

(2013) 01 MAD CK 0154

In the Madras High Court

Case No : Writ Petition No. 8671 of 2012 and M.P. No. 1 of 2012

E. Edwig

APPELLANT

Vs

Tamilnadu Legislative Assembly

RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Advocates Act, 1961 — Section 30

Banking Regulation Act, 1949 — Section 45

Constitution of India, 1950 — Article 105, 105(3), 122, 122(1), 124

Industrial Disputes Act, 1947 — Section 36(4)

Citation : (2013) 1 CTC 774 : (2013) 4 RCR(Civil) 484 : (2013) 3 SCT 384 :
(2013) WritLR 461

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Rubert J. Barnabas for Mr. V. Velmurugan in W.P. No. 8671 of 2012 and Mr. P.T. Perumal in W.P. No. 8672 of 2012, for the Appellant; S. Gurukrishna Kumar, Additional Advocate General-IV Assisted by Mr. S. Venkatesh, Govt. Pleader, for the Respondent

Judgement

K. Chandru, J.—The only question that arises for consideration in these writ petitions is whether a person, who was summoned to appear

and show cause by the Privilege Committee constituted by the Tamil Nadu Legislative Assembly, is entitled to be represented along with an

Advocate of his choice in the said proceedings? In the first writ petition (W.P. No. 8671 of 2012), the petitioner is an Advocate, who has chosen

to challenge the proceedings issued by the Secretary of the Tamil Nadu Legislative Assembly, dated 28.01.2012. By the impugned proceedings,

the petitioner's client Mr. Nakkheeran Gopal was informed that for the purpose of giving an explanation to the show cause notice issued by the

Privilege Committee, the concerned person must himself give an explanation in

writing and also appear before the Committee for giving statement.

Therefore, on his behalf, no lawyer or any other person will be allowed to give explanation or argue his case as was decided by the Committee.

2. In the second writ petition (W.P. No. 8672 of 2012), the petitioner Nakkheeran Gopal, who is an Editor, Printer and Publisher of Nakkheeran

magazine, which is a Tamil Bi-weekly, has chosen to challenge the same order and after setting aside the same, seeks for a direction to the

respondents to permit the petitioner to appear and represent through or along with his counsels, as of right, in the proceedings.

3. When both writ petitions came up on 02.04.2012, notice was taken by the learned Advocate General assisted by Mr. Venkatesh, learned

Government Pleader, who was directed to get instructions from the Secretary of the Tamil Nadu Legislative Assembly. Subsequently, a counter

affidavit was filed by the second respondent, dated 03.04.2012. Since the first writ petition was filed by an Advocate claiming to challenge the

proceedings, dated 28.01.2012, this court finding that such a right cannot accrue to an Advocate, wanted to know the views of his client Mr.

Nakkheeran Gopal and also to know whether he had authorized the stand taken by the said Advocate. Mr. Nakkheeran Gopal, the petitioner in

the second writ petition has filed a supporting affidavit, dated 03.04.2012 stating that he fully endorsed the stand taken by the Advocate. Since

both writ petitions were interlinked, they were heard together.

4. Heard the arguments of Mr. Rubert J. Barnabas for Mr. V. Velmurugan, learned counsel for the petitioner in W.P. No. 8671 of 2012, Mr. P.T.

Perumal, learned counsel for the petitioner in W.P. No. 8672 of 2012 and Mr. S. Gurukrishna Kumar, learned Additional Advocate General-IV

assisted by Mr. S. Venkatesh, learned Government Pleader for respondents.

5. It is seen from the records that Nakkheeran magazine vide its issue dated 07.01.2012 had published a news item in the name of one Kamaraj,

who is the Joint Editor of Nakkheeran magazine, making certain statements attributed to the present Chief Minister of Tamil Nadu. It is found that

a member of the Legislative Assembly sent a letter to the Hon'ble Speaker of Tamil Nadu Legislative Assembly on 17.01.2012 stating that the

publication of the said news will infringe the privileges of the House. Therefore, he wanted an action to be initiated against the person concerned. It

is pursuant to the same, the matter was taken up by the Hon'ble Speaker of the House stating that there is prima facie case of infringement of the privilege of the member of the House. Therefore, in terms of Rule 226 of the Tamil Nadu Legislative Assembly Rules, the matter was referred to an enquiry by the Privilege Committee.

