(1962) 07 AHC CK 0007

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 56 of 1960

A.J. Faridi and Another		APPELLANT
	Vs	
Chairman, U.P. Legislative Council (R.V. Dhulekar), Lucknow and Others		RESPONDENT

Date of Decision: July 11, 1962

Acts Referred:

- Constitution of India, 1950 - Article 168, 174, 183, 185, 185(1)

Citation: AIR 1963 All 75

Hon'ble Judges: S.D. Singh, J; B. Dayal, J

Bench: Division Bench

Advocate: Bishun Singh, K.S. Verma and B.C. Agarwal, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

S.D. Singh, J.

This petition under Article 226 of the Constitution has been filed by Dr. A.J. Faridi, who was a Member of the U. P. Legislative Council. The three opposite parties in the petitions are Sri Raghunath Vinayak Dhulekar, Chairman, U. P. Legislative Council, the Secretary of the U. P. Legislative Council and the U. P. Legislative Council itself.

2. On nth February, 1960, Dr. Faridi and eight other members of the Council gave notice of the following resolution :

"Sri Raghunath Vinayak Dhulekar, being unfit for the office of the Chairman of the Council, should be removed from the office"

under Rule 143 of the Rules of Procedure and Conduct of Business of the Council. Under this rule a resolution for the removal of the Chairman can be moved only if the leave of the House is given for the purpose by 20 members of the House rising

in support of the same when so required by the Chairman to do. The question relating to the leave was included as item No. 3 in the agenda for and March, 1960.

3. On 2nd March, 1960, Sri Raghunath Vinayak Dhulekar (to be referred to hereafter as Sri Dhulekar), the Chairman of the Council, was occupying the chair. After the first two items of the agenda were gone through, he put the question relating to, the leave for the aforesaid resolution to the house, and asked such of the members as were in favour of leave being granted rising in their seats; and on only 18 members rising, he announced that the leave had been refused. Dr. Faridi and others protested against Sri Dhulekar himself occupying the chair when this matter was put to the House, and later walked out. ''But we are not concerned in this petition with what happened after the Chairman had announced the decision of the House.

4. Dr. Faridi has prayed in this petition for a writ, direction or order in the nature of mandamus against the opposite-parties to the effect that the proceedings relating to item No. 3 in the agenda for 2nd March, 1960, be treated as ultra vires the Constitution and not effective and further ordering the Chairman to proceed according to the provisions of Articles 183 and 185 of the Constitution without applying Rule 143 aforesaid on the ground that it was ultra vires and illegal.

5. What is urged on behalf of the petitioner is that the law relating to the moving of a resolution for the removal of the Chairman is that which is contained in Article 183 of the Constitution, and that that article prescribes only two limitations in respect of it, namely,

(1) that at least 14 days'' notice of the intention to move such a resolution has been given, and

(2) that the resolution is passed by a majority of all the then members of the Council.

6. It is urged that these are the only two conditions governing a resolution for the removal of a Chairman and that Rule 143 of the Rules of Procedure and Conduct of Business (to be referred to hereafter as the Rules) having prescribed a further condition that leave of the House should be asked for and that that leave should be available only if at least 20 members rise in support of the same, being inconsistent with Article 183, is ultra vires the Constitution.

7. It was contended that Article 194(3) of the Constitution prescribes the powers, privileges and immunities of a House of the Legislature of a State and its members as being, unless they are defined by the Legislature itself by law, to be the same as were enjoyed by the House of Commons of the Parliament of the United Kingdom and its members at the commencement of the Constitution. One of the powers and privileges of a member of the House of Commons, it was urged, is to move any resolution in the House including a resolution for the removal of the Speaker or Chairman and to speak for and in support of the same and that it is this power and privilege of the petitioner, which was denied by Rule 143, which is ultra vires the

Constitution even on that ac count.

8. It was further contended that under Article 185 of the Constitution where any resolution for the removal of the ''Chairman from his office is under consideration, the Chairman shall not, though he is present, preside while the resolution is being considered and that this constitutional provision was ignored by Sri Dhulekar, thereby vitiating the proceedings for the day.

9. The contention on behalf of the opposite parties was that Rule 143, as also other Rules relating to Procedure and Conduct of Business of the Council, were framed under Article 208(i) of the Constitution, which entitles a House of the Legislature to make rules subject to the provisions of the Constitution for regulating its procedure and conduct of business, that although Article 194(3) guarantees the powers, privileges and immunities of a House of the Legislature or its members as being the same as those of House of Commons of the Parliament of the United Kingdom and its members, a right to move a particular resolution inside the House is neither a power nor a privilege referred to in Article 194(3), but an ordinary right of a member of the House which right is to be exercised subject to the Rules of Procedure and Conduct of Business which may be framed by the House itself under Article 208(1) of the Constitution, and that Article 185(i) requires the Chairman to vacate the chair only when a resolution for his removal from office is under consideration and not when what is being considered by the House is whether leave to move the resolution should be granted.

10. It was also contended on behalf of the opposite parties that the term of office of Dr. Faridi as member of the House expired on 5th May, 1960, and that though he was re-elected as a member with effect from 6th May, 1960, there was a break in his membership and that with his break in the membership of the House, even the resolution given notice of by him, even though, according to the petitioner, it is still pleading, will be deemed to have lapsed. It was further alleged that the session of the legislative Council was prorogued on 22nd May, 1960, and all notices then pending lapsed under Rule 5 of the Rules and that the petitioner would not be entitled to any relief even on that account.

