REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.797 OF 2021

ASHISH SHELAR & ORS. ...PETITIONERS

VERSUS

THE MAHARASHTRA LEGISLATIVE ASSEMBLY & ANR. ...RESPONDENTS

WITH

WRIT PETITION (CIVIL) NO.807 OF 2021

WRIT PETITION (CIVIL) NO.800 OF 2021

AND

WRIT PETITION (CIVIL) NO.808 OF 2021

JUDGMENT

A.M. KHANWILKAR, J.

1. The petitioners have been duly elected as members of the current Maharashtra Legislative Assembly (2019-2024). They got elected from different constituencies in the State of Maharashtra. They belong to the Bharatiya Janata Party[1], the principal Opposition Party in the Maharashtra Legislative

1 for short, "BJP"

Assembly. The Ruling Party is a coalition between the Shiv Sena, the Nationalist Congress Party (NCP) and the Indian National Congress (INC) christened as "Maha Vikas Aghadi".

2. This *lis* emanates from the events as unfolded during the Monsoon Session of the Maharashtra Legislative Assembly on 5.7.2021. The proceedings of the House witnessed heated exchanges between the members of the Opposition Party and the Ruling Party due to an impression formed by the former that the business of the House was being conducted in unilateral manner, with conscious and engineered effort to suppress voice of the Opposition Party. In that, even the Leader of Opposition was denied an opportunity to speak on a crucial motion under consideration. At the relevant time, the House was presided over by the Chairman nominated under Rule 8 of the Maharashtra Legislative Assembly Rules[2], who according to the petitioners, denied opportunity to the Opposition Party to speak including to the Leader of Opposition.

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2 for short, "Rules"

3. It is alleged that in the meeting of the Business Advisory Committee, which preceded the actual Assembly Session, there was a concerted effort on behalf of the members of the Ruling Party to cut short the Assembly Session for a period of two days especially when the State was facing unprecedented situation owing to pandemic, which needed elaborate deliberation in the House. The concerted effort was to strip of all legislative tools available to the Opposition Party so as to make sure that voice of opposition is muffled and suppressed.

4. The Chair of the Speaker of the House was vacant at the relevant time due to stepping down by the incumbent. The election for appointing a new Speaker of the Assembly was yet to be conducted. As per Rule 8 of the Rules, in such a situation other nominated member of the House had to preside on 5.7.2021. As aforesaid, a general feeling had developed amongst the members of the Opposition Party that the business of the House was not being transacted in congenial manner and they were prevented from raising important questions and express their views on matters of public importance. To wit, when the Minister was moving a

resolution in relation to the empirical data pertaining to OBC, the Leader of Opposition wanted to object to the same. However, he was denied that opportunity. That eventually led to heated exchanges between the members of both sides and consequently, the House was adjourned.

5. Thereafter, some of the members of the Opposition went to meet the Deputy Speaker in his chamber to vent out their grievance regarding the unfair manner of conducting proceedings by the nominated Chairman. At that time, some members of the Ruling Party (Shiv Sena) arrived and engaged in heated exchanges. When the House resumed, the nominated Chairman referred to the fact that some members of the Shiv Sena were present in the chamber and involved in heated exchanges, but no action was being taken against them as both the sections had apologised to each other. According to the petitioners, when the House resumed, by way of courtesy a sincere apology was graciously tendered by the Leader of Opposition to the Chairman for the earlier incident while adverting to the fact that none of the MLAs belonging to the Opposition Party (BJP) including the

petitioners herein had abused the Chairman. Soon thereafter, to the utter surprise of the petitioners (and other members of the Opposition Parties), the Minister for Parliamentary Affairs moved a resolution for initiating action against 12 MLAs of the BJP for having committed contempt of the House. That motion was tabled in the House and the Chairman was called upon to do the needful. The Chairman then called upon the House to pass the said resolution. The House in turn passed that resolution by majority votes after it was put to vote at 14:40 hours on 5.7.2021. The same reads thus:

> "P.H.: Contempt of the House by objectionable behavior
>
> M.H.: Resolution of Minister for Parliamentary Affairs regarding suspension of M.L.A.s for Contempt of the House due to objectionable behavior.
>
> 1) Dr. Sanjay Kute,
> 2) Adv. Ashish Shelar,
> 3) Shri Abhimanyu Pawar
> 4) Shri Girish Mahajan
> 5) Shri Atul Bhatkhalkar
> 6) Adv. Parag Alavani,
> 7) Shri Harish Pimple
> 8) Shri Ram Satpute,
> 9) Shri Jaikumar Rawal,
> 10) Shri Yogesh Sagar,
> 11) Shri Narayan Kuche,
> 12) Shri Kritikumar @ Bunty Bhangdiya, M.L.A.

Adv. Anil Parab (Minister for Parliamentary Affairs): Hon'ble Speaker, I wish to move the following resolution with your kind permission.

"On 5th July 2021 when the business of the House was being conducted, Hon'ble M.L.As Dr. Sanjay Kute, Adv. Ashish Shelar, Sarvashree Abhimanyu Pawar, Girish Mahajan, Atul Bhatkhalkar, Adv. Parag Alvani, Sarvashree Harish Pimple, Ram Satpute, Jaikumar Rawal, Yogesh Sagar, Narayan Kuche, Kirtikumar @ Bunty Bhangdia misbehaved in the House, addressed the Chairman in the Speaker's Chair unparliamentary language, tried to take the mike and Rajdand, despite repeated warnings, all these members misbehaved in the chamber of the Hon'ble Speaker even after the House was adjourned and abused and manhandled the Chairman in the Speaker's Chair. Due to the indisciplined and unbecoming behavior resulting in maligning the dignity of the House, this House resolves to suspend the membership of Sarvashree Dr. Sanjay Kute, Adv. Ashish Shelar, Sarvashree Abhimanyu Pawar, Girish Mahajan, Atul Bhatkhalkar, Adv. Parag Alvani, Sarvashree Harish Pimple, Ram Satpute, Jaikumar Rawal, Yogesh Sagar, Narayan Kuche, Kirtikumar @ Bunty Bhangdia for a period of one year. Similarly, during the period of suspension they may be restrained from entering into the premises of Vidhan Bhawan at Mumbai and Nagpur."

Hon'ble Speaker, I request the House to pass this resolution.

Resolution has been tabled.

Chairman in the Speaker's Chair: Now I put this resolution to vote.

Resolution has been passed after putting it to vote."

6. According to the petitioners, the Leader of Opposition thereafter wrote four letters to the Deputy Speaker on 7.7.2021 for furnishing relevant information including CCTV

footage, video recording of the entire proceedings and a copy of the verbatim proceedings of the record of the Legislative Assembly dated 5.7.2021 and 6.7.2021. Thereafter, the petitioners also sent letters to the Deputy Speaker requesting him to furnish relevant material of the proceedings including recording of the proceedings in the House dated 5.7.2021 and 6.7.2021.

7. Eventually, on 22.7.2021, the petitioners approached this Court by way of these writ petitions under Article 32 of the Constitution of India, for issuing appropriate writ, order or direction so as to quash and set aside the impugned resolution dated 5.7.2021 passed by the Maharashtra Legislative Assembly being unconstitutional and grossly illegal and for enforcement of their fundamental rights as guaranteed under Articles 14 and 21 of the Constitution.

8. It is urged that the impugned resolution dated 5.7.2021 has been passed in undue haste and is politically motivated. It is primarily intended to adversely impact the numbers of the Opposition Party in the House. It has been passed without

giving an opportunity of hearing to the petitioners much less calling upon them to offer written explanation. To buttress this ground, reliance has been placed on a decision of two-Judge Bench of this Court in ***Alagaapuram R. Mohanraj & Ors. vs. Tamil Nadu Legislative Assembly & Anr.***[3].

9. It is urged that the events, as unfolded, on the face of it, would indicate the undue haste in which the impugned resolution came to be passed within a matter of hours, that too, without granting opportunity to the petitioners to meet the case against them. This was grossly and patently violative of Article 14 of the Constitution. For, there was absolutely no material before the Chairman or the Minister to substantiate the need for suspending the petitioners, that too for such a long period.

10. Further, even the impugned resolution dated 5.7.2021 does not refer to any material on the basis of which such extreme step of suspension had been taken against these petitioners. There is no indication in the resolution as to how

3 (2016) 6 SCC 82

the 12 members (petitioners herein) were identified from a huge crowd of people and singled out for initiating the action of suspension. As a matter of fact, the impugned resolution itself alludes to unruly behaviour on the floor of the House and outside the chamber of the Speaker. The video footage of the alleged incident, which is in public domain, shows a large crowd of people and there is absolutely no way of identifying the 12 MLAs (petitioners herein) who have been suspended and singled out. As a matter of fact, the Minister who brought the motion was not even present in the chamber of the Speaker. In a similar situation, this Court in ***Alagaapuram R. Mohanraj***[4] had to quash the resolution for lack of evidence to identify the suspended members of the Tamil Nadu Legislative Assembly.

11. In the present case, the impugned resolution makes no reference to any material much less video footage, etc., which has been relied upon before bringing an action for suspension. Moreover, it is amply clear from the impugned resolution that the action against the petitioners was for

4 supra at Footnote No.3

alleged unruly behaviour/misconduct and not for breach of privilege that is covered by an independent dispensation. As regards suspension of a member of the House, as per Rule 53 of the Rules such action could be initiated "only" by the Speaker after complying with the principles of natural justice and fair play. The provision, such as Rule 53, is engrafted to put a check on the majoritarian attitude of the Government. The Speaker is expected to act fairly, in particular during the conduct of proceedings in the House towards both sides, namely, members of the Ruling Party as well as of the Opposition Party. So to speak, he exercises quasi-judicial function.

12. It is urged that a motion for unruly behaviour in the House can never be a subject matter of voting since it would enable the political party in power to virtually wipe out the opposition for some trivial acts committed by their members, by suspending as many members of the Opposition Party. The decision of suspension, therefore, must rest with the Speaker and not the House. Notably, Rule 53 of the Rules prescribes a maximum period of suspension not exceeding

remainder of the Sessions. Thus, suspension of the petitioners for a period of one year is grossly unconstitutional and illegal. If the impugned resolution was allowed to prevail, nothing would prevent the political party in power (in majority) to resort to such mechanism and to suspend a large number of members of Opposition Party upto five years or remainder of the term of the Legislative Assembly by resorting to voting in the House.

13. It is also urged that the erstwhile Speaker had stepped down, as a result of which, he ceased to be the Chairman. As such, heated exchanges allegedly occurring between him and the petitioners outside the House, would not invite action of suspension, inasmuch as after stepping down as Speaker, he would continue only as an ordinary MLA. Further, the Chairman nominated under Rule 8 of the Rules is not empowered to exercise powers under Rule 53, considering the fact that there was a Deputy Speaker of the House who could have discharged the functions of the Speaker after his stepping down or during his absence as per Article 180 of the Constitution. In that sense, the impugned resolution dated

5.7.2021 is nullity and *non est* in the eyes of law, having passed without authority of law.

