

**(1951) 09 MAD CK 0008**

**In the Madras High Court**

**Case No :** Criminal Miscellaneous Petition No. 1767 of 1951

**In Re: K. Anandan Nambiar**

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**Date of Decision :** 11-09-1951

**Acts Referred:**

Constitution of India, 1950 — Article 194, 194(3), 226

**Citation :** AIR 1952 Mad 117 : (1953) ILR (Mad) 93 : (1951) 64 LW 1031 : (1952) 1 MLJ 1

**Hon'ble Judges :** Somasundaram, J; Mack, J

**Bench :** Division Bench

**Advocate :** S. Mohan Kumaramangalam, for the Appellant; A.G. and Public Prosecutor, for the Respondent

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## **Judgement**

Mack, J.—This is a petition under Article 226 of the Constitution by K. Anandan Nambiar a Member of the Madras Legislative Assembly.

He was arrested on 4th May 1949 and detained under the Maintenance of Public Order Act. He has since been continuously under detention. He

has applied to us for the issue of a writ by way of mandamus or other appropriate writ to declare and enforce his right to attend the present sittings

of the Legislative Assembly now in progress either freely or with such restrictions as may be reasonably imposed. He also complains that his letters

to the Legislature addressed to the Chairman of the Committee of Privileges have been withheld by the Superintendent, Central Jail and seeks a

declaration of his right to communicate with the Legislature in his capacity as a member without let or hindrance from prison.

2. Petitioner was elected from the Railway Trade Union Labour Constituency at the general elections in 1946 on the Communist party ticket. He

still retains his seat and received the usual summons sent to all members dated 6th August 1951 with a message from H. E. The Governor requiring

his attendance on Monday the 20th of August 1951 on the occasion of his special address to both Houses.

3. Petitioner filed a Habeas Corpus petition, Criminal M.P. No. 1490 of 1949 u/s 561-A, Criminal P.C., to set him at liberty so as to enable him

to attend the Legislative Assembly sittings. This was dismissed by Govinda Menon and Rajagopalan, JJ. He filed another Habeas Corpus petition

Criminal M. P. No. 3022 of 1949 for his release inter alia, on the ground that he was, as a member of the Legislative Assembly, immune from

arrest. That petition was dismissed by another Bench, Govinda Menon and Basheer Ahmed Sayeed, JJ. He now applies to us for a similar but

slightly different relief invoking Article 226 of the Constitution contending that on the basis that his continued detention is lawful, he has a right to

attend the sittings "of the Legislative Assembly even from prison under prison escort.

4. The petition raises substantially a very short and simple point for determination though we have heard a long and elaborate argument both from

Mr. Kumaramangalam for the petitioner and the learned Advocate-General. Petitioner does not now press any position before us that he, as a

Member of the Legislative Assembly, has a privilege of immunity from preventive detention. This position was fully canvassed before a learned

Bench Govinda Menon and Krishnaswami Nayudu, JJ., in the case of "P. VenKataswarlu another member of the Legislative Assembly in Criminal

M. P, No. 2059 Of 1949, a decision reported in ILR 1951 Mad. 135. They held in their decision dated 27-3-1950 following the decision in the

"Ramsay case", that a Member of the Legislative Assembly could claim no privilege from arrest and the detention under Preventive Detention

Legislation. Petitioner has filed along with his petition copy of a letter from the Secretary of the Madras Legislature dated 29th August 1950 in

reply to a letter from him dated 12th August 1950 and a telegram to the Chief Secretary dated 22nd July 1950 referring him to the Ramsay case in

which the Committee of Privileges of the House of Commons held that preventive arrest under statutory authority by executive order was not

within the principle of the case to which the privilege from arrest could be extended. It is not necessary to elaborate the law in England relating to

privileges of Members of Parliament regarding freedom from arrest and only sufficient to say that while they were entitled to immunity from arrest

by a process of civil law 40 days before and 40 days after and also during the sittings of the House, there was no privilege of arrest when charged

or convicted of an indictable offence. Preventive detention not being an indictable offence, the question whether a member of Parliament could

claim immunity from such Retention was considered by the Committee of Privileges after an elaborate enquiry at which Captain Ramsay, who was

at the time detained under Regulation 18 (b) of the Defence (General) Regulations, 1939, was heard and the Home Secretary Sir John Anderson

and other eminent witnesses examined. The enquiry was held . on representation made by Captain Ramsay that the privilege of a Member of

Parliament from arrest and detention had been infringed to the speaker, who referred the matter to the Committee of Privileges. These facts are

necessary, Article 226 of the Constitution being invoked, in view of the powers, privileges and immunities of the Legislature of a State, its members

and committees being defined under Art. 194(3) of the Constitution according to which they

shall be such as may from time to time be defined by 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.

