



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 06th MARCH, 2024

IN THE MATTER OF:

+ **W.P.(C) 2482/2024 & CM APPL. 10180/2024**

AJAY KUMAR MAHAWAR & ORS

..... Petitioners

Through: Mr. Jayant Mehta, Sr. Advocate with Mr. Ripu Daman Bhardwaj, Mr. Satya Ranjan Swain, Mr. Vijay Kumar Joshi, Mr. Himanshu Bidhuri and Ms. Kangan Roda, Ms. Nikita Sethi, Advocates for P-1.

Ms. Sonia Mathur, Sr. Advocate with Mr. Chetanya Puri, Ms. Priyanka Garg and Mr. Nikhil Jaiswal, Advocates for P-2.

Mr. Kirti Uppal, Sr. Advocate with Mr. Kamal Diggpaul, Ms. Soumava Karmakar and Mr. Rudra Paliwal, Advocates P-3.

versus

LEGISLATIVE ASSEMBLY OF THE NATIONAL CAPITAL TERRITORY OF DELHI, THROUGH SECRETARY & ANR.

..... Respondents

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Sameer Vashisht, ASC and Mr. Vanshay Kaul, Mr. Aman Singh and Mr. Vedansh Vashisht, Advocates.

+ **W.P.(C) 2483/2024 & CM APPL. 10182/2024**

ABHAY VERMA

..... Petitioner

Through: Mr. Pavan Narang, Ms. Jyoti Taneja,



Mr. Piyush Beriwal, Mr. Himanshu Sethi and Ms. Aiswarya Chhabra, Advocates.

versus

LEGISLATIVE ASSEMBLY OF NATIONAL CAPITAL TERRITORY OF DELHI & ANR Respondents

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Sameer Vashisht, ASC and Mr. Vanshay Kaul, Mr. Aman Singh and Mr. Vedansh Vashisht, Advocates.

+ **W.P.(C) 2484/2024 & CM APPL. 10184/2024**

OM PRAKASH SHARMA & ORS Petitioners

Through: Ms. Malvika Trivedi, Sr. Advocate with Mr. Himanshu Pathak, Mr. Neeraj, Mr. Amit Tiwari, Mr. Sahaj Garg, Mr. Abhishek Saket, Mr. Shrey Sherawat, Mr. Kautilya Birat, Advocates for P-1 and P-2.

Mr. Dinesh Agnani, Sr. Advocate with Mr. Shoumendu Mukherjee, Mr. Kushagra Kansal Mr. Siddharth Khatana, Mr. Subhash Tanwar, Mr. Ankush Kapoor and Mr. Shrey Sherawat, Advocates for P-3.

versus

LEGISLATIVE ASSEMBLY OF THE NATIONAL CAPITAL TERRITORY OF DELHI THROUGH SECRETARY Respondent

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Sameer Vashisht, ASC and Mr. Vanshay Kaul, Mr. Aman Singh and Mr. Vedansh Vashisht, Advocates.



CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present writ petitions have been filed challenging the Motion passed in the 5th Session of the 7th Delhi Legislative Assembly on 16.02.2024 whereby the Petitioners had been suspended from the Sittings of the House and the issue was referred to the Committee of Privileges of the Legislative Assembly.
2. The facts leading to filing of the present petitions are as follows:
 - a. The Petitioners are Members of the 7th Delhi Legislative Assembly. The Petitioners have been elected to the Delhi Legislative Assembly in the elections held on 08.02.2020.
 - b. The 5th Session of the 7th Legislative Assembly, which is the budget session for the year 2024-2025 was scheduled from 15th February, 2024 to 21st February, 2024. The Session was extended till 29.02.2024 and further till 08.03.2024 with 18 scheduled sittings of the House.
 - c. Bulletin II dated 14.02.2024 was issued by Legislative Assembly Secretariat, NCTD informing all the members of the House that the Hon'ble Lieutenant Governor of Delhi would address the House at the start of the 5th session on 15.02.2024 and a schedule was provided for the same.
 - d. It is stated that on 15.02.2024, the Petitioners with other members of the House interrupted the Address of the Hon'ble Lieutenant Governor and continued to disrupt the address of the Hon'ble



Lieutenant Governor despite repeated warnings given to them by the Speaker of the House.

- e. At 11:18 AM and 11:31 AM, the petitioners were marshaled away from the Chamber of the House on the directions of the Speaker for continuously disrupting the Address of the Hon'ble Lieutenant Governor.
- f. Subsequently, a motion was proposed in the House on 16.02.2024 to refer the matter to the Committee of privileges and a decision was taken to suspend the Petitioners from sitting in the House till a finding is submitted by Committee of Privileges. The relevant except of the Motion is as follows"

“That this House disapproves the repeated violation of rules, directives of the Chair and unruly conduct of Hon'ble Members Shri Om Prakash Sharma, Shri Anil Kumar Bajpai, Shri Jitender Mahajan , Shri Ajay Kumar Mahawar, Shri Mohan Singh Bisht, Shri Abhay Verma, Shri Vijender Gupta, as the same are not in conformity with the rules to be observed by the Members of this House, as the same lowers the dignity of the House, and as the same are in violation of the framework of Code of Conduct for Members of the Delhi Assembly, as prescribed by the Committee on Ethics and thus approves that this matter be referred to the Committee of Privileges and the suspension of these Members till the Committee of Privileges submits its findings on cases of breach of privilege and contempt pending against them ”

(emphasis supplied)

- g. The abovementioned motion was put to vote and was adopted by the house on 16.02.2024 by a voice vote. Subsequently, on the



instructions of the Speaker, the Petitioners were escorted out of the legislative chamber of the House by Marshalls.

h. The Petitioners have, therefore, approached this court challenging the abovementioned motion.

