

(2013) 10 MAD CK 0072

In the Madras High Court

Case No : Writ Appeal No. 1287 of 2013

V.C. Chandhira Kumar Member of Legislative Assembly Erode
East Constituency and Others

APPELLANT

Vs

Tamil Nadu Legislative Assembly Secretariat and The Hon'ble
Speaker The Tamil Nadu Legislative Assembly Secretariat Fort
St. George

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2013) 6 CTC 506

Hon'ble Judges : R.K. Agrawal, Acting C.J.; M. Sathyanarayanan, J

Bench : Division Bench

**Advocate : K.M. Vijayan, for Mr. V.T. Balaji, for the Appellant; A.L. Somayaji
Advocate General Amicus Curiae Assisted by Mr. S.T.S. Moorthy, Government
Pleader and Mr. T.N. Rajagopalan, Special Government Pleader, for the
Respondent**

Final Decision : Dismissed

Judgement

1. The petitioners in W.P. No. 10175/2013, are the appellants and challenging the vires of the Resolution dated 26.3.2013, passed in the House

of Tamil Nadu Legislative Assembly, by and under which, they have been suspended for a period of six months and the salary and other

allowances during that period, have been withheld, filed the above said writ petition and it was dismissed on 5.6.2013. The writ petitioners

aggrieved by the said order, had filed this writ appeal. **BACKGROUND FACTS:**

1.1. The facts leading to the filing of the writ petition have been narrated in detail, in the order passed in the writ petition, and therefore, it is not

necessary to restate the entire facts except to briefly state certain facts, which are relevant for the purpose of disposal of this writ appeal.

1.2. The appellants/writ petitioners, who are six in number, belong to Desiya Murpokku Dravida Kazhagam (DMDK) and they are Members of

the Tamil Nadu Legislative Assembly from May, 2011, and represent the respective Constituency, from where, they got elected.

1.3. The first appellant is the Whip of the Party and the party, in which, he belongs, is declared as the ""Opposition Party"" in the Legislature and in

the Assembly Election held during May, 2011, 29 members belonging to the said Party, were elected as Members of the Tamil Nadu Legislative

Assembly (MLAs), out of which, 4 without resigning from the Party, started behaving independently with an intention to cause split to the political

party viz. DMDK. One such member viz. Thiru. Tamilalazhagan, got elected from the Thitakudi Constituency and 3 others viz. Thiru. Michael

Rayappan, Thiru. R. Sundarajan and Thiru. Arunpandiyan, without getting permission from the Whip of the party viz. the first appellant herein, but

with the permission of the Speaker, who according to the appellants herein, was carrying on colourable exercise of power, started making

statements in support of the Ruling Party and also made threatening statements against the members of the DMDK Party and their activities caused

disturbance and discomfort in the minds of the other Members of the said Party and they have also agitated.

1.4. On 8.3.2013, the provocation was passed by Mr. Tamilalazhagan and other MLAs viz. Tvl. Michael Rayappan, R. Sundarajan and

Arunpandiyan, and they were ably supported by the MLAs belonging to the Ruling Party, and in this regard, the Speaker of the Legislative

Assembly by invoking Rule 226 of the Tamil Nadu Legislative Assembly Rules, had referred the matter alleging breach of privilege, to the Privilege

Committee for the purpose of investigation and submission of report. The MLAs viz. The appellants herein, along with Tvl. Parthiban, Sekar and

Muthukumar were also said to have been involved in the alleged breach of privilege.

1.5. According to the appellants, the Privilege Committee has conducted proceedings without issuing any notice to the appellants herein and in

gross violation of principles of natural justice, fair play and good conscience, gave its report stating that the appellants are guilty of breach of

privilege. As per the majority opinion of the Privilege Committee, it was recommended that the appellants, who had indulged in acts of assaulting a

Member inside the house, have to be suspended for a period of one year and during that period, are also not eligible to receive salary and other

allowances and the said report dated 21.3.2013, was placed before the Assembly and was put to vote and by majority, it was accepted.

1.6. The Hon''ble Speaker of the Assembly announced that as per the Resolution passed, the appellants have been suspended from the Assembly

for a period of one year from that date and during that period, are ineligible to receive salary and other allowances. On 26.3.2013, the Leaders of

the other Political Parties made a request for remission of the suspension period and the Hon''ble Chief Minister, taking into consideration the said

plea, recommended that the period of punishment is to be reduced to six months. Once again, a resolution was moved, wherein, it has been

resolved to reduce the punishment to six months and it was further resolved that during that period, they were ineligible to receive salary and other

allowances, etc. The appellants challenging the vires of the said resolution, filed the writ petition.

1.7. The second respondent has filed the counter stating among other things, that one Mr. K. Tamilalagan, MLA, belonging to DMDK Party, was

speaking inside the Floor of the Assembly with the permission of the Speaker and intimidation was made and attempts were made to physically

assault and Mr. Michael Royappan, MLA, also belonging to DMDK Party, who sought to intervene, was assaulted and the said unruly incident

happened in full view of the House in the presence of MLAs, media persons and other visitors, who had seen the same from the galleries, and

though it was open to the House to pass a resolution, suspending them and to withhold their salary and other benefits, the Speaker did not do so

and by acting in a fair and unbiased manner, referred the issue to the Privilege Committee consisting of members from all political parties.

1.8. It is further stated in the counter, that on the same date, on which the incident took place, i.e., 8.2.2013, the first appellant had given his

written explanation with regard to his version, to the Hon''ble Speaker of the Assembly and it was also signed by other members belonging to the

said Political Party. Thiru. Michael Royappen, MLA, belonging to the same Party, had also given his version/explanation with regard to the incident

and both the representations were also taken into consideration by the Privilege Committee.

