

(1994) 09 MAD CK 0045

In the Madras High Court

Case No : Writ Petition No's. 4202 and 4203 of 1987

S. Balasubramanian

APPELLANT

Vs

State of Tamil Nadu and others

RESPONDENT

Date of Decision : 28-09-1994

Acts Referred:

Constitution (Forty-Fourth Amendment) Act, 1978 — Section 26

Constitution of India, 1950 — Article 105(3), 12, 14, 143, 19

Tamil Nadu Legislative Assembly Rules — Rule 219, 229

Citation : AIR 1995 Mad 329

Hon'ble Judges : M. Srinivasan, J; D. Raju, J; A.R. Lakshmanan, J

Bench : Full Bench

Advocate : Mohan Parasaran, for the Appellant; R. Krishnamoorthy, General and Muthukumaraswamy, for the Respondent

Judgement

Raju, J.—These two writ petitions have been filed by the very same petitioner who, during the relevant period of time, was the Editor of

Ananda Vikadan"" a Tamil weekly having its registered Office at No. 758, Anna Salai, Madras-2. W.P. No. 4203 of 1987 has been filed for a

writ of declaration, declaring that the Resolution passed by the Tamil Nadu Legislative Assembly dated 4-4-1987 sentencing the petitioner to three

months rigorous imprisonment as unconstitutional, null and void, illegal and unenforceable. W.P. No. 4202 of 1987 has been filed for a writ of

mandamus, directing the respondents to compensate the petitioner for the alleged flagrant violation claimed to have been committed of the

petitioner's fundamental rights on account of imposing of a rigorous imprisonment for three months.

2. The controversy between the parties hereto has its origin centering around a cartoon published on the outer wrapper rather the front cover page

of the Tamil weekly "Ananda Vikatan" bearing the date of issue 29-3-1987. It is an accepted fact that the particular issue in question was

available at the news stand for sale to the members of the public on 27-3-1987 itself. The cartoon picturised the dais of a public meeting with

audience in front thereof in addition portraying some persons also seated on the dais. In the fore-front, two persons are shown to be prominently

sitting in two chairs in front of the mike. Behind those two persons, two other persons were shown to be sitting less prominently with a Police

Constable standing in between those seated behind. Below the ,, said picture, a conversation in the form of a query and a reply among two of the

audience has been printed in Tamil which if translated in English reads as hereunder:-

Of the two persons on the stage, who is the M.L.A. and who is the Minister?

The person who looks like a pick-pocket is the M.L.A. and the person who looks like a masked dacoit is the Minister

3. On 28-3-1987 when the Tamil Nadu Legislative Assembly was in session, one of the members of the Assembly by name N.S. V. Chindhan

appears to have raised an issue out of the above referred to cartoon as offending and ridiculing the members of the Legislature by describing them

as anti-social elements and that such things must be put an end to. The then Speaker of the Assembly appears to have made a statement while

condemning that publication that it was brought to his notice by some sections of the House and the said publication in his opinion is derogatory

and which was aimed and calculated to damage the reputation of the members of the House in general and moreso, the Ministers in particular.

While elucidating on the issue by stating that a man's reputation is a man's property and under the guise of freedom of press, one would expect to

preserve and promote the freedom of citizen first before talking about democracy and that the press has a duty not to damage the reputation of the

M.L.As. and Ministers to push and promote the sales of the journal in the market. The statement of the Speaker is said to be the ruling of the Chair

and it proceeded further to state that the reputation of the M.L.As. has been injured by such publication and on behalf of the members of the

House, the Speaker demands and orders ""Ananda Vikatan"" to publish in the front page their apology for the said publication making it known that

failing which summary sentence will be passed by the House itself. This was said to have been followed by cheers. The then Speaker also appears

to have further stated that such irresponsible publication was possible because the defamatory laws are not so stringent and the Writers and Editors

know that the protracted and prolonged trial, dissuade one from having recourse to a Court of law for redress. An appeal to the journals to

condemn such irresponsible publication in order to preserve the freedom of the Members was also said to have been made. A further reference is

also made to certain yellow journals -- gutter journals -- publications having aim only to mar the reputation of the M.L.As. in the eyes of the public

and thereby cause irreparable loss to the system of democracy itself, by indulging in such activities and the Speaker warns such irresponsible press

that the Legislature is a Court of Record and it will take cognizance in future such publications and deal with them straightway to prevent such

gutter publications. The statement further notices by way of recollection the punishment meted out to a journalist in Tamil Nadu by sending him to

undergo three months imprisonment by the Supreme Court, in addition to making him go to every Judge's house and apologise before entering the

jail to serve the sentence. A request was also said to have been made to construe the same as precedent and followed as precedents. Nobody has

a right to mar the reputation of M.L.As. and Ministers and the recently started weeklies and magazines are prone to such libellous publications and

tend to lower the reputation of the Dailies and Journals with long heritage like "Ananda Vikatan".

4. Consequent upon the above, the third respondent appears to have addressed a communication dated 31-3-1987 to the petitioner inviting his

notice and attention to the issue of "Ananda Vikatan" dated 29-3-1987 in the front cover page particularly the cartoon published in a manner

derogatory of Honourable Ministers and Assembly Members and the order of the Speaker dated 28-3-1987 said to have been made in the

Assembly having felt that the said cartoon offended the name and prestige of the Assembly members particularly the Honourable Ministers and that,

therefore, the petitioner must publish an apology expressing regret in the front page of the next issue. The petitioner, by his undated reply,

addressed to the third respondent, stated that the explanation to the publication of the cartoon in the issue of "Ananda Vikatan" dated 29-3-1987

is being published in the issue dated 5-4-1987 and a copy of the same is being sent to him for his perusal.

5. The enclosed Article was published in the weekly issue of the magazine dated 5-4-1987. The sum and substance of the publication explaining

the earlier cartoon while expressing surprise over the events in the Assembly and the ruling of the Speaker states that the caricature was a mere

and an ordinary of fenceless joke with no one in mind or to offend any one, that the same has to be taken jovially and the Minister or M.L.A.

referred to need not be taken as belonging particularly to the State of Tamil Nadu or any other State and that like any other joke pertaining to an

Advocate, a Doctor, a Cinema actress, the one in question is a joke pertaining to the politician in general all over the world referable to only a

politician who has come to power by using democracy and betrays the confidence of the citizen. It is also stated therein that merely because the

conversation is found printed in Tamil, it need not necessarily be considered to be attributable to Tamil Nadu since Ananda Vikatan being a Tamil

magazine, be it Rajiv or Reagan, in cartoons or titbits, they would be shown to converse only in Tamil. While adverting to then concluded General