6. The Privilege Committee constituted by the House in its meeting held on 20.01.2012 took up the matter for enquiry and decided to call for an

explanation from the news magazine. Accordingly, a notice was given to the Editor and Printer Mr. Nakkheeran Gopal (petitioner in W.P. No.

8672 of 2012) and to the Joint Editor Mr. Kamaraj, vide notice dated 20.01.2012. It was stated that they should give a written explanation on or

before 27.01.2012 and that if they want to appear in person and give an explanation, that may also be permitted. If no reply is received, an

appropriate action will be initiated by the Committee. It was thereafter, the Editor and Printer Mr. Nakheeran Goptal along with the Joint Editor

had executed a vakalat in favour of four advocates including Mr. E. Edwig, the petitioner in W.P. No. 8671 of 2012 to appear before the Privilege

Committee. An affidavit was also filed by Mr. Nakkheeran Goptal stating that already a contempt application was filed by the Chief Minister in

Contempt Application No. 39 of 2012 before this court. That contempt application was closed by the First Bench by a final order. Therefore, he

wanted three weeks time to submit his explanation. He also filed an another affidavit stating that as to which portion of the publication was

breaching the privilege of the house. It is pursuant to the said request, the impugned communication, dated 28.01.2012 was sent, stating that the

Privilege Committee in its meeting dated 28.01.2012 held that it is unnecessary to permit the petitioner to file a vakalat through an Advocate. It is

only the person against whom the Privilege motion was given to give a written statement and if necessary he should appear in person. He cannot be

represented by an Advocate or any other person. The decision of the committee was communicated to the petitioner stating that no lawyer or any

other person will be allowed to give explanation or argue on his behalf. A copy of the news report which constituted the privilege was also

enclosed. It was thereafter, the two writ petitions came to be filed.

7. Mr. Nakkheeran Gopal, the Editor, Nakkheeran Publications has sent a reply

dated 03.02.2012 stating that he has not written anything against the public life of the Chief Minister. The news item did not touch upon the discharge of the public functions of the Chief minister. It was no way connected to the privilege of the Legislative Assembly. The news item referred to the personal life of the Chief Minister and that the Chief Minister's own affidavit will support his case. If the proceedings before the Privilege Committee is entertained, it will be an abuse of power of the legislature amounting to curtailment of press freedom guaranteed by Article 19(1) (a) of the Constitution.

8. In the affidavit filed in support of the writ petition, the Editor and Printer of the magazine contended that the proceedings initiated for breach of privilege contemplates prosecution, arrest, punishment and incarceration. In such proceedings, the fundamental right of the person, who is receiving the notice, is involved. Therefore, in order to protect his right by presenting precedents and case laws, an assistance of an Advocate is required. It is an extended fundamental right and that the Committee cannot deny the right to appear through a counsel. He further submitted that the Legislative Assembly is an august body consisting of elite members, who are representatives of the public. It is also assisted by highly equipped committee members, staff members, well informed and knowledgeable Secretaries and assistants, whereas the petitioner is an ordinary journalist and not at all equipped to maintain the standards of intelligence and knowledge equal to the members of the assembly. Therefore, he should be given the right of assistance by an Advocate in order to prove that he has not committed any breach of privilege of the House. Therefore, he need the assistance of legally trained minds. Inasmuch as the process of recording evidence, examination of documents are contemplated, it is his legal right to have the assistance of an Advocate. There were previous occasions where on the recommendation of the Privilege Committee, the House had punished the journalists by sending them to jail. The prosecution and punishment involves quasi judicial function. Therefore, the right of the petitioner under Article 21 has to be protected in this proceedings.

