IN THE SUPREME COURT OF INDIA

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 800 OF 2021

IN THE MATTER OF:

Kirtikumar @Banti Bhangdiya and Ors. …Petitioners

Versus

The Maharashtra Legislative Assembly & Anr. …Respondents

INDEX

Sr. No.	Particulars	Page No.
1.	Written Submissions of Mr. Mukul Rohatgi, Sr. Adv.	1-26

DATE: 25.01.2022 **FILED BY:**

APSingh

Abhikalp Pratap Singh,
Advocate on Record for the Petitioners,
Supreme Court of India.
(M) +91-9999770795, 9560660020
(O) 011-47048747
Office: C-69, 2nd Floor, Nizamuddin East,
Delhi-110013

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 800 OF 2021

IN THE MATTER OF:

Kirtikumar @Banti Bhangdiya and Ors. ...Petitioners

Versus

The Maharashtra Legislative Assembly & Anr. ...Respondents

Written Submissions on behalf of the Petitioners by Mr. Mukul Rohatgi, Senior Advocate:

Introduction:

1. The Petitioners herein, in the batch of Petitions are Members of the Maharashtra Legislative Assembly who, for allegations pertaining to 'disorderly conduct', were suspended for a period of 1 year vide a Resolution dated 05.07.2021 passed by Maharashtra Assembly without being afforded any hearing at all.

2. The Petitioners, aggrieved by the said impugned resolution, which directly impinges upon their fundamental rights, have approached this Hon'ble Court in this batch of Writ Petitions under Article 32 of the Constitution of India.

3. The premise of the Petitioners' submission is that the resolution passed by the Maharashtra Legislative Assembly imposing the 'punishment' amounting to one year suspension suffers from the vice of manifest arbitrariness, irrationality, excessiveness, violation of principles of natural justice and without jurisdiction and as such violative of Article 14 of the Constitution of India.

Brief Background of Parliamentary practice with respect to 'disorderly conduct':

4. The source of powers, privileges, immunities etc. of the House can be traced to Article 194(3) of the Constitution of India which reads as under:

> ***"194.Powers, privileges, etc., of the House of Legislatures and of the members and committees thereof. -***
>
> *(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 26 of the Constitution forty-fourth Amendment) Act, 1978."*
>
> [Emphasis Supplied]

5. The powers and privileges of the House can be traced back to the powers and privileges available to the House of Commons in England. This is evident from the originally enacted text of Art 194(3) of the Constitution (prior to the 44th Amendment in 1979) and is as follows:

> ***"194.Powers, privileges, etc., of the House of Legislatures and of the members and committees thereof. -***
>
> *(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution."*
>
> [Emphasis Supplied]

6. In this regard, it is pertinent to examine the powers and privileges of House of Commons with respect to 'disorderly conduct', as were available

to it in the year 1950[1] – when the Constitution of India came into force. The procedure of suspension by the House of Commons was and continues to be governed by Standing Orders (S.O.). The relevant provisions of the 1948 Standing Order[2] is as under:

> *"22 (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 directions shall thereupon and without any further question being put to be suspended from the service of the House during the* ***reminder of the session****."*
>
> [Emphasis Supplied]

7. In fact, even under the latest Standing Order, i.e., Standing order of 2018, the powers and privileges to deal with 'disorderly conduct' are similar and the same are extracted hereunder for ready reference:

> ***"43.Disorderly conduct:***
>
> *The Speaker, or the chair, shall order any Member or Members whose conduct is grossly disorderly to withdraw immediately from the House during the remainder of that day's sitting; and the Serjeant at Arms shall act on such orders as he may receive from the chair in pursuance of this order. But if on any occasion the Speaker, or the chair, deems that his powers under the previous provisions of this order are inadequate, he may name such Member or Members, in which event the same procedure shall be followed as is prescribed by Standing Order No. 44 (Order in debate).*
>
> ***44.Order in debate:***

[1] Standing order of 1948.

[2] Standing Order are rules agreed by the house that govern the way its business operates in the Chamber and committees.

