

A.M. Paulraj Vs. the Speaker, Tamil Nadu Legislative Assembly, Madras and anr.

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Court : Chennai

Decided On : Dec-17-1985

Reported in : AIR1986Mad248

Judge : M.N. Chandurkar, C. J., ;V. Ramaswami and ;Natarajan, JJ.

Acts : [Constitution of India](#) - Articles 21, 194(3), 208, 208(1), 212 and 226 ; Tamil Nadu Legislative Assembly Rules - Rules 248 and 255

Appeal No. : Writ Appeal No. 593 of 1985

Appellant : A.M. Paulraj

Respondent : The Speaker, Tamil Nadu Legislative Assembly, Madras and anr.

Advocate for Pet/Ap. : V. Vivekanandam, Adv.;V.P. Raman, Adv. for S. Kaoagasabai, Adv.

Judgement :

Chandurkar, C. J.

1. This is an appeal by the petitioner whose petition under Art. 226 of the Constitution in which he had asked for a Writ of Mandamus forbearing the Speaker of the Tamil Nadu Legislative Assembly from proceeding any further with the

Notice No. 45 dt. 1st July 1985 against the petitioner, has been dismissed by the learned single Judge.

2. The petitioner is the Editor of a Tamil monthly magazine 'Vaniga Ottrumai'. He had published an article in the Feb. 1983 issue of the said magazine criticising vehemently the members of the Legislature. The Privileges Committee of the Seventh Tamil Nadu Legislative Assembly called upon the petitioner on 29-11-1983 to give an explanation for the said writing in the Feb. 1983 issue of his magazine. The petitioner appeared before the Privileges Committee and owned full responsibility for what he had written in his magazine. On 28-3-1984, the Privileges Committee recommended that the petitioner should be punished by awarding a sentence of simple imprisonment for one week.

3. The petitioner had filed W.P. No. 4301 of 1984, for quashing the said recommendation. That petition was however dismissed as premature. Before any final action was taken on the report of the Privileges Committee, the seventh Tamil Nadu Legislative Assembly was dissolved on 15-11-1984. Elections to the State Legislative Assembly took place in Dec. 1984 and in due course the Eighth Tamil Nadu Legislative Assembly was constituted.

4. The Eighth Legislative Assembly, in its proceedings No. 45 dt. 1st July 1985, unanimously resolved that the petitioner be arrested and be detained in Central Jail for two weeks for his writings in the journal 'Vaniga Ottrumai'. Para 4 of this resolution, which is in Tamil, was got translated by the official Translator in the High Court. That resolution reads as follows : -

'The Honourable Leader of the House moved the Resolution that the report of the Privileges Committee of the Seventh Legislative Assembly on the matter relating to the breach of privileges of the Assembly by the monthly magazine 'Vaniga Ottrumai' given to the 7th Legislative Assembly on 28-3-1984, may be taken up for consideration.

The Resolution was left to the decision of the Assembly and was passed.

2. The Honourable Leader of the Assembly moved a Resolution that after accepting the Report of the Privileges Committee of the Seventh Legislative Assembly, on the matter relating to the breach of the privileges of the Assembly by the monthly magazine 'Vaniga Ottrumai' which was given to the Seventh Legislative Assembly on 28-3-1984, the Assembly decides that the Editor and Publisher Thiru Paulraj should be arrested and detained in the Central Prison in Madras to undergo simple imprisonment for two weeks for breach of privileges of the House.

Thiru A. Rahman Khan, Member, moved his amendment and spoke on it. The Honourable Leader of the Assembly explained on the subject. It was deemed that Thiru A. Rahman Khan's amendment had been withdrawn with the permission of the House. The Resolution was left to the decision of the Assembly and was passed unanimously.'

5. This Resolution shows that the Leader of the House moved a resolution that the report of the Privileges Committee of the Seventh Legislative Assembly which was presented to that Assembly on 28-3-1984, may be taken up for consideration. After this resolution was passed, the Legislative Assembly accepted the report of the Privileges Committee and decided that the petitioner who is the editor and publisher of the magazine 'Vaniga Ottrumai' should be arrested and detained in the Central Prison in Madras to undergo simple imprisonment for two weeks for breach of privilege of the House. A resolution to this effect was unanimously passed.

6. The petitioner then filed the writ petition out of which this appeal arises. When the matter was heard for admission before the learned single Judge, the contention raised on behalf of the petitioner was that as a result of the dissolution of the Seventh Legislative Assembly the proceedings referred to the Privileges Committee had lapsed and that the succeeding Eighth Legislative Assembly had no jurisdiction to continue to prosecute the said matter.

7. The learned Judge requested the Advocate General to assist him because he found that the question raised was of some importance. The learned Judge held, on the authority of the decision of the Supreme Court in *In re, Under Art. 143*,

[Constitution of India](#), AIR 1965 SC 745, that a petition under Art. 226 of the Constitution was maintainable at the instance of the petitioner. On merits, the learned Judge negated the contention of the petitioner that as a result of the dissolution of the Seventh Legislative Assembly the proceedings commenced against the petitioner had lapsed. The learned Judge held that it was open to the Eighth Legislative Assembly to take up the proceedings from the stage where they were left earlier, after the Privileges Committee had made its report on 28-3-1984. The learned Judge held that it was not open to the petitioner to contend that de novo proceedings should have been taken against him, nor was the petitioner entitled to make a grievance that the original proposal being only to punish him for one week, the punishment had been enhanced without notice to him, because, according to the learned Judge, the Privileges Committee had only made a recommendation in the matter of punishment which was not binding on the Legislature. The learned Judge also found that Art. 212 of the Constitution did not permit a challenge to the validity of proceedings in the Legislature of a State on the ground of an alleged irregularity of proceedings. This order dismissing the writ petition is now challenged in this appeal.