3. The learned Counsel for the Petitioner contends that the Fifth Schedule is a self-contained code and is exhaustive in nature insofar as dealing with the Code of Conduct of Members inside the House is concerned. It also describes the procedure to enquire the same and also the punishments that can be imposed for such breach of conduct. It is submitted that a punishment under Clause 44 of the Fifth Schedule has already been inflicted on the Petitioners when the Speaker asked for the Members of the House to withdraw on 15.02.2024. It is submitted that once the mechanism under the said schedule had worked itself out, a motion could not have been entertained on 16.02.2024 which once again pertained to the conduct of the Members. Moreover, it is also stated that it is clear from the transcript of the House that the motion had been passed on 16.02.2024 invoking the Rule 6 of the Fifth Schedule and not Chapter XI of the Rules and Procedure.

4. It is submitted in the present case that the Petitioners have been suspended from the House by invoking Clause 44 of Fifth Schedule for breach of Code of Conduct. It is also stated that since the Fifth Schedule is exhaustive in nature, after such a suspension being punishment for breach of Code of Conduct, no further proceedings could have been initiated under Chapter XI for questions involving breach of privilege or contempt. It is submitted that proceedings were initiated under Chapter XI after due punishment under Clause 44 of Fifth Schedule had already been awarded and the same tantamounts to following a procedure which is unknown to the proceedings of the House. It is also submitted that punishment of suspension



awarded under Clause 44 of Fifth Schedule could only have been for a specific period and not for an indefinite period, and same was not followed in the present case.

5. It is submitted that even assuming without admitting that the procedure provided for under Chapter XI for breach of privilege or contempt could have been invoked in the present case, the procedure provided for within Chapter XI has not been properly followed. It is submitted that in the case at hand before a question of breach of privilege was raised under Rule 66 via a complaint of a Member, the requirements under Rule 67 were not complied with. Furthermore, the condition for admissibility of such a question was not followed as far as the due procedure provided for in proviso to Clause 68 is concerned. It is stated that the said proviso provides that the member against whom a complaint is made shall be given an opportunity of being heard and the same was not followed in the present case. It is submitted that the reference to the Committee of Privileges can only be made by the Speaker under Rule 70. It is contended that such a reference has to be presupposed with the application of the Speaker's mind on the matter. It is submitted that case at hand is where the reference to the Committee of privileges is done directly via a motion moved in the House on 16.02.2024 and such a procedure wherein the House refers the matter to the Committee of Privileges, and not the Speaker, does not find footing under Rule 70 of Chapter XI or any other Rule in the Rules of Procedure and Conduct of Business in the Legislative Assembly of the National Capital Territory of Delhi. It is, therefore, contended that such a reference is contrary to the procedure prescribed.



6. It is further submitted that without the admission of any guilt, the Members of the House have written to the Hon'ble Lieutenant Governor rendering their apology which has also been duly accepted. Moreover, the Petitioners on 21.02.2024 have also met the Speaker regarding the events which have transpired on 15.02.2024.

7. *Per contra*, the learned Senior Counsel for the Respondents commences his arguments by underlying the right of the House as an institutional body to self-protection and to maintain its dignity. It is submitted that the behavior expected of a member of the assembly is one that does not hamper the functioning of the House as a whole and its other constituents. It is submitted that the action of the Speaker on 15.02.2024 was not in exercise of the powers of the Speaker under Rule 277(2) as the Speaker had not named any members which can be seen from the contents of the transcript. It is submitted that immediate removal to maintain the dignity and functioning of the House is an inbuilt and necessary rule, the exercise of which is not punitive in nature.

8. It is also submitted that despite the high-degrees of immunity envisaged for the members of the assembly, they do not possess any protection for their unruly behavior from the House, which can itself take on the same action and that complete perversity in the procedure followed while taking such action has to be made out for the interference of the court which has not been established for the case at hand. Reliance is placed on Raja Ram Pal v. Hon'ble Speaker, Lok Sabha, (2007) 3 SCC 184 to state that the matter at hand ought not to be tested on traditional parameters of judicial review and that a constrained approach has to be opted for.



9. On the issue of the exhaustive operation of Fifth Schedule, it is submitted that the schedule to an enactment cannot be a complete code unless the enactment itself makes it a complete code. It is further put forward that Schedule 5 was made under the general Rules of Conduct under Rule 235B which does not override the earlier provisions. The Respondents rely on Aphali Pharmaceuticals Ltd. v. State of Maharashtra & Ors., 1989 4 SCC 378 which lays out that if there persists a dichotomy between a provision of a Schedule and a Rule then the Rule will override it. The relevant portion of the said judgment reads as under:-

" 30. This brings us to the question of interpretation of the Act and the Schedule with the Explanation, in view of the submission that the Explanation could not have rendered Item 3(i) of the Schedule redundant. Was there any change of intention of the legislature in this regard?"

