

(2001) 02 GAU CK 0012

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 7275 of 2000

Nipamacha Singh and Others

APPELLANT

Vs

Secretary, Manipur Lagislative Assembly and Others

RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Constitution of India, 1950 — Article 174, 176, 179, 180, 181
Manipur Legislative Assembly Procedure and Conduct of Business Rules — Rule 127, 130, 307, 307(1), 307(2)

Citation : (2001) 1 GLT 228

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : A. Nilomani Singh, A. Bimal Singh and P.K. Roy Choudhury, for the Appellant; T. Nanda Kumar Singh, A. Potsangbum, J. Singh, R. Gogoi and D. Baruah, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—The thirty two writ Petitioners who are members of the Seventh Manipur Legislative Assembly gave a notice dated 18.11.2000 to the Secretary of the Manipur Legislative Assembly of their intention to move a resolution for removal of the Speaker of the Manipur Legislative Assembly. The Respondent Nos. 4, 5 and 6 who are also members of the Seventh Manipur Legislative Assembly also appear to have signed this notice dated 18.11.2000. But the Speaker rejected the motion for his removal on technical grounds and a bulletin was issued on 5.12.2000 by the Secretary of the Manipur Legislative Assembly informing all concerned about the rejection of the said motion. Aggrieved by the said rejection of the motion for removal of the Speaker, the Petitioners have filed this writ petition under Article 226 of the Constitution for quashing the order of the Speaker of the Manipur Legislative Assembly rejecting the motion for his removal and for compelling the Respondents by a writ of mandamus to perform their duties as enjoined by the Constitution of India and the Rules of Procedure and conduct of Business in Manipur Legislative Assembly. The Petitioners have

also prayed for appropriate directions for getting rid of the sine die adjournment and for early sitting of the House.

2. Mr. Nilomani Singh, learned Counsel for the Petitioners, submitted that under Article 179(c) a Speaker of the legislative Assembly may be removed from his office by a resolution of the Assembly passed by a majority of all members of the Assembly. The first proviso to Article 179 of the Constitution, however, provided that no resolution for removal of the Speaker from his office shall be moved, unless at least fourteen days notice has been given of the intention to move the resolution. He submitted that the majority of the members of the Legislative Assembly thus had a Constitutional right to remove the Speaker of the Legislative Assembly from his office and in accordance with such Constitutional right, the majority of the members of the Manipur Legislative Assembly had served a notice of fourteen days of their intention to move resolution for removal of the Speaker, but the Speaker of the Manipur Legislative Assembly has frustrated the said Constitutional right of the majority of the members of the Legislative Assembly by rejecting the said motion for his removal on technical grounds. He submitted that Rules 307, 308, 309 and 310 in Chapter XXII of the Rules of Procedure and Conduct of Business in the Manipur Legislative Assembly provided specifically for removal of Speaker from office. Sub-rule (1) of Rule 307 provided that a member wishing to give notice of a resolution under Clause (c) of Article 179 of the Constitution for removal of the Speaker shall do so in writing to the Secretary and Sub-rule (3) of Rule 307 further provided that on receipt of such notice, a motion for leave to move the resolution shall be included in the list of business in the name of the member concerned on a date fixed by the Speaker. Thus, the Speaker should have included in the list of business the motion for leave to move the resolution after fourteen days from the date of receipt of the notice dated 18.11.2000. Instead of including the said motion for leave to move the resolution in the list of business, the Speaker rejected the motion on technical grounds. According to Mr. Nilomani Singh, the Speaker cannot resort to his powers under the general provisions in Rules 127, 130, 336, 352 and 353 for rejecting any motion because the said Rules 127, 130, 336, 352 and 353 do not apply to a motion for removal of the Speaker, and only the provisions of Rules 307, 308, 309 and 310 apply to resolution for removal of the Speaker. He cited the decisions of the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, for the proposition that where under a specific provision a particular subject has received special treatment, such special provision will exclude the applicability of any general provision. He also relied on the decision of the Supreme Court in State of Mizoram v. Baikchhawna (1999) 1 SCC 156, in support of his submission that when a statute requires an action to be taken in a particular manner, the same has to be taken in that manner. He argued that a notice given by a member of the Manipur Legislative Assembly to move a resolution for removal of the Speaker can only be dealt with in a manner provided in Rules 307, 308, 309 and 310 of the Rules of Procedure and Conduct

of Business and no Ors. manner. He further submitted that while rejecting the motion for his removal, the Speaker has not indicated any reason whatsoever and has vaguely stated that the motion is rejected on technical grounds. Such rejection of the motion for removal of the Speaker without reason is arbitrary and on this ground the impugned order of rejection is liable to be quashed. He cited the decision of the Supreme Court in the case of *Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi* (1979) 1 SCC 405, wherein it was held that when a statutory functionary makes an order on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or Ors. wise. Mr. Nilomani Singh contended that since the order of the Speaker rejecting the motion to remove him from office was violative of the Constitutional rights of the Petitioners and was arbitrary, this Court should quash the said impugned order and direct that a motion for leave to move the resolution for removal of the Speaker from office shall be included in the list of business of the House.