11. One of the questions argued before us in this petition relates to interpretation of Article 212(1) of the Constitution and it may be considered first. Article 212(1) of the Constitution provides that 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 and it was contended that the irregularity, if any, alleged on behalf of the petitioner being an irregularity of procedure, the validity of the proceedings cannot be questioned in Court. What is in substance provided for under this Article is that the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance with the Rules of Procedure and Conduct of Business, and as pointed out by their Lordships of the Supreme Court in Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others, , even though the Legislature may not have strictly

complied with the requirements of the procedural law laid down for conducting its business, it cannot be a ground for interference by the Courts, which 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 will not be a ground for issuing a writ either under Article 32 or Article 226 of the Constitution. Sri Bishun Singh, who argued the case for the petitioner, conceded that this was the correct position and that if the irregularity pointed out or alleged by the petitioner is held to be mere irregularity of procedure, he was out of Court. But what was contended by him was that it was not mere irregularity in procedure which vitiated the proceedings of the Council on 2nd March, 1960, but disregard of the provisions of the Constitution by the chairman and it was contended by him on the authority of Haridas Majumdar v. Sir Bejoy Prasad Singh Roy AIR 1946 Cal 121 that the action of the Chairman would not be protected if he was acting in defiance of the provisions of the Constitution, or if he was exercising some power which he did not possess.

12. Reference was also made to Attorney-General for New South Wales v. Trethowan 1932 AC 526. Section 7A of the Constitution Act, 1962, of New South Wales provided that no Bill for abolition of the Legislative Council should be presented to the Governor for His Majesty''s assent unless it had been approved by the majority of the electors voting upon a submission to them made in accordance with the section; and the same provision was to apply to a Bill to repeal Section 7A. In 1930 both the Houses of the Legislature of New South Wales passed two Bills, by one of which Section 7A was repealed and by the other the Legislative Council was abolished. The procedure prescribed u/s 7A of the Constitution, which was repealed by the earlier of the two Acts, was not followed. It was held by their Lordships of the Privy Council that the provision of Section 7A of the Constitution Act, 1902, being a part of the Constitution, the Bill relating to the repeal of that section as also the other Bill by which the Legislative Council was to be abolished could not lawfully be presented to the Governor for His Majesty''s assent, unless and until they were approved by a majority of the electors voting. This was a case in which the provisions of the Constitution Act were ignored by the Legislature and the two Bills passed in spite of the provision contained in Section 7A.

13. The law on the subject has been correctly stated in paragraph 5 of Section 74 of Nason''s Manual of Legislative Procedure, 1953 Edition, on the authority of Blood v. Beal (1905) 100 Mo 39 : 60 Atl 427 as

"The courts have the right to restrain a local legislative body in order to prevent a manifest violation of the constitution of the State",

or in paragraph 2 of Section 7 (page 35), where it is said on the authority of State v. Alt (1887) 26 Moo App 673

"If Congress or a state legislature violates a constitutional requirement the courts will declare its enactment void".

14. The position, therefore, is that if the petitioner can show that opposite party No. 1, Sri Dhulekar, acted in defiance of any provision of the Constitution or if he exercised any power, which he did not under the Constitution possess, it will be possible for this Court to interfere. But if what the petitioner is able to establish merely amount to an irregularity of procedure, the validity of the proceedings inside the House would not be open to be questioned through this petition.

15. The main argument in the case was directed against the validity of Rule 143 of the Rules which reads:

"143. Any resolution to remove the Chairman or Deputy Chairman from office, of which the previous notice of 14 days has been received from a member, shall be read to the Council by the member presiding. He shall then request those members who are in favour of leave being granted to move the resolution to rise in their places and if not less than twenty members rise accordingly, the members presiding shall allow the resolution to be moved. If less than twenty members rise, the member presiding shall inform the intending mover thereof that he has not the leave of the Council to move it".

16. As has been pointed out by us earlier, the argument was that this rule contravenes Article 183 of the Constitution, which prescribes only two limitations upon the passing of a resolution for the removal of the Chairman.

17. The Rules were framed by the Legislative Council under Clause (i) of Article 208 of the Constitution, which provides:

"208 (i). 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".

The Legislative Council had, therefore, power to make rules regulating its procedure and the conduct of business, though the rules have to be "subject to the provisions of the Constitution", which means consistent with it. Although, therefore; the Legislative Council had jurisdiction to frame ''the rules, including Rule 143, if this rule contravenes any provision of the Constitution, it would obviously be beyond the rule-making power of the Council. On the other hand, if it is in conformity with the provisions of the Constitution, or, if it cannot be said to be in violation of any of the provisions of the Constitution it would be within the rule-making power of the Council and consequently binding upon the members so far as the conduct of business inside the House is concerned.

18. Reference was made to paragraph 5 u/s 6 of Mason''s Manual of Legislative Procedure, 1953 Edition, page 34, where it is stated:

"5. A constitutional provision regulating procedure controls over all other rules of procedure".

19. There is no difficulty in our accepting this principle. But the question still remains if there is anything in the Constitution which stands contravened by Rule 143.