31. A Schedule in an Act of Parliament is a mere question of drafting. It is the legislative intent that is material. An Explanation to the Schedule amounts to an Explanation in the Act itself. As we read in Halsbury's Laws of England, Third Edn., Vol. 36, para 551 [Ed.: See in Fourth Edition, Vol. 44, para 822] :

"To simplify the presentation of statutes, it is the practice for their subject-matter to be divided, where appropriate, between sections and Schedules, the former setting out matters of principle, and introducing the latter, and the latter containing all matters of detail. This is purely a matter of arrangement, and a Schedule is as much a part of the statute, and as much an enactment, as is the section by which it is introduced."



The Schedule may be used in construing provisions in the body of the Act. It is as much an act of legislature as the Act itself and it must be read together with the Act for all purposes of construction. Expressions in the Schedule cannot control or prevail against the express enactment and in case of any inconsistency between the Schedule and the enactment, the enactment is to prevail and if any part of the Schedule cannot be made to correspond it must yield to the Act. Lord Sterndale, in IRC v. Gittus [(1920) 1 KB 563] said: (at p. 576)

“It seems to me there are two principles or rules of interpretation which ought to be applied to the combination of Act and Schedule. If the Act says that the Schedule is to be used for a certain purpose and the heading of the part of the Schedule in question shows that it is prima facie at any rate devoted to that purpose, then you must read the Act and the Schedule as though the Schedule were operating for that purpose, and if you can satisfy the language of the section without extending it beyond that purpose, you ought to do it. But if in spite of that you find in the language of the Schedule words and terms that go clearly outside that purpose, then you must give effect to them and you must not consider them as limited by the heading of that part of the Schedule or by the purpose mentioned in the Act for which the Schedule is prima facie to be used. You cannot refuse to give effect to clear words simply because prima facie they seem to be limited by the heading of the Schedule and the definition of the purpose of the Schedule contained in the Act.”

10. It is further submitted that the actions of the suspended Members of the House are not to be seen in silos and that such incidents have not



occurred for the first time. It is submitted that the constant disruption by the Petitioners which undermine the dignity of the House and the Speaker merely culminated via the motion being passed on 16.02.2024 under Rule 6 of Fifth Schedule and that the ultimate resolution is at a much different footing than just the disruption of the Hon'ble Lieutenant Governor's speech. It is put forth that the matter at hand is one of continuous misconduct.

11. It is further submitted that the present case falls within a complaint made by a Member under Rule 66 and the fact that the requirements under Rule 67 as allegedly were not followed in the case at hand is a mere procedural irregularity and not an illegality.

12. The Ld. Counsel for the Respondents submitted that under Chapter XI of the Rules, a motion passed by the House under Rule 66 Proviso to refer the case to the Committee of Privileges, as has been done in this case, can either be consented to by the Speaker under Rule 70, or if he is of the opinion that the same can be disposed of by the House under Rule 71, do so while complying with the provisions of Rule 72.

13. The Ld. Counsel further provided that the consent of the Speaker is twofold which is required to be given at two stages. He states that the Speaker has to first give his consent for raising the motion to the House, as well as his consent to refer the matter to the Committee of Privileges under Rule 70. It is further submitted that while doing so, the Speaker will be guided by the principles of Rule 68.

14. The Ld. Counsel also elaborated that it need not be necessary to hear the member concerned against whom the House is taking action, at the time



of the House recommending the matter to the Committee of Privileges, as the same can be done in front of the Committee of Privileges under Rule 220(2). He states even if the member concerned is not heard at that stage, the member concerned will be heard under Rule 75 when a substantive motion is raised under Rule 74 before passing of the sentence.

15. The Ld. Counsel states that there has been substantial compliance with the procedure laid down in the Rules, even if some procedural provisions may not have been complied with. The Ld. Counsel also states that the Principles of Natural Justice stand satisfied, insofar as the Petitioners being given a chance to be heard was complied with, as the petitioners had an opportunity to be heard while the discussion on the said motion was ongoing in the House on the 16th of February, 2024.

16. In rejoinder, Mr. Jayant Mehta, learned Senior Counsel for the Petitioners, states that Clause 42, 43 and 44 of the Fifth Schedule prescribes a procedure to deal with complaints regarding breach of code of conduct. Under Clause 42, the Presiding Officer of the House can *suo motu* take up for consideration the breach of conduct. If the Presiding Officer or the House do not take up for consideration the breach of conduct, then under Clause 43, the Speaker can refer the complaint regarding violation of the code of conduct to the Committee. Clause 44 postulates the punishment for breach of conduct either under Clause 42 or Clause 43. Parallely, under Rule 277, the Speaker has the power to Order for withdrawal of the Member, adjourn the House or suspend the Sitting. Rule 277(3)(b) provides that the maximum punishment for the first breach of conduct would be three sittings and the maximum punishment for the second breach of conduct would be seven sittings. He states that under Rule 277(3)(b), once the



Speaker takes an action then the House can suspend a Member for three Sittings which is three days and since the Petitioners have already undergone the maximum punishment prescribed under Rule 277(3)(b) there cannot be a further continuation of suspension even adopting clause 44 of the Fifth Schedule.

17. Mr. Jayant Mehta, learned Senior Counsel for the Petitioners, states that Rule 277 and Sixth Schedule are the facets of the ordinary functioning of the House. He states that under Rule 277(1), the Speaker has the power to Order for withdrawal from the House for that day. He states that under Clause 44 of the 5th Schedule for a violation of a code of conduct, the Presiding Officer i.e., the person occupying the chair of the Speaker for that sitting or the House can impose a punishment for withdrawal. He states that once the Speaker has exercised his power under Rule 277 then any further action by the House under 5th Schedule will not be permissible since it would amount to taking action on the same act once by the Speaker and the second by the House.

