

(1994) 07 MAD CK 0110

In the Madras High Court

Case No : H.C.P.No.762/92 and W.P. 8529/94

D. Murugesan in HCP 762I94 and A. Muthupandian in WP
8529/94

APPELLANT

Vs

The Hon'ble Speaker (Thiru Sedapatti R. Muthiah) Tamil Nadu
Legislative Assembly, Fort St. George, Madras-9 and Others

RESPONDENT

Date of Decision : 20-07-1994

Acts Referred:

Constitution of India, 1950 — Article 105(3), 14, 143, 19, 19(1)(a)

Citation : (1994) 2 LW(Cri) 408

Hon'ble Judges : Thanikkachalam, J; Gulab C. Gupta, J

Bench : Division Bench

Advocate : N.T. Vanamamalai, for M/s. K.S. Natarajan, Ms. G. Janaki and T. Saikrishnai, for the Appellant; R. Krishnamoorthy, Advocate General assisted by Mr. R. Muthukumaraswamy, Addl. Govt. Pleader on behalf of the 3rd respondent in both the petitions and of Mr. I. Subramanian, Assistant Public Prosecutor on behalf of the respondents, for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, J.—The petitioner claims to be the General Manager of DINAKARAN, a Tamil daily newspaper published from Madras and has preferred this writ petition challenging the validity of the detention of Mr. A. Muthupandian (petitioner in WP.8529/94), News Editor of the said daily by the respondents 1 and 2 on an alleged breach of privilege of the Tamil Nadu Legislative Assembly (hereinafter referred to as the Assembly). It appears that a portion of the proceedings of the Assembly dt. 8.2.1993 were ordered to be expunged by the first respondent exercising his authority under Rule 281 of the Tamil Nadu Legislative Assembly Rules framed under Article 208(1) of the Constitution of India. The daily DINAKARAN, however, in its edition dated 9.2.93 published entire proceedings including the portion ordered to be expunged by the first respondent. On the aforesaid record two Members of the Assembly raised the question of privilege on 9.2.93 itself. Thereafter the third respondent issued a

letter to the editor of the said daily on 9.2.93 requiring him to send his explanation to the aforesaid publication which amounted to breach of privilege, by 20.3.93. The petitioner Muthupandian however, did not send his explanation within the due date and wanted some further information from the third respondent. The said petitioner's reply was, however, sent to the third respondent on 31-3-1993. The said petitioner also submitted a detailed explanatory letter on 28-4-1993 in which he denied that any breach of privilege had been committed by the newspaper in publishing the expunged portions of the proceedings. Thereafter, it was considered proper to refer the matter to the Privilege Committee to ascertain whether any case of breach of privilege was made out against the said petitioner and others concerned with the newspaper. The Privilege Committee considered the matter in its sittings on 29.10.1993, 11-4-1994 and 21-4-1994. From the said report it appears that the Privilege Committee found the news editor of the newspaper guilty of two breaches of privileges and recommended seven days simple imprisonment to him for each of them. It was also recommended that two sentences should run concurrently. This report of the Privilege Committee was placed before the House on 3-4-1994, which, by a resolution, accepted the same and sentenced the news editor, A. Muthupandian, to simple imprisonment for seven days for the aforesaid breaches of privilege.

2. Before the petitioner, A. Muthupandian, the news editor, could be arrested pursuant to the resolution dated 30-4-1994 of the first respondent, he filed a writ petition in this Court on 2-5-1994 under Article 226 of the Constitution of India challenging the legal validity of the aforesaid sentence, which is the subject matter of W.P. No.8529 of 1994. This writ petition was heard by a learned Single Judge of this Court on 4-5-1994, who was pleased to order notice of the petition to be sent to the respondents.

3. It also appears that on 2-5-1994, Thiru Kumari Anandan, the Member raising the privilege issue on 9-2-1993 moved the House to revoke the sentence imposed on the petitioner, Muthupandian and instead warn him not to publish such proceedings in future. The proceedings dated 2-5-1994 indicate that the Chief Minister also requested the respondent - Speaker to drop the proceedings by showing magnanimity towards the newspaper and its news editor Muthupandian. The House, in its magnanimity passed a resolution revoking its resolution dated 30-4-1994 and the sentence imposed on the petitioner-Muthupandian. This magnanimous gesture of the Assembly should normally have brought the matter to a close.

4. It however appears that the newspaper dated 5-5-1994 carried the news of the writ petition No.8529 of 1994 being admitted and notices issued by this Court and hence the House of the Assembly once again discussed this issue. The first respondent is reported to have stated in the Assembly that magnanimity of the House has not been appreciated by the petitioner-Muthupandian and their authority to impose punishment for breach of privilege has been questioned in

the High Court. This, according to the Members of the House disqualified the petitioner-Muthupandian from the benefit of the resolution dated 2-5-1994. After a debate on the issue, the House. adopted a resolution revoking its resolution dated 2-5-1994 and restoring the punishment imposed on Muthupandian by its resolution dated 30-4-1994.