8. At the very threshold, we must mention the fact that none of the two respondents have appeared in these proceedings, and, indeed, they have even declined to receive the notice which was sought to be served on them with regard to the admission of this appeal. We, therefore, requested the learned Advocate General to assist us in these proceedings. We would have, very much liked the respondents to be represented by a counsel. It appears to us that the refusal to receive even a notice of this appeal is based on a misapprehension that when a petition under Art. 226 of the Constitution is filed in the High Court by a person who has been punished for a breach of privilege, the admission and hearing of such a petition amounts to an affront to the Legislature and there is a confrontation between the High Court and the Legislature. Such an impression is, in our view, wholly unjustified. Indeed, the maintainability of a petition under Art. 226 of the Constitution challenging the decision of the House of a Legislature sentencing a citizen to imprisonment for contempt of the House has clearly been upheld in the decision of the Supreme Court in *In re, Under Art. 143, Constitution of India*, : AIR 1965 SC745 (hereinafter referred to as the 'Reference case'). In the reference

case, a printer and publisher of a pamphlet was directed by the Speaker of the Uttar Pradesh Legislative Assembly to be committed to prison for committing contempt of the Assembly by his conduct therein. The Speaker had issued a warrant that the said person should be detained in the jail for a period of seven days and in execution of the warrant the said person was detained in the jail. He filed a petition under S. 491 of the Cr. P.C. and Art. 226 of the Constitution in the High Court through an advocate challenging that his detention in jail was illegal. The Division Bench of the High Court passed an order that he should be released on bail on furnishing two sureties and he was released. The Assembly by resolution took the view that the two Judges of the High Court who passed the order of release, the person detained and his advocate had committed contempt of the Assembly and ordered that the person should immediately be taken into custody and the two Judges and the advocate be brought in custody before the Assembly. The two Judges and the advocate filed separate petitions under Art. 226 of the Constitution contending that the resolution passed by the Assembly amounted to contempt of Court, that it was wholly without jurisdiction, that it should be set aside and that by an interim order its implementation should be stayed. On these petitions, a Full Bench of the High Court made an order restraining the Speaker of the Assembly from issuing the warrant in pursuance of the direction of the Assembly and from securing execution of the warrant if already issued. At that stage, the President of India exercised his power to make a reference to the Supreme Court under Art. 143(1) of the Constitution, referring five questions to the Supreme Court. One of the questions referred was whether, if in enforcement of its decision, the Assembly issued a general or unspeaking warrant, the High Court was entitled to entertain a habeas corpus petition challenging the validity of the detention of the person sentenced by the Assembly. The Supreme Court expressed an opinion that it was open for the Division Bench of the high Court to entertain and deal with the petition of the printer challenging the legality of the sentence of imprisonment imposed upon him by the Legislative Assembly for its contempt and for infringement of its privileges and to pass orders releasing him on bail, pending the disposal of the said petition. When such a petition is filed, the Supreme Court pointed out that the conflict is not between the High Court and the Legislature, but the conflict is between the citizen and the Legislature. In para 60

of the judgment, the Supreme Court observed as follows: -

'Whilst we are considering this aspect of the matter, it is relevant to emphasise that the conflict which has arisen between the High Court and the House is, strictly speaking, not a conflict between the High Court and the House, as such, but between the House and a citizen of this country. Keshav Singh (the printer and publisher) claims certain fundamental rights which are guaranteed by the Constitution and he seeks to move the High Court under Art. 226 on the ground that his fundamental rights have been contravened illegally. The High Court purporting to exercise its powers under Art. 226(1) seeks to examine the merits of the claims made by Keshav Singh and issues an interim order. It is this interim order which has led to the present unfortunate controversy. Basically and fundamentally, the controversy is between a citizen of Uttar Pradesh and the Uttar Pradesh Legislative Assembly. That is why in dealing with the question about the extent of the powers of the House in dealing with cases of contempt committed outside its four walls, the provisions of Art. 226 and Art. 32 assume significance. We have already pointed out that in the case of *M. S. M. Sharma*, : AIR 1959 SC395, this court has held that Art. 21 applies where powers are exercised by the Legislature under the latter part of Art. 194(3). If a citizen moves the High Court on the ground that his fundamental right under Art. 21 has been contravened, the High Court would be entitled to examine his claim, and- that itself would introduce some limitation on the extent of the powers claimed by the House in the present proceedings.' In the earlier proceedings, the Supreme Court specifically upheld the maintainability of a petition under Art. 226 of the Constitution by a person who has been held guilty of contempt of the Legislature by the Legislative Assembly. The following observations in para 59, are relevant -

'It is hardly necessary to emphasise that the language used by Art. 226 in conferring power on the High Courts is very wide. Art 12 defines the 'State' as including the Legislature of such State, and so, prima facie, the power conferred on the High Court under Art. 226(1) can, in a proper case, be exercised even against the

Legislature.-If an application is made to the High Court for the issue of a writ of habeas corpus, it would not be competent to the House to raise a preliminary objection that the High Court has no jurisdiction to entertain the application because the detention is by an order of the House. Art. 226(1) read by itself, does not seem to permit such a plea to be raised. Art. 32 which deals with the power of this Court, puts the matter on a still higher pedestal; the right to move this Court by appropriate proceedings for the enforcement of the fundamental rights is itself a guaranteed fundamental right, and so, what we have said about Art. 226(1) is still more true about

Art. 32(1).'

9. It is, therefore, settled law for, more than twenty years now, that where a petitioner approaches a court contending that as a result of a committal to civil prison by the Legislature for breach of privilege his fundamental right under Art. 21 has been violated, such a petition cannot be thrown out at the very threshold merely on the ground that the decision of a House of Legislature on an issue of privilege is being challenged. There is nothing in the Constitution which disabled a citizen who complains of a violation of his fundamental right under Art. 21 of the Constitution from filing a petition under Art. 226 of the Constitution. The entertaining of a petition under Art. 226 in such a case or entertaining of an appeal against an order dismissing such a petition need not, therefore, be taken as an affront either to the Speaker of the Legislative Assembly or the Legislative Assembly itself.

