
(1968) 03 MAD CK 0015
In the Madras High Court
Case No : Writ Petition No. 897 of 1968

C. Subramaniam	Vs	APPELLANT
Speaker of the Madras, Legislative Assembly, Madras and Others		RESPONDENT

Date of Decision : 14-03-1968

Acts Referred:

Constitution of India, 1950 — Article 13, 19, 19(1), 194(3), 20

Citation : AIR 1969 Mad 10 : (1968) ILR (Mad) 377 : (1968) 81 LW 369

Hon'ble Judges : M. Anantanarayanan, C.J.; Veeraswami, J.; Ramakrishnan, J.; Natesan, J.; Ismail, J

Bench : Full Bench

Advocate : V.K. Thiruvenkatachari, for T. Martin, for the Appellant; M.K. Nambiar and K.K. Venugopal, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

Anantanarayanan, C.J.—This is a proceeding under Article 226 of the Constitution, for the issue of a writ of Prohibition restraining the

Speaker of the Madras Legislative Assembly (respondent 1) and the State of Madras (respondent 2) from proceeding further with" the notice

forming Annexure A to the petition, asking the petitioner (Mr. C. Subramaniam) to show cause why he should not be held to have committed

contempt of the Legislative Assembly. The Union of India, the Attorney General of India and the Advocate General of Madras have been shown in

the array of parties as the third, fourth and fifth respondents to the petition.

2. Annexure C to the petition is an excerpt from a leading daily of Madras dated 11-2-1968, describing a speech made by the petitioner at

Dindigul, under the caption ""Political Fraud"". The report states that Mr. C. Subramaniam (petitioner) referred to the recent Language Bill (more

strictly, Language Resolution) adopted by the State Assembly, as the "biggest political fraud". In respect of this matter, Annexure B shows that the

Legislature adopted a motion to the effect that this was a question of privilege to be dealt with by the House itself and this motion further authorised

the Speaker to issue a notice to Mr. Subramaniam, asking him to show cause why he should not be held to have committed contempt of the

House, in respect of the passage in his speech, already set forth. Annexure A is the actual notice, to show cause received by the petitioner after the

Speaker had held that there was a prima facie case of breach of privilege.

3. The single line of reasoning upon which this petition has been argued before us by Mr. V.K.T. Chari for the writ petitioner, proceeds on two

related aspects of the law, which are set forth" in the sub-paragraphs of paragraph 6 of the affidavit. Before embarking on a scrutiny of this, which

is the heart of the matter, we may refer to certain earlier averments in the affidavit We might immediately state that the accuracy of the report of the

speech, is not now in controversy; arguments were submitted, upon the basis of the report being accurate. But the petitioner states that he has been

a Member of the Legislative Assembly of Madras, a Member of the Parliament, a Minister of the Madras Government and the Leader of the

House in the Madras Assembly, and also a Minister of the Union Government. He is currently holding the political office of the President, Tamilnad

Congress Committee. He has a duty towards the public, particularly in the field of political matters, which he must discharge fearlessly, and by

virtue of rights inherent in British subjects from the days of the Magna Carta, and re-affirmed by the Constitution of India, particularly in the

Preamble and in Article 19 thereof. After noting these averments, we may first proceed to set forth the reasoning of Mr. Chari, upon the petition,

Mr. Chari fully concedes that, whatever might have been the somewhat hazy or indeterminate state of rights as between the subject and the

Legislature, and between the Legislature and the Judiciary, which hitherto prevailed, matters are now clear beyond controversy, by virtue of the

dicta of the Supreme Court in three important cases, namely, M.S.M. Sharma Vs. Sri Krishna Sinha and Others, . Dr. Jatish Chandra Ghosh Vs.

Hari Sadhan Mukherjee and Others, and in re Article 143. Constitution of India, In the matter of: Under Article 143 of the Constitution of India, .