5. Consequent upon the aforesaid resolution the petitioner-Muthupandian was arrested on 5-5-1994 and detained in the Central Jail, Madras. This led to the filing of the present writ petition on 6-5-1994. This Court, while admitting this petition for final hearing after notice to the respondents, directed release of the petitioner-Muthupandian on bail pending disposal of this writ petition. Petitioner-Muthupandian was released on 7-5-1994 pursuant to the order of this Court. The legal and Constitutional validity of the resolution of the Assembly dated 5-5-1994 is the subject matter of this writ petition.

6. Since it appeared to this Court during the final hearing of this writ petition that it would be proper to send for W.P.No.8529 of 1994 and also hear the same along with this writ petition, both these writ petitions were heard on 5-7-1994.

7. It may be mentioned that notices sent by this Court to the respondents 1 to 3 were returned unserved with the remark that it has been decided by a resolution of the Assembly not to accept such notices. In spite of it, since the matter was of considerable public importance, this Court thought it proper to direct publication of the notice in the newspaper and thereby affording an opportunity to the respondents to appear and make their submissions if they may so wish. Pursuant to the aforesaid, the third respondent has entered appearance and filed a counter-affidavit giving details of the incident and the resolutions of the Assembly. The learned Advocate-General, who has appeared for the said respondent has very graciously made available the English translation of the proceedings dated 30.4.1994, 2.5.1994 and 5.5.1994 besides the report of the privilege Committee, for the benefit of this court. The appearance of the third respondent is, in the opinion of this court, a step in right direction and is appreciated. This court must however regretfully note that the respondents 1 and 2 have not only not appeared in this court, but, have refused even to accept the notice of this court thinking perhaps that they are not amenable to the jurisdiction of this court. We must admit that we would be handicapped in their absence and would be passing judgment on their action without there being anything on record on their behalf. But that is a risk which we must take as we cannot refuse to perform our Constitutional duty. That is however the risk that the respondents 1 and 2 have taken knowingly and voluntarily.

8. We should, at the very outset remind ourselves and all others that this democratic republic is ruled by the "rule of law" as contrasted to "rule of men". This rule of law has its roots in our Constitution, which, we, the people of India, have enacted, adopted and given to ourselves. This Constitution aims at establishing a disciplined democratic social order, where justice, social, economic and political will inform all its institutions. This Constitution also confers, clearly

and specifically, the power of judicial review and hence it is the privilege of the judicatory to say what the Constitution is. It is now well settled that the Constitution is what the judiciary says it is. In spite of it, it is the Constitution and not the judiciary or any one else that is supreme. This rule of law is precisely and clearly stated by the Supreme Court in *I. Manilal Singh Vs. Dr. H. Borobabu Singh and another*,) as under:-

It is our constitutional duty which requires us to make this order, to uphold the majesty of law and justify the confidence of the people, that no one in this country is above the law and governance is not of men but of the "rule of law". It is unfortunate that this action has to be taken against a person who happens to be the Speaker of a legislative Assembly, but that does not permit us to apply the law differently to him when he has wilfully and contumaciously driven the court to this course. We must remind ourselves that the "rule of law" permits no one to claim to be above the law and its means- "be you ever so high the law is above you". It was said long back: "to seek to be wiser than the laws, is forbidden by the law."

There is, therefore, no scope of any confrontation between various institutions working as per this Constitutional discipline. The judiciary, even while exercising its powers of judicial review does not do so in a spirit of confrontation nor does it, while so doing, assert its superiority over others. It only performs its constitutional obligation with humility and the keenness to strengthen the rule of law. In its relationship with the legislature, the judiciary has always shown its deep-rooted respect to its authority recognising the basic truth that it consists of elected representatives of our people and is engaged in the establishment of a social order prescribed by the Constitution. Any one going deeper into the judicial working will immediately learn that the judiciary has, by and large, upheld the validity of laws enacted by the legislature and has engaged itself, during most of its time, in securing proper implementation of those laws. This is however not to say that laws have not been struck down as ultra vires to the Constitution. That has been done only to uphold the Constitution and strengthen the rule of law and in the belief that it will eventually benefit and strengthen the legislature itself. We, therefore, wish to emphasize that those who talk of their superiority and consequential confrontation with the judiciary do not display their respect for the constitutionally mandated discipline. They need to undertake introspection in wider national interest.

9. Speaking in terms of these petitions it is considered proper to emphasize that this court while issuing notice to the respondents did not do so in a spirit of confrontation or to challenge their authority and jurisdiction. As long as they are within their Constitutional authority, their superiority is bound to be recognised by this Court.. In this connection reference to a Full Bench decision of this Court in *A.M. Paulraj Vs. The Speaker, Tamil Nadu Legislative Assembly, Madras and Another*, is necessary as some what similar statements were expressed therein. It would have served not only the cause of justice but the dignity of Legislature

itself if the respondents had accepted the notice and made available to this Court their point of view for consideration. We are, however, under oath of our office to dispense justice without fear and favour and hence we must proceed to discharge our constitutional obligation in accordance with law.