14. These writ petitions came up for preliminary hearing on 14.12.2021. After hearing learned counsel for the petitioners and for the State of Maharashtra, the Court passed the following order:

> "We have heard learned counsel for the petitioners and for the State of Maharashtra.
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> These matters involve issues of moment for a Westminster form of Democracy.
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> It is urged by the petitioners that the impugned resolution by the Maharashtra Legislative Assembly dated 05.07.2021 suffers from the vice of denial of opportunity of being heard and adherence to the rules of natural justice.
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> It is also urged that the resolution neither follows the procedure prescribed under Rule 53 of the Maharashtra Legislative Assembly Rules (for short "The Rules"), namely, for suspension of member of the House by the Speaker nor predicated in Part XVIII including Rule 273 to take action against the member for breach of privilege of the House.
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> It is also urged that the power of Legislative Assembly though absolute in certain respects, the decision reached by the House can always be questioned on the settled principles amongst others being manifestly grossly arbitrary or irrational, violating the fundamental rights and such other grounds, as may be permissible and delineated in the decision of the Constitution Bench of this Court in Raja Rampal Vs. Hon'ble Speaker, Lok Sabha & Ors. reported in (2007) 3 SCC 184, including the two Judge decision of this Case in Alagaapuram R. Mohan Raj & Ors. Vs. Tamil Nadu Legislative Assembly & Anr. reported in (2016) 6 SCC 82. Further, for the nature

of impugned resolution, it not only abridges the rights of as many as twelve members, as guaranteed to them under Article 194 of the Constitution of India, but also of the constituencies represented by each of them by merely invoking the route of majority opinion of the House, an unprecedented and unconventional move not backed by any similar precedent. In any case, the period of suspension of one year is unconscionable and manifestly arbitrary and irrational.

On the other hand, it is urged by the learned counsel for the State that Article 212(1) of the Constitution of India makes it amply clear that it is not open to the Court to explore the argument of proper procedure not followed by the House. Further, it is not open to the Court to do judicial review of the final decision on the basis of abstract arguments and grounds urged before this Court; and even if a sui generis procedure has been adopted by the House, it is the absolute prerogative of the House to regulate its business.

It is also urged by the learned counsel for the State that the petitioners have not refuted the case made out against them about misbehaviour in the House and outside the House as well. Indeed, this plea has been countered by learned counsel appearing for the petitioners.

All these are debatable issues and would require deeper consideration.

As a result, we deem it appropriate to issue a formal notice to the respondents, returnable on 11.01.2022.

Mr. Sachin Patil, Advocate waives notice for respondent No. 2-State.

Additionally, the petitioner is permitted to serve dasti notice on the respondent No.1.

Needless to observe that pendency of these petitions will not come in the way of the petitioners to explore the possibility of urging upon the House to show leniency and reconsider the decision impugned in these writ petitions, at least, to the extent of reducing the term specified therein. That is a matter to be considered by the House appropriately."

By this order, the Court had expressed a sanguine hope that the matter would get resolved in the ensuing Session scheduled in the following week. Presumably, no effective headway had been made in that regard.

15. It appears that notice sent to respondent No.1, as per office report, has been duly served. We have been informed by the learned counsel appearing for the State as well as the petitioners that respondent No.1 would not be appearing in the present proceedings. The respondent-State, however, is defending the impugned resolution by filing counter affidavit dated 7.1.2022 sworn by Mr. Satish Baban Waghole, In Charge Secretary, Parliamentary Affairs Department. The reply affidavit amongst others points out that the issues raised by the petitioners are essentially the matters concerning procedure in the House of the Legislative Assembly and at best regarding some procedural irregularities committed during the proceedings. That cannot be the basis to invoke jurisdiction of this Court which is constricted by the mandate of Article 212 of the Constitution, as it concerns the

powers and privileges of the House. Thus, the petitioners are not entitled for any relief under Article 32 of the Constitution.

16. It is urged that the suspension for unruly conduct in the House is not solely referrable to Rule 53 of the Rules. Whereas, it is open to the Legislature to depart from the Rules and take a decision which could exceed the period prescribed in the Rules. The period of one year suspension cannot be said to be arbitrary or disproportionate as such when the Legislature has the prerogative to reprimand or admonish its members, independent of the power of the Speaker of the House to order withdrawal of members under the Rules. The House has the power to take suitable action against its members who transgress the limits laid down in Article 194(1) of the Constitution, being its inherent power and it is not open to the Judicature to have a second-guess approach in that regard.

17. It is urged that from the averments in the writ petitions itself, it is conceded that the Leader of Opposition had to apologise for the unruly behaviour of the members of the

Opposition including that of the petitioners. The petitioners had committed acts which resulted in undermining and maligning the dignity of the House in the face of the House and for which reason, the House decided to suspend the petitioners. In such a situation, there is no question of granting any opportunity of hearing or for furnishing written explanation, being a case of contempt of the House on the face of it while it was in Session. The reply affidavit essentially rebuts the legal arguments of the petitioners and reiterates the factual position emanating from the impugned resolution itself and urges this Court to dismiss the writ petitions being devoid of merits.

Submissions - Petitioners:

18. The petitioners are represented by Mr. Mahesh Jethmalani, Mr. Mukul Rohatgi, Mr. Neeraj Kishan Kaul and Mr. Siddharth Bhatnagar, learned senior counsel. The sum and substance of their submission is as follows. First, the impugned resolution passed by the House is without jurisdiction. For, the power to suspend as per applicable

Rules is bestowed “only” upon the Speaker of the House and as the Office of the Speaker was vacant at the relevant time, upon the Deputy Speaker as per Article 180 of the Constitution. Further, the exercise of power by the Speaker is a quasi-judicial decision which must, therefore, precede with a formal inquiry, opportunity of hearing to the member concerned and recording of satisfaction about the nature of misdeeds committed by the member concerned amounting to grossly disorderly conduct. In short, the House had no jurisdiction to pass the impugned resolution much less the manner in which it has been passed, in undue haste. Second, no known or prescribed procedure has been followed to order withdrawal of the members from the Assembly. Thus, a gross illegality has been committed by the House. The House is bound to adhere to the Rules framed by it for that purpose under Article 208 of the Constitution. The applicable Rules provide for different dispensation. The power to order withdrawal of its member, is provided in Rule 53 and regarding breach of its Privileges is governed by Part XVIII of the Rules (vide Rules 273 to 289). A 15 days’ notice regarding

the motion introduced in the House is required to be given under Part XII of the Rules being Rule 106 of the Rules. None of these have been followed in tabling of the subject motion and in passing the impugned resolution. Thus, it is not a case of mere procedural irregularity, but of being unconstitutional, grossly illegal and irrational resolution adopted by the House including the direction to the petitioners to withdraw from the House for one year vide impugned resolution. Thirdly, there has been gross violation of principles of natural justice. In that, no opportunity whatsoever was afforded to the petitioners much less a formal notice calling upon them to offer their explanation. Had such an opportunity been given, it would have been possible for the petitioners to demonstrate that they were not part of the unruly mob which had indulged in activities amounting to grossly disorderly conduct.

18.(a) It is also urged that at any rate the impugned resolution suspending the petitioners for a period of one year cannot be countenanced in law being unconstitutional, grossly illegal and irrational. Inasmuch as, Rule 53 provides

for a graded approach to be adopted by the Speaker for ensuring orderly conduct of business in the House by directing withdrawal of a member, who in his opinion, had or was creating obstruction in that regard. Inasmuch as, if it is his first instance of such type, the Speaker could order his withdrawal for the remainder of the day's meeting. In case of repeat misconduct during the same Session, the Speaker could order withdrawal of such member for the remainder of the Session. Had it been a case of exercise of power under Rule 53, the member so directed to be absent shall, during the period of such absence, is deemed to be absent with the permission of the Assembly within the meaning of clause (4) of Article 190 of the Constitution. However, the impugned resolution makes no reference to this aspect at all.

18.(b) On the stated position taken by the respondents that the power has been exercised by the House and is not ascribable to Rule 53, but the inherent power of the House, even in that case, the suspension of the member of the House cannot go beyond the ongoing Session. Inasmuch as, excess and unnecessary period of suspension of the member from the

House is not only undesirable in the matter of democratic values enunciated in the Constitution, but substantively or grossly illegal and irrational, if not bordering on perversity. For, longer period of suspension beyond the ongoing Session would not only be unnecessary, but nearer to being arbitrary, irrational and perverse. Taking any other view would entail in validating grossly illegal and irrational resolution of the House. To buttress this argument, support is drawn additionally from the dispensation predicated in the concerned Standing Order of the United Kingdom regarding the Parliamentary Procedure as well as extracts from Sir Thomas Erskine May's Treatise on The Law, Privileges Proceedings and Usage of Parliament. It is urged that the consequence of absence of suspended member of the House beyond sixty days would entail in vacation of the seat occupied by him/her, as predicated in Article 190(4); and in which case, in law, the concerned constitutional Authority would be obliged to initiate process to fill in the vacant seat(s) not later than six months from the date of such vacancy in

terms of Section 151A[5] of the Representation of the People Act, 1951[6]. This is essential also to ensure that the concerned constituency does not remain unrepresented in the Legislative Assembly for more than six months owing to the action against its duly elected representative by the House. Had it been a case of expulsion, it would not have resulted in punishment either to the concerned member or the constituency represented by him. For, the member concerned in that case could get re-elected to occupy the vacant seat not later than six months. Thus understood, the timeline of suspension of the petitioners prescribed in the impugned resolution is worst and operates as inflicting penalty upon the petitioners as well as the constituency represented by them. In other words, it is worse than expulsion of a member of the House.

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5 **151A. Time limit for filling vacancies referred to in sections 147, 149, 150 and 151**.— Notwithstanding anything contained in section 147, section 149, section 150 and section 151, a bye-election for filling any vacancy referred to in any of the said sections shall be held within a period of six months from the date of the occurrence of the vacancy:

Provided that nothing contained in this section shall apply if—

(a) the remainder of the term of a member in relation to a vacancy is less than one year; or

(b) the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within the said period.

6 for short, "1951 Act"

18.(c) In the present case, learned counsel contends that the House had to assemble for only two days of the ongoing Session. The suspension, therefore, ideally could not have been for a period more than the remainder of the Session in terms of Rule 53 of the Rules. Moreover, as the motion was introduced in the House for initiating contempt, it ought to have proceeded only under Part XVIII of the Rules by following procedure prescribed therein which includes giving opportunity of hearing to the member before the Committee of Privileges. If it was to be regarded as an ordinary motion, then the procedure under Rule 106 of the Rules would have required 15 clear days' notice. Further, Rule 110[7] postulates that the resolution if moved by the Minister, it should precede with seven days' notice. Even this requirement had been violated. In either case, the impugned resolution suffers from the vice of denial of principles of natural justice, besides being arbitrary, perfunctory and founded on unsubstantiated allegations against the petitioners. To buttress this

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7 **110. Government Resolutions.—** (1) The provisions of rule 106 shall not apply to resolutions of which notice is given by a Minister or the Advocate General.

(2) **Seven days' notice shall be necessary** in respect of such resolutions

(emphasis supplied)

submission, reliance has been placed on the dictum in ***Alagaapuram R. Mohanraj***[8].

18.(d) It is then urged that at any rate the time period of suspension as specified in the impugned resolution is manifestly arbitrary and grossly disproportionate and excessive, besides being grossly illegal and unconstitutional being hit by Articles 14 and 21 of the Constitution. For, the impugned resolution entails in denial of representation even to the concerned constituency for such a long time, much less beyond the period specified in the Constitution [Article 190(4)] and the mandate of conducting elections not later than six months from the date of vacancy vide Sections 150 and 151A of the 1951 Act. Reliance is placed on ***Barton vs. Taylor***[9], ***Sushanta Kumar Chand & Ors. vs. The Speaker, Orissa Legislative Assembly and Anr.***[10], ***M.S.M. Sharma vs. Sri Krishna Sinha & Ors.***[11], ***Special Reference No.1 of 1964***[12], ***Jagjit Singh vs. State of Haryana & Ors.***[13], ***Raja Ram***

8 supra at Footnote No.3 (paras 38 to 42)
9 (1886) 11 AC 197
10 AIR 1973 Ori 111 (Division Bench)
11 AIR 1959 SC 395 (5-Judge Bench) (paras 25,26,28 and 29)
12 AIR 1965 SC 745 (7-Judge Bench) (paras 31,32,35,36,39 to 41,56,60,61,124 and 125)
13 (2006) 11 SCC 1 (3-Judge Bench) (para 44)

Pal vs. Hon'ble Speaker, Lok Sabha & Ors.[14] and ***Amarinder Singh vs. Special Committee, Punjab Vidhan Sabha & Ors.***[15]***.***

18.(e) It was also argued that suspension of members beyond the period specified in Rule 53 tantamounts to deviation from the logic stated therein. And being a case of deviation from the applicable Rules, it was essential to first suspend Rule 53. That could be done by way of a motion under Rule 57[16]. Moreover, the general powers of the Speaker have been constricted in terms of Rule 58[17], namely, limited to matters not specifically provided for in the rules.