4. At the outset. Mr. Chari stressed the Preamble to the Constitution, particularly the second clause thereof, which enshrines the solemn resolve to secure to all citizens of this country "liberty of thought, expression, belief, faith and worship". He would link this with the Fundamental Right to freedom of speech and expression guaranteed under Article 19(1)(a), but subject to reasonable restrictions under Article 19(2). Again, he contends that though the privileges of the State Legislature are guaranteed under Article 194(3), in view of the failure of the State Legislature to enact the necessary law within a reasonable time, as contemplated by the first limb of Article 194(3), these privileges must now be regarded as subject to the Fundamental Rights of citizens. This Article states-
.....the powers, privileges and immunities of a House of the Legislature of a State.....shall be such as may from time to time be 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 committees, at the commencement of this Constitution".

The line of reasoning that emerges from the further arguments of learned counsel is this. Entry 39 of list II of the Seventh Schedule relates to powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof....." This has to be read along with Article 246, which embodies the principles of competency of legislation, respectively by Parliament and by the State Legislatures. The Constitution was completed in formulation by the Constituent Assembly on 26-11-1949, and came into effect and force on 26-1-1950. The old Constituent Assembly continued as a single provisional Parliament, till the respective elections were held. Clearly therefore, Article 194(3) was transitional or transitory in character. It was never contemplated that this state of affairs in respect of the powers, privileges and immunities of the State Legislature should continue for any indefinite term; enacted laws were expected to be made, in this respect, as early as convenient.

But one indisputable effect of *M.S.M. Sharma Vs. Sri Krishna Sinha and Others*, , affirming the same proposition, is that any such law hereafter to be made by the Parliament or a State Legislature, would be subject to the Constitutional limitations of Article 13, and the Fundamental Rights guaranteed under the Constitution. The State Legislature was fully aware of this,

as petitions had been presented even in Parliament, and the decision of the Supreme Court in *In the matter of: Under Article 143 of the Constitution of India*, , was the subject of discussion. Nevertheless, for many years, no law embodying such rights, privileges and immunities has been made, and this is deliberate inaction; the consequence of it must be that what is guaranteed under the second limb of Article 194(3) to the Legislature, is no longer available, and must be held to have lapsed by default.

5. Linked with this is an argument, upon what may be termed the "juristic norms" which have to be applied to any law, the infringement of which may expose a subject to penalties, or to any disability. Any Law is a rule, and, further, necessarily a rule of prohibition or injunction; it follows that such a rule must be definite and ascertainable, before the subject can be exposed to untoward consequences, for infringement of the law. The Law of British Parliamentary Privileges is "'wilderness of single instances'". This is a vague and amorphous jurisprudence. Further, it involves a study of what these privileges were as on 26-1-1950, and several of them might have lapsed owing to desuetude. This law is hardly ascertainable, for the sources of the law, namely, *Hansard*, running into hundreds of volumes, and *Erskine May's Parliamentary Practice* are not even available, without much difficulty, to a lawyer, leave alone a citizen.

This entire argument is, in its turn, made to impinge on Article 20(1) and Article 21 of the Constitution, since *In the matter of: Under Article 143 of the Constitution of India*, , is authority for the view that, though the body of privileges made part of the law under Article 194(3) may prevail, so long as this law is enforced, over Article 19(1)(a), it does not prevail over Article 21. It is here stressed that such a proceeding, asking the petitioner to show cause against a conviction for contempt of the Legislature, is essentially in criminal jurisdiction. Mr. Chari points out, upon authority, that the House of Commons in the United Kingdom, unlike the House of Lords, does not impose a fine or imprisonment for limited periods, but directs an indefinite detention in custody, of the person in contempt. This infringes Article 21 and Article 20(1), the combined effect of which Articles is to declare that no person can be proceeded against with regard to any offence, except for the violation of a law in force, and

according to procedure established by law".

6. Before dealing with these arguments, it may be necessary to set forth certain postulates or propositions which are very clear and now well

established, in the light of the decisions of the Supreme Court, already referred to. Since, for this purpose, we have already largely to draw upon

the observations in In the matter of: Under Article 143 of the Constitution of India, , and many paragraphs of this judgment in the text In the matter

of: Under Article 143 of the Constitution of India, have been read before us, we shall set forth the bare propositions, in the interests of brevity,

confining ourselves to citing only one or two observations of the learned Chief Justice (Gajendragadkar, C. J.)