10. That brings us to the merits of the contentions raised by Mr. V. P. Rao. The contentions raised by him are as follows -

1. While Art. 19(1)(a) of the Constitution may not be attracted, Art. 21 is certainly attracted and therefore relief under Art. 226 is available;

2. Article 194(3) provides, inter alia, that in other respects, the powers, privileges and immunities of a House of the Legislature of a State and of the members and the Committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and rules framed under Art. 208 of the

Constitution are 'law' within the meaning of Art. 194(3). Rule 248 of the Rules as amended up to 7th Mar. 1985 provides that the question of privilege shall be restricted to a special matter of recent occurrence. When the Eighth Assembly punished the petitioner in July 1985 for an article written in Feb. 1983, the question could not be said to be relating to a 'matter of recent occurrence.'

3: Article 212 relied upon by the learned single Judge is not relevant for the purpose of the present case because what is complained of is not irregularity in procedure but illegality of the resolution and lack of jurisdiction of the Legislative Assembly to punish the appellant.

4. The Eighth Tamil Nadu Legislative Assembly cannot take action on what was left undone by the previous Legislature which stood dissolved, and, as even in the case of punishment awarded by the House of Commons, the contemner would be released when the House of Commons was prorogued, the punishment if it was awarded by the Seventh Legislative Assembly, would not have continued beyond the dissolution of that Assembly, and therefore, the power to punish must also be held as not surviving the dissolution of the Seventh Assembly.'

11. In so far as Art. 226 is concerned, we have already held that the petition under Art. 226 of the Constitution was maintainable having regard to the law laid down by the Supreme Court in the Reference case : AIR 1965 SC745 ; we shall deal with the contention based on Art. 21 later.

12. We shall now deal with the second contention. Under Art. 208 of the Constitution, 'a House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.' In exercise of the power under Art. 208, the Tamil Nadu Legislative Assembly has made elaborate rules, known as 'The Tamil Nadu Legislative Assembly Rules' (hereinafter referred to as the Rules). Rules 245 to 256 deal with 'Committee of Privileges'. Rule 245 provides that a member may, with the consent of the Speaker, raise a question involving a breach of privilege, either of a Member or, of the House or of a Committee thereof rule 246 deals with notice of a motion to raise a question of privilege and such a notice together with a brief statement has to be given at least one hour before the commencement of the

sitting on the day on which the question is proposed to be raised. The notice can be given to the Speaker, the Secretary and the Leader of the House. Rule 247 provides for the time of raising a question of privilege and under that rule on the Speaker giving his consent to raise a question of privilege it must be raised after the questions and before the list of business for the day is entered upon. The proviso to R. 247 provides that a question of privilege arising during the sitting of the House shall be entitled to immediate precedence over all other business. Rule 248 which is relied upon, reads as follows : -

'The right to raise a question of privilege shall be governed by the following conditions, namely -

1. The question shall be restricted to a specific matter of recent occurrence.
2. The matter, in the opinion of the Speaker requires the intervention of the House;

If these conditions are satisfied the Speaker may give his consent under R. 245.'

A bare reading of this rule will indicate that when condition is prescribed that the question shall be restricted to a specific matter of recent occurrence that was intended to be a circumstance which had to be considered by the Speaker to decide whether he will give his consent to raise the question of privilege. What is 'a recent occurrence' has obviously to be decided by the Speaker and it is exclusively within his discretion to decide whether the matter which is sought to be raised is of 'recent occurrence' or not. It is the Speaker who gives consent and holds that the matter, in his opinion, requires the intervention of the House. Under R. 251, he may allow a motion to be made by any member 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. However, R. 248 did not become relevant when the impugned resolution was passed by the Eighth Legislative Assembly because the matter was allowed to be raised in the earlier Assembly and had already been referred to the Committee of Privileges.

13. In any case, it would not be possible for this Court under Art. 226 to sit in judgment over the decision of the Speaker to allow the matter to be raised, even if

it may appear that a matter which is allowed to be raised was not of recent occurrence. The rules vest an absolute discretion in the Speaker to decide whether he will permit a question of privilege to be raised or not. Even otherwise, rules framed under Art. 208 of the Constitution are essentially procedural in character, and Art. 212 does not permit the validity of any proceedings in the Legislature of a State to be called in question on the ground of any irregularity of procedure. The correctness of such decision cannot be challenged in a Court of law.

14. The third and the fourth contentions are inter-related. It has been vehemently argued before us by Mr. Raman that the dissolution of a Legislative Assembly must wipe out all the proceedings which were pending before the dissolved Assembly and the new Legislative Assembly could not resurrect those proceedings and continue them. At best, according to the learned counsel, if the proceedings lapsed with the dissolution, all that was possible for the new Legislative Assembly to do was that they would have been entitled to initiate fresh proceedings for breach of privilege. It was also argued that only when a motion of breach of privilege is brought for the first time before the new Legislative Assembly that there would be jurisdiction to initiate a proceeding for breach of privilege against the petitioner. The argument, substantially, is that under Art. 194(3) the Legislative Assembly has no power to continue a proceeding relating to a breach of privilege if the earlier Legislative Assembly had, before it was dissolved, not concluded that proceeding. This result according to the learned counsel, necessarily follows from the decision of the Supreme Court in *Purushothaman Nambudiri v. State of Kerala*, : AIR 1962 SC694 , which according to the learned counsel is nearest to the proposition which he is canvassing. The learned counsel contended that Art. 212 does not come in the way of the petitioner because what the petitioner is complaining of is not irregularity in procedure but is complaining of an illegality committed by the Legislative Assembly in as much as it had no jurisdiction to proceed with the proceedings for breach of privilege which had commenced and were left incomplete in the Seventh Legislative Assembly.

15. The learned Advocate General, whose useful assistance given to the Court we must acknowledge with thanks, has argued that if as a result of the proceedings

for breach of privilege a person is deprived of personal liberty, then, such deprivation will be in accordance with the procedure established by law, that is, law contained in Art. 194(3) of the Constitution. It was pointed out that even if there is a departure from the rules framed under Art. 208, so long as that departure is not violative of Art. 21, it is not open to the petitioner to challenge the proceedings for breach of privilege on the ground that the petitioner's liberty under Art. 21 has been violated otherwise than according to procedure established by law. The learned Advocate General has brought to our notice passages from Erskine May's 'Parliamentary Practice' to show that a new House of Commons has the power to punish a person for contempt of the earlier House of Commons. He argued that the Privileges Committee had already submitted the report before the dissolution of the Seventh Assembly and relying on 'Practice and Procedure of Parliament' by Kaul and Shakdher it was argued that though there was dissolution of the Assembly the report of the Privileges Committee did not lapse. He has also placed reliance on the report o ' f the Privileges Committee of the Parliament in the case of Mrs. Indira Gandhi.