3. Mr. Ashok Potsangbum, learned Counsel appearing for the Speaker of the Manipur Legislative Assembly, on the Ors. hand, submitted that the Rules of Procedure and Conduct of Business in Manipur Legislative Assembly are not law and are, therefore, not enforceable. This, no writ or direction can be issued by this Court that a motion for leave to move the resolution be included in the list of business in accordance with Sub-rule (3) of Rule 307 of the Rules of Procedure and Conduct of Business. He further submitted that the Petitioners have also prayed in the writ petition for appropriate direction for getting rid of sine die adjournment and for early sitting of the House but under Article 174 of the Constitution, it is only the Governor who has been vested with the power to summon the House and this Court cannot direct summoning of the House. He explained that in the disturbances that took place on 2.12.2000 soon after the House was adjourned sine die, there was extensive damage to the House and the Government has been requested to provide the necessary funds for repairing the damage, but the Government has not been cooperating in the matter as would be clear from Annexures X8, X9, X10 and X11 to the counter affidavit filed on behalf of the Respondent Nos. 1 and 2. He stated that as soon as the damage to the House is repaired the Speaker will take steps for sitting of the House. Mr. Potsangbum submitted that under Clause (2) of Article 212 of the Constitution, no officer or member of the Legislative of a State in whom powers are vested by or under the Constitution for regulating Procedure or the Conduct of Business or for maintaining order in the Legislature is subject to jurisdiction of any Court in respect of exercise by him of those powers. He argued that the Speaker of the Manipur Legislative Assembly who has exercised his powers the Rules of Procedure and Conduct of Business and rejected the motion for his removal on technical grounds is not subject to the jurisdiction of the Court in respect of exercise of such powers and the writ petition was not maintainable under Article 226 of the Constitution. He cited the decision of the Orissa High Court in *Saradhakar Supakar v. Speaker, Legislative Assembly* AIR 1952 Ori 234 , in

which it was held that Article 212 of the Constitution operates as a bar to the jurisdiction of the High Court to issue a writ under Article 226 of the Constitution against the Speaker of the Assembly on a matter relating to conduct of the business of the Assembly. He also relied on decision of the Orissa High Court in *Godavaris Misra Vs. Nandakisore Das*, Speaker, Orissa Legislative Assembly, in support of his submission that the immunity of the Speaker in respect of actions taken by him in exercise of powers conferred by the Rules extends to not only the procedure and conduct of business in the House, but to Procedure and Conduct of Business which deal with proceeding in the legislative. He also relied on *Harendra Nath Barua v. Dev Kanta Barua* AIR 1958 Gau 160, in which the court did not entertain a challenge to order of the Speaker on the ground that the procedure adopted by the Speaker was irregular. He cited the decision of Full Bench of the High Court of Punjab and Haryana in *Jai Singh Rathi and Others Vs. State of Haryana and Others*, in which it was observed that the power of the Speaker to regulate the procedure or the conduct of business in the House or for maintaining order in the House it is immune from the jurisdiction of the Court under Article 212 of the Constitution. He cited the decision in *M.S.M. Sharma Vs. Sri Krishna Sinha and Others*, in which the Supreme Court left to the discretion of the Speaker of the House of Legislature to determine whether the subject matter of motion is or is not a specific matter of recent occurrence. He relied on the observations of the Supreme Court in *Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others*, that 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 law had not been strictly followed and no court can go into those questions which are within the special jurisdiction of the Legislature itself, which has power to conduct on its own business. He referred to the decisions of the Full Bench of the Madras High Court in *K.A. Mathialagan v. P. Srinivasan*, in which the settled law that the House of Commons is not responsible to external authority for following its rules has been taken note of. He contended that the Speaker had extensive powers under Rules 127, 130, 336, 352 and 353 of the Rules of Procedure and Conduct of Business in Manipur Lagislative Assembly to consider and reject the motion and Rule 354 of the said Rules of Procedure and Conduct of Business provided that no decision of the Speaker in respect of disallowing of any resolution or question or in respect of any Ors. matter shall be questioned. He relied on the observations of the Allahabad High Court in *A.J. Faridi and Another Vs. Chairman, U.P. Legislative Council (R.V. Dhulekar)*, Lucknow and Others, that Article 183 of the Constitution and Ors. corresponding Articles of the Constitution laid down restrictions on the moving of resolution for removal of the Presiding officer but they are not the only conditions to which such a resolution may be subject and the Rules of Procedure may provide for further restrictions. He submitted that in addition to the conditions imposed by Article 179 of the Constitution, the Rules of Procedure and Conduct of Business may put Ors. conditions and restrictions for the removal of the Speaker, and the Speaker can reject the motion for his removal from office, if such motion does not satisfy such Ors. conditions and restrictions prescribed by