7. Firstly, the perspective of approach to any question of this kind has been determined, in constitutional terms, in paragraph 43. To quote:

In this connection it is necessary to remember that the status, dignity and importance of these two respective institutions, the Legislatures and the

Judicature, are derived primarily from the status, dignity and importance of the respective causes that are assigned to their charge by the

Constitution. These two august bodies.....must function not in antimony nor in a spirit of hostility, but rationally, harmoniously and in a spirit of

understanding within their respective spheres.....

8. Next, it may be taken as now settled beyond doubt that any Law that the State Legislature may enact under Article 194(3), with regard to its

powers, privileges and immunities, will be subject to Article 13, and the Fundamental Rights guaranteed under the Constitution, Thirdly, it may be

taken as the Constitutional Law, however, that the Corpus of law which has to prevail, until such an enactment is made, will not be subject to

Article 19(1)(a), because, under the rule of harmonious construction, the particular provision in Article 194(3) will have to prevail. But, equally, this

Corpus of law will be subject to the right guaranteed under Article 21. We may take it that the content of Article 21, may have to be interpreted

also in the light of the terminology of Article 20(1) of the Constitution.

9. Fourthly, while the foregoing postulates may be true of the respective spheres of action of the Legislature in respect of its powers and

immunities, and the Judiciary, it does not mean that a final order imposing a disability on a subject, for alleged breach of privilege or contempt of

the Legislature, will not be justiciable. It has to be carefully noted that, in paragraph 129 (page 787), their Lordships have referred to the amplitude

of the unrestricted power of the High Court under Article 226, and, in another context, they have not approbated, the dicta of Dixon C.J., in the

Queen v. Richards, 92 CCLR 157, that, if the warrant issued by the Legislature does not specify the grounds of commitment, it is conclusive.

This matter need not be further referred to for the simple reason that, notwithstanding what Mr. Chari strenuously urged on this aspect, we are not

here concerned with any warrant, or anything analogous to a committal proceeding. We are concerned, purely and simply, with a notice to the writ

petitioner to show cause why he should not be held to have committed a breach of privilege of the Legislature, by way of contempt of the

Legislature. Further, it is clearly premature, and even impossible, to judge now, upon the matter of the alleged contempt itself, we may add that the

affidavit itself contains no averment with regard to this. What we are asked to do is to issue a writ of prohibition restraining the Speaker of the

Legislative Assembly from proceeding further, which is virtually on a ground of absence of an ab initio jurisdiction.

10. Mr. Chari has referred to a passage in Halsbury's Laws of England, Simonds Edn. Volume 5, page 478, (Section 1058), with regard to the

extent of power of the privilege of Legislatures, as applying to the Commonwealth. It is claimed that these privileges do not include any power "to

punish by arrest and commitment". The authorities cited are Fenton v. Hampton. (1858) 11 Moo PC 347 and Doyle v. Falconer, (1866) 1 PC

328. But, obviously, we are not further concerned with this aspect, for we are here upon the effect of Article 194(3) of our Constitution, and the

body of rights, privileges and immunities which it thereby secures to the State Legislature. The same observations may apply to the dicta cited from

Moore on the Australian Constitution 2nd Edn. page 138-A.

11. It is very difficult to see how any theory of automatic lapse, or lapse due to inaction, can apply to Article 194(3), in its relation to the State

Legislature. It is of considerable interest to note, and this is discussed in In the matter of: Under Article 143 of the Constitution of India, , itself, that

Section 49 of Australian Constitution was in almost identical terms, except, that the operative word was declare". But, as Mr. Nambiar, assisting

us as *amicus curiae*, has emphasised, though this was over sixty years ago, enactments have not superseded the state of rights secured for the

Legislature by Section 49 in Australia, except in two minor respects; apparently, the Legislature was content with the body of rights, privileges and

immunities thus secured, without seeking any enlargement or modification. We may take notice of the fact that certain petitions have been

submitted to Parliament and to the State Legislature, stressing the need for early enactment, in the interest of the Rule of law, as Mr. Chari has

described; but it is impossible to arrive at any conclusion that the inaction is deliberate; far more so, to sustain any theory that such inaction has the

effect of a lapse or extinction. Per contra, Mr. Nambiar points out that where the Constitution intends setting a term to any situation of rights, it

explicitly says so, and Arts. 334, 337 and 343 are very clear instances.