Submissions – Respondent (State of Maharashtra):

19. Mr. C. Aryama Sundaram, learned senior counsel appearing for the State of Maharashtra, however, would urge that much argument of the petitioners is founded on untenable assumption that the Rules were binding on the

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14 (2007) 3 SCC 184 (5-Judge Bench)
15 (2010) 6 SCC 113 (5-Judge Bench) (paras 47,62,64 and 65)

16 **57. Suspension of rules.—** Any member may, with the consent of the Speaker, move that any rule may be suspended in its application to a particular motion before the House; and if the motion is carried, the rule in question shall be suspended for the time being.

17 **58. General Powers of Speaker.— All matters not specifically provided for in these rules** and all questions relating to the detailed working of these rules shall be regulated in such manner as the Speaker may, from time to time direct.

(emphasis supplied)

House; and it was not open to the House to proceed *dehors* the rules formulated under Article 208 of the Constitution. He submits that it is open to the Legislature to deviate from the Rules, even if framed under Article 208. Such rules are only akin to the byelaws of the society which are not enforceable nor can it be regarded as statutory rules. Further, grounds of challenge set forth by the petitioners are essentially questioning the procedure adopted by the House in adopting the impugned resolution. Such a challenge cannot be maintained nor could be entertained by the Court in light of bar under Article 212(1) in particular. It is not open to the Court to question the decision of the House on the ground of irregularities in the procedure. For, the House has the prerogative to adopt its own procedure even *dehors* the rules framed under Article 208. In a given situation, the rules being procedural rules can be deviated by the House, if the need so arises. The Court can only enquire into the question as to whether the House had jurisdiction to adopt such a resolution and no further.

19.(a) He further submits that it is cardinal that the powers and privileges of the House of Legislatures as delineated in Article 194 of the Constitution are non-justiciable, forming part of Chapter III (the State Legislature) in Part VI of the Constitution. It is so mandated by Article 212(1) of the Constitution. That gives enough room to the Legislature to adopt its own procedure for upholding the privileges of the House of Legislature and its members which includes proceeding against even non-member in case of breach. Thus, it is not open to even remotely suggest that the Legislature lacks jurisdiction.

19.(b) He submits that the fact that Rule 53 of the Rules provides for exercise of power by the Speaker to order withdrawal of member in graded manner, that does not and cannot prevent the House from passing a resolution to even expel the erring member. Thus, the House can certainly direct suspension of its member for a period beyond the remainder term of the Session. The Legislature while adopting such resolution is not required to give any reason. For, no judicial review of reasons which had weighed with the

Legislature to pass the resolution is permissible, unless it is further shown that the resolution adopted by the House is unconstitutional. In the present case, the House had adopted resolution which is self-eloquent. In that, it mentions the necessity for passing such a resolution of suspension of the petitioners for a term of one year. The power has been exercised by the Legislature, which is inherent in it especially regarding the conduct of its business. The impugned resolution, therefore, is not unconstitutional. He would submit that in the guise of asserting that the impugned resolution is irrational, the petitioners in effect are questioning the proportionality of the period of suspension. This enquiry by the Court is impermissible. For, the decision of the House regarding quantum or the period of suspension is non-justiciable

19.(c) He vehemently urged that this Court ought not to venture into the factual matrix and have a second-guess approach regarding the opinion expressed by the House in the impugned resolution. To buttress his submissions, he has placed reliance on the decision of the Gujarat High Court in

Jagdishbhai Thakore & Anr. vs. Chandrikaben Chudasma & Ors.[18], which follows the exposition of the Division Bench of the same High Court in ***Chhabildas Mehta, M.L.A. vs. The Legislative Assembly, Gujarat State***[19]. He has also placed reliance on ***K.A. Mathialagan vs. P. Srinivasan & Ors.***[20], ***A.M. Paulraj vs. The Speaker, Tamil Nadu Legislative Assembly, Madras & Anr.***[21], ***K. Anbazhagan & Ors. vs. The Secretary, The Tamil Nadu Legislative Assembly, Madras & Ors.***[22], ***V.C. Chandhira Kumar, Member of Legislative Assembly & Ors. vs. Tamil Nadu Legislative Assembly, Secretariat & Anr.***[23], ***Special Reference No.1 of 1964***[24], ***Kihota Hollohon vs. Zachilhu & Ors.***[25], ***M.C. Mehta vs. Union of India & Ors.***[25A], ***Raja Ram Pal***[26] and ***Amarinder Singh***[27].

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18 2007 SCC OnLine Guj 402 (para 8): 2007 (48) 4 GLR 2998 (Single Judge Bench)
19 (1970) 11 GLR 729 (Division Bench) (paras 14 to 16)
20 AIR 1973 Madras 371 (Full Bench)
21 AIR 1986 Madras 248 (Full Bench)
22 1987 SCC OnLine Mad 89 (Division Bench) (paras 87 to 92, 101, 108 to 110 and 160)
23 2013 (6) CTC 506 (Division Bench) (paras 4.19 to 4.30)
24 supra at Footnote No.12 (paras 31,34,35 and 39 to 41)
25 AIR 1993 SC 412:1992 Supp (2) SCC 651 (5-Judge Bench)
25A (1999) 6 SCC 237 (paras 18 to 21)
26 supra at Footnote No.14 (paras 125, 160 to 162, 163, 271 to 300, 451 to 453, 530, 531, 534, 536, 598 and 696 to 705)
27 supra at Footnote No.15 (paras 54 and 66)

20. He would further submit that the Maharashtra Legislative Assembly even in the past on more than one occasion had passed similar resolution to suspend its member for one year period. That is the legitimate inherent power of the House in the matter of upholding its privilege. Article 190(3) prescribes no limitation in this regard. Further, the invocation of Article 190(4) and Section 151A of the 1951 Act by the petitioners, is completely misplaced. For, Article 190(4) has no application unless the absence of the member concerned is voluntary and without permission of the House. Article 190(4) cannot override the powers and privileges of the Legislature endowed in Article 190(3). Article 190(4) is an enabling provision envisaging occurrence of vacancy only if the Legislature so resolves/decides, unlike *ipso facto* vacancy occurring in situations referred to in Article 190(1) to 190(3). For issuing declaration under Article 190(4) that vacancy has arisen, it ought to be done by the Legislature if such recommendation is made by the Committee constituted under Rule 229 of the Rules known as Committee on Absence of Members from the Sittings of the House. The functions of the

stated Committee are spelt out in Rule 230. The procedure noted in Rules 231 and 232 is clearly indicative of the fact that the absence of the member must be voluntary and without permission of the House. In fact, the period of absence noted in Article 190(4) is sixty days[28] of meetings and not English calendar days. In this case, only seven days of meetings had been conducted so far. Thus, invocation of Article 190(4) in the fact situation of the present case is unavailable. Further, in the case of absence of member from the House owing to his/her suspension by the House presupposes that the House itself has restricted the entry of the concerned member during the meetings and it can be safely regarded as deemed permission of the House for absence for the relevant period. Similarly, the constituency cannot complain about its non-representation in the House having elected someone who conducts himself/herself inappropriately in the meetings. In ***Raja Ram Pal***[29], similar plea had been negatived. Concededly, suspended elected representative continues to represent the constituency from

28 Out of total 98-100 days in a year in three Sessions, namely, Budget, Monsoon and Winter altogether.
29 supra at Footnote No.14

where he/she has been elected for all other purposes except attending the meetings owing to suspension. The argument of the petitioners is more fixed on the basis of morality approach. That cannot be countenanced. As a matter of law, the House has inherent powers to direct suspension of its member for one year period and there is no express bar or restriction provided for by the Constitution or by virtue of any statutory provision. In substance, it is urged that the Court cannot enquire into the grievances as made, essentially being about the irregularity of procedure in adopting the impugned resolution by the House.

21. We have heard learned counsel for the petitioners and the respondent-State. As aforesaid, respondent No.1 has chosen not to appear despite service.

Consideration:

22. The moot question is about the maintainability of the challenge in respect of the stated resolution adopted by the Legislative Assembly. The scope of interference by the Court has been well-delineated in successive decisions of the

Constitution Bench of this Court. This Court has consistently expounded that the judicial scrutiny regarding exercise of legislative privileges (including power to punish for contempt of the House) is constricted and cannot be *stricto sensu* on the touchstone of judicial review as generally understood in other situations. In that, there is complete immunity from judicial review in matters of irregularity of procedure. The Constitution Bench of this Court in ***Raja Ram Pal***[30] delineated the principles on the basis of catena of decisions noted in the said decision as follows:

> *"**Summary of the principles relating to parameters of judicial review in relation to exercise of parliamentary provisions***
>
> **431.** We may summarise the principles that can be culled out from the above discussion. They are:
>
> (*a*) Parliament is a coordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;
>
> (*b*) The constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere coordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of actions which partake the character of judicial or quasi-judicial decision;

30 supra at Footnote No.14

(*c*) The expediency and necessity of exercise of power or privilege by the legislature are for the determination of the legislative authority and not for determination by the courts;

(*d*) The judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature;

(*e*) Having regard to the importance of the functions discharged by the legislature under the Constitution and the majesty and grandeur of its task, there would always be an initial presumption that the powers, privileges, etc. have been regularly and reasonably exercised, not violating the law or the constitutional provisions, this presumption being a rebuttable one;

(*f*) The fact that Parliament is an august body of coordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power;

(*g*) While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;

(*h*) The judicature is not prevented from scrutinising the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens;

(*i*) The broad contention that the exercise of privileges by legislatures cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct;

(*j*) If a citizen, whether a non-Member or a Member of the legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this Court to examine the merits of the said contention, especially when the impugned action entails civil consequences;

(*k*) There is no basis to the claim of bar of exclusive cognizance or absolute immunity to the parliamentary proceedings in Article 105(3) of the Constitution;

(*l*) The manner of enforcement of privilege by the legislature can result in judicial scrutiny, though subject to the restrictions contained in the other constitutional provisions, for example Article 122 or 212;

(*m*) Article 122(1) and Article 212(1) displace the broad doctrine of exclusive cognizance of the legislature in England of exclusive cognizance of internal proceedings of the House rendering irrelevant the case-law that emanated from courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by the Constitution of India;

(*n*) Article 122(1) and Article 212(1) prohibit the validity of any proceedings in legislature from being called in question in a court merely on the ground of irregularity of procedure;

(*o*) The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the legislature;

(*p*) Ordinarily, the legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the court may

examine the validity of the said contention, the onus on the person alleging being extremely heavy;

(*q*) The rules which the legislature has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution;

(*r*) Mere availability of the Rules of Procedure and Conduct of Business, as made by the legislature in exercise of enabling powers under the Constitution, is never a guarantee that they have been duly followed;

(*s*) The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny;

(*t*) Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action;

(*u*) An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity."

