
(2020) 01 CAL CK 0050

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 1125 Of 2013

Arunava Ghosh

APPELLANT

Vs

Speaker, West Bengal Legislative Assembly And Others

RESPONDENT

Date of Decision : 09-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 13, 13(2), 14, 19, 19(1)(a), 19(2), 20, 20(3), 21, 22, 85, 105, 122, 194, 194(3), 195, 208, 212

Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule 3

Constitution (Forty-Fourth Amendment) Act, 1978 — Section 26

Evidence Act, 1872 — Section 139

Foreign Exchange Regulation Act, 1973 — Section 74, 79

Citation : (2020) 01 CAL CK 0050

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Partha Sarathi Sengupta, Soumya Majumdar, Anindya Lahiri,, S. Chatterjee, P. Chakraborty, A. Ghosh, M. Gupta, P. Das, Kausik Chanda, Vipul Kundalia

Final Decision : Disposed Of

Judgement

Debangsu Basak, J

1. The petitioner has challenged the constitutional validity of the Section 26 of the Constitution (44th) Act, 1978. He has also sought a declaration that Article 194 (3) of the Constitution is unworkable and that, its application in the facts of the present case resulted in violation of the Fundamental Rights of the petitioner guaranteed under Articles 14, 19, 21 and 22 of the Constitution of India. Petitioner has also challenged the Memo dated August 26, 2013, the recommendation contained in the First Report of the Committee of Privilege 2012-2013 of the West Bengal State Legislature and the punishment imposed upon the petitioner on August 27, 2013.

2. Learned Senior Advocate appearing for the petitioner has submitted that, the

punishment imposed upon the petitioner of reprimand and sentence to detention till the adjournment of the sitting of the West Bengal State Legislative Assembly is bad and should be quashed. He has submitted that, Part III of the Constitution has primacy over any law for the time being in force in India. He has referred to Article 13 and particular to Article 13 (2) and submitted that, Article 13 (2) prohibits making any law which takes away or up bridges the rights conferred by Part III of the Constitution. He has referred to and relied upon Article 19 of the Constitution and submitted that, a citizen has the Fundamental Right of freedom of speech and expression. Although, such Fundamental Right can be put under reasonable restriction, none of the grounds, recognised in law to be a reasonable restriction on such Fundamental Right of a citizen, exists in the facts of the present case.

3. Relying upon Article 20 of the Constitution, learned Senior Advocate appearing for the petitioner has submitted that, no person can be convicted of any offence except violating a law in force at the time of commission of the so called offence. According to him, in the present case, there is no allegation of violation of any existing law, as, according to him, no law existed in the manner as claimed for it to be violated by the petitioner.

4. Referring to and relying upon Article 20 (3) of the Constitution of India, learned Senior Advocate appearing for the petitioner has submitted that, although, no person can be compelled to be a witness against himself, the petitioner was called upon to be a witness and depose on oath when, the petitioner was an accused.

5. Learned Senior Advocate appearing for the petitioner has submitted that, Article 21 prohibits a person from being deprived of his life or personal liberty without a procedure established by law. According to him, the actions complained of have taken away the personal liberty of the petitioner.

6. Learned Senior Advocate appearing for the petitioner has submitted that, the petitioner appeared in a programme on a television channel. It was alleged as against the petitioner by the Privilege Committee of the West Bengal State Legislative Assembly that, the petitioner allegedly used words which were defamatory and derogatory to the Speaker of the Assembly. The State Assembly purported to exercise the power of privilege vested upon them. The State Assembly passed a sentence of punishment and executed the same as against the petitioner. Referring to Articles 105 and 195 of Constitution of India, learned Senior Advocate appearing for the petitioner has submitted that, they deal with power and privileges of the house of the Parliament and State Legislatures as also of the member of the committees thereof. According to him the two provisions are *pari materia*. He has drawn the attention of the Court to Article 208 of the Constitution and submitted that, such Article provides that the house of a legislature of a State can make rules for regulating its procedures and conduct of its business subject to the provisions of the Constitution. He has referred to and relied Article 212 of the Constitution and submitted that, the

validity of any proceeding in the State Legislature cannot be called into question on the ground of alleged irregularity of procedure. According to him, the validity of the proceedings and the State Legislature can be called into question on substantive grounds which are not procedural in nature. Consequently, although, there are serious procedural lapses culminating into the impugned order of punishment, he has submitted that, the petitioner is not taking such points in view of the constitutional mandate.

