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SECTION- X

**IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO. 808 OF 2021
(Under Article 32 of the Constitution of India)**

IN THE MATTER OF:
Harish Pimple And Ors.

...PETITIONERS

VERSUS

THE MAHARASHTRA LEGISLATIVE ASSEMBLY AND ANR.

...RESPONDENTS

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versus

The Maharashtra Legislative Assembly & Anr. ... Respondents

*(Alongwith other connected Petitions being
W.P. (C) Nos. 797, 800 and 807 of 2021)*

Written Submissions on behalf of the Petitioners:

I. IMMUNITY FROM JUDICIAL REVIEW GRANTED TO STATE LEGISLATURES UNDER ARTICLE 212 DOES NOT EXTEND TO IMMUNITY FROM REVIEW OF UNCONSTITUTIONAL ACTS

1. Article 212(1) confers immunity on the members of the Legislature 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 those powers exercised by him.
2. While admittedly, the protection under Art. 212 confers immunity upon the Legislature for any **irregularities in procedure, the Hon'ble Supreme Court has clearly held that this immunity does not extend to procedures that are illegal or unconstitutional. If the impugned procedure were illegal and unconstitutional, it would be open to be scrutiny in a court of law.** *{Para 61, Powers, Privileges and Immunities of State Legislatures, In re, AIR 1965 SC 745.}*
3. A 7-Judge Bench of this Hon'ble Court in the case of ***Powers, Privileges and Immunities of State Legislatures, In re***, (1965) 1 SCR 413: AIR 1965 SC 745 ("*State Legislatures Case*") has extensively

laid down the law on the scope of judicial review of the exercise of inherent powers of State Legislatures.

4. To compare, while a speech made in contravention of Article 211 (*prohibition on discussion in Legislature of conduct of Judges*) is protected against in action in court by Art 194(2), no such exception or protection is provided in prescribing the powers and privileges of the House under the latter part of Art. 194(3). (***Para 31, In Re, Powers and Privileges***)
5. Further, where the proceedings of legislation are tainted on account of substantive illegality or unconstitutionality, they cannot be protected from judicial scrutiny. [See also Para 366, 389, 393, 398, 413 *Raja Ram Pal.*, (2007) 3 SCC 184.]
6. Supremacy of the Constitution is protected by authority of an independent judiciary body to act as an interpreter of a scheme of distribution of powers. The Supreme Court is a sentinel of the Constitution and democracy, particularly of the fundamental rights of citizens. Therefore, in matters where the fundamental rights of parties are infringed, the actions of state functionaries, including legislative assemblies, are subject to judicial review.

II. THE INHERENT POWERS OF STATE LEGISLATURES TO PUNISH FOR CONTEMPT OF THE HOUSE, INCLUDING THE POWER TO SUSPEND MEMBERS, IS SUBJECT TO PART III OF THE CONSTITUTION OF INDIA.

7. Article 194(3) of the Constitution of India confers certain powers, privileges, and immunities upon State Legislatures, which admittedly include the powers to punish for contempt of the house. Article 208(1), further, provides that state legislatures may frame rules to regulate the

procedure and conduct of the House. However, the inherent powers of the State Legislature, whether drawn directly from Article 194(3), or through Rules framed under Article 208, cannot bypass, erode or violate the fundamental rights guaranteed to all citizens under Part III of the Constitution.

8. 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 Court, in the *State Legislatures Case* categorically notes **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.**
9. Even if these rules were seen as mere guidelines, when the legislature fails to provide any reason whatsoever for a departure from the provisions of the rules, this constitutes an illegal exercise of power.
10. Given the existence of direct Rule on Procedure for Withdrawal of Member for Misconduct (Rule 53), and Procedure for Passing of Resolution (Rule 110), the legislature cannot act in a manner entirely unknown to the Rules as defined by that very legislature.
11. While the British system of legislative powers is based on the supremacy of Parliament in the United Kingdom, in India, all powers exercised by the Legislature are subject to a written constitution, and particularly the fundamental rights guaranteed under Part III.
12. While admittedly Article 208(1) provides that State Legislature may make rules for regulating its procedure and conduct of its business, these rules are subject to the provisions of the Constitution. **(Para 60, 125, In Re Powers and Privileges)**

13. Vaguely worded and abstract grounds such as “conduct unbecoming of a member of the house”, if recognized will trigger disproportionate use of legislative privileges to target political opponents and dissidents.
14. Thus, as recognized in the *State Legislatures* case, **even if the power is exercised is under the inherent powers that may be available to a legislature to punish for its contempt, such power of the legislature cannot erode the fundamental rights of citizens**, as held below,

“36.....If it appears that any of the powers, privileges and immunities claimed by the House are inconsistent with the fundamental rights guaranteed by the Constitution, how is the conflict going to be resolved. Was it the intention of the Constitution to place the powers, privileges and immunities specified in the latter part of clause (3) on a much higher pedestal than the law which the legislature of a State may make in that behalf on a future date? As a matter of construction of clause (3), the fact that the first part of the said clause refers to future laws which would be subject to fundamental rights, may assume significance in interpreting the latter part of clause (3). That, in brief, is the position of the first three material provisions of Article 194.

