

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2021

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.13189 to 13191, 13193, 13195, 13197, 13200,
13201, 13203, 13204, 13206, 13208, 13209, 13214 to 13216,
13219, 13220 and 13504 of 2020
& WMP Nos.16313 to 16316, 16320, 16322, 16324, 16326, 16328 to
16330, 16333, 16334, 16336, 16339, 16340 to 16342, 16993,
19777, 19799, 19804, 19805, 19810, 19814, 19817, 19819, 19821,
19825, 19827, 19830, 19831, 19838, 19854, 19855, 19857, 19858,
19947, 19952, 19953, 19958 to 19961, 19963, 19967 to 19970,
19972 to 19977 of 2020

1 M.K.STALIN ... PETITIONER in WP No.13189 of 2020
1 MA.SUBRAMANIAN ... PETITIONER in WP No.13190 of 2020
1 S.SUDHARSANAM ... PETITIONER in WP No.13191 of 2020
1 P.SIVAKUMAR @ THAYAGAM KAVI ... PETITIONER in WP No.13193 of 2020
1 A.R.R.SEENIVASAN ... PETITIONER in WP No.13195 of 2020
1 SABA RAJENDRAN ... PETITIONER in WP No.13197 of 2020
1 S. AMBEDKUMAR ... PETITIONER in WP No.13200 of 2020
1 P.KARTHIKEYAN ... PETITIONER in WP No.13201 of 2020
1 S.PUGAZHENDI ... PETITIONER in WP No.13203 of 2020
1 K.S.RAVICHANDRAN ... PETITIONER in WP No.13204 of 2020
1 P.K.SEKAR BABU ... PETITIONER in WP No.13206 of 2020
1 R.T.ARASU ... PETITIONER in WP No.13208 of 2020
1 M.P. GIRI ... PETITIONER in WP No.13209 of 2020
1 N.KARTHIK ... PETITIONER in WP No.13214 of 2020
1 S.THANGAPANDIAN ... PETITIONER in WP No.13215 of 2020

1 DR. GOVI CHEZHIAN ... PETITIONER in WP No.13216 of 2020
1 B.RANGANATHAN ... PETITIONER in WP No.13219 of 2020
1 P.N.P. INBASEKARAN ... PETITIONER in WP No.13220 of 2020
1 KU.KA.SELVAM ... PETITIONER in WP No.13504 of 2020

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. ...RR1 to 4(in all W.Ps)
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

Prayer in W.P.No.13189 of 2020, 13190, 13191, 13193, 13195, 13197, 13200, 13201, 13203, 13204, 13206, 13208, 13209, 13214 to 13216, 13219, 13220/2020 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records pertaining to the impugned Show Cause Notice No.10100/2017-9 SA.MA.PE.SAE (SA.MU.VA-3) dated 07.09.2020 issued by the second respondent, based on the reference dated 19.07.2017 in Serial No.9 of the Tamil Nadu Legislative Assembly Bulletin No.37 dated 19.07.2017 made by the first respondent to the third respondent, and to quash the same.

Prayer in W.P.No.13504/2020:

Writ of Certiorari calling for the records of the Respondents culminating in the impugned notice Ref No. 10100/2017-9, Sa.Ma.Pa(Sa.Mu.Va-3) dated 07.09.2020 issued by the 2nd Respondent quash the same.

For Petitioners in : Mr.R.Shanmugasundaram,
all these WPs Senior Counsel for Mr.V.Arun

Mr.Amit Anand Tiwari, assisted by
Mr.Mahesh Sahasranaman
Ms.Devyani Gupta for Mr.V.Arun

Mr.N.R.Elango, Senior Counsel in all W.Ps

Mr.B.Harikrishnan in W.P.No.13504/2020

For Respondents :Mr.Vijay Narayan, Advocate General
in all these Wps assisted by Mr.V.Jayaprakash Narayanan,
Government Pleader for R2

Mr.AL.Somayaji, Senior Counsel
for Mr.K.Gowtham Kumar for R3

No Appearance for RR 1 and 4

C O M M O N O R D E R

Whether the question of herd immunity will apply only to COVID-19 or even for the Members of the Legislative Assembly, which has cropped up at the right time.