Elections in the States of Kerala, West Bengal and Kashmir, it was said to have been found to be topically relevant in the context of the out-

coming results of those elections by means of an ordinary joke and there is no need or justification to consider or construe the same to have any

particular reference to the M.L.As. or Ministers of the State of Tamil Nadu as the target. It is further stated therein that the conversation was said

to reflect the manner of criticism normally made by audience in a public meeting of politicians, in general and the same has to be appreciated in that

context and not by getting angry considering it to mean an accusation of the M.L.As. or the Ministers. It is also stated that no one else but within a

guilty conscience could take it to be an offensive one and others would only think that the same does not pertaining to them and enjoy and laugh it

away. In addition, the said Article proceed to state that there are number of journals and magazines publishing news items and cartoons with

individual reference to M.L.As. and Ministers by adopting ways and means so as to offend the feelings of such persons and while ignoring such

things, the threatened action to severely punish the petitioner alone for an ordinary joke constrain him to think whether the real offence is the

popularity of the petitioner's magazines and the love and support of several lakhs of readers or to merely use the petitioner as a scape goat for

detering the other publishers, generally. Even at the forefront of the said Article, the petitioner-Editor expressed his surprise at the action of the

Speaker in instantly delivering a judgment finding the petitioner guilty of an offence against the House and threatening him to impose the punishment

also without even giving an opportunity to explain the charge proposed to be levelled against the petitioner, or considering the explanation of the

petitioner, by adopting a deterrent method of threatening the petitioner with any of two alternatives viz., apologise by accepting the offence or be

punished without an enquiry or an adjudication in a judicious manner. While expressing surprise at the piquant situation in which the petitioner was

placed by using a threat normally heard to be administered at Police Stations threatening to accept the guilt to enable a release with a lighter

punishment on a threat of imprisonment, the petitioner was feeling sorry whether a similar treatment could be meted out in Courts or Legislative

Assembly and is that the present day democracy. It is also stated that in cases of breach of privilege it is the Assembly which should decide by

means of a resolution and not for the Speaker to unilaterally decide to impose punishments. While pointing out the same, that even in the absence

of such a resolution by the Assembly, if the Speaker could impose, decide and indicate about the punishment also openly in the Assembly, it only

shows that whatever be the explanation, it may not be independently considered and that already the decision has been taken to punish him seem

to be the obvious though not openly spoken out in such terms and in such circumstances, the need for submitting any explanation does not at all in

his view, arise. At the same time, the Article purports to be an explanation to the lakhs and lakhs of its readers and that the petitioner would be

satisfied if the readers are convinced that he has not committed any offence. While concluding the Article, it has been stated that if the Speaker of

the Tamil Nadu thinks that he has his office and authority to do anything he likes, let him please himself to give the punishment and if he does so, it

only will go to show that the publicity about the democracy in existence is only a mere matter of speech and it will only confirm the view that the

Tamil Nadu Government is acting with a dictatorial mentality keeping in view personal likes and dislikes. The Article wound up by a declaration

long live this democracy".

6. The subject matter again engaged the attention of the house on 4-4-1986. It appears from the proceedings of the House for the day that the

then Speaker informed the House that since the petitioner has failed to express his apology in spite of having been given an opportunity after finding

that the cartoon in question offends the rights of the House, the issue has to be further considered by the House. The leader of the House appears

to have proposed a resolution for consideration under Rule 225 of the Tamil Nadu Legislative Assembly Rules for taking into consideration the

ruling of the Speaker on 28-3-1987 and the reply of the petitioner received on 2-4-1987. Smt. D. Yasodha, M/s. Nanjil K. Mano-haran, K.

Ramani, A.S.A. Arumugham, P. Uthirapathy, A.K.A. Abdul Samad, K. Muthuvel and K. Tamilarasan were said to have participated in the

discussion which followed and the leader of the House also appears to have offered his reply on the discussion. During the course of hearing, the

entire speeches made by the respective members have been read to us. We find that one of the members by name Nanjil K. Manoharan has

analysed the criteria and consideration to be adopted with particular reference to similar instances involving dignitaries while others also appear to

have expressed their personal views on the matter and about the manner in which action has to be taken. Thereupon, it appears that leader of the

House proposed that the House resolved that by publishing the offending cartoon in the journal in question, the petitioner has committed a breach

of privilege of the House and, therefore, the petitioner-Editor of the magazine must be arrested and detained in the Central Prison for three months

to undergo rigorous imprisonment. It is seen that the above resolution was passed by the House while the members present representing some of

the Political parties staged walk-out.

7. Pursuant to the resolution of the House, it appears that the then Speaker seemed to have issued a general warrant for the arrest of the petitioner

and to undergo three months rigorous imprisonment and the police happened to arrest him on the same day from his farm-house at Padappai near

Madras, brought him to Madras and lodged him in the Central Prison at Madras. To complete the narration of events, it has to be stated that the

wife of the petitioner appears to have moved the Supreme Court under Art. 32 of

the Constitution of India by filing W.P. No. 280 of 1987 and that a special Bench was constituted for the hearing. It is also stated that in the meantime, there were criticisms of the action taken against the petitioner from various institutions and dignitaries all over the Country. The then Chief Minister appears to have intervened in the matter by requesting the then Speaker to appeal to the House to reconsider and revise the decision. On conveying the same, the Speaker appears to have again made a speech about the need for safeguarding and preserving the democratic institutions to ensure that the liberty of the individual will not be at stake, and stating further while adverting to Article 50 of the Constitution of India that the Legislature, a Democratic Institution can deliver justice enshrined in the preamble to the Constitution of India, to the people. The then Speaker also appears to have declared that he accepts the appeal of the then Chief Minister and appreciate his gesture and in exercise of the residuary powers conferred on him by the House, he orders "the release of the Editor of "Ananda Vikatan" Thiru. S. Balasubramaniam from the Central Prison, Madras today after the period already undergone by him." The Speaker appears to have then sought to ascertain the opinion of the House by putting the question that he hopes the house accepts it. Thereupon, it is seen from the records of the House that the members have accepted it by thumbing on the tables and raising sound thereby.

8. It appears, on account of the subsequent development, the proceedings before the Supreme Court was closed. Some other writ petitions have been also filed by means of public interest litigations in W.P. Nos. 4002, 4200 and 4201 of 1987 and this Court, after hearing the counsel appearing for them, had to dismiss the same on 19-9-1994 holding that those persons have no locus standi to raise the issue before this Court any longer when the very person aggrieved has filed the above two writ petitions to vindicate his rights. W.P. No. 4191 of 1987 was dismissed as having abated on account of the death of the petitioner therein.

9. These and the other writ petitions initially came up before a learned single Judge, of this Court (S. Mohan, J. as the learned Judge, then was) and the learned J. by an order dated 27-4-1987, having regard to the vital and important nature of the issues involved, referred the following questions for being placed for the consideration of a Division Bench or Full Bench

of this Court:--

(i) Whether the collective will of the Assembly albeit it deprives a citizen of his fundamental right conferred under Art. 21 of the Constitution would

be immune to attack in proceedings before a Court?

(ii) Whether, by reason of the petitioner in W.P. Nos. 4202 and 4203 of 1987 having been set at liberty, the infringement of Article 21 could not

be complained of?