20. What was urged on behalf of the petitioner was that a right to move a resolution for the removal of the Chairman of the Council and the manner in which that resolution was to be brought before the House was not merely a matter of procedure, but one involving the constitutional rights, powers and privileges of the members of the Council. This contention was sought to be supported by the provisions of Article 183(c) and Article 194(3). Article 183 provides for the vacation and resignation, and removal from the office, of Chairman and Deputy Chairman. Under Clause (a) a Chairman or Deputy Chairman of the Legislative Council should vacate his office if he ceases to be a member of the Council. Under Clause (b) he may, at any time, resign his office in writing. It is Clause (c) which relates to his removal from office. To the extent this article relates to Clause (c), it reads:

"183. A member holding office as Chairman or Deputy Chairman of a Legislative Council-

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

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

21. The article thus lays down two restrictions on a resolution for the removal of a Chairman or Deputy Chairman from his office, namely,

(1) that the resolution shall be passed by a majority of all the then members of the Council, and

(2) that the resolution shall not be moved unless at least fourteen days'' notice has been given of the intention to move the same.

22. The contention on behalf of the petitioner was that no further restriction can be placed upon the right of a member of the Council to move a resolution for the removal of the Chairman. The article does not, however, to our mind, prescribe the only conditions which may govern a resolution for the removal of the Chairman or the Deputy Chairman, but only two essential conditions in addition to any others subject to which, according to the Rules of procedure of the House, a resolution may be given notice of or moved. The provision made under Article 183 does not create any new right in the members of the Council, but only makes the holding of the office of Chairman or Deputy Chairman subject to the same being vacated if a resolution for their removal is passed by the Council.

23. Reference was then made to Article 194 of the Constitution which prescribes the powers, privileges and immunities of State Legislatures and their members. Clause (i) of Article 194 says that subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State and Clause (2) provides that no member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings. These; two clauses, therefore, relate to particular types of privileges of the members of a State Legislature and then Clause (3) speaks of the powers, privileges and immunities of a House of a State Legislature or members thereof. It reads :

"(3) 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 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."

This Clause does not specifically say what the powers, privileges and immunities of a House of the Legislature or a member thereof or of any of its committees shall be, but merely states that they shall be the same as those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of the Constitution, i.e., on 26th January, 1960.

24. The argument advanced on behalf of the petitioner was that it is one of the privileges of a member of the House of Commons to move) a resolution including a resolution for the removal of the Speaker, and to speak in support thereof, and that this privilege being guaranteed for the members of the State Legislatures under Article 194(3), it cannot be curtailed by Rule 143.

25. It was, on the other hand, contended that Article 194(3) itself contemplates that the privileges may be defined by the Legislature by law, and it was, consequently, urged that the Rules of Procedure and Conduct of Business of the Council having been framed by the Council, it should be deemed to have curtailed this alleged privilege --if privilege it can be called at all -- to the extent mentioned in Rule 143. We do not, however, think the Rules of Procedure and Conduct of Business framed by the Council can be said to have been "defined by the Legislature by law."" The term ""Legislature"" has been defined under Article 168 as consisting of the Governor and to the extent the State of Uttar Pradesh is concerned, both the Houses of Legislature, namely, the Legislative Assembly and the Legislative Council. The three combined would constitute "Legislature" and not either House of the same. Even the term "Law" will have to be understood in the sense in which it has been used in

Article 246. It is the Legislature of a State which has power to make laws in respect of any of the matters in list II in the seventh schedule, referred to in the Constitution as the State List. A law, in order that it may be deemed to have been passed by the Legislature, should be passed in the form and manner in which such laws are passed (see Articles 196 and 201) and the adopting of the rule-by the Council for the procedure and conduct of business inside the House cannot, therefore, be said to be a law within the meaning of that expression in Article 194(3).

26. Sri Bishun Singh argued that the powers, privileges and immunities of the members of the House of Commons are very wide and that no attempt has been made to define them so far. Reference was made to the speech of the Attorney-General, James P. Boucaut, on the second reading of a Bill introduced in 1872 to repeal the Parliamentary Privileges Act, 1858, which was quoted by Lord Cairns as saying that the Parliament''s most important privilege is not to define their Privileges. (Privileges Digest Vol. III, p. 106). This would not materially help the petitioner. Even though there may not be any exhaustive definition of the powers, privileges and immunities of the House of Commons or its members, the extent to which they have been claimed or exercised would give a clear idea of what they are supposed to be.

27. Reference was made to May''s treatises on Law, Privileges and Proceedings and Usage of Parliament, 16th Edition, on page 400 of which it is mentioned :

"Certain matters cannot be debated, save upon a substantive motion which admits of a distinct vote of the House. Among these may be mentioned the conduct of the sovereign, the heir to the throne, the Governor-General of the Dominions, the Lord Chancellor, the speaker....."

and reference was then made to two reported proceedings of the House of Commons, one dated 25th May, 1925, and the other dated 7th May, 1962, contained in Parliamentary Debates of the House of Commons, Volumes 184 and 500 respectively. In the former Captain Wedgwood Benn moved a resolution censuring the conduct of the speaker and in the other Mr. Sydney Silverman did the same. In both the cases the member moving the resolution started speaking on the same without any leave of the House having been previously obtained and thereafter the resolutions were discussed and voted upon. It was urged on the authority of these two proceedings that it is a privilege or power of a member of the Parliament to move a resolution censuring the Conduct of the Speaker or for his removal, and that this power or privilege is guaranteed to the members of the State Legislatures u/s 194(3) of our Constitution. But merely because such a resolution was moved in the House of Commons without any previous proceeding for leave of the House, it cannot be inferred that it was in exercise of a power or privilege that the resolution was moved by the two speakers. Normally a power, privilege or immunity is exercised by the person entitled to the same as against some person other than himself. When we speak of the power privileges or immunities of the members of

the House of Commons, what we understand thereby is that these powers,'' privileges and immunities are exercised by them as against persons other than the members of the House of Commons and that too in addition to their ordinary rights either as individuals or as members of an association or society. When Captain Wedgwood Benn in one case and Mr. Sydney Silverman in the other moved the resolutions censuring the conduct of the Speaker. it was not in exercise of any power, privilege or immunity which was enjoyed by them as members of the House of Commons, but only in exercise of an ordinary right as such members, and that too relating to the internal conduct of business of the House of Commons.

