(1958) 07 GAU CK 0004

Gauhati High Court

Case No: Civil Rule No. 89 of 1958

Harendra Nath Barua		APPELLANT
	Vs	
Dev Kanta Barua and Others		RESPONDENT

Date of Decision: July 11, 1958

Acts Referred:

- Assam Legislative Assembly Procedure and Conduct of Business Rules - Rule 131, 158, 160, 161, 162
- Constitution of India, 1950 - Article 105, 122, 19(1), 194, 194(3)
- Government of India Act, 1935 - Section 71

Hon'ble Judges: Sarjoo Prosad, C.J; H. Deka, J

Bench: Division Bench

Advocate: P.K. Goswami, S.R. Khound and B.K. Goswami, for the Appellant; S.M. Lahiri, General, D.N. Medhi, Sr. Govt. Advocate, R.C. Choudhuri, H. Goswami and G.S. Bhattacharyya, for the Respondent

Judgement

Sarjoo Prosad, C.J.
The Petitioner Sri Harendra Nath Barua has moved this Court for a writ of certiorari, prohibition and/or any other appropriate writ against the Speaker, the Secretary, and the Members of the Committee of Privileges of the Assam Legislative Assembly.

2. The relevant facts as mentioned in his application may be stated. The Petitioner is the Editor of "Natun Assamiya", an Assamese daily newspaper, published from Gauhati. It is claimed that this is the only Assamese daily with a large circulation throughout the State. Sometime in April, 1958, there appeared a news item in the press announcing the decision of the Chief Minister of Assam to undergo a voluntary cut in his salary from Rs. 1,500/- to Rs. 1,000/- per month.

At about the same time, there was another news item in the local press, which stated that there was a move by the members of'' the Assam Legislative Assembly to raise their salary to Rs. 250/- per month (excluding allowances), in place of Rs. 150

per month. The Petitioner as the Editor of the daily, wrote an editorial in the issue of his paper of 25-4-1958, commenting upon the aforesaid news items under the caption, "Tyag Aru Bhog" (Renunciation or Enjoyment).

The substance of the article was that the move for increase of salary of the members of the Assembly at the present juncture, when the people in general were labouring under economic hardship and distress, was neither fair nor proper and that in this matter the members had not taken the wholesome lead given by their Leader. A copy of this article together with an English translation thereof forms an annexure to the petition.

In the counter-affidavit filed by the Secretary of the Legislative Assembly, there is another English translation of the article, which appears to be somewhat different from the translation supplied by the Petitioner; but that is of no consequence for the purposes of this application, nor does it appear that the difference is so substantial as to deserve any special notice.

The Petitioner claims that the aforesaid article was in the nature of a legitimate and fair comment on a matter of public importance and had not in any manner affected the prestige or dignity of the House or the integrity and character of the members of the said Legislative Assembly in the discharge of their functions in the course of any proceeding pending in the Assembly. The comment, according to the Petitioner, was a bona fide comment made in due discharge of his duties as the Editor of a responsible daily and consistent with the right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution.

It appears that the article in question attracted the notice of the Speaker, the Respondent No. 1 to this application, and oft the morning of 28-4-1958, he passed an order giving a direction to the Secretary of the Assembly that a messenger from the Secretariat might be sent that noon to Gauhati to summon the Editor and the Printer of "Natun Assamiya" to appear before the Privileges Committee.

According to the Petitioner, this order was immediately followed by a statement made by the Speaker in the Legislative Assembly on the subject, wherein the Speaker informed the House that his attention had been drawn to the editorial concerned. According to the Speaker, the writing prima facie cast reflections on the members of the House, which constituted contempt and breach of privileges of the Hon''ble Members and affected the dignity of the House.

The Speaker, therefore, by virtue of the authority vested in him under the relevant Rules of Procedure and Conduct of Business in the Assam Legislative Assembly, deemed it necessary to refer the matter to the Committee of Privileges, which was directed to submit its report by 30-4-1958. The Speaker further informed the House that he thereby directed the Editor and the Printer of the offending daily to appear before the Privileges Committee by 4-30 P.M. on 29-4-1958.

The above facts are not disputed by the Respondents, but there is difference as to the sequence in which the events happened. According to the Respondents, actually the Speaker gave the direction to the Secretary for summoning the Petitioner and the printer of the paper after having made a statement on the floor of the House and after taking the House in confidence. At about 4 P.M. on the afternoon of 28-4-1958, the Petitioner received a notice from the Secretary through a messenger of the Secretariat which directed him to appear before the Privileges Committee, as stated earlier, and show cause in explanation or exculpation why the article should not be regarded "as a breach of privilege of the House."