(iii) Whether the individuals, namely, Messrs. P. Ramamurti, P. Manickam, N.V.N. Somu and R.R. Dalavai could question the validity of the

impugned proceedings and consequently whether the writ petitions filed by them are maintainable?

As noticed earlier, the other writ petitions filed by M/s. P. Ramamurti, P. Manickam, N.V.N. Somu and R.R. Dalavai were dismissed already by

us and these writ petitions alone have been now taken up for consideration of questions (i) and (ii) alone by us.

10. Mr. Mohan Parasaran, learned counsel appearing for the petitioner, contended that the High Court is empowered to issue a writ under Art.

226, even to a Legislature it being one of the authorities falling within the the definition of "State" under Article 12 of the Constitution of India. It

was also contended that after the 44th Amendment Act, 1978 so far as the powers, privileges and immunities of the House or the members and

committees thereof are concerned they shall, until defined by the Legislature concerned by law, be those of the House and of its members and

committees immediately before the coming into force of Section 26 of the Constitution (Forty-Fourth Amendment) Act, 1978 and having regard to

the consistent practice, the legislature was holding the view that publications similar to the one in question are not to be construed to mean breach

of privilege of the House or its members. The learned counsel further contended that the cartoon in question does not amount to either contempt of

the Authority or breach of privilege of the House or its Members and that while exercising jurisdiction under Art. 226 of the Constitution of India,

this Court is entitled to consider whether the publication in question really constitutes such contempt or breach, complained of. According to the

learned counsel, even assuming without admitting that the publication constituted any violation as claimed, the punishment of three months rigorous

imprisonment imposed is arbitrary, unreasonable and violative of Arts. 14, 19(1) (g) and 21 of the Constitution of India. Argued the learned counsel further that the House as such has not decided the issue and at any rate, the Speaker who gave the ruling in the house has done so even before the petitioner put on notice of the charge against him, or giving him an opportunity to show cause against the proposed action and considering the explanation and this is made clear from the record of proceedings of the House on 28-3- 1987 and the notice issued by the third respondent on 31-3-1987. The pre-deter-mined decision about the guilt and the move to impose punishment was said to have been taken without giving any opportunity to the petitioner and in gross violation of the principles of natural justice resulting in a conviction even before trial and even the rules framed by the House in this regard and consequently, the impugned resolution was grossly violative of Art. 21 of the Constitution of India. Lastly, it was contended that the resolution passed on 6-4-1987 does not annul the conviction but only amounts to reduction of sentence alone and for the unlawful detention in prison and sufferings undergone by the petitioner on account of infringement of his fundamental rights and the agony and mental suffering the petitioner is entitled to be compensated by the award of suitable damages.

11. Mr. R. Krishnamoorthy, learned Advocate General, contended that the offending publication constitutes both a breach of-privilege and contempt of the authority of the House and its members and consequently there is no merit or substance in the contentions on behalf of the petitioner to the contrary. It was also contended that when the House, as a body considered and construed the offending publication to constitute a breach as well as contempt, the verdict of the House must be taken to be final and it is not given to any one to canvass the correctness of the same before this Court, as if on an appeal. Argued the learned Advocate General further that a look at the cartoon and a reading of the conversation will go to substantiate the insinuation and the offence meant and projected by the offending publication against the House and its members, particularly in the context of the language of the magazine. It was also contended that there was nothing wrong in the procedure adopted in the matter and the Speaker also acted only on behalf of the House and its Members in his representative capacity as the Presiding Officer, and in any event the

Record of Proceedings would disclose that the House only ultimately decided the issues and resolved to punish the petitioner. As for the denial of

opportunity and accusation of pre-determined approach, the learned Advocate General contended that the petitioner was given an opportunity and

he sent a reply adopting the article published on 5-4-1987 and that the ultimate punishment came to be imposed after deliberation and discussion

by participation of members representing the cross-sections of the House and consequently the grievance of the petitioner is purely based upon

unfounded assumptions. The learned Advocate General also contended that the House ultimately accepted the appeal of the then Chief Minister to

reconsider and revise the decision and, therefore, it may not be correct to contend that punishment or any further stigma attached to the petitioner.

Finally, it was contended that the petitioner cannot claim or be granted any damages or compensation payable by the respondents since the

Assembly which was in existence and which imposed the punishment on finding the petitioner guilty no longer exists to render them answerable to

the petitioner for any claim in respect of the punishment imposed.

12. Before embarking upon an analysis and consideration of the respective submissions of the learned counsel on either side, we consider it

necessary to advert to some of the relevant decisions and the principles laid down therein. The powers, privileges and immunities of the State

Legislature vis-a-vis the exercise of the jurisdiction conferred upon the High Court under Article 226 of the Constitution of India came up for

consideration of the Supreme Court before a Bench of seven learned Judges on a Presidential reference in AIR 1965 SC 745 (In Re : Under

Article 143 of the Constitution of India). As per the majority opinion rendered therein, there can be little doubt that the powers, privileges and

immunities which are contemplated by Clause 3 of Article 194 are incidental powers, privileges and immunities which every Legislature must

possess in order that it may be able to function effectively and that explains the purpose of the latter part of clause (3) and that they should be

shown to have subsisted in the House at the commencement of the Constitution viz. 26-1-1950 which cut off date stood modified subsequently

by virtue of the Constitution (44th Amendment) Act, 1978 as 20th June, 1979. While adverting to the position that the powers claimed have to be

found in Article 194(3) and dealing with the claim that is the privilege of the House to construe the relevant provisions of Article 194(3) and determine for itself what its powers, privileges and immunities are, unfettered by the views of the Court, and that the Constitution confers on the House the sole and exclusive jurisdiction, it was held that the Supremacy of the Constitution is fundamental to the existence of a Federal State and this supremacy is protected by the authority by an independent judicial body to act as the interpreter of a scheme of distribution of powers. It was also held that the Legislatures in India function within the limits prescribed by the material and relevant provisions of the Constitution and therefore cannot claim the nature and type of Sovereignty which can be claimed by the Parliament in England. While observing the position that just as the legislatures are conferred legislative authority and their function are normally confined to legislative functions and the functions and authority of the executive lie within the domain of executive authority the jurisdiction and authority of the judicature in this Country was held to lie within the domain of adjudication and adjudication of any dispute as to whether legislative authority has been exceeded or fundamental rights have been contravened is entrusted solely and exclusively to the Judicature of this Country and, therefore, the decision about the Construction of Article 194(3) and content thereof must ultimately rest exclusively with the Judicature in this Country and not the legislatures. In emphasising the significant role the High Courts have to play in the development of the rule of law the successful working of which is the basic foundation of democracy, the majority - opinion also held that it would not be correct to state that all powers and privileges which were possessed by the House of Commons at the relevant time can be claimed by the House of Legislature in this Country and that all the clauses under Article 194 should be taken subject to the provisions of the Constitution including the fundamental rights secured under Part III which are paramount though in that case the Court proceeded to consider the issues raised therein on the basis that Article 19(1)(a) will have no application whereas Article 21 squarely applied. Referring to Article 212(1) their Lordships have held that it makes it possible for a citizen to call in question in the appropriate Court of law the validity of any proceedings inside the House if his case is that the said proceedings suffer not from mere irregularity of procedure but from an illegality and if the

impugned procedure is illegal and unconstitutional it would be open to be scrutinised in a Court of law, though such scrutiny is prohibited if the

complaint against the procedure is nothing more than that the procedure was irregular.

