestricted the Royal Prerogative may theretofore have been.”

86. The learned Advocate General has submitted that even assuming for the sake of argument that the notice was not very happily worded, then the same is a matter of procedure and can be cured by the Committee of Privileges itself. On the other hand, Mr.N.R.Elango has countered this submission contending that this cannot be permitted keeping in view the judgment of the Apex Court in the case of Mohinder Singh Gill and another (supra).

87. This issue as to whether the notice is defective or otherwise is to be considered in the background as to whether the bringing in and displaying of Gutkha sachets and photographs relating thereto were by themselves a breach of privilege or not, but the recital in the notice about the item being a prohibited item can be determined by this Court without prejudice to the powers and privileges of the Committee to cure its own defect.

88. Another argument has been advanced as being a clear breach of procedure and both malice in fact and malice in law, namely that the Speaker has exercised his power to make the reference suo motu in a predetermined way by making known his firm opinion that the conduct of all the petitioners was a clear breach of privilege. It is urged that the Speaker being the head of the House has already rendered a decision in his individual capacity and that is likely to prejudice the entire proceedings. The Speaker could not have extended his final opinion while making a reference and which, according to the petitioners, has been done on account of political loyalties to the Ruling Party. Thus, the power of reference has been exercised colourably and in the facts of the present case,

having done so, it also suffers not only from malice in fact, but also malice in law. To substantiate the said submission, Mr.Amit Anand Tiwari, learned counsel for the petitioner has pressed into service the judgment in the case of Gurdial Singh, (supra).

89. The counter affidavit filed on behalf of respondents 2 to 4 specifically recites that the Speaker had only expressed a prima facie view for the purpose of reference and it is not a predetermination of the issue. Even though from the language deployed by the Speaker there is a clear indication that the conduct of the petitioners amounted to a breach of privilege by bringing in and displaying Gutkha sachets and photographs of the shops selling Gutkha, but, in our considered opinion, there is no power with the Speaker to clothe himself with authority for taking a decision in the matter of breach of privilege as per the Rules indicated herein above. Even if his language and expression indicate some form of determination, they are just a reference to the facts which have led to the reference and not beyond that. The Committee of Privileges cannot take it to be a decision or an indication of an opinion so as to influence the minds of the Members of the Privilege Committee. The same is yet to be examined by the Privileges Committee and there can be no presumption that all the Members of the Privileges Committee would be influenced by any such indication of an opinion expressed by the Speaker. The Speaker himself appears to be considerate when it was announced by him that he would have accepted it, had the Members taken permission from him. We, therefore, find no reason to further delineate on this issue, without prejudice to the rights of the petitioners to agitate the same before the appropriate forum. Coming to the decision in the case of S.Balasubramanian (supra), the Full Bench has categorically noted that the Speaker of the House in that case had made a statement calling upon the Editor of the Journal to publish an apology on the front page in respect of the offending nature of the publication, which was considered to be a breach of privilege. Learned counsel for the petitioners, on the strength of such observations by the Full Bench, are attempting to draw a parallel with the statement rendered by the Speaker in the present case. It is true that the Speaker did promise to take action in the matter, but cumulatively his statements do not amount to a final pronouncement as was in the case of S.Balasubramanian (supra). This parallel therefore, in our opinion, cannot lead to the conclusion that the Speaker had already made up his mind to punish the petitioners. This distinctive feature, therefore, in the present case is not covered by the ratio of the decision in the case of S.Balasubramanian (supra).

90. It has been urged that the petitioners have been deprived of their opportunity to address the House as the incident was in full view of the House, therefore, denial of such opportunity results in violation of principles of natural justice. This argument also deserves rejection at this stage, in as much as Clause 46(4) of the Practice and Procedure Handbook is not a statutory rule, but even otherwise the petitioners still have the opportunity to contest this position before the Committee of Privileges, whereafter the matter will have to be placed before the House for consideration.

91. One of the other contentions that has been raised is that the Constitution of the Privileges Committee is itself a concern for doubting its bona fides, in as much as persons who are interested in the subject matter, including the Deputy Speaker and several other Members who have raised the issue are participants of the Privileges Committee. It is, therefore, contended that any action taken or report submitted by the Privileges Committee would be vitiated by mala fides. The stage of determination about its own constitution could not arrive and it is undisputed that such Committees are constituted annually. The Committee to which it was referred in the year 2017 has undergone changes and there are other Members as well. Learned counsel contends that this would be a case of continuing mala fides and, therefore, the very constitution of the Committee is bound to result in injustice.