2. The privilege is not knowing that you are hearing others and not listening, when they tell you – Dr.DaShanne Stokes.

3. Nineteen of the Members of the Tamilnadu Legislative Assembly belonging to the opposition party, including the Leader of the Opposition, have challenged the Show Cause Notices dated 07.09.2020 (for the sake of brevity, "the SCN") on the issue of breach of privilege calling upon them to furnish explanation. This is the second SCN issued to the petitioners by the second respondent on the same cause of action.

4. Earlier a batch of writ petitions in W.P.Nos.24156 to 24176 of 2017 were filed seeking to quash the notices dated 28.08.2017 issued by the very same second respondent as per the directions of the third respondent, on the basis of the reference made by the first respondent, with respect to the alleged incident that took place on 19.07.2017, wherein, the Hon'ble First Division Bench of this Court vide order dated 25.08.2020, inter alia, held as follows :

"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.

4.1. On the strength of Clause (iii) supra, the present impugned SCN dated 07.09.2020 have been issued. The said notices also called upon the petitioners to provide written explanation on or before 14.09.2020.

5. Based on the strength of the decision of the Hon'ble Supreme Court in Rajaram Pal V. Hon'ble Speaker, Lok Sabha, (2007) 3 SCC 184, the petitioners have moved this Court under Article 226 of the Constitution contending that the said notices are amenable to judicial review.

6. The SCN issued by the Privileges Committee was on the premise that the Gutkha, which is one of the prohibited items as per the Gazette Notification dated 23.05.2017, was brought into the Assembly by the petitioners, which amounted to breach of privilege.

7. Counter-affidavits were filed on behalf of the third respondent, wherein, it was stated that the third respondent had

deliberated the matter and on the directions of the third respondent, notices were issued to the petitioners. It is also specifically stated that by referring to paragraphs 71 and 106 (iii) of the order passed by the Hon'ble Division Bench of this Court and after deliberations in the meeting held on 07.09.2020, based on the decision taken by the Committee, notices were issued to the petitioners calling upon them to give reply on or before 14.09.2020. As it is alleged by the petitioners that though the notices were dated 07.09.2020, they were received by them only on 10.09.2020 asking them to give reply on or before 14.09.2020, time to file their reply was extended till 24.09.2020. Though it is further alleged by the petitioners that the issuance of the SCN amounts to re-agitation of the issues, which were finally concluded by the order of the Division Bench, it is stated by the third and fourth respondents that it is only on the strength of the directions given by the Hon'ble Division Bench, the instant SCN had been issued.

8. Heard Mr.R.Shanmugasundaram, Mr.N.R.Elango, learned Senior Counsels and Mr.Amit Anand Tiwari and Mr.B.Harikrishnan learned counsel appearing on behalf of the petitioners ; Mr.Vijay Narayan, learned Advocate General appearing on behalf of the second respondent; and Mr.AL.Somayaji, learned Senior Counsel appearing for the third respondent. In spite of service, the fourth respondent did not chose to appear through any counsel before this Court in his individual capacity and he chooses to appear in his official capacity as the third respondent alone. The endorsement made by the Registry shows that the first respondent refused to receive the notice, from which, it is clear that the notice is deemed to have been served on the said respondent.

9. At the outset, it is to be stated that Mr.AL.Somayaji, learned Senior Counsel appearing on behalf of the third respondent contended that the writ petitions are premature at this stage as what is challenged is only the SCN. The learned Senior Counsel placed reliance on the following decisions :

- (i).Pandit M.S.M.Sharma V. Shri Sri Krishna Sinha, AIR 1960 SC 1186 (Para 10) ;
- (ii).C.Subramaniam V. The Hon'ble Speaker, AIR 1969 Mad 10 ;
- (iii).L.N.Phukan and others V. Mohendra Mohan Choudhury and Others, AIR 1965 Assam and Nagaland 74 ;
- (iv).A.Kamaraj V. The Secretary, Assembly Secretariat, Tamil Nadu Legislative Assembly, 2012 (6) CTC 593 ; and
- (v).Ratna Gupta V. The Secretary, Rajasthan Legislative Assembly Secretariat, Jaipur and others, 2012 (2) WLN 488;

9.1. The learned Advocate General, besides making a similar submission, pointedly argued that the petitioners shall be directed to give their written explanation before the Committee,

as the Committee would then place the explanation and its report before the Assembly, as the Committee itself is not the final authority to take any action against the petitioners.