7. Learned Senior Advocate appearing for the petitioner has drawn the attention of the Court to the discussion on Article 85 of the Constitution before the Constituent Assembly. He has submitted that, the privilege of the members of the State Legislature was not known even to the members of the Constituent Assembly. Moreover, the members of the Constituent Assembly were of the view that, the provisions in the Constitution with regard to privilege of the committee was only a temporary measure. He has referred Article 194 (3) of the constitution and has submitted that, such understanding of the Constituent Assembly was reflected therein. He has pointed out that, despite the Constitution coming into effect six decades ago, such temporary measure is yet to attain any finality. The privileges of the State Legislature remain undefined. The State Legislature is yet to promulgate any Legislation defining their privileges. Therefore, on the basis of such undefined privileges, it cannot be said that, a person committed any offence of breach of such privilege. An offence can be committed of an existing law. The privilege of the State Legislation remaining undefined, it cannot be said to be breached or an offence committed in respect of such undefined privilege.

8. Referring to the notice of the breach of privilege and contempt of the house against the petitioner, learned Senior Advocate appearing for the petitioner has submitted that, the notice does not say that the statements made by the petitioner were untrue. According to him, the truth of the statements made by the petitioner not being disputed, the statements made by the petitioner are protected under Article 19 (1) (a) of the Constitution. Article 19 coming under Part III of the Constitution being paramount will override any other constitutional provision. An unknown undefined concept of privilege cannot abridge the Fundamental Right guaranteed under Article 19 (1) (a) of the Constitution.

9. Referring to the facts of the present case, learned Senior Advocate appearing for the petitioner submitted that, certain expression used by the petitioner suggest that such statements were an expression of frustration of a person who had the greatest respect for the institution and chair of the Speaker and was not made to demean the institution or the chair.

10. Referring to Article 19 of the Constitution, learned Senior Advocate appearing for the petitioner has submitted that, such Article protects action taken by the members of the Legislature in the State Legislature.

11. Learned Senior Advocate appearing for the petitioner has submitted that,

contempt of a State Legislature is different from privilege that a member of a State Legislature enjoys in the Legislature. According to him, the concept of contempt of the State Legislature is analogous to the contempt of Court. He has submitted that, in a proceeding under the Contempt of Court Act, 1971 a plea of truth is a valid defence and a person cannot be held guilty of contempt for any fair comment on a judgement. In the instant case, that, he has submitted that, the truth of the statements is not in dispute and in any event the allegedly offending statements are a fair comment. Therefore, according to him, the petitioner did not commit contempt of the State Legislature by making the statements.

12. Learned Senior Advocate appearing for the petitioner has submitted that, the entire proceeding culminating into the impugned order of punishment, has been in violation of the principles of natural justice. According to him, plea of natural justice is not a procedural matter and that, principles of natural justice and its applicability on a matter of substance, is basic to every concept of justice. He has relied upon (1983) 3 Supreme Court Cases 398 (Union of India and another vs. Tulsiram Patel and others) and (1991) 1 Supreme Court Case 588 (Union of India and other vs. Mohd. Ramzan Khan) in support of his contentions.

13. Referring to the facts of the present case, he has submitted that, the proceeding stands vitiated by breach of principles of natural justice inasmuch as, the punishment against the petitioner was imposed on the basis of a report of the Privilege Committee, a copy whereof was not made available to the petitioner. The petitioner was not given any opportunity to cross examine the complainant. The deposition of the complainant was taken in absence of the petitioner. He has submitted that, right to cross examine is a substantive right and an integral part of principles of natural justice. According to him, the petitioner was not heard as the petitioner refused to make any statement on oath until the complainant was asked to depose before committee in presence of the petitioner and the petitioner was allowed a chance of cross examination. According to him, the privilege committee had acted with material irregularity in deciding not to hear the petitioner without the petitioner taking the oath.

14. Referring to the conduct of the proceedings, learned Senior Advocate appearing for the petitioner has submitted that, although the initial notice required the petitioner to explain the statements made by the petitioner in a Television programme, the Privilege Committee took the view that the gravity of the offence committed by the petitioner increased on the petitioner refusing to take oath, casting aspersions on the Privilege Committee and its members in the written submission of the petitioner and that, the petitioner being an ex-member of the State Legislative Assembly and an advocate of the Calcutta High Court. According to him, these are extraneous considerations and therefore, the impugned decision of the Privilege Committee stands vitiated.

15. Learned Senior Advocate appearing for the petitioner has submitted that, although, the petitioner has undergone the punishment imposed, the petitioner

seeks quashing of the impugned order of punishment as also the proceedings, so as to be honourably acquitted and not to continue with any stigma. He has given up the prayers relating to the challenges to the constitutional validity of the 44th Amendment.