92. We are not inclined to examine this contention at this stage, in as much as the said Committee has been constituted and reconstituted in the past three years and none of the Committees had the occasion to consider the issue before it on account of the interim orders that have been passed in favour of the petitioners. To construe and presume that the same mala fides continue today and the reconstitution of the Committees does not make any difference would be a premature exercise on our part to presume mala fides against the present constituted Committee of Privileges. Even otherwise, Rule 228 of the Legislative Assembly Rules takes care of this situation and in the event the proceedings are continued by the Committee of Privileges, it shall be open to the petitioners to raise such objections to be taken into account accordingly. In the said background, the issue of doctrine of necessity and the decisions in respect thereof need not be gone into.

93. The contention that has been vehemently argued by the learned counsel for the petitioners is that the entire action is actuated by mala fides that can be collectively gathered from the sequence of events after the demise of the Former Chief Minister, Ms.J.Jayalalithaa on 5.12.2016. It is urged that the Ruling Party suffered serious setbacks on account of its own

defections and withdrawal of support by its own members that led it to be reduced to a minority government, and in that atmosphere, in order to allay and dispel this doubt of survival of government and to prevent facing a trust motion, the Ruling Party with the help of the Speaker generated this breach of privilege motion in order to weaken the opposition by any means.

94. It is pointed out that on 5.12.2016, Mr.O.Panneerselvam, who is currently the Deputy Chief Minister, had been elected as the Chief Minister, after the demise of Ms.J.Jayalalithaa. On account of internal party differences, he resigned from the post of Chief Minister on 5.2.2017. Mrs.Sasikala Natarajan, who had been chosen by the AIADMK Party to be the next Chief Minister came to be convicted in the disproportionate assets case on 14.2.2017. The Ruling Party, therefore, was left in a quandary and the current Chief Minister, Mr.Edappadi K.Palaniswami, was sworn in on 15.2.2017. His government was put to the test of confidence on the floor of the House on 18.2.2017. Mr.O.Panneerselvam and 10 others voted against the motion of confidence. This second turmoil led to a petition being preferred before the Speaker under the Members of the Tamil Nadu Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986 seeking disqualification of 11 AIADMK MLAs on 20.3.2017.

95. It is during the continuance of the new government in the background above that on 24.3.2017, Mr.U.Mathivanan, an MLA of the DMK Party raised the issue of banned substances, including Gutkha, being freely available in the State of Tamil Nadu with the active participation of high officials and with allegations against a Minister. The prohibition against the manufacture, storage, transportation and sale of Gutkha was continued by the notification dated 23.5.2017. On 29.6.2017, the petitioner, Mr.M.K.Stalin, spoke about the income tax raids and investigation into large bribes that were allegedly transacted for facilitating Gutkha distribution in Tamil Nadu. On 8.7.2017, Income Tax authorities raided godowns, offices and residences of a Tamil Nadu based Pan Masala trader and manufacturer on charges of tax evasion of Rs.250 Crores. On 11.7.2017, a complaint was lodged by Mr.J.Anbazhagan, a DMK MLA, with the Central Bureau of Investigation and it is in this background that the petitioner, Mr.M.K.Stalin, made his speech protesting against the apathy of the Government in dealing with the matter on the floor of the House on 19.7.2017, when some sachets of Gutkha were displayed along with photographs of the shops selling such Gutkha in Tamil Nadu.

96. It is the contention of Mr.N.R.Elango, learned Senior Counsel that this entire chronology of events was being viewed as a threat to the survival of the government and he has then

relied on a chart given by him to demonstrate the fluctuation of the strength of the Ruling Party in the House, which came to be reduced on 22.8.2017, with 18 MLAs of the AIADMK Party writing to the Governor withdrawing support from the government headed by the present Chief Minister. This culminated in reducing the strength to 114 in the 234 strength Assembly, which was less than half the magic number of majority.

97. Mr.Amit Anand Tiwari, learned counsel for the petitioner contended that the background in which the privilege motion was moved was this political turmoil so as to cut down on the numbers of the Opposition in order to reduce the total strength of the House, so that the Ruling Party is able to demonstrate its majority in spite of failing numbers. He submits that these mala fides continued with the same situation continuing, and the minority government struggling to survive, as the disqualification by the Speaker of the 18 MLAs of the AIADMK Party was upheld by the High Court in a writ petition filed by them, by majority judgment of 2:1, as already narrated above.

98. The petitioners had already challenged the show cause notices impugned herein, where a stay order was passed on 7.9.2017. The party of the petitioners, namely, the DMK, also filed a writ petition seeking a direction for a trust vote for the Government to demonstrate that it survived, which petition is still pending.