28. As has been mentioned in May''s Parliamentary Practice, i6th Edition, p. 45 the practice of claiming these privileges developed gradually. In the reign of Henry IV the only privilege claimed by the Speaker was for himself, that he might be allowed to inform the King of the mind of the Commons, and that if he made'' any error in doing so, it might be corrected by reference to the House. In 1536 another privilege was ''claimed regarding access to the Crown, in 1541 was claimed the privilege relating to freedom of speech and in 1554 was asserted the triple privilege of freedom from arrest, freedom of speech and of access; and the practice of demanding these privileges became regular by the end of the sixteenth century. As pointed out by May, it has been the custom for the Speaker at the commencement of every Parliament :

"In the name, and on behalf of the Commons to lay claim by humble petition to their ancient and undoubted rights and privileges; particularly that their persons (their estates and servants) may be free from arrests and all molestations; that they may enjoy liberty of speech in all their debates; may have access to Her Majesty''s royal person whenever occasion shall require; and that all their proceedings may receive from Her Majesty the most favourable construction."

The Lord Chancellor then replies to the Speaker''s petition :

"Her Majesty most readily confirms all the rights and privileges which have ever been granted to or conferred upon the Commons, by Her Majesty or any of her royal predecessors."

It will thus be seen that at one time the only privilege claimed by the House of Commons was that of the Speaker to inform the King of the, mind of the Commons. But the right to move resolutions inside the House or to move a resolution censuring the Speaker must still have been, there, and this should by itself be enough to indicate that the right to move such a resolution is not a power or privilege of a member of the House of Commons, but a right inherent in his being a member of that House and is independent of any powers and privileges which may be enjoyed by him.

29. That the powers and privileges claimed by the members of the House of Commons are in excess of those possessed by any other body or individual is again

clear from May''s Parliamentary Practice which was freely quoted and relied upon even on behalf of the petitioner. In the beginning of Chapter III the learned author states that the parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. The powers and privileges, which are claimed by the members of the House of Commons, have thus to be those which are in excess of the rights possessed by other bodies or individuals. The powers and privileges do not constitute the normal functioning of the Parliament, but are only such as are necessary to enable the members thereof to discharge their normal functions.

30. The question of privilege of the two Houses of the Parliament or members thereof has been discussed in general in Chapter III of May''s Law, Privileges, Proceedings and Usage of Parliament (16th Edition). The privilege of freedom of speech is discussed in Chapter IV, that of freedom from arrest or molestation in Chapter V and other minor privileges claimed for the House of Commons in Chapter VI. Among these minor privileges is included freedom'' of access to the Sovereign. Nowhere is there any mention of any privilege or power of a member to be exercised as against the Speaker of the House or other members thereof.

31. May quotes the definition of privileges of the Commons from Redlich on page 42 of his book as :

"The sum of the fundamental rights of the House and of its individual Members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords. The privileges or fundamental rights of the House and its individual members are clearly, therefore, those which are claimed as against the Crown or the authority of the ordinary courts of law or the special rights of the House of Lords, and not as against the members of the House themselves or the Speaker of the House. Rights of the latter kind would relate to the transaction of normal business inside the House and would, therefore, relate to a question of procedure or conduct of business, and include a right for the members to have their own Speaker or to remove him as and when he ceases to enjoy confidence of the House.

32. Even the dictionary meaning of the words ''power'' and ''privilege'' suggests that those entitled to a particular power or privilege exercise the same as against others, who are not so entitled. The word ''power'' is defined in the Universal English Dictionary as meaning "capacity to control, and to impose one''s will, authority, government, dominion, rule." The word ''privilege'' is defined in Webster''s New World Dictionary as meaning "a right, advantage, favour, or immunity granted to some person, group of persons, or class, not enjoyed by others and sometimes detrimental to them" or "a basic civil right, guaranteed by a government; as, the privilege of equality for all", and in Webster''s New International Dictionary Vol. II as

"a right or immunity granted as a peculiar benefit, advantage, or favour also, the law or grant by which it is conferred special enjoyment of a good, or exemption from an evil or burden."

33. The Shorter Oxford English Dictionary Vol. III gives the meaning of the word ''privilege'' as "a right, advantage or immunity granted to or enjoyed by a person or class of persons beyond the common advantage of others."

34. This view also finds support from the observations of their Lordships of the Supreme Court in a recent case Purushothaman Nambudiri Vs. The State of Kerala, . The question which engaged the attention of their Lordships in that case was whether legislative procedure followed by a Legislature was covered by the word "powers" of a State Legislature as referred in Article 194(3). What their Lordships observed was :

"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 Article 196. In the context, the word ''power'' used in Article 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 Article 194(3) may, for instance, refer to the powers of the House to punish contempt of the House. The two topics are entirely different and distinct and the provisions in respect of one cannot be invoked in regard to the other."

35. What their Lordships considered in this case was the significance of the word "powers", but that word, it was held must be considered along with the words "privileges and immunities" and the instance cited by their Lordships clearly gives indication of the sense in which the words "powers, privileges and immunities'''' were to be understood. That being so, a question relating to procedure can by no means be said to relate to the powers, privileges and immunities of a member of the Legislature.