16. We may now reproduce Art. 194(3) of the Constitution which is the only provision relevant for our purpose : -

'In other respects, the powers, privileges, and immunities of House of the Legislature of a State, and of the members and the Committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and until so defined shall be those of that House and of its members and Committees immediately before the coming into force of S. 26 of the Constitution (Forty-fourth Amendment) Act 1978'.

It may be pointed out that by the Forty-second Constitution Amendment Act, Art. 194(3) was sought to be amended by providing that the privileges of a House of the Legislature shall be such as may from time to time be defined by such House, S. 21 of the Forty-second Amendment Act 1976, by which this amendment was intended to be introduced, was not brought into force, the present form in which Art. 194(3) stands, therefore, requires, a consideration of what were the powers, privileges and immunities of a House of the Legislature of a State and of the

members and the Committees of a House of such Legislature immediately before the coming into force of S. 26 of the Constitution (Forty-fourth Amendment) Act 1978. Though Art. 194(3) provides for powers, privileges and immunities being defined by the Legislature by law, admittedly the Tamil Nadu Legislature not having defined such powers, privileges and immunities, in order to ascertain what were the powers, privileges and immunities of the Tamil Nadu Legislative Assembly, we must ascertain what were the powers, privileges and immunities before the coming into force of S. 26 of the Forty-fourth Amendment Act. That necessarily takes us to the original form in which Art. 194(3) was enacted. It read as follows -

'In other respects, the powers, privileges and immunities of a House of the Legislature of a State and of the members and the committees of House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees, at the commencement of this Constitution'.

We must necessarily find out what were the powers and privileges of the House of Commons in England at the commencement of the Constitution, because those would be the powers and privileges of the House of Legislature not only at the commencement of the Constitution i.e. on the 26th Jan. 1950, but also prior to the commencement of the Fortyfourth Amendment Act, 1978. Those powers and privileges can best be ascertained from May's Parliamentary Practices. Chapter-X deals with 'Breaches of Privileges and Contempts' and at page 161, 19th Edn. under the heading 'Offences in Former Session' the following is stated -

'Either House will punish in one Session offences that have been committed in another.

On 4 and 14 April 1707, it was resolved by the Commons, nem-Con 'That when any person ordered to be taken into the custody of the Serjeant at Arms shall...abscond from justice.....the order for commitment shall be renewed at the beginning of the next session of Parliament and that this is declared to be a Standing Order of the House.

It also appears that a contempt committed against one Parliament may be punished by another; and libels against former Parliaments have often been punished. In the debate on the privilege of Sir R. Howard in 1625 Mr. Seldom said : 'It is clear that breach of privilege in one Parliament may be punished in another succeeding.'

The learned Advocate General also referred us to Chapter XIV of May's Parliamentary Practice. This chapter is headed 'A New Parliament and Opening and Close of Session'. Dealing with 'Parliamentary and Sessional Periods' the learned author has observed at page 259 as follows :-

'A 'Parliament' in the sense of a Parliamentary period, is a period not exceeding five years which may be regarded as a cycle beginning and ending with a proclamation. Such a proclamation (which is made by the Queen on the advice of her Privy Council) on the one hand, dissolves an existing Parliament, and, on the other, orders the issue of writs for the election of a new Parliament and appoints the day and place for its meeting. This period, of course, contains an interregnum between the dissolution of a Parliament and the meeting of its successors during which there is no Parliament in existence; but the principle of the unbroken continuity of Parliament is for all practical purposes secured by the fact that the same proclamation which dissolves a Parliament provides for the election and meeting of a new Parliament'.

In Kaul and Shakhder's Practice and Procedure of Parliament, a summary of the findings of the Privileges Committee of the Lok Sabha in Mrs. Gandhi's case, has been reproduced. Conclusion No. (iv) which has been referred to both by Mr. Raman and the learned Advocate-General reads as follows -

'The dissolution of Lok Sabha does not imply discontinuity of the institution of Parliament. May has cited 3 -cases during the 16th and 17th centuries in support of the contention that in the U.K. contempt against one Parliament may be punished by another. Also, in a recent case of Mr. John Cordle, a House of Commons Select Committee on conduct of Members, reporting on 13th July 1977 found him guilty of a contempt in taking part in a debate in 1964 without declaring an interest. The House of Commons unanimously agreed with the finding. In view

of this position, in terms of Art. 105(1)) of the Constitution, the Lok Sabha possesses the power to punish a breach of privilege and contempt of the earlier Lok Sabha. In T ulmohan Ram's case, although the question whether the privilege case raised ori2inally in the 4th Lok Sabha, could be taken up in the Fifth Lok Sabha, was not specifically raised, the 5th Lok Sabha did refer to the Committee of Privileges of the 8th June 1971, this case which was under consideration of the Committee of Privileges of the 4th Lok Sabha and has lapsed on the dissolution of the 4th Lok Sabha. As for Shri T. N. Kaul's case' the emphasis in the Speaker's ruling was on the right to raise a question of privilege regarding a matter of recent occurrence and emphasis on the words Fifth and Sixth Lok Sabha was laid only to indicate the time lag between the occurrence of the incident and raising of the matter in Lok Sabha. The present case came to public notice for. the first time after the 6th Lok Sabha had been constituted and as such, it could not be raised during the 5th Lok Sabha. As observed by the Speaker in the House on 16 th Nov. 1977, authorities have taken the view that when a matter comes to light at a later stage, Parliament has a right to take into consideration.'

Relying on the concluding two sentences of the above, Mr. Raman has based his argument that the only case in which a new Legislative Assembly can take action for breach of privilege of the previous Legislative Assembly is where the case comes to public notice for the first time after the Legislative Assembly was constituted. According to him even on the authority of the report of the Privileges Committee in Mrs. Indira Gandhis case, the present proceedings against the petitioner are wholly without jurisdiction, because they were not proceedings which had come to the notice of the 8th Legislative Assembly for the first time and in fact the 7th Legislative Assembly had left the proceedings incomplete.