the Rules of Procedure and Conduct of Business. He argued that the notice dated 18.11.2000 of the Petitioners for moving a resolution for removal of the Speaker contained allegations and charges against the Speaker which were not admissible and the Speaker had the power under Rule 130 of the Rules of Procedure and Conduct of Business to disallow the motion as not admissible. He submitted that the first step for removal of a Speaker is a notice of an intention of a member to move a resolution for removal of a Speaker and at this stage the notice did not require to specify allegations and the charges against the Speaker and yet in notice dated 18.11.2000 grave and serious allegations and charges were made against the Speaker and thus the Speaker rejected the motion on technical grounds. He submitted that there are precedents in Manipur Legislative Assembly and in Lok Sabha to show that motions for removal of Speaker have been rejected on such technical grounds. Mr. Potsarigbum finally submitted that the representation dated 21.12.2000 annexed to the reply affidavit of the Petitioners would show that the Petitioners have taken their grievance against the Speaker of the Manipur Legislative Assembly to the President of India. He contended that since the matter is under the consideration of the President of India, this Court should dismiss this writ petition.

4. Mr. T. Nanda Kumar Singh, learned Advocate General, Manipur, appearing for the State of Manipur, however, submitted that the subject matter of the said representation dated 21.12.2000 Annexure A/6 is entirely different and it has nothing to do with the relief claimed in this writ petition. He argued that in the decision of the Supreme Court in Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others, it has been held that a man cannot be allowed to be a Judge of his own cause and, therefore, the Speaker cannot be allowed to be a Judge in any matter relating to his removal. He submitted that for this reason Article 181 of the Constitution provides that in any sitting of the Legislative Assembly, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker shall not preside. He referred to the observations in the Full Bench judgment in K.A. Mathialagan Vs. P. Srinivasan and Others, that a resolution for removal of a Speaker becomes operative when notice of motion for the removal of the Speaker is given and is taken up for consideration and contended that for this reason the Speaker does not have the power to reject the motion for his removal on technical grounds. He submitted that Rules 307 and 308 of the Rules of Procedure and Conduct of Business do not provide for such rejection of a motion for removal of a Speaker on such technical grounds by the Speaker. In reply to the submission of Mr. Potsangbum that the notice of intention to move a resolution should not specify the charges against the Speaker, he referred to the precedents in Lok Sabha given at Page 254 of the Book on Parliamentary Procedure by Dr. Subhas C. Kashyap, Vol. I published by Universal Law Publishing Co. (P) Ltd. to show that where a notice is not accompanied by the text of the resolution giving reasons for removal of the Speaker no action was taken on such notice. Mr. Nanda Kumar submitted that it is not for the Speaker but for the House to decide as to whether a motion for

removal of a Speaker should be taken up for consideration or not.

5. Mr. R. Gogoi, learned Counsel appearing for the Secretary of the Manipur Legislative Assembly, submitted that there are no express provisions in the Constitution denying the powers of the Speaker of the Legislative Assembly to reject a motion for his removal from office on some valid ground. He submitted that under Clause (1) of Article 208 of the Constitution, a House of Legislature of a State may make rules for regulating its procedure and for the conduct of its business and in exercise of this power, the Manipur Legislative Assembly has made the Rules of Procedure and Conduct of Business, but these rules are not mandatory but directory in nature and violation of the rules of the Rules of procedure do not amount to breach of law giving rise to a cause of action in a court of law. He submitted that while Clause (1) of Article 212 grants immunity to the proceedings of a Legislature of a State from any challenge on the ground of irregularity of procedure in a court of law, Clause (2) of Article 212 grants immunity to an officer or a member of a Legislature of a State in respect of exercise of powers vested in him for regulating procedure and the conduct of business for maintaining order in the Legislature. He submitted that Article 212 is no bar to the exercise of jurisdiction by this Court under Article 226 of the constitution on the grounds as indicated in *Shri Kihota Hollohon Vs. Mr. Zachilhu and others*, Mr. Gogoi referred to paragraph-116 and 117 of the said decision of the Supreme Court in the said case in which the views of Mavalankar and Pandit Nehru on the high office of the Speaker have been quoted. He submitted that such views of distinguished persons with rich experience of public life would show that the Speaker is expected to act impartially and conduct himself with great dignity and has a very responsible role in our Constitutional system and this position of the Speaker must be kept in mind by the Court while deciding the powers of the Speaker in allowing or rejecting a motion for his removal from office. Mr. Gogoi also cited extracts from Chapter VIII of the Book of M.N. Kaul, S.L. Shakhder on the Practice and Procedure of Parliament in support of his submission that wide discretion is vested in the Speaker and he is not required to give reasons for his decision and that the orders passed by the Speaker are final.