1.9. The second respondent further stated that since the Assembly proceedings are covered through videos also, the video footage was viewed by the members including Thiru. Parthiban, and thereafter, it has been decided to proceed only against the appellants, who were involved in such a kind of activity inside the Floor of the House.

1.10. It is further stated in the counter, that the principles of natural justice have been followed strictly and the explanation given by the first appellant and countersigned by other MLAs, was also taken into consideration and the Privilege Committee by majority opinion, has found that the appellants are guilty of breach of privilege and recommended the punishment for one year suspension with withholding of salary and other benefits and it was also placed before the House and was put to vote and the House has also by a majority opinion, accepted the report submitted by the Privilege Committee, and imposed the punishment as recommended and thereafter, the Leaders belonging to the political parties, made a request for remission of the punishment and the Hon"ble Chief Minister, taking into consideration the sentiments expressed by the Leaders of various political parties, suggested that the period of punishment may be reduced to six months and it was once again, put to vote and it was passed.

1.11. Insofar as the legal issues raised by the appellants/writ petitioners, the second respondent submitted that all the legal issues have been considered and answered by the Hon"ble Supreme Court of India in the decision reported in Raja Ram Pal Vs. The Hon"ble Speaker, Lok Sabha and Others, and the decisions of this Court reported in A.K. Bose, M.L.A., 225-B, Jeeva Nagar, Second Street, Jaihindpuram, Madurai -11 Vs. Tamil Nadu Legislative Assembly and The Speaker, Tamil Nadu Legislative Assembly and in Vijayakant Vs. Tamil Nadu Legislative Assembly, and prayed for dismissal of the writ petition.

2. FINDINGS RENDERED IN THE WRIT PETITION:

2.1. The learned Single Judge has formulated the following questions for consideration:

- a) Whether the entire proceedings are vitiated and are liable to be set aside on the ground of violation of principles of natural justice?
- b) Whether the State Legislature has the power and privilege under Article 194 to suspend the writ petitioners?

c) If the answer is affirmative for question number (b) then, whether the writ petitioners could be suspended for more than 60 days in the light of

Article 190(4) of the Constitution of India?

d) Whether the privilege is restricted to what happened inside the four walls of the Assembly and whether it can travel outside the Assembly?

e) Whether the Legislative Assembly has the power to suspend the salary and other benefits of a Member including their right to vote in the Rajya

Sabha in the capacity of a Member of the Assembly?

2.2. The learned Single Judge, after exhaustive analysis of the factual aspects and legal position, held as follows:

(a) The learned Single Judge answered Question No. (a) in the following manner:

(i) The writ petitioners/appellants are not able to show how they have been seriously prejudiced and affected by not issuing a notice to them,

getting their explanation, giving a report and thereafter, passing the order.

(ii) Though some principles of natural justice have been followed, if not in its entirety, the same have not vitiated the proceedings and further, an

opportunity of representing their case was availed by the writ petitioners themselves and their case was very well articulated by their own Member

(Thiru. Parthiban) in the Privileges Committee.

(iii) The appellants/writ petitioners have not established as to the prejudice caused to them, on account of non-supply of copies of the report to the

other Members of the Assembly.

(b) The learned Single Judge while answering Question No. (b), has taken into consideration the decision in Raja Ram Pal's case (cited supra),

and the decision reported in Amarinder Singh Vs. Special Committee, Punjab Vidhan Sabha and Others, and held that the State Legislature has

the power and privilege under Article 194(3) of the Constitution of India to suspend the writ petitioners.

(c) The learned Single Judge on Question No. (c), held that the arguments advanced on behalf of the writ petitioners, that suspending a Member

for more than 60 days would be ultra vires of Article 190(4) of the Constitution of India is farfetched and misconceived and gave a finding that the

State Legislature has power and privilege to suspend a Member for more than 60 days and it does not in any way offend Article 190(4) of the

Constitution of India.

(d) The learned Single Judge while answering Question Nos. (d) and (e), has taken into consideration the decision reported in *Vijayakant Vs.*

Tamil Nadu Legislative Assembly, and held that denial of salary and other privileges like voting in an election, are not constitutional rights nor the

fundamental rights and in such circumstances, it is not open to the petitioners to contend that their rights are affected and consequently, impugned

proceedings are liable to be quashed.

2.3. The learned Single Judge in the light of the reasons assigned, both on facts and in law, has held that the questions/issues raised by the writ

petitioners, were already answered in the above cited judgments and there are no merits in their contentions and hence, dismissed the writ petition

vide impugned order dated 5.6.2013, and challenge is made by filing this writ appeal.

3. SUBMISSION AND DISCUSSION:

3.1. Since the writ petition has been dismissed on merits, the learned Senior Counsel appearing for the appellants, made a challenge to that order

by putting forth the very same contentions. The questions formulated for disposal of the writ petition, are once again considered in this writ appeal

also.

3.2. QUESTION No. (a):

Whether the entire proceedings are vitiated and are liable to be set aside on the ground of violation of principles of natural justice?

3.3. It is the submission of the learned Senior Counsel appearing for the appellants, that none of the appellants/writ petitioners were issued with

notice with regard to the alleged breach of privilege by the Privilege Committee before conducting investigation, enquiry and submission of its

report under Rule 229 of the Tamil Nadu Legislative Assembly Rules. It is the further submission of the learned Senior Counsel appearing for the

appellants, that the report of the Privilege Committee ultimately led to the passing of the resolution by the House on 25.3.2013 and 26.3.2013

respectively, under which, the writ petitioners were suspended from the Assembly for one year and their salary and other emoluments were also

ordered to be withheld and since the said proceedings had resulted in gross civil consequences, the appellants should have been put on notice; but,

it was not done and therefore, the entire proceedings are vitiated.