9. In the counter affidavit filed by the Secretary of the House, it was stated that the Privilege Committee in its meeting held on 28.01.2012 had decided not to accept the vakalat as at all times the matters involving breach of

privilege or contempt of the House are considered by the Committee in-camera and that individuals concerned alone have to appear before the Committee and submit their explanation. The Committee had, therefore, decided that the petitioner has to send his explanation on his own. The explanation already sent by the petitioner is under consideration by the Committee of Privileges. Since the Privilege committee has sought for an explanation from the petitioner on the issue of breach of privilege referred to by the Speaker, it has not envisaged any specialized debate involving questions of law. The rejection of the petitioner's request is legal and correct. The committee after due consideration of the explanation by the petitioner will come to a further conclusion. The Committee consists of members of the Legislative Assembly drawn from all parties. If such a request of the petitioner is considered, the independence of the Privilege Committee/Assembly will be affected. If the petitioner is having documents to prove his case, he can produce it before the Committee, for which no lawyer is required. The petitioner has no right to get the assistance of an Advocate and no right of the petitioner is infringed. Nothing prevented the petitioner to present his point of view before the Committee and he will not be put to any disadvantage of not availing the assistance of an Advocate. Permitting the Advocates to appear before the Privilege Committee and arguing on behalf of persons against whom breach of privilege has been raised was neither done in the past nor permitted in the past. There is no provision in the Tamil Nadu Legislative Assembly Rules for the grant of an assistance of a lawyer for appearing before the Committee of privilege.

10. Both parties made elaborate submissions both on the right to have a counsel of his choice and appear before the Committee as well as the extent of judicial review in respect of the proceedings initiated by the Legislature or any of its committee. In this case, this court is not inclined to go into the issue as to whether there was any prima facie case for issuance of notice against the petitioner in the second writ petition. The issue is only limited to consider whether pursuant to the notice issued by the Privilege Committee, an affected person can have a right of assistance of an Advocate and to appear before the Committee.

11. Before proceeding with the contentions raised, it is necessary to refer to

certain provisions in the Constitution relating to powers, privileges and immunities of the House. Article 105 deals with the powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof, which reads as follows:

105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.-(1) Subject to the provisions of this

Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in Parliament or

any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House,

shall be such as may from time to time be defined by Parliament by law, and, until so defined, [shall be those of that House and of its members and

committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978].

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and

otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

12. Since the present case arose out of the Legislature of the State, Article 194 of the Constitution deals with the same, which reads as follows:

194. Powers, privileges, etc., of the House of Legislatures and of the members and committees thereof.-(1) Subject to the provisions of this

Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in

the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of

such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a

House of such Legislature, shall be such as may from time to time be defined by the Legislature of law, and, until so defined, [shall be those of that

House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-fourth Amendment)

Act, 1978].

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and

otherwise to take part in the proceedings of a House of the Legislature of a State or any committee thereof as they apply in relation to members of

that Legislature.

13. In terms of Article 208, the Tamil Nadu State Assembly has framed rules of procedure known as The Tamil Nadu Legislative Assembly Rules.

Rules 219 to 230 relate to the Committee of Privileges. Apart from dealing with as to how the privilege motion is referred to, how the committee is

constituted and how the report of the committee is presented before the House, the rules do not contemplate any other procedure. Under Rule

230, apart from these rules, the rule relating to Select Committee of the Assembly shall apply. Even the rule relating to the Select Committee does

not deal with the situation which has arisen in this case. Therefore, it can be safely concluded that the Privilege Committee constituted by the

House, if it is in respect of the privilege motion, as to how they should go about to decide the privilege issue against any person is not spelt out by

any statutory rules or standing instructions. In effect, there is no rule which prevent the committee from permitting the affected person to have the

assistance of an Advocate in the proceedings to be conducted by them.

14. As and when the proceedings are completed and the matter referred to the House and the House thereupon to decide the imposition of penalty

against the person so summoned and the nature of judicial review came to be considered by the Supreme Court in very many decisions and

parameters of judicial review has also been spelt out.