36. Reference was made by the learned Counsel for the petitioner, Sri Bishun Singh, to Parliamentary Procedure in India by A. R. Mukherjee 1958 Edition, page 91, and Commentary on the Constitution of India by D. D. Basil, 1962 Edition. The learned author of the Parliamentary Procedure in India refers to the rules of several Houses of Legislatures in India providing that leave to move a motion for the removal of the Presiding Officer must be granted by the House by a specified number of members rising in their seats before such a motion can be moved. It may be mentioned here that rules almost similar to Rule 143 of the Rules of the U.P. Legislative Council have been framed by -the different Houses of Legislatures though the number of members, who have to rise in support of the motion, differs from House to House.

Rule 201(3) of the Rules of Procedure for the Lok Sabha provides for the leave of the House being obtained for such a resolution by 50 members rising in their seats in support of the resolution. Rule 271(3) of the U. P. Legislative Assembly Rules provides for leave being granted if one-fifth of the them members rise in their seats. Rule 172 of the West Bengal Legislative Council provides for the leave being granted by 25 members rising in support of the resolution and Rule 9 (1) of the Punjab Council makes similar provision by 15 members rising. Rule 11 of Maharashtra, Rule 110 (3) of Bihar, Rule 55 of Madras and Rule 142 of Mysore Legislative Council Rules provide for only ten members rising in support of the leave being granted. It is with reference to these rules that the learned author of the Parliamentary Procedure in India says on page 91 :

"In view of the clear provision in the Constitution that a Presiding Officer can be removed by a specified majority after notice for a specified period, it seems any further restriction on the right to move a resolution is ultra vires. The Constitution gives a right to any member to move a resolution for the removal of the Presiding Officer. The only restriction put upon his right is that he must give fourteen days'' notice of his intention to do so; whether he would be able to carry the House by the required majority is to be decided when the vote is taken and not at the time when he intends to move the resolution."

37. The same opinion is expressed by Basn in his Commentary on the Constitution of India, while commenting on Article 90 on page 527 of the 1962 Edition. ''

38. Both the learned authors have assumed that Article 183 and the other corresponding articles in the Constitution lay down restrictions on the moving of a resolution for the removal of the Presiding Officer and that they are the only conditions to which such a resolution may be subject. The provision that the resolution shall not be moved unless at least 14 days'' notice has been given, is, to our mind not a restriction at all, but a mere rule of procedure which has been provided for in the Constitution itself, as it was considered that the Presiding Officer and the other members of the Legislature should have a minimum notice of 14 days for the discussion of the resolution. Even if that provision were not made in the Constitution, the rules of procedure might have provided for the same. The only restriction which, to our mind, has been placed by the Constitution is the one relating to the passing of the resolution by a majority of "all the then members of the Council." But even in making this provision, it cannot be said that the intention was that such resolutions shall not be subject to any other rule of procedure which may be prescribed by the House itself. That the State Legislatures have been given powers to make such rules is clear from Article 208(i). It is certainly true that the rules which may be so framed have to be subject to the provisions of the Constitution. But this only means that the rules which may be framed for regulating the procedure of the House and the conduct of its business are not to be such as may contravene an express provision in the Constitution. Every rule in a way places

some restriction on the course of conduct of those for whom it is intended, and a rule framed by a House of a Legislature under Article 208(i) would not, therefore, be invalid merely because it involves some restriction upon the otherwise unregulated rights of the members of a Legislature.

39. It was urged that Article 183 is a complete Code by itself. If that contention may be accepted, it would be acceptable only to the extent it provides for the different ways in which the office of a Chairman or Deputy Chairman may fall vacant. If it is contended that this article also - contains all the conditions which may govern a resolution for the removal of the Chairman or Deputy Chairman, the contention would obviously be without any substance, for that may lead to the absurd conclusion of even such a rule as Rule 36 (i) which requires notice of a motion to be in writing, being treated as constitutionally invalid.

40. The question may be looked at from another point of view. Section 65(2) of the Government of India Act, 1935, made provision for the removal of a Presiding Officer of a House of a Provincial Legislature similar to the one contained in Article 183 and Section 84(i) of that Act gave the different Houses of Legislatures rule-making powers similar to those contained in Article 208(i). Rules similar to present Rule 143 were framed by different Legislatures in exercise of their powers u/s 84(i) aforesaid. It might be enough for purposes of this discussion to refer to Rule 18 of the old 1937 Legislative Rules and Rule 9 of the 1938 Rules in Uttar Pradesh, which made similar provision for the leave of the House in respect of a motion for the removal of the Presiding Officer. Our Constitution makers may well be presumed to be aware of the rules so framed, and which were even in force when the Constitution was drafted. If, knowing that the rule-making powers were utilised by the different Houses of the Legislatures to frame a so-called rule of procedure, the very same provisions regarding the removal of the Presiding Officers from their office and the rule-making powers of the different Houses of the Legislatures were repeated in, the Constitution without any further safeguard against any encroachment of the alleged constitutional right of the members of the different Legislatures, the inference is obvious that the practice of Training such rules was not regarded as contravention of any constitutional provision, but one which concerned merely a matter of procedure or conduct of business in ,a House, which matter could be regulated by rules. It is a settled principle of construction of a statute that the Legislature is presumed to know the interpretation put on it by judicial decisions. When a provision in a statute has received a particular interpretation and the Legislature re-enacts that very provision in spite of that, interpretation, such reenactment is legislative recognition of the construction placed upon it by Courts. The principle underlying this rule of construction has only to be re-stated in different words when the interpretation of the previous statute was not by judicial decisions but by the Houses of Legislatures themselves, and is implied in the rules of procedure or course of conduct of business set up or followed by them.