3.4. The learned Advocate General acting as the Amicus Curiae, has submitted that the fact remains, immediately, a representation by the

appellants and other members belonging to the Party, was submitted to the Speaker and during the course of the proceedings before the Privilege

Committee, video coverage/clipping of the particular incident was also shown and one of the Members of DMDK Party viz. Thiru. Parthiban, had

also participated in the proceedings and the representation submitted by Thiru. Michael Rayappan, another Member, was also taken into

consideration and the Privilege Committee on due application of mind to the entire materials placed before it, thought fit to arrive at a conclusion

that there was a breach of privilege and accordingly, recommended the punishment and the report was placed before the Assembly, wherein, all

the Members participated in the discussion and resolution was passed suspending the appellants for a period of one year and withholding of

salaries and other emoluments and on the intervention of the Hon''ble Chief Minister, it was reduced to six months and therefore, it cannot be said

that the principles of natural justice have been violated in toto.

3.5. The Hon''ble Supreme Court of India in a catena of decisions, reported in Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam

Gurumurthy Sastry and Others, and Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Others, , held that adherence of principles of

natural justice cannot be put in a straightjacket formula, but compliance with the doctrine, is solely dependent upon the facts and circumstances of

each case and the totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action

suffers from the vice of non-compliance of doctrine, the Courts in that event, ought to set right the wrong inflicted upon the person concerned and

to do so would be a plain exercise of judicial power.

3.6. The rules of natural justice or the duty to act fairly are regarded as having that degree of flexibility that enables the Courts to adapt the

procedural obligations of an administrative body to the characteristics of the power that it exercises, as held in (1974) Q.B. 523 (Maxwell V.

Department of Trade and Industry). In some cases, the Courts have held that the statutory provisions for an administrative appeal or even full

judicial review on merits are sufficient to negative the existence of any implied duty to hear before the original decision is made.

3.7. After the commotion took place on the Floor of the Assembly, representations were submitted by the appellants as to their versions and

similarly, representations were also given by the Legislators, who, according to the appellants, were acting against the interest of the political party.

Before the Privilege Committee, video recordings/clippings were played number of times and the coverage was viewed by the Members of the

Privilege Committee, who represent almost all political parties, and Thiru S.R. Parthiban, MLA, DMDK Party, who supports the cause of the

appellants, also took part in the proceedings.

3.8. This Court has also perused the report of the Privilege Committee and it would disclose that initially, the appellants 1 and 2 along with Tvl.

Venkatesan, Parthiban, Sekar and Muthukumar, has done some acts, which undermined the majesty of the House, and the Hon''ble Speaker has

passed an order stating that the proceedings of the Legislative Assembly at the relevant point of time, which was recorded, have to be seen, and

thereafter, action should be taken against the concerned Members. The first appellant and other 22 Members belonging to DMDK Party, had

given their complaint on 8.2.2013, to the Hon''ble Speaker and similarly, the MLAs belonging to the Opposite Party viz. Tvl. C. Michael

Rayappan, R. Sundarajan and Arunpandiyan had also given their complaints against the appellants and other MLAs. Before the Privilege

committee, the video recordings were shown and it disclosed that the appellants had participated in the alleged act and Thiru. S.R. Parthiban, who

belongs to the group of the appellants herein, had also seen the video footage and he confirmed the factum of presence of the appellants herein at

the relevant point of time. The video footage was repeatedly played and the Privilege Committee opined that Thiru. Michael Rayappan was

surrounded by Tvl. T. Murugesan, V.C. Chandhirakumar, S. Senthilkumar, P. Parthasarathi, R. Arulselvan and V. Muthukumar and attacked him

and Thiru. S.R. Parthiban, who belongs to the group of the appellants herein, did not participate and therefore, the finding has been arrived at

about the participation of the appellants in the incident. The Privilege Committee has also taken into consideration the legal position vis-a-vis the

factual aspects and the earlier decisions of this Court in the matter of Thiru O.S. Manian and Thiru A.K. Bose and recommended that the

appellants have to be suspended for a period of one year and during that period, they should not be paid with salary or other privilege. Thereafter,

the matter was placed on the Floor of the House and it was put to vote and through voice vote, the resolution was passed, under which, the

appellants were suspended for a period of one year with a corresponding withholding of their salary and other privileges. In the Forenoon of

26.3.2013, Dr. S.K. Tamilarasan, a Member of a particular political party, made a request for reduction of punishment and there was a discussion,

in which, Dr. M.H. Javashirullah, one of the MLAs of a political party, has also participated and other Members had also participated and after a

full-fledged discussion, the Hon''ble Chief Minister suggested that the punishment shall be reduced from one year to six months and it was put to

voice vote and by a majority vote, the resolution for modification of the punishment was passed and it was reduced to six months with the

corresponding withholding of salary and other privileges.

3.9. In the celebrated decision rendered by the Hon''ble Supreme Court of India and reported in Raja Ram Pal Vs. The Hon''ble Speaker, Lok

Sabha and Others, , the facts would disclose that the acts on the part of the 9 MPs of Lok Sabha and 1 MP of Rajya Sabha were put under

scanner, as per the sting operation carried out by a private channel, that they had accepted money directly or through middlemen, as consideration

for raising certain questions in the House or for otherwise espousing certain causes for those offering the lucre and it was referred to the Privilege

Committee and the Privilege Committee concluded that incriminating evidence was available and it was placed on the Floor of the House and a

motion was adopted by the Lok Sabha resolving to expel the 10 Members from the membership of Lok Sabha and challenge was made by them

as to the said action. The following questions arose before the Hon''ble Supreme Court of India:

1. Does this Court, within the constitutional scheme, have the jurisdiction to decide the content and scope of powers, privileges and immunities of

the legislatures and its Members?

