
(1960) 10 KL CK 0018
In the High Court Of Kerala
Case No : O.P. No. 1144 of 1960

K.P. Kochanujan Thirumulpad

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 07-10-1960

Acts Referred:

Constitution of India, 1950 — Article 194(3), 196(5), 201, 226

Citation : AIR 1961 Ker 324

Hon'ble Judges : M.A. Ansari, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : T.N. Subramonia Iyer, S. Subramonia Iyer and P.R. Nambiar, V.R. Krishna Iyer and M.M. Abdulkadir, in C.M.P. No. 4602 of 1960, for the Appellant; A.G. (K.V. Surianarayana Iyer), for the Respondent

Final Decision : Dismissed

Judgement

Ansari, C.J.—We are in the happy position of having to decide this writ petition, after hearing very able arguments by the advocates of both the parties; and we wish to include, in acknowledging the assistance, the junior lawyers of both the parties as well, who have been assisting the seniors in the case.

2. The events, that have led to the powers of this Court being invoked by the writ petition, can be shortly narrated. The petitioner claims to be a landlord at Ernakulam and entitled to the usufructs of the lands owned by his family. He complains that the provisions of the Kerala Agrarian Relations Bill, 1957, relating to scaling down of rent, slab rate regarding compensation, ceiling, and automatic deprivation of ownership on an appointed date, amount to inroads on his rights of property.

He further claims the provisions to be expro-priatory, discriminatory, opposed to the petitioner's fundamental rights, and create a new type of landlordism of the tenant. It is common ground that the aforesaid Bill had, on June 10, 1959, been passed by the then Legislative Assembly of this State; and a copy of the Bill,

signed by the Speaker of the Assembly, was presented to the Governor, who, under Article 200, reserved the Bill for the consideration of the President of the Republic.

That Article provides that when a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the States it shall be presented to the Governor, and the Governor shall declare either that he assents to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the consideration of the President. Before the direction under Article 201 had been issued, the Legislative Assembly was dissolved on July 31, 1959.

3. At this stage, it would be of advantage to state what is the President's authority under Article 201, that reads as follows:

"When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill, or that he withholds assent therefrom:

Provided, that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State, together With such a message as is mentioned in the first proviso to Article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration".

The President's directive has been received on July 27, 1960, and states that the Bill be returned to the Legislative Assembly, with the message that the House will reconsider Clauses 2(20), 2 (39), 7, 15, 18, 37, 57, 60, 71 and 74 of the Bill, and, in particular, consider the desirability of introducing in the Bill the several modifications recommended in the direction. The Assembly, to which these recommendations been made had been elected in February, 1960; and the subsequent steps, by which the aforesaid directive and the recommendations have come to the new Assembly, are not disputed.

His Excellency the Governor has on August 2, 1960, communicated the direction to the Speaker of the new Legislative Assembly, which is in conformity with Rule 108 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly. Thereunder, when a Bill, which has been passed by the Assembly, is returned by the Governor for reconsideration by the Assembly, the point or points referred for consideration shall be put before the Assembly by the Speaker, and shall be discussed and voted upon in the same manner as amendments to a Bill, or in such other way as the Speaker considers most convenient for their consideration by the Assembly.

There are further Rules concerning such reconsiderations, which have been

framed under the residuary powers of the Speaker under Rule 242 of the aforesaid Rules. These are eight in number; and the first directs the Speaker to read the Governor's message in the Assembly, if in session; and, if not, to publish the message in the Bulletin for the information of the members. A notice of the motion for reconsideration of the Bill, has then to be made by any Minister of the Government, if it be a Government Bill, in the light of the direction contained in the message, which must be listed not less than two days from the receipt of the notice. The debate on the motion shall be confined to consideration of matters referred to in the Governor's message, or to any suggestion relevant to the subject-matter of the amendments recommended by the Governor; and the next rule reads thus:

"5. Consideration of Amendments. (1) If the motion that the Bill be taken up for reconsideration is carried, any member may> when called upon by the Speaker, move an amendment to the Bill of which he has previously given notice.