6. In reply, Mr. Nilomani Singh, learned Counsel for the Petitioners, submitted that the challenge in this writ petition to the order of the Speaker the motion for his removal from office is not on the ground of irregularity of procedure, but on the ground that the Constitutional rights of the Petitioners under Article 179(c) of the Constitution have been frustrated. Under Article 179(c) and 181 of the Constitution, it is only the House of the Legislative Assembly which is to consider the motion for removal of the Speaker from office and that the rejection of the motion for his removal from office by the Speaker was unconstitutional and illegal and the court had power under Article 226 of the Constitution to issue an appropriate writ in this case. He cited the opinion of the Supreme Court in *In the matter of: Under Article 143 of the Constitution of India*, that if the impugned procedure in the Legislature is illegal and unconstitutional, it would be open to the scrutiny in a court of law though such scrutiny is prohibited if the complaint

against the procedure is not more than this that the procedure was irregular. He also relied on *State of Punjab Vs. Satya Pal Dang and Others* and *Baldev Parkash and Others*, wherein a Constitutional Bench of the Supreme Court rejected the contention that the decision of the Speaker on a point of order was a final and held that the decision or ruling of the Speaker was not only not final, but utterly null and void and to no effect. He also cited the decision of the Constitutional Bench in *Shri Kihota Hollohon Vs. Mr. Zachilhu and others*, in which the Supreme Court reaffirmed the principles laid down in *In the matter of: Under Article 143 of the Constitution of India*, that the decision of the Speaker is not final and can be challenged on the ground of illegality or perversity. Mr. Nilomani Singh pointed out that in *Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others*, the Supreme Court again held that the Speaker who was functioning as a Tribunal under the 10th Schedule was subject to judicial review under Article 226 and 227 of the Constitution. According to Mr. Nilomani Singh, this Court had wide powers under Article 226 of the Constitution to issue an appropriate writ or direction quashing the impugned order of the Speaker rejecting the motion for his removal from office and to issue appropriate directions.

7. Articles 179 and 181 of the Constitution which relate to removal of the Speaker from his office are quoted herein below--

179. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.--A member holding office as Speaker or Deputy Speaker of an Assembly

(a) shall vacate his office if he ceases to be a member of the Assembly;

(b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office by a resolution of the Assembly passed by a majority of all then members of the Assembly;

Provided that no resolution for the purpose of Clause (c) shall be moved unless at least fourteen days, notice has been given of the intention to move the resolution.

Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first sitting of the Assembly after the dissolution.

181. The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration (1) At any sitting of the Legislature Assembly, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and provisions of Clause (2) of Article 180 shall apply in relation to every such sitting as they apply in relation to a sitting

from which the Speaker or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and Ors. wise to take part in the proceedings of the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in Article 180, be entitled to vote only in the first instance on such resolution or on any Ors. matter during such proceedings but not in the case of equality of vote.

A reading of Article 179 and in particular Clause (c) thereof would show that a member holding the office of Speaker may be removed from his office by a resolution of the Assembly passed by a majority of the all then members of the Assembly. The first proviso to Article 179, however, states that no resolution for the purpose of Clause (c) shall be moved unless at least 14 days notice has been given of the intention to move the resolution. It is thus clear from Article 179(c) and the first proviso thereof that the resolution for removal of the Speaker from his office is to be moved and passed in the Assembly. Article 181(1) of the Constitution quoted above provides that in any sitting of the Legislative Assembly, while a resolution for removal of the Speaker from his office is under consideration, the Speaker shall not, though he is present, preside Article 181(2) further provides that the Speaker shall have the right to speak in, and Ors. wise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly. Therefore, both Clauses (1) and (2) of Article 181 make it abundantly clear that any resolution for removal of the Speaker from his office is to be placed before the Legislative Assembly for consideration and it is in the proceedings of the Legislative Assembly that he will have his say on such resolution. From a joint reading of Articles 179 and 181 of the Constitution, three conclusions follow; (i) that a member of the Legislative Assembly has a right to move a resolution for removal of the Speaker from his office in the Legislative Assembly, (ii) that such resolution for removal of the Speaker from his office can be considered only by the Legislative Assembly, (iii) that the Speaker has his say on such resolution for his removal in the proceedings of the Assembly.

8. The Constitution, however, does not indicate the detailed procedure which has to be followed for moving a resolution for removal of the Speaker from his office in the Legislative Assembly and for consideration of such a resolution by the Assembly. Article 208 of the Constitution is titled a "Rules of procedure" and Clause (1) of Article 208 of the Constitution provides as follows:

208. Rules of Procedure: (1) A house of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

Under Clause (1) of Article 208 of the Constitution quoted above, a House of the Legislature of a State has been vested with the power to make rules for regulating its procedure and conduct of its business. But such power has been

made subject to provisions of the Constitution. Therefore, a House of the legislature of a State cannot make any rule for regulating its procedure and for the conduct of its business contrary to the provisions of the Constitution. Since a member of a Legislative Assembly has a right to move a resolution for removal of the Speaker from his office in the Legislative Assembly and such resolution has to be considered by the Legislative Assembly under the provisions of Articles 179 and 181 of the Constitution, rules made by the Legislative Assembly for regulating its procedure and conduct of its business cannot make any provision for consideration, rejection or passing of any resolution for removal of the Speaker from his office by any authority Ors. than the Legislative Assembly. The Rules of Procedure and Conduct of Business in Manipur Legislative Assembly made under Clause (1) of Article 208 of the Constitution has to be interpreted and understood accordingly.