10. It is pertinent to note that the same objection was raised before the Division Bench as to whether the validity of the SCN itself can be challenged, as it is the notices that have been issued and the Committee of Privileges was yet to deliberate on the same. The decisions cited above by the learned Senior Counsel were considered threadbare by the Hon'ble Division Bench from paragraphs 40 to 50 and it was held in paragraph 51 as follows :

"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."

11. Therefore, the said question of maintainability on the basis of the premature challenge of the SCN need not be gone into by this Court, at this stage, as in the earlier round the very same grounds were raised, which were dealt with by the Hon'ble Division Bench, including the question of maintainability and the same cannot be re-agitated.

12. The other point that has to be determined is whether the present impugned notices dated 07.09.2020 issued by the second respondent suffer from any jurisdictional illegality ?

13. Mr.R.Shanmugasundaram, learned Senior Counsel, who appeared on behalf of the petitioner in W.P.No.13189 of 2020 submitted that the impugned notice suffers from serious error,

as already the grounds on which the present notice has been issued, are decided by the Hon'ble Division Bench of this Court. At this juncture, it is apt to reproduce the impugned SCN dated 07.09.2020 as hereunder :

"Confidential : Very Urgent
Via Speed Post

Chief Secretariat,
Chennai-600 009.

SECRETARIAT OF THE LEGISLATIVE ASSEMBLY

SHOW CAUSE NOTICE NO.10100/2017-9 SA.MA.PE.SAE
(SA.MU.VA-3) 07.09.2020

Sarwari, Avani 22

Thiruvalluvar Year, 2051

Dear Sir,

Sub : Tamil Nadu Legislative Assembly - Issue of Breach of Privileges - Request for Explanation - Related matter.

It is informed that as per the Tamil Nadu Legislative Assembly Rules, for the purpose of reporting on the issue relating to the acts of the Leader of the Opposition and few DMK Members of the Legislative Assembly in the premises of the Legislative Assembly on 19.07.2017, the Speaker of the House had referred the matter to the Privileges Committee. (Minutes of the Session of the Assembly is attached).

On the meeting of the Privileges Committee held on 07.09.2020, the members of the Privileges Committee had at length discussed the Para Nos.71 and 106(iii) of the Judgment of the Madras High Court in Writ Petition No.24156, 24157, 24159-24171 and 24173-24176/2017 and had further discussed the further steps that need to be taken,

- i. The displaying of Gutkha Packets in the Assembly without the permission of the Speaker of the House ;
- ii. The disturbance caused to the Assembly proceedings ;
- iii. Setting a bad precedent ;
- iv. Causing disorder and bringing disrepute to the proceedings of the Assembly.

The Privileges Committee for the abovesaid reasons and for the purpose of protecting the Legislative Assembly's Discipline, Value and uniqueness, has decided to initiate action for breach of Privilege against the following Members of the Legislative Assembly, as follows:

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."

15. A cursory and comparative reading of both the notices would go to show that the cause of action for both arose only on 19.07.2017 regarding the acts of the petitioners in the Assembly, which amounts to the alleged breach of privilege. The notices dated 28.08.2017 referred to the act of bringing "prohibited items" and exhibiting them in the Assembly on 19.07.2017 as breach of privilege, whereas, the present SCN were issued for the purpose of protecting the Legislative Assembly's Discipline, Value and uniqueness.