(1) Whenever a Member shall have been named by the Speaker, or by the chair, immediately after the commission of the offence of disregarding the authority of the chair, or of persistently and wilfully 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, the Speaker shall forthwith put the question, on a motion being made, '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 chair shall forthwith suspend the proceedings of the committee and report the circumstances to the House; and the Speaker shall on a motion being made forthwith put the same question as if the offence had been committed in the House itself.

Proceedings in pursuance of this paragraph, though opposed, may be decided after the expiration of the time for opposed business.

(2) If any Member be suspended under paragraph (1) of this order, his suspension on the first occasion shall continue for five sitting days, and on the second occasion for twenty sitting days, including in either case 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 the Speaker, when severally summoned under the Speaker's orders by the Serjeant at Arms to obey such direction, the 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**.*

(5) Nothing in this order shall be taken to deprive the House of the power of proceeding against any Member according to ancient usages."

[Emphasis Supplied]

Rules pertaining to parliamentary practice framed by Houses of Legislatures in India:

8. In India, all the Houses of Legislatures have power to frame their own rules of conduct under Article 208 of the Constitution of India, which is quoted hereunder:

> "***208.Rules of procedure.-***
>
> *(1) A House of the Legislature of a State may make rules for regulating* ***subject to the provisions of this Constitution****, its procedure and the conduct of its business.*
>
> *(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the corresponding Province shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be.*
>
> *(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the legislative Council, may make rules as to the procedure with respect to communications between the two Houses.*"
>
> [Emphasis Supplied]

9. Article 208 prescribes that the Rules framed by every house shall be subject to the provisions of the Constitution. Thus, the intention of parliament has been very clear that the procedure to conduct its business by any house of Legislature can never be violative of the Constitution of India.

10. In the state of Maharashtra, the Maharashtra Legislative Assembly has framed its own rules of business – admittedly within the four corners of the constitutional mandate.

11. Insofar as dealing with cases of 'disorderly conduct' by any of its members, the relevant rule under the MLA Rules is Rule No. 53, which is extracted hereunder:

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

12. Thus, a perusal of the power of the House of Commons as prevalent in 1950 and the Rules framed by the Maharashtra Legislative Assembly clearly show that in case of "Suspension" of members, the same cannot travel beyond the period of the Session. Further, the Petitioners submit that any suspension for a period exceeding the "remainder of the session" would amount to gross illegality and irrationality thereby rendering it justiciable before this Hon'ble Court.

Scope of power of the House in dealing with cases of 'disorderly conduct' – 'Smooth functioning' as against 'Punishment':

13. As evident from above, this rule 53 is in line with the well established traditions, custom and practices of the House of Commons. In fact, all the other state legislative assemblies as well as both the houses of the

parliament also prescribe the same 'remedy' for dealing with 'disorderly conduct'.

14. It is submitted that in cases of 'disorderly conduct' all the rules in India as well as House of Commons provide for a 'remedy/solution' and not 'punishment' – which appears to be intent behind passing the impugned resolution by suspending the Petitioners for a period of one year.

15. The word 'withdraw' used in Rule 53 is further demonstrative of the fact that the intention is to ensure smooth functioning of the house rather than punishing a member. The said rationale is further fortified by the fact that the word 'withdraw' is also used in rule 319 which deals with the Speaker's power in dealing with strangers – again to ensure smooth functioning of the House. Rule 319 is extracted hereunder:

> "***319. Powers to order withdrawal of strangers****:*
> *The Speaker, whenever he thinks fit may order the strangers to withdraw or any gallery to be cleared"*

16. In this regard, the Petitioner places reliance on the celebrated judgment of Privy Council in the case of ***Barton vs. Taylor, as reported in (1886) 11 AC 197.***

17. In the said judgment the Privy Council was dealing with a case of suspension of a Member from the Legislative Assembly of New South Wales. It was held that the power of suspension for an indefinite time is unavailable to the Legislative Assembly as it is punitive in nature. The relevant extracts of the same are extracted hereunder for ready reference:

> *"These words were used by Sir James Colvile, when delivering the judgment of this tribunal in Doyle v. Falconer, and their Lordships adopt them. It does not, however, appear to be a just inference from the expressions, "excluded for a time," and "to keep him excluded," that a power to exclude a member, and to keep him excluded, for a length of time unlimited, or limited only by the discretion of the Assembly, was considered in Doyle v. Falconer, or ought, on sound principles, to be now held by their*

Lordships to be necessary to the existence of such a body or to the proper exercise of its functions. 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. The sitting or meeting, as a whole, has a practical unity. It commences with the usual forms of opening, when the Speaker takes the chair; it is terminated by the adjournment of the House. It has its proper rota of business (such as, in our House of Commons, the Notices and Orders of the Day) ; a separate record of the whole business done at each such sitting or meeting (including the suspension of a member if that should take place) is entered upon the journals. The "service" of members in attendance at each such sitting or meeting is continuous; and at each adjournment that service is interrupted, not to be renewed until after an interval of some hours, days, or weeks, or even months, as the case may be.

The power, therefore, of suspending a member guilty of obstruction or disorderly conduct during the continuance of any current sitting, is, in their Lordships' judgement, 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. The facts pleaded in this case do not raise the question whether that would be ultra vires or not. 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. It is true that

confidence may, generally, be placed in such bodies; and there may be cases (as in such very important colonies as this of New South Wales) in which there may be preponderating reasons for entrusting them with much larger powers than those which ought to be implied from the mere necessity of the case. But their Lordships are at present considering only those powers which ought to be implied on the principle of necessity, and which must be implied in favour of every Legislative Assembly of any British possession, however small, and however far removed - from effective public criticism. Powers to suspend toties quoties, sitting after sitting, in case of repeated offences (and, it 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. 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.

The same considerations have also led their Lordships to the conclusion that even if a power of unconditional suspension during the pleasure of the Assembly did exist, a suspensory resolution not expressed (or interpreted by any Standing Order) to be conditional on something to be done by the person suspended, or to be during pleasure, or for a definite time, ought not to be held operative beyond the end of the current sitting."

[Emphasis Supplied]

18. The said judgment has been accepted and upheld by a Constitution Bench of this Hon'ble Court in *Raja Ram Pal vs. Hon'ble Speaker, Lok Sabha and Ors.*, as reported in (2007) 3 SCC 184.

Scope of Article 212 and Judicial Review of the acts of the Legislature:

19. The Respondents have resisted the present Petition and defended the unconstitutional Resolution primarily and solely on the strength of Article 212 of the Constitution of India, which is extracted hereunder:

> "***212.Courts not to inquire into proceedings of the Legislature. -***
>
> *(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.*
>
> *(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.*"

20. While the Petitioners do not deny the protection granted to Houses of Legislatures insofar as mere procedural irregularity is concerned, the case of the Petitioner is one of violation of constitutional provisions as well as inherent lack of jurisdiction in imposing a 'punishment' of suspension of one year, not only on the Petitioners but also on each of the constituencies represented by these legislators – which have been condemned to no representation in the house for one year.

21. The direct answer to the plea of Article 212 raised by the Respondent is contained in the Constitution Bench judgment of this Hon'ble Court in *Raja Ram Pal's case* (supra). The relevant paragraph is reproduced herein below:

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

(a) Parliament is a coordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;

(b) The constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere coordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of actions which partake the character of judicial or quasi-judicial decision;

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

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

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

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

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

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

(i) <u>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;</u>

(j) <u>If a citizen, whether a non-Member or a Member of the legislature, complains that his fundamental rights under</u>

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]

22. Further, a 7 judge bench of this Hon'ble Court in ***Powers, Privileges and Immunities of State Legislatures, Re V*** **reported in** ***(1965) 1 SCR 413*** had also held as follows:

> *"60. There are two other articles to which reference must be made. Article 208(1) provides that a House of the legislature of a State may make rules for regulating, subject to the provisions of this Constitution, is procedure and the conduct of its business. This provision makes it perfectly clear that if the House were to make any rules as prescribed by it those rules would be subject to the fundamental rights guaranteed Part III. In other words, where the House makes rules for exercising its powers under the latter part of 194(3), those rules must be subject to the fundamental rights of the citizens.*
>
> *61. Similarly, Article 212(1) makes a provision which is relevant. It lays down that the validity of any proceedings in the legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. Article 212(2) confers immunity on the officers and members of the legislature in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order, in the legislature from being subject to the jurisdiction of any court in respect of the exercise by him of those powers. Article 212(1) seems to make it possible for a citizen to call in question in the appropriate Court of law the validity of any proceedings inside the Legislative Chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a Court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular. That again is another indication which may afford some assistance in construing the scope and extent of the powers conferred on the House by Article 194(3)."*

[Emphasis Supplied]

23. Thus, this court, in two Constitution Bench decisions has preserved its powers to deal with and interfere in cases where the actions of House of Legislature are unconstitutional. This is also in spirit with Article 208 of the Constitution of India which provides that the business of the House shall be conducted in compliance with the constitutional provisions.**Observance of Rules of Natural Justice when Action of the House result in visiting penal/civil consequences.**

24. The Petitioners further rely on the decision of this Hon'ble Court in ***Alagaapuram R. Mohanraj & Ors. vs. Tamil Nadu Legislative Assembly and Anr. reported in (2016) 6 SCC 82*** which has clearly held that natural justice is a very important part of procedure to be adopted in the House. The relevant paragraphs are reproduced herein below:

> *"**44.** The principles of natural justice require that the petitioners ought to have been granted an opportunity to see the video recording. Perhaps they might have had an opportunity to explain why the video recording does not contain any evidence/material for recommending action against all or some of them or to explain that the video recording should have been interpreted differently.*
>
> ***45.** The Privileges Committee should have necessarily offered this opportunity, in order to make the process adopted by it compliant with the requirements of Article 14. Petitioner 1 in his reply letter to the notice issued by the Privileges Committee seeks permission to give further explanation when the video recording is provided to him. Petitioner 3 in his reply letter states that he believes his version of his conduct will be proven by the video recording. The other petitioners do not mention the video recording in their reply letters. However, it is not the petitioners' burden to request for a copy of the video recording. It is the legal obligation of the Privileges Committee to ensure that a copy of the video recording is supplied to the petitioners in order to*

> *satisfy the requirements of the principles of natural justice The failure to supply a copy of the video recording or affording an opportunity to the petitioners to view the video recording relied upon by the Committee in our view clearly resulted in the violation of the principles of natural justice i.e. a denial of a reasonable opportunity to meet the case. We, therefore, have no option but to set aside the impugned Resolution dated 31-3-2015 passed in the Tamil Nadu Legislative Assembly. The same is accordingly set aside.*
>
> [Emphasis Supplied]

25. This case has been distinguished on the ground that this was a case where the 'disorderly conduct' of those legislators was referred to the privileges committee – which after granting an opportunity to be heard, decided against the legislators.

26. In the humble submission of the Petitioners herein, the present case is on an even higher footing insofar as the perversity of the House is writ large as no hearing was granted to the Petitioners – at all. In the Alagaapuram Case, despite being given a hearing, this Hon'ble Court held that the hearing was not a fair one since the footage of the video was not provided to those legislators. However, in the present case, despite for making a request for the video footage, neither the same was granted nor a hearing, of any manner was granted to the Petitioners.

27. In the present case, the action taken without complying with any form of natural justice, the Respondents have argued that they are not liable for any scrutiny, whatsoever.

Non-Compliance with the Maharashtra Assembly Rules:

28. As mentioned above, Rule 53 which provides for procedure to be followed in dealing with cases of 'disorderly conduct' has been completely by passed by the Assembly.

29. The Respondent, State of Maharashtra has sought to contend that the MLS Rules are merely procedural in nature and do not bind the House. It is further contended that the House is entitled to deviate from the procedure any deviation from the said rules would constitute a mere procedural irregularity which is saved from judicial review under Article 212.