(2) When specific amendments are recommended by the Governor an amendment relevant to the subject-matter of an amendment recommended by the Governor may be moved, but no other amendment shall be moved to the Bill," unless it is consequential upon, incidental or alternative to, an amendment recommended by the Governor.

(3) When no specific amendment is recommended by the Governor, no amendment shall be moved, which does not come within the scope of the message recommending reconsideration of the Bill.

(4) The Speaker shall put the amendments recommended by the Governor, if any and such other amendments as would come within the scope of the message from the Governor, recommending reconsideration of the Bill".

The other Rules provide that when all amendments been disposed of, the Minister in charge may move that the Bill as originally passed by the Assembly be passed again, or passed again as amended, as the case may be; and, if the motion that the Bill returned by the Governor with a message be taken up for reconsideration in the light of the directions contained in the message be not carried, the Minister may at once move that the Bill, as originally passed by the Assembly, be passed again without amendment. The aforesaid is the summary of the Rules concerning the Bills that are returned, and it is relevant for purposes of deciding this petition.

4. But, to proceed with the narration of the events, on September 26, 1960, the petitioner applied to this Court claiming a writ in the nature of mandamus, or other appropriate writ, against the State of Kerala, to forbear from, or pursue or consider, or seek to make the Kerala Agrarian, Relations Bill, 1957, as passed by the former Legislative Assembly of the State on June 10, 1960, law in the State.

5. One of the grounds, on which the relief is asked for, is that under Article 196 a Bill must become law during the lifetime of the Assembly then in existence,

cannot survive the dissolution of the House, and cannot be considered by the new Assembly after general election. In support of the argument, reliance has been placed on the words "return", "reconsider", and "pass again" in the proviso to Article 201; and it is urged that the words would not have been used, had the intention been to vest the new Assembly with authority to reconsider either the whole or part of the Bill.

It has been averred in the affidavit accompanying the petition, that the petitioner had made distinct demands by notice to the State Government, with copies to the Revenue Minister and the Speaker of the Assembly, to refrain from proceeding further with the original Bill, but the authorities concerned do not propose to comply with the demand. The urgency pleaded for coming to this Court, is that any petition moved after the Bill becomes law can only relate to the reconsidered Bill, and could serve no purpose. On September 26, 1960, one of us sitting as Single Judge, admitted the petition and referred it to the Division Bench, declining to pass final order on an application for interim injunction.

6. Meanwhile, the new Assembly has proceeded with reconsideration of the Bill, and it is stated in paragraph 5 of the counter affidavit that the Bill has already been taken up by the Assembly at its session on September 26, 1960, been continued on September 27, and is to be continued on October 3, 1960. Such was the position when the arguments in the case were begun; and during the hearing, an application has been made by Sri T.K. Ramakrishnan claiming, being vitally interested in, affected by the result of the petition, because of being a Member of the Assembly, as well as of the Executive committee of the Kerala Karshaka Sanghom, Trichur, and, therefore, to be treated as an intervener. The order, which we now propose to pass, will cover both the writ petition and the intervened application.

7. The writ petitioner's learned Advocate has urged three grounds for the writ being issued. These are that:

(1) Due to the dissolution of the Assembly, that had passed the Bill, the measure had ceased to exist, with the result of there being no Bill, which could, in exercise of powers under the proviso to Article 201, be sent to the new Assembly for reconsideration; that

(2) The new Assembly is incompetent to pass whole or part of the Bill on the President's direction; and, the entire proceedings, being ultra vires, can be stopped in exercise of power under Article 226, with a view to preserve the petitioner's fundamental rights from being interfered with, or threatened by the Bill being passed; and that

(3) The petitioner has sufficient interest to claim a writ of mandamus from the Court, inasmuch as his right to property is being threatened by the aforesaid passage.