16. Mr.N.R.Elango, learned Senior Counsel appearing for most of the petitioners argued that when it is only breach of privilege, for which, the notices were issued, whether the Committee can consider the discipline, value and uniqueness as breach of privilege. He referred to three kinds of breach of privileges as (i) by a Member of the House inside the House ; (ii) outside the House by a Member ; and (iii) breach by a third party. In the instant case, the allegation is by a group of Legislators belonging to the Opposition party. Article 194 protects freedom of speech within the legislature, subject to the provisions of the Constitution, rules and standing orders regulating the procedure of the Legislature and it sets out the scheme of powers and privileges which has already been discussed in detail by the Division Bench in paragraph 26 of the judgment. It was contended by the learned Senior Counsel that with no codified laws for what constitute the breach of privilege offence or for punishment, the impugned SCN should not have been issued. And also in the absence of such regulations, right of a member to address the House on an issue of public importance cannot be curtailed. This aspect has been dealt with by Hon'ble Division Bench in paragraph 30 of the judgment dated 25.08.2020, wherein, it was held as follows :

"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 uncodified in spite of the need to do so, as indicated in the Constitution itself."

17. The present impugned notices have been issued to the petitioners for displaying the Gutkha packets in the Assembly without the permission of the Hon'ble Speaker of the House. Whether the display made by the petitioners was right or not was already discussed by the Hon'ble Division Bench in the light of the Gazette Notification dated 23.05.2017, issued by the Commissioner of Food Safety and Drug Administration, Tamil Nadu, which prohibited the manufacture, storage, transport, distribution and sale of Gutkha, as it is injurious to human-life on consumption. The argument that the words "possession, consumption and display" are not mentioned in the said notification was also dealt with by the Hon'ble Division Bench elaborately. Regarding the conduct of the petitioners of displaying the Gutkha sachets, whether can be treated as being prohibited from exhibition in the House in terms of the Gazette notification dated 23.05.2017, is not a question of procedural irregularity, but is an allegation of substantive illegality where the petitioners were alleged to have acted and conducted themselves by such act that can be termed as prohibited in law.

18. The Division Bench had categorically held that Gutkha was a prohibited item as defined in the notification dated 23.05.2017, but in the instant case, no element of such intended act, which would breach the said notification has been established. While so, the only advancement made in the present impugned notices is that the permission of the Hon'ble Speaker of the House had not been obtained. In this regard, it would be worthwhile to refer to the Minutes of the Proceedings of the Tamil Nadu Legislative Assembly dated 19.07.2017, wherein, when

Gutkha was displayed by the petitioners in the Assembly, what was stated by the Hon'ble Speaker was recorded in the following manner :

"மாண்புமிகு பேரவைத் தலைவர் . திராவிட முன்னேற்றக் கழகத்தைச் சேர்ந்த மாண்புமிகு எதிர்க்கட்சித் தலைவர் அவர்கள் பேசுகின்றபோது, தடை செய்யப்பட்ட பொருளை என்னிடம் முறையான அனுமதியைப் பெறாமல் அவரும் மற்ற உறுப்பினர்களும் இன்றைக்கு அவையில் கொண்டுவந்து காண்பித்திருக்கின்ற காரணத்தால், இதை அவை உரிமை மீறிய செயலாக நான் கருதுகிறேன். (குறுக்கீடுகள்) ஆகவே, இது சம்பந்தமாக விசாரித்து, தக்க நடவடிக்கை எடுப்பதற்காக அவை உரிமைக் குழுவிற்கு அனுப்பி வைக்கிறேன் என்பதைத் தெரிவித்துக்கொள்கிறேன்."

19. The first respondent, therefore, had mentioned that the petitioners ought to have obtained permission from him before displaying the Gutkha sachets in the Assembly, and he did not say that the display itself was not prohibited. As mentioned supra, when there are no clearly laid out rules and what constitutes breach of privilege and what punishment it entails, it could not be stated that the petitioners ought to have obtained permission from the first respondent.