16. Learned Senior Advocate appearing for the petitioner has relied upon (1965) 1 SCR 413 (Powers, Privileges and Immunities of State Legislatures, in Re, Special Reference No. 1 of 1964), (2007) 3 SCC 184 (Raja Ram Pal vs. Hon'ble Speaker, Lok Sabha and others), (2010) 6 SCC 113 (Amarinder Singh vs. Special Committee, Punjab Vidhan Sabha and others), (2014) 4 SCC 473 (Lokayukta, Justice Ripusadan Dayal (Retired) and others vs. State of Madhya Pradesh and others) and (2018) 7 SCC 1 (Kalpana Mehta and others vs. Union of India and others).

17. By an order dated January 28, 2016 the Advocate General was requested to appear in the matter. The Advocate General, has submitted on July 3, 2019 that, the State Government has chosen not to appear. Such submission was recorded by the order dated July 3, 2019.

18. Learned Additional Solicitor General appearing for the Union of India has submitted that, the State Legislature enjoys privileges under Article 194 of the Constitution of India. According to him, the language of Article 105 which confers privileges upon the members of the Parliament is *pari materia* with the language of Article 194. He has submitted that, Article 194 (3) of the Constitution of India as it stood prior to the 44th amendment provided that the powers, privileges and immunities of the State Legislature shall be such as may from time to time defined by the Legislature by law and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and the committees at the commencement of the Constitution of India i.e. January 26, 1950. After the 44th amendment, Article 194 (3) of the Constitution stood modified. The amended Article 194 (3) provides that power, privileges and immunities of the State Legislature and of the members of the committee of a State Legislature shall be such as may from time to time be defined by the State Legislature by law and until so defined, shall be those of that of the State Legislature and of its members and committees immediately before coming into force of Section 26 of the Constitution (44th) Act, 1978. He has submitted that, the 44th amendment Act came into force with effect from June 20, 1979. According to him, the State Legislature even after the 44th amendment continue to enjoy the same powers, privileges and immunities of the members of the House of Commons of the United Kingdom at the commencement of the Constitution i.e. January 26, 1950.

19. Learned Additional Solicitor General, has referred to the debate of Constituent Assembly at the time of enactment of the original Article 105 and 195 of the Constitution as also the debates of the Lok Sabha at the time of enactment of the Constitution (44th) amendment Act, 1978. He has submitted that, such debates will establish that, the framers of the Constitution did not

think it appropriate to codify the privileges, powers enjoyed by the State Legislature and the parliament. According to him, privileges are rights which are necessary for the execution of the powers and functions of Parliament and State Legislature unhindered and uninterruptedly. Therefore, according to him, the Parliament and the State Legislature should best be left to adjust their extent of powers and privileges. Courts should not interfere with the view taken by another constitutional authority as to the jurisdiction of such constitutional authority.

20. Learned Additional Solicitor General has referred Special Reference No.1 of 1964 (supra) and submitted that, powers, privileges and immunities which are contemplated by Article 194 are the incidental powers, privileges and immunities which every State Legislature must possess in order to function effectively. Referring to Raja Ram Pal (supra), learned Additional Solicitor General has submitted that, the State Legislatures enjoys a power to punish for contempt. According to him, the power to punish for contempt extends to acts committed outside the House also. On the scope of the privileges enjoyed by a State Legislature, learned Additional Solicitor General has referred to various paragraphs of Raja Ram Pal (supra).

21. Learned Additional Solicitor General has submitted that, Article 122 of the Constitution prohibits interference with the internal Parliamentary proceedings on the ground of mere procedural irregularities. He has draws the attention of the Court to the extent and scope of judicial review as discussed in Raja Ram Pal (supra).

22. Referring to Amarinder Singh (supra) learned Additional Solicitor General has submitted that, Supreme Court discussed the nature and scope and purpose of privileges of the State Legislature under Article 194 of the Constitution therein. According to him, committees of the State Legislature are part and parcel of the State Legislature and that, such committee enjoy the same power, privilege and immunities as that of the State Legislature. He has drawn the attention of the Court to various passages of Kalpana Metha (supra) in that regard. According to him, powers, privileges and immunities of the members of the State Legislature and its committees cannot be said to be vague and undefined.

23. Referring to the Fundamental Right of freedom of speech, learned Additional Solicitor General has submitted that, such right cannot be read to mean that, a person can make derogatory or disparaging comments against any individual or against a member of the State Legislature. He has relied upon (1971) 1 SCC 626 (Shri C.K.Daphtary and others vs. Shri. O.P. Gupta and others) in support of his contention.