8. The Advocate-General's objections to the writ being allowed, are also three-

fold, which are that:

(1) The Assembly under our Constitution enjoys the privileges similar to the British House of Commons; the proceedings of the Assembly are, therefore, immune from outside interference including courts, with the result that no order can be passed against the Speaker of the Kerala Legislative Assembly to prevent his observing the Rules regarding reconsideration of the Bill after having received the message containing the President's directive; that

(2) The executive functions of the Government must not be confused with the Assembly's power to legislate, which is a different authority; and in the absence of the Speaker or any other person representing the Assembly, further proceedings in the Assembly cannot be stopped by ordering this Petition, where the only respondent is the Kerala State; and that

(3) The prevention claimed is by one, who has no personal right, and the petitioner's claim of his fundamental rights being threatened, may well be adjudicated upon, after the Bill had become law.

The Advocate-General has further urged that the exercise of the power under the proviso to Article 201 is not circumscribed by the reconsideration being directed only to the Assembly, that had passed the Bill. Moreover, the learned Advocates of the parties were anxious to further argue the claims of the petitioner's fundamental rights being infringed and the reply of the Bill not being so vitiated; but we had not allowed them to do so at this stage, for the reason that, should the objection of the proceedings before the Assembly now challenged being covered by its privilege be sustained, any adjudication on what is pending there, would be liable to be misunderstood as interfering with the process of enacting law.

The crucial issue, therefore, before us is whether the privileges enjoyed by the House of Commons, which under our Constitution, have been conferred on the Assemblies, exclude interferences by the Courts, even where the complaints be of the proceedings of the Legislatures not being in conformity with the Constitution. Should we uphold the objection the argument by the petitioner's learned Advocate about the President's directive in the case being beyond the proviso to Article 201 and the proceedings in the Assembly being ultra vires, would await adjudication in some other proceedings. So also the complaint of the threats to the petitioner's fundamental rights, must await adjudication, i.e., at the stages subsequent to the assent having been afforded to the Bill after it is passed by the Assembly.

9. The petitioner's learned advocate has urged that the authority to legislate is governed by the Constitution; and if the Assembly has, under the fundamental instrument, not the authority, the legislative process would not enjoy the privilege, for, such acts would not then be of a proper legislative authority. He has further urged that the President's direction under the proviso to Article 201 being according to the correct interpretation of the proviso available only for such

Bills as have passed the Assemblies that have not been dissolved, the direction in this case would not constitutionally authorise the reconsideration of the Bill passed by the earlier Assembly, the subsequent proceedings would not be legislative, and would not attract the privileges relied upon.

He has also tried to distinguish the cases relied by the Advocate-General as dealing with the privileges of the legislature not controlled, and therefore, not relevant where the enacting authority be circumscribed by fundamental rules of the Constitution. With respect, we feel the position would be different where the Constitution itself had conferred those privileges, and the inquiry would then be what the privileges of the Commons are, which have been conferred on our Legislatures. the conferment is under Article 194, which leads as follows :

"194. (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 a 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 by law, and, until so defined, shall be these of the House of Commons of the Parliament of the United Kingdom, and of its members and committees at the commencement of this Constitution.

(4) x x x"

10. It is clear that in absence of any legislative enactment, -- and there is no such enactment in this State -- the privileges and immunities of the Kerala Assembly, would be those of the Commons on the date the Constitution was inaugurated. It has, therefore, to be ascertained whether the privilege now claimed is the recognised form of immunity enjoyed by the House of Commons. We would begin by setting out two passages from May's "Parliamentary Practice". One is at page 42, and reads thus :

"Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and Which exceed those possessed by other bodies or individuals."

The next is at page 60, and runs :

"There are three principal matters involved in the statement of the law contained in this Article :

1. The right of each House to be the sole judge of the lawfulness of its own proceedings;

2. The right implied to punish its Own Members for their conduct in Parliament;

Further there is the question,

3. What is the precise meaning of the term "proceedings in Parliament"?

X X X X

X X X X

"Another collective right of the House is to settle its own code of procedure. this is such an obvious right -- it has never been directly disputed -- that it is unnecessary to enlarge upon it except to say that the House is not responsible to any external authority for following the rules it lays down for itself, but may depart from them at its own discretion. this is equally the case whether a House is dealing with a matter which is finally decided by the sole authority, such, as an order or resolution, or whether like a bill, it is the joint concern of both Houses.