5. We have to examine this petition in the light of Article 226 of the Constitution unlike the English Courts who have no such heavy burden

imposed upon them. It is conceded for the petitioner that no fundamental right set out in part III of the Constitution is violated, all freedoms and

rights of an ordinary citizen being restricted by lawful preventive detention. There remains only the responsibility of interference on our part ""for any

other purpose ""and whether this petition can be brought within this very wide and extensive discretion. Article 226 confers on us extremely wide

powers of interference and a corresponding extremely heavy burden of responsibility. The framers of the Constitution could never have

contemplated High Courts constituting themselves on applications by all sorts of aggrieved persons into inquisitorial tribunals supervising, criticising,

modifying or cancelling the actions and orders of different departments of executive authority, institutions, public bodies and last but not least of the

Legislatures as regards their internal affairs which are controlled by the Speaker and the House and its committees. It is only in exceptional cases

that writs under these wide powers ""for any other purpose"" can in our opinion be issued, such as for Instance when there has been a clear violation

of statutory law, when principles of natural justice have been violated or perhaps where there has been mala fide discrimination against an individual

to the detriment of his rights. It is impossible to define with exactitude the cases in which Article 226 of the Constitution can be rightly invoked.

They should be comparatively exceptional and very few. But we view with showing apprehension ""and alarm the very large number of petitions

under this Article seeking our intervention and to make it an avenue for redress. This may be partly due to "" a tendency to exploit this avenue with

legal ingenuity seeking fresh avenues for the invocation of this Article. A contributory reason may also be the growing tendency to depart from

standards of justice and fair play in day to day administration. It is in the light of this approach to Article 226 that we shall consider this petition.

6. Mr. Kumaramangalam, though he concedes no violation of any fundamental right, would base petitioner's right to attend the sittings of the

Legislature even from the confines of preventive detention on something more fundamental than the fundamental rights set out in Part III of the

Constitution, He urges that the very basis of the sovereignty of the people will be undermined and imperiled if a member of a Legislature is

deprived of his right to sit in it and if the electorate are to be for years deprived of any representation in the House. He points out that petitioner still

continues to be a member, that he draws his salary as a Legislator, that though a detenu he has been u/s 64(b) of the Representation of Peoples

Act, 1951 accorded the right of vote by postal ballot and finally urges that he is even entitled under this Act to stand for and contest an election,

though a detenu. We do not propose to canvass the correctness of this last contention, which does not fall for our determination. The position

both for the petitioner and his electorate has no doubt been most unfortunate but that by itself can give petitioner no legal right to the relief he now

seeks to attend the Legislature while under detention.

7. We have tried to follow Mr. Kumaramangalam in his underground exploration of the foundations of the Constitution. But we cannot see how

they could be placed in Jeopardy by MLAs under the lawful preventive detention being (not?) permitted while under such detention, to attend the

sittings of the House. We are able to discern two main massive and indispensable pillars underground on which the Constitution is founded. The

first pillar is unswerving loyalty by each and every citizen to the Constitution and to the flag of the Indian Union, the Constitution be changed only

by Constitutional means eschewing any form of violence. The second pillar we may describe as honesty, character and integrity in the component

organs of the Constitution, viz., the Legislature and the Executive and judiciary. We are called upon to consider the legal position with regard to all

forms of preventive detention, whether for action prejudicial to the security of the State itself or the maintenance of public order which threatens to

undermine the first pillar or for action prejudicial to the maintenance of essential services particularly those affecting the supply of food, such as

black-marketing and hoarding and cornering operations by which fortunes can be accumulated at the expense of the suffering poor, which

threatens to undermine the second pillar. If a case should ever arise of a Member of a Legislative Assembly being preventively detained for black