9. Chapter-XXII of the Rules of Procedure and Conduct of Business in Manipur Legislative Assembly is titled as "Resolution for removal of Speaker or Deputy Speaker from Office" and in the said Chapter Rules 307, 308, 309 and 310 have been included, which are extracted herein below--

307.(1) A member wishing to give notice of a resolution, under Clause (c) of Article 179 of the Constitution, for the removal of the Speaker or the Deputy Speaker shall do so in writing to the Secretary.

(2) A resolution for the removal of the Speaker or the Deputy Speaker must specify the charges against him.

(3) On receipt of a notice under Sub-rule (1) a motion for leave to move the resolution shall be entered in the list of business in the name of the member concerned, on a day fixed by the Speaker provided that the day so fixed shall be any day after fourteen days from the date of the receipt of notice of the resolution.

308.(1) Subject to the provisions of Article 181 of the Constitution, the Speaker or the Deputy Speaker or such Ors. person as is referred to in Clause (2) of Article 180 of the Constitution shall preside when a" motion under Sub-rule (3) of Rule 307 is taken up for consideration.

(2) The member in whose name the motion stands on list of business shall , except when he wishes to withdraw it, move the motion when called upon to do so, but no speech shall be permitted at this stage.

(3) The Speaker or the Deputy Speaker or the person presiding, as the case may be, shall thereupon place the motion before the House and shall request those members who are in favour of leave being granted to rise in their places. If not less than ten members of the House rise accordingly, the Speaker or the Deputy Speaker or the person presiding, as the case may be, shall declare that leave has been granted and that the resolution will be taken up on such day, not being more than ten days from the date on which leave is asked for, as he may

appoint, If less than ten members rise, the Speaker or the Deputy Speaker or the person presiding, as the case may be, shall inform the member that he has not the leave of the House.

309. On the appointed day the resolution shall be included in the list of business to be taken up after the questions and before any Ors. business for the day is entered upon.

310. Except with the permission of the Speaker or the person presiding, a speech on the resolution shall not exceed fifteen minutes in duration.

Provided that the mover of the resolution when moving the same may speak for such longer time as the Speaker or the person presiding may permit.

Under Sub-rule (1) of Rule 307 quoted above, the notice of resolution for removal of the Speaker under Clause (c) of Article 179 of the Constitution has to be in writing to the Secretary of the Manipur Legislative Assembly and under Sub-rule (2) of Rule 307, such resolution must specify the charges against the Speaker. Sub-rule (3) of Rule 307 further provides that on receipt of notice of resolution for removal of the Speaker from his office, a motion for leave to move the resolution shall be included in the list of business on the name of the member concerned and Rule 308 quoted above indicates the manner in which such motion for leave to move the resolution will be considered by the Assembly. After such leave is granted by the Assembly, the resolution is to be included in the list of business of the House and thereafter the House of the Assembly will take up the resolution. This procedure for taking up the resolution by the House of the Assembly has been stated in Rules 309 and 310 of the Rules quoted above. Thus once a notice of resolution for removal of the Speaker satisfies the requirement of Sub-rules (1) and (2) of Rules 307, it is the House of the Assembly which has to consider as to whether leave should be granted to move the resolution for removal of the Speaker and it is not for the Speaker to consider whether such leave should be granted to move the resolution for his removal from office. Similarly, once leave is granted by the House of the Assembly to move the resolution for removal of the Speaker such resolution will be considered only by the House of the Assembly and not by the Speaker and it is for the House whether to pass or reject such a resolution. These provisions in Rules 307, 308, 309 and 310 of the Rules of procedure and conduct of Business in Manipur Legislative Assembly are, therefore, consistent with the provisions of Articles 179 and 181 of the Constitution which provide that a resolution is to be moved in the Assembly and has to be considered by the Assembly.

10. Some of the provisions in the aforesaid Rules 307, 308, 309 and 310 of the Rules of Procedure and Conduct of Business in Manipur Legislative Assembly, however, are in addition to what have been provided in Articles 179 and 181 of the Constitution but such additional Provisions do not in any way contravene the provisions of the Constitution. For example, Article 179 is silent as to the manner in which a notice of a resolution for removal of Speaker is to be given and Sub-

rule (1) of Rule 307 provides that such notice has to be given in writing to the Secretary of the Manipur Legislative Assembly, Article 179 of the Constitution also does not say as to what a resolution for removal of the Speaker should contain and Sub-rule (2) of Rule 307 states that such resolution for removal of the Speaker must satisfy the charges against him. These provisions in Sub-rules (1) and (2) of Rule 307 are thus provisions in addition to the provisions in Article 179 of the Constitution and such additional provisions could be made by a House of a Legislature under Article 208 of the Constitution so long as such provisions do not contravene express provisions of the Constitution. This is because the power of the House of a Legislature under Article 208 of the Constitution is to be exercised, as indicated above, subject to the provisions of the Constitution. I, therefore, agree with the decision of Allahabad High Court in the case of *A.J. Faridi v. Chairman, U.P. Legislative Council* (supra) that the Rules of procedure may provide for the restrictions and conditions in addition to the conditions imposed by Article 179 of the Constitution for removal of the Speaker from office. But, I would like to clarify that the Rules of Procedure made under Article 208 of the Constitution cannot provide for any condition or restriction which expressly contravene the provisions of Articles 179 and 181 of the Constitution.