30. It is submitted that Rule 53 is not merely a procedural rule but also any action taken under the same determines the substantial constitutional rights of the members of the House as it states the time period for which a member is not allowed to attend the House. Suspension of members for any period exceeding the "Remainder of Session" constitutes substantive illegality and hence is subject to judicial review by this Hon'ble' Court. Thus, by giving Rule 53 a complete go by, the Respondent has infringed the rights of the Petitioner under Article 14 as well as Article 21[3] of the Constitution of India.

31. The Petitioners also rely on the decision of this Hon'ble Court in ***MSM Pandit Sharma vs. Shri Krishna Sinha & Ors.*** **reported in** ***AIR 1959 SC 395*** which has clearly held that Rules framed under Article 208 of the Constitution of India are procedure established by law. The relevant paragraphs are reproduced herein below:

> *"**25**. Article 194 has already been quoted in extenso. It is quite clear that the subject-matter of each of its four clauses is different. Clause (1) confers on the members freedom of speech in the legislature, subject, of course, to certain provisions therein referred to. Clause (2) gives immunity to the members or any person authorised by the House to publish any report etc. from legal proceedings. Clause (3) confers certain powers, privileges and immunities on the House of the Legislature of a State and on the members and the committees thereof and finally clause (4) extends the provisions of clauses (1) to (3) to persons who are not members of the House, but who, by virtue of the Constitution, have the right to speak and otherwise to*

[3] Right to Reputation

take part in the proceedings of the House or any committee thereof. In the second place, the fact that clause (1) has been expressly made subject to the provisions of the Constitution but clauses (2) to (4) have not been stated to be so subject indicates that the Constitution-makers did not intend clauses (2) to (4) to be subject to the provisions of the Constitution. If the Constitution-makers wanted that the provisions of all the clauses should be subject to the provisions of the Constitution, then the Article would have been drafted in a different way, namely, it would have started with the words: "Subject to the provisions of this Constitution and the rules and standing orders regulating the procedure of the Legislature —" and then the subject-matter of the four clauses would have been set out as sub-clause (i), (ii), (iii) and (iv) so as to indicate that the overriding provisions of the opening words qualified each of the sub-clauses. In the third place, it may well be argued that the words "regulating the procedure of the Legislature" occurring in clause (1) of Article 194 should be read as governing both "the provisions of the Constitution" and "the rules and standing orders". So read freedom of speech in the Legislature becomes subject to the provisions of the Constitution regulating the procedure of the legislature, that is to say, subject to the Articles relating to procedure in Part VI including Articles 208 and 211, just as freedom of speech in Parliament under Article 105(1), on a similar construction, will become subject to the articles relating to procedure in Part V including Articles 118 and 121. The argument that the whole of Article 194 is subject to Article 19(1)(a) overlooks the provisions of clause (2) of article 194. The right conferred on a citizen under Article 19(1)(a) can be restricted by law which falls within clause (2) of that article and he may be made liable in a court of law for breach of such law, but clause (2) of Article 194 categorically lays down that no member of the Legislature is to be made liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or in committees thereof and that no person will be liable in respect of the publication by or under the authority of the House of such a Legislature of any report, paper or proceedings. The provisions of clause (2) of Article 194, therefore, indicate that the freedom of speech referred to in clause (1) is different from the freedom of speech and expression guaranteed under Article 19(1)(a) and cannot be cut down in any way by any law contemplated by clause (2) of Article 19.

***26.** As to the second head of arguments noted above it has to be pointed out that if the intention of clause (1) of Article 194 was only to indicate that it was an abridgement of the freedom of speech which would have been available to a member of the Legislature as*

a citizen under Article 19(1)(a), then it would have been easier to say in clause (1) that the freedom of speech conferred by Article 19(1)(a) when exercised in the Legislature of a State, would, in addition to the restrictions permissible by law under clause (2) of that article, be further subject to the provisions of the Constitution and the rules and standing orders regulating procedure of that Legislature. There would have been no necessity for conferring anew the freedom of speech as the words "there shall be freedom of speech in the Legislature of every State" obviously intend to do.