13. The existence and extent of privilege claimed was held to be a justiciable matter and, therefore, can be adjudicated upon by the High Court.

While sustaining the power of the House to punish for contempt committed outside its Chamber, the Supreme Court also declared that the House

and all the Legislative Assemblies in India never discharged any judicial functions and their historical and constitutional background does not

support their claim that they can be regarded as Courts of Record in any sense or as a result of the provisions contained in Article 194(3). On that

premise, it was also held that it would be unreasonable to contend that the general warrant issued by the House in this Country possessed any

conclusive character and consequently it would be futile to contend in the teeth of Articles 226 and 32 which admit of no exception that a citizen

cannot move the High Court the Supreme Court to invoke their jurisdiction even in cases where his fundamental rights have been violated. The

judicial powers conferred on the High Courts and the Supreme Court were held to be meant for the protection of the fundamental rights of the

citizen and such existence of judicial powers themselves necessarily involved the right of a citizen to appeal to the said power in a proper case and

consequently the claim of the House that the general warrant of the House should be treated as conclusive in all Courts of law was held to be

inconsistent with the inalienable and unquestionable right of the citizen to have recourse to the Courts of law secured under Articles 226 and 32 of

the Constitution of India and, therefore, cannot be deemed to have been included under Article 194(3). Of course while declaring the position of

law as above, the Supreme Court clarified also the position that they were dealing with the question of jurisdiction and are not concerned with the

propriety or reasonableness of the exercise of such jurisdiction. While declaring the general principles as above, the Court also held that on the

facts of that case, the High Court concerned was competent to entertain and deal with the petition filed challenging the legality of the sentence of

imprisonment imposed by the Legislative Assembly concerned for its contempt and for infringement of its privileges and pass appropriate orders

including the grant of bail, pending disposal of the main petition before the High Court. The Supreme Court further took care to clarify the position

that their answer to the questions referred to them was confined to cases in relation to contempt alleged to have been committed by a citizen who is

not a member of the House outside the four walls of the Legislative Chambers.

14. In the decision reported in *A.M. Paulraj Vs. The Speaker, Tamil Nadu Legislative Assembly, Madras and Another*, , a Full Bench of this

Court had an occasion to consider the challenge made in a writ petition under Article 226 of the Constitution of India, the committal of the

petitioner therein to prison by the Eighth Legislative Assembly to undergo simple imprisonment for two weeks for breach of privileges of the House

on account of the publication of an offending Article in the magazine ""Vaniga Ottrumal"" criticising vehemently the members of the Legislature. When

the publication was made and the question of breach of privilege was referred to the privileges committee, it was the Seventh Tamil Nadu

Legislative Assembly that was in session. On account of the dissolution of the said House on 15-11-1984, General Election were held to the State

Legislative Assembly in December, 1984 and in due course, the Eighth Tamil Nadu Legislative Assembly was constituted which pursued the action

earlier initiated by the erstwhile Legislative Assembly. When the Privileges Committee enquired the petitioner therein after giving him an opportunity

and recommended that the petitioner should be punished for the publication of the offending Article in his magazine, he filed a writ petition before

this Court which came to be initially dismissed by the learned single Judge as premature. The matter was pursued on appeal contending that the

Eighth Tamil Nadu Legislative Assembly had no jurisdiction to continue or to prosecute the matter referred to the Privileges Committee by the

Seventh Legislative Assembly which came to be dissolved subsequently and according to the petitioner therein, with the dissolution of the Seventh

Tamil Nadu Legislative Assembly, the proceedings referred to the Privileges Committee also lapsed and the petitioner therein was absolved of any

liability to be proceeded against pursuant to the report of the then Privileges Committee. The Full Bench of this Court applied the decision of the

Supreme Court in the decision reported in *M.S.M. Sharma Vs. Sri Krishna Sinha and Others*, . The Full Bench was also of the view that where

the Legislative Assembly after accepting the report of Committee of Privilege on the matter of breach of privilege decided that the person found guilty of breach of privilege should be detained in prison to undergo imprisonment for two weeks, the decision could not be challenged on the ground that the aggrieved party was not given a hearing even when his personal liberty guaranteed under Article 21 of the Constitution was violated and that the term of detention was enhanced by the Assembly from one week as recommended by the Committee of Privileges to two weeks. It may be noticed at this stage that in that case, the petitioner was heard and due opportunity was given by the Privileges Committee.

15. In the decision reported in *Asif Hameed and others Vs. State of Jammu and Kashmir and Others*, the Apex Court was concerned with the scope and doctrine of Judicial Review in the context of the scheme of separation of powers and functions of various organs of the State enshrined in the Constitution of India. It was observed therein, although the doctrine of separation of powers has not been recognised under the Constitution in its absolute rigidity but the Constitution makers have meticulously defined the functions of various organs of the State, viz., Legislature, Executive and Judiciary which have to function within their own spheres demarcated under the Constitution and that no organ can usurp the functions assigned to another. While emphasising the fact that the functioning of democracy depends upon the strength and independence of each of its organs who have all powers including that of finance, and the Judiciary has no power over sword or the purse nonetheless, it was held that the Judiciary has the power to ensure that the aforesaid two main organs of the State function within the constitutional limits, it being the sentinel of democracy and Judicial review being a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. Their Lordships have also declared the position in unmistakable terms that the expanding horizon of judicial review has taken in its fold the concept of social and economic justice and that while exercise of powers by the legislature and executive is subject to judicial restraint, the only check on the exercise of power by the Judiciary is the self-imposed discipline of judicial restraint.