(emphasis supplied)

23. These principles have been restated by the subsequent Constitution Bench in ***Amarinder Singh***[31], in paragraphs 53 and 54. Further, it would be useful to advert to the observations in paragraphs 87 and 88 of the same decision in

31 supra at Footnote No.15

the context of the concerns about the intrusion into the powers of the Legislature. The same reads thus:

> "***Concerns about intrusion into the executive and judicial domain***
>
> **87. The doctrine of separation of powers is an inseparable part of the evolution of parliamentary democracy itself**. Renowned French philosopher Montesquieu had drawn the attention of political theorists to the dangers inherent in the concentration of legislative, executive and judicial powers in one authority and stressed on the necessity of checks and balances in constitutional governance. **Our institutions of governance have been intentionally founded on the principle of separation of powers and the Constitution does not give unfettered power to any organ. All the three principal organs are expected to work in harmony and in consonance with the spirit and essence of the Constitution. It is clear that a legislative body is not entrusted with the power of adjudicating a case once an appropriate forum is in existence under the constitutional scheme**.
>
> **88.** It would be pertinent to cite the following observations made by M.H. Beg, J. (as His Lordship then was) in *Indira Nehru Gandhi* v. *Raj Narain*[32]: (SCC p. 149, para 392)
>
> > "*392.* … **One of these basic principles seems to me to be that, just as courts are not constitutionally competent to legislate under the guise of interpretation, so also neither our Parliament nor any State Legislature, in the purported exercise of any kind of law-making power, perform an essentially judicial function by virtually withdrawing a particular case, pending in any court, and taking upon itself the duty to decide it by an application of law or its own standards to the facts of that case**. This power must at least be first constitutionally taken away from the court concerned and vested in another authority before it

32 1975 Supp SCC 1

> can be lawfully exercised by that other authority. It is not a necessary or even a natural incident of a 'constituent power'. As Hans Kelsen points out, in his '*General Theory of Law and the State*' (see p. 143), while creation and annulment of all general norms, whether basic or not so basic, is essentially a legislative function, their interpretation and application to findings reached, after a correct ascertainment of facts involved in an individual case, by employing the judicial technique, is really a judicial function. **Neither of the three constitutionally separate organs of State can, according to the basic scheme of our Constitution today, leap outside the boundaries of its own constitutionally assigned sphere or orbit of authority into that of the other. This is the logical meaning of the principle of supremacy of the Constitution**.""
>
> (emphasis supplied)

24. To the same end, dictum of the Constitution Bench in ***Sub-Committee on Judicial Accountability vs. Union of India & Ors.***[33] may be apposite. In paragraph 61 of the reported decision, the Court observed thus:

> "**61.** But where, as in this country and unlike in England, there is a written Constitution which constitutes the fundamental and in that sense a "higher law" and acts as a limitation upon the legislature and other organs of the State as grantees under the Constitution, **the usual incidents of parliamentary sovereignty do not obtain and the concept is one of 'limited government'. Judicial review is, indeed, an incident of and flows from this concept of the fundamental and the higher law being the touchstone of the limits of the powers of the various organs of the State which derive power and authority under the Constitution and that the judicial wing is the**

33 (1991) 4 SCC 699 (5-Judge Bench)

> **interpreter of the Constitution and, therefore, of the limits of authority of the different organs of the State**. It is to be noted that the British Parliament with the Crown is supreme and its powers are unlimited and courts have no power of judicial review of legislation."
>
> (emphasis supplied)

The Court then noted that this doctrine is in one sense the doctrine of *ultra vires* in the constitutional law and in a federal set up, the judiciary becomes the guardian of the Constitution. It enunciated that the rule in ***Bradlaugh vs. Gossett***[34] was inapplicable to proceedings of colonial legislature governed by the written Constitution. In paragraph 66, the Court expounded as follows:

> "**66.** The principles in Bradlaugh[35] is that even a statutory right if it related to the sphere where Parliament and not the courts had exclusive jurisdiction would be a matter of the Parliament's own concern. **But the principle cannot be extended where the matter is not merely one of procedure but of substantive law concerning matters beyond the parliamentary procedure. Even in matters of procedure the constitutional provisions are binding as the legislations are enforceable**. Of the interpretation of the Constitution **and as to what law is the courts have the constitutional duty to say what the law is**. The question whether the motion has lapsed is a matter to be pronounced upon the basis of the provisions of the Constitution and the relevant laws. Indeed, the learned Attorney General submitted that the question whether as an interpretation of the constitutional processes and laws, such a motion lapses or not is exclusively for the courts to decide."
>
> (emphasis supplied)

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34 (1884) 12 QBD 271: 50 LT 620
35 supra at Footnote No.34

25. In the Indian context, the power of the Legislature is not absolute, as noted by the Constitution Bench in ***Raja Ram Pal***[36] in paragraph 398. The same reads thus:

> "**398.** We are of the view that the manner of exercise of the power or privilege by Parliament is immune from judicial scrutiny only to the extent indicated in Article 122(1), that is to say the court will decline to interfere if the grievance brought before it is restricted to allegations of "irregularity of procedure". **But in case gross illegality or violation of constitutional provisions is shown, the judicial review will not be inhibited in any manner by Article 122, or for that matter by Article 105**. If one was to accept what was alleged while rescinding the resolution of expulsion by the Seventh Lok Sabha with the conclusion that it was "inconsistent with and violative of the well-accepted principles of the law of parliamentary privilege **and the basic safeguards assured to all enshrined in the Constitution", it would be a partisan action in the name of exercise of privilege**. We are not going into this issue but citing the incident as an illustration."
>
> (emphasis supplied)

After having said as above, the Court proceeded to examine the extent of circumspection to be observed by the courts. That had been exposited in following words:

> "**414.** In *State of Rajasthan v. Union of India*[37] while dealing with the issues arising out of communication by the then Union Home Minister to the nine States asking them to advise their respective Governors to observe the

36 supra at Footnote No.14
37 (1977) 3 SCC 592 : AIR 1977 SC 1361

Legislative Assemblies and therefore seek mandate from the people, this Court observed in para 40 as under: (SCC p. 616)

> "40. *This Court has never abandoned its constitutional function as the final judge of constitutionality of all acts purported to be done under the authority of the Constitution*. It has not refused to determine questions either of fact or of law so long as it has found itself possessed of power to do it and the cause of justice to be capable of being vindicated by its actions. But, *it cannot assume unto itself powers the Constitution lodges elsewhere or undertake tasks entrusted by the Constitution to other departments of State which may be better equipped to perform them*. The scrupulously discharged duties of all guardians of the Constitution *include the duty not to transgress the limitations of their own constitutionally circumscribed powers by trespassing into what is properly the domain of other constitutional organs*. Questions of political wisdom or executive policy only could not be subjected to judicial control. No doubt executive policy must also be subordinated to constitutionally sanctioned purposes. It has its sphere and limitations. But, so long as it operates within that sphere, its operations are immune from judicial interference. This is also a part of the doctrine of a rough separation of powers under the supremacy of the Constitution repeatedly propounded by this Court and to which the Court unswervingly adheres even when its views differ or change on the correct interpretation of a particular constitutional provision."
>
> (emphasis supplied)

415. We reaffirm the said resolve and find no reason why in the facts and circumstances at hand this Court should take a different view so as to abandon its constitutional functions as the final judge of constitutionality of all acts purported to be done under the authority of the Constitution, though at the same time refraining from transgressing into the sphere that is properly the domain of Parliament.

> **416.** Learned Additional Solicitor General submits that in *U.P. Assembly case (Special Reference No. 1 of 1964)*[38] the Court had placed reliance on Articles 208 and 212 which contemplate that **rules can be framed by the legislature subject to the provisions of the Constitution which in turn implies that such rules are compliant with the fundamental rights guaranteed by Part III. He submits that if the rules framed under Article 118 (which corresponds to Article 208) are consistent with Part III of the Constitution then the exercise of powers, privileges and immunities is bound to be a fair exercise and Parliament can be safely attributed such an intention**.
>
> **417.** While it is true that there is no challenge to the Rules of Procedure and Conduct of Business in Lok Sabha and the Rules of Procedure and Conduct of Business in the Council of States, as made by the two Houses of Parliament in exercise of enabling powers under Article 118(1), **we are of the opinion that mere availability of rules is never a guarantee that they have been duly followed**. What we are concerned with, given the limits prescribed in Article 122(1), is not "irregularity of procedure" but illegalities or unconstitutionalities."
>
> (emphasis supplied in bolds)

26. From the exposition in these successive Constitution Bench decisions referred to above, it is not possible to countenance the submission of the learned counsel for the respondent-State that the enquiry must be limited to one of the parameters specified in ***Raja Ram Pal***[39] and, in this case, only clause (s) – "The proceedings which may be tainted on

38 supra at Footnote No.12
39 supra at Footnote No.14

account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny". On the other hand, we lean in favour of taking the view that each of the parameters is significant and permissible area of judicial review in relation to exercise of parliamentary privileges including clauses (f), (g), (s) and (u). In one sense, clause (u) is a comprehensive parameter articulated by the Constitution Bench in ***Raja Ram Pal***[40], as it predicates that "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".

27. The Constitution, by itself, does not specify the limitation on the privileges of the Legislature, but, indubitably, those privileges are subject to the provisions of the Constitution (as is predicated in the opening part of Article 194(1) as also in Article 208(1) requiring the House of

40 supra at Footnote No.14

the Legislature to make rules for regulating its procedure), which ought to include the rights guaranteed to the citizens under Part III of the Constitution. The moment it is demonstrated that it is a case of infraction of any of the rights under Para III of the Constitution including ascribable to Articles 14 and 21 of the Constitution, the exercise of power by the Legislature would be rendered unconstitutional. For attracting Articles 14 and 21 of the Constitution, it is open to the petitioner to demonstrate that the action of the Legislature is manifestly arbitrary. The arbitrariness can be attributed to different aspects. Applying that test, it could be a case of irrationality of the resolution/decision of the House. Indeed, in this case, the Court is not called upon to enquire into the proportionality of such a resolution/decision.

28. There is marked distinction between the expression "rational" and "proportional". The expression "proportion" is derived from a latin word "*proportio*" or "*proportionalis*". It means corresponding in size or amount to something else. To wit, the punishment should be proportional to the crime — whereas, expression "rational" is derived from a latin word

"*ratio*" or "*rationalis*". It means action is based on or in accordance with the reason or logic or so to say sensible or logical. The rationality of action can be tested, both on the ground of power inhering in the Legislature and the exercise of that power.

29. Keeping the stated principles in mind, we must proceed to analyse the grounds of challenge in these petitions. The foremost ground is that it is imperative for the House to adhere to the procedure prescribed in the Rules framed by the House under Article 208 of the Constitution.