24. Referring to the defence of truth being spoken by the petitioner, learned Additional Solicitor General has submitted that truth cannot be pleaded or examined as a defence to a charge of contempt of House when it is not possible for the Court to ascertain as to whether the statements made by the petitioner

are true or not. In the facts of the present case, he has submitted that, the truth of the statements made by the petitioner cannot be ascertained by Court. Therefore, the Court should not entertain the plea of truth as a defence in the facts of the present case. In support of his contention, learned Additional Solicitor General has relied upon (1989) Maharashtra Law Journal 1078 (V.M. Kanade v. Madhav Gadkari & Ors.).

25. On the aspect of the breach of the principles of natural justice in the conduct of proceedings by State Legislature as against the petitioner, learned Additional Solicitor General has submitted that, the facts are otherwise. According to him, the petitioner was afforded of all possible opportunities of hearing. It is the petitioner who did not accept those opportunities. He has referred to the conduct of the petitioner in the proceedings. He has submitted that, the facts placed before the committee being admitted, question of cross examining the complainant or non furnishing of the report of the committee is not fatal. According to him, the plea of violation of natural justice is not available to the petitioner. He has relied upon (1984) 1 SCC 43 (K.L.Tripathi vs. State Bank of India & others) and (2013) 9 SCC 549 (Telstar Travels Private Limited & others vs. Enforcement Directorate) in support of his contention.

26. Learned Additional Solicitor General has submitted that, the State Legislature did not take into consideration any irrelevant or extraneous factors while passing the impugned sentence. He has submitted that, so long as the impugned order of punishment is not illegal or unconstitutional, the Court should not be concerned with the consequence of such punishment. Therefore, according to him, the writ petitioner cannot be granted any relief.

27. At the hearing of the writ petition, the writ petitioner did not press the prayers in the writ petition with regard to constitutional validity of the various provision of law. The contentions of the petitioner were limited to the manner and extent as noted herein.

28. The issues that have fallen for consideration in the writ petition, in view of the stand taken by the respective parties, are as follows:

- i) Whether, the impugned decision of the State Legislature and the process leading upto the impugned decision, in imposing the impugned punishment are in violation of the principles of natural justice?
- ii) Whether, words spoken by the petitioner are defamatory and constitute contempt of the State Legislature?
- iii) Whether, a State Legislature has the power to punish for contempt in respect of acts conducted beyond the State Legislature?
- iv) To what relief or reliefs are the parties are entitled to?.

29. The petitioner participated in a Television programme telecast live on July 9, 2012 on a News channel. In such TV programme, the petitioner made certain

statements about the Speaker of the State Legislature. A Member of the Legislative Assembly (MLA) by a letter dated September 4, 2012 gave notice of breach of privilege against the petitioner and others. A Privilege Committee was constituted by the State Legislature. The Privilege Committee held a meeting on October 12, 2012 where, the Privilege Committee decided to allow the petitioner to make a representation with regard to contents of the letter dated September 4, 2012 of the MLA. Such decision of the Privilege Committee was communicated to the petitioner by a letter dated October 16, 2012 issued by the Secretary of the State Legislature. By a letter dated November 6, 2012, the Secretary of the State Legislature informed the petitioner about initiation of proceedings against the petitioner. The petitioner was asked to attend the hearing on November 23, 2012. By two letters dated November 8, 2012, the petitioner asked for a copy of the letter dated October 16, 2012 and contended that the Speaker should not preside over the privilege motion. By a letter dated November 19, 2012 the Secretary of the State Legislature forwarded a copy of the letter dated October 16, 2012 along with its enclosures to the petitioner. According to the petitioner, the compact disc (CD) forwarded to the petitioner under cover of the letter dated November 19, 2012 did not contain any recording or file. By a letter dated December 11, 2012, the Acting Secretary of the State Legislature forwarded a copy of the CD. According to the petitioner the CD also did not contain any recording or file. By a letter dated December 17, 2012, the petitioner requested for information and documents and pointed out that, the CD furnished to the petitioner did not contain any recording or file. By a letter dated January 8, 2013 the Acting Secretary of the State Legislature communicated the exception taken by the Privilege Committee to the contents of the letter dated December 17, 2012 of the petitioner. The petitioner was issued a notice to appear before the Privilege Committee on January 24, 2013. By a letter dated January 14, 2013, the petitioner asked for copies of documents. The petitioner questioned the maintainability of the proceeding and the jurisdiction of the Privilege Committee. The Privilege Committee was requested to decide the same as a preliminary issue.