2. If the first question is answered in the affirmative, can it be found that the

powers and privileges of the legislatures in India, in particular with reference to Article 105, include the power of expulsion of their Members?

3. In the event of such power of expulsion being found, does this Court have the jurisdiction to interfere in the exercise of the said power or

privilege conferred on Parliament and its Members or committees and, if so, is this jurisdiction circumscribed by certain limits?

3.10. It is useful and relevant to extract the following portions of the above said Constitution Bench decision:

It is always expected, rather it should be a matter of presumption, that Parliament would always perform its functions and exercise its powers in a

reasonable manner. Having regard to the importance of the functions discharged by the legislature under the Constitution and the majesty and

grandeur of its task, there would always be an initial presumption that the powers, privileges, etc. have been regularly and reasonably exercised,

not violating the law or the constitutional provisions, this presumption being a rebuttable one.

...

The scope for judicial review in matters concerning parliamentary proceedings is limited and restricted. Parliament indeed is a coordinate organ and

its views do deserve deference even while its acts are amenable to judicial scrutiny. The expediency and necessity of exercise of power or privilege

by the legislature are for the determination of the legislative authority and not for determination by the courts. The area of powers, privileges and

immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the

traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the Court would confine itself

to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards such as on grounds of lack of

jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance

with rules of natural justice and perversity.

....

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

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

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

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

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

judicial or quasi-judicial decision;

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

determination by the courts;

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

judicature;

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

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

the constitutional provisions, this presumption being a rebuttable one;

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

standards to review exercise of its power;

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

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

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

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

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

the citizens;

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

constitutional provisions is not correct;

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

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

consequences;

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

Constitution;

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

constitutional provisions, for example Article 122 or 212;

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

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

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

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

ground of irregularity of procedure;

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

opinion for that of the legislature;

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

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

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

alleging being extremely heavy;

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

the Constitution;

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

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

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

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

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

lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-

compliance with rules of natural justice and perversity.

3.11. In *K. Anbazhagan and Others Vs. The Secretary, The Tamil Nadu Legislative Assembly, Madras and Others*, , the Tamil Nadu Legislative

Assembly expelled certain members for having burnt a part of Constitution in the public and it was put to challenge by 10 Members belonging to a

particular political party. The primordial question, which arose for consideration in that writ petition, was whether the State Legislature have the

power to expel a Member of the Assembly. A Division Bench of this Court held that the power of expulsion is incompatible with any of the

provisions of the Constitution and there can be little doubt, having regard to the provisions of Article 194(3) of the Constitution of India, the Indian

Legislature could exercise the power of expulsion in a case in which, it thinks fit to exercise its power for conduct of a Member, who is considered

unworthy. The Division Bench in the above said case, had summarised its conclusions in the form of following propositions:

(1) The adoption of a written Constitution which is given by the people of India to themselves as long as the Constitution of India which represents

the will of the people and is the supreme law of the land, is in force, it is an imperative obligation on every citizen of the Indian Republic, including

those who want to voice their dissent in respect of any particular provision, to abide by the provisions of the Constitution and notwithstanding their

dissent in respect of some provisions they are bound to respect it, apart from the

express provision made in Art. 51A of the Constitution.

(2) The impugned resolution does not have the effect of expulsion of a member on the ground that he has incurred a disqualification for having

committed a breach of oath, but it is founded on the conduct of the elected members, which the Assembly considered to be derogatory to the

dignity of the Constitution as well as the dignity of the Assembly and they were considered unfit to be members of the Assembly. This expulsion

does not disqualify the expelled members from seeking re-election.

(3) The conduct of any person including an elected representative of the people in burning the Constitution can hardly be treated as permissible

method of expressing disapprobation of a constitutional provision assuming for a moment that some provision is not to the liking of some citizens.

(4) Burning of the Constitution or any part of it is not in keeping with the norms and conduct expected of a member of the Legislative Assembly

and is highly derogatory of the expected norms of conduct.

(5) Burning or defiling of the Constitution or the National Flag or doing any act specified in S. 2 of the Prevention of Insults to the National Honour

Act, 1971, does not fall within Explanation 1 of S. 2 and will amount to an offence under the said Act and when an elected representative of the

people who but for the provisions of the Constitution of India and the Representation of the People Act would not have been able to claim the

representative status, goes to the extent of burning or defiling or destroying the very Constitution or a part of the Constitution, it would be for the

House to decide how to deal with such a member.

(6) An elected representative of the people who makes an oath or affirmation under Art. 188 is duty bound to bear true faith and allegiance to the

Constitution of India and uphold the sovereignty and integrity of India, and burning a part of the Constitution is in terms a breach of the oath.

(7) The effect of the Constitution (Forty-fourth Amendment) Act, 1978 amending Art. 194(3) is that whenever a question of privilege arises, the

relevant point of time for ascertaining whether a similar privilege was exercised by the House or its members and Committees has to be determined

with reference to 20th June, 1979.

(8) The power of expulsion apart from being a part of the power of the House of Commons to regulate its own composition, was essentially a

power which was in the nature of exercising a disciplinary control over the membership of the House with a view to see that such of the members

who are unfit in the opinion of the House to continue to be its members, could be expelled from membership. What is important is not that the

power of expulsion so exercised was a part of the powers of the House of Commons to regulate its composition but that the power of expulsion

was in fact exercised by the House of Commons also as a part of the power to punish a member by expelling him.