41. Reference was made by the learned Standing Counsel, who appeared for the opposite-parties-to the Procedure of the House of Commons by Josef Redlich, Vol. III, 1908 Edition, in which it is mentioned on page 15;

"An order, given by the House to itself, to take up such and such a matter on such and such a day is the only form which can give to a subject for discussion any right to a share of the House''s fixed programme of work. But such an order is an effective barrier against the otherwise unfettered initiative of members."

This was the position in respect of the procedure of the House of Commons in 1908. The members of the Parliament have unfettered initiative, which initiative is, however, subject to the order which the House gives to itself that it would take up such and such a matter on such and such a day. This order, which the House gives to itself, is so far as the U. P. Legislative Council is concerned, to some extent, contained in its Rules of Procedure and Conduct of Business; and the unfettered initiative of the members, referred to by Redlich may, to some extent, be said to have been curtailed by Article 183, which provides that a motion for the removal of the Chairman or Deputy Chairman will require at least fourteen days'' notice. The notice being thus given, it is for the House to decide how and in what manner it would come up before it for discussion; and if the House decided that a motion for the removal of the Chairman or Deputy Chairman, which has not the support of even twenty members of the House, will not have the leave of the House for being taken up for discussion and consideration, it cannot, even from that view, be said that in including Rule 143 among the Rules, the Legislative Council did something which was unconstitutional.

42. Reliance was placed on behalf of the petitioner on a decision reported in United States v. Bellin, Joseph and Co. (1891) 36 Law Ed 321. The second paragraph of the head-note reads:

"The House of Representatives has power to determine its rules of proceedings; it may not, by its rules, ignore constitutional restraints or violate fundamental rights."

No exception can be taken to the view expressed in this decision of the Supreme Court of the United States. The question, however, is whether in framing Rule 143 the Legislative Council ignored constitutional restraints or violated any fundamental rights. In our opinion it did not, and this decision of the Supreme Court of the United States would not, therefore, apply to the facts of the instant case.

43. Reference was made to Articles 61, 66, go, 94, 179 and 124 of the Constitution and an attempt, was made to compare Article 183 with them. Article 61 provides for the impeachment of the President and Sub-clause (a) of Clause (2) of that article provides that the notice for a resolution for the impeachment of the President shall be in writing and signed by not less than one-fourth of the total number of members of the House in which the resolution is to be moved. Proviso (b) to Article 67 provides for the removal of the Vice-President, Article 90(c) for the removal of the

Deputy Chairman of the Council of State, Article 94(c) for the removal of the Speaker of the House of the People, Article 179(c) for the removal of the Speaker or the Deputy Speaker of a State Legislative Assembly and Article 124(4) for the removal of the. Judge of the Supreme Court. Article 183(c) provides, as has already been mentioned earlier, for the removal of the Chairman or Deputy Chairman of a State Legislative Council. It was pointed out that where the Constitution desired that the resolution which is moved for the removal of a person from his office should, have, as a condition precedent to the resolution being moved in the House, the support of a certain number of members of that House, provision was made in the Constitution itself, as in Article 61(2)(a). As no such provision has been made in any other article referred to above, it was urged that the intention was that there should be no such restriction on the moving of a resolution and that therefore, Rule 143 was beyond the rule-making powers of the Legislative Council.

44. The reasons, however, why no such provision, as is to be found in Clause (2) (a) of Article 61, was made in the case of a resolution for the removal of any other officer was not that it was not intended to prescribe any such rule, but that it was considered to be a mere matter of procedure for which the Houses of the Legislatures could themselves prescribe under the Rules of Procedure and Conduct of Business, and with which the Constitution was not to be burdened. The case of the President is different. The President being the head of the State, the Constitution makers were anxious to make every provision for the dignity of the High Office of the head Of the State being property safeguarded. In his case it was considered necessary that the Constitution should itself provide that the resolution should not, in the interest of the dignity of the High Office, even come up before the House unless it had the support of not less than one-fourth of the members of the House, while in other cases it was left to the discretion of the Houses of the Legislatures themselves to make such provision for them by'' Rules as was considered expedient by them.

45. The next contention of the petitioner is based on the interpretation of Article 185 of the Constitution which reads :

"185. (i) At any sitting of the legislative Council, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, "though he is present, preside, and the provisions of Clause (2) of article 184 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman is absent.

(2) The Chairman shall have the right to speak in and otherwise to take part in the proceedings of, the Legislative Council while any resolution for his removal from office is under consideration in the Council and shall, notwithstanding anything in Article 189, be entitled to vote only in the first instance on such resolution or on any

other matter during such proceedings but not in the case of an equality of votes."

It is admitted by the opposite-parties that when item No. 3 of the day''s agenda was taken up on 2nd March, 1960, Sri Dhulekar was presiding and continued to preside while the question relating to the leave of the House was being considered. The contention on behalf of the petitioner is that under Clause (i) of Article 185 the Chairman, Sri Dhulekar, should have vacated the chair while this question was being considered. On the other hand, the contention is that it was not the resolution itself which was under the consideration of the House, but only the question whether the aforesaid resolution had the leave of the House for being moved, that it is only in the former case that Article 185(1) requires the Chairman or the Deputy Chairman to vacate the chair, and that this article would not be applicable where the only question before the House is concerning leave for such a resolution being moved.