99. The Deputy Speaker has filed a suit against the petitioner, Mr.M.K.Stalin, seeking compensation and damages in respect of these incidents and allegations against him. Apart from this, the Chief Whip of DMK Party, Mr.R.Sakkrapani, has filed W.P.(C) No.543 of 2020 before the Apex Court seeking a direction for the Speaker to dispose of the disqualification petition of the 11 AIADMK MLAs, including the present Deputy Chief Minister, Mr.O.Pannerselvam, that was moved on 20.3.2017. The Apex Court, on 8.7.2020, issued notice returnable in four weeks.

100. Mr.Tiwari, therefore, contends that the same issue which arose with regard to the heavy fluctuation and the reducing numbers of support to sustain the government in the House continues to be the worry of the Ruling Party and it is for this reason that this entire exercise of somehow or the other reducing the numbers of the DMK Party Members has been attempted by a recourse to a breach of privilege motion on a total non issue, where the Speaker has not played an impartial role and his predetermined intentions are also part of the malicious action. He, therefore, submits that it is both malice in law as well as in fact.

101. We have considered these submissions and we find that the political unrest caused due to the switching over of loyalties and walking over of members and their support is more of a vibrant part of Indian politics. It has legal consequences which are well known throughout all political circles and have been matters of legal determination for long in the constitutional courts, where such issues have been raised. The question is can such political maneuverings in a democratic setup, where a government survives on numbers, be said to be an act of malice, where a group of elected Members or an individual Member exercises his conscientious decision to support one party or the other, or to even withdraw from such proceedings.

102. The law of politics is not exactly a codified statutory law. It is only the consequences of such actions that have been regulated by statutory law. A political support in a vibrant democracy being either withdrawn or extended, or even by way of abstention, can be a matter of purely personal opinion depending upon one's own thinking, philosophy and political relationships. If a Member or a group of Members withdraw support or extend support or abstain from such proceedings in a democracy, where a government ordinarily survives by the rule of majority, can it be said that any such action on account of political or personal considerations be a malicious transaction, if it is done voluntarily, according to one's own belief, by exercising voting rights or abstention thereof inside the House?

103. To attribute malice to such a transaction and hold it to be a foundation for a notice of breach of privilege may be a difficult task, as a breach of privilege and its complaint has to be examined only within the meaning of the words privilege and its breach. To import political affiliations and maneuverings as the foundation of malice in a privilege motion can be at best an allegation, but, in our opinion, it is difficult to determine in these court proceedings that the notice which recites only the bringing in and exhibiting of a prohibited item inside the House was actuated by such malice. The initiation of the motion and the notice plainly and simply allege the issue being raised by the display of alleged prohibited items. It is correct that the incident on 19.7.2017 falls between a close proximity of all the incidents that have been narrated by the learned counsel for the petitioners, but merely because the incident falls in between, the notice itself, the consequences whereof are yet to be decided, cannot be conclusively and clinchingly said to be actuated by malice, unless it is found that the powers to initiate the privilege motion are a colourable exercise of power and arise out of some element of personal bias or revenge, so as to constitute malice. Political opposition and rivalry to either support or make

governments fall are a process of democracy, whereas a motion of breach of privilege is only to maintain the dignity of the House and uphold its high traditions in the conduct inside the House and to constitutionally protect its Members. We will say nothing further as it would not be appropriate to pronounce upon such an issue finally when the alleged breach may be examined by the Committee of Privileges. Even otherwise, in an appropriate case, such an issue may have to be examined on the touchstone of the political question doctrine vis-a-vis loyalties and confidence in matters of support or otherwise by Members of a legislative body in the formation of a government and the impact of legal provisions on such issues.

104. The learned Advocate General contended that this entire sequence of events had not been correctly stated, as the government continued to enjoy a majority confidence and at no stage was there any lack of numbers to support the government. We do not propose to enter into this issue of counting the numbers either in support or otherwise, as we decline to go into this issue of mala fides, being dependent upon political developments regarding the sustenance of government.

105. Our findings therefore may be summarized as follows:

(i) Privilege and breach of privilege is to be understood as historically laid down in the case of Keshav Singh (supra) and more elaborately explained in the case of Raja Ram Pal (supra) supplemented with paragraph 30 herein above.

(ii) There is no dispute on admitted facts and we have proceeded only to decide only a pure question of law that raises a question of jurisdictional error, as explained in paragraphs 49 to 62 herein above.

(iii) The question of propriety, impropriety or otherwise assessing the conduct of breach of privilege is within the powers of the House, as explained in paragraph 63 and other observations herein above.

(iv) The jurisdiction on the admitted facts of this case and the power of the Court to proceed to decide the matter is available under Article 226 of the Constitution of India on the principles laid down by the Apex Court and also on the principles of pragmatism and unreasonableness - vide paragraphs 64 to 76 and other observations herein above.