30. By a notice dated January 18, 2013, the Acting Secretary of the State Legislature informed the petitioner of the decision of the Privilege Committee to hear the petitioner on January 24, 2013. On January 24, 2013 when, the petitioner appeared before the Privilege Committee along with an advocate, the Chairperson of the Privilege Committee objected to the appearance of an advocate. According to the petitioner, the Privilege Committee allowed the other noticees to be assisted by advocates. Another notice dated January 31, 2013 was issued directing the petitioner to appear before the Privilege Committee on February 8, 2013. By a letter dated February 5, 2013, petitioner put on record such facts.

31. On February 8, 2013, when the petitioner attended the hearing of the Privilege Committee, the petitioner raised preliminary objection with regard to the maintainability of the proceedings and jurisdiction of the Privilege

Committee. By a notice dated February 18, 2013, the petitioner was asked to appear before the Privilege Committee on February 22, 2013. The petitioner did not appear on such date. By a letter dated February 25, 2013, the petitioner reiterated his stand with regard to the maintainability and the jurisdiction issues. By a notice dated April 12, 2013 the petitioner was asked to appear before the Privilege Committee on April 26, 2013. The petitioner attended the hearing and reiterated the issues earlier raised.

32. The Privilege Committee presented a report to the State Assembly being the First Report of the Privilege Committee 2012-2013 and the same was accepted by the State Assembly on August 26, 2013. The State Assembly resolved, on August 26, 2013, that the petitioner should be summoned on August 27, 2013 for awarding punishment to be decided by the State Assembly. This decision of State Assembly was communicated to the petitioner by a writing dated August 26, 2013 issued by the Speaker. By a letter dated August 27, 2013 the petitioner informed the Speaker that he will attend the State Legislature but without prejudice to his rights and contentions. On August 27, 2013 after the petitioner appeared before the State Legislature, he was punished with the sentence of detention till the adjournment of the State Legislature for that day. The petitioner suffered such punishment. Thereafter, the petitioner by letter dated August 30, 2013 requested the Speaker of the State Legislature and the Secretary of the State Legislature to furnish a copy of recommendation of the Privilege Committee and the order of punishment. In response thereto, Secretary of the State Legislature under cover of the letter dated September 26, 2013 forwarded a copy of the First Report of the Privilege Committee along with impugned order of punishment.

33. A decision of the State Legislature imposing a punishment or expelling a member is justiciable. In Special Reference (1) of 1964 (supra), the Supreme Court has answered the reference made by the President to it by holding, inter alia, that, a writ petition challenging a legality of the sentence of imprisonment imposed upon a citizen by a State Legislature for the contempt of the State Legislature and for infringement of privileges of State Legislature is maintainable. Raja Ram Pal (supra) relying upon Special Reference 1 of 1964 (supra) has held that, an order of an expulsion issued by a State Legislature is subject to judicial review. Amarinder Singh (supra) and Lokayukta, Justice Ripusadan Dayal (Retired) and others (supra) have entertained and decided on a writ petition challenging decision of the State Legislature.

34. Although a decision of the State Legislature imposing punishment is justiciable, the decision of the State Legislature can be challenged only on certain grounds. Raja Ram Pal (supra) has held that, Courts need to exercise restraint in judicial review of decisions of the State Legislatures so as not to transgress into the domain of the State Legislature and to maintain harmony and spirit of understanding. It has laid down that, exercise of power of privilege by a State Legislature ought not to be tested on the traditional parameters as applicable to

administrative action. However, exercise of power of privilege by a State Legislature is open to judicial review on judicially discoverable and manageable standards, such as on grounds of lack of jurisdiction or the impugned decision being a nullity for some reason such as gross illegality, rationality, violation of constitutional mandate, mala fides, non compliance with rules of natural justice and perversity. The twin test of legality and constitutionality of an action of a State Legislature in exercise of power of privilege can be applied by a Court.

35. One of the recognised parameters on which a decision of a State Legislature can be tested is whether the principles of natural justice stands isolated or not. Mere breach of principles of natural justice without such breach being coupled with prejudice to the petitioner, will not be sufficient to vitiate a decision.

36. K.L.Tripathi (supra) has considered a punishment of dismissal imposed upon an employee of the bank. On the aspect of applicability of the principles of natural justice, it has observed that, in respect of an order involving adverse or penal consequences against an officer or an employee, there must be an investigation into the charges consistent with the requirement of the situation in accordance with the principles of natural justice as far as they are applicable to a particular situation. There must be some real prejudice to the complainant. There is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the fact and circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject matter to be dealt with, and so forth. It has gone on say that the concept of fair play in action, which is the basis of natural justice, must depend upon the particular lis between the parties. Where there is no lis regarding the facts, no real prejudice would be caused to a party by absence of any formal opportunity of cross examination and that per se could not be invalidate or vitiate the decision arrived at fairly. The party who does not want to controvert the veracity of the evidence on record or testimony gathered behind the his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross examination specially when it was not asked for and there was no dispute about the veracity of the statements.