The printer of the paper was also served with a similar notice. The Petitioner then informed the Secretary by a letter sent on that very day that it was not possible for him within that short notice to move to Shillong and adding that he was quite clear in his mind that the article in question had nothing to do with the privileges of the House. It appears that the Committee of Privileges then fixed 6-6-1958, for the hearing of the matter, but in the meantime the Petitioner obtained a Rule nisi from this Court and ad interim stay of further proceedings.

3. It is this Rule which has now come up for final hearing. The Petitioner submits that the order of the Speaker and the consequential steps taken by him or the Committee of Privileges contravened Article 19(1)(a) of the Constitution, inasmuch as they are calculated to stifle the freedom of the press and are thus illegal, inoperative and void. It is argued that the Speaker had no power to summon the Petitioner without a resolution of the House on the subject or without a prior determination of the question of breach of privileges by the Privileges Committee.

It is also complained that the steps taken by the Speaker are not sanctioned by the Rules of Procedure and Conduct of Business in the Assam Legislative Assembly and that on the merits of the case, it is stoutly asserted by the Petitioner that the article in question did not constitute any libel of any member or members of the House concerning their conduct and integrity, nor did the article insult or lower the prestige and dignity of the House so as to amount to a breach of its privileges. The questions, therefore, which arise for our determination are:

(1) Whether this Court has any power to interfere with the action taken by the Speaker as the highest functionary of the State Legislative and purporting to do so in protection or vindication of its rights and privileges?;

(2) Whether under the Rules of Procedure and Conduct of Business in the Assam Legislative Assembly, the Speaker and the Secretary of the Legislative Assembly, in the absence of any resolution of the House, had authority to summon the Petitioner to appear before the Privileges Committee?; and

(3) Whether any legal right of the Petitioner has been infringed by the issue of the order in question asking him to appear before the Privileges Committee on a particular date?

4. The first question raises a question of great constitutional importance; and although we would have preferred to rest our decision on the other two narrower questions, in view of the stand taken by Sri P.K. Goswami, the learned Counsel for the Petitioner, and the learned Advocate-General for the Speaker, we feel strongly pressed to express our views on some salient aspects of the matter. At the same time, we acknowledge with gratitude the able assistance which we have received from the learned Counsel of either parties.

To appreciate the extent of the powers, privileges and immunities of State Legislatures and their members and the constitutional limitation imposed on Courts to inquire into proceedings of the Legislatures, a reference to two pertinent provisions of the Constitution is necessary. Article 194 of the Constitution embodies the powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof.

Clause (3) of that Article, which has a relevant bearing on the subject of discourse, provides that these powers, privileges and immunities.

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.

Article 212 prohibits the validity of any proceedings in the Legislature of a State from being "called in question on the ground of any alleged irregularity of procedure" and Clause (2) of that Article specifically enjoins that

no officer or member of the Legislature of at State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers.

The learned Advocate-General has in particular laid stress upon this part of Article 212 and claimed immunity for the impugned act of the Speaker and the Secretary of the Legislative Assembly, in whom powers are vested by or under the Constitution from being subjected to the jurisdiction of this Court in the exercise of those Constitutional powers.

Article 194 of the Constitution, therefore, vouchsafes to the State Legislatures, their members and their committees, in the absence of any legislation on the point, the same powers, privileges and immunities, as those of the House of Commons of the Parliament of the United Kingdom and of its members and committees. The corresponding provisions in respect of the Houses of Parliament of India are to be found under Articles 105 and 122 of the Constitution.

The language of Articles 105 and 194 of the Indian Constitution is substantially identical to that of Section 49 of the Australian Constitution Act, where also it is

provided that.

the powers, privileges and immunities, of the Senate and of the House of Representatives, and of the members and the committees of each House shall be such as are declared by the Parliament and until declared, shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

This similarity in the language of Section 49 of the Australian Constitution is relevant in order to appreciate the decisions cited on the point. At the same time, it is significant to remember that these provisions did not exist in the Government of India Act, 1935; and there the privileges of the Legislature, were far more limited as defined in Section 71 of the Act.

Both sides, therefore, are agreed that we have to look to the precedents of the House of Commons of the Parliament in the United Kingdom and the authorities bearing on them in order to determine the scope and limitations of those powers, privileges and immunities, which flow from the above constitutional provisions. May''s "Parliamentary Practice" and several English and Australian decisions have, therefore, been cited at the Bar in support of the respective contention of either side.

5. As stated by May, "the Speaker of the House of Commoos "is the representative of the House itself in its powers, proceedings and dignity" and one of his main functions is to preside over the debates of the House of Commons and enforce the observance of all rules for preserving order in the proceedings. He enjoys a position of undoubted pre-eminence by virtue of his office and the chief characteristics attaching to his exalted office are authority and impartiality.