10. In view of the attitude of the respondents 1 and 2 it would be necessary to first ascertain the jurisdiction of this Court in the present case. The petitioners, speaking broadly, claim that as a result of the impugned conviction and sentence of the News Editor, his Fundamental right under Article 21 has been violated. It is therefore prayed that this Court by exercising extraordinary jurisdiction of this Court under Article 226 of the Constitution should secure his aforesaid fundamental right. Such a question is not arising for the first time. The immunity enjoyed by the respondents, is stated in Article 212 of the Constitution And" hence nothing more could be claimed by them. Under the said provision the Courts cannot invalidate any proceeding in the Legislature on the ground of irregularity of procedure. There would, therefore, be no immunity if the proceedings are held without jurisdiction i.e., in defiance of the mandatory provisions of the Constitution or by exercising powers which the Legislature does not under the Constitution possess. Decisions of the Supreme Court in Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others, In reference under Art. 143 In the matter of: Under Article 143 of the Constitution of India, and Kihota v. Jachilhu (AIR 1963 SC 412) deserve attention in this behalf. Courts have generously interpreted this provision and held that even any erroneous decision or interpretation of rules of procedure by the Speaker cannot be the subject matter of scrutiny in a Court of law Harendra v. Dev. Kanta (AIR 1958 Ass 160), nor can the Court act as a revisional authority against the Legislature or the Speaker as held in Raj Narain Singh Vs. Atmaram Govind and Another, . This, however, does not mean that if a law is passed or a motion or resolution carried in violation of the provisions of the Constitution it cannot be declared invalid by the Courts Hem Chandra Sen Gupta and Others Vs. The Speaker of Legislative Assembly of West Bengal and Others, The matter has also received attention of a Full Bench of this Court in A.M. Paulraj Vs. The Speaker, Tamil Nadu Legislative Assembly, Madras and Another, where the law was clarified as under:-

It is, therefore, settled law for more than twenty years now, that where a petitioner approaches a Court contending that as a result of a committal to civil prison by the Legislature for breach of privilege his fundamental right under Art. 21, has been violated, such a petition cannot be thrown out at the very threshold merely on the ground that the decision of a House of Legislature on an issue of privilege is being challenged. There is nothing in the Constitution which disabled a citizen who complains of a violation of his fundamental right under Art. 21 of the Constitution from filing a petition under Art. 226 of the Constitution, the entertaining of a petition under Art. 226 in such a case or entertaining of an appeal against an order dismissing such a petition need not, therefore, be taken as an affront either to the Speaker of the Legislative Assembly or the Legislative Assembly itself.

Under the circumstances, there can be no doubt about the jurisdiction of this Court in the matter of constitutionality of the conviction and sentence of the petitioner Muthupandian for alleged breach of privilege of the Assembly. This Court, therefore, finds no justification for the respondents 1 and 2 to act as they have done. Apparently it is a case where the respondents have not shown their due regard to the Constitution in so far as it confers jurisdiction on law courts. Since they are constitutional functionaries, themselves, it is not possible to assume that they would disregard the Constitution. It is therefore, a case where they have not found time to go through the above quoted decisions of the Apex Court and this Court. This must be regretted.

11. During the course of arguments, the following important legal questions emerged for consideration of this Court:

(1) Whether the petitioner-Muthupandian has by publishing the expunged portions of the proceedings of the House committed any breach of privilege justifying imposition of sentence of imprisonment on him?

(2) Whether the resolution dated 2.5.1994 revoking the sentence imposed on the petitioner has the effect of finally closing the privilege issue? If so, whether the resolution dt. 5.5.1994, passed by the Legislative Assembly is constitutionally valid?

(3) Whether the re-imposition of sentence on the petitioner-Muthupandian by resolution dated 5.5.1994 was because he has moved W.P.No.8529 of 1994 in this court, If so, whether it is in accordance with the Constitution?

(4) Whether the petitioner-Muthupandian was entitled to notice of hearing by the Legislative Assembly before passing the resolution dated 5.5.1994? If so, whether the said resolution is void for violation of principles of natural justice?

12. QUESTION NO.1: The petitioner-Muthupandian in his explanation submitted to the third respondent, stated that the Assembly has no privilege against publication of its proceedings in a newspaper in as much as the proceedings are of a public body and held in public. It was submitted during the hearing of the petition that the Legislature has not enacted any law defining its privileges and immunities and, therefore, there is no justification in law for treating the impugned publication as an act of breach of privilege. It is, therefore, submitted that the petitioner-Muthupandian could not be held in law guilty of breach of any privilege and punished. The punishment imposed upon him is, therefore, claimed to be void and unconstitutional under Article 21 of the Constitution. The learned advocate General appearing for the third respondent however submitted that even though the legislature has not enacted any law defining privileges and immunities of the House, the privileges exist in as much as the House had been enjoying from its very inception all those privileges which were enjoyed by the House of Commons in England. He also submitted that one such privilege is the privilege to prohibit publication of its proceedings even though they were true and correct. It is, therefore, submitted that the petitioner-Muthupandian has been rightly held guilty of breach of privilege and punished.