X X X X

X X X X"

11. The next book we would refer to is Ridge's Constitutional Law, Eighth Edn., P. 61, where these powers are enumerated as follows :

"These and other rights may be grouped under two heads.

(1) Those demanded of the Crown by the Speaker of the House of Commons at the commencement of each Parliament and granted as a matter of course. These are

(a) Freedom from arrest,

(b) Freedom of speech.

(c) The right of access to the Crown.

(d) The right of having the most favourable construction placed upon its proceedings.

The second group comprises those not demanded by the Speaker, These are:

(a) The right to provide for the due composition, of its own body.

(b) The right to regulate its own proceedings.

(c) The right to exclude strangers.

(d) The right to prohibit publication of its debates.

(e) The right to enforce observation of its privileges by fine, imprisonment, or expulsion."

12. The first corollary to the aforesaid privileges of the Commons, is that a Court will not take any note of the procedure in Parliament, whereby a bill comes to be enacted, and the second is that the Court will not allow a judicial process to be used in this sphere, where Parliament and not Court has jurisdiction. in support of the first, reference may be made to *Lee v. Bude and Torrington Junction Rly. Co.* (1871) 6 C. P. 576, and of the second, to *Bradlaugh v. Gossett* (1884) 12 QBD 271. The plaintiff in the latter of the two aforesaid cases, had been returned as a member, and required the Speaker to call him to the table" for the purpose of taking the oath.

The Speaker, in consequence of something, which had transpired on a former occasion, declined to do so; and the House eventually directed the Sergeant to exclude the plaintiff from the House until he undertook to create no further disturbance. in an action against the Sergeant, praying for an injunction to restrain him from carrying out the order, it was held that this being a matter relating to the internal proceedings of the House of Commons, the Court of the Queen's Bench has no power to interfere. in this connection, Stephen, J., at p. 285, observes as follows :

"The House of Commons is not a Court of Jus-Wee; but the effect of its privilege to regulate its own internal concerns practically invests it with a judicial character when it has to apply to particular cases the provisions of Acts of Parliament. We must presume that it discharges this function properly and with due regard to the laws in the making of which it has so great a share. If its determination is not in accordance with law, this resembles the case of an error by a Judge whose decision is not subject to appeal. There is nothing startling in the recognition of the fact that such an error is possible

13. The autonomy to regulate its own proceedings, therefore, rests on the analogy of the rights of Courts of Law, and it cannot be interfered with by Courts. of course, any decision on legal issues and extending beyond the legislating process, would not be accepted by Courts; for, Courts of law even in England have not accepted the House's right of determining what their privileges are outside the House, and in this country the Courts' positions are fortified by being vested with the authority to interpret the Constitution.

Yet, so far as the procedure within the House is concerned, its immunity from the judicial process was not doubted in 1950. *Gunupati Keshavram Reddy Vs. Nafisul Hasan and the State of U.P.*, is illustrative of the outside limitations, for there a petition under Article 32 of the Constitution alleged that one Shri Homi Dinshaw Mistry was under illegal arrest.

The petition further alleged that he was arrested in Bombay on March 11 1952, taken, in custody to Lucknow to be produced before the Speaker of the Uttar Pradesh Legislative Assembly to answer a charge of breach of privilege, was not produced before a Magistrate within twenty-four hours of his arrest, and was in detention in Lucknow. in these circumstances, the petitioner was held entitled to

the protection under Article 22(2) of the Constitution.

That authority has, however, not been treated as justifying interference by Courts with Legislative proceedings, even where complaints be made of the proceedings been contemplating interference with the petitioner's fundamental right or other constitutional provision. In this connection we would begin with *Chotey Lal Vs. The State of Uttar Pradesh and Others*, where a writ of mandamus was claimed on the allegation that the Zamindari Abolition and Land Reforms Bill was a piece of legislation, which completely deprived the petitioner of the property; and, therefore, the opposite party must be restrained from bringing about the law, but the Court refused the writ on the ground of the proceedings being privileged.