18. The question which arises for consideration is whether the decision to suspend the Petitioners without specifying any period of time till the Committee of Privileges submits its findings on the question of breach of privilege and contempt is sustainable or not and as to whether the decision of the House in referring the matter to Committee of Privileges of the Legislative Assembly without any independent decision of the Speaker is sustainable, and has the House violated the procedure prescribed in the Rules for procedure and conduct of business.

19. Special provisions with respect to Delhi were brought in by way of 69th Constitution Amendment Act, 1991 introducing Article 239AA. Article



239AA (2)(a) prescribes that there shall be a Legislative Assembly for the National Capital Territory and the seats in such Assembly shall be filled by members chosen by direct election from territorial constituencies in the National Capital Territory. 239AA (3)(a) prescribes that the Constitutional Legislative Assembly shall have the power to make the laws for the whole or any part of the National Capital Territory.

20. The Parliament enacted the Government of National Capital Territory of Delhi Act, 1991 (*hereinafter referred to as "GNCTD Act"*). The GNCTD Act was made to supplement the provisions of the constitution relating to the Legislative Assembly for the National Capital Territory of Delhi. Section 3 of the GNCTD Act states that the total number of seats in the Legislative Assembly to be filled by persons chosen by direct election from territorial constituencies shall be seventy (70). Section 33 of the GNCTD Act gives power to the Legislative Assembly to make rules or regulations for regulating its procedure and the conduct of its business. In exercise of powers conferred under Sub-Section (1) of Section 33 of the GNCTD Act, the Legislative Assembly brought out Rules of procedure and the conduct of its business.

21. In order to maintain discipline in the assembly specific rules have been framed. Rule 277 gives power to the Speaker to direct any Member whose conduct is disorderly to withdraw immediately from the House. The procedure to implement the said power is given under Rule 277(2).

22. At this Juncture, it is relevant to delineate the position of the Speaker. Such a position is one that emanates from election or a choice exercised by the Members of the House and the person so chosen during the course of this exercise holds the office of a Speaker during the pleasure of the majority



of the House. It is an office which acts following the principles of total impartiality wherein the Speaker undoubtedly discharges his duties as the servant of the House. The authority exercised by the Speaker within the four corners of the House is one that emanates from the House itself and he exercises the same keeping in mind the well being of the House. Therefore, it is prudent to note that the Speaker is an impartial arbitrator of the proceedings in the House who has to apply his own mind while conducting the proceedings in the House.

23. Rule 277 gives power to the Speaker to pass orders to preserve peace and order in the House. If the Speaker is of the opinion that the conduct of any Member is disorderly or is defiant, the Speaker may direct the concerned Member to withdraw immediately from the House and the member so ordered to withdraw shall withdraw forthwith and shall absent himself during the remainder of the day's sitting. Under Clause 2 of Rule 277, if a Member who has been ordered by the Speaker under Rule (1) to withdraw does not obey the order to withdraw and the Speaker considers that merely ordering such a Member to go out of the House is inadequate or if the Member is wilfully and persistently creating obstructions on successive occasions, then under Clause 3(a) of Rule 277 as soon as a member is named, the Leader of the House or the Minister for Parliamentary Affairs or in his absence any other member shall forthwith make a motion to the effect that the member so named be suspended from the service of the House and the question on such motion shall be put before the House without any amendment, debate or adjournment proceedings. The period of suspension for the member so suspended shall for the first occasion be for three Sittings, for the second occasion for seven Sittings and on subsequent



occasions unless otherwise decided by the House, for the remainder of the session.

24. The Fifth Schedule of the Rules lays down the code of conduct of the Members of Legislative Assembly and the code of conduct of Members inside the House. Clause 6 of the Fifth Schedule which is relevant for this case deals with the code of conduct for members during the Lieutenant Governor's address. Clause 6 of the Fifth Schedule reads as under:

"6. If any member interrupts or obstructs the Lieutenant Governor's Address to the House either before or during or after the Address, while the Lieutenant Governor is in the House, with any speech or point of order or walk out or in any other manner, such interruption, obstruction or show of disrespect shall tantamount to an act of disrespect to the Lieutenant Governor and may be considered as a grossly disorderly conduct on the part of the concerned member/members and a contempt of the House which may be dealt with by the House subsequently on a motion moved by the member."

25. Clause 42 of the Fifth Schedule prescribes that the Presiding Officer or the House, as the case may be, can *suo motu* take up for consideration cases of breach of the code that have taken place in the House. Clause 43 of the Fifth Schedule prescribes that in other cases, the Speaker may refer complaints, regarding violation of Code of Conduct to Committee on Ethics for examination and a report thereon. Clause 44 of the Fifth Schedule prescribes punishment for breach of code of conduct. Clauses 42, 43 and 44 of the Fifth Schedule reads as under:

"42. The presiding officer or the House, as the case may be, suo motu take up for consideration cases of breach of the code that have taken place in the House."



43. In other cases, the Speaker may refer complaints, regarding violation of Code of Conduct to Committee on Ethics for examination and report thereon.