37. Principles of natural justice are not codified. They are understood to mean 'universal justice', 'the requirements of substantial justice', 'the substantial requirement of justice', 'the natural sense of what is right and wrong', 'fundamental justice', 'fair play in section' ' a duty to act fairly and common fairness' by various authorities. Judicial pronouncements have recognised that, 'no man shall be the judge of his own cause' and 'hear the other side' are the two pillars constituting the principles of natural justice. Essentially, the principles of natural justice obliges a person deciding any issue affecting any right of any person to adopt and adhere a fair procedure while arriving at a decision.

38. Article 14 of the Constitution of India has mandated that, the State shall not deny any person equality before the law or the equal protection of the laws within the territory of India. Article 14 of the Constitution invalidates any action

of the State which is discriminatory or arbitrary. Violation of principles of natural justice in the decision making process of the State results in arbitrariness which is discriminatory and therefore violates Article 14. The mandate that the State actions must conform with the principles of natural justice can be found in Article 14, although it may not be the sole repository.

39. Principles of natural justice stands attracted in a proceeding which is judicial or quasi judicial in nature as held in *Tulsiram Patel and others (supra)* and *Mohd. Ramzan Khan (supra)*. Administrative actions affecting the rights of the parties must adhere with the principles of natural justice. Contempt proceedings of State Legislature are quasi criminal in nature and therefore, attract the principles of natural justice. It is quasi criminal in nature as the Contempt proceedings can culminate into an order of penal punishment. A State Legislature while deciding a contempt proceeding is required to adhere with the principles of natural justice.

40. In the facts of the present case, The State Legislature constituted a Privilege Committee on receipt of a notice from one of the members of the State Legislature that, the petitioner acted in contempt of the State Legislature by making statements which were defamatory and derogatory to the Speaker of the State Legislature and to the House. The Privilege Committee submitted a report to the State Legislature under the name of the First Report of the Privilege Committee 2012-2013. The contents of the report were against the petitioner. The Privilege Committee found the petitioner to be guilty of making statements which were defamatory and derogatory in nature to the Chair of the Speaker. The petitioner was not given a copy of such report of the Privilege Committee before a sentence against the petitioner being pronounced. The petitioner is entitled to a copy of the report of the Privilege Committee to meet the contents thereof and defend himself adequately before the punishing authority. In a disciplinary proceeding, *Mohd. Ramzan Khan (supra)* has held that, a delinquent is entitled to know the report of the enquiry officer so as to defend himself adequately before the Disciplinary Authority. Applying such ratio to the facts of the present case, the State Legislature having delegated the power of making an enquiry as against the petitioner for the alleged defamatory and derogatory statements to the Privilege Committee constituted by it, and the State Legislature requiring such Privilege Committee to submit a report to the Speaker, the petitioner was entitled to a copy of such report, before the Speaker decided to punish the petitioner. The petitioner was entitled to the report to defend himself. The State Legislature took into consideration the contents of the report while deciding to punish the petitioner. The petitioner was entitled to a copy of the report to controvert its contents, if possible, prior to a decision being taken on the basis thereof. This in my view, breached the principles of natural justice of *audi alteram partem*. The petitioner was denied a reasonable opportunity of hearing by non furnishing of the First Report of the Privilege Committee 2012-2013 to the petitioners, on the basis of which the Speaker imposed the punishment upon the petitioner. The decision of the State Legislature cannot withstand the test of Article 14 of the Constitution on this ground.

41. Rules of natural justice require that, the person likely to be affected by the decision be given an opportunity to present his evidence, and to the extent possible the evidence against him be adduced in his presence and again to the extent possible be given an opportunity to cross examine the witness adducing evidence against him. Right of cross examination is an integral part of the principles of natural justice. It is a part of *audi alteram partem*. Right to a fair hearing includes a right to cross examine the witness adducing evidence against him. Cross examination allows the veracity of the statements made by the witness to be tested. Denial of right of cross examination does not *ipso facto* lead to a breach of the principles of natural justice. The party alleging the breach has to substantiate that the right of cross examination was denied to him despite a request being made by him and that, such denial resulted in a prejudice to him.