(9) The House of Commons possessed and exercised the power and privilege to expel a member for an action which the House considered to be

a misconduct even though the misconduct was committed outside the House. This power subsisted not only at the commencement of the

Constitution, but in the absence of anything to show that this power was given up between the commencement of the Constitution and the

commencement of the Constitution (Forty-fourth Amendment) Act, such a power must be held to be subsisting at the material time for the

purposes of Article 194(3) of the Constitution of India.

(10) By enacting Art. 194(3) what was intended to be adopted was the powers and privileges of the House of Commons as set out in May's

Parliamentary Practice, which included the power of expulsion.

(11) The power of expulsion is not inconsistent with any other provisions of the Constitution of India. Such power cannot be negated on the

ground that an elected member was entitled to continue as a member for a period of five years or that a particular constituency may go

unrepresented because of the expulsion of the elected representative.

(12) A conduct which is expressly made penal cannot be justified on the ground of a fundamental right under Art. 19(1)(a) and in any case burning

the Constitution would not fall within "Freedom of speech and expression".

(13) Even in the United States, the power of expulsion has been recognised in respect of the conduct of an elected member of a House

inconsistent with the position and dignity and inconsistent with the trust and duty of a member and has been held to exist in a legislative body,

whether expressly conferred or not, as being a necessary and incidental power to enable the House to perform its high functions and necessary to

the safety of the State.

(14) The resolution of expulsion is not open to challenge on the ground that it amounts to a Bill of Attainder or that it is a punishment for violation of oath.

(15) The Resolution of expulsion is not "law" within the meaning of Art. 13 of the Constitution of India and is not open to challenge on the ground of violation of Art. 19(1)(c) or 29(1) of the Constitution of India, apart from the fact that no right under Art. 19(1)(c) or Art. 29(1) of the petitioner is affected.

(16) The resolution is not open to challenge on the ground that the concerned members were not heard as such a challenge would be a challenge on the ground of failure to follow a procedure which would amount to an "irregularity" and not an "illegality" having regard to the provisions of Art. 212 of the Constitution of India.

(17) The Resolution of expulsion is not open to challenge on the ground that a seat becoming vacant on account of expulsion of a member is not expressly contemplated by S. 150 of the Representation of the People Act, because the opening part of S. 150 will also cover a case of seat becoming vacant as a result of expulsion.

(18) Rules made under Art. 208 of the Constitution have to be construed as regulating the procedure of the House and the conduct of its business, and R. 312 when it refers to the "residuary power" of the Speaker, must be exercised only with regard to the procedure and conduct of the business of the House.

3.12. As per the above proposition No. 16, the resolution is not open to challenge on the ground that the concerned Members were not heard.

3.13. In 2008-2 L.W. 1001 (A.K. Bose V. Tamil Nadu Legislative Assembly & Another), the facts of the case would disclose that a MLA

belonging to a particular political party, was proceeded against for the reason that he threw the hat of the Watch and Ward of the Legislative

Assembly close to the table of the Speaker and the impugned resolution dated 19.10.2007, was passed by the Tamil Nadu Legislative Assembly

with effect from 19.10.2007 till the first 10 days of the next session likely to be convened on 23.1.2008, and he shall not have the benefit of any

privilege or salary till that period and one of the grounds of challenge was that the impugned resolution is contrary to law as he was not put on

notice either by the House or by the Speaker or by the Legislative Assembly Secretariat before the issue was being decided and neither any

explanation was sought from him, nor he was heard and given show cause notice and no reply was sought from him and also no debate took place

with his participation and that he was also not put on notice with regard to the charges against him, nor was he given any opportunity to show

cause against the proposed action and no explanation was sought from him. The learned Judge while deciding the said issues and other issues

raised in the writ petition, has considered the judgment of Raja Ram Pal's case (cited supra) and other decisions including Anbazhagan's case

(cited supra), and held as follows:

87. In regard to the above, the point to be noted is that though the act complained of on the part of the petitioner, took place on 18.10.2007 and

the procedure was adopted on 19.10.2007, no reason whatsoever has been assigned by the petitioner as to why he had not approached this

Court for about more than two months from the date of incident. That apart, there was neither justifying nor compelling need on the part of the

Speaker to give him an opportunity since his role had occurred during the sitting of the House which was undisputable and in fact, there were

members as eye-witnesses and there was also official electronic record by way of simultaneous video recording of the House proceedings and

therefore, in the facts and circumstances of this case, the Speaker, being a constitutional functionary exercised the discretion vested in him and

decided that there was no need to give an opportunity to the petitioner. It is also to be stated that the Speaker along with other Members, had

witnessed the said act on 18.10.2007 which had occurred ""during the course of the proceedings"" of the House and the same was also confirmed

by viewing the video recording. In the said circumstances, on 19.10.2007, after viewing the video recording, the Assembly had unanimously

passed the resolution which is under challenge. Last but not the least, the petitioner, being a Member of the Legislative Assembly, aggrieved by the

non-observance of procedure contemplated under the Rules, could have very well moved the Speaker or the House as he has got the right to

demand a copy of the resolution, video record, etc. The note-worthy point in this context is that when he had taken pains to get a copy of the

proceedings from the library through his colleague, no reason has been assigned as to why he has not moved the Speaker or the House with regard

to waiver/modification/reduction of the punishment imposed on him, even though his right to continue as a Member of the Legislative Assembly

after the expiry of the punishment period is certain.