(v) The issue relating to breach of procedure including the curing of a defect in the notice and

allegations of mala fides have been discussed in paragraphs 77 to 87 herein above but we should not be presumed to have expressed any final opinion thereon.

106. Having considered all the submissions raised and in view of what has been stated herein above, our conclusions are:

- i. The issuance of the impugned notice of breach of privilege dated 28.8.2017, based on the incident dated 19.7.2017, suffers from a foundational error of assuming the conduct of the petitioners to be prohibited by the notification dated 23.5.2017, and we hold accordingly. The petitioners cannot be proceeded against on the strength of the impugned notices dated 28.8.2017 by treating their conduct on 19.7.2017 of displaying Gutkha sachets and photographs as being violative of any prohibitory law particularly the Notification dated 23.5.2017.
- ii. Our conclusion aforesaid is confined only to the interpretation of the notification dated 23.5.2017 vis-a-vis the specific conduct of the petitioners inside the House that was made the basis for the issuance of notice of breach of privilege and is not to be construed as an interpretation regarding a prosecution or trial of any offence before a competent forum arising out of the notification dated 23.5.2017.
- iii. We leave it open to the Committee of Privileges, if it so chooses, to deliberate upon the issue any further in case it still is of the opinion that any breach has been committed of the privileges of the House by the petitioners and in that event, the petitioners will be at liberty to raise all such objections that have been raised before us, or even otherwise available in law.

107. With the aforesaid observations, all the writ petitions are partly allowed and stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

sasi

To:

1.The Speaker,
Tamilnadu Legislative Assembly,
Fort St. George, Chennai 600 009.

2.The Secretary,
Tamilnadu Legislative Assembly,
Fort St. George, Chennai 600 009.

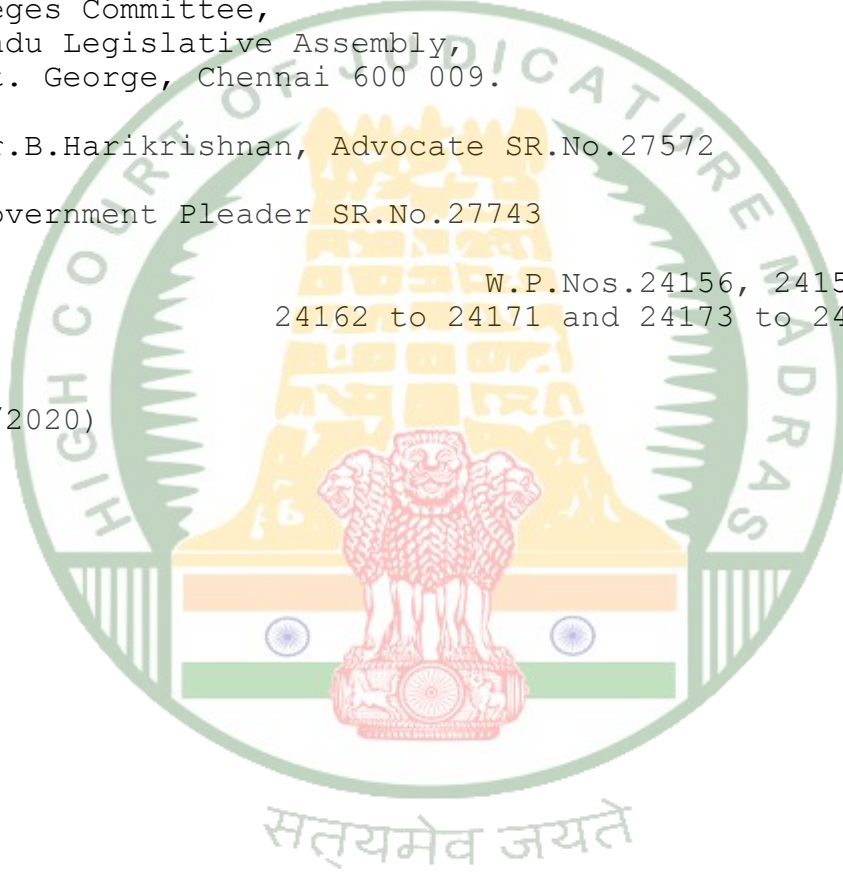
3.The Chairman,
Privileges Committee,
Tamilnadu Legislative Assembly,
Fort St. George, Chennai 600 009.

+2cc to Mr.B.Harikrishnan, Advocate SR.No.27572

+1cc to Government Pleader SR.No.27743

W.P.Nos.24156, 24157, 24159 to
24162 to 24171 and 24173 to 24176 of 2017

SVI (CO)
GMY (22/09/2020)



WEB COPY