42. The Supreme Court while considering a proceeding under the Foreign Exchange Regulation Act, 1973 read with the FERA Adjudicating Rules, has held in *Telstar Travel Private Limited (supra)* that, the documents produced in the adjudication proceeding before the FERA was in the nature of production in terms of Section 139 of Evidence Act where the witness producing the documents is not subjected to cross examination. However, in construing Rule 3 of the Adjudicating Rules framed under Section 79 of Foreign Exchange Regulation Act, the Supreme Court has held that, in a given situation, cross examination may be permitted to test the veracity of the depositions sought to be used against a party against whom action is proposed to be taken. It is only when a deposition goes through the fire of cross examination that Court or statutory authority is able to determine and assess its probative value. Using a deposition that is not so tested, may therefore, amount to using evidence, which the party concerned did not have an opportunity to question. Such refusal may in turn amount to violation of the rule of a fair hearing and opportunity implicit in any adjudicatory process, affecting the right of the citizen. In a given case, failure to permit the party to cross examine may result in a prejudice calling for reversal of the order impugned and *de novo* enquiry into the matter.

43. Evidence Act, 1872 is not attracted in a proceeding for contempt of the State Legislature. However, the principles enshrined therein cannot be obviated in its entirety. Affidavit of a person making statements in his own favour cannot be regarded as sufficient evidence, unless tested by cross examination, to arrive at a conclusive finding of a fact. The complaint of the complainant to the State Legislature cannot be considered as an evidence produced under Section 139 of the Evidence Act, 1872.

44. In the facts of the present case, the petitioner wanted to cross examine the complainant by a writing dated November 19, 2012. The Privilege Committee considered the letter dated November 19, 2012 containing the request of the petitioner for cross examination. The Privilege Committee in its First Report although alluded to this letter dated November 19, 2012, did not deal with the aspect of the request of cross examination made by the petitioner. There is no

material on record to suggest that, the petitioner was allowed to cross examine the complainant. It has been contended on behalf of the Union of India that, since, the statements made by the petitioner which were said to be contemptuous were admitted, therefore, denial of the right of cross examination is not fatal and that, the same does not sound in breach of principles of natural justice as no prejudice was caused to the petitioner. With respect, such contentions cannot be accepted in the facts of the present case. The complainant has taken a view that, the words spoken of by the petitioner are contemptuous in nature and that, it is derogatory to the State Legislature as also to the Speaker. The allegation that, the words spoken of by the petitioner are derogatory and defamatory in nature sounding in contempt of the State Legislature, however has not been admitted by the petitioner. The petitioner therefore, has a right to cross examine the complainant, when, the complainant has alleged that, the words spoken of by the petitioner are acts of contempt. In my view, denial of a right of cross examination on such aspect, prejudicially affects the petitioner and is in breach of principles of natural justice. The Privilege Committee has acted with material irregularity in acting on the basis of an affidavit of the complainant which was not tested by a cross examination.

45. An authority adjudicating the rights between parties, be it a constitutional authority, a Court, statutory authority, tribunal or a departmental authority is enjoined with the duty to adhere to the principles of natural justice. In the adjudication proceedings, the adjudicator has to afford a reasonable opportunity of hearing to the parties. Mandate on the adjudicator to adhere to the principles of natural justice emanates from a requirement of the substantive right of the parties to the proceeding, to be dealt with fairly and impartially. It is not a procedural requirement. It has to pass a reasoned order. Passing a reasoned order is considered to be one of the facts of the principles of natural justice. Right of cross-examination of the witness produced against a party is an integral part of the right to have equal opportunity of being heard by the adjudicator. It is an integral part of the principles of natural justice. In the present case, the petitioner being denied the right to cross-examine the complainant, principles of natural justice stand violated. Moreover, the first report of the Privilege Committee has not spoken on the aspect of the request of cross examination. To such an extent, the first information report of the Privilege Committee is non-speaking. It is trite law that, a non-speaking order is a nullity.

46. Democracy encompasses, protects, nurtures and provides space for dissent. Democracy has the widest space for every spectrum of voices and ideas. Our nation is a democracy. Our Constitution protects the fundamental right to free speech. However, such right is not absolute and can be subjected to reasonable restrictions. Shri C.K.Daphtary and others (supra) has held that, assuming Article 19(2) of the Constitution applies, the restrictions imposed by the existing law of contempt are reasonable and in public interest. In a proceeding under Contempt of Courts Act, 1971, V.M. Kanade (supra) has held that, in law scandalising a judge of a particular Court amounts to scandalising that Court itself. Contempt

proceedings are intended to be a protection to the public whose interest would stand affected by the act or conduct of any person, the authority of the Court is lowered and the confidence of the public in the administration of the justice is weakened. Every criticism of a public or a constitutional authority may not be contempt. What would constitute a contemptuous behaviour would no doubt depend upon the facts and circumstances of each case.