13. Article 194 of the Constitution provides for powers, privileges and immunities of the State legislature and their members. Sub-Art. (3) which is relevant for the purpose of these petitions, read as under before its amendment by 42nd constitution amendment of 1976:-

In other respect, 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 the House of Commons of the parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

A bare reading of this provision would indicate that it gave the Legislature the authority to define by law made in this behalf its privileges and immunities and provides that as long as these privileges were not defined as aforesaid, they would be the same as those of the House of commons on the date of commencement of the constitution. The Supreme Court considered the ambit and scope of this provision In reference under Article 143 (AIR 1965 SC 745) and held that it was for the courts and not for the Legislature to determine whether the House did in fact enjoy a particular privilege. It was also clarified that the courts alone were entitled to determine what was the privilege of the British House of Commons on the date of commencement of the constitution and whether any of such privileges had become inconsistent with any other provision of the Constitution. The aforesaid decision was sought to be superseded by the 42nd constitutional amendment of 1976 which omitted any reference to legislation at any point of time or any reliance on the privileges of the British House of Commons and provided that the privileges of the House of Legislature shall be such as may from time to time be evolved by such House. This provision of the 42nd constitutional amendment was not however brought into force by a notification u/s 1(2) of that Act, and stood superseded by 44th constitutional Amendment. The 44th Constitutional (Amendment) Act 1978 provided that as long as the privileges are not defined by law, they shall be those that were available to the House immediately before the coming into force of section 26 of the Constitutional 44th (Amendment) Act 1978. Since before coming into force of this provision, the privileges of the House, in the absence of any law on the subject, were the privileges enjoyed by the British House of Commons at the commencement of the Constitution the courts have followed the law laid down by the Supreme Court in reference case (Supra) Under the circumstances, the question requiring consideration of this court is, whether the British House of Commons had the privilege of prohibiting publication of even true and correct proceedings at the commencement of the Constitution?

14. The question is not new and has arisen for consideration of the Supreme Court and this court earlier. In M.S.M. Sharma Vs. Sri Krishna Sinha and Others, (hereinafter referred to as Sharma's Case I) the Court considered this question for the first time in the context of Article 19(1)(a) dealing with the freedom of

press. The Court, by majority, held that the House of Commons had at the commencement of our constitution the power and privilege of prohibition the publication of not only the inaccurate or garbled version but even a true and faithful report of the debates or proceedings that take place within the House. A fortiori the House at the relevant time had the power and privilege of prohibiting the publication of an inaccurate or garbled version of such debates or proceedings. The decisions of the court is as under:-

The result of the foregoing discussion. Therefore, is that the house of Commons had at the commencement of our Constitution the power or privilege of prohibiting the publication of even a true and faithful report of the debates or proceedings that take place within the House. A fortiori the House had at the relevant time the power or privilege of prohibiting the publication of an inaccurate or garbled version of such debates or proceedings. The latter part of Art. 194(3) confers all these powers, privileges and immunities on the House of the Legislature of the States, as Art. 105(3) does on the House of Parliament. It is said that the conditions that prevailed in the dark days of British history, which led to the House of Parliament to claim their powers, privileges and immunities, do not now prevail either in the United Kingdom or in our country and that there is therefore, no reason why we should report them in these democratic days. Our constitution clearly provides that until Parliament or the State Legislature, as the case may be, makes a law defining the powers, Privileges and immunities of the House, its members and Committees, they shall have all the powers, privileges and immunities of the House of Commons as at the date of the Commencement of our Constitution and yet to deny them those powers, privileges and immunities, after finding that the House of Commons, had them at the relevant time, will be not to interpret the Constitution but to re make it. Nor do we share the view that it will not be right to entrust our Houses with those powers, privileges and immunities for we are well persuaded that our Houses, like the House of Commons will appreciate the benefit of publicity and will not exercise the powers, privileges and immunities except in gross cases.

This was also a case where "Search Light" an English Daily newspaper of Patna had published expunged portions of the debate of the House and the editor of that newspaper was held prima facie guilty of the breach of privilege and served with a show cause notice requiring him to explain why he should not be punished for the said breach of privilege. The legal and constitutional validity of the said show cause notice was challenged by filing a writ petition under Article 32 of the Constitution providing opportunity to the Apex Court to examined the matter and lay down the law as aforesaid. It appears that after the aforesaid decision the said Shri Sharma received a fresh show cause notice from the Secretary of the Legislative Assembly calling upon him to show cause why proper action should not be recommended against him for the breach of privilege of the Speaker and the Assembly, giving the said petitioner a further opportunity to move the Supreme Court by filing yet another petition under Article 32 of the Constitution. The decision Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others, laid

down that the earlier decision was substantially on a question affecting the whole legislative Assembly and since the said question had been fully debated and decided after due deliberation, it binds the petitioner as also the Legislative Assembly. In other words, earlier decision in Sharma's Case (1) Supra was affirmed. The court however clarified that the Legislature was the sole arbiter of its internal management and hence its proceedings cannot be impugned on the ground of any procedural irregularity by filing petition in a court of Law. The court also clarified that the Legislature had the jurisdiction to control the publication of its proceedings and to go into the question whether there has been any breach of its privileges and the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance with its rules of business.