17. Now it appears to us that if the only guideline for ascertaining whether a Legislature has the-power to punish for contempt of the earlier Legislature is whether the House of Commons had such power, then, in our view, the illustration given in May's Parliamentary Practice would be enough for the purpose of spelling out under Art. 194(3) a similar power of a Legislative Assembly in India. The position that a breach of privilege in one Parliament can be punished in another succeeding Parliament seems to be beyond doubt in England. Consequently, this

has to be considered as privilege of the House of a Legislature to punish for contempt or breach of privilege of a Legislature which has been dissolved. It is also important to note that this position is recognised by the Indian Parliament in Mrs. Indira Gandhi's case. This would also mean that even the Lok Sabha had considered that it has the power and privilege to punish a person for contempt of the earlier Lok Sabha. It would be permissible for a State Legislature to look in so far as the Parliamentary practice is concerned to the proceedings of the Lok Sabha and the proceedings of the Privileges Committee of the Lok Sabha. It therefore appears to us that the 8th Legislative Assembly had the power and jurisdiction to punish the petitioner for breach of privilege of the 7th Legislative Assembly.

18. Another limb of argument that the Eighth Legislative Assembly has no power to punish the petitioner for breach of privilege of the Seventh Legislative Assembly was that when the Seventh Legislative Assembly was dissolved on 15-11-1984, all the proceedings including the proceedings pending against the petitioner must be treated as having lapsed. Reference is made to the effect of the dissolution of the House of Commons. As noticed in the decision of the Supreme Court in *Purushothaman v. State of Kerala*, : AIR 1962 SC694 , regarding the convention in England, it was pointed out that in England in addition to bringing a Session of Parliament to a close 'prorogation would put an end to all businesses which is pending consideration before either House at the time of such prorogation. The Supreme Court noticed in *Purushothaman's* case, : AIR 1962 SC694 , that in England dissolution of Parliament is invariably preceded by prorogation and observed that what is true about the result of prorogation is a fortiori true about the result of dissolution. Mr. Raman has relied on this decision and the observations made therein and contended that dissolution of Parliament in England is sometimes described as Civil death of Parliament and according to him with the dissolution of the Seventh Legislative Assembly, all the proceedings pending against the petitioner must be deemed to have lapsed. The learned counsel contended that in the earlier decision of the Supreme Court in *M. S. M. Sharma v. Shree Krishna Sinha*, : [1961]1SCR96 , the Supreme Court had expressly left open the question 'whether dissolution of the House necessarily has the effect of completely wiping out the contempt or the proceedings relating thereto. According

to Mr. Raman, this question must now be taken to have been answered in the affirmative by the Supreme Court in Purushothaman's case, : AIR 1962 SC694 . The learned counsel, therefore, argued that notwithstanding the fact that the privileges committee of the Seventh Legislative Assembly had completed the proceedings against the petitioner and had submitted its report to the Chairman, the entire proceedings must be treated as having lapsed as a result of the dissolution. The learned Advocate General has, however, argued that the contempt committed by the petitioner was contempt of the House of the Legislature. The House of the Legislature, according to the Advocate General, is a continuing institution notwithstanding the fact that from time to time, its constitution may change by virtue of the members being elected at the General Elections. He pointed out that there was no question of the proceedings against the petitioner lapsing as a report has already been submitted by the Privileges Committee and the Eighth Legislative Assembly was entitled to proceed to consider that report.

19. May, in his 'Parliamentary Practice' 19th Edition, in Chapter X IV at Page 259 has made a reference to the unbroken continuity of Parliament under the heading 'Parliamentary and Sessional Periods' He observed as follows :

' 'A Parliament' in the sense of Parliamentary period is a period not exceeding five years which may be regarded as a cycle beginning and ending with a proclamation. Such a proclamation (which is made by the Queen on the advice of her Privy Council) on the one hand, dissolves an existing Parliament, and, on the other, orders the issue of writs for the election of a new Parliament and appoints the day and place for its meeting, this period, of course, contains an interregnum between the dissolution of a Parliament and the meeting of its successor during which there is no Parliament in existence; but the principle of the unbroken continuity of Parliament is for all practical purposes secured by the fact that the same proclamation which dissolves a Parliament provides for the election and meeting of a new Parliament'.

Even under our Constitution, it appears to us that the institution of a Legislature is a continuing institution notwithstanding the fact that the Legislative Assembly can be dissolved and in its place new Members of the Legislative Assembly can be

elected. Under Art. 168, it is provided that for every State there shall be a Legislature and it shall consist of a Governor and in the States of Andhra Pradesh, Bihar, Tamil Nadu, Maharashtra, Karnataka and Uttar Pradesh, two Houses : in other States, the Legislature consists of the Governor and one House. It is true that under Art. 172(1) it is provided that every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly. But it is to be pointed out that Art. 194(3) refers to not only the powers, privileges and immunities of the Members and the Committees of a House of Legislature, but it also refers to the powers, privileges and immunities of a House of the Legislature of a State. Art. 194(3) therefore, in our view, contemplates independently the powers, privileges and immunities of an institution, namely, the House of the Legislature of a State, which is a constituent of the Legislature as contemplated by Art. 168(1) of the Constitution.