30. The Constitution Bench of this Court in ***M.S.M. Sharma***[41] had occasion to deal with the efficacy of the rules so framed under Article 208 of the Constitution. In paragraph 29[42], the Court noted that Article 194(3) read with

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41 supra at Footnote No.11

42 (29) Seeing that the present proceedings have been initiated on a petition under Art. 32 of the Constitution and as the petitioner may not be entitled, for reasons stated above, to avail himself of Art. 19(1)(*a*) to support this application, learned advocate for the petitioner falls back upon Art. 21 and contends that the proceedings before the Committee of Privileges threaten to deprive him of personal liberty otherwise than in accordance with procedure established by law. The Legislative Assembly claims that under Art. 194(3) it has all the powers, privileges and immunities enjoyed by the British House of Commons at the commencement of our Constitution. If it has those powers, privileges and immunities, then it can certainly enforce the same, as the House of Commons can do. **Article 194(3) confers on the Legislative Assembly those powers, privileges and immunities and Art. 208 confers power on it to frame rules. The Bihar Legislative Assembly has framed rules in exercise**

rules framed under Article 208 had laid down the procedure for enforcing its powers, privileges and immunities. Further, the Legislative Assembly has the powers, privileges and immunities of the House of Commons and if the petitioner is deprived of his personal liberty as a result of the proceedings before the Committee of Privileges, such deprivation will be in accordance with procedure established by law and the petitioner cannot complain of the breach, actual or threatened, of his fundamental right under Article 21. This dictum presupposes that action taken under the rules framed under Article 208 of the Constitution and in conformity therewith is compliance of the procedure established by law for the purpose of Article 21 of the Constitution.

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of its powers under that Article. It follows, therefore, that Art. 194(3) read with the rules so framed has laid down the procedure for enforcing its powers, privileges and immunities. If, therefore, the Legislative Assembly has the powers, privileges and immunities of the House of Commons and if the petitioner is eventually deprived of his personal liberty as a result of the proceedings before the Committee of Privileges, such deprivation will be in accordance with procedure established by law and the petitioner cannot complain of the breach, actual or threatened, of his Fundamental Right under Art. 21.

(emphasis supplied)

31. In ***Ratilal Bhanji Mithani vs. Asstt. Collector of Customs, Bombay & Anr.***[43], the Constitution Bench restated the aforenoted position in the following words:

> "….. As explained in *Pandit Sharma's case*[44], **these powers and the procedure prescribed by the rules has the sanction of enacted law and an order of committal for contempt of the Assembly is according to procedure established by law**. Das, C.J., speaking for four learned Judges said at page 861: "Art. 194(3) confers on the Legislative Assembly those powers, privileges and immunities and Art. 208 confers power on it to frame rules. The Bihar Legislative Assembly has framed rules in exercise of its powers under that Article. It follows, therefore, that Art. 194(3) read with the rules so framed has laid down the procedure for enforcing its powers, privileges and immunities. If, therefore, the Legislative Assembly has the powers, privileges and immunities of the House of Commons and if the petitioner is eventually deprived of his personal liberty as a result of the proceedings before the Committee of Privileges, such deprivation will be in accordance with procedure established by law and the petitioner cannot complain of the breach, actual or threatened, of his fundamental right under Art. 21." Subba Rao, J. in his minority judgment in that case and the Court in *Special Reference No. 1 of 1964*[45] did not say anything to the contrary on this point."
>
> (emphasis supplied)

32. It is settled law that even rules made to exercise the powers and privileges of State Legislature constitute law within the meaning of Article 13. This is exposited in ***Special***

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43 (1967) 3 SCR 926 (at p. 929)
44 supra at Footnote No.11
45 supra at Footnote No.12

Reference No.1 of 1964[46]. It is held that when the State Legislatures purport to exercise this power, they will undoubtedly be acting under Article 246 read with Entry 39 of List II. The enactment of such a law will, therefore, have to be treated as a law within the meaning of Article 13.

33. In the backdrop of these observations, the plea taken by the State that the rules are neither statutory rules nor binding on the House will be of no avail. Indeed, the Constitution Bench of this Court in ***Sub-Committee on Judicial Accountability***[47] in paragraph 94 noted as follows:

> "**94.** Second view is to be preferred. It enables the entire process of removal being regulated by a law of Parliament — ensures uniformity and reduces chances of arbitrariness. **Article 118 is a general provision conferring on each House of Parliament the power to make its own rules of procedure. These rules are not binding on the House and can be altered by the House at any time. A breach of such rules amounts to an irregularity and is not subject to judicial review in view of Article 122**."
>
> (emphasis supplied)

46 supra at Footnote No.12
47 supra at Footnote No.33

These observations have been noted while deliberating over the legal question as to whether the law made by the Parliament in the matter of removal of a judge of the High Court ought to prevail over the Rules framed by the House under Article 118 (corresponding to Article 208, applicable to State Legislative Assembly). This Court held that the parliamentary law is of higher quality and efficacy than the Rules under Article 118. This, however, had not whittled down the legal exposition that the Rules framed by the Legislative Assembly under Article 208 of the Constitution is the procedure established by law for the purpose of Article 21 of the Constitution.

34. Be that as it may, it is well-settled that the rules so framed can be altered by the House at any time. Until the rules are altered, however, the House is ordinarily guided by the procedure prescribed in the rules framed under Article 208 of the Constitution. At the same time, proceedings inside the Legislature cannot be called into question on the ground that the same have not been carried on in accordance with the rules of business as restated in ***Kihota Hollohon***[48]. It is, however, enough for the present to observe that the rules

48 supra at Footnote No.25 (para 42)

framed under Article 208 acquire the status of procedure established by law for the purpose of Article 21 of the Constitution as noticed in ***M.S.M. Sharma***[49]. This observation has been quoted with approval by another Constitution Bench again in ***Raja Ram Pal***[50], *inter alia,* in paragraphs 53, 167, 338, 416 and 417.

35. Viewed thus, even though the Legislature has the prerogative to deviate from the rules including to alter the rules; until then, and even otherwise, it is expected to adhere to the "express substantive stipulation" (which is not mere procedure) in the rules framed under Article 208 of the Constitution and the principle underlying therein, being procedure established by law.

36. As aforesaid, the dispensation prescribed under the Rules to exercise power to order withdrawal of member (suspension) is ascribable to Rule 53 of the Rules which reads thus:

> "**53. Power to order withdrawal of member.**— The Speaker may direct any member who refuses to obey his

49 supra at Footnote No.11
50 supra at Footnote No.14

> decision, or whose **conduct** is, in his opinion, **grossly disorderly**, to withdraw immediately from the Assembly and any member so ordered to withdraw shall do so forthwith and shall absent himself during the **remainder of the day's meeting**. If any member is ordered to withdraw a **second time in the same Session**, the Speaker may direct the member to absent himself from the meetings of the Assembly **for any period not longer than the remainder of the Session**, and the member so directed shall absent himself accordingly. The member so directed to be absent shall, during the period of such absence, be deemed to be absent with the permission of the Assembly within the meaning of clause (4) of Article 190 of the Constitution."
>
> (emphasis supplied)

This Rule not only speaks about the procedure to be adopted for passing the drastic order of withdrawal of a member from the House but also about the substantive disciplinary or the rationality of the self-security measure to be taken in a graded (objective standard) manner. The non-compliance of or deviation from the former (procedure) may be non-justiciable. However, in regard to the substantive disciplinary or the rationality of the self-security measure inflicted upon the erring member, is open to judicial review on the touchstone of being unconstitutional, grossly illegal and irrational or arbitrary.

37. In terms of above Rule, the power is exercised by the Speaker being a quasi-judicial order directing the member to

withdraw from the meetings of the Assembly. The Speaker is expected to exercise this power only in case of conduct of the member being "grossly disorderly" and in a graded objective manner. The *raison d'etre* is to ensure that the business of the House on the given day or the ongoing Session, as the case may be, can be carried on in an orderly manner and without any disruption owing to misconduct of one or more members. The expression used in the stated Rule is "grossly disorderly".

38. The expression "grossly disorderly" has not been defined in the Rules. The meaning of expression "gross" as given in the Black's Law Dictionary[51] reads thus:

> "**gross,** *adj.* (14c) **1.** Conspicuous by reason of size or other attention-getting qualities; esp., obvious by reason of magnitude <a gross Corinthian column>. **2.** Undiminished by deduction; entire <gross profits>. **3.** Not specific or detailed; general <a gross estimate>. **4.** Coarse in meaning or sense <gross slang>. **5.** Repulsive in behavior or appearance; sickening <a gross fellow with gross habits>. **6.** Beyond all reasonable measure; flagrant <a gross injustice>."

"Grossly", is an adverb and indicative of relatively higher degree of misconduct or so to say extremely wrong and deviant.

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39. The expression "disorder" as defined in Black's Law Dictionary[52] is as follows:

> "**disorder.** (1877) **1.** A lack of proper arrangement <disorder of the files>. **2.** An irregularity <a disorder in the proceedings>. **3.** A public disturbance; a riot. See CIVIL DISORDER. **4.** A disturbance in mental or physical health <an emotional disorder> <a liver disorder>."

The expression "disorderly" as defined in Black's Law Dictionary[53] is as follows:

> "**Disorderly**. Contrary to the rules of good order and behavior; violative of the public peace or good order; turbulent, riotous, or indecent."

In the Concise Oxford Dictionary[54], the expression "disorderly" has been defined thus:

> "**disorderly** adj. 1 untidy; confused. 2 irregular; unruly; riotous. 3 Law contrary to public order or morality."

The expression "disorderly conduct" as defined in Black's Law Dictionary[55] is as follows:

> "**disorderly conduct.** See CONDUCT
>
> **Conduct,** *n.* (15c) Personal behavior, whether by action or inaction, verbal or nonverbal; the manner in which a person behaves; collectively, a person's deeds. • Conduct does not include the actor's natural death or a death that

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> results from behavior consciously engaged in but not reasonably expected to have this result. — **conduct,** *vb.*"

40. Taking the totality of the meaning of expressions "grossly" and "disorderly", it must follow that the conduct of the member is such that it was impeding the smooth or orderly functioning of the House, and may also be of such a nature that it is likely to bring disrepute to the House. It may involve varied situations and, therefore, implied exercise of rational corrective mechanism is quintessential. The action of suspension or directing withdrawal of a member from the meetings of the Assembly is in the nature of self-security and is essentially directed to ensure that the House can then protect itself against obstruction, or disturbance of its ongoing proceedings owing to the misconduct of any of its members. That power is different from the privilege to inflict punishment on a member, which may require higher degree of deprivation of the member over and above participating in the proceedings of the House during the Session. In a given case, it can be in the form of expulsion being the highest degree of exclusion of the member from the House. Yet

another would be penal, in case of ordering imprisonment owing to act of contempt of the House. We shall elaborate on this aspect a little later while dealing with the challenge on the ground of impugned resolution being grossly irrational.

41. Suffice it to observe that Rule 53 of the Rules provides for a graded (rational and objective standard) approach to be adopted by the Speaker for ensuring orderly conduct of the business of the House. In the present case, however, the Minister for Parliamentary Affairs introduced a motion in the House for initiating action for contempt of the House, which the Chairman allowed it to be put to vote instantly at 14:40 hours on the same day and it was passed by the House by majority in no time. Indeed, if it is a case of grossly disorderly behaviour in the House, the Speaker/Chairman himself is free to take instantaneous decision to order withdrawal of the member from the meetings of the Assembly during the remainder of the day's meeting and if it is a case of repeat misconduct in the same Session — for the remainder of the Session.

42. Concededly, there is nothing in the constitutional scheme or the rules framed under Article 208 to prevent a member of the House to move a motion for directing withdrawal of a member on the ground of his grossly disorderly conduct. Further, if the Speaker can *suo motu* direct the member to withdraw from the Assembly on the same day instantly to secure smooth functioning of the proceedings, for the same logic, even the House could pass a resolution itself on a motion being moved by a member of the House instantly with the concurrence of the Speaker on such a motion.

43. In the present case, the Chairman entertained the subject motion and called upon the House to vote thereon, which had the effect of giving tacit consent if not explicit concurrence to the same. In that sense, it is not a case of resolution passed by the House (to suspend its members) as being without jurisdiction. It is a different matter that if the Speaker/Chairman was to do so, it could be only under Rule 53 in a graded manner for the remainder of the day and for repeat misconduct in the same Session — for the remainder

of the Session. That would be a logical and rational approach consistent with the constitutional tenets.