*39. Our legislatures have undoubtedly plenary powers, but these powers are controlled by the basic concepts of the written Constitution itself and can be exercised within the legislative fields allotted to their jurisdiction by the three Lists under the Seventh Schedule; but beyond the Lists, the legislatures cannot travel. They can no doubt exercise their plenary legislative authority and discharge their legislative functions by virtue of the powers conferred on them by the relevant provisions of the Constitution; but the basis of the power is the Constitution itself. Besides, the legislative supremacy of our legislatures including the Parliament is normally controlled by the provisions contained in Part III of the Constitution. **If the legislatures step beyond the legislative fields assigned to them, or acting within their respective fields, they trespass on the fundamental rights of the citizens in a manner not justified by the***

relevant articles dealing with the said fundamental rights, their legislative actions are liable to be struck down by courts in India. Therefore, it is necessary to remember that though our legislatures have plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution.

125. As we have already indicated we do not propose to enter into a general discussion as to the applicability of all the fundamental rights to the cases where legislative powers and privileges can be exercised against any individual citizen of this country, and that we are dealing with this matter on the footing that Article 19(1)(a) does not apply and Article 21 does. If an occasion arises, it may become necessary to consider whether Article 22 can be contravened by the exercise of the power or privilege under Article 194(3). But, for the moment, we may consider Article 20. **If Article 21 applies, Article 20 may conceivably apply, and the question may arise, if a citizen complains that his fundamental right had been contravened either under Article 20 or Article 21, can he or can he not move this Court under Article 32? For the purpose of making the point which we are discussing, the applicability of Article 21 itself would be enough. If a citizen moves this Court and complains that his fundamental right under Article 21 had been contravened, it would plainly be the duty of this Court to examine the merits of the said contention, and that inevitably raises the question as to whether the personal liberty of the citizen has been taken away according to the procedure established by law. In fact, this question was actually considered by this Court in the case of Pandit Sharma [1959 Supp (1) SCR 806] . It is true that the answer was made in favour of the legislature: but that is wholly immaterial for the purpose of the present discussion. If in a given case, the allegation made by the citizen is that he has been deprived of his liberty not in accordance with law, but for capricious or mala fide reasons, this Court will have to examine the validity of the said contention, and it would be no answer in such a case to say that the warrant issued against the citizen is a general warrant and a general warrant must stop all further judicial inquiry and scrutiny. In our opinion, therefore, the impact of the fundamental constitutional right**

conferred on Indian citizens by Article 32 on the construction of the latter part of Article 194(3) is decisively against the view that a power or privilege can be claimed by the House, though it may be inconsistent with Article 21. In this connection, it may be relevant to recall that the rules which the House has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution under Article 208(1).”

III. A DENIAL OF A REASONABLE OPPORTUNITY TO MEET A CASE AGAINST THE MEMBERS, PRIOR TO THEIR SUSPENSION, FALLS AFOUL THE GUARANTEED RIGHT OF EQUALITY AS ENSHRINED IN ART. 14.

15. In the present case, the Impugned Resolution violates the fundamental right of equality of the Petitioner MLAs, as it (i) fails to provide them an opportunity to be prior to their suspension; and (ii) was passed without giving the Petitioner MLAs access to the relevant evidence, and thus no reasonable opportunity was given to the Petitioners to meet the case against them.
16. This Hon'ble Court, in the case of *Alagaapuram R. Mohanraj v. T.N. Legislative Assembly*, (2016) 6 SCC 82 has held that in matters concerning the suspension of members of legislatures, **non-compliance with the principles of natural justice constitutes a violation of Art. 14.**
17. In the present case, the Chairman case recognized that the heated exchanges were attributable not only to the Petitioners, but also to members of the Ruling Coalition. However, the action to suspend members has solely been taken against 12 members, all belonging to the Opposition Party without any evidence being produced to indicate any of the charges of abusing and manhandling the Chairman.