11. In the instant case, the notice dated 18.11.2000 of the Petitioners was in writing to the Secretary of the Manipur Legislative Assembly and, therefore, it fulfilled the requirements of Sub-rule (1) of Rule 307. Further, the said notice contained the resolution for removal of the Speaker and also specified charges against him. It also fulfilled the requirements of Sub-rule (2) of Rule 307. The contention of Mr. Potsangbum that at the stage of giving notice of a resolution for removal of the Speaker from his office in writing to the Secretary under Sub-rule (1) of Rule 307, the charges against the Speaker are not required to be specified is misconceived. Sub-rules (1) and (2) of Rule 307 have to be read together and so read, any notice of a resolution in writing to the Secretary of the Manipur Legislative Assembly under Sub-rule (1) of Rule 307 has to specify the charges against the Speaker. As has been rightly submitted by Mr. R. Gogdi, the Speaker holds a high Constitutional office and is expected to act impartially in the conduct of proceedings in the House and as a very responsible role in our constitutional system. Any resolution for removal of the Speaker from his office must specify charges which according to the member giving the notice warrant removal from office. If without specific charges against the Speaker, members were allowed to give notice of their intention to move a resolution for removal of the Speaker from office, extraneous considerations unrelated to the discharge of the Constitutional duties of the Speaker may prompt the members to give such notice of a resolution for removal of the Speaker from office. Where, therefore, a notice for moving a resolution for removal of the Speaker from office does not specify the charges, the same cannot be taken up for consideration by the House. As a matter of fact, I find from the book *Parliamentary Procedure* by Subhash C. Kashyap, Vo. 1 published by Universal Law Publishing Co. (P) Limited, that there have been precedents in Lok Sabha where no action has been

taken on a notice of a resolution for removal of the Speaker or the Deputy Speaker as long with the notice the text of the resolution giving reasons for moving of the resolution had not been forwarded. Relevant extracts from page 254 from the said book citing the said proceedings are given herein below:

(ii) On 15 Apr. 1975, Jyotirmoy Bosu gave the following notice:

I hereby give fourteen days notice to move a motion of No-confidence against the H.S.

I shall move the motion after the expiry of the period.

No action was taken on Bosu's notice as he had not forward the text of resolution giving reasons for moving the resolution.

(iii) On 2 Dec. 1980, a member (Jyotirmoy Bosu) gave notice of his intention to move a resolution for removal of Dy. Speaker. Since Bosu had not forwarded text of resolution giving reasons for moving the said resolution no action was taken and the member informed.

Similar action was taken on 22 Apr. 1981, when again Bosu and four Ors. members gave notice only of their intention to move resolution for removal of Dy. Speaker.

(iv) On 18 July 1983, a member (K Mayathevar) gave notice of his intention to move a resolution for removal of the Dy. Speaker. Since Mayathevar had not given text of resolution giving reasons for moving the said resolution, no action was taken and the member informed.

(v) On 15 Apr. 1987, before calling upon Somnath Chattarjee to ask for leave of the House to a resolution seeking removal of Speaker from his office, Deputy Speaker inter alia observed that the resolution should have been specific with respect to charges. Inasmuch as the charges were not specific, were not clearly and precisely expressed and did not raise one definite issue, the resolution would be prima facie out of order. However, it was left to the House to decide whether leave should be granted. After leave was granted to the member by the House, the member moved resolution which was discussed and negatived. (L.S. Deb, 15.4.1987, cc. 562-64 & 629-31).

12. The Speaker, however may have serious objections to the allegations and the charges in the notice of resolution for removing him from office. In the present case, the allegations and the charges in the notice dated 18.11.2000 of the Petitioners to the Secretary of the Manipur Legislative Assembly in support of the resolution for removal of the Speaker from his office are that he misused the office of the Speaker for personal and political aggrandizement and for financial benefit by threatening nine MLAs against whom disqualification proceedings have been initiated, he openly supported anti-national insurgents and rebels by condemning in public the decision of the Council of Ministers to take up counter insurgency measures, he has included in corrupt practice for financial