***27.** …*

***28.** Seeing that the present proceedings have been initiated on a petition under Article 32 of the Constitution and as the petitioner may not be entitled, for reasons stated above, to avail himself of Article 19(1)(a) to support this application, learned advocate for the petitioner falls back upon Article 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 Article 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 Article 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 Article 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 Article 21.*

***29.** We now proceed to consider the other points raised by learned counsel for the petitioner. He argues that assuming that the Legislative Assembly has the powers, privileges and immunities it claims and that they override the fundamental right of the petitioner, the Legislative Assembly, nevertheless, must exercise those privileges and immunities in accordance with the standing orders laying down the rules of procedure governing the conduct of*

> *its business made in exercise of powers under Article 208. Rule 207 lays down the conditions as to the admissibility of a motion of privilege. According to clause (ii) of this rule the motion must relate to a specific matter of recent occurrence. The speech was delivered on 30-5-1957, and Shri Nawal Kishore Sinha, MLA sent his notice of motion on June 10, 1957, that is to say, 10 days after the speech had been delivered. The matter that occurred 10 days prior to the date of the submission of the notice of motion cannot be said to be a specific matter of recent occurrence. It is impossible for this Court to prescribe a particular period for moving a privilege motion so as to make the subject-matter of the motion a specific matter of recent occurrence. This matter must obviously be left to the discretion of the Speaker of the House of Legislature to determine whether the subject-matter of the motion is or is not a specific matter of recent occurrence. The copies of the proceedings marked as Annexure D in Annexure III to the petition do not disclose that any objection was taken by any member on the ground that the matter was not a specific matter of recent occurrence. We do not consider that there is any substance in this objection."*
>
> [Emphasis Supplied]

32. Another facet of the Respondents argument, as also mentioned in the Counter Affidavit dated 8.01.2022 filed by it is that the suspension is not under Rule 53 but inherent power of the House invoked by .

33. The said argument raised by the Respondent must also fail in view of Rule 57 of the Maharashtra Assembly Rules which reads as under:

> *"**57. Suspension of the 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."*

34. Thus, any deviation from the rules also requires a motion to be moved for deviating from a particular rule, rule 53 in the present case, which has admittedly not been done.

35. Infact, the general powers of the speakers under Rule 58 are also limited to cases where the rules do not prescribe for matters not specifically provided in the rules. It is submitted that insofar as dealing with cases of 'disorderly conduct' is concerned, the Maharashtra Assembly Rules clearly provide for the same under Rule 53. Rule 58 is extracted hereunder:

> ***"58. General Power of the 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]

36. The Petitioners further rely on Rule 110 of the MLA Rules which state that any Resolution moved by a Minister is to be preceded by a seven day notice. Rule 110 is extracted hereunder:

> "***110. Government Resolutions***
>
> 1) *The provisions of rule 106 shall not apply to resolutions of which notice is given by a Minister of the Advocate General.*
> 2) *Seven days' notice* ***shall be necessary*** *in respect of such resolutions."*

[Emphasis Supplied]

37. Admittedly, no notice was given before passing the impugned resolution, which is mandatory – as evident from the above.

38. In view of the same, it is most respectfully submitted that since the impugned resolution is passed without jurisdiction and is therefore liable to be quashed and set aside.

Irrationality and Excessiveness of the Resolution:

39. The irrationality and the excessiveness of the decision to suspend the Petitioners for a period of one year is also evident from the fact that the same is worse than expulsion.

40. It is submitted that even in cases of expulsion, atleast the constituency gets its representation back within a period of six months as fresh elections are mandated by the Election Commission in terms of Section 151A of the Representation of Peoples Act, 1951 – which is extracted hereunder:

> *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 byelection within the said period.*
>
> [Emphasis Supplied]

41. In fact, reference can also be made to Article 190 (4) of the Constitution of India which provides the seat of a member, who for a period of 60 days absents himself, without permission of the House of the Legislature from all meetings, may be declared vacant by the House. Thus the objective clearly appears to be one where the Constitution mandates that a constituency does not go unrepresented in the House for a period of more than 60 days. Article 190(4) is extracted hereunder:

> *"190(4) If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant: Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days"*

42. Thus, by suspending the Petitioners for a period of one year, the rights of their respective constituents are also being violated by the House and this suspension is worse than expulsion.