18. **This is particularly relevant given that action has taken against the members for alleged disorderly conduct outside the Chamber of the Deputy Speaker.** Not all members of the Legislature who voted on the Impugned Resolution were even present when these alleged exchanges broke out in the vicinity of the Chamber of the Speaker. Therefore, firstly, the Impugned Resolution, which finds the members responsible for such grave misconduct **has been voted upon by members who were not even present during the incident.** Thus, given that the impugned action was taken without providing the Petitioners a chance to meet the case against them, the Resolution clearly falls afoul the basic principles of natural justice and is liable to be struck down.
19. *Further*, the right to be heard before action is taken includes the right to be presented with all evidence against the members, including video-graphic and CCTV footage, and members being given adequate time to respond to such evidence, even if only via writing.
20. The burden of providing such proof, in these cases, rests on the legislature, even if no formal request for evidence is made, as the legislature must at all times respect the principles of natural justice.
21. In the present case, the challenge to the impugned action of suspending the MLAs was taken **without presenting them with video evidence indicating their wrongdoing or giving them any chance to respond to any allegations against them.**
22. This is despite repeated attempts on the part of the Petitioners and various members of the Opposition requesting video tapes, CCTV footage, and recordings of the proceedings vide letters dated 07.07.2021 and 08.07.2021.

IV. PERIOD OF SUSPENSION OF 1 YEAR IS UNCONSCIONABLE, MANIFESTLY ARBITRARY, IRRATIONAL AND THUS IN VIOLATION OF ARTICLE 14

23. The Impugned Resolution also provides an unconscionable, manifestly arbitrary period of one year of suspension to the MLAs. Acts of the legislature, which are excessive or disproportionate, are manifestly arbitrary, fall afoul Article 14, and thus are liable to be struck down.
24. The maximum penalty envisaged under the Rule 53 of the Maharashtra Legislative Assembly Rules, 1960 for a first default of disorderly conduct is for withdrawal for the remainder of the day. Only if the person is directed to withdraw the second time in the same session, the maximum penalty envisaged under the Rules is for him to be absent for the remainder of that session.
25. When the ordinary period of punishment for disorderly conduct is a period of one day, or one session, there must be some aggravated or vexatious conduct, that threatens the very integrity of the legislative functions to justify a suspension of one year.
26. Allowing one year long suspensions in simple cases of disorderly conduct, without providing an opportunity to be heard, would thus leave the business of State Legislatures to the whims of the majority.
27. However, in the present case, the Impugned Resolution has suspended members for a period of one year, and further, barred their entry from the premises of the Legislature. If some members have committed a folly, the punishment may be awarded to them but it must be commensurate with such act, which should not be severe, too harsh or unreasonably excessive, depriving the constituency having its representation in the House.

28. The Impugned Resolution by suspending the members for a period of 1 year, de facto results in the seat of that constituency being left vacant beyond the permissible limit of 6 months, s.151A, Representation of People Act.
29. This constitutes not merely a violation of the Act itself, but also the basic structure of the Constitution, which includes within its folds the principles of democracy – as the impact of a year long suspension is to leave a constituency unrepresented for more than six months.
30. Pertinently, in this regard, this Court in ***Amarinder Singh v. Punjab Vidhan Sabha***, (2010) 6 SCC 113 : (2010) 2 SCC (Cri) 1343 : 2010 SCC OnLine SC 518 , has held as follows,

*“47. The observations cited above make it amply clear that the exercise of **legislative privileges is not an end in itself. They are supposed to be exercised in order to ensure that legislative functions can be exercised effectively, without undue obstructions. These functions include the right of members to speak and vote on the floor of the House as well as the proceedings of various Legislative Committees. In this respect, privileges can be exercised to protect persons engaged as administrative employees as well. The important consideration for scrutinising the exercise of legislative privileges is whether the same was necessary to safeguard the integrity of legislative functions. We are also expected to look to precedents involving the British House of Commons.***

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

64. *As outlined earlier, the respondents have also contended that the power of a legislature to punish for its own contempt should not be seen as incidental to its power of self-composition and that it should have a wider import than the remedial power of preventing obstructions to legislative functions. It will be useful to refer to the following extract from the respondents' written submissions: (Raja Ram Pal case [(2007) 3 SCC 184] , SCC p. 323, para 292)*

“292. ... even if the House of legislature has limited powers, such power is not only restricted to ex facie contempts, but even acts committed outside the House. It is open to the Assembly to use its power for ‘protective’ purposes, and the acts that it can act upon are not only those that are committed in the House, but upon anything that lowers the dignity of the House. Thus, the petitioners' submission that the House only has the power to remove obstructions during its proceedings cannot be accepted.”

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

65. *We are unable to agree with this line of reasoning presented on behalf of the respondents. Expressions such as “lowering the dignity of the House”, “conduct unbecoming of a Member of the House” and “unfitness of a Member” are openly worded and abstract grounds which if recognised, will trigger the indiscriminate and disproportionate use of legislative privileges by incumbent majorities to target their political opponents as well as dissidents. The various grounds for disqualification of Members of Legislative Assemblies (MLAs) have been enumerated in Articles 190 and 191 of the Constitution. For most circumstances, there is an elaborate machinery in place to decide questions pertaining to the disqualification of members and the vacancy of seats. However, it is for the purpose of tackling unforeseen and novel impediments to legislative functioning that the “powers, privileges and*

immunities” contemplated by Article 194(3) of the Constitution have not been codified.”

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