Confidence in the impartiality of the Speaker is an indispensable condition for the successful working of procedure and many conventions exist, which have as their object not only to ensure the impartiality of the Speaker, but also to ensure that his impartiality is generally recognised. He takes no part in debate either in the House or in committee. It is the duty of the Speaker to see that the House is properly constituted before it proceeds to business.

He preserves the orderly conduct of debate by repressing disorder when it arises, by refusing to propose the question upon motions and amendments, which are irregular and by calling the attention of the House to bills, which are out of order and securing their withdrawal. He rules on points of order submitted to him by members on questions either as they arise or in anticipation, provided a notice of a question seeking a ruling must be notified to him privately and not placed upon the paper.

Mr. Goswami contends that none of the duties which by tradition and convention have been assigned to the Speaker of the House of Commons included or

contemplated an action, which has been taken by the Speaker in the present instance out of his own motion and without a resolution of the House and the report of any committee. He submits that his undoubtedly exalted position excludes the Speaker from taking sides specially in a matter, which affects the rights and liberties of a person outside the House; and where, in case of any complaint made by, the members he may be called upon to deal with the matter strictly in accordance with the rules of procedure formulated by the House.

The learned Counsel has referred to relevant passages, from May''s book to show what constitutes breach of privilege or contempt of the House. According to the author, "written imputations, as affecting a Member of Parliament, may amount to breach of privilege, without, perhaps, being libels at common law", but to constitute a breach of privilege a libel upon a Member must concern the character or conduct of the member in that capacity.

Mr. Goswami urges that the article in the present instance was neither a libel upon any particular member nor did it concern the character or conduct of any member in his capacity as a member. In case of complaints founded upon documents as in respect of publication in newspaper or book, the normal procedure appears to be that it should be lodged by a member of the House, who should deliver a copy of the offending document on the table of the House and the passages complained of read aloud by the Clerk or the Secretary for the information of the House before any further proceedings are taken on that complaint.

We will have to examine later the relevant Rules of Procedure and Conduct of Business in the Assam Legislative Assembly; but the contention of Mr. Goswami is that none of these formalities have been observed in the present case. He complains J that the Speaker of his own motion has proceeded, to take action against the Petitioner, without having the support of any resolution of the House or the Committee, thereby adopting in some respects a partisan altitude, which derogates from his lofty position of dignity and impartiality.

Mr. Goswami further urges that there is no question here of the validity of any proceedings in the Legislature of the State, nor was the Speaker or the Secretary acting in the exercise of his powers for regulating procedure or conduct of business or for maintaining order in the Legislature; according to the learned Counsel, the case was thus taken out of the immunity provided by Articles 212 or even 194(3) of the Constitution. He, therefore, submits that in such a case he has every right to approach this Court as the highest Court in the State for and appropriate writ where, due to the unwarranted action of those dignatories, his rights and liberties have been invaded.

These arguments though weighty and attractive have their obvious limitation. Whatever and howsoever uncertain the legal position may have been in the early stages of constitutional evolution - at times even associated with political

controversy, ill conducive to the harmony and coordination so essential to constitutional growth it is well established now that the House of Commons in England has certain well defined rights and privileges, honoured and sanctified by tradition and custom, one of the most important of them being the right to commit a person for contempt of its high authority and dignity and for breach of its privileges.

This power extends not merely to members of the House, but even to persons outside it and when the House acts in vindication of those rights and privileges, the Courts of the land have no right to interfere. The proper forum is the House itself where the person affected can claim the redress of his rights. By virtue of the Indian Constitution, these powers and privileges are enjoyed by the Houses of Parliament in India and the Houses of the State Legislatures.

The Speaker as the chief custodian of the powers and privileges of the State Legislature is not merely the constitutional head of the Legislature, but also the chief functionary thereof. "He is", as May points out, "the representative of the House itself in its powers, proceedings and dignity", It may be that ordinarily he would not take notice of an alleged contempt or breach of privilege, except where it is committed in the House itself, provided the matter is brought to his notice in due course by a regular complaint instituted by any of the members of the House; but, there is nothing to prevent him from taking notice of such contempt or breach of privilege where the offending publication has attracted his attention and then set the House and the machineries thereof in motion for an appropriate action against the offender.

In a given case, whether he acts with propriety or otherwise is not the concern of the Court, so long as his acts are confined to the enforcement of the well-established rights and privileges of the House, and not calculated to bolster up new and startling privileges unknown to convention and tradition. The Constitution has undoubtedly placed an obligation on this Court to protect the rights and liberties of the people; but, while it is the duty of this Court to enforce the mandates of the Constitution and to see that persons, in authority, public bodies or institutions within its jurisdiction, howsoever high and exalted they may be, keep within the bounds of the Constitution, it is equally the duty and the responsibility of this Court to realise the constitutional limitations within which it has to function.