15. The matter received detailed and serious attention of a larger Bench of the Supreme Court in reference under Art.143 (In the matter of: Under Article 143 of the Constitution of India, It was a case where a member of the public printed and published a pamphlet which was held to constitute breach of privileges of a member of the Assembly by the Speaker, who administered a reprimand to him. Since the said person committed further contempt of the Assembly by his conduct therein, he was held guilty of contempt and ordered to be detained in jail for seven days. The warrant was executed and the said person put in jail. On a petition filed under Art.226 of the Constitution read with Section 491 Cr.P.C. by an advocate of the High Court on behalf of the accused, the High Court ordered release of the accused on bail. The Legislative Assembly took this order as affront to its authority and passed a resolution to the effect that the two judges of the High Court, the petitioner and his advocate had committed contempt of the Assembly. It was, therefore, ordered that the two Judges and the Advocate be brought in custody before the Assembly. On hearing of this order, the two Judges and the Advocates filed petitions in the High Court under Art.226 challenging the constitutional validity of the said resolution. A full court of the High Court ordered by a notice restraining the Speaker of the Assembly from issuing warrant in pursuance of the direction of the Assembly and from securing execution of the warrant if already issued. It was at this stage that the President of India thought it proper to exercise his powers to make a reference to the Supreme Court under Art. 143 of the Constitution. The Apex Court examined the ambit and scope of Art, .194(3) of the Constitution and held that the second part of this provision requires that the powers, privileges or immunities which are claimed by the House of Legislature must be shown to have subsisted and enjoyed by the British House of Commons at the commencement of the constitution. In every case where power is claimed, it is necessary to infer whether it was existing at the relevant time. It must also appear that the said power was not only claimed by the House of Commons but was recognised by English Courts. It would obviously be idle to contend that if a particular power which is claimed by the House of Legislature was claimed by the House of Commons but was not recognised by the English Courts, it would still be upheld under latter part of clause (3) only on the ground that it was in fact claimed by

the house of Commons. In other words, the enquiry which is prescribed by this Clause is the power in question shown or proved to have subsisted in the House of Commons at the relevant time? The Court also held that this provision does not exclude the applicability of certain relevant provisions of the Constitution and hence in dealing with the effect of Art.194(3) wherever it appears that there is a conflict between it and the fundamental rights, an attempt will have to be made to resolve the said conflict by adopting a rule of harmonious construction. Relying on Sharma's case (1) (Supra), the Court held that it must be taken as settled that though Art. 19(1)(a) would not apply to such a case, Art.21 would apply. Tracing the history of privilege of the House of Commons in England the Apex Court held that all privileges held and exercised by the House of Commons cannot be claimed by Houses of legislature in India. It was specifically held that the right to punish a citizen for contempt on a general warrant which the House of Legislature claims to be an integral part of its power or privilege is inconsistent with the material provisions of the Constitution and cannot be deemed to have been included under the latter Part of Art.194(3) (para 132). The judicial history of this country indicates that the dispute about the privilege of the House of Legislature remains by and large settled by this decision of the Apex Court. In spite of it, the matter came up for decision of a Full Bench of this Court in A.M. Paulraj Vs. The Speaker, Tamil Nadu Legislative Assembly, Madras and Another,). The petitioner, the editor of a Tamil Magazine in this case, had published an article which the Assembly held constituted breach of its privilege and hence punished him by awarding a sentence of one week simple imprisonment. He challenged its constitutional validity alleging that it violated his fundamental right under Art. 21 of the Constitution. This Court on examination of the issue in the context of the Tamil Nadu legislative Assembly Rules framed under Art.203 of the Constitution held that a decision of the legislative Assembly to punish a person for breach of its privileges could not be challenged on the ground that such a person was not given a hearing in as much as the rules of the Assembly do not provide for any such hearing. The Court, therefore, did not find any substance in the complaint that the punishment contravened Art.21 of the Constitution.

16. These decisions clearly establish that the British House of Commons had on the date of commencement of our Constitution, the privilege of prohibiting publication of even a true and correct version of its proceedings including the power to punish any person committing breach of this privilege. Under the circumstances, the Assembly would also have the power and the privilege of prohibiting publication of its proceedings and punish the person found guilty of breach of this privilege. It should also be accepted as well established that even when a legislative Assembly holds a person guilty of breach of this privilege. and imposes punishment on him, the said person would be entitled to challenge the constitutionality of his conviction and sentence under Art.21 of the Constitution. Art.21 of the Constitution, though interpreted in a limited way in the beginning, has been after the decision in Maneka Gandhi v. Union of India (A.I.R.1978 S.C.) receiving wider and comprehensive interpretation. Personal liberty under this