In *Saradhakar v. Speaker, Orissa Legislative Assembly*, AIR 1952 Orissa 234, it was held that Article 212 of the Constitution operates as a bar to the jurisdiction of the High Court being invoked for the issue of a writ under Article (2) against the Speaker of the Assembly or the Secretary of the Assembly in a case of the kind then before the Court. It was held in *Godavaris Misra Vs. Nandakisore Das, Speaker, Orissa Legislative Assembly*, that the Speaker of the Assembly, in respect of his action in disallowing certain questions, notice of which had been given by a member of the Assembly, could not be controlled by the exercise of the powers under Article (2). In *Bhairabendra Narayan v. State of Assam* AIR 1953 Gu 162, it was held that no Court can interfere with any authority concerned with the making of laws during the formative stages of an enactment, and that it was not possible for the Court to look into an intended piece of legislation.

In *Raj Narain Singh Vs. Atmaram Govind and Another*, it was held that no writ, direction or order, restraining the Speaker from allowing a particular question to be discussed or interfering with the legislative processes of either House of the Legislature, or interfering with the freedom of discussion or expression of opinion in either House, can be entertained.

In *M.S.M. Sharma Vs. Sri Krishna Sinha and Others*, it was held that Articles 105(3) and 194(3) are constituent laws, and that, therefore, they are as supreme as provisions of Part III of the Constitution. The majority of the learned Judges further held that the framers of our Constitution did not in their wisdom think fit to make the powers, privileges and immunities under Article 194(3) subject to the fundamental rights conferred by Article 19(1)(a), that Articles 19(1)(a) and 194(3) have to be reconciled, and that the only way of reconciling the same is to read Article 19(1)(a) as subject to the latter part of Article 194(3).

In *Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others*, the petitioner on November 24, 1959, received a fresh notice from the Secretary of the Legislative Assembly, calling upon him to show cause on or before December 1, 1959, why appropriate action should not be recommended against him for a breach of the privilege of the Speaker and the Assembly. It was contended

before the Supreme Court that the procedure was not strictly in accordance with law; but the learned Judges, rejecting this contention, observed :

"There are two answers to the contention firstly, that according to the previous decision of this Court, the petitioner has not the fundamental right claimed by him. He is, therefore, out of Court. Secondly, the validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. Article 212 of the Constitution is a complete answer to this part of the contention raised on behalf of the petitioner. No Court can go into those questions which are within the special jurisdiction of the legislature itself, which has the power to conduct its own business. Possibly, a third answer to this part of the contention raised on behalf of the petitioner, is that it is yet premature to consider the question of procedure as the Committee is yet to conclude its proceedings. It must also be observed that once it has been held that the Legislature has the jurisdiction to control the publication of its proceedings and to go into the question whether there has been any breach of its privileges, the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance with its rules of business. Even though it may not have strictly complied with the requirements of the procedural law laid down for conducting its business, that cannot be a ground for interference by this Court under Article 32 of the Constitution."

What are the Commons privileges under English Common Law, is clear, and the framers of our Constitution have in Article 194(3) provided that the privileges and immunities of the House of Legislature of a State, until defined, shall be those of the House of Commons, of the Parliament of the United Kingdom, at the commencement of the Constitution. Therefore, we cannot interfere with the proceedings within the Assembly, and Courts have refrained from departing from the rule of non-interference, even when Act, or legislation about to be passed is averred to be void on grounds of its having contravened the Constitutional provisions.

14. The petitioner's learned Advocate has relied on several cases to show that injunction can be issued where acts against the Constitutional provisions be threatened. In *Attorney General for New Wales v. Trethowan* (1932) AC 526, the Constitution Act, 1902, had provided that no bill for abolishing a Legislative Council should be presented to the Governor until it had been proved by a majority of the electors, voted upon submission to them made in accordance with the Act; and, in 1930, both Houses of the Legislature had passed two bills one to repeal the section, which provided the referendum, and the other, to abolish the Legislative Council.