88. While harping on the above point, the learned counsel for the petitioner has questioned the authenticity of the procedure of video recording.

But, it has been brought to the notice of this Court that simultaneous recording of proceedings of the House has been done from 16.08.2001

onwards as per the orders of the then Speaker and such video recording has been in vogue for more than six years and the same has not been

disputed or objected by any Member of Legislature or political parties till now and nor its veracity, reliability and authenticity ever questioned or

disputed. Accordingly, the act of the petitioner in throwing the cap of the Watch and Ward towards the table of the Speaker has been witnessed

by the Speaker himself and other Members as well on 19.10.2007 subsequent to which a motion was moved and the impugned resolution was

passed.

89. It appears that no notice whatsoever was served on the petitioner with regard to the allegation levelled against him nor any explanation called

for from him. Of course, the Speaker has the power to exercise his discretion to waive the procedure. The point to be answered in regard to the

above issue is whether the non-observance of procedure contemplated constitutes an act of "irregularity" or "illegality". On a perusal of the entire

materials available before this Court and upon analysing the various decisions and after giving due credence to the contentions raised and the

procedure adopted by the first respondent in passing the impugned resolution, it cannot be said that the impugned resolution is a result of illegality

inasmuch it is only a procedural irregularity which is involved in the matter. In such view of the matter, I do not find any merit or substance in the

plea of the petitioner in this regard.

3.14. In Vijayakant Vs. Tamil Nadu Legislative Assembly, , the petitioner therein, who was an elected Member of the Legislative Assembly from

Rishivanthiyam Assembly Constituency, made a challenge to the resolution passed by the Tamil Nadu Legislative Assembly, suspending him for a

period of 10 days, and one of the grounds of attack was that the principles of natural justice have been given a go-by completely. The learned

Judge while deciding the case, has also considered Raja Ram Pal's case and found on facts, that though he was called upon to appear, he sent his

reply only and before the Privilege Committee, video record of the proceedings were shown and held that the copies of the report of the

Committee of the Privilege were made available in the Library of the Assembly for perusal of any Member, who wanted to peruse the same, and

the Deputy Leader of the Party, to which, the petitioner belongs, was also supplied with the copy of the report and none of the Members

demanding copies of the report before the resolution was put to move, and arrived at a conclusion that the contention taken by the petitioner, that

the proceedings of the House were vitiated on account of non-compliance of the principles of natural justice, cannot hold water.

3.15. The facts narrated above in the earlier paragraphs, would amply demonstrate that with regard to the incident that took place on the Floor of

the Assembly on 8.2.2013, Thiru. C. Michael Rayappan, who belongs to the opposite camp of the said political party, sent a letter to the Hon'ble

Speaker on 8.2.2013, as to his version, and the first appellant and 22 MLAs belonging to the said political party, also gave their versions on the

same day on 8.2.2013, to the Hon'ble Speaker and the matter in issue, was referred to the Privilege Committee.

3.16. The Privilege Committee conducted its proceedings on 15.3.2013 and 21.3.2013, and the letters/versions given by Michael Rayappan as

well as by the first appellant and 22 Members were considered and the video footage was also shown to the Members of the Privilege Committee,

who belong to various political parties. Thiru. S.R. Parthiban, who belong to the camp of the appellants herein, had also participated in the said

proceedings and the video footage revealed about the role played by the appellants alone, and therefore, no action was suggested against other

Members of the said political party.

3.17. The proceedings of the Privilege Committee were also placed before this Court and a perusal of the same would disclose that a threadbare

discussion took place on all aspects and ultimately, the Privilege Committee opined that the suspension of the appellants for a period of one year

with corresponding withholding of salary and other benefits would meet the ends of justice and thus, suggested the said punishment and the said

report was also placed on the Floor of the Assembly and once again, the issue was discussed and ultimately, it was put to vote on 25.3.2013,

wherein, the punishment suggested by the Committee, was accepted by a majority voice vote and on 26.3.2013, Dr. S.K. TAMILARASAN, MLA of a

particular political party, prayed for lenience and once again, discussion took place on the Floor of the Assembly and the Hon"ble Chief Minister

suggested that the punishment can be reduced to 6 months with corresponding withholding of salary and other privileges and it was once again

passed by means of a voice vote. The Hon"ble Supreme Court of India in Raja Ram Pal's case (cited supra), held among other things, that the

exercise of the power of judicial review shall be done with utmost care and caution and the circumspection and the exercise of such a power by the

Legislature is not to be tested on the traditional parameters as applicable to administrative action and the Court would confine itself to the

acknowledged parameters of judicial review and within the judicially discoverable and manageable standards, such as on the grounds of lack of

jurisdiction or the impugned decision being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala

fides and non-compliance of rules of natural justice and perversity. As already observed in the earlier paragraphs, rule of natural justice to be

applied to a given case, would depend upon the existing facts and circumstances of that case, the frame work of law under which, the enquiry is

held, and the body of persons appointed for that purpose. In the light of the reasons assigned above, this Court is of the view that the principles of

natural justice have been followed and hence it cannot be said that the entire proceedings are vitiated and Question No. (a) is answered in negative

and against the appellants.

3.18. QUESTION No. (b):

Whether the State Legislature has the power and privilege under Article 194 to suspend the appellants/writ petitioners?