20. Be that as it may, the earlier notices only mentioned about the act of the petitioners bringing "prohibited items" and exhibiting them in the Assembly on 19.07.2017 as breach of privilege, whereas, the instant SCN specifically mention that the Gutkha sachets were displayed in the Assembly without the permission of the Hon'ble Speaker of the House. From the Minutes of the Proceedings quoted above, even on the very same date of the incident, the first respondent has specifically mentioned that the display of the banned items ought to have been brought in, only with the permission of the Hon'ble Speaker. While so, there is no convincing reason forthcoming from the respondents as to why the earlier notices did not mention that the breach of privilege was on account of not obtaining prior permission from the Hon'ble Speaker.

21. It is pointedly argued on behalf of the petitioners that the impugned notice dated 07.09.2020 travelled beyond the scope of the reference made by the first respondent on 19.07.2017. When the cause of action for the issuance of the notices for breach of privilege is one and the same, whatever is the breach, that should have been mentioned at the institution itself and the same cannot be improvised upon subsequently. As stated above, the present notice has added the phrase "without the permission of the Speaker" to include the act of the petitioners as breach of privilege for the purpose of issuing the fresh notices. It is useful to advert to the Bulletin No.37 of the Tamilnadu Legislative Assembly, dated 19.07.2017, in this regard :

"9. உரிமை மீறல்

தடைசெய்யப்பட்ட பொருட்களை சட்டமன்றப் பேரவையில் கொண்டு வந்து காண்பித்திருக்கின்ற காரணத்தால், அது அவை மீறிய செயல் என்பதால் தக்க நடவடிக்கை எடுப்பதற்காக இப்பிரச்சனை பேரவை விதிகளின்படி அவை உரிமைக் குழுவிற்கு அனுப்பி வைப்பதாக மாண்புமிகு பேரவைத் தலைவர் அவர்கள் பேரவையில் அறிவித்தார்"

The said bulletin also specifically recorded that breach of privilege is for bringing the prohibited items inside the Assembly and not for bringing the same without the permission of the Hon'ble Speaker.

22. The Division Bench has already condoned the act of bringing in the prohibited items and exhibiting in the House interpreting the notification dated 23.05.2017 by holding that the purpose for which it was displayed was to register a protest to highlight the alleged failure to enforce the notification. Such an expression of protest by virtue of the notification dated 23.05.2017 cannot be said to be prohibited under the said notification. It is relevant to extract the following portion from paragraph 71 of the judgment of the Division Bench of this Court :

71. 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."

23. Admittedly, the alleged breach of privilege of not obtaining permission from the first respondent precedes the act

of displaying or exhibiting the banned products inside the House. When the second act of displaying is already held to be an act not prohibited under the notification, the required permission, when not codified or mentioned anywhere does not arise. Thus, the Privilege Committee cannot now under the scope of reference on its own to include the alleged permission, disturbance, etc., caused in the Assembly.

24. Though the Division Bench, while dealing with the earlier Show Cause Notices, had given liberty to deliberate upon the dispute any further in case the Committee of Privileges is of the opinion that any breach has been committed of the privileges of the House by the petitioners, the above directions or observations cannot be taken advantage of by the Committee of Privileges to expand the scope of the reference to issue the SCN.

25. Every person has a right to fair trial by a competent and impartial Tribunal, whereas, in the breach of privilege laws, the Members of the Legislature became Judges in their own cause raising concerns of conflict of interest and violating basic principles of fair trial. One of such actions is now before this Court for the judicial review of legislative action. When it comes to administrative law, judicial review of administrative action becomes vital part of it.

26. Any administrative authority should have discretionary powers to resolve real-time issues. None the less the decisions taken by exercising these discretionary powers must be reasonable. When there is no reasonableness, it leads to the challenge of the said discretion. Therefore, reasonableness should be transparent and consistent. Now the question is whether the administrative action of the respondents, who are the Legislators, is within the limits. Though the Court should not substitute the opinion of the administrative authority with that of their own, is bound to look for a failure in the exercise of the power of discretion; whether there is any illegality or procedural impropriety. However, the Courts is concerned with the manner in which the decision has been passed. It means that the second respondent will be able to make the same decision again in exercise of the discretionary power vested with it. Such decision should not be arbitrary and inconsistent with Article 19 of the Constitution of India.