44. In case of violation of the code of Conduct the Presiding Officer or the House, as the case may be, impose any of the following punishment/penalties—

(a) Admonition;

(b) Reprimand;

(c) Censure;

(d) Withdrawal from the House;

(e) Suspension from the service of the House for a specific period; and

(f) Any other penal action considered appropriate by the House."

26. A conjoint reading of Clauses 6, 42, 43 and 44 of the Fifth Schedule shows that the code of conduct has been prescribed for the members during Lieutenant Governor's Address to the House. Clause 42 gives power to the Presiding Officer or the House to *suo motu* take up for consideration cases of breach of the code that have taken place in the House which according to the House or the Presiding Officer is violative of the code of conduct which have been prescribed for Members inside the House and they have the power to punish the concerned Member under Clause 44. If the Presiding Officer does not *suo motu* take up the case then the speaker can refer complaints regarding violation of Code of Conduct to Committee on Ethics for examination and report thereon and on receipt of the report, punishment can be imposed under Clause 44. Clause 44 prescribes the punishment.

27. A perusal of the aforesaid Clause 6 of the Fifth Schedule indicates that if any member interrupts or obstructs the Lieutenant Governor's Address to the House either before or during or after the Address, while the



Lieutenant Governor is in the House, such interruption, obstruction or show of disrespect shall tantamount to an act of disrespect to the Lieutenant Governor and may be considered as a grossly disorderly conduct on the part of the concerned member/members and a contempt of the House which may be dealt with by the House subsequently on a motion moved by the Member. Clause 6 of the Fifth Schedule postulates that apart from proceeding under Fifth Schedule, the House can in addition to initiating proceedings under Fifth Schedule also move for contempt of the House under Chapter XI. Further proceedings under Fifth Schedule and Chapter XI can be taken in addition to the power exercised by the Speaker under Rule 277. Rule 277 confers power on the Speaker to take action in order to ensure smooth functioning of the House.

28. Chapter XI of the Rules deals with the question involving breach of privilege and contempt. The entire Chapter XI is being reproduced because this Court intends to deal with the entire procedure for breach of privilege and contempt which reads as under:



CHAPTER-XI

QUESTIONS INVOLVING BREACH OF PRIVILEGE AND CONTEMPT

66. Raising a question of breach of privilege or contempt

A question involving a breach of privilege or contempt either of a member or of the House or of a Committee thereof may, with the consent of the Speaker, be raised by—

- (i) a complaint from a member;
- (ii) a report from the Secretary;
- (iii) a petition; or
- (iv) a report from a Committee:

Provided that if the breach of privilege or contempt is committed in the view of the House, the House may with the consent of the Speaker take action without any complaint.

67. Complaint by member

A member wishing to raise such a question when the House is in session shall give notice in writing to the Secretary at least three hours before the commencement of the sitting on the day on which the question is proposed to be raised. If the question is based upon a document, the original or a copy thereof shall accompany the notice.

If the complaint is against any member of the House, such a notice shall be in duplicate, a copy of which shall be sent to the member concerned.

68. Conditions of admissibility

Admissibility of such question shall be governed by the following conditions—

- (i) the question is restricted to a definite matter of recent occurrence;
- (ii) the subject matter of the notice shows *prima facie* a question of breach of privilege or contempt; and
- (iii) the matter requires the intervention of the House:



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Provided that if the complaint is against a member, the Speaker, before giving his consent and determining its admissibility, shall hear him after giving an opportunity to inspect the concerned documents, if any, and if need be, may also hear the complainant or any other member.

69. Mode of raising question of privilege

- (1) The Speaker, if he gives consent under rule 66 and holds that the matter proposed to be discussed is in order, shall call the member, who shall rise in his place and, while asking for leave to raise the question of privilege, may make a short statement relevant thereto:

Provided that where the Speaker has refused his consent under rule 66 or is of the opinion that the matter proposed to be discussed is not in order, he may, if he thinks fit, state that he refuses consent or holds that the notice of question of privilege is not in order:

Provided further that if the Speaker deems it necessary, he may hear the member concerned and other member(s) and also seek such other information as he may require before giving decision:

Provided also that the Speaker may if he is satisfied with the urgency of the matter, allow a question of privilege to be raised at any time during the course of a sitting after the disposal of questions.

- (2) If objection to leave being granted is taken, the Speaker shall put the motion to vote before the House. If not less than one-sixth of the members rise in support of the motion, the Speaker shall declare that the leave is granted. If however, the number of members rising in support of the motion is less than one-sixth, the Speaker shall inform the member that he does not have the leave of the House.

70. Presentation of complaint

If in the opinion of the Speaker, the notice of breach of privilege or contempt is fit for giving consent and is admissible under these rules, he may refer that matter to the Committee of Privileges for examination, investigation



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and report and acquaint the House about it. If in the opinion of the Speaker, the notice is inadmissible, he shall inform the House accordingly:

Provided that if the Speaker deems it necessary, he may hear the member concerned and other members before giving his decision.

71. Consideration of question of breach of privilege or contempt by the House

If the Speaker is of the opinion that the matter given notice of, is such as can be disposed of by the House without being referred to the Committee of Privileges, it will be permissible to move that the question be taken up for consideration forthwith or at some future date:

Provided that if the notice is received by a report from the Secretary or a Committee or by a petition, copies of the report or petition shall, if the Speaker considers it necessary, be printed and distributed amongst the members before the consideration of the matter by the House.