Article now includes right the privacy, right the speedy trial, right to legal aid, protection against custodial violence, right to medical assistance, right to shelter and even right to education upto the age of 14 as per Art.45. Similarly, the word "life" used in this Article has been receiving wider and wider connotation and now includes right to live with dignity, right of livelihood of earning living, right to education and even the right to pollution free environment. Under the circumstances, the right to life now means more than mere survival or animal existence. Similarly the word "procedure" used in this Article has come to mean a procedure which is not arbitrary, unfair or unreasonable. The Court has gone even to the extent of holding that if the punishment inflicted on a person is too cruel or torture some in the present day social background, it would be an unreasonable procedure (see *Inderjeet Vs. State of Uttar Pradesh and Another*, Under the circumstances, it can be easily held that a procedure which is arbitrary, oppressive or fanciful is no procedure at all. Reasonableness should, therefore, be the basis for exercising the power or authority in our conditional discipline. After the decision of the Supreme Court in *Triveniben Vs. State of Gujarat*, it should be treated as well settled that procedural fairness required by Art.21 has to be observed at every stage till the last breath of the life of the accused. That is the reason why the concept was extended to the disposal of mercy petitions under Art.72 of the constitution. After the decision in *A.R. Antulay Vs. R.S. Nayak and Another*, even the judicial orders are not free from the aforesaid test. Paras 61,62 and 80 of this judgment also lay down that a decision which violates the basic principles of natural justice i.e., an order passed behind the back of a party, is contrary to the procedure established by law and, therefore, violative of Art.21 of the Constitution. Under the circumstances, even the view of this Court in *A.M. Paulraj's case (Supra)* may require reconsideration, in some suitable case in future.

17. The specific question however is, whether the first respondent- Legislature had the power and privilege of punishing the petitioner for having published the expunged portions of the proceedings of the House? That the Houses of Legislature in India have the privilege to prohibit publication of even the true and correct report of the debate of the House is well established. The Supreme Court in *Sharma's case (1) (Supra)* considered Parliamentary practices in England and held that the privilege extended to prohibit the publication of any report of the debate or proceedings. The Court also noticed with reference to the history of Parliamentary Privileges in England that the House of Commons had actually prohibited publication of its proceedings and not inter middle with the same, by passing resolutions in this behalf. The Court also noticed that the House had at no point of time subsequent to its resolutions given up this valuable privilege. It was, therefore, held that the House of Commons had enjoyed, at the commencement of our Constitution, the power and privilege of prohibiting publication of even a true and faithful report of be debate or proceedings that take place within the House. A fortiori it was held that the House had at the relevant time the power and privilege of prohibiting publication or an inaccurate

or garbled version or such debate or proceedings. The Court, therefore, held that the House of Legislatures of the States also have this privilege because of the latter part of Article 194(3) of the Constitution.

18. The privilege however is the privilege to prohibit publication of any report of the debates or proceedings. Since it is couched in negative language, it will require some action on the part of the House to assert the privilege and prohibit publication. The learned Advocate-General however submitted that even this requirement would be satisfied in this case because the Speaker had clearly and specifically ordered that the offensive parts be expunged from the proceedings of the House. This, according to the learned Advocates-General, amounts to an order asserting the said privilege. Reliance has been placed on observations in para 32 in Sharma's case (1) (Supra) which reads as under:

The effect in law of the order of the Speaker to expunge a portion of the speech of a member may be as if that portion had not been spoken. A report of the whole speech in such circumstances, though factually correct, may, in law, be regarded as perverted and unfaithful report and the publication of such a perverted and unfaithful report of a speech i.e., including the expunged portion in derogation of the orders of the Speaker passed in the House, prima facie, be regarded as constituting a breach of the privilege of the House arising out of the publication of the offending news item and that is precisely the charge that is contemplated by the Committee's resolution and which the petitioner is by the notice called upon to answer.

This is no doubt obiter dicta But, obiter dicta even of the. Supreme Court are binding on this Court, (See The Commissioner of Income Tax, Hyderabad-deccan Vs. Vazir Sultan and Sons, and, therefore, it must be held that the petitioner has, by publishing the expunged portions of the proceedings of the House, committed the breach of privilege of the House. In view of this, it is not necessary for this Court to express any opinion as to the sentence in as much as not only the question whether there has been any breach of privilege of the House but also the sentence to be imposed for the same is within the exclusive jurisdiction of the House. The complaint of the petitioner about denial of reasonable opportunity to present his case before the whole House also does not deserve any serious consideration inasmuch as the petitioner has been given such an opportunity by the third respondent and the explanation submitted by him has received consideration of the privileges Committee. Principles of natural justice as is well known is not an unruly horse (see The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, and the whole purpose of its compliance is to ensure fair play in action. K.L. Tripathi Vs. State Bank of India and Others, In this view of the matter, the resolution dated 30.4.1994 of the first respondent - Assembly holding the petitioner guilty of breach of privileges and imposing sentence of one week's simple imprisonment must be held to be legal and valid. It must also be held that though the said decision can be challenged on the ground of violation of Art.21 of the Constitutions, this Court

finds no such violation in the instant case.