27. Mr.N.R.Elango, learned Senior Counsel also emphasized that the impugned notices suffer from malafides, as its primary objection is to prevent the petitioner and other legislators belonging to the opposition party from attending the upcoming assembly session. It would be relevant to advert to the apprehensions of the petitioners in this regard, as stated in

grounds z and aa of the affidavit filed in support of W.P.No.13189 of 2020 :

"It is submitted that the present Notice dated 07.09.2020 is without jurisdiction as the present proceedings are void ab initio stand vitiated due to the substantive illegality arising from the bias and prejudice of the respondents. It is important to note that firstly, respondent No.4 V.Jayaraman, who is the Chairman of the Privileges Committee and the Hon'ble Deputy Speaker, has a personal bias against the petitioner herein, and the petitioner has been facing a defamation case in C.S.No.124 of 2020 instituted by respondent No.4 herein. There is clearly a likelihood of bias in the actions of the respondent No.4 and his position as the Chairman of the Privileges Committee vitiates all proceedings initiated against the petitioner herein.

It is further submitted that the petitioner has not been provided with the Minutes of the Meeting of the Privileges Committee on 07.09.2020 and it is verily believed that meeting of the Privileges Committee dated 07.09.2020 was attended by Mr.O.Panneerselvam, the Deputy Chief Minister. The presence Mr.O.Panneerselvam also vitiates these proceedings as there is a presumption of bias that can be drawn against the Leader of the Opposition and the Opposition Party MLAs. It is pertinent to note that number of cases have been filed against Mr.O.Panneerselvam by the DMK Chief whip seeking his disqualification from Assembly on the grounds of defection."

28. It was submitted that the fourth respondent Mr.V.Jayaraman, who is the Chairman of the Privileges Committee and the Hon'ble Deputy Speaker, has personal bias against the first petitioner and the said petitioner has been facing defamation case in C.S.No.124 of 2020, as has been instituted by the fourth respondent. Therefore, it is apprehended that there will be likelihood of bias in the action of the fourth respondent and his position as the Chairman of the Privilege Committee would vitiate all the proceedings initiated against the petitioner in W.P. No.13819 of 2020 and also the other petitioners, who are his partymen.

29. Mr.Amit Anand Tiwari, learned counsel appearing on behalf of the petitioner in W.P.No.13204 of 2020 urged that as held in the judgment of the Division Bench of this Court, the present impugned notices also suffer from foundational error, as the mandatory provisions are not followed. It is also contended that the Opposition Party, to which the petitioners belong to,

has filed eight cases against the Hon'ble Deputy Chief Minister and other members seeking their disqualification, and hence, when the Hon'ble Deputy Chief Minister had a direct substantial interest as the Leader of the House and Ex-officio Member of the Privilege Committee, the issuance of SCN is biased. In support of their submissions, they relied upon the relevant provisions contained in the Tamil Nadu Legislative Assembly Rules.

30. It is apt to refer to Rule 228 of the said Rules, which takes forward the cause of concern of the petitioners in this regard :

"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."

As stated above, the fourth respondent and the Leader of the House, who also holds the post of Hon'ble Deputy Chief Minister, are the Chairman and member of the Privilege Committee respectively, and according to the claim of the petitioners, they have personal and direct interest, that may prejudicially affect the consideration of the matter of breach of privilege in the instant case and thus, the matter ought to have been referred to the Speaker. The contention of the petitioners in this regard cannot be brushed aside lightly.