20. It is true that in England the effect of dissolution which is preceded by prorogation, is that the proceedings in the House of Commons or in the Committee of the House lapse with the session. This has been accepted by the Supreme Court in *Purushothaman's case*, : AIR 1962 SC694 , cited supra. In *Purushothaman's case*, : AIR 1962 SC694 the question was whether the Kerala Agrarian Relations Act- 1960 (hereinafter referred to as the Kerala Act) became invalid on the ground that after it was passed by the Kerala Legislative Assembly and it was reserved by the Governor for the assent of the President under Art. 200 of the Constitution, before the assent was given the President issued a proclamation under Art. 356 of the Constitution and dissolved the Assembly. In Kerala, mid-term Election took place in Feb., 1960 after the Assembly was dissolved on July 31, 1959. After the new Government came to power, on July 27, 1960, the President for whose assent the bill was pending sent it back with his message requesting the Legislative Assembly to reconsider the bill in the light of the specific amendment suggested by the President. The Governor returned the bill to the new Assembly for consideration on Aug. -2, 1960. On Sept. 26, 1960, the amendments suggested by the President were taken up for consideration and on Oct. 15, 1960, the bill, as amended in the light of the President's

recommendations was passed by the Assembly. The bill received the assent of the President on Jan. 21, 1961 and it became law. One of the grounds on which the validity of the Kerala Act was challenged was that when the Bill was pending before the President for his assent, the Assembly having been dissolved on July. 31, 1959, it lapsed in consequence of the said dissolution and so it was not competent to the President to give his assent to a lapsed bill with the result that the said assent and all proceedings taken subsequent to it were constitutionally invalid. Repelling this argument, the effect of dissolution of the House of Commons in England was set out as follows in para 4 of the judgment.: -

'There is no doubt that, in England, in addition to bringing a Session of Parliament to a close prorogation puts an end to all business which is pending consideration before either House at the time of such prorogation; as a result any proceedings either in the House or in any Committee of the House lapse with the session. Dissolution of Parliament invariably preceded by prorogation, and what is true about the result of prorogation is, it is said, a fortiori true about the result of dissolution. Dissolution of Parliament is some times described as a civil death of Parliament'. Ilbert, in his work on 'Parliament' has observed that 'prorogation' means the end of a session (not of a Parliament)'; and adds that 'like dissolution, it kills all bills which have not yet passed. He also describes dissolution as an end of a Parliament (not merely of a session) by royal proclamation', and observes that it wipes the slate clean of all uncompleted bills or other proceedings.'

Then, in para 5 of the judgment, it is observed as follows -

'According to May, the effect of prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the proceedings of Parliament at an end but all proceedings pending at the time are quashed except impeachment by the Commons and appeals before the House of Lords. Every bill must therefore be renewed after prorogation as if it has never been introduced. To the same effect are the statements in Halsbury's Laws of England, (vide Volume 28, pages 371, 372, paras 648 to 65 1). According to Inson, 'prorogation ends the Sessions of both Houses simultaneously and terminates all pending business. A bill which has passed through some stages but which is not ripe for royal assent at

the date of prorogation must begin at the earliest stage when Parliament is summoned again and opened by a speech from the throne. It would thus be seen that under English Parliamentary practice, bills which have passed both Houses and are awaiting assent of the Crown receive the royal assent before the Houses of Parliament are prorogued. In other words, the procedure which appears to be invariably followed in proroguing and dissolving the Houses shows that no bill pending royal assent is left outstanding at the time of prorogation or dissolution. That is why the question as to whether a Bill which is pending assent lapses as a result of prorogation or dissolution does not normally arise in England. Thus, there can be no doubt that in England, the dissolution of the Houses of Parliament kills all business pending before either House at the time of dissolution'

(underlining is ours).

The Supreme Court, in the above paragraph, has approved of the convention set out by May in Chapter XIV of the Nineteenth edition of Parliamentary practice at page 260 as follows -

'Effect of prorogation and adjournment respectively -

The effect of a prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed, except impeachment by the Commons and appeals before the House of Lords. Every bill must therefore be renewed after a prorogation, as if it were introduced for the first time.'

The above passage, therefore, shows that though, in so far as legislative business is concerned, all business before the Parliament lapses as a result of prorogation or dissolution, there is an exception to this doctrine of lapsing and that exception is that the impeachments by the Commons and appeals before the House of Lords do not lapse. The effect of dissolution of a House of Legislature in India has been considered by Kaul and Shaktiher as follows -

'Dissolution, as already stated, marks the end of the life of a House and is followed by the constitution of a new House. Once the House has been dissolved, the

dissolution is irrevocable. There is no power vested in the President to cancel his order of dissolution and revive the previous House. The consequences of a dissolution are absolute and irrevocable. In Lok Sabha, which alone is subject to dissolution under the Constitution, dissolution 'passes a sponge over the Parliamentary slate'. All business pending before it or any of its committees lapses on dissolution. No part of the records of the dissolved House can be carried over and transcribed into the records or registers of -a new House. In short, the dissolution draws the final curtain upon the existing House.'

'Practice and Procedure of Parliament' - Volume I-3rd Edn. page 159.

The learned authors have, however given exceptions to the rule that no part of the records of the dissolved house can be carried over and transcribed into the records of registers of the new House. The exceptions are that reports of the Parliamentary Committee and assurances by Ministers can be carried over to the new House. Referring to the 'business before Committee' while observing that all business pending before the Parliamentary Committees of Lok Sabha lapses upon dissolution of Lok Sabha and the Committees themselves stand dissolved on dissolution of Lok Sabha, the learned authors have observed as follows -

'However, a Committee which is unable to complete its work before the dissolution of the House may report to the house to that effect, in which case any preliminary memorandum or note that the Committee may have prepared or any evidence that it may have taken is made available to the new Committee when appointed. Likewise, where a report completed by a Committee when the House is not in sessions is presented by its Chairman to the Speaker and before its presentation to the house in the next session, Lok Sabha is ,Oissolved, the report is laid by the Secretary General on the table of the new House at the first convenient opportunity (underlining is ours). While laying the report, the Secretary General makes a statement to the effect that the report was presented to the Speaker of the preceding Lok Sabha before its dissolution; where it was ordered by the Speaker that the report be printed or circulated under R. 280, the Secretary-General also reports that fact to the House.'

21. While, therefore, there can be no doubt' that as in England, the effect of dissolution is that all business pending for consideration before the Legislature will also lapse in India, the well-known exception that such dissolution does not affect the proceedings for impeachment has also been recognised in India and it is now well-understood that where a committee has completed its business and made a report to the Speaker, then, such a report can be considered by the succeeding House. This exception will also take in the report of a Committee of Privileges of the previous House which has been made to the Speaker of the House before the Legislature was-dissolved - (see pages 160, 161).