46. The words used in Clause (1) of Article 185 are "while any resolution for the removal of the Chairman from his office is under consideration" and the plain meaning of these words, of course, is that the Chairman is required to vacate the chair only when the resolution for his removal from office is itself under consideration. As has been pointed out earlier, Rule 143 of the Rules of Procedure and Conduct of Business of the U. P. Legislative Council requires that before such a resolution may come up for consideration before the House, leave of the House must be obtained; and it is to be granted by at least twenty members rising in their places in its favour. This rule1 is within the rule-making authority of the Legislative Council under Article 208(i) of the Constitution, and the Council having itself provided under this rule that leave of the house must be obtained as a condition precedent to the resolution being moved for consideration, it cannot be said that the resolution itself was before the House, when only leave for moving the resolution was being asked for.

47. Some arguments were advanced as to the meaning of the word "consideration" used in Clause (i) of Article 125. Recording to Webster''s New World Dictionary, "consideration" means "act of considering; careful fought or attention deliberation or meditation; something that is, or should be, considered, as in making a decision; a thought or opinion produced by considering; a reflection." In Shorter Oxford English Dictionary the same word is defined as having the meaning "the action of looking at beholding; the keeping of a subject before the mind; attentive thought, reflection, meditation the action of taking into account". It was urged on the basis of this meaning of the word "consideration" that the resolution for the removal of the Chairman from his office was under consideration even when the House was being asked as to whether the resolution had the necessary leave. It is, however, not the meaning of the word "consideration" which is important. When there is some matter before the House, there is bound to be something before it for consideration. If the resolution itself had been moved, that resolution would be before the House for consideration; and if the question regarding the leave of the House for the

resolution being moved was put before the House, it was that question which was under consideration. What is important for being noticed in this connection, therefore, is not whether the House was considering any matter or applying its mind in the consideration of any matter, but the particular matter which could be regarded as being under the consideration of the House. As has just been pointed out by us earlier, what was under the consideration of the House was not the resolution itself, but the question as to whether the resolution was to be allowed to be moved. So long as the resolution had not the necessary leave, it could not be before the House.

48. Reference was made to Note 2 u/s 581 in Mason''s Manual of Legislative Procedure, 1953, at page 420 where it is said :

"2. The presiding officer should leave the chair during the discussion of any business concerning himself. When a member is censured for use of improper references to the presiding, officer, the presiding officer, should leave the chair and call another to preside until any action is taken against the offender"

This rule enunciated by the learned author ''relates'' to the practice which is probably being followed in the United States of America. It is not an absolute rule of law, which must necessarily be followed by every Legislature. It was conceded by the learned, counsel for the petitioner that this practice is not followed by the House of Commons in the United Kingdom. In our own country the Constitution itself makes provision for the application of this rule, and for our own law, therefore, we will have to look to the provisions of Article 185 of the Constitution and other relevant provisions thereunder, rather than to any practice or rule of law followed in any "Other country.

49. Reference was then made by the learned Counsel, for the petitioner to the Table, Vol. XXIII for 1954, being a Journal of the Society of Clerks-At-The-Table in Commonwealth Parliaments. On page 89 is reference to a motion which was moved, censuring the speaker on 24th May, 1954, in the House of Assembly in Australia. On page 90 is mentioned the fact that during the whole of the debate the: chair was occupied by: the Deputy Speaker. This, precedent does not, however, help the petitioner inasmuch even under Article 185 of the Constitution, which would govern the procedure in such cases in our country, the Chairman would not preside when the resolution for his removal is under consideration, it has not been shown that under an exactly similar, provision in the Constitution of Australia, the Speaker would not preside even when the question relating to the leave of the House for the resolution being moved is under consideration. That alone would have been of any help in the interpretation of Article 185.

50. Reference was then made to proceedings of the Lok Sabha and the Legislative Assemblies of Uttar Pradesh and Orissa so as to indicate the sense in which Article 185 of the Constitution has been interpreted. It was urged, on the basis of the three

instances aforesaid that even according to the interpretation of Article 185 by the Houses of Legislatures themselves, the Speaker or Chairman, should not preside over the House even when the question relating to the leave of the House for a resolution for removal is under consideration. According to the proceedings of the Lok Sabha dated 18th December, 1954, a motion for the removal of the Speaker was brought before the House and the Deputy Speaker presided even, when the question relating to the leave of the House for the motion was being considered. It will, how ever, appear from the proceedings that the Deputy Speaker was occupying the chair that day from the very beginning, and there is nothing in the printed official report to show that the Speaker was even present in the House. It cannot, there fore, be said that it was on account of that interpretation of Article 185 of the Constitution which the petitioner wants to put over it that the Speaker did not preside over the deliberations of the House, when the question of leave was being considered.

51. A resolution for'' the removal of the Speaker of the Uttar Pradesh Legislative Assembly was brought before the House on 19th March, 1959. The Speaker for whose removal the resolution was intended, left the chair even before the question relating to the leave of the House was taken up. But he did so not because he thought that he was required to vacate the chair when that question was before the House, but because he thought he should, do so, in good grace. He specifically referred to the provisions of the Constitution in that respect, and said that according to the Constitution he was required to vacate the chair only when the resolution itself was under consideration, but he thought it would be proper for him not to occupy the chair even when the question relating to the leave of the House was before it Even the proceedings of the Uttar Pradesh Legislative Assembly do not, therefore, indicate that Article 185 was interpreted by it or the Speaker in the manner in which the petitioner wants it to be interpreted.