marketing operations prejudicial to such essential services, involving as it does social and moral turpitude, really worse than that of many criminals

imprisoned under ordinary law, can it possibly be said that his being restricted from attending the House while under such detention in the slightest

degree puts in jeopardy any basis of the Constitution? On the contrary, both justice and law require that he should be restrained from further

legislative activity and further misuse of his position till the electorate call upon him to account at the next election. We are unable to differentiate in

law any treatment of cases of preventive detention. Once a member of a Legislative Assembly is arrested and lawfully detained, though without

actual trial under any Preventive Detention Act, there can be no doubt that under the law as it stands, he cannot be permitted to attend the sittings

of the House. A declaration by us that he is entitled to do so, even under armed escort is entirely out of the question. We however readily concede

the contention of Mr. Kumaramangalam that if a party in power detains a political opponent or continues his detention with the mala fide object of

stiffing opposition and prejudicing the party to which he belongs in a forthcoming election, there would be an undermining of the basis of the

Constitution, putting in jeopardy the second pillar to which we have adverted. That contention is wholly irrelevant for the purposes of this petition,

which proceeds on the basis that detention is lawful bona fide and for proper grounds.

8. There remains the subsidiary prayer by the petitioner for a declaration that he is entitled to correspond with the Legislature of which he still

continues to be a member without let or hindrance. This is in our opinion well founded. As long as a detenu continues to be a member of a

Legislature, drawing the emoluments of his office, receiving summons to attend, he is entitled to the right of correspondence with the Legislature,

and to make representations to the Speaker and the Chairman of the Committee of Privileges and no executive authority has any right to withhold

such correspondence. It is conceded in the affidavit of the Superintendent of the Jail who is impleaded as the 2nd respondent, that under the orders

of the Inspector General of Prisons, he withheld a petition to the Chief Secretary to Government, who is the first respondent, and a copy thereof to

the Speaker of the Legislative Assembly. Government appear to have acted under R. 11 of the Madras Security Prisoners' Rules 1950 passed u/s

4 of the Preventive Detention Act regulating correspondence permissible to detenu. We see no grounds for any differentiation in treatment as

between a member of a Legislative Assembly detenu and any other ordinary detenu in the application of these rules, but in this one respective hold

that during the period of his detention, a detenu, who continues to be a member of the Legislative Assembly, has a right to correspond with the

House. This right, as it appears to us, flows not merely from principles of natural justice, which will be violated by such letters being withheld, but

as a continuing member of the House, he would also appear to be entitled to this privilege under Article 194(3) of the Constitution under which

English Parliamentary practice has to be followed until a law is enacted by the Legislature defining the powers, privileges and immunities of the

House, its committees and its members. Capt. Ramsay was permitted to correspond with the House of Parliament while under detention and was

also given a personal hearing in an elaborate enquiry conducted by the Committee of Privileges. It is true that some early letters of the petitioner

were forwarded to the House who sent him a reply but he is entitled to continue making further representations.

9. We accordingly declare the right of the petitioner as a Member of the Legislative Assembly to correspond without let or hindrance with the

Speaker and the Chairman of the Committee of Privileges through the Secretary of the Legislature during his period of detention and issue a writ

by way of mandamus directing the Chief Secretary to Government and the Superintendent of the Central Jail to forward to the House any letters

from the petitioner held up on executive orders so that the Legislative Assembly may deal with them in accordance with Parliamentary law and

practice prevailing in England by which the Legislature is bound. In other respects we dismiss this petition.

Somasundaram, J.

10. I have perused the judgment of my learned brother and I agree with the orders proposed by him. As regards the case of P. Venkateswarlu,

referred to by my learned brother, I think that the judgment in Cri. M. P. No. 2059 of 1949 was premature as in my opinion the obligation to

ascertain and determine the privileges of a member of the House rests primarily and in the first instance with the House and House only and our

jurisdiction, comes in only later, i.e., when the House fails to perform its duties or refused to perform its duties or performs it contrary to Clause 3

of Article 194 of the Constitution. I do not think that the House can be found fault with for anything done or not done as the letter dated 10th

August 1951 written by the petitioner to the Chief Secretary (copy of which was sent to the Speaker) has not even been placed before them for

their consideration.