mismanagement by engaging 35 employees in the Assembly on contract basis and in conducting DPC while there was a complete ban on recruitment and selection of candidates by the Government of Manipur, he flouted wilfully the financial rules in purchase of equipments of Manipur Legislative Assembly and has violated the sanctity and neutrality of the office of the Speaker by openly siding, supporting and inciting the opposition in political matters not related with his official works. The Speaker may be genuinely aggrieved by the nature of the aforesaid allegations and charges against him in the said notice dated 18.11.2000 of the Petitioner, but it is not for the Speaker to reject the motion for his removal on this ground because under Articles 179 and 181 of the Constitution, the power to consider any motion or resolution for removal of the Speaker from office is vested in the Legislative Assembly and not in the Speaker. If the Speaker has serious objections to the allegations and the charges made against him in the said notice of resolution for removal from office, he can speak out his reactions to the said allegations and the charges in the proceedings before the Assembly in accordance with the Constitutional rights under Clause (2) of Article 181 of the Constitution. It is ultimately for the Legislative Assembly to consider these allegations and the charges against the Speaker given in the notice of resolution for removal of the Speaker from office and the objection of the Speaker to such allegations and the charges. Rules 127, 130, 336, 352 and 353 of the Rules of procedure and conduct of business in Manipur Legislative Assembly cannot therefore be taken recourse to be the Speaker to reject a motion for his removal from office on the ground that the allegations and the charges in the notice of resolution for removal of the Speaker from office are inadmissible. Under Clause (1) of Article 208 of the Constitution such Rules of procedure are to be made by a House of a Legislature of a State subject to the provisions of the Constitution and Rules 127, 130, 336, 352 and 353 could not have intended to vest any power on the Speaker which under Articles 179 and 181 of the Constitution is vested in the Legislative Assembly.

13. It is true as has been submitted by Mr. Ashok Potsangbum that the Speaker has been granted immunity under Clause (2) of the Article 212 of the Constitution in respect of exercise of powers by him vested by or under the Constitution for regulating the procedure or the conduct of business or maintaining order in the Legislature. It is also true as has been submitted by Mr. Potsangbum and Mr. R. Gogoi that deviation from the procedure laid down in Rules of procedure and conduct of business in Manipur Legislative Assembly including the procedure laid down in Rules 307, 308, 309 and 310 thereof cannot call for interference from this Court under Article 226 of the Constitution. But in the present case, as has been held above, the power to consider or to reject a motion for removal of the Speaker from his office did not vest in the Speaker but in the Legislative Assembly under Articles 179 and 181 of the Constitution and correspondingly the Petitioners as members of the Manipur Legislative Assembly had the constitutional right to move a motion for removal of the Speaker from his office in the Legislative Assembly. The Speaker has thus exceeded his powers

under the provisions of the Constitution and violated the Constitutional rights of the Petitioners. Clause (2) of Article 212 of the Constitution as per its very language protects only exercise of powers vested in an officer or the members of a legislature under the Constitution and will not protect from challenge before the court exercise of any power by such officer or member of a Legislature of a State which is not vested in him under the Constitution.

14. In the decisions cited by Mr. Potsangbum, the court had not found that the Speaker had exercised powers not vested in him under the Constitution. In *Saradhakar Supakar v. Speaker, Legislative Assembly* (supra), Shri Saradhakar Supakar, a member of the Orissa Legislative Assembly prayed for a writ on the Speaker and the Secretary of the Orissa Legislative Assembly directing them to exclude the address of the Governor followed by discussion thereof as provided under Article 176 of the Constitution from the list of business fixed for the 7th and 8th March, 1952 and directing them not to hold any meeting of the Assembly on these dates for that purpose. The point of order raised for this very purpose was overruled by the acting Speaker on 6th of March, 1952. The court held that Article 176 of the Constitution had not been violated and that the order of business fixed for the Assembly on 7th and 8th of March, 1952, did not constitute infringement of any provisions of the Constitution. The court also held that Article 212 of the Constitution operates as a bar to the jurisdiction of this Court being invoked for issue of a writ under Article 226 of the Constitution against the Speaker of the Assembly or the Secretary of the Assembly in a case of this kind. In *Godavaris Misra v. Nandakisore Das* (supra), Shri Godavaris Misra, a member of the Orissa Legislative Assembly, filed a petition under Article 226 of the Constitution against the Speaker for disallowing two questions raised by Shri Misra in notices dated 5.9.52 and 6.9.52 and the court held that the Speaker had the authority to disallow the two questions and once he had such authority he could decide it either rightly or wrongly and so long as he was within his jurisdiction, he was immune from interference by the court and was protected under Clause (2) of Article 212 of the Constitution. In *Harendra Nath Barua v. Dev Kanta Barua* (supra), Shri Harendra Nath Barua moved the Assam High Court for a writ against the Speaker, Secretary and the members of the Committee of Privileges of Assam Legislative Assembly as he had been summoned to appear before the Privilege Committee by a notice of the Speaker and the court held that under Article 194 of the Constitution, a House of a Legislature and the members of a committee thereof had the same powers, privileges and immunities as those of the House of Commons of the Parliament of United Kingdom and its members, Committees and the Speaker as the Chief custodian of powers and privileges of the Legislature could exercise the said powers and take notice of contempt or breach of privilege of the House by the offending publication made by the Petitioner and summon him to the House. The court further held that the action taken by the Speaker was not unwarranted under the rules and cannot be challenged before the court. In *M.S.M. Sharma v. Dr. Sri Krishna Sinha* (supra) a journalist had filed a petition under Article 32 of