31. No doubt, it is true that the legislative house collectively and its members individually enjoy certain privileges, i.e., certain rights and immunities, without which the House and its members cannot discharge the functions entrusted to them by the Constitution. The freedom, authority and the dignity of the House and its members are safeguarded by these principles. The alleged breach of privilege is referred by the House to the Committee of Privileges for examination. The Minutes of the Proceedings of the Tamilnadu Legislative Assembly dated 19.07.2017 has recorded that the petitioners had displayed the banned items inside the House, for which, the Hon'ble Chief Minister had stated that if the banned items are available at any particular place, it would have been appropriate to give a complaint before the appropriate authority, including the

police, and the Leader of the Opposition ought not to have brought it inside the House and exhibited the same. In response, the first respondent - Hon'ble Speaker also stated that he would take appropriate action for not obtaining his permission before bringing the banned items inside the House. The Hon'ble Minister for Fisheries and Personnel and Administrative Reforms ("Hon'ble Minister for Fisheries", for short) specifically mentioned that the petitioners had brought into the House prohibited items and exhibited the same, which have been recorded in the Cameras and requested the Hon'ble Speaker to take action against those who have displayed the prohibited items. Subsequent to the said request of the Hon'ble Minister for Fisheries, the Hon'ble Speaker had answered that appropriate action would be taken against the members including the Leader of the Opposition for bringing the banned items inside the Assembly without the permission, which amounted to breach of privilege.

32. In the light of the above recordings in the form of Minutes of the Proceedings, it would be appropriate to advert to the Rule 219 of the Tamil Nadu Legislative Assembly Rules, which reads as follows :

"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."

In terms of the above rule, the Hon'ble Minister for Fisheries had requested the Hon'ble Speaker to take action against the petitioners for having committed breach of privilege.

33. Rule 223 states that once consent is given by the Hon'ble Speaker holding that the matter proposed to be discussed warrant interference of the House, he may at his discretion call the Member concerned to make a short statement relevant thereto. However, the provisos to Rule 223 contemplates affording an opportunity to the Member to explain briefly why the matter requires intervention of the House and also to the Member against whom, the matter is sought to be raised by the Member. However, in the case of the petitioners, Rule 223 has not been followed and no opportunity was afforded to the petitioners.

34. Rule 224 empowers the Hon'ble Speaker to refuse his consent and if so, the same would be communicated to the member concerned and that the matter shall not be raised in the House in any form thereafter. However, if the Hon'ble Speaker holds that the matter raised affects the privilege or amounts to a contempt of the House and requires the intervention of the House, in terms of Rule 225, he allows the motion made by any Member to be referred to the Committee of privileges or in the alternative that it be dealt with by the House itself.

35. It is also relevant to note that Rule 226 of the Tamil Nadu Legislative Assembly Rules empowers the Hon'ble Speaker to suo motu refer any question of privilege to the Committee for examination and the said provision is reproduced hereunder :

"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."

A reading of the above said provision makes it crystal clear that the Hon'ble Speaker has the suo motu power to refer any question of privilege to the Committee for examination, investigation and report. However, a conjoint reading of the Minutes of the Proceedings of the Tamilnadu Legislative Assembly dated 19.07.2017 and the Bulletin No.37 of even date issued by the second respondent recording the business proceedings of the Assembly for that particular date would go to show that no such power was exercised by the Hon'ble Speaker, while referring the question to the Privilege Committee. There is no other piece of material placed before this Court to show that the question was referred to the Committee by the Hon'ble Speaker by virtue of Rule 226. The first respondent refused to receive the notices served on him in these writ petitions and he is not before this Court to explain the facts. The counter-affidavit was filed by the third respondent and the second respondent did not file any counter-affidavit explaining neither the stand of the first respondent nor his own stand. In the absence of such material to show that the reference was made under Rule 226 in exercise of suo motu power, it has to be stated that the above provisions contained in the Tamil Nadu Assembly Rules ought to have been complied with by the respondents, which they failed in the instant case. The non-compliance of these Rules vitiates the impugned notices and on the said ground also, the same are liable to be quashed.

36. It is argued on behalf of the petitioners that the Rules empower the Committee and the Hon'ble Speaker to deal with the specific matter of recent occurrence and the subject incident having been taken place as early as on 19.07.2017, there is no power vested with them to proceed with the matter. Having regard to the facts and circumstances of the case and the petitioners having obtained interim orders from this Court and on the strength of the orders passed by the Division Bench, the alleged SCN had been issued, the said contention cannot be accepted by this Court.

37. However, the inevitable conclusion of the foregoing discussion would be that the edifice of the impugned notices has to fall and these writ petitions deserve to be allowed.