16. The decision reported in AIR 1958 Assam 160 (*Harendra Nath v. Dev Kanta Barua*) was very much relied upon by the learned Advocate

General to sustain the authority of the Speaker to pass orders as has been done in this case giving directions to the Secretary of the Assembly to

call for the explanation of the petitioner herein and act for and on behalf of the House and its members in a representative capacity of the Presiding

Officer of the House. It is to be noticed from the report of the decision, that the petitioner before the Court therein was the Editor of ""Naton

Assamiya"", an Assamese daily. In the context of a news item announcing the decision of the Chief Minister of Assam to undergo a voluntary cut in

his salary to the tune of Rs. 500/- per month and the move by the members of the Assam Legislative Assembly to raise their salary to Rs. 250/-

per month excluding allowances from Rs. 150/, the then existing salary, the petitioner therein who was the Editor of the daily referred to above

wrote an Editorial commenting upon the news items under the caption ""Renunciation or Enjoyment . The said Article attracted the notice of the

Speaker of the Assam Legislative Assembly and immediately he passed an order giving a direction to the Secretary of the Assembly that a

messenger from the Secretariat might be sent that noon to Gauhati to summon the Editor and the Printer of Newspaper in question to appear

before the Privileges Committee. This order was followed by a statement made by the Speaker in the Legislative Assembly on the subject, wherein

the Speaker informed the House that his attention has been drawn to the editorial concerned and since according to him, the writing prima facie

cast reflections on the members of the House, thereby constituting contempt and breach of privileged of the members and affected the dignity of

the House, he deemed it necessary to refer the matter to the Committee of Privileges by virtue of the relevant Rules of Procedure and Conduct of

Business in the Assam Legislative Assembly, with a direction to submit its report. In that context, the petitioner therein came to the Court raising an

issue as to whether under the Rules of Procedure and Conduct of Business in the Assam Legislative Assembly, the Speaker and the Secretary of

the Legislative Assembly, in the absence of any resolution of the House, had authority to summon the petitioner to appear before the Privileges

Committee ? and whether the High Court had any power to interfere with the action taken by the Speaker as the highest functionary of the State

Legislative Assembly in protection or vindication of his rights and privileges? and whether any legal right of the petitioner therein has been infringed

by the issue of the order. While so considering the issues raised, it was held by the Division Bench of the Assam High Court that the Speaker as

the chief custodian of the powers and privileges of the State Legislature is not merely the constitutional head of the Legislature, but also the Chief

functionary thereof. He being the representative of the House itself in respect of its powers, proceedings and dignity and there is nothing which

prevented him from taking notice of such contempt or breach of privilege and set the House and the machineries thereof in motion for an

appropriate action against the offender. Of course, in the context, certain observations wide in their purport seemed to have been made holding

that the Court would not go into the matter of interpretation of the Rules, which was said to lie exclusively within the authority of the Speaker.

17. In AIR 1952 Madras 117 (In Re: Anandan), A Division Bench of this Court had an occasion to construe the scope and extent of privileges of

a member of the House who has been detained under the Maintenance of Public Order Act, in a Writ filed under Article 226 of the Constitution of

India. The Court observed that the jurisdiction under Article 226 is so wide as to permit interference not only when there has been any infringement

of Fundamental rights but also for any other purpose in exceptional cases like violation of statutory law, principles of natural justice, mala fide

discrimination against an individual to the detriment of his rights and where there is departure from standards of justice and fair play in day to day

administration. In P.N. Dua Vs. P. Shiv Shanker and Others, , it was held that any criticism about the judicial system or the judges which hamper

the administration of justice into ridicule must be prevented, although the particular speech made by the then Law Minister before a meeting of the

Bar Council of Hyderabad was held by the Court not to constitute an imminent danger of interference with the administration of justice or result in

bringing administration of justice into disrepute.

18. In State of Karnataka Vs. Union of India (UOI) and Another, , the challenge was to the notification issued under the Commissions of Inquiry

Act, 1952 issued by the Central Government, facilitating an enquiry under the said Act into the correctness of the allegations against the Chief

Minister of the State and other specified individuals. Reliance was also placed in support thereof on Article 194(3) and in those circumstances, the

Seven Judges Bench of the Supreme Court held as hereunder :--

56. It is evident, from the Chapter in which Art. 194 occurs as well as the heading and its marginal note that the ""powers"" meant to be indicated

here are not independent. They are powers which depend upon and are necessary for the conduct of the business of each House. They cannot

also be expanded into those of the House of Commons in England for all purposes. For example, it could not be contended that each House of a

State Legislature has the same share of legislative power as the House of Commons has, as a constituent part of a completely sovereign legislature.

Under our law, it is the Constitution which is sovereign or supreme. The Parliament as well as each Legislature of a State in India enjoys only such

legislative powers as the Constitution confers upon it. Similarly, each House of Parliament or State Legislature has such share in legislative power

as is assigned to it by the Constitution itself. The powers conferred on a House of a State Legislature are distinct from the legislative powers of

either Parliament or of a State Legislature for which, as already observed, there are separate provisions in our Constitution. We need not travel

beyond the words of Art. 194 itself, read with other provisions of the Constitution, to clearly reach such a conclusion.

57. There is, if we may say so, considerable confusion still in the minds of some people as to the scope of the undefined ""powers, privileges and

immunities"" of a House of a State Legislature so much so that it has sometimes been imagined that a House of a State Legislature has some judicial

or quasi judicial powers also, quite apart from its recognised powers of punishment for its contempts or the power of investigations it may carry out

by the appointment of its own committees. Arguments of the kind which have been sometimes advanced in this country could not have been

advanced if it was clearly understood that, even in England, where the Constitution is largely conventional, the exercise of judicial powers directly

by Houses of the legislature, including powers such as those of impeachment, are practically obsolete. Whatever remained of the power enjoyed

once by the High Court of Parliament, when the King could himself sit, as a part of Parliament with the Houses of Parliament, to administer justice

is now concentrated in the House of Lords, exercised through a Committee of Law Lords.

58. Every power of the House of Parliament in England is subject to an act of Parliament. The Act with which we are concerned is an Act of our Parliament. We have to satisfy ourselves by reference to our Constitution and not the British Constitution that the provisions of the Act before us are within the legislative competence of Parliament. But, if we could ignore the provisions of our Constitution relating to distribution of legislative powers, which is what the arguments based on Art. 194(3) seem to imply, we would be left with no yard-stick for determining the legislative competence of our Parliament. It would be absurd to take that view simply because that is the position in England. Nobody could, in England, question the validity of an Act of Parliament on the ground that it is in excess of the power vested in a sovereign Parliament to legislate. If we could apply that principle here the Act before us would be a sufficient answer to all argument against its validity.

59. If that principle does not apply in our country because of the provisions of our Constitution, which constitute courts judges of constitutionality of even Acts of Parliament, we have to test the provisions of the Act on the anvil of express provisions of our own Constitution and not on the erroneously supposed powers of a House of Commons in England which could never ignore or invalidate the provisions of any Act made by the Parliament there although it could play a decisive role in its repeal if it so desired.

60. A source of confusion about the "powers" and "privileges" of the House of Commons even in England was sought to be removed long ago by Sir Erskine May when he pointed out in his "Parliamentary Procedure and Practice", in 1844, that Coke's dictum and Blackstone's views, according to which the ordinary law Courts could not judge matters relating to "Lex Parliamenti" on the ground that "the High Court of Parliament hath no higher", were out of date even in 17th Century England. He said about such views :

The views belonged to a time when the distinction between the judicial and legislative functions of Parliament was undrawn or only beginning to be drawn and when the separation of the Lords from the Commons was much less complete than it was in the seventeenth century. Views about the High Court of Parliament and its powers which were becoming antiquated in the time of Coke, continued to be repeated far into the eighteenth

century, although after the Restoration Principles began to be laid down which were more in accord with the facts of the modern Constitution. But

much confusion remained which was not dismissed by the use of the phrase ""privileges of Parliament.