the Constitution before the Supreme Court challenging the proceedings initiated against him for breach of privilege of the House of the Assembly in respect of an offending publication and his contention was that his fundamental right under Article 19(1)(a) and 21 of the Constitution had been affected. The Supreme Court held that Article 19(1)(a) of the Constitution must yield to Clause (1) and (3) of Article 194 of the Constitution. The Supreme Court further held that the Legislative Assembly had power, privilege and immunity of the House of Commons and if the Petitioner was eventually deprived of his personal liberty as a result of proceedings before the Committee of Privilege, such deprivation will be in accordance with the procedure established by law and the Petitioner cannot complain of breach of or threat to his fundamental right under Article 21 of the Constitution. The Petitioner again moved the Supreme Court under Article 32 of the Constitution contending that his right under Article 19(1)(a) of the Constitution had been affected and that the procedure adopted inside the House of the legislature was not regular and not strictly in accordance with law. The Supreme Court held that according to its previous decision, the Petitioner had no such fundamental right under Article 212 of the Constitution and the validity of the proceedings in the said Legislature cannot be called in question on an allegation that the procedure laid down by law had not been strictly followed. The court further observed that courts have always recognised the basic difference between the complete want of jurisdiction and improper or irregular exercise of jurisdiction and mere non-compliance with the rules of procedure cannot be a ground for issue of a writ under Article 32 of the Constitution. In *J. Singh Rathie v. State of Haryana* (supra), Mr. J. Singh Rathie and Ors. were members of the Haryana Legislative Assembly and were suspended from the Session of the legislative Assembly and they filed a writ petition under Article 226 and 227 of the Constitution for quashing the proceedings of the Haryana Vidhan Sabha suspending them and for quashing the subsequent proceedings of the said Legislative Assembly leading to the passage of the publication bill 1969-70 on Feb, 12 1969. The Full Bench of the Punjab and Haryana High Court held that the Haryana Legislative Assembly was neither a court nor a Tribunal subordinate to the High Court over which the High Court could exercise the jurisdiction of the Superintendence under Article 227 of the Constitution and that the power of the Speaker to regulate the procedure and to conduct the business in the House to maintain order in it was immune from the jurisdiction of the court under Clause (2) of Article 212 of the Constitution. It is thus clear from the discussion from the aforesaid decisions cited by Mr. Potsangbum that in each of the cases the court found that the Speaker or the Ors. authorities of the Legislature were acting within their jurisdiction or did not violate the constitutional right of the Petitioner and held that the court could not interfere in the decisions taken by the Speaker and Ors. authorities of the Legislature acting within their jurisdictions on the grounds that the procedure laid down under rules or law had not been strictly followed. But in the present case, the Court has come to a finding that the Speaker in rejecting the motion in the notice dated 18.11.2000 of the Petitioners for removal of the Speaker from office exercised a jurisdiction not vested on him

but in the Legislative Assembly and had violated the constitutional rights of the Petitioners. Unlike in England where parliament is sovereign and there is no written Constitution, in India there is a written Constitution and each authority howsoever high he may be has to act within the powers vested in it by the written constitution and cannot usurp the power vested in some Ors. authority and the Court under Article 226 of the Constitution can issue appropriate writ/direction when an authority exercises a power not vested in it under the Constitution and protect the constitutional right of a person.

15. Coming now to the contention of Mr. Potsangbum that the relief claim in this writ petition has also been claimed by the Petitioner before the President of India and the Governor, I find from the said representation dated 21.12.2000 to the President of India (Annexure-A/6 to the reply affidavit of the Petitioners) that the same relates to the motion of no-confidence against the Government, sine die adjournment of the House by the Speaker and the possibility of imposition of Presidents Rule in the State of Manipur. The representation dated 25.12.2000 to the Governor (Annexure-A/7 to the reply affidavit of the Petitioners) relates to sine die adjournment of the house and the delay in sitting of the House. But the representations to the President of India and the Governor of Manipur do not relate to the impugned order of the Speaker rejecting the proposed motion for removal of the Speaker from office in the notice dated 18.11.2000 of the Petitioners. Thus, the court cannot dismiss the writ petition on the ground that alternative remedies are being pursued by the Petitioners against the impugned order of the Speaker of the Manipur Legislative Assembly.

16. In the result, the writ petition is allowed and the impugned order of the Speaker of the Manipur Legislative Assembly rejecting the motion for removing him from office in the notice dated 18.11.2000 of the Petitioners is quashed and the Respondent Nos. 1 and 2 are directed to place the said motion before the House of Manipur Legislative Assembly unless the said motion is withdrawn by the Petitioners. Considering, however, facts and circumstances of the case, the parties shall bear their own costs.