43. The Petitioners, on a legal principle, do not dispute the House's power to expel its members (but do dispute the exercise of any such power in the facts of the present case).

44. The said power to expel has also been upheld by this Hon'ble Court in *Raja Ram Pal's Case* (supra). However, what is pertinent to note is the fact in the said case, before expelling the member, the matter was referred to the privileges committee and there was a complete compliance with principles of natural justice. Furthermore, the said case was not one of 'disorderly conduct' but pertained to a serious allegations wherein a TV News Channel showed some video- footage of some persons, alleged to be members of Parliament accepting money for tabling questions or raising issues in the House, under the caption 'operation Duryodhana' ("Cash for Questions").

45. However, in the present case, where the allegation (which is denied on facts by the Petitioners), is of a much lesser magnitude, the Petitioners as well as their respective constituencies have been condemned to a punishment of a higher degree, i.e. no right to be represented in the House for a period of one year.

46. In this regard, the Petitioners place reliance on a judgment of the Orissa High Court in Sushant Kumar Chand & Ors. vs. The Speaker, Orissa Legislative Assembly & Anr. reported in (1972) SCC OnLine Ori 57.

47. In the said case, the Hon'ble Division Bench of the Orissa High Court had held that, even the period of imprisonment sentenced by the Legislative Assembly in case of contempt of the House should be till the period the House is in session. The relevant paragraphs of the said judgment are extracted hereunder:

> *"**4.** Mr. Murty does not dispute the power of the Orissa Legislative Assembly to take cognizance of its contempt and even to award sentence of imprisonment, as has been done in this case. On the authority of the decision by their Lordships of the Supreme Court in the case of in re Under Article 143 of the Constitution of India, AIR 1965 SC 745. Mr. Murty also agrees that this Court has no jurisdiction to question the correctness of the sentence of Imprisonment and the warrant in question. He however, contends that the petitioners were entitled to be released when the Orissa Legislative Assembly was prorogued on 13-10-1969. There is no dispute that the Orissa Legislative Assembly was prorogued as contemplated under Article 174(2)(a) of the Constitution on 13th of October, 1969. According to Mr. Murty the detention of the petitioners should have come to an end with the adjournment of the house on 13-10-1969 and they should not have been detained until 15-10-1969. In support of his contention he contends that under Article 194(3) of the Constitution, the privileges of a house of legislature of a State are those of the House of Commons of the Parliament of the United Kingdom as at the commencement; of the Constitution of India. There is no dispute that the powers and privileges of the house of the Orissa Legislative Assembly has not yet been defined by the legislators by law. It is Mr. Murty's contention that in the United Kingdom it is long settled that even if there has been an order of detention for contempt of the House of Commons for a fixed term, with the adjournment of a session of Parliament, the unexpired term of the sentence is waived and the contemner gets acquitted. In terms of Article 194(3) of the Constitution of India that must be taken to be the law applicable in India and the petitioners were, therefore, entitled to be set at liberty on the 13th of October, 1969.*

9. *The position has been authoritatively stated in "Halsbury's Laws of England, vol. 28" Lord Simonds p. 4641.*

"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....."

10. *In the famous Earl of Shaftsbury's case, 86 English Reports page 792, the Court of King's Bench has also ruled to that effect. Dealing with a petition of habeas corpus on behalf of the Earl of Shafts-bury, their Lordships at page 796 of the reporter discussed the position in law and ultimately concluded by saying:—*

".....And so concluded, that the order is determined with the session, and that the Earl of Shaftsbury ought to be discharged."