12. The argument that these powers, privileges and immunities thus secured for the Legislature, do not form a law at all, in the juristic sense, is

equally unsubstantial. Actually, this Corpus is part of the Law of the Constitution itself. Nor can it be contended that this law is amorphous and

unascertainable, though it may be true that certain sources of the law, comprising precedents are not easily available. Mr. Nambiar has set forth

before us certain interesting passages in ""Constitutional and Administrative Law"" by Hood Phillips (3rd Edn.) pages 186 and 187. It is very clear

from these paragraphs, that defamatory or disrespectful speeches, outside the House of Commons, by third parties, reflecting on the House, or

tending to bring the House into contempt or ridicule, could be properly regarded as contempt of the Legislature. There are even precedents, such

as Allighan's case 1947 HC Pap 138; but we need not explore any further into this aspect here, for obvious reasons.

The argument that this is essentially a criminal jurisdiction, because, as observed in In the matter of: Under Article 143 of the Constitution of India, ,

the practice of the House of Commons has been, not to impose fine for contempt, while it may detain indefinitely, is clearly quite inapplicable to the

present stage of the proceedings. This is a stage of assumption of jurisdiction, and nothing more. Actually, if we are to judge from the passage at

page 189 of Hood Phillips (earlier cited), Reprimand and Admonition are also included in forms of punishment, which are open to the House of

Commons. It is impossible to accept the argument that we have, at the present stage, any procedure whatever, which impinges on Article 20(1) or Article 21 of the Constitution of India.

13. Finally, a word may be stated about the character of a writ of prohibition, even though this court is not confined to the precise scope of the Prerogative Writs in the United Kingdom, and Article 226 embodies a wider amplitude of power. The history of this writ, and the true scope of its issue and function, were discussed by a Division Bench of this court in *Taj Mahal Transports (P) Ltd., Melapalayam, Tirunelveli Vs. Secretary, Regional Transport Authority, Tirunelveli and Another*, . The following few lines from that decision are useful, as succinctly stating the situation at law (at page 12)-

If, in each one of these cases, a party, who might be affected by such a possible decision, can be permitted to come up to this court and ask for prohibition to go, though it might be perfectly probable that the inferior Tribunal would have jurisdiction, upon facts being established in a particular way, this would really imply that many proceedings quite within the competence of such authorities, or which may be ultimately found to be comprised in the jurisdiction, may be stifled at the outset. ...If there is jurisdiction over the matter before the Tribunal *prima facie*, and facts canvassed before it, one way or another, may affect the issue as to the boundary of that jurisdiction, we think, that, the Tribunal should be permitted to function, and to determine its own jurisdiction the writ should not issue to paralyse such an enquiry".

14. For the above reasons, we are clearly of the view that Article 194(3) vests the Speaker of the Legislature, empowered by a Resolution of the Legislature, with the right to call upon a third party, like the writ petitioner, to show cause why he should not be held to have committed a breach of the privilege of the Legislature, by way of contempt. That is all that has happened, and a writ of prohibition need not be issued by this court to stifle the very exercise of that jurisdiction. We need not emphasise, both as a matter of caution and as a necessary corollary, that we are stating nothing whatever about the averments themselves in the notice, or the degree to which such facts will or will not constitute a contempt of the Legislature. These are matters which it is quite premature for us to refer to, at

this stage. This writ petition will, therefore, be dismissed in limine.

15. We must record our obligation to Mr. M.K. Nambiar, appearing with Mr. K.K. Venugopal, who has rendered us valuable assistance as amicus curiae.