72. Disposal of a complaint before the House

- (1) If it is decided to bring a complaint against a member before the House for disposal, the said member shall be given notice and an opportunity to be heard for explanation and exculpation of his case and also to inspect and to produce relevant document or documents.
- (2) The member complained against shall attend the House on the day fixed and if he is unable to attend, he shall intimate to the Speaker his reasons for absence and the House, in view of the reasons given, may postpone the consideration of the matter. If, however, the House is of the opinion that there are no valid reasons for absence or the member has wilfully absented himself, it may proceed with the consideration of the matter in his absence. In case, member is absent and has failed to intimate the reasons for his absence due to unavoidable circumstances, the House may reopen the question at his request.
- (3) The member complained against after attending the House and giving his explanation shall withdraw from the House, and shall not enter the House as long as the matter is under consideration of the House. The House may, however, allow him to hear the



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proceedings or recall him for purposes of giving a further explanation or for tendering an apology.

- (4) The procedure provided in this rule shall *mutatis mutandis* apply to those persons also who are not members.

73. Motion after presentation of the report

After presentation of its report, the Chairman of the Committee of Privilege or any member thereof or any member of the House may make a motion that the report of the Committee be taken into consideration forthwith or at some future time within which the report may be printed and copies supplied to members.

74. Substantive motion

When the House agrees to the Motion—

- (i) that the question of breach of privilege or contempt, committed in view of the House, be considered; or
- (ii) that the matter be taken up for consideration forthwith under rule 71; or
- (iii) that the report of the Committee of Privileges may be considered under rule 73;

any member may move a substantive motion confirming the commission of the breach of privilege or contempt, or the report, as the case may be, and also suggesting the action to be taken by the House thereon, and any other member may move an amendment to the said motion.

75. Opportunity to person charged

Except where the breach of privilege or contempt has been committed in the view of the House, the House shall before passing any sentence give an opportunity to the person charged to be heard for explanation or exculpation of the offence against him:

Provided that if the matter has been referred to the Committee of Privileges and the person charged has been heard before the Committee, it shall not be necessary for the House to give him that opportunity unless the House directs otherwise.



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76. Summoning the party charged

The Speaker may summon the person charged by notice or warrant of arrest to appear before the House at any stage of the proceedings.

77. Punishment

- (1) The House on its own or on the recommendation of the Committee of Privileges may inflict the following punishments—
 - (a) admonition;
 - (b) reprimand;
 - (c) suspension of member;
 - (d) fine;
 - (e) expulsion of member;
 - (f) imprisonment, the term whereof is at the pleasure of the House but cannot extend beyond prorogation or dissolution; and
 - (g) any other punishment which the House may deem proper and subject to the provisions of section 18.
- (2) The members suspended from the service of the House shall stand debarred from entering into the precincts of the House and from taking part in the proceedings of the House and the Committees, but the Speaker may, on a request being made to that effect, allow a suspended member to enter into the precincts of the House for any particular purpose.
- (3) The House may, on a motion being made, order that any punishment of suspension or the unfinished part thereof may be rescinded.

78. Groundless complaint

In case the House finds a charge of breach of privilege or contempt groundless, it may order the payment by the complainant of an amount not exceeding Rs. 500/- as cost to the party charged.

79. Execution of orders of the House

The Speaker or any other person authorised by him in this behalf shall have the power to execute all the orders passed and sentences inflicted by the House.



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80. Brevity of debate

The debate at all stages on question involving breach of privilege or contempt shall be brief.

81. Regulation of procedure

The Speaker may issue such direction as may be necessary for regulating the procedure in matters connected with the consideration of the question of privilege or contempt either in the Committee or the House.

82. Power of Speaker to refer question of privilege or contempt to Committee

Notwithstanding anything contained in these rules, the Speaker may refer any question of privilege or contempt to the Committee of Privileges for examination, investigation or report, and acquaint the House about it.

83. Procedure on question of breach of privilege or contempt of the House by a member or officer or servant of any other House

If a member, officer or servant of any other Legislature in India is involved in a case of contempt or an alleged breach of privilege of the House, the Speaker shall refer the matter to the Presiding Member of that Legislature, unless on hearing the member who raised the question or perusing any document, where the complaint is based on document, the Speaker is satisfied that no breach of privilege has been committed or matter is too trivial to be taken notice of, in which case he may disallow the motion for breach of privilege. When a case of contempt or an alleged breach of privilege of any other Legislature in India, in which a member, officer or servant of the House is involved, is referred to the House by the Presiding Member of the Legislature of which contempt has been committed, the Speaker shall deal with that matter in the same manner as if it were a case of breach of privilege of the House and communicate to the Presiding Member who made the reference, a report about the inquiry and the action taken on the reference received.



(37)

INTIMATION OF ARREST, DETENTION, AND RELEASE ETC. OF A MEMBER TO SPEAKER

84. Intimation of arrest, detention etc. of a member to Speaker by Magistrate

When a member is arrested on a criminal charge or for a criminal offence or is sentenced to imprisonment by a court or is detained under an executive order, the judge, magistrate or executive authority, as the case may be, shall immediately intimate such fact to the Speaker indicating the reason for the arrest, detention or conviction, as the case may be and also the place of detention or imprisonment of the member in the appropriate form set out in the First Schedule annexed to these rules.