61. Sir Erskine May went on to indicate the three notions resulting from this ""confusion of thought"" in the course of English Constitutional history.

He wrote :

Three notions arise from this confusion of thought :

(1) That the courts, being inferior to the High Court of Parliament, cannot call in question, the decision of either House on a matter of privilege.

(2) That the *lex a consuetudo parliamenti* is a separate law, and, therefore, unknown to the Courts.

(3) That a Resolution of either House declaratory of privilege is a judicial precedent binding on the courts.

62. Now, what learned counsel for the Plaintiff seemed to suggest was that Ministers, answerable to a Legislature were governed by a separate

law which exempted them liabilities under the ordinary law. This was never the law in England. And, it is not so here. Our Constitution leaves no

scope for such arguments, based on a confusion concerning the ""powers"" and ""privileges"" of the House of Commons mentioned in Arts. 105(3)

and 194(3). Our Constitution vests only legislative power in Parliament as well as in the State Legislatures. A House of Parliament or State

Legislature cannot try anyone or any case directly, as a Court of justice can, but it can proceed quasi judicially in cases of contempts of its

authority and take up motions concerning its ""privileges"" and ""immunities"" because, in doing so, it only seeks removal of obstructions to the

performance of its legislative functions. But, if any question of jurisdiction arises as to whether a matter falls here or not, it has to be decided by the

ordinary Courts in appropriate proceedings. For ex-ample, the jurisdiction to try a criminal offence, such as murder committed even within a

House vests in ordinary criminal courts and not in a House of Parliament or in a State Legislature. In *Smt. Indira Nehru Gandhi Vs. Shri Raj*

Narain and Another, , this Court held that a House of Parliament cannot, in exercise of any supposed ""powers"" under An. 105, decide election

disputes for which special authorities have been constituted under the

Representation of the People Act, 1951, enacted in compliance with Art.

329. Similarly, appropriate provisions for appointments of suitable persons, invested with power to determine, in accordance with a procedure

which is fair and just and regular and efficient, for ascertainment of facts on matters of public importance, is provided by the Act. If such provisions

are covered by specific provisions relating to legislative competence of Parliament and one of the items in Central List I or the Concurrent List HI

of the Seventh Schedule of the Constitution, we need not go to other provisions which would, strictly speaking not be relevant unless they could be

relied upon to clearly carve out some exception operating against such legislative competence.

19. In the decision in *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, , the Surpeme Court

held as hereunder :--

13. The last violation regarded as a lethal objection is that the Board did not enquire of the respondent, independently of the one done by the

Regional Inspector. Assuming it to be necessary, here the respondent has, in the form of an appeal against the report of the Regional Inspector,

sent his explanation to the Chairman of the Board. He has thus been heard and compliance with Reg. 26, in the circumstances, is complete.

Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded

against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each

situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities

and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No

man shall be hit below the belt -- that is the conscience of the matter.

14. Shri Gambhir, who appeared as *ami-cus curiae* and industriously helped the Court by citing several decisions bearing on natural justice, could

not convince us to reach a contrary conclusion. It is true that in the context of Article 311 of the Constitution this Court has interpreted the quality

and amplitude of the opportunity to be extended to an affected public servant. Certainly we agree with the principles expounded therein. But then

we cannot look at law in the abstract or natural justice as a mere artifact. Nor can we fit into a rigid mould the concept of reasonable opportunity,

Shri Gambhir cited before us the decisions *State of Gujarat Vs. R.G. Teredesai and Another*, ; *The Management of D.T.U. Vs. Shri B.B.L.*

Hajelay and Another, and *Krishna Chandra Tandon Vs. The Union of India (UOI)*, and one or two other rulings. The ratio therein hardly militates

against the realism which must inform "reasonable opportunity" or the rule against bias. If the authority which takes the final decision acts

mechanically and without applying its own mind, the order may be bad, but if the decision-making body, after fair and independent consideration,

reaches a conclusion which tallies with the recommendations of the subordinate authority which held the preliminary enquiry, there is no error in

law. Recommendations are not binding but are merely raw material for consideration. Where there is no surrender of judgment by the Board to the

recommending Regional Inspector, there is no contravention of the canons of natural justice. We agree with Shri. Gambhir that the adjudicating

agency must indicate in the order, at least briefly, why it takes the decision it does, unless the circumstances are so clear that the concluding or

decretal part of the order speaks for itself even regarding the reasons which have led to it. It is desirable also to communicate the report of the

Inquiry Officer, including that part which relates to the recommendation in the matter of punishment, so that the representation of the delinquent

may be pointed and meaningful.

20. On a careful consideration of the submissions of the learned counsel appearing on either side in the light of the principles laid down in the above

decisions, we propose to take up first for consideration the question as to the scope and extent of interference by Courts exercising jurisdiction

under Article 226 of the Constitution of India in matters of the nature concerning the legality, propriety and constitutionality of the action taken in

the purported exercise of the privileges of the House of legislature engrafted in Article 194(3) of the Constitution of India. It is by now well settled

and there could be no serious controversy over the position so well reiterated by more than one decision of the Supreme Court that the constitution

reigns supreme and the rights, powers and privileges of the various limbs of the State are subject to the provisions contained in the Constitution, the

basic and fundamental law which provides for the governance of the State. It is equally well settled that the final authority to state the meaning of the constitution and to settle constitutional controversies exclusively belongs to the Supreme Court and the High Courts which are constituted as the sentinels of both the Constitution and the democracy as well as the fundamental rights of the citizen -- inclusive of their life, liberty and freedom. That apart, the legislatures in India have to function within the limits prescribed by the material and relevant provisions of the Constitution of India and adjudication of any dispute as to whether legislative authority has been exceeded- or fundamental rights have been contravened is solely and exclusively left to the Judicature of this Country and, therefore, inevitably the decision about the construction of Article 194(3) of the Constitution, the privileges, powers and immunities claimed or action taken in vindication thereof cannot be said to be in the exclusive domain or of the sole arbitral or absolute discretion of the House of legislature. Of course, the Courts having regard to their own self-imposed limits would honour the sentiments particularly keeping in view the plenary powers of the Legislature within the constitutionally permitted limits so long as such action of the Legislature does not result in the negation of the fundamental rights secured under the Constitution or the life, liberty, freedom and dignity of the citizen. The all powerful postures or claims of sky-high powers or suzerain claims of sovereignty or over-lordism are to be brushed aside as nothing but fossils of the tyrannical and anarchical past and not in keeping tune with the basic and fundamental principle of rule of law, the bedrock of the Constitution or the democratic ideals which are the avowed object of the Republic ushered in by the Constitution of India. The contentions to the contrary have no basis or recognition of law and do not have the merit of acceptance by Courts in this Country.