52. The proceedings of the Orissa Legislative Assembly for 10th April, 1954, indicate that the question relating to the leave of the House for the removal of the Speaker was taken, up late in the day. The Deputy Speaker presided over the Legislative Assembly from the very beginning of the day. The proceedings indicate that the Speaker himself spoke in connection with , that resolution. But it cannot be Said on that account that he was present in the House from the very beginning. It may be that he attended the Legislative Assembly late in the day. Even in the case of Orissa Legislative Assembly, therefore, it cannot be said that the Speaker vacated the chair to enable the Assembly taking up the question of the leave of the House, for the resolution. The three precedents cited on behalf of the petitioner do not, therefore, indicate that in actual practice Article 185 of the Constitution was interpreted so as to mean that the Speaker or the Chairman should not preside over the House even when the question of leave for the resolution being moved is under the consideration of the House.

53. As has been mentioned by us earlier, the Rules of Conduct and Business of "different Houses of Legislatures in India even prior to the commencement of the present Constitution provided for leave of the House being first obtained for moving a resolution for the removal of the Presiding Officer of a House of the Legislature. It has also been pointed out earlier that those responsible for the drafting of the Constitution may well be presumed to be aware of those rules. They, therefore, knew that a resolution for the removal of the Chairman or. Speaker or a Deputy Chairman or a Deputy Speaker may not come up before a House unless leave of the House for the resolution being moved is asked for is available. If the intention behind Article 185 were that- the Chairman or Deputy Chairman should not preside over the Council even when leave of the house, is being asked for the language of Clause (i) of Article 185 would, have been different. Instead of saying while any resolution for the removal of the Chairman from his office is under consideration" the article should have said some such thing as "while any resolution for the removal of the Chairman from his office or the question of leave of the House for such a resolution being moved is under consideration." Knowing as they did, that in many cases where the leave of the House is refused, the resolution itself would never come up before the House, and all what, might in that case be before it would be the question for leave, when no provision was made for the Chairman or the "Deputy Chairman vacating the chair when such question alone is under consideration, the inference is obvious that it was riot the intention behind Article 185 that the Chairman or Deputy Chairman should vacate the chair on such occasion. And there is some reason for this view being taken by those responsible'' for the ''drafting of the Constitution. The question relating to the leave of the House does not require any discussion. It is only a mechanical process which has to be gone through. The Chairman has" only to announce that notice had been given in respect of such and such resolution, which has been found in order and that the House has to indicate by sufficient number of members rising in their seats whether the member giving notice of the resolution has the leave of the House to move the same. It is again, a mechanical process by which the number of members rising is to be counted'' and announced. The Chairman is not required to apply his judicial mind or exercise his discretion while the resolution is to be read out or the number of members rising in their seats counted. It was probably, because of this that it was thought unnecessary that the Chairman should vacate the chair for such purpose.

54. In view, of what we have held in respect of the main questions discussed in the hearing of this petition, the petition fails and the petitioner is not entitled to any relief. We may, however, deal briefly with the 6ther two points raised on behalf of the opposite-parties. ''

55. It was urged that Dr. Faridi ceased to be a member of the Council, on the expiry of his term on 5th, May, 1960, and that with the expiry of his term, the notice given by him on 11th February, 1960, also lapsed. Dr. Faridi''s contention was that although his term expired on 5th May, be was re-elected Member of the Legislative

Council and took his seat with effect from 6th May again. It was urged that he was re-elected on 14th April, 1960, and his election was even notified before 5th May and that, therefore, his membership of the Legislative Council should be deemed to be continuous; Even though Dr. Faridi may have been re-elected to the Council before the expiry of his term, there was a break in his membership when his previous term expired on 5th May, 1960. He took oath of membership of the House afresh on 6th May, and even though there was no time, gap in between the two memberships, his membership with effect from 6th May was a fresh membership and could not be said to be in the same continuation. This does not, however, seem to have any effect upon the resolution, notice of which was given by him and eight others. This notice was given by, nine members in all, and unless the membership of all the nine expired simultaneously, it would not perhaps be possible to hold, in case the resolution was otherwise found to be pending, to have lapsed with the expiry of the membership of. Dr. Faridi on 5th May, 1960.

56. The next point urged was that the Council was prorogued on 22nd May, 1960, and under Rule 5 (a) of the Rules of Procedure and Conduct of Business all pending notices and business, except Bills pending in the Council shall lapse. It was urged that even if the resolution of which notice was given by Dr. Faridi and others is held not to have been discussed by the Council in accordance with the provisions of Jaw and consequently held to be pending, it will, in any case, be deemed to have lapsed under the aforesaid rule when the Council was prorogued. As has, however, been pointed out by their Lordships of the Supreme Court in Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others, the prorogation of a House does not mean its dissolution. The effect of the prorogation only is to interrupt the proceedings which are revived on a fresh motion to carry on of to renew the proceedings. It was open to the petitioner even after the prorogation of the House to have his resolution, of which notice was given by him, renewed. The petition should not, therefore, Jail on that account.

57. Having: regard, however, to our finding that Rule 143 of the Rules was not ultra vires the rule-making power of the Council and was constitutionally valid, that the resolution given notice of by the petitioner was subject to the procedure prescribed under Rule 143 and that having regard to the fact that less than twenty members rose in support of the resolution when leave of the House was asked for and also the finding that Article 183 of the Constitution does not prohibit the Chairman for whose removal the resolution has been brought forward from presiding over the House when what is under consideration is not the resolution itself, but the question whether the mover has the leave of the House to move the resolution, this petition fails and is consequently dismissed with costs to the opposite parties.