22. It is not possible to read the decision in Purushothaman's case, : AIR 1962 SC694 as laying down a proposition that notwithstanding this convention the Supreme Court took the view that the report of the Privileges Committee must also be held to lapse on the dissolution of a House of Legislature. The passage on which this argument is advanced by Mr. Raman is in paragraph 7 of the judgment where the Supreme Court Was considering the argument whether or not a successor Legislative Assembly can carry on with the business pending before its predecessor at the time of its dissolution is really a matter of the power ' of the Legislature and as such the powers of the Legislativ Assembly shall be such as may from time to time be defined, shall be those of the House of Commons of Parliament of the United Kingdom, and of its Members and Committees at the commencement of this Constitution', and, therefore, the conventional position with regard to the effect of dissolution of Parliament which prevails in England is 'saved in India by virtue, of Art. 194(3) of the Constitution until a definite law is passed by the State Legislature in that behalf to the contrary. Observing that the argument based on Art. 194(3) was entirely misconceived, the Supreme Court, in paragraph 9 of the judgment, has observed as follows -

'The powers, privileges and immunities of 'State Legislatures and their Members with which the said Article deals have no reference or. relevance to the Legislative procedure which is the subject matter of the provisions of Art. 196. In the context, the word 'powers' used in Art. 194(3) must be considered along with the words 'privileges and immunities' to which the said clause refers, and there can be no doubt that the said word can have no reference-to the effect of dissolution with

which we are concerned. The powers of the House of the Legislature of a State to which reference is made in Art. 194(3) may, for instance, refer to the powers of the house to punish contempt of the house.' (underlining is ours).

The two topics are entirely different and distinct and the provisions in respect of one cannot be invoked in regard to the other. Therefore, there is no constitutional basis for the argument that unless the Legislature by law has made a contrary provision the English convention with regard to the effect of dissolution shall prevail in this country.'

According to Mr. Raman, when the Supreme Court referred to the fact that the powers of the House of the Legislature to which reference is made in Art. 194(3) may refer to the powers of the House to punish. contempt of the House, the Supreme Court must be taken to have decided the effect of dissolution of the House on proceedings for contempt of the House which question was left open by the Supreme Court in the earlier decision in Sharma's case, : [1961]1SCR96 . According to Mr.. Raman, this is the only way the observations made by the Supreme Court can be read.

23. Now, it is undoubtedly true that in Sharma's case, : [1961]1SCR96 , the Supreme Court had expressly left open the question whether the dissolution of the House necessarily has the effect of completely wiping out the contempt of the proceedings relating thereto.. But, we are unable to read the observations in Purushothaman's case, : AIR 1962 SC694 , as answering this question in the affirmative. We have to remember that the question which fell for decision before the Supreme Court in Purushothaman's case, : AIR 1962 SC694 , was whether the convention that the legislative business lapses on the dissolution of the House of Commons, could also be given effect to in India, and while approaching the question which fell for determination by the Supreme Court it was pointed out that while there was no doubt that dissolution of the House of Parliament in England brings to a close and in that sense kills all business pending before either House at the time of dissolution the Supreme Court observed that before accepting the broad argument that this must also inevitably be the consequence in every country which has adopted the English Parliamentary form of Government, it would be

necessary to enquire whether there are any provisions made by our Constitution which deal with the matter and if the relevant provisions of our Constitution provide for the solution of the problem it is that solution which obviously must be adopted. The Supreme Court then found that there was express provision in Art. 196(3) of the Constitution that a Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof. It was pointed out that Art. 196(3) makes a complete departure from the English convention, inasmuch as the prorogation of the House or the Houses does not affect the business pending before the Legislature at the time of prorogation. It was pointed out that under this clause the pending business may be pending either in the Legislative Assembly, or in the Legislative Council or may be pending the assent of the Governor and at whichever stage the pending business may stand, so long as it is pending before the Legislature of a State it shall not lapse by the prorogation of the Assembly. The Supreme Court considered the effect of Art. 196(5) which provides for all cases where the principle of lapse on dissolution should apply and observed that the effect of Cl. (5) of Art. 196 was that all cases not falling within its scope are not subject to the doctrine of lapse of pending business on the dissolution of the Legislative Assembly. The observations in para. 9 of the judgment relied upon by Mr. Raman have therefore to be read as pointing out the difference between the scope of Art. 194(3) and Art. 196. The Supreme Court in paragraph 9 of the judgment clearly pointed out that Art. 194(3) which dealt with the powers, privilege and immunities of State Legislatures and their members did not have any reference or relevance to the legislative procedure which is the subject matter of the provisions of Art. 196. When the Supreme Court observed that the powers of the House of the Legislature of a State to which reference is made in Art. 194(3) may, for instance, refer to the powers of the house to punish for contempt of the house, those observations were clearly intended to give an illustration of the scope of the powers under Art. 194(3) and they cannot, be read as laying down the proposition that the effect of dissolution of a House of the Legislature was to wipe out the proceedings for contempt of the House. We must, therefore, reject the argument that the Seventh Legislative Assembly having been dissolved, the English Legislative Assembly had no power to continue the proceedings against the petitioner. It was clearly open to the Eighth Legislative Assembly to take up the

matter with regard to the breach of privilege from the stage when the report was already made to the Speaker of the House.

24. The only other argument which requires to be dealt with is with reference to the violation of the right of the petitioner under Art. 21 of the [Constitution of India](#). This argument is the second limb of the first contention. It is urged that the petitioner is being deprived of his liberty even without hearing him inasmuch as he has been punished merely on the basis of a report of the Privileges Committee. The argument is that the petitioner should have been heard before the Assembly accepted the report of the Privileges Committee, and modified the proposed punishment. As already pointed out, Rr. 245 to 256 made under Art. 208(1) of the [Constitution of India](#) deal with the Committee of Privileges. Rule 2.55 reads as follows -

'255(a). The report of the Committee of Privileges shall be presented to the Assembly by the Chairman of the Committee or by any member of the Committee so authorised.

(b) As soon as may be, after the report has been presented a motion in the name of the Chairman of the Committee or any member of the Committee may be made that the report be taken into consideration.