In the circumstances, the Privy Council upheld the injunction given by the Australian Court for restraining the bill from being presented for the assent. The petitioner's learned Advocate has urged that where the powers of the Legislature be limited, issuing injunction would not amount to interference with the privileges of the Legislature, where infringement of the Constitutional provisions

be threatened.

We do not think the case can be of help to the writ petitioner, for, much depends in what form the privilege been conferred. It may be that the privileges, incidental to the limited powers conferred on a Legislature, cannot be pleaded, where acts complained against be ultra vires. The privileges of the Parliament, however, rest on different basis and are not thus circumscribed. In this connection, Coke, 1 Inst. 15 had observed :

"Every court of justice hath rules and custom? for its directionso the High Court of Parliament suis propriis legibus et consuetudinibus subsistit. It is lex et consuetudo parliament that all weighty matters in any parliament moved concerning the peers of the realm, or commons in parliament assembled, ought to be determined, adjudged, and discussed by the course of the Parliament, not by the civil law, nor yet by the common laws of this realm used in more inferior courts. Not only, therefore, had each House extensive privileges, the relation of which to Common Law was undefined, but it acted as a tribunal for their interpretation and enforcement".

15. That cannot be said of colonial Legislatures, which were never courts, and had only powers necessary for the proper exercise of their function. It further follows that privileges of such colonial Legislatures cannot stand comparison with those of the House of Commons, nor with those, who have under Article 194(3) been expressly vested with the privileges of the House of Commons when the Constitution was inaugurated. Such Assemblies, therefore, have privileges like those of Courts, and it is not urged that Courts can be prevented from exercise of the powers vested in them.

That apart, doubts have now been thrown on Courts issuing injunctions, whereby assents to Bills would be restrained; and the Advocate-General has drawn our attention in this connection to the observation of Dixon, C.J., in *Hughes and Vale Pty. Ltd. v. Gaiv* (1953-54) 90 CLR 203. The petitioner's advocate has referred to two Australian cases, where injunction been granted; but we feel that harmonious exercise of powers, requires adherence to the rule of non-interference with the legislative proceedings until the matter stands beyond the House.

16. But, to continue with the cases cited by the petitioner's learned Advocate, he has relied on *Shankar Roy Chowdhury and Another Vs. H.E.A. Cotton and Others*, , where proceedings of a subordinate-legislature were held subject to the jurisdiction of the High Court, where it was questioned. He has further relied on *Haridas v. Bejoy Prosad* AIR 1946 Cal 121, where it was held that the president of a Provincial Legislature, though protected from interference by civil Courts when acting in accordance with powers conferred upon him, could not be protected if he was acting in defiance of the provisions of the statute and the rules made thereunder, or if he were exercising some power, which he did not possess.

We are not bound by the decisions, and we also do not find in them any discussion of whether claim to privileges like those of the House of Commons, if claimed, would be disregarded and injunction issued. The petitioner's Advocate then relied on *Anand Bihari v. Ram Sahay*, AIR 1952 Madh-B 31, but the observations of Dixie, J., in the case, have not been affirmed by the Supreme Court in *M.S.M. Sharma Vs. Sri Krishna Sinha and Others*, .

After having dealt with the cases, we feel that the principle of non-interference with the proceedings of the Assembly on the ground of the privileges conferred on the Assembly by our Constitution, is well established; and the question, which now arises for adjudication, is whether the acts complained against in the writ petition, are within proceedings of the Assembly so as to preclude our interference with those proceedings.

17. The petitioner's learned Advocate has urged that the proviso to Article 201 contemplates direction to the Assembly, that passed the bill; otherwise the words "reconsideration" and "return" would not have been used. In support of the argument, he has relied on Article 196(3) and (5), which provides that a bill pending in the Legislature of a State, shall not lapse by reason of the prerogation; but would, on dissolution. He urges that any doubt concerning such lapsing, is swept away by Article 196(5) which says :

"A bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly."