15. The Supreme Court vide its decision in Raja Ram Pal Vs. The Hon'ble Speaker, Lok Sabha and Others, had considered the scope of power

of the Parliament under Article 105 of the Constitution and in paragraph 149, it

was observed as follows:

149.... The argument is that Parliament can only claim additional powers by making a law. However, we are unable to accept this contention, since

Article 105(3) itself provides the power to make a law defining powers and privileges and further the position that all the privileges of the House of

Commons vest in Parliament until such a law is passed. Article 327 pertains to the constitution of the House insofar as election matters, etc. are

concerned.....

16. The scope of judicial review over an action of the legislature came to be considered by a Constitution Bench in the said case (also known as

Cash for query case). In paragraphs 348, 352, 354 to 356 and 431, the Supreme Court had observed as follows:

348. The learned counsel for the Union of India further submitted that in exercise of the privileges of the House to regulate its own proceedings

including the power to expel a Member, it does not engage Article 14 or Article 19. He referred to the judgment of the Canadian Supreme Court

in *New Brunswick Broadcasting Corp. v. Nova Scotia Speaker* 48 in particular, the observations (p. 373) to the following effect:

It is a basic rule, not disputed in this case, that one part of the Constitution cannot be abrogated or diminished by another part of the Constitution:

Reference re Bill 30, an Act to amend the Education Act (Ont.), (1987) 1 SCR 1148. So if the privilege to expel strangers from the Legislative

Assembly is constitutional, it cannot be abrogated by the Charter, even if the Charter otherwise applies to the body making the ruling. This raises

the critical question: Is the privilege of the Legislative Assembly to exclude strangers from its chamber a constitutional power?

352. In the light of law laid down in the two cases *Pandit Sharma (I)* 19 and *Pandit Sharma (II)* 20 and in *U.P. Assembly case* (Special Reference

No. 1 of 1964) 12 we hold that the broad contention on behalf of the Union of India that the exercise of parliamentary privileges cannot be

decided against the touchstone of fundamental rights or the constitutional provisions is not correct. In *Pandit Sharma* the manner of exercise of the

privilege claimed by the Bihar Legislative Assembly was tested against the procedure established by law and thus on the touchstone of Article 21.

It is a different matter that the requirements of Article 21, as at the time

understood in its restrictive meaning, were found satisfied. The point to be noted here is that Article 21 was found applicable and the procedure of the legislature was tested on its anvil. This view was followed in U.P.

Assembly case (Special Reference No. 1 of 1964) 12 which added the enforceability of Article 20 to the fray.

354. The enforceability of Article 21 in relation to the manner of exercise of parliamentary privilege, as affirmed in Pandit Sharma (I) 19 and Pandit

Sharma (II) 20 and U.P. Assembly case (Special Reference No. 1 of 1964) 12 has to be understood in light of the expanded scope of the said

fundamental right interpreted as above.

355. It is to be remembered that the plenitude of powers possessed by Parliament under the written Constitution is subject to legislative

competence and restrictions of fundamental rights and that in case a Member's personal liberty was threatened by imprisonment of committal in

execution of parliamentary privilege, Article 21 would be attracted.

356. If it were so, we are unable to fathom any reason why the general proposition that fundamental rights cannot be invoked in matters concerning

parliamentary privileges should be accepted. Further, there is no reason why the Member, or indeed a non-Member, should not be entitled to the

protection of Article 21, or for that matter Article 20, in case the exercise of parliamentary privilege contemplates a sanction other than that of

committal.

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

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

(b) The constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty,

can claim to be the sole judge of the power given under the Constitution, mere coordinate constitutional status, or even the status of an exalted

constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of actions which partake the character of

judicial or quasi-judicial decision;

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

determination by the courts;

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

judicature;

(e) Having regard to the importance of the functions discharged by the legislature under the Constitution and the majesty and grandeur of its task,

there would always be an initial presumption that the powers, privileges, etc. have been regularly and reasonably exercised, not violating the law or

the constitutional provisions, this presumption being a rebuttable one;

(f) The fact that Parliament is an august body of coordinate constitutional position does not mean that there can be no judicially manageable

standards to review exercise of its power;

(g) While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to

exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action

would be tested, and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and

manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;

(h) The judicature is not prevented from scrutinising the validity of the action of the legislature trespassing on the fundamental rights conferred on

the citizens;