11. *There seems to be no doubt that in United Kingdom by 1950 when the Constitution of India came into force the position was well settled that the House of Commons could pass an order for detaining a contemner for a fixed term, but the unexpired portion of the sentence was to lapse as and when the session during which the detention order was made ended.*

12. *That being the law applicable to India in view of the provisions under Article 194(3) of the Constitution, the petitioners were entitled to be released on 13-10-1969 when admittedly the autumn session of the Orissa Legislative Assembly came to an end and was prorogued."*

[Emphasis Supplied]

48. The Petitioners most respectfully submit that the business transacted in one Session of the House, if kept pending ordinarily lapses on prorogation of the House and cannot be carried to the next Sessions. In that view it is submitted that the maximum suspension that could have been imposed upon the Petitioners was "remainder of the session" and the suspension thus lapses when the session in which it was imposed was prorogued. This submission of the Petitioners is fortified by the judgment this Hon'ble Court in ***Sub-Committee on Judicial Accountability***

v. Union of India*, reported in *(1991) 4 SCC 699. which has clearly held that that pending business lapses on prorogation and as a general practice the House is usually prorogued before it is dissolved. The relevant paragraphs are reproduced herein below:

> ***"53.*** *Shri Ram Jethmalani for the petitioner-sub-committee referred to the conventions of the British Parliament and urged that pending business lapses on prorogation and as a general practice the House is usually prorogued before it is dissolved. Learned counsel said that impeachment motions are sui-generis in their nature and that they do not lapse. It is, however, necessary to distinguish the Indian parliamentary experience under a written Constitution from the British conventions. Indeed, referring to the doctrine of lapse this Court in Purushothaman Nambudiri v. State of Kerala [1962 Supp 1 SCR 753 : AIR 1962 SC 694] Gajendragadkar, J., said: (SCR pp. 759-60)*
>
> *"In support of this argument it is urged that wherever the English parliamentary form of government prevails the words 'prorogation' and 'dissolution' have acquired the status of terms of art and their significance and consequence are well settled. The argument is that if there is no provision to the contrary in our Constitution the English convention with regard to the consequence of dissolution should be held to follow even in India. There is no doubt that, in England, in addition to bringing a session of Parliament to a close prorogation puts an end to all business which is pending consideration before either House at the time of such prorogation; as a result any proceedings either in the House or in any Committee of the House lapse with the session. Dissolution of Parliament is invariably preceded by prorogation, and what is true about the result of prorogation is, it is said, a fortiori true about the result of dissolution. Dissolution of Parliament is sometimes described as 'a civil death of Parliament'. Ilbert, in his work on 'Parliament' has observed that 'prorogation means the end of a session (not of a Parliament)'; and adds that 'like dissolution, it kills all bills which have not yet passed'. He also describes dissolution as an 'end of a Parliament (not merely of a session) by royal proclamation', and observes that 'it wipes the slate clean of all uncompleted bills or other proceedings' ...."*
>
> *After referring to the position in England that the dissolution of the House of Parliament brought to a close and in that sense killed all business of the House at the time of dissolution, the learned Judge said: (SCR pp. 768-69)*

"Therefore, it seems to us that the effect of clause (5) is to provide for all cases where the principle of lapse on dissolution should apply. If that be so, a Bill pending assent of the Governor or President is outside clause (5) and cannot be said to lapse on the dissolution of the Assembly.

In the absence of clause (5) it would have followed that all pending business, on the analogy of the English convention, would lapse on the dissolution of the Legislative Assembly. It is true that the question raised before us by the present petition under Article 196 is not free from difficulty but, on the whole, we are inclined to take the view that the effect of clause (5) is that all cases not falling within its scope are not subject to the doctrine of lapse of pending business on the dissolution of the Legislative Assembly. In that sense we read clause (5) as dealing exhaustively with Bills which would lapse on the dissolution of the Assembly. If that be the true position then the argument that the Bill which was pending assent of the President lapsed on the dissolution of the Legislative Assembly cannot be upheld."

[Emphasis Supplied]

49. It is submitted that not only the 'magnitude of the punishment', but the entire 'concept of punishment' for 'disorderly conduct' is alien to the customary parliamentary practice as well as the law.

Place: New Delhi

Dated: 25.01.2022