In support of this argument, he further relies on the view by the late Sri Alladi Krishnaswami Iyer, which publicly expressed disapproval against the then Governor's reference under the Government of India Act, 1919, of a bill for the reconsideration of the Assembly, which had not passed the bill. The opinion had been published in 46 Mad LJ 53, and is strongly relied on by the petitioner's advocate.

We find nothing in the opinion to suggest that Courts should interfere, even though the direction under the proviso to Article 201 had reached the Speaker of the Assembly and when the direction, with the Governor's message, be on the table of the Assembly for purposes of reconsideration. We further find nothing in the opinion that the Assembly, must not have the freedom, of considering whether, the bill should not be amended in the light of what are stated in the direction.

In this connection, the Rules framed for the Assembly are of importance, and show the direction resulting in further amendments to the bill being considered. As already shown, under Rule 108, the Speaker has to put the message for reconsideration- of the House; and, in the particular case, that has been done. Thereafter, the procedure provided by other Rules, framed under Rule 242, is to be followed, and as a matter of fact, the bill is now being debated.

In these circumstances, it would be difficult to hold that what the writ petitioner is anxious to stop, is not proceedings within the Assembly; and, as we have already shown, from very ancient times such discussions form parts of legislative proceedings and governed by the *lex et consuetudo parliamenti*. The objection that no writ can be issued, must be upheld, in these circumstances.

18. The petitioner's learned Advocate has then argued that the threat to his fundamental rights would justify a declaration being given against the President's direction in the particular case. It is, however, clear that most of what have been sent for reconsideration, are not what the petitioner claims to be adversely affecting his fundamental rights. The clauses, that have been sent for reconsideration are 2 (20) 2 (39), 7, 15, 18, 37, 57, 60, 71 and 74; and the clauses the petitioner avers his fundamental rights to be prejudiced by, are 10 41, 45, 52, 59, 60, 72 and 72 (b).

Therefore, Clause 60 is the only one, against which the petitioner complains; but, the modification required is not such as to make his position worse than what it was under the bill as passed by the Assembly. It is common ground that, after the bill had been passed on June 10, 1959, till the Governor's message to the present Assembly, the petitioner has not come to this Court for any relief; which means that the passage of the Bill was regarded as not causing any immediate injury.

It is also clear that under Article 196(5) the dissolution affects the Bills pending in the Assembly, and cannot extend to those awaiting assents. Indeed, though the Governor and the Assembly together constitute the Legislative authority, yet the petitioner's learned advocate has not shown us any provision in the Constitution, directing that the assents must be given during the lifetime of the Assembly, that passed the Bills.

Indeed, if the two being the same when the Bills are being passed in the Assembly be insisted upon, every change of the Governor, would result in all the Bills then before the Assembly lapsing. It follows that neither according to the Constitution, nor on principle, must a Bill become law when the Governor and the Assembly be the same. It also follows that different rules govern the two arms of the legislation, and the inaction of the petitioner in this case cannot be explained on his having assumed the Bill to have lapsed due to the earlier Assembly having been dissolved.

It further follows that, had the threat to the petitioner's fundamental rights, by the passage of the Bill, been such as he now claims, he would not have refrained from invoking the jurisdiction of this Court for such a long time; and, because he has not done so then, we feel that at this stage the threat is not such as to justify exercise of our discretionary powers under Article 226.

Undoubtedly, the petitioner has the right of seeking adjudication of his complaints; but due to the objection of the proceedings being privileged, no order can be issued now. Therefore, his constitutional rights would be

determinable after the measure has become law; and, should he be unfortunate not to convince us, he has of course his right of appeal in the superior Court. in these circumstances, we do not think sufficient grounds have been made out to issue the writ or any other order the petitioner has asked for.

19. The result is that, the petition fails; and it is dismissed with costs. Because the petition fails, we see no reasons to direct the intervener being impleaded. His petition is dismissed, and he must, therefore, pay the costs of the writ petitioner this order will govern both the petitions. The interim injunction application also fails, and is dismissed.