(i) The broad contention that the exercise of privileges by legislatures cannot be decided against the touchstone of fundamental rights or the

constitutional provisions is not correct;

(j) If a citizen, whether a non-Member or a Member of the legislature, complains that his fundamental rights under Article 20 or 21 had been

contravened, it is the duty of this Court to examine the merits of the said contention, especially when the impugned action entails civil

consequences;

(k) There is no basis to the claim of bar of exclusive cognizance or absolute immunity to the parliamentary proceedings in Article 105(3) of the

Constitution;

(l) The manner of enforcement of privilege by the legislature can result in judicial scrutiny, though subject to the restrictions contained in the other

constitutional provisions, for example Article 122 or 212;

(m) Article 122(1) and Article 212(1) displace the broad doctrine of exclusive cognizance of the legislature in England of exclusive cognizance of

internal proceedings of the House rendering irrelevant the case-law that emanated from courts in that jurisdiction; inasmuch as the same has no

application to the system of governance provided by the Constitution of India;

(n) Article 122(1) and Article 212(1) prohibit the validity of any proceedings in legislature from being called in question in a court merely on the

ground of irregularity of procedure;

(o) The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its

opinion for that of the legislature;

(p) Ordinarily, the legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide

intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters,

but if in a given case, the allegations to such effect are made, the court may examine the validity of the said contention, the onus on the person

alleging being extremely heavy;

(q) The rules which the legislature has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of

the Constitution;

(r) Mere availability of the Rules of Procedure and Conduct of Business, as made by the legislature in exercise of enabling powers under the

Constitution, is never a guarantee that they have been duly followed;

(s) The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny;

(t) Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some

relevant material sustaining the action;

(u) An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of

lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.

(Emphasis added)

17. The decision of the said Constitution Bench came to be considered once again by the subsequent Constitution Bench in *Amarinder Singh Vs.*

Special Committee, Punjab Vidhan Sabha and Others, and that the view of the *Raja Ram Pal's* case (cited supra) was quoted with approval.

18. As much as the power to enquire into the complaint and the power to record evidence, the privilege committee has to give an opportunity to

the affected person who was issued with notice in such case. The report of the committee whether it is accepted by the House or rejected is not an

issue as it forms the basis for the House to further deliberate the matter relating to the privilege. Even in case of impeachment of a judge of the High

Court in terms of Article 124 and the constitution of Judges Enquiry Committee was considered by the Supreme Court in *Mrs. Sarojini*

Ramaswami Vs. Union of India and others, and in paragraphs 62 and 63, the Supreme Court had observed as follows:

62. In this context, it would be relevant to recall the scheme indicated earlier. The determination by the Committee that the Judge is not guilty of

misbehaviour, is alone final as it terminates the proceeding. However, in that case there is no scope for judicial review of the finding of not guilty

made by the Committee as already indicated. This aspect negates the character of tribunal for this reason alone. In the other situation when the

Committee's determination is that the Judge is guilty of misbehaviour, that finding is inchoate which may or may not be acted upon by the

Parliament. Finding of guilty made by the Committee is in the nature of recommendation to Parliament to commence its process and by itself is not

self-effectuating. Thus, the finding recorded by the Committee where it finds the Judge guilty of any misbehaviour being subject to acceptance by

the Parliament, is not final and is, therefore, not conclusive.

63. No action is to be taken on the motion in case the Committee finds that the Judge is not guilty of any misbehaviour. In that event if the

Committee has to be regarded as a Tribunal under Article 136, it would serve no useful purpose and would also lead to the anomalous result that

the Committee is to be treated as a Tribunal if it finds that the Judge is not guilty of any misbehaviour but it is not to be treated as a Tribunal if it

finds that the Judge is guilty of any misbehaviour. The character of the Committee as a Tribunal cannot depend on the findings that are ultimately recorded by it.