44. If the House takes upon itself to discipline its members, it is expected to adopt the same graded (rational and objective standard) approach on the lines predicated in Rule 53. That would be a case of rational action taken by the House as per the procedure established by law. The expression "rational" is defined in Black's Law Dictionary[56] as follows:

> "**rational**, *adj.* (14c) **1.** Endowed with the faculties of cognition traditionally thought to distinguish humans from the brutes <man as a rational being>. **2.** Based on logic rather than emotion; attained through clear thinking; not absurd, preposterous, foolish, or fanciful <a rational conclusion>. **3.** (Of a person) able to think clearly and sensibly; clear-headed and right-minded <Jones was rational at the time of the woman's death>."

As opposed to a rational decision, it would be a case of irrational or preposterous approach. The expression "irrational" as defined in Black's Law Dictionary[57] is as follows:

> "**irrational**, *adj.* (16c) Not guided by reason or by a fair consideration of the facts <an irrational ruling>. See ARBITRARY.
>
> **arbitrary,** *adj.* (15c) **1.** Depending on individual discretion; of, relating to, or involving a determination made without consideration of or regard for facts, circumstances, fixed rules, or procedures. **2.** (Of a

56 11th Edition
57 11th Edition

judicial decision) founded on prejudice or preference rather than on reason or fact.
• This type of decision is often termed *arbitrary and capricious.* Cf. CAPRICIOUS. — **arbitrariness,** *n."*

45. A *priori,* if the resolution passed by the House was to provide for suspension beyond the period prescribed under the stated Rule, it would be substantively illegal, irrational and unconstitutional. In that, the graded (rational and objective standard) approach predicated in Rule 53 is the benchmark to be observed by the Speaker to enable him to ensure smooth working of the House, without any obstruction or impediment and for keeping the recalcitrant member away from the House for a period maximum upto the remainder of the entire Session.

46. Inflicting suspension for a period "beyond the period necessary" than to ensure smooth working/functioning of the House during the Session "by itself"; and also, as per the underlying objective standard specified in Rule 53, indubitably, suffer from the vice of being grossly irrational measure adopted against the erring member and also substantively illegal and unconstitutional.

47. It is a different matter if the House had ended up with resolution of expulsion of the member, which power in a given situation it could legitimately exercise, as held in ***Raja Ram Pal***[58]. That action would not visit the member with disqualification and also allow him to get re-elected from the same constituency within the statutory period of six months from the date of vacation of his seat. However, if it is a case of suspension for a period beyond the remainder of the Session, it would entail in unnecessary (unessential) deprivation. And longer or excessive deprival would not only be regarded as irrational, but closer to or bordering on perversity. Resultantly, such an action would be violative of procedure established by law and also manifestly arbitrary, grossly irrational and illegal and violative of Articles 14 and 21 of the Constitution.

48. Be it noted that suspension beyond the remainder period of the ongoing Session would not only be grossly irrational measure, but also violative of basic democratic values owing to unessential deprivation of the member

58 supra at Footnote No.14

concerned and more importantly, the constituency would remain unrepresented in the Assembly. It would also impact the democratic setup as a whole by permitting the thin majority Government (coalition Government) of the day to manipulate the numbers of the Opposition Party in the House in an undemocratic manner. Not only that, the Opposition will not be able to effectively participate in the discussion/debate in the House owing to the constant fear of its members being suspended for longer period. There would be no purposeful or meaningful debates but one in *terrorem* and as per the whims of the majority. That would not be healthy for the democracy as a whole.

49. It is well-established that fundamental rights are guaranteed by Part III of the Constitution, out of which Articles 14, 19 and 21 are the most frequently invoked to test the validity of the executive as well as legislative actions when these actions are subjected to judicial scrutiny. Different Articles in the Constitution under chapter Fundamental Rights and the Directive Principles in Part IV ought to be read as an integral and incorporeal whole with possible

overlapping with the subject matter of what is to be protected by its various provisions particularly the fundamental rights. The sweep of Article 21 is expansive enough to govern the action of dismembering a member from the House of the Legislative Assembly in the form of expulsion or be it a case of suspension by directing withdrawal from the meeting of the Assembly for the remainder of the Session.

50. Be that as it may, it is evident from the impugned resolution that it has been passed by the majority votes in the House immediately after it was put to vote by the Chairman. It was in fact introduced as a motion for initiating action for having committed contempt of the House which ordinarily ought to have proceeded under Part XVIII of the Rules dealing with Privileges. That would have required constitution of a Committee of Privileges to enquire into the entire matter by giving opportunity of hearing to the persons concerned. Instead of adopting that procedure, the House itself chose to direct withdrawal of the petitioners from the meetings of the Assembly for a period of one year — which direction is neither

ascribable to the dispensation prescribed in Part XVIII of the Rules or Rule 53 enabling the Speaker to do so.

51. As aforementioned, it is not a case of procedural irregularity as such. Whereas, the decision taken by the House in this case, is one of substantive illegality in directing suspension beyond the period of remainder of the Session in which the motion was presented. We say so because, the period of suspension in excess of the period essential to do so much less in a graded manner including on principle underlying Rule 53, would be antithesis to rational or objective standard approach for ensuring orderly functioning of the House during the ongoing Session.

52. Reverting to the challenge to the impugned resolution being grossly irrational. As noticed earlier, Rule 53 provides for a graded (rational and objective standard) approach. The timeline as specified in Rule 53 is with a view to address the immediate concern of the House for ensuring orderly conduct of the business of the House in the given Session. This action is implied on the doctrine of necessity. The Speaker and for

that matter, even the House as a whole or by majority, would be within its power to resort to such a mechanism being rational measure. Exceeding the stated timeline is a substantive matter and not a procedural irregularity. It would raise a basic question as to what purpose would be served by withdrawing the member from the House for successive Sessions falling within that period of one year. Indeed, if the conduct of the member is gross warranting his removal from the Assembly even beyond the period of sixty days [Article 190(4)] or six months (Section 151A of the 1951 Act), the House is capable of invoking its inherent power of expulsion of such a member, which is a greater power.

53. Indubitably, suspension for a day or for the remainder of the Session, would be of a lesser degree of exercise of that power. However, it is not open to contend that the higher degree of power would include power to suspend the member beyond the period essential to keep him/her away from the Assembly for ensuring orderly conduct of the business of the House. As expounded in ***Amarinder Singh***[59], the important

59 supra at Footnote No.15 (paras 47 and 66)

consideration for scrutinising the exercise of legislative privileges is whether the same is necessary to safeguard the integrity of the legislative functions. This Court had recognised that the Legislature's power to punish for its contempt was not untrammelled. That power of legislative chamber to punish for its own contempt must coincide with the Legislature's interest in protecting the integrity of its function. In other words, the suspension of a member must be preferred as a short-term or a temporary measure for restoring order in the functioning of the concerned Assembly Session for completing its scheduled business within time and by way of disciplinary measure against the incorrigible member(s).

54. The word "suspension" is necessarily linked to attendance of the member in the House. Thus, the suspension may be resorted to merely for ensuring orderly conduct of the business of the House during the concerned Session. Anything in excess of that would be irrational suspension. This is so because the member represents the constituency from where he has been duly elected and longer

suspension would entail in deprivation of the constituency to be represented in the House. It is true that right to vote and be represented is integral to our democratic process and it is not an absolute right. Indeed, the constituency cannot have any right to be represented by a disqualified or expelled member. However, their representative cannot be kept away from the House in the guise of suspension beyond the necessary (rational) period linked to the ongoing Assembly Session, including the timeline referred to in Article 190(4) of the Constitution and Section 151A of the 1951 Act.

55. Be that as it may, suspension is essentially a disciplinary measure. It must follow that suspension for a period of one year would assume the character of punitive and punishment worse than expulsion. For, suspension for long period and beyond the Session has the effect of creating a *de facto* vacancy though not a *de jure* vacancy. The argument of the State that despite suspension from the House, the members would continue to discharge all other functions outside the House as an elected representative. This plea, in our view, is tenuous. For, the effect of such

suspension is visited not only on the constituency that goes unrepresented for potentially long and unessential time, but also on the functioning of the Assembly itself. Apart from a role in bringing to light the special needs or difficulties of the constituency, a member also plays a role in various motions, debates, votes, etc.[60]. In any case, this plea cannot whittle down the logic requiring limited action essential for orderly functioning of the House on the given day or at best, the Session for completion of its scheduled business for the relevant Session.

56. Suffice it to observe that one-year suspension is worse than "expulsion", "disqualification" or "resignation" — insofar as the right of the constituency to be represented before the House/Assembly is concerned. In that, long suspension is

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60 Some of the functions of the elected representative in the House/Assembly (taken from the Maharashtra Legislative Assembly Rules) would indicate that the member would not be able to take part in following matters, if suspended:

(a) Moving of a motion which requires decision by the Assembly, including by Division (**Rules 23, 40, 41**); (b) Taking part in a debate on a motion including speeches (**Rules 33,34**); (c) Asking Questions on Statements made by Ministers (**Rule 47**); (d) Making of personal explanations (**Rule 48**); (e) Questions on matters of public concern from Ministers (**Rule 68**); (f) Short Notice questions for immediate reply on questions of urgent nature (**Rule 86**); (g) Private member bills (**Rule 111**); (h) Discussions on matters of sufficient public importance (**Rule 94**); (i) No confidence motions (**Rule 95**); (j) Adjournment motions (**Rule 97**); (k) Participation as members of Committees, including the Committee for consideration of matters of public importance, Business Advisory Committee, Public Accounts Committee, Committee on Estimates, etc (**Part XV of the Rules**).

bound to affect the rights harsher than expulsion wherein a mid-term election is held within the specified time in terms of Section 151A of the 1951 Act, not later than six months. Thus, the impugned resolution is unreasonable, irrational, and arbitrary and liable to be set aside.

57. Having said this, we may now turn to two decisions of the Privy Council referred to and discussed by the Constitution Bench in ***Raja Ram Pal***[61], in paragraphs 284 to 293. The same reads thus:

> "**284.** Finally, **in *Barton***[62] it involved the suspension of a Member from the Legislative Assembly of New South Wales. The power of suspension for an indefinite time was held to be unavailable to the Legislative Assembly as it was said to have trespassed into the punitive field. The judgment was delivered by the Earl of Selborne. Referring to *Kielley*[63] and *Doyle*[64] the Court observed:
>
> > "It results from those authorities that no powers of that kind are incident to or inherent in a Colonial Legislative Assembly (without express grant), except 'such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute'.
> >
> > Powers to suspend toties quoties, sitting after sitting, in case of repeated offences (and, if may be, till submission or apology), and *also to expel for aggravated or persistent misconduct, appear to be sufficient to meet even the extreme case of a Member whose conduct is habitually obstructive or disorderly*.

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61 supra at Footnote No.14
62 supra at Footnote No.9
63 Edward Kielley vs. William Carson, (1842) 4 Moore PC 63 : 13 ER 225
64 Thomas William Doyle vs. George Charles Falconer, (1865-67) LR 1 PC 328 : 36 LJPC 33 : 15 WR 366

> **To argue that expulsion is the greater power, and suspension the less, and that the greater must include all degrees of the less, seems to their Lordships fallacious. The rights of constituents ought not, in a question of this kind, to be left out of sight. Those rights would be much more seriously interfered with by an unnecessarily prolonged suspension than by expulsion, after which a new election would immediately be held**."
>
> (emphasis supplied)

285. The Court went on to examine what is necessary and found that an indefinite suspension could never be considered necessary.