21. The further question that requires to be considered before ever embarking upon the issue relating to the propriety of the decision taken in this case by the House of the alleged breach of privilege or the contempt of the authority of the House or its members on the peculiar facts and circumstances of the case, is as to whether the House has acted in conformity with the Rule of law in taking an action or resolving to decide and impose a punishment on a citizen resulting in the deprivation of his life or personal liberty. It is an axiomatic principle firmly incorporated in and

which permeates the provisions of our Constitution that no person shall be deprived of his life or personal liberty except according to procedure established by law and the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Consequently, no law or procedure laid down by Law or the action taken thereunder can be arbitrary or irrational or oppressive and the requirement of compliance with the principles of natural justice are implicit in Article 21 and every action of the State has to be tested on the anvil of Articles 14, 19 and 21 read together, (vide : AIR 1978 SC 597 : Maneka Gandhi's case; AIR 1988 SC 1531 : Antulay's case). No immunity can be claimed from the scrutiny of this Court to see whether any Act or action of the legislature as in the case of the other limb of the State, violator the above cardinal principles.

22. Shorn of the merits of the claim made as to whether the publication in question constitutes actually a breach of privilege of the House or the members of the House or amounts to contempt of the authority of the House, it becomes necessary to consider whether there was due observance of law within the meaning of Articles 14 and 21 of the Constitution of India before visiting the petitioner with the punishment indisputably resulting in the negation of his personal liberty. The Tamil Nadu Legislative Assembly Rules prescribe for the procedure for dealing with the question of privilege of the House or its members (vide : Rules 219 to 229) and the Residuary powers of the Speaker (vide : Rule 286). The Rule relating to the Residuary powers stipulates that all matters not specially provided in the Constitution or in those rules and questions relating to the detailed working of those rules shall be regulated in such manner as the Speaker may from time to time direct. The rules relating to privileges committee provided that a member may with the consent of the Speaker raise a question involving a breach of privilege either of a members or of the House and on the Speaker giving his consent it should be raised at the appropriate stage of the proceedings, specified therein. On being so allowed a motion may be allowed to be made that the alleged breach of privilege be referred to the Committee of Privileges or in the alternative that it be dealt with by the House itself. Notwithstanding those provisions the Speaker was also enabled to suo motu refer any question of privilege to the

Committee of Privileges for examination, investigation and report. The report of the Committee of Privileges shall be presented to the Assembly

and thereafter a motion may be made that the report be taken into consideration and after such motion has been carried, a move shall be made that

the Assembly agrees or disagrees or agree with amendments, if any, with the recommendations contained in the report.

23. So far as the facts of the present case are concerned to which a detailed reference has been made even in the beginning, the moment a member

has brought to the notice of the Speaker and raised the issue the then Speaker appears to have made a statement about the offending nature of the

publication itself and declared that he demands on behalf of the Members of the House and order the Journal in question to publish in the front

page their apology for the publication in question making it also known that on failing to do so, summary sentence will be passed by the House

itself. It appears that there were cheers at that stage, as seen from the record of the proceedings. This record of events as transpired in the House

only confirms the plea of the petitioner that the alleged guilt of the petitioner has been decided and pronounced upon by the then Speaker himself

and declaration to that effect was made by him even before any opportunity to show cause or a hearing was given to the petitioner, and what was

proposed to be communicated to the petitioner and demanded of him was the apology to be expressed by another publication on threat of

imposition of a summary sentence by the House itself, on the petitioner failing to do so. The communication dated 31-3-1987 which emanated

from the third respondent thereafter also confirms the position that the then Speaker has made an order in the Assembly in this regard. This

position is further confirmed by the then Speaker himself even in the proceedings held on 4-4-1987, as could be seen from the record of

proceedings, that the magazine has failed to comply with the order to publish an apology in response to the ruling given by him. The record of

proceedings dated 6-4-1987 places this aspect of the matter beyond any controversy wherein it is found that in the teeth of certain objections

raised by some of the members of the manner of decision, the then Speaker affirmed stating that the punishment was given after enquiring with

them meaning thereby, some of the members. The leader of the House (Dr. Era. Nedun-chezhian) also refers to the decision taken on 29-3-1987

to be the decision of the then Speaker. The petitioner in his subsequent article in the issue of the magazine dated 5-4-1987, more as a matter of

explanation to the readers of the magazine also has been critical of the pre-determined and authoritarian nature of the decision arrived at by the

then Speaker himself even before and without even giving an opportunity to the petitioner and lamenting upon the futility of giving even any

explanation at that stage. After the speeches made by some of the members who were permitted to participate by making such speeches the

House was said to have considered and passed a resolution, holding that after consideration it was resolved that the magazine in question, by

publishing the offending cartoon, had committed breach of privilege of the House and consequently decided to arrest and detain the petitioner in

the Central Jail at Madras for undergoing three months rigorous imprisonment.

24. These events, as disclosed in the record of proceedings of the House for relating to the relevant dates leave no room for any doubt or any

serious controversy that it is the then Speaker who appears to have himself given the ruling on the culpability and offending nature of the publication

and made an order demanding the publication of an apology also. This position gets confirmation from the fact that unlike the record of

proceedings dated 4-4-1987 specifically stating that the motion or resolution has been passed and the proceedings dated 6-4-1987 recording that

the House accepted the move of the then Speaker by raising sound on thumping the tables -- conspicuously, the record of proceedings dated 28-

3-1987 disclose that there were merely cheers after the ruling of the Speaker about the offending nature of the publication and the order made by

him for the demand of an apology. The Constitution Bench of seven learned Judges of the Supreme Court in the decision reported in A.R. Antulay

Vs. R.S. Nayak and Another, has declared that no man is above the law and no man can be denied his rights under the Constitution and the laws

and a man has a right to be dealt with in accordance with law and not in derogation of it. While adverting to the serious consequences flowing from

the non-adherence to the principles of natural justice Their Lordships of the Supreme Court specifically noticed the fact that on an earlier occasion,

certain directions came to be passed without hearing the appellant in the case before the Court, though such an order came to be passed in the

presence of the counsel for the appellant and that the appellant had a right not to suffer any order passed behind his back, though by a Court, in

violation of the basic principles of natural justice. Their earlier pronouncement in *Nawabkhan Abbaskhan Vs. The State of Gujarat*, was referred to

for the proposition that an order passed without hearing a party which affects his fundamental rights is void. Even the record of proceedings

disclose that the then Speaker passed orders and gave his ruling unilaterally and commanded the petitioner to convey his apology or threat of

summary imposition of sentence. The proceedings dated 4-4-1987 of the House by means of a resolution to which a reference has already been

made, do not have the consequence of rectifying the serious lapse or redeem the action taken to punish the petitioner by detaining him in prison, of

the patent illegalities committed at every stage. *Suo motu* the Speaker of the House has power only to refer the question to the privileges

committee and not to record a verdict on the very question. The Residuary Powers of the Speaker also will not come to his rescue in the teeth of

any provision in the Constitution or the Rules themselves and that too in the matter of detailed working of the Rules and not otherwise. There had

been, in our view, gross violation of law as also the principles of natural justice in dealing with the case of the petitioner and punishing him with

imprisonment and the entire procedure adopted in this case smacks of arbitrariness and oppresiveness besides the same being most unreasonable.