(Emphasis added)

19. However, in the same judgment, the Supreme Court approved the power of the committee to provide legal assistance as being a part of the

reasonable opportunity given to a person facing charges and in paragraph 113, the Supreme Court had observed as follows:

113. Now the other aspect to be examined is the violation of any principle of natural justice, if the copy of the report is not given to the Judge

concerned for seeking a judicial review and this is the main plank of submission on which the entire edifice is built on behalf of the petitioner. So far

as the principle of audi alteram partem that no person can be condemned unheard, is concerned, in my view is not applicable in the present case.

The right of hearing to the Judge concerned in the present scheme of law can only arise before two authorities. One before the Inquiry Committee

and the other before the Parliament. So far as the right of hearing before the Committee is concerned, there is ample opportunity given in the

provisions of the Act and the Rules. The entire investigation into misbehaviour is done after a notice is given to the Judge concerned. The charges

framed together with a statement of the grounds on which each such charge is based is communicated to the Judge and he is given a reasonable

opportunity of presenting a written statement of defence. The Committee after considering the written statement of the Judge may amend the

charges and thereafter the Judge is again given a reasonable opportunity of presenting a fresh written statement of defence. The Committee in

making the investigation is required to give a reasonable opportunity to the Judge of cross-examining witnesses, adducing evidence and of being

heard in his defence. The plea of the Judge is recorded, the evidence of each witness examined by the Inquiry Committee is taken down in writing.

The Judge is also given a right to consult, and to be defended by a legal practitioner of his choice. Thus, so far as the opportunity of hearing before

the Inquiry Committee is concerned, the abovementioned provisions clearly show

that full opportunity of hearing is given to the Judge in respect of contesting the charges framed against him as well as cross-examining any witness and leading any evidence in defence.

(Emphasis added)

Therefore, it cannot be said that the committee merely record the evidence and report to the House cannot be a ground to deny the assistance of a counsel.

20. What is meant by the reasonable opportunity came to be considered in a judgment of the Supreme Court in K.I. Shephard and Others Vs.

Union of India (UOI) and Others, and in paragraphs 12 and 15, it was observed as follows:

12. Mullan in Fairness: The New Natural Justice has stated:

Natural justice co-exists with, or reflected, a wider principle of fairness in decision-making and that all judicial and administrative decision-making and that all judicial and administrative decision-makers had a duty to act fairly.

In the case of State of Orissa v. Dr. (Ms.) Binapani Dei 4 this Court observed:

It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be

made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and

after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken: the

High Court was, in our judgment, right in setting aside the order of the State.

In A.K. Kraipak v. Union of India 5 a Constitution Bench quoted with approval the observations of Lord Parker in Re: (H) K (an infant) 6.

Hegde, J. speaking for the Court stated: (SCC p. 272, para 20)

Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or

unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the

opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for

the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to

prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Oftentimes it is not easy to

draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are

now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative

enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry.

These observations in A.K. Kraipak case 5 were followed by another Constitution Bench of this Court in Chandra Bhavan Boarding and Lodging,

Bangalore v. State of Mysore 6. In Swadeshi Cotton Mills v. Union of India 7 a three Judge Bench of this Court examined this aspect of natural

justice. Sarkaria, J. who spoke for the court, stated: (SCC pp. 683-84, para 28)

During the last two decades, the concept of natural justice has made great strides in the realm of administrative law. Before the epoch-making

decision of the House of Lords in Ridge v. Baldwin 8 it was generally thought that the rules of natural justice apply only to judicial or quasi-judicial

proceedings; and for the purpose, whenever a breach of the rule of natural justice was alleged, courts in England used to ascertain whether the

impugned action was taken by the statutory authority or tribunal in the exercise of its administrative or quasi-judicial power. In India also, this was

the position before the decision dated February 7, 1967, of this Court in Dr Binapani Dei case 4; wherein it was held that even an administrative

order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. This supposed distinction

between quasi-judicial and administrative decisions, which was perceptibly mitigated in Binapani Dei case 4 was further rubbed out to a vanishing

point in A.K. Kraipak v. Union of India 5....

On the basis of these authorities it must be held that even when a State agency acts administratively, rules of natural justice would apply. As stated,

natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given

adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a

hearing or enquiry (if one is held); and (c) effectively to prepare their own case

and to answer the case (if any) they have to meet.

15. Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with

power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural

justice have developed with the growth of civilisation and the content thereof is often considered as a proper measure of the level of civilisation and

Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness

and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. We do not think in the facts of

the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame.....

(Emphasis added)

21. A similar view was projected by the Supreme Court after approving K.I. Shephard's case (cited supra) in H.L. Trehan and Others Vs. Union

of India (UOI) and Others, and in paragraphs 12 and 13, it was observed as follows:

12. It is, however, contended on behalf of CORIL that after the impugned circular was issued, an opportunity of hearing was given to the

employees with regard to the alterations made in the conditions of their service by the impugned circular. In our opinion, the post-decisional

opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally

proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional

opportunity. In this connection, we may refer to a recent decision of this Court in K.I. Shephard v. Union of India 1. What happened in that case

was that the Hindustan Commercial Bank, the Bank of Cochin Ltd. and Lakshmi Commercial Bank, which were private banks, were amalgamated

with Punjab National Bank, Canara Bank and State Bank of India respectively in terms of separate schemes drawn u/s 45 of the Banking

Regulation Act, 1949. Pursuant to the schemes, certain employees of the first mentioned three banks were excluded from employment and their

services were not taken over by the respective transferee banks. Such exclusion

was made without giving the employees, whose services were terminated, an opportunity of being heard. Ranganath Misra, J. speaking for the court observed as follows: (SCC pp. 448-49, para 16)

We may now point out that the learned Single Judge for the Kerala High Court had proposed a post-amalgamation hearing to meet the situation

but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing.

On the other hand the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could not

represent and their case could be examined. We do not think that would meet the ends of justice. They have already been thrown out of

employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of

employment and then give them an opportunity of representation when the requirement is that they should have the opportunity referred to above

as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a

representation may not really yield any fruitful purpose.

13. The view that has been taken by this Court in the above observation is that once a decision has been taken, there is a tendency to uphold it and

a representation may not yield any fruitful purpose. Thus, even if any hearing was given to the employees of CORIL after the issuance of the

impugned circular, that would not be any compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by

Article 14 of the Constitution. The High Court, in our opinion, was perfectly justified in quashing the impugned circular.

(Emphasis added)

Thus, the Committee cannot find an erroneous procedure and leave the rest to the legislature to decide further action. In the light of the above, the

stand taken by the Privilege Committee of the Tamil Nadu Legislature, as notified by the respondents, cannot be said to be legally valid.

22. It is now brought to the notice of this court that Section 30 of the Advocates Act, 1961 has been brought into force with effect from

15.06.2011. Section 30 reads as follows:

30. Right of advocates to practise."Subject to provisions of this Act, every

advocate shall be entitled as of right to practise throughout the territories to which this Act extends,

(i) in all courts including the Supreme Court;

(ii) before any tribunal or person legally authorised to take evidence; and

(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.

(Emphasis added)

Therefore, the privilege committee which is undoubtedly empowered to record evidence cannot deny the assistance of a counsel in the absence of

any rule legally prohibiting such appearance.

23. However, Mr. S. Gurukrishna Kumar, learned Additional Advocate General appearing for the respondents stated that the Rules of procedure

and conduct of business in Lok Sabha in Rule 271 provides that the Committee under the direction of the Speaker, permit a witness to be heard

by a counsel appointed by him and approved by the Committee. He also stated that similar rule was not framed by the Council of States (Rajya

Sabha), wherein the House Committee has to regulate the question of privilege on its own. The rules framed by the Tamil Nadu Legislative

Assembly do not have the rule providing for assistance of an Advocate during the proceedings before the privilege committee. In the absence of

rule, the petitioner cannot claim any legal right to have the assistance of the counsel.