85. Intimation to Speaker on release of a member

When a member is arrested and after conviction released on bail pending an appeal or is otherwise released, such fact shall also be intimated to the Speaker by the authority concerned in the appropriate form set out in the First Schedule annexed to these rules.

86. Treatment of communication received from Magistrate

As soon as may be, the Speaker shall, after he has received a communication referred to in the rule 84 or which may also be sent by wireless message, teleprinter or telegram, read it out in the House if it is sitting, or the House is not sitting, direct that the members be informed of the same:

Provided that if the intimation of the release of a member either on bail or otherwise is received before the House has been informed of the original arrest or imprisonment, the act of his arrest or imprisonment and his subsequent release or discharge may, in the discretion of the Speaker, not be intimated to the House by him.

PROCEDURE REGARDING SERVICE OF A LEGAL PROCESS AND ARREST WITHIN THE PRECINCTS OF THE HOUSE

87. Arrest within the precincts of the House

No arrest shall be made within the precincts of the House without obtaining the permission of the Speaker

88. Service of legal process

A legal process, civil or criminal shall not be served within the precincts of the House without obtaining the permission of the Speaker.



29. The scope of interference by a Court exercising jurisdiction under Article 226 of the Constitution of India has been crystallized in several judgments of the Apex Court. The Apex Court in Raja Ram Pal v. Hon'ble Speaker, Lok Sabha, (2007) 3 SCC 184 after discussing various judgments of the Apex Court has summarized the parameters of judicial review in relation to matters of procedure followed by the Parliament which would mutatis mutandis apply to the State Legislature as well, has observed as under:

"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 judiciary 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.

(emphasis supplied)

30. In Ashish Shelar v. Maharashtra Legislative Assembly, (2022) 12 SCC 273, the Apex Court after placing reliance upon Paragraph No.431 of Raja Ram Pal (supra) and several other Judgments has observed as under:

"31. From the exposition in these successive Constitution Bench decisions referred to above, it is not possible to countenance the submission of the learned counsel for the respondent State that the enquiry must be limited to one of the parameters specified in Raja Ram Pal [Raja Ram Pal v. Lok Sabha, (2007) 3 SCC 184] and, in this case, only clause (s) — “The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny”. On the other hand, we lean in favour of taking the view that each of the parameters is significant and permissible area of judicial review in relation to exercise of parliamentary privileges including clauses (f), (g), (s) and (u). In one sense, clause (u) is a comprehensive parameter articulated by the Constitution Bench in Raja Ram Pal [Raja Ram



Pal v. Lok Sabha, (2007) 3 SCC 184] , as it predicates that : (SCC p. 373, para 431)

“431. ... (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.”

32. The Constitution, by itself, does not specify the limitation on the privileges of the legislature, but, indubitably, those privileges are subject to the provisions of the Constitution [as is predicated in the opening part of Article 194(1) as also in Article 208(1) requiring the House of the legislature to make Rules for regulating its procedure], which ought to include the rights guaranteed to the citizens under Part III of the Constitution. The moment it is demonstrated that it is a case of infraction of any of the rights under Part III of the Constitution including ascribable to Articles 14 and 21 of the Constitution, the exercise of power by the legislature would be rendered unconstitutional. For attracting Articles 14 and 21 of the Constitution, it is open to the petitioner to demonstrate that the action of the legislature is manifestly arbitrary. The arbitrariness can be attributed to different aspects. Applying that test, it could be a case of irrationality of the resolution/decision of the House. Indeed, in this case, the Court is not called upon to enquire into the proportionality of such a resolution/decision.

31. The Apex Court in Ashish Shelar (supra) further held that rules made to exercise the powers and privileges of a State Legislature constitute law within the meaning of Article 13. The Apex Court after placing reliance upon on In re, Special Reference No.1 of 1964, AIR 1965 SC 745 reiterated



that when the State Legislatures purport to exercise this power, they are undoubtedly acting under Article 246 read with Entry 39 of List II and the enactment of such a law will, therefore, have to be treated as a law within the meaning of Article 13. The Apex Court, thereafter, went on to hold that even though the legislature has the prerogative to deviate from the rules including to alter the rules; until then, and even otherwise, it is expected to adhere to the “express substantive stipulation” (which is not mere procedure) in the Rules framed under Article 208 of the Constitution and the principle underlying therein, being procedure established by law.

32. Applying the aforesaid principles, let's examine as to whether the decision of the assembly to suspend the Petitioners for an indefinite period till the Committee of Privileges submits its findings on the question of breach of privilege and contempt under the various provisions of Rules of Procedure and Conduct of Business in the Legislative Assembly of National Capital Territory of Delhi has been taken after following the procedure in the assembly or not and as to whether the decision to refer the question to the Committee of Privileges has been taken in accordance with procedure or not.

33. The allegation against the Petitioners is that the Petitioners along with other Members of the House have interrupted the address of the Hon'ble Lieutenant Governor on 15.02.2024. The Petitioners marched out on 15.02.2024 and they were permitted to rejoin in the next sitting which is on 16.02.2024. On 16.02.2024, a motion was moved against the Petitioners by Sh. Dilip Kumar Pandey, Chief Whip of AAP, and the House took a decision to refer the question of breach of privilege and contempt to the Committee of Privileges and suspended the Petitioners till the Committee of



Privileges submits its findings on the question of breach of privilege and contempt.