(c) Any member 'may give notice of amendment to the motion for consideration of the report referred to above in such form as may be considered appropriate by the Speaker;

Provided that, an amendment may be moved that the question be recommitted to the Committee either without limitation or with reference to any particular matter.

(d) After the motion for consideration of the report has been carried, the Chairman or any member of the Committee or any other member as the case may be, move that the Assembly agrees, or disagrees, or agrees with amendments, with the recommendations contained in the report.' Under Cl. (c) of R. 255, any member can give notice of amendment to the motion for consideration of the report in such form as may be considered appropriate by the Speaker and under Cl. (d) after the

motion for consideration of the report is carried, the Chairman or any member of the Committee or any other member as the case may be, move that the Assembly agrees, or disagrees, or agrees with amendments with the recommendation contained in the report. The proceedings show that the Leader of the Assembly moved a resolution on July 1, 1985, that after accepting the report of the Privileges Committee of the Seventh Legislative Assembly on the matter relating to the Breach of privileges of the Assembly by the monthly magazine 'Vaniga Ottrumai' which was given to the Seventh Legislative Assembly on Mar. 28, 1984, the Assembly decides that the editor and publisher Thiru Paulraj should be arrested and detained in the Central Prison in Madras to undergo simple imprisonment for two weeks for breach of privileges of the House. The proceedings show that Thiru A. Rahman Khan had moved an amendment, but that amendment was deemed to be withdrawn. It is not known what the amendment was. But the proceedings show that the resolution moved by the Leader of the Assembly was passed unanimously. Now, it is difficult for us to see how the decision of the Assembly could be challenged on the ground that the petitioner 'was not heard. The rules framed under Art. 208(1) of the Constitution do not provide for any such hearing. It is true that the privileges Committee had proposed a punishment of simple imprisonment for one week but the Legislative Assembly in the exercise of its powers under Art. 194(3) was entitled to take a decision with regard to the term of imprisonment to be awarded to the petitioner. The decision of the Assembly cannot be challenged on the ground that there was any irregularity in the procedure. Art. 212 of the Constitution creates an express bar against a challenge to any proceedings of the Legislature on the ground of alleged irregularity of procedure. Art. 212(1) reads as follows - '212(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged, irregularity. of procedure.'

In so far as Art. 21 is concerned, where a person is punished' in the exercise of powers under Art. 194(3) in accordance with the Rules made by the Legislature under Art. 208(1), such punishment resulting in deprivation of procedure established by law's as contemplated by Art. 21.

25. A similar argument was advanced in Sharma's case, : [1961]1SCR96 , that the procedure adopted inside the House of a Legislature was not regular and was strictly not in accordance with law. Repelling this contention, the Supreme Court observed as follows in para 10 of the judgment : -

'There are two answers to this question firstly that according to the previous decision of this Court, the petitioner has not the fundamental right claimed by him. He is, therefore, out of Court. Secondly, the validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. Art. 212 of the Constitution is a complete answer to this part of the contention raised on behalf of the petitioner. No Court can go into those questions which are within the 'Special jurisdiction of the Legislature itself, 'which has the power to conduct its own business. Possibly a third answer to this part of the contention raised on behalf of the petitioner is that it is yet premature to consider the question of procedure as the Committee is yet to conclude its proceedings. It must also be observed that once it has been held that the Legislature has the jurisdiction to control the publication of its proceedings, and to go into the question whether there has been any breach of its privileges, the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance with its rules of business. Even though it may not have strictly complied with the requirements of the procedural law laid down for conducting its business that cannot be a ground for interference by this Court under Art. 32 of the Constitution. Courts have always recognised the basic difference between complete want of jurisdiction and improper or irregular exercise of jurisdiction. Mere non-compliance with rules of procedure cannot be a ground for issuing a writ under Art. 32 of the Constitution vide Janardhan Reddy v. State of Hyderabad, : [1951]2SCR344 '.

Apart from the fact that there does not appear to be any departure from the procedure prescribed by the rules under Art. 208(1) of the Constitution in view of the decision of the Supreme Court in Sharma's case, : [1961]1SCR96 cited supra, even though the Legislature may not have strictly complied with the requirements of the procedural law laid down for conducting its business, that cannot be a ground for issuing a writ under Art. 226 of the Constitution. The question of

punishment for a breach of privileges is a matter exclusively within the jurisdiction of the Legislature and Art. 212 of the Constitution forecloses any scrutiny by the Court with regard to the procedure adopted by the Legislature. We may also point out that the Supreme Court in *M.S.M. Sharma v. Sri Krishna Sinha*, : AIR 1959 SC395 has clearly pointed out that where a person is deprived of his personal liberty as a result of proceedings before the Committee of Privileges, such deprivation will be in accordance with the procedure prescribed by law. In that case, the Bihar Legislative Assembly had framed rules under Art. 208 to deal with a matter of breach of privileges. Referring to these rules, the Supreme Court observed as follows in para 29,-

'It follows, therefore, that Art. 194(3) read with the rules so framed has laid down the procedure for enforcing its powers, privileges and immunities. If, therefore, the Legislative Assembly has the powers, privileges and immunities of the House of Commons and if the petitioner is eventually deprived of his personal liberty as a result of the proceedings before the Committee of Privileges, such deprivation will be in accordance with procedure established by law and the petitioner cannot complain of the breach, actual or threatened, of his fundamental right under Art. 21.'

These observations give a complete answer to the contention raised by the learned counsel that he was entitled to relief from this Court under Art. 226 of the [Constitution of India](#) on the ground that he was deprived of his liberty otherwise than in accordance with the procedure established by law.

26. In the view we have taken, we hold that the petitioner is not entitled to a Writ of Mandamus sought by him restraining the respondents from giving effect to the decision of the Legislative Assembly to sentence him to two week's simple imprisonment for breach of privilege. The learned Judge was, in our view, right when he dismissed the writ petition. The appeal accordingly fails and is dismissed. The stay order issued by this Court shall stand vacated. Leave to file appeal to the Supreme Court rejected.

Appeal dismissed.