24. The learned Additional Advocate General also referred to the Parliament paper No. 297/1981 prepared by the Parliament of Commonwealth

of Australia, wherein with reference to the assistance of an Advocate, the following note appears:

Persons accused of breaches of the privileges or of other contempts of either House are not, as a rule, allowed to be defended by counsel; but in a

few cases incriminated persons have been allowed to be heard by counsel, the hearings being sometimes limited to "such points as do not

controvert the privileges of the House". Where a person has been allowed to make his defence by counsel, counsel have sometimes been heard in

support of the charge; and where a complaint of an alleged breach of privilege was referred to the Committee of Privileges, counsel were allowed,

by leave of the House, to examine witnesses before the Committee on behalf of both the Member who had made the complaint and the parties named therein.

25. Hence it was argued that only with the House permission, such a request can be permitted. Thereafter, the counsel referred to certain

judgments in the service as well as labour laws. He referred to a judgment of the Supreme Court in *Paradip Port Trust, Paradip Vs. Their*

Workmen, . In that case, a reference was made to Section 30 of the Advocates Act, even though at the time of judgment (9.9.1976), the section

was not notified, but yet the Supreme Court held that the power under the Advocates Act is only general law and that the special law like the

Industrial Disputes Act will have overriding effect. Therefore, Section 36(4) of the ID Act prohibits the lawyer's appearance except with the

consent of the opposite party and the leave of the tribunal was legally valid. In this case, it is not the case of the respondents that they have framed

rules prohibiting the appearance of the counsel along with the party.

26. The learned Additional Advocate General also referred to a judgment of the Supreme Court in *Bharat Petroleum Corporation Ltd. Vs.*

Maharashtra General. Kamgar Union and Ors, . In that case, the Standing Order providing for the right of representation by an employee who is

facing a disciplinary action only by the member of the trade union was held to be valid.

27. He also referred to another judgment of the Supreme Court in *M/s Cipla Ltd. and Others Vs. Ripu Daman Bhanot and Another*, to contend

that even where there is discretion to permit an Advocate, it should be depend upon the complicated question involved, which could not be tackled

by him as he was a layman to the procedure. Therefore, he contended that the petitioner being an Editor and Printer is well aware of the

publication made by him and he does not require any assistance of an Advocate.

28. But, in the present case, the impugned order does not indicate that any such consideration was taken into account by the Privilege Committee.

On the other hand, the stand of the respondents were categorical that in any proceedings of the House or the House Committee, the lawyer will

never be permitted.

29. The counsel subsequently referred to a judgment of the Supreme Court in

Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi,

wherein the right to be represented through counsel or agent can be restricted, controlled or regulated by statutes, rules, regulations or standing

orders. The delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right.

30. As noted already, in this case, no rule was framed by the committee or by the House prohibiting the appearance of the counsel along with the

person who was issued with a show cause notice. On the other hand, the plea of the petitioner has been rejected only on the ground that there is

no rule providing for such a requirement. In essence, neither the House nor the committee has framed any rule either allowing or denying the

appearance of an Advocate for a party who was summoned to appear. Therefore, it is not a case where there is any legal impediment for the

House to permit a counsel of the choice of the person who was summoned to appear. Further, after the notification of Section 30 of the Advocates

Act, 1961, there is vested right created by the Parliament for a party to appear through counsel in case where the body is entitled to take evidence.

It is immaterial that the report of the committee is not made as final and it was subject to the decision of the full House. It is suffice that the

proceedings may culminate in the deprivation of the liberty of a citizen and the petitioner's apprehension that he will be unable to deal with the

situation on his own and requires the assistance of an Advocate. Hence the Committee cannot deny the assistance of the counsel. The decisions

relied on by the respondents has no relevance to the case on hand. The request made by the petitioner do not violate any of the rules framed by the

House. The present writ petitions are maintainable since it comes within the parameters of a judicial review permissible in the light of Raja Ram

Pal's case (cited supra) as well as Amarinder Singh's case (cited supra). Hence both writ petitions will stand allowed. The Privilege Committee of

the Tamil Nadu Legislative Assembly is hereby directed to permit the petitioner in W.P. No. 8672 of 2012, i.e., Nakkheeran Gopal to be

represented by the Advocate of his choice to appear along with him in the proceedings pending before the Committee. No costs. Consequently

connected miscellaneous petition stands closed.