286. The learned counsel for the petitioners have relied on the above distinction and submitted that the limited power does not envisage expulsion and can only be used for *ex facie* contempts.

287. We are not persuaded to subscribe to the propositions advanced on behalf of the petitioners. Even if we were to accept this distinction as applicable to the Indian Parliament, in our opinion, the power to expel would be available.

288. Firstly, *Barton*[65] which allows only a limited power to punish for contempt, finds that even though the Legislative Assembly does not have the power to indefinitely suspend, as that was punitive in nature, the Assembly would have the power to expel, considering expulsion a non-punitive power. Secondly, the objection that the limited power could only deal with *ex facie* contempt, is not tenable.

289. In the above context, reference may be made to **Harnett v. Crick**[66]. This case involved the suspension of a Member of the Legislative Assembly of New South Wales until the verdict of the jury in the pending criminal trial against the Member had been delivered. The

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65 supra at Footnote No.9

66 Lawrence Joseph Harnett vs. William Patrick Crick, 1908 AC 470 : 78 LJPC 38 : 99 LT 601 (PC)

suspension was challenged. When the matter came up before the Privy Council, the respondents argued that:

> "The Legislative Assembly had no inherent power to pass [the Standing Order]. Its inherent powers were limited to protective and defensive measures necessary for the proper exercise of its functions and the conduct of its business. They did not extend to punitive measures in the absence of express statutory power in that behalf, but only to protective measures. … The fact that a criminal charge is pending against the respondent does not affect or obstruct the course of business in the Chamber or relate to its orderly conduct."

290. This argument was rejected and the House of Lords allowed the appeal. Lord MacNaghten, delivering the judgment, initially observed that:

> "… no one would probably contend that the orderly conduct of the Assembly would be disturbed or affected by the mere fact that a criminal charge is pending against a Member of the House." (475)

291. But he found that certain peculiar circumstances of the case deserved to be given weight. The Court went on to hold thus:

> "If the House itself has taken the less favourable view of the plaintiff's attitude [an insult and challenge to the House], *and has judged that the occasion justified temporary suspension, not by way of punishment, but in self-defence, it seems impossible for the Court to declare that the House was so wrong in its judgment*, and the Standing Order and the resolution founded upon it so foreign to the purpose contemplated by the Act, that the proceedings must be declared invalid."(476)
>
> (emphasis supplied)

292. The above case thus establishes that even if the House of legislature has limited powers, such power is not only restricted to *ex facie* contempts, but even acts committed outside the House. It is open to the Assembly to use its power for "protective" purposes, and the acts that it can act upon are not only those that are committed in the House, but upon anything

> **that lowers the dignity of the House**. Thus, the petitioners' submission that House only has the power to remove obstructions during its proceedings cannot be accepted.
>
> **293.** It is axiomatic to state that expulsion is always in respect of a Member. At the same time, it needs to be borne in mind that a Member is part of the House due to which his or her conduct always has a direct bearing upon the perception of the House. Any legislative body must act through its Members and the connection between the conduct of the Members and the perception of the House is strong. **We, therefore, conclude that even if Parliament had only the limited remedial power to punish for contempt, the power to expel would be well within the limits of such remedial contempt power**."
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> (emphasis supplied in bolds)

The two decisions of the Privy Council (***Barton***[67] and ***Lawrence Joseph Harnett***[68]) were pressed into service in that case to answer the plea that the Legislature has inherent limited remedial power to punish for contempt by way of suspension of its member and cannot resort to expulsion of the member. The Constitution Bench noticed that even these two decisions of the Privy Council, recognised inherent power of the Legislature to expel its member and, thus, negatived the plea of the petitioner in that regard. This Court after analysing the said decisions concluded that the Legislatures established in India by the Constitution, including

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67 supra at Footnote No.9
68 supra at Footnote No.66

Parliament under Article 105(3), need not be denied the claim to the power of expulsion arising out of remedial power of contempt.

58. What emerges from the stated conclusion is that the Constitution Bench declared that the inherent power of the Legislature is not absolute, but limited remedial power to punish for contempt and to take such measures as are necessary for orderly functioning of the proceedings of the House.

59. The case of ***Barton***[69] has been noticed in paragraph 284, which in turn had dealt with suspension of the member from the Legislative Assembly of the New South Wales. In that case, the resolution passed by the House did not mention about the time frame of suspension of the member. That was challenged by the aggrieved member being irrational and unnecessary. That plea was considered by the Privy Council keeping in mind its earlier decisions in ***Edward Kielley***[70] and ***Thomas William Doyle***[71]. (These decisions have been adverted to in paragraph 283 by the Constitution Bench as

69 supra at Footnote No.9
70 supra at Footnote No.63
71 supra at Footnote No.64

well). After noticing these decisions, the Privy Council in ***Barton***[72] noted that those authorities had dealt with situation that no powers of that kind are incident to or inherent in a Colonial Legislative Assembly (without express grant), except such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute.

60. It must follow that in absence of any express provision bestowing power in the Legislature to suspend its member(s) beyond the term of the ongoing Session, the inherent power of the Legislature can be invoked only to the extent necessary and for proper exercise of the functions of the House at the relevant point of time. No more. For that purpose, it could resort to protective and self-defensive powers alone and not punitive at all. This logic is reinforced from the dictum in ***Barton***[73] wherein the Privy Council noted as follows:

> "…"If a member of a Colonial House of Assembly is guilty of disorderly conduct in the House while sitting, he may be removed or excluded for a time, or even expelled …. The right to remove for self-security is one thing, the right to inflict punishment is another …. If the good sense and

72 supra at Footnote No.9
73 supra at Footnote No.9

> conduct of the members of Colonial Legislatures prove insufficient to secure order and decency of debate, the law would sanction the use of that degree of force which might be necessary to remove the person excluded from the place of meeting, and to keep him excluded.""[74]

61. The Privy Council in the same decision then proceeded to observe as follows:

> "... **The principle on which the implied power is given confines it within the limits of what is required by the assumed necessity. That necessity appears to their Lordships to extend as far as the whole duration of the particular meeting or sitting of the Assembly in the course of which the offence may have been committed. It seems to be reasonably necessary that some substantial interval should be interposed between the suspensory resolution and the resumption of his place in the Assembly by the offender, in order to give opportunity for the subsidence of heat and passion, and for reflection on his own conduct by the person suspended; nor would anything less be generally sufficient for the vindication of the authority and dignity of the Assembly**. ..."
>
> (emphasis supplied)

These observations are significant and apposite in the context of the issue under consideration. And we must lean in favour of adopting the same. Inasmuch as this exposition recognises the fact that implied or inherent power of the Legislature must be reckoned to the extent only to what is required to be done by the House for effective and orderly functioning of its business during

74 1 L.R, P.C. 340

the ongoing Session and not beyond. This is more emphatically expounded by the Privy Council in the following words:

> "The power, therefore, of suspending a member guilty of obstruction or disorderly conduct during the continuance of any current sitting, is, in their Lordships' judgment, reasonably necessary for the proper exercise of the functions of any Legislative Assembly of this kind; and it may very well be, that the same doctrine of reasonable necessity would authorize a suspension until submission or apology by the offending member; which, if he were refractory, might cause it to be prolonged (not by the arbitrary discretion of the Assembly, but by his own wilful default) for some further time. …"

Again, it went on to observe as follows:

> "… If these are the limits of the inherent or implied power, reasonably deducible from the principle of general necessity, they have the advantage of drawing a simple practical line between defensive and punitive action on the part of the Assembly. **A power of unconditional suspension, for an indefinite time, or for a definite time depending only on the irresponsible discretion of the Assembly itself, is more than the necessity of self-defence seems to require, and is dangerously liable, in possible cases, to excess or abuse**. …"
>
> (emphasis supplied)

62. The essence of the analysis done in ***Barton***[75] is about the logic and rationality behind the need to suspend a member. It unambiguously held that the same be regarded as temporary by way of self-protective mechanism of the Legislature to ensure orderly conduct of its business in the House during the sitting. For that very reason, Rule 53

75 supra at Footnote No.9

provides for a graded corrective action, namely, on the first occasion, the Speaker may suspend the member for the remainder of the day and if the misbehaviour is repeated in the same Session — for the remainder of the Session. The observations in ***Barton***[76] would reinforce this logic of need to adhere to a graded approach, which reads thus:

> " …"Suspension" must be temporary; the words, "suspended from the service of the House," may be satisfied by referring them to the attendance of the member in the House **during that particular sitting. So much as this is necessary to make the suspension effective, more is not**. …"
>
> (emphasis supplied)

63. In light of this decision, it must follow that only a graded approach is the essence of a rational and logical approach; and only such action of the Legislature which is necessary for orderly conduct of its scheduled business of the ongoing Session can be regarded as rational approach. Suspension beyond the Session would be bordering on punishing not only the member concerned, but also inevitably impact the legitimate rights of the constituency from where the member had been elected.

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76 supra at Footnote No.9

64. In the case of ***Lawrence Joseph Harnett***[77], the question was about the challenge to the Standing Order which provided as follows:

> "Whenever it shall have been ruled or decided (whether before or after the approval of this Standing Order) that the House may not proceed on a matter which has been initiated in the House affecting the alleged misconduct of a Member, because thereby the said member may be prejudiced in a criminal trial then pending on charges founded on such misconduct, the House may suspend such member from the service of the House until the verdict of the jury has been returned, or until it is further ordered."

This Standing Order was approved by the Governor. In that context, the Privy Council observed that it seems impossible for the Court to declare that the House was so wrong in its judgment, and the Standing Order and the resolution founded upon it so foreign to the purpose contemplated by the Act, so as to declare the proceedings against the member invalid. In other words, the Privy Council was considering a written Standing Order and its efficacy.

65. In the present case, the House has already adopted the Rules for conduct of its business and Rule 53 of the Rules expressly provides for the mechanism regarding suspension of its member. Indubitably, the source of powers and privileges

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77 supra at Footnote No.66

of Legislatures in India is derived from Article 105(3) in case of Parliament and Article 194(3) concerning the State Legislature. In absence of a law to define such powers and privileges, as of now, it can only exercise those powers as existed in the House of Commons of the Parliament of United Kingdom at the commencement of the Constitution.

66. In the celebrated treatise of Sir Thomas Erskine May[78] dealing with the Parliamentary privileges, it is noted as follows:

> "if for a subsequent occasion, in default of an order by the House that the suspension of the member shall terminate when the House orders that it shall do so, **the suspension shall be for the remainder of the Session**."
>
> (emphasis supplied)

He then noted that the first or subsequent occasion would mean the first or the subsequent occasion in the same session.

67. Further, the position as obtained in United Kingdom at the relevant time to suspend its members was governed by the House of Commons Standing Order Relative to Public

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78 The Law, Privileges Proceedings and Usage of Parliament, Fifteenth (1950) Edition (See Chapter VII under the heading "Proceedings upon the naming of a Member" at pages 451-452.)

Business 1948. The relevant Standing Order is No. 22 (1 to 4) as reproduced hereunder:

"22. Order in debate.— (1) Whenever a Member shall have been named by Mr. Speaker or by the chairman, immediately after the commission of the offence of disregarding the authority of the chair, or of persistently and willfully obstructing the business of the House by abusing the rules of the House, or otherwise, then, if the offence has been committed by such Member in the House, Mr. Speaker shall forthwith put the question, on a motion being made, no amendment, adjournment, or debate being allowed, "That such Member be suspended from the service of the House"; and if the offence has been committed in a committee of the whole House, the chairman shall forthwith suspend the proceedings of the committee and report the circumstances to the House; and Mr. Speaker shall on a motion being made forthwith put the same question, no amendment, adjournment, or debate being allowed, as if the offence had been committed in the House itself.