19. In this context, the defence of the petitioners that they represent a "free press" and it is their duty to inform the people of happenings in a public body like the Assembly, may also be examined. That this country has "free press" is a basic truth, but it is an incomplete statement. Correct statement should be that this country has "Free and responsible Press" engaged in educating public opinion in our constitutional discipline. Such a press works within our constitutional frame-work and ensures its compliance by all. The Press, in the context of this constitutional discipline, cannot invade the privacy of even a public like Assembly or public person like the respondent-Speaker. The petitioners were expected to be aware of the Supreme Court decision in Sharma's case I (Supra) and claim any right under Art. 19 of the Constitution. This decision clearly lays down that no right to public debates of the Assembly can be claimed by the Press except under the discipline under Art.194(3). This Court has, therefore, no hesitation that the defence was rightly not accepted by the Assembly. The defence, in the opinion of this Court only indicates that the petitioners have exaggerated notion about their status as Press-persons and deserves the respect shown.

19-A. QUESTION No.2 The proceedings of the Assembly of which an English translation has been provided to us for our benefit, indicate that on 2.5.1994 Thiru Kumari Ananthan, made a request to the respondent Speaker "to cancel the order enforcing imprisonment on the editor and instruct him not to public like this in future and putting an end to this issue". He also claimed that the petitioner had been sentenced for breach of privilege on a Resolution moved by him in the House. The first respondent-was not initially willing to accept the aforesaid request and this led to the intervention of the Chief Minister in the debate. The Chief Minister is reported to have stated that even though the punishment to the petitioner, who is an editor of a daily newspaper has not been given at the instance of her Government, the Government is being blamed for the said punishment. She, therefore, requested the respondent Speaker to reconsider his verdict as the affected member himself says that this punishment is not necessary." On this, the learned Speaker is reported to have stated that "since the affected member himself is now openly informing this House that this punishment is not necessary I request that the Honorable Leader of the House may propose the resolution for rescinding the resolution passed by the House on the basis of his suggestion." The respondent Speaker is also reported to have told the House that the punishment given to the petitioner was on two cases of breach of privileges, one raised by Thiru Kumari Ananthan and another by T.M. Panga Rajan, Thereafter, a long debate seems to have taken place, during which the Chief Minister eventually requested the House to cancel punishment on both the issues. She is reported to have stated as under;

I told you that the Speaker could cancel the ruling in Kumrai Ananthan's case and keep the ruling as such in Rangarajan's case. But after a rethought, I feel

that even though others work with narrow mindedness, let us act with magnanimity that is fair on our part. And I stress again my earlier statement that let us be magnanimous; whether the journalists have regard for us or not, there are many other people in our State to regard our magnanimity. If the people had given serious thought to the writings of the journalists then our Government would not have been formed. Therefore, in order to ascertain that we would be magnanimous for ever, unmindful of the writings, I request you to reconsider and cancel the decision in accordance with the procedure.

The Chief Minister is also reported to have stated that "I do not think that just because of cancelling the decision all the journalists would suddenly change their approach and attitude and they would command our action and write reasonably." It was thereafter that a resolution "that the resolution regarding imposing punishment already passed by this House on 30.4.1994 may be cancelled" was proposed by Dr. V.R. Nedunchazhiyan, and was eventually passed by the House. As a result of the aforesaid resolution, the warrant issued against the petitioner Muthupandian was withdrawn. The submission of the learned counsel for the petitioner is that this resolution has the effect of putting an end to the whole issue of breach of privilege and closing the matter for ever. The learned Advocate-General however submitted that the effect of this resolution is not to close the issue of breach of privilege as such but only suspend the sentence imposed on the petitioner Muthupandian. Before considering these rival contentions it is necessary to note the resolution dated 30.4.1994, which is as under:

This House accepts the recommendation contained in the report as per Rule 229 (d) of the Assembly Rules.

The recommendation of the Committee of Privileges is as under:

The Committee, therefore, considers that the editor of the newspaper has wantonly committed these mistakes. The Committee decides that one week's simple imprisonment for each of the two offences should be awarded to the then news editor and taking into consideration the fact that the two offences were committed by one and the same news editor the Committee recommends that one week imprisonment for the above said two counts should be imposed on Thiru. A. Muthupandian.

It should, therefore, be clear that the House has not only accepted the recommendation that the petitioner Muthupandian was guilty of breach of privileges but also the recommendation that he should be given one week's simple imprisonment for each of those breaches, the sentences to run concurrently. Since the Assembly has accepted both these recommendations, there would be no justification for the submission that the resolution dated 2.5.1994 has the effect of cancelling only the sentence part of it. The reasonable interpretation would be that the Assembly had cancelled its decision not only in relation to the conviction of the petitioner Muthupandian for breach of privileges

but also the sentence imposed upon him. If this is considered in the contest of "magnanimity" reflected in the speech of the Chief Minister, the only inference would be that the respondent-Assembly had closed the entire matter for ever and asserted its magnanimity in spite of the adverse attitude of the editors like the petitioner. There is, therefore, no escape from the conclusion that the resolution dated 2.5.1994 has the effect of not only revoking the sentence but also setting aside this decision about the guilt of the said petitioner.