While denying the personal liberty of the petitioner, a citizen of this country, even the elementary procedure established by law does not appear to

have been adhered to. The principles laid down or observation made in the context of a cancellation of a certificate under the Coal Mines

Regulation, 1957 in the decision in *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, and that

too on the peculiar facts of the case cannot be invoked in the case on hand involving a serious violation of the personal liberty of a citizen. The

observations of the Division Bench of the Assam High Court in the decision reported in AIR 1958 Assam 160 (*supra*) have to be confined to the

facts of that case and some of the observations made therein apart from being couched in wide language cannot be approved or accepted on

account of the subsequent declaration of law made by the Apex Court in the various other decisions referred to above. For all the reasons stated

above, we are of the view that there had been gross violation of the fundamental rights of the petitioner secured under Arts. 14 and 21 of the

Constitution in imposing the sentence of rigorous imprisonment for three months and on this ground alone, the condemnation of the petitioner as

also the punishment imposed are declared to be unconstitutional and null and void.

25. In the view we have taken as to the validity of the action taken by the Speaker and the Legislature, we do not think it necessary to consider the

question whether the cartoon published by the petitioner is in breach of the privilege of the House or in contempt of the House. However, we wish

to point out that the question whether a particular cartoon would amount to breach of privilege or contempt depends on the facts and

circumstances of each case. There cannot be a general rule either way regarding cartoons.

26. The next question to be considered is as to whether the petitioner is entitled to an order for payment of compensation for his UP lawful

detention during the period between 4-4-1987 and 6-4-1987 on which day he was set at liberty. Reliance has been placed upon some of the

decisions of the Supreme Court and particularly those reported in Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, : Smt.

Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, and Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others,

the Supreme Court was considering a claim for the award of compensation in favour of a mother whose son suffered "custodial death" after being

taken by the police in custody, and it was held therein that the relief of monetary compensation, as exemplary damages, in proceedings under An.

32 by the Supreme Court or under Art. 226 by the High Courts for established infringement of the indefeasible right guaranteed under Art. 21 of

the Constitution of India is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and

indefeasible rights of the citizen. The payment of compensation in such cases, it was held, is not to be understood as it is generally understood in a

civil action for damages under the private law but in the broader sense of providing relief by an order of making "monetary amends" under the

public law for the wrong done due to breach of public duty of not protecting the fundamental rights of the citizen. In Bhuvneshwar Singh Vs. Union

of India (UOI) and Others, , the Supreme Court was concerned with the validity of pre-trial detention of a Sepoy in the Indian Army beyond three months without the approval of the Central Government. After holding that such detention was illegal, the Supreme Court declared that it would be appropriate to award him adequate compensation for violation of his fundamental right of personal liberty as guaranteed by Art. 21 of the Constitution and awarded Rs. 30,000/- as compensation for his illegal pre-trial detention.

27. The learned Advocate-General, in traversing the above claim on behalf of the petitioner, contended that there could be no analogy drawn on the basis of those cases to the case on hand and the principle of awarding compensation would be inappropriate to cases of the nature under consideration. According to the learned Advocate-General, a collective body like the State Assembly as constituted and then in existence, which is not part of the executive but a distinct entity by itself resolved to detain the petitioner and that particular body is no longer in existence to answer the claim for compensation or for being saddled with any monetary liability. It is also the plea of the learned Advocate-General that in the cases referred to by the learned counsel for the petitioner the liability was found to be that of the Administrators due to their recklessness or unlawful activities, and therefore the executive limb of the State was saddled with the liability for the lapse or act of commission and omission of its officers and therefore this is not a case where any one or more than one individual could be accused of or made answerable to the resolution passed by an erstwhile House, with totally different composition and constitution. The release was also said to amount to a revision or reconsideration and application of the punishment meted out to the petitioner.

28. We have carefully considered the submissions made by the learned Advocate-General and the learned counsel for the petitioner. In the light of our declaration that the indictment as well as imposition of sentence on the petitioner and consequential arrest and his detention in the Central Prison from 4-4-1987 till he was released on 6-4-1987 was unconstitutional and void in law, the petitioner is entitled to redress; in the shape of "monetary amends" under the public law for the wrong done to the citizen. The fact that such wrong came to be done on the basis of a resolution

of a body like the House of a Legislature which no longer exists is no legal or sufficient answer to deny the entitlement of the petitioner in this regard. Redress in law even in its ordinary meaning must be an effective reparation or compensation for the wrong sustained. The claim for and grant of damages in a matter of the nature for the wrongful imprisonment would include loss of earnings consequent on the imprisonment and recompense for the inconvenience and distress suffered during the imprisonment. Otherwise, the mere declaration granted by this Court on paper would really be an exercise in futility. The provisions of Art. 12 of the Constitution define the State to include the Government and the respective Legislatures to each of the State also among other entities and authorities. Article 154 of the Constitution vests the executive power of the State in the Governor to be exercised by him directly or through officers subordinate to him in accordance with the Constitution and Art. 168 which deals with the Constitution of Legislature in State declares that for every State there shall be a Legislature which shall consist of the Governor and one House, So far as the State of Tamil Nadu is concerned, the extinction of a particular House consequent upon the expiry of the term by efflux of time or dissolution and the reconstitution of the House after General Elections, therefore, cannot be considered to create a vacuum or absolve the "State" of its responsibilities and duties for any violation or offending action taken against a citizen by the House, the number of which ran out of office. The petitioner has impleaded as first respondent to the above writ petitions the State of Tamil Nadu represented by its Chief Secretary to the Government. The Legislature being a limb of the "State", and the executive has the repository power of the "State" have a duty and obligation to discharge all or any of the commitments imposed on the "State" on account of the functioning of another limb like the Legislature. Consequently, the stand taken by the learned Advocate-General does not appeal to us for the merit of our acceptance. The resolution dated 6-4-1987 does not therefore cancel the earlier resolution dated 4-8-1987 but merely directs release taking into account the period of sentence already undergone. It appears more to be a communication than cancellation.

29. As for the quantum of compensation to be awarded, we are to state that the petitioner has not claimed any particular sum except claiming to be

compensated. Even during the time of hearing, no specific claim with reference to any particular amount or any details or basis for any such claim

for a particular amount has been made. In such circumstances, it has to be taken that the object of the petitioner was merely more to vindicate his

honour than to really obtain to the last pie compensation for the loss of earnings or for the inconvenience caused during the period of imprisonment.

Having regard to the above, we consider it sufficient to award a sum of Rs. 1,000/- as a notional or token compensation by way of "monetary

amends" to the breach of the fundamental rights of the petitioner in vindication of his stand. Respondents 1 and 3 shall ensure the payment to the

petitioner. Consequently, we answer the questions referred to the Full Bench as hereunder :--

Questions Nos. 1 and 2 are answered in the negative.

30. The writ petitions are ordered on the above terms. No costs.

31. Reference answered accordingly.