34. As stated earlier, Clause 6 of the Fifth Schedule deals with the Code of Conduct of Members during the address of Hon'ble Lieutenant Governor. A perusal of Clause 6 indicates that apart from being a violation of Code of Conduct, action can also be taken for contempt of the House which can be dealt with by the House subsequently on a motion moved by a Member. Therefore, it cannot be said that the Fifth Schedule is a complete Code in itself. However, it must be noted that in the present case the Petitioners have been suspended till the Committee of Privileges takes a decision on the question which is not one of the punishments that is prescribed in Clause 44 of the Fifth Schedule. Clause 44(e) of the Fifth Schedule gives power to the Presiding Officer or the House to suspend a Member only for a definite period and not indefinitely. For a breach of Code of Conduct, the Petitioners could have been given only any one of the punishments provided under Clause 44 of the Fifth Schedule which does not stipulate a suspension for an indefinite period. Since the suspension can be only for a specific period and not indefinitely i.e., till the Committee of Privileges takes a decision on the question of breach of privilege, the suspension of the Petitioners till the Committee of Privileges takes a decision is, therefore, beyond the purview of Clause 44 of the Fifth Schedule and is, therefore, unsustainable.

35. Chapter XI deals with the questions involving the breach of privilege and contempt. Rule 66 of Chapter XI provides that a question involving a breach of privilege or contempt of a Member of the House or of a Committee can be raised by a complaint from a Member, a report from the Secretary, a petition or a report from a Committee, however, this can be



raised only with the consent of the Speaker. Proviso to Rule 66 of Chapter XI gives the power to the House to proceed ahead to take action under Chapter XI even without a complaint, however, it has to be done with the consent of the Speaker. In the present case, the House was of the view that the Petitioners have committed contempt and therefore, by way of motion raised by Sh. Dilip Kumar Pandey, Chief Whip of AAP, the House referred the matter to the Committee of Privileges. Since the House has unanimously taken the issue, Rule 67 of Chapter XI would not be applicable in this case because Rule 67 of Chapter XI deals with a complaint by a Member which does not apply here. Rules 67 and 68 of Chapter XI do not apply here. Though the learned Senior Counsel for the Assembly states that even when the House decides to take up the issue of breach of privilege, Rules 67 and 68 of Chapter XI would apply but in the opinion of this Court once the House has taken a decision to take action without any complaint then Rules 67 and 68 of Chapter XI do not apply.

36. It is pertinent to mention that if the contention of the learned Senior Counsel for the Petitioners is accepted that Rules 67 and 68 of Chapter XI would apply even in the present case then it must be said that proviso to Rule 68 of Chapter XI has not been followed inasmuch as, the Petitioners have not been given an opportunity to be heard which itself vitiates the decision of the House in referring the issue to the Committee of Privileges. The Petitioners have been suspended without following the procedure established by law.

37. Rule 70 of Chapter XI gives power to the Speaker to exercise his discretion to refer the matter to the Committee of Privileges for examination. Rule 70 of Chapter XI states that after the motion is passed by the House



then it is the Speaker who has to take a decision as to whether there has been a breach of privilege or not and as to whether contempt has been committed or not. Only the Speaker can refer the matter to the Committee of privilege for examination, investigation and a report from the Committee and no one else can, including the House itself. Proviso to Rule 70 of Chapter XI also gives discretion to the Speaker to hear the Member before giving his decision. Rule 70 of Chapter XI, therefore, casts an obligation on the Speaker to take a decision as to whether the Speaker feels that the matter should be referred to the Committee of privileges or not and the Speaker has to inform the House accordingly. Rule 70 of Chapter XI has not been followed in this case. The Speaker who is an impartial arbitrator and conducts the House has not taken any decision independently and has not held that the matter is one that requires to be referred to the Committee of Privileges.

38. Rule 71 of Chapter XI also gives power to the Speaker to dispose of the motion without it being referred to the Committee of Privileges and proceed directly to impose punishment. If such a route is taken then before imposing punishment, the Member concerned has to be given an opportunity of being heard under Rule 75 of Chapter XI. Rule 77 of Chapter XI prescribes the punishment.

39. In the present case, the Petitioners have been given a punishment under Rule 44 of the Fifth Schedule which is not prescribed under Rule 44 of the Fifth Schedule. The Petitioners have been given a punishment in excess of what can be given under Rule 44 of the Fifth Schedule and at the same time, the Petitioners have been actually given a punishment under Rule 77 of Chapter XI which is a suspension for an indefinite period without even



being heard (which has not been held to be valid by the Apex Court in Ashish Shelar (supra)). In the absence of any application of mind by the Speaker in referring the matter to the Committee of Privileges and in view of the fact that the Petitioners have not been heard while being given punishment of suspension till the Committee of Privileges decides the matter and since the punishment under Rule 77 of Chapter XI can be prescribed only after a Member is heard, the direction for suspending the Petitioners till the Committee of Privileges takes a decision cannot be sustained.

40. The upshot of this is that the decision of the House to send the issue before the Committee of Privileges without the Speaker independently applying his mind as postulated under Rule 70 of Chapter XI and the decision of the House to suspend the Petitioners till the Committee of Privileges takes a decision both are in violation of the procedure prescribed under the Fifth Schedule and Chapter XI. Since the Petitioners have already undergone the suspension of 14 sittings, this Court is of the opinion that the Petitioners should be permitted to re-join the House forthwith.

41. In view of the above, the writ petitions are disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MARCH 06, 2024

S. Zakir