38. Accordingly, the writ petitions are allowed and the impugned notices (SCN) dated 07.09.2020 are set aside. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

39. Before parting with this matter, this Court is reminded the following words of Prof. Avram Noam Chomsky, an American Philosopher, "the more privilege you have, the more opportunity you have. The more opportunity you have, the more responsibility you have". Tamil Poet and Philosopher Thiruvalluvar, about 2000 years ago said, :

"அவைஅறிந்து ஆராய்ந்து சொல்லுக சொல்லின்

தொகைஅறிந்த தூய்மை யவர்."

which means,

"Those with pure mind and studied eloquence
Should use words that suit the audience."

In other words, "Men of clear mind and powerful speech should use words that suit the audience." Not only the proceedings of the Assembly has to commence with one couplet of Thirukural everyday, the Legislators also should follow the Thirukural in their day-to-day life inside and outside the Assembly.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gg
To

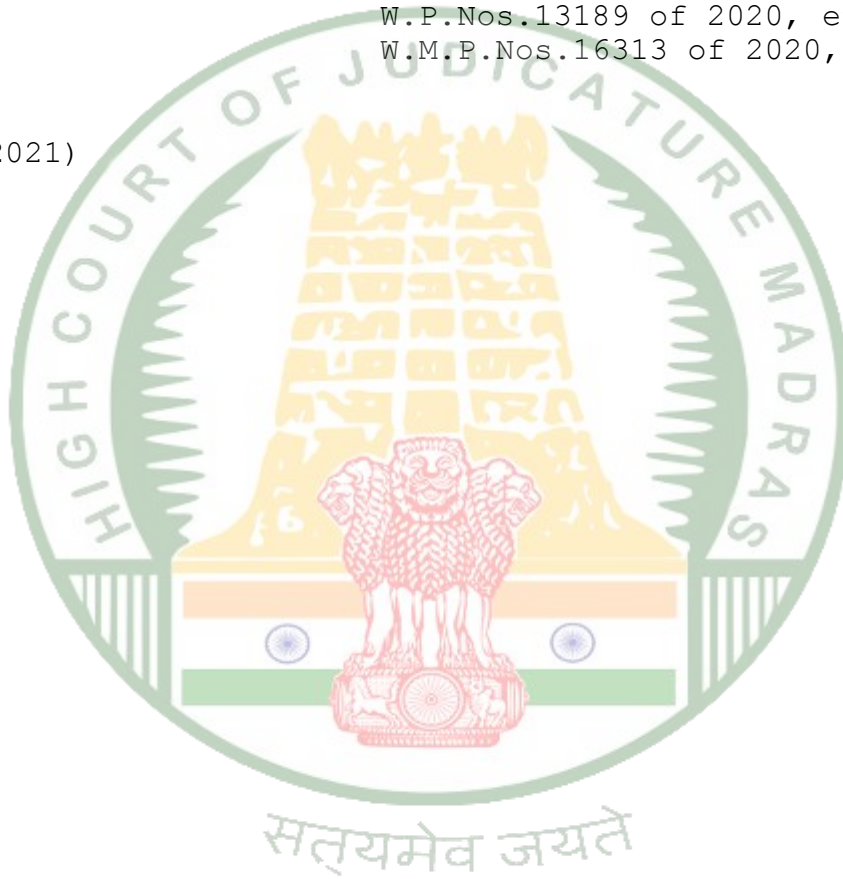
1. The Speaker,
Tamilnadu Legislative Assembly,
Fort St. George,
Chennai-600 009.
2. The Secretary,
Tamilnadu Legislative Assembly,
Fort St. George,
Chennai-600 009.

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

+2 Ccs to Mr.K. Gowtham Kumar, Advocate sr 7903.
+1 CC to The Government Pleader sr 7682.
+2 Ccs to Mr.V. Arun, Advocate sr 8666.

W.P.Nos.13189 of 2020, etc. batch
W.M.P.Nos.16313 of 2020, etc. batch

RV(CO)
SP(12/03/2021)



WEB COPY