11. The question raised in this petition is whether the petitioner who is a member of the Madras Legislative Assembly and who has been detained

under the Preventive Detention Act, 1950 has a right to participate in the deliberations of the Assembly "without let or hindrance". If he has no

right, can it be said that preventing him from attending the Assembly constitutes a breach of the privilege of a member of the House? Finally can the

letter written by the petitioner to the Chief Secretary (copy of which was sent to the Speaker) be withheld from being placed before the House or

the Committee of Privileges, if there was one constituted. Mr. Mohan Kumaramangalam appearing for the petitioner has ably put forth his

arguments from all aspects, i.e., from the point of view of right as well as from the point of view of the privileges. I refrain from dealing with all his

contentions as they may have to be dealt with by another and more appropriate

body elsewhere, and any opinion I may express is likely to prejudice or prejudge the issue before that body. But in the light of the order proposed, I would deal only with one of the points raised, viz., the validity of the withholding of the letter dated 10th August 1951 sent by the petitioner to the Chief Secretary, (a copy of which as already stated was also sent to the Speaker).

12. Under Clause (3) of Article 194 of the Constitution 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 till they are defined by the Legislature by law be those of the House of Commons of the Parliament of the United Kingdom and of its members and Committees at the commencement of the Constitution. The privilege of a member of the House of Commons when detained under the provisions of an Act somewhat similar to but not altogether similar to those of the Preventive Detention Act in India has been determined. I have used the words "somewhat similar but not altogether similar" advisedly because there was no provision in the English Act similar to Section 14 of the Preventive Detention Act and this, in my opinion, makes a lot of difference, in its bearing on the question of privileges of a member detained and on the principle governing these privileges. In England the question arose when Captain Ramsay was detained u/s 18B of the Defence (General) Regulations 1939 made under the Emergency Powers (Defence Acts), 1939 and 1940. I find from Sir T. Erskine May's Parliamentary Practice, 1950 Edn. p 81 that the detention led to the Committee of privileges being directed to consider whether such detention constituted a breach of the privilege of the House. The Committee of Privileges then went into the whole question and made a report to the House of Commons stating that there was no breach of privilege involved. A copy of the report has been made available to us by the kindness of the learned Advocate General who appeared for the State. A perusal of the report shows that the Committee examined the Home Secretary and the clerk of the House of Commons Sir Gilbert Champion and after obtaining necessary authority from the House of Commons gave opportunity to Ramsay also, to make his representations with the aid of a Solicitor and he was fully heard. The question thus was gone into fully as in a judicial enquiry. (13) Paragraph 15 of the report

shows how the Committee was satisfied that the grounds on which the Home Secretary acted did not arise from anything said by Captain Ramsay from his place in Parliament as any action taken by the Home Secretary from anything said in the Parliament would constitute a breach of the privilege. The Committee says that they attach great importance to this point and they were satisfied that the action of the Home Secretary did not arise from anything said by Captain Ramsay from his place in Parliament

14. A perusal of the report shows how carefully the question was gone into and what great attention was bestowed upon it by the Committee. The regulations under which the member was detained, the history of the privilege claimed, the existence or the extent of the privilege were all gone into fully and thoroughly and in a manner which was not only satisfactory to all concerned but which is the pride and glory of the British Nation. I am referring to this aspect because I think that our House, i.e., the Madras Legislative Assembly in this case is the proper and primary authority to decide what the privileges of the House or its members or the Committees are and they should therefore follow the example of the House of Commons as the privileges of the member of our House are the same as the members of the House of Commons in England, in the absence of their being defined by law.

15. In this case the petitioner has written a letter to the Chief Secretary (copy of which was sent to the Speaker) asking that he should be permitted to attend the Assembly. This in substance raises the question of his right or privileges whatever it may be. This letter should not have been withheld, as has been done in this case. It should have been placed before the Committee of Privileges if there is one (we are told that there is one) and if there is no Committee before the House who should constitute a committee and direct it to consider this and report to the House. This course in my opinion is necessary to establish good, sound and healthy traditions which the House must develop.

16. I therefore agree with the order proposed by my learned brother that the letter of the petitioner be placed before the Madras Legislative Assembly which may deal with it in accordance with the practice prevailing in the House of Commons in England.