3.19. It is the submission of the learned Senior Counsel appearing for the appellants, that there is no alleged breach of privilege for the reason that

it has not been codified as required under Article 194(3) of the Constitution or by

means of Rules framed under Article 208 of the Constitution of India and hence the proposed recourse to British Parliamentary Practice is neither permissible by virtue of Constitution 44th Amendment, which did not save the law, as stood in the year 1950, when the Constitution was enacted, as per Section 7 of the General Clauses Act. It is the further submission of the learned Senior Counsel appearing for the appellants, that the parliamentary privilege is restricted to the proceedings happened inside the four walls of the Parliament and so also the legislative privilege and in support of his submission, placed reliance upon the decisions reported in P.V. Narsimha Rao Vs. State (CBI/SPE), and P.V. Narsimha Rao Vs. State (CBI/SPE), .

3.20. In response to the said submission, the learned Advocate General, who has acted as the Amicus Curiae, submitted that the said issue/question raised on behalf of the appellants, has no longer res integra in view of the decision rendered by the Apex Court in Raja Ram Pal's case and the scope of Constitution 44th Amendment of the year 1978 has been elaborately considered and dealt with in Anbazhagan's case, A.K. Bose's case and Vijaykant's case (cited supra).

3.21. The Hon'ble Supreme Court of India in paragraphs 125 and 126 of the judgment in Raja Ram Pal Vs. The Hon'ble Speaker, Lok Sabha and Others, , dealt with the very same issue with regard to the Constitution 44th Amendment Act, 1978, and held that the power of expulsion is not diluted or negated by any of the Constitution or statutory provisions and further held that when the power of expulsion is available under Article 194(3) to a Legislative Assembly even to expel a Member, it has got power to suspend a Member, which is of temporary in nature, and admittedly, less severe than the punishment of expulsion.

3.22. The learned Single Judge has dealt with the said issue in paragraph No. 45 of the impugned order and has also taken into consideration the decisions rendered by the Apex Court and reported in AIR 1965 SC 744 (U.P. ASSEMBLY CASE) and in Amarinder Singh Vs. Special Committee, Punjab Vidhan Sabha and Others, and held that the State Legislature has power and privilege under Article 194(3) of the Constitution of India to suspend a Member.

3.23. In Raja Ram Pal Vs. The Hon'ble Speaker, Lok Sabha and Others, , the

Hon"ble Supreme Court of India has considered the said issue from paragraph No. 170 onwards and in paragraph No. 171, opined that the ratio of U.P. Assembly's case (cited supra), which was made under significantly different circumstances, cannot be interpreted and found that the powers of the House of Commons enjoyed in its capacity as a Court of record, are unavailable to the Indian Parliament, including the power to punish for contempt.

3.24. In 2010 UKSC 52 (cited supra), the appellants therein were serving as Members of the House of Commons, and with regard to the claims made by them in respect of the parliamentary expenses, criminal proceedings were launched against them, and each of them has been charged with false accounting contrary to Section 17(1)(b) of the Theft Act, 1968. The appellants took a stand that the Crown Court has no jurisdiction to try them in respect of the charges framed against them, on the ground that same would infringe the parliamentary privilege. The learned Senior Counsel appearing for the appellants, has drawn the attention of this Court to paragraph Nos. 88 and 91 of the said decision and would submit that as per the said judgment, even in parliamentary proceedings, the concept of privilege has been protected to the Members to a great extent and parliamentary privilege is restricted to the core business of the parliament (debate in the Assembly) and not for the administration.

3.25. In Anbazhagan's case (cited supra), in paragraph No. 69, it has been held that the power of expulsion subsists not only on the commencement of the Constitution, but in the absence of anything to show that this power was given up between the commencement of the Constitution and the commencement of the Constitution 44th Amendment Act, such a power must be held to be subsisting at the material time for the purpose of Article 194(3) of the Constitution.

3.26. In view of the authoritative pronouncement of Raja Ram Pal's case on the said issue, Question No. (b) is answered in negative and against the appellants.

3.27. QUESTION No. (c):

Whether the appellants/writ petitioners could be suspended for more than 60 days in the light of Article 190(4) of the Constitution of India?

3.28. The learned Senior Counsel appearing for the appellants, has contended

that the suspension of a Member of the Legislative Assembly beyond the period of 60 days, is in contravention of Article 190(4) of the Constitution of India and as per Article 190(4) of the Constitution, if for a period of 60 days, a Member of the House of the Legislature of a State, without permission of the House, is absent from all the meetings thereof, the House may declare his seat vacant. According to the learned Senior Counsel appearing for the appellants, in that event, the seats held by the appellants, are likely to be declared vacant for the reason that the period of suspension is beyond 60 days.

3.29. In the considered opinion of the Court, the said submission lacks merits and substance for the reason that the said Article would apply to a case, where, a Member of the Legislative Assembly, on his own volition, is absenting himself without the permission of the House. In the case on hand, the order of suspension came to be passed pursuant to the report of the Privilege Committee, and it was also put to vote and initially, it was for a period of one year and subsequently, on the representation made by one of the MLAs, it was reduced to six months and during that interregnum, the payment of salary and other allowances were also ordered to be withheld.

3.30. In the earlier paragraphs, this Court held that the power of suspension is available with the State Legislature and since it has passed a resolution to suspend the appellants far beyond the period of 60 days, they were debarred from attending the Assembly and claiming salary and other privileges and in that event, Article 190(4) of the Constitution has no application. Therefore, Question No. (c) is answered against the appellants.

3.31. QUESTION No. (d):

Whether the privilege is restricted to things happened inside the Assembly, and whether it can travel beyond the four walls of the Assembly?

3.32. The learned Senior Counsel appearing for the appellants, contended that the denial of salary and other benefits to the appellants, during the period of suspension, is ultra vires of Article 195 of the Constitution read with the provisions of the Tamil Nadu Payment of Salaries Act, 1951.