47. In the facts of the present case, although the State Legislature has taken a decision, such decision cannot pass the test of Article 14 of the Constitution. A writ Court is not a Court of Appeal of every decision. In the present case, it need not reappraise the evidence led and come to a finding of guilt or lack of it. In any event, the evidence produced stand vitiated by breach of principles of natural justice.

48. In view of the discussions above, the first issue is answered in the affirmative and in favour of the petitioner. The second issue is answered by holding that, since the impugned decision stands vitiated, a Writ Court need not act as a Court of Appeal and answer such issue.

49. In *Raja Ram Pal* (supra) the Supreme Court has dealt with the issue as to whether, the Supreme Court, within the constitutional scheme, have a jurisdiction to decide the contempt powers and scope of powers, privileges and immunities of the Legislatures and its member. If such question is answered in the affirmative, can it be found that the powers and privileges of the Legislatures in India include the power of expulsion. If power of expulsion exists, is it subject to judicial review and if so the scope of such judicial review. The Supreme Court has answered such questions in the affirmative. It has held that, Parliamentary privilege, though not part of law of the land, is to a certain extent an exemption to the ordinary law. It has relied upon the Special Reference (1) of 1964(supra) and held that, powers, privileges and immunities which are contemplated by Article 194 are incidental powers, privileges and immunities which every Legislature must possess in order to function effectively. It has held that, a State Legislature does not enjoy all the powers of House of Commons as, the State Legislature cannot be said to be a court of record. Referring to Special Reference 1 of 1964 (supra), the Supreme Court has held that, the State Legislatures in India do enjoy the power to punish for contempt, however, such power is enjoined with a limitation. The limitation being that powers of contempt cannot be used to divert ordinary Court of their jurisdiction.

50. *Amarinder Singh* (supra) has examined the question as to whether, alleged misconduct on the part of the writ petitioner warranted exercise of legislative privileges under Article 194(3) of the Constitution or not. In the facts of that case, it has held that, the, State Legislature exceeded its power by expelling the petitioner on the ground of breach of privilege when there existed none. The alleged misconduct of the petitioner there, of alleged improper exemption of land was an executive act and did not distort, obstruct or threaten integrity of legislative proceedings in any manner. Therefore, the resolution of the State

Legislature directing expulsion of the petitioner was held to be constitutionally invalid.

51. In *Lokayukta, Justice Ripusadan Dayal (Retired) and others (supra)* the Supreme Court has considered the meaning and scope of the privilege of a State Legislature. It has held that, the scope of privileges enjoyed by the State Legislature depends upon the need of the privilege. The privileges of the House are those rights without which the house cannot perform its legislative functions. They do not exempt the members of the House from their obligation under any statute which continue to apply to them like any other law applicable to ordinary citizens. A member of the State Legislature does not enjoy any privilege against criminal prosecution. There cannot be any privilege against conduct of investigation of the criminal offence. A provision of a statute will prevail over any existing privilege of the House. The prohibition against making an arrest, without obtaining the permission of the Speaker, from the precincts of the House is applicable only to the Members of the Assembly. It has gone to say that, in order to constitute a breach of privilege, a libel upon a Member of Parliament must concern his character or conduct in his capacity as a Member of the House and must be based on matters arising in the actual transactions of the business of the House. Reflections upon Members otherwise than in their capacity as Members do not, therefore, involve any breach of privilege or contempt of the House. Similarly, speeches or writings containing vague charges against the Members or criticising their parliamentary conduct in a strong language, particularly, in the heat of a public controversy, without, however, imputing any mala fides are not treated as a contempt or breach of privilege of the House.

52. *Kalpana Mehta and others (supra)* has considered the extent to which a report of parliamentary committee can be relied upon in Court and the probative value thereof. It has held that, parliamentary committee reports are public documents and admissible under Section 74 of the Evidence Act. Judicial notice can be taken of such report. While discussing the parliamentary privilege and the rationale bearing it, the Supreme Court has observed that, parliamentary privilege was introduced to prevent any undue interference in the working of the parliament. It enables the Members of Parliament to function effectively and efficiently without unreasonable impediment. Freedom of speech i.e. available to the Members of the Parliament on the floor of the Legislature is distinct from the freedom which is available to the citizens under Article 19 (1) (a) of the Constitution. Members of Parliament enjoys full freedom in respect of what they speak inside the house.

53. The third issue is answered in the affirmative and against the petitioner. So far as fourth issue is considered, the same is decided by quashing the impugned decision of the State Legislature.

54. W.P. No. 1125 of 2013 is disposed of accordingly without any order as to costs.