(2) If any member be suspended under this order, his suspension on the first occasion shall continue until the fifth day, and on the second occasion until the twentieth day, on which the House shall sit after the day on which he was suspended, but on any subsequent occasion until the House shall resolve that the suspension of such Member do terminate.

(3) Not more than one Member shall be named at the same time, unless two or more members, present together, have jointly disregarded the authority of the chair.

(4) If a Member, or two or more Members acting jointly, who have been suspended under this order from the service of the House, shall refuse to obey the direction of Mr. Speaker, when severally summoned under Mr. Speaker's orders by the Serjeant at Arms to obey such direction, Mr. Speaker shall call the attention of the House to the fact that recourse to force is necessary in order to compel obedience to his direction, and the Member or Members named by him as having refused to obey his direction shall thereupon and without any

> further question being put be suspended from the service of the House during the remainder of the session."

On conjoint reading of sub-clause (2) and (4) of the above-cited Standing Order No. 22, it is seen that suspension of a member on the first occasion can be for a period of five days or the remainder of the session whichever is earlier. Even for the second occasion the period of suspension is only twenty days or remainder of the Session, whichever is earlier. On any subsequent occasion the period of suspension shall be until the House shall resolve that the suspension of such member do terminate.

68. The Orissa High Court in ***Sushanta Kumar Chand***[79] had occasion to deal with a case of warrant issued by the Speaker of the Assembly to detain the contemnor for seven days' simple imprisonment. It was urged that as the unexpired period of sentence was beyond the term of the Session of the House, the same had lapsed in law. The High Court answered the challenge in favour of the petitioners after noticing passage from Sir Thomas Erskine May and Halsbury's Laws of England. The Sir Thomas Erskine May's

79 supra at Footnote No.10

Parliamentary Practice relied upon in that decision, expounds thus:

> "Persons committed by the Commons, if not sooner discharged by the House, are immediately released from their confinement on a prorogation, whether they have paid the fees or not. If they were held longer in custody, they would be discharged by the Courts upon a writ of habeas corpus."

And Halsbury's Law of England relied upon in the same decision observes thus:

> "The Lords claim to have power to commit an offender for a specified period even beyond the period of a session. This course was also formerly pursued by the Commons but was later abandoned; **and it would now seem that they no longer have power to keep offenders in prison beyond the period of session**....."
>
> (emphasis supplied)

The rationale for limiting all remedies for breach of privilege, as a rule, to a Session in which the House takes action for such breach is the effect of prorogation. According to Erskine May's Treatise[80], it is stated as under:

> "The effect of a prorogation is at once to **suspend all business until Parliament shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed**, except impeachments by the Commons, and appeals before the House of Lords. Every bill must therefore be renewed after a prorogation, as if it had never been introduced."
>
> (emphasis supplied)

80 1950 Edition at page 32 under the heading "Effect of a Prorogation"

69. A *priori,* if the Legislature intended to depart from mechanism predicated in Rule 53, it ought to have expressly provided for that dispensation. If it had done that by a law or in the form of Rules framed under Article 208 of the Constitution, the legality and constitutionality thereof could have been tested. Suffice it to note, in absence thereof, it would inevitably be exercise of power without an express grant in that regard. In such a case, the exercise of power can only be implied or inherent and limited to the logic of general necessity by way of self-protective or self-defensive action reasonably necessary for proper exercise of the functions of the House during the ongoing Session. Anything in excess then for a day or the remainder of the ongoing Session, would not be necessary much less rational exercise of inherent power of the Assembly. Even, Rule 53 bestows authority in the Speaker to take action against the member only for ensuring orderly functioning of the House. Same logic must apply to the exercise of inherent limited power by the House, even if it may not be *de facto* under Rule 53.

70. Be it noted, had it been a case of expulsion of the member by the House in terms of Section 151A of the 1951 Act, the Election Commission would move into action and rather be obliged to take steps not later than six months to fill in the vacancy so caused subject to the situation referred to in the proviso therein — so that the constituency could be duly represented in the House at the earliest opportunity. Concededly, the Legislative Assembly is a conglomeration of members chosen by direct election from the territorial constituencies in the State (as per Article 170). That presupposes that all territorial constituencies must be duly represented in the Assembly in *continuum*. In any case, their representation cannot be deprived for longer period than necessary for the orderly functioning of the House during the Session. For that reason, the statutory mandate postulated vide Parliamentary law[81] (which must be regarded as higher law and acts as a limitation upon the Legislature as well, as expounded in ***Sub-Committee on Judicial***

81 Section 151A of the 1951 Act

Accountability[82]), the constituency cannot be denied representation in the House beyond a limited period due to fortuitous situation. Moreover, the expelled member would be free to contest the mid-term election and get re-elected from the same constituency. In that, the member does not incur any disqualification due to expulsion or even removal by the House. In case of suspension beyond the period of remainder of the Session or sixty days or six months, as the case may be, even though is not a case of disqualification incurred by the member, it would entail in undue deprivation of the constituency to be represented in the House by their duly elected representative. It is, therefore, a drastic measure trenching upon imposing penalty more than disciplinary or corrective measure, beyond the limited inherent powers of the House.

71. Learned counsel for the respondents had invited our attention to the judgments of the Gujarat High Court wherein it had been held that the rules framed under Article 208 of the Constitution are neither statutory nor binding on the

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82 supra at Footnote No.33 (para 61)

Legislative Assembly. Those decisions have not taken note of the efficacy of the observations made by the Constitution Bench of this Court in ***M.S.M. Sharma***[83] as back as in 1959 — that the rules framed under Article 208 of the Constitution would have the effect of procedure established by law for the purpose of Article 21 of the Constitution and which dictum has been consistently followed in subsequent decisions including by the Constitution Bench which dealt with the case of ***Raja Ram Pal***[84]. Accordingly, the decisions pressed into service by the respondents cannot take the matter any further. The respondents have relied upon other decisions including of this Court which, however, has had no occasion to deal with the legality and efficacy of direction or order issued by the House such as vide impugned resolution of suspending duly elected members for a period of one year instead of maximum period of remainder of the same Session. Indeed, the decision of Madras High Court in ***V.C. Chandhira Kumar, Member of Legislative Assembly***[85] held the

83 supra at Footnote No.11
84 supra at Footnote No.14
85 supra at Footnote No.23

resolution of the Assembly reducing the original period of one year to six months as valid, however, for the view that we have taken, the said decision will be of no avail.

72. Resultantly, we have no hesitation in concluding that the impugned resolution suffers from the vice of being unconstitutional, grossly illegal and irrational to the extent of period of suspension beyond the remainder of the concerned (ongoing) Session. Further, it is not a case of mere procedural irregularity committed by the Legislature within the meaning of Article 212(1) of the Constitution.

73. Although learned counsel appearing for the parties had raised diverse contentions, we need not dilate further having opined that in exercise of inherent power of the House, the suspension of the members could not have, in any case, exceeded the remainder period of the ongoing Session. The concerned Session having concluded long back in July 2021, the petitions ought to succeed and could be disposed of with a declaration that suspension beyond the remainder of the ongoing Session in which the resolution was passed, is

nullity, unconstitutional and grossly illegal and irrational. The same cannot be given effect to beyond the remainder period of the concerned Session and must be regarded as *non est* in the eyes of law beyond that period. For that reason, it is unnecessary for us to dilate on other aspects of the matter. Thus, we do not wish to examine the same.

Epilogue:

74. It is unnecessary to underscore that Parliament as well as the State Legislative Assembly are regarded as sacred places, just as the Judicature as temple of justice. As a matter of fact, the first place where justice is dispensed to the common man is Parliament/Legislative Assembly *albeit* by a democratic process. It is a place where policies and laws are propounded for governing the citizenry. It is here that the entire range of activities concerning the masses until the last mile, are discussed and their destinies are shaped. That, in itself, is the process of dispensing justice to the citizens of this country. These are places where robust and dispassionate debates and discussion inspired by the highest

traditions of truth and righteousness ought to take place for resolving the burning issues confronting the nation/State and for dispensing justice — political, social and economic. The happenings in the House is reflection of the contemporary societal fabric. The behavioural pattern of the society is manifested or mirrored in the thought process and actions of the members of the House during the debates. It is in public domain (through print, electronic and social media) that the members of the Parliament or Assembly/Council of the State, spend much of the time in a hostile atmosphere. The Parliament/Legislative Assembly are becoming more and more intransigent place. The philosophical tenet, one must agree to disagree is becoming a seldom scene or a rarity during the debates. It has become common to hear that the House could not complete its usual scheduled business and most of the time had been spent in jeering and personal attacks against each other instead of erudite constructive and educative debates consistent with the highest tradition of the august body. This is the popular sentiment gaining ground amongst the common man. It is disheartening for the

observers. They earnestly feel that it is high time that corrective steps are taken by all concerned and the elected representatives would do enough to restore the glory and the standard of intellectual debates of the highest order, as have been chronicled of their predecessors. That legacy should become more prominent than the rumpus caused very often. Aggression during the debates has no place in the setting of country governed by the Rule of Law. Even a complex issue needs to be resolved in a congenial atmosphere by observing collegiality and showing full respect and deference towards each other. They ought to ensure optimum utilisation of quality time of the House, which is very precious, and is the need of the hour especially when we the people of India that is Bharat, take credit of being the oldest civilisation on the planet and also being the world's largest democracy (demographically). For becoming world leaders and self-dependant/reliant, quality of debates in the House ought to be of the highest order and directed towards intrinsic constitutional and native issues confronting the common man of the nation/States, who are at the crossroad of semi-

sesquicentennial or may we say platinum or diamond jubilee year on completion of 75 years post-independence. Being House of respected and honourable members, who are emulated by their ardent followers and elected from their respective constituency, they are expected to show statesmanship and not brinkmanship. In the House, their goal is and must be one — so as to ensure the welfare and happiness of we the people of this nation. In any case, there can be no place for disorderly conduct in the House much less "grossly disorderly". Such conduct must be dealt with sternly for ensuring orderly functioning of the House. But, that action must be constitutional, legal, rational and as per the procedure established by law. This case has thrown up an occasion for all concerned to ponder over the need to evolve and adhere to good practices befitting the august body; and appropriately denounce and discourage proponents of undemocratic activities in the House, by democratically elected representatives. We say no more.

Conclusion:

75. In conclusion, we have no hesitation in allowing these writ petitions and to declare that the impugned resolution directing suspension of the petitioners beyond the period of the remainder of the concerned Monsoon Session held in July 2021 is *non est* in the eyes of law, nullity, unconstitutional, substantively illegal and irrational. The impugned resolution is, thus, declared to be ineffective in law, insofar as the period beyond the remainder of the stated Session in which the resolution came to be passed.

Order:

76. As a result of the stated declaration, the petitioners are entitled for all consequential benefits of being members of the Legislative Assembly, on and after the expiry of the period of the remainder of the concerned Session in July 2021. The writ petitions are allowed in the above terms. No order as to costs.

Postscript:

77. While parting, we need to express a word of appreciation for the able assistance given by the learned counsel appearing

for the concerned parties enabling us to deal with the complex issues on hand. That they did despite the handicaps and uncertainty of online interaction in virtual Court hearing.

Pending application(s), if any, stands disposed of.

.....J.
(A.M. Khanwilkar)

.....J.
(Dinesh Maheshwari)

.....J.
(C.T. Ravikumar)

New Delhi;
January 28, 2022.