According to the learned Senior Counsel appearing for the appellants, the payment of salary and other benefits that enures to a Member of the

Legislative Assembly, is a constitutional right prescribed under the above said Act, and it can be withdrawn only in a manner provided under that

statute, and the above said Act did not provide for any such situation to withhold the salary or other benefits and under the guise of breach of

privilege, the right of a Member to receive the salary and other benefits have been unjustly taken away and it also amounts to double punishment.

3.33. The said issue was also considered in Vijayakant Vs. Tamil Nadu Legislative Assembly, , and the learned Judge has taken into consideration

paragraph Nos. 151 to 159 of the decision rendered in Raja Ram Pal's case, and held that an elected Member, who is debarred by virtue of an

order of suspension, from discharging his duties and functions, may have to suffer all the consequences that go with the office and therefore, the

contention put forth that suspension for a period spilling over to two sessions, would tantamount to exercise of a power beyond the four walls of

the Legislature and that therefore, it is impermissible, cannot be accepted.

3.34. The payment/receipt of salary and other allowances is by virtue of a person occupying the position of a Member of the Legislative Assembly

and once he is suspended for a particular period, the natural corollary or consequence would be the denial of salary and other privileges and in the

case on hand, the recommendation was also made by the Privilege Committee in its report, and it was put to vote and by majority opinion, the

resolution was passed including the withholding of salary and other benefits. The provisions of Tamil Nadu Payment of Salaries Act, 1951, do not

speak about the order of suspension of a Member of the Legislative Assembly and the consequence thereof and u/s 13(1) of the Act, any person

entitled to salary or allowances under the said Act, may at any time, during the time of his respective office, relinquish the whole or any such

portion of the salary or allowance payable to him. As per the above said provision, it is a voluntary act on the part of the Member of the Legislative

Assembly, who can relinquish his salary or other allowances, and under sub-section 2 of Section 13, such relinquishment may be cancelled by him

also. In the case on hand, by virtue of the suspension of the appellants for a period of six months from participating the proceedings of the

Legislative Assembly, the Privilege Committee made a recommendation for withholding of salary and other allowances also and it was put to vote

and accepted by the Assembly by means of majority decision.

3.35. The learned Single Judge has elaborately dealt with that issue and rejected the plea raised on behalf of the writ petitioners/appellants herein,

and this Court finds no reason to interfere with the said finding, rendered in the impugned order. Hence, Question No. (d) is answered in negative

and against the appellants.

3.36. Insofar as Question No. (e) as to whether the Legislative Assembly has power to suspend the right of a Member to vote in the Rajya Sabha

in the capacity as a Member of the Assembly, pendency of this writ appeal, M.P. No. 1/2013 was moved praying for stay of the operation of the

order insofar as it forbears the appellants from participating in the Rajya Sabha Election held during 2013, and this Court has taken into

consideration the letter of the Election Commission of India dated 15.5.2013, and passed an order directing the first respondent herein to permit

the appellants to participate and vote in the ensuing Rajya Sabha Election. In the light of the stand taken by the Election Commission of India in the

above said letter, this Court is of the view that the suspension is only for the purpose of proceeding in the Assembly and not for the purpose of

Election to the Council of States and such a view has also been taken by the Hon"ble Supreme Court of India in the decision reported in *Kuldip*

Nayar Vs. Union of India (UOI) and Others, . Therefore, de hors the suspension of the appellants, they are entitled to exercise their right to

participate in the Election for electing Members to the Council of States (Rajya Sabha).

4. CONCLUSION:

4.1. The primordial submission made by the learned Senior Counsel appearing for the appellants, relates to non-adherence of the principles of

natural justice. This Court while dealing with the said issue, had elaborately dealt with the letter given by the appellants and other MLAs, and so

also the letter given by Thiru. Michael Rayappan, and in the proceedings of the Privilege Committee, Thiru. Parthiban, belonging to the appellants"

faction, had also participated and the video footage was repeatedly placed and after elaborate consideration, the role played by the appellants was

fixed and after obtaining the views of the Members of the Privilege Committee, who belong to various political parties, report was submitted to the

Assembly holding that they have committed breach of privilege and suspension for a period of one year with corresponding withholding of salary

and other benefits was also recommended and was put to vote and by majority voice vote, it was passed. Subsequently, at the instance of one of

the Members of the Legislative Assembly, with regard to the reduction of punishment, a resolution was moved once again and the period of

punishment was reduced from one year to six months with the corresponding withholding of salary and other benefits. Therefore, it cannot be said

that the principles of natural justice have been given a complete go-by. A perusal of the proceedings of the Privilege Committee as well as the

Legislative Assembly would disclose that fair procedure was adopted before taking the decision to suspend the appellants for a period of six

months with corresponding withholding of salary and other benefits and therefore, it cannot be said that they have been condemned.

4.2. The questions/points urged by the learned Senior Counsel appearing for the appellants, are no longer res integra for the reason that in Raja

Ram Pal's case, all the issues have been elaborately dealt with and the ratio laid down in the said case has been followed in the subsequent

decision rendered in A.K. Bose's case and Vijaykant's case.

4.3. It is to be pointed out at this juncture, that the appellants had already undergone the period of suspension and therefore, there cannot be any

impediment on their right to attend the Assembly and get salary and other privileges attached to the said Office.

RESULT:

In the light of the reasons assigned above, there are no merits in this writ appeal and accordingly, it is dismissed confirming the order dated

5.6.2013, made in W.P. No. 10175/2013, except the issue that de-hors the suspension of the appellants, they are entitled to participate in the

voting for the election of Members to the Council of State (Rajya Sabha) as clarified by the Election Commission of India. However, in the

circumstances of the case, there shall be no order as to costs.