20. It is also the considered view of this Court that the interpretation put by the learned Advocate-General to the resolution dated 2.5.1994 would introduce an element of unreasonableness and arbitrariness in the matter and make the decision violative of Art. 21 of the Constitution. It would only mean that the Assembly is claiming the right of inflicting the sentence on the accused held guilty by it at any time in future and thereby keeping the accused in undue physical and mental strain. Keeping Democle's Sword hanging on the head of such a person would not be within the constitutional discipline mandated by Art. 21. In this view of the matter this Court has no hesitation in holding that the respondent-Assembly had by its resolution dated 2.5.1994 closed the entire issue of breach of privilege by the petitioner Muthupandian and given, in its magnanimity, the freedom lost by him consequent upon his convictions.

21. QUESTION NO.3; Though our decision to the question No.2, by itself is sufficient to hold that the resolution dated 5.5.1994 is unconstitutional, it requires consideration whether the Assembly could re-impose the sentence on a person held guilty of breach of privilege only because he has moved the High Court under Art. 226 of the Constitution of India challenging the validity of sentence imposed upon him. Right to move the High Court under Art. 226 is a constitutional right of a person which cannot be taken away by any one. Punishing a person for invoking jurisdiction of the High Court may, therefore, amount to obstructing his approach to the court and may be viewed seriously. There had been instances where the courts have viewed such obstruction as amounting to contempt of Court. Recent decision of the Supreme Court in *I. Manilal Singh vs. H.Borobabu Sing* (AIR 1994 SC.C.505) deserves special mention as it was also a case where the speaker of a Legislative Assembly had felt offended because his order was challenged before the Supreme Court. Be that as it may, depriving a person of his personal liberty only because he has approached the Court would amount to violation of his fundamental right under Art.21 of the constitution and render the action illegal and unconstitutional. Such an action would also be violative of Art. 14 of the constitution. In this view of the matter, if the approach of the petitioner to this Court by filing a writ petition be the only basis for the resolution dated 5.5.1994, the same would be violative of Art.14 and 21 of the Constitution.

22. A perusal of the proceedings dated 5.5.1994 however indicates that though the debate in the House has started because of the order of this Court, admitting the writ petition of the petitioner, Muthupandian, the same is not the only reason

for passing the resolution. It appears that the magnanimity of the Chief Minister, which, according to this Court, was real and should have been appreciated, was treated as her defeat by several newspapers and gave a cause of complaint to the members of the ruling party. While expressing their indignation against this attitude of the press, reference to the writ petition was also made. Those reference were, however carefully and cautionary made and were accompanied by the statement that the House will never interfere with the exclusive privilege of judiciary at any time. In this view of the matter this Court finds no justification for the submission that the resolution dated 5.5.1994 was passed only because the petitioner Muthupandian had moved this Court by filing a petition under Article 226 of the Constitution.

23. While on the subject this Court must express its shock and surprise at the newspaper reports of the resolution dated 2.5.1994. We have extensively quoted the speech of the Chief Minister which reflects nothing but her magnanimity and her Governments resolve to act fairly and reasonably and not vindictively. This Could not by any responsible press be terms as "bowing down." The newspaper headings "JAYALALITHA BOWED DOWN" does not in our opinion correctly represent the proceedings dated 2.5.1994. It is necessary to clarify that the Constitution and the country expect a responsible press helping the democracy and its processes and not an irresponsible press feeding the public with wrong and incorrect news items. Cheap publicity or popularity is not our cult and has to be discouraged even by the press. We are of the opinion that a clear case of introspection by the press exists and those responsible for it would undertake such an exercise at the earliest for their own benefit.

24. Since the resolution dated 5.5.1994 is being invalidated by us on the ground that the cause of action for imposing any sentence on the petitioner-Muthupandian did not exist on that day, it is really not necessary to consider the last question which must be left to be decided in some suitable case in future. This Court, would however, hope that in a case like this the Assembly and the respondent-Speaker would remind themselves of the sentiments expressed by the Supreme Court in reference under Art. 143 which is reproduced hereunder for ready reference:

Before we part with this topic, we would like to refer to one aspect of the question relating to the exercise of power to punish for contempt. So far as the courts are concerned, Judges always keep in mind the warning addressed to them by Lord Atkin in *Andre Paul v. Attorney General of Tinidad*. AIR 1936 P.C.141. Said Lord Atkin, "Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful even though out-spoken comments of ordinary men" We ought never to forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the

dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their Judicial conduct. We venture to think that what is true of the Judicature is equally true of the Legislatures.

Though these sentiments were expressed in relation to the punishment for contempt they are equally relevant in relation to the punishment for breach of privileges. Frequent or indiscriminate use of the power in anger or irritation would not sustain the dignity or the status of the House. The dignity and status of the House, is, without doubt, sacrosanct to our democracy.

25. In view of the discussion aforesaid, H.C.P.No.762 of 1994 succeeds and is allowed by quashing the sentence imposed on the petitioner-Muthupandian. The warrant issued by the respondent No.1 against him is also quashed. Since the said petitioner is on bail as per orders of this Court, bail bonds furnished by him are hereby cancelled and he is set free. W.P.No.8529 of 1994 is however dismissed. No Costs.