The action of the Speaker in initialing proceedings for contempt, though somewhat abnormal, does not necessarily detract from his position of dignity and impartiality. It is well known that in cases of contempt the prosecutor is himself the Judge. This necessarily involves an added responsibility on the Judge to maintain his position to objectivity and detachment so as not to cloud his judgment; but this responsibility he is called upon to shoulder in the larger interest of the public and for the vindication of the confidence which the public have in his sense of fairness and impartiality.

The position of the House of the Legislature, which is the supreme Legislative organ of the State is, in this respect, almost identical.

6. Some of the leading cases on the subject as to the state of the law in England have been conveniently digested and summarised in Keir and Lawson "Cases in Constitutional Law." These cases, though well known, having regard to the universe (sic) of discourse, bear repetition. In the case of Stockdale v. Hansard (1839) 9 Ad. & El. 1 (A), it was recognised that the members of each House of Parliament were the sole judges whether their privileges have been violated and whether thereby any person had been guilty of a contempt of their authority; and so they must necessarily adjudicate on the extent of their privileges.

The cases bearing on the point all establish that the House of Commons has power to commit for contempt and when it has so committed any person, the Court cannot question the propriety of Such commitment or enquire whether the person committed had been guilty of contempt of the House, in the same manner as the Court cannot entertain any such questions if the commitment be by any other Court having power to commit for contempt.

In such instances, the action is taken by a competent authority and the Court, which is asked to interfere not being a Court of appeal cannot entertain the, question whether the authority has been properly exercised. It was, however, held on the facts of that particular case that the step taken by the House was not covered by any of those privileges and therefore, the Court could interfere.

It was found that in making the resolution the House of Commons was not acting as a Court either legislative, judicial or inquisitorial, or a any other description and therefore, the action taken, though supported by a resolution of the House, was open to, question. The above constitutional position was again affirmed in the case of the Sheriff of Middlesex (1840) 11 Ad & El 273 (B), where the Sheriff had been taken in custody by the Serjeant-tat-arms of the House of Commons by the order of the Speaker, for having been guilty of a contempt and breach of the privileges of the House.

Lord Denman, C.J., who decided the earlier case, reiterated the law on the point. The learned Chief Justice quoted a remarkable passage from the judgment of Lord Ellenborough in the cases of Burdett v. Abbot (1811) 14 East 1 (C), where the noble Lord said:

If a commitment appeared to be for a contempt of the House of Commons generally, I would neither in the case of that Court, or of any other of the Superior Courts, inquire further: but if it did not profess to commit for a contempt, but for some matter appearing on the return, which could by no reasonable intendment be considered as a contempt of the Court committing, but a ground of commitment palpably and evidently arbitrary, unjust, and contrary to every principle of positive law, or natural justice; I say, that in the case of such a commitment, (if it ever should

occur, but which I can not possibly anticipate as ever likely to occur), we must look at it and act upon it as justice may re, quire from whatever Court it may profess to have proceeded.

His Lordship further observed:

On the motion for a habeas corpus, there must be an affidavit from the party applying; but the return, if it discloses a sufficient answer, puts an end to the case: and I think the production of a good warrant is a sufficient answer. Seeing that we cannot go into the question of contempt on affidavit, nor discuss the motives which may be alleged. Indeed (as the Courts have said in some of the cases) it would be unseemly to suspect that a body, acting under such sanctions as a House of Parliament, would, in making its warrant, suppress facts which, if discussed, might entitle the person committed to his liberty. If they ever did so act, I am persuaded that, on further consideration, they would repudiate such a course of proceeding.

Their Lordships, therefore refused to interfere with the order of commitment for contempt passed by the House of Commons. The case of Bradlaugh v. Gossett (1834) 12 QBD 271 (D), was a ease, which related to measure of internal discipline in the House of Commons itself. The Plaintiff in the said case having been returned as a member for a borough required the Speaker of the House of Commons to call him for the purpose of taking oath as intended by the statute.

In consequence of something which transpired on a prior occasion, the Speaker declined to do so and the House upon motion resolved that "the Serjeant-at-arms do e: elude the Plaintiff from the House until he should engage no further to disturb the proceedings of the House." It was held that this being a matter relating to the internal management of the procedure of the House of Commons, the Court had no power to interfere.

It was pointed out that the House of Commons was not subject to the control of Her Majesty''s Courts in its administration of that part of the statute law, which has relation to its own internal procedure only. What is said or done within the walls could not be enquired into in a Court of Law. A resolution of the House of Commons of course could not change the law of the land, but a Court of Law had no right to enquire into the propriety of a resolution of the House restraining member from doing within the walls of the House itself something, which by the general law of the land he had the right to do.

This case is obviously distinguishable, but its importance only lies in the fact that the law as laid down in the previous cases of (1811) 14 East 1 (C), (1839) 9 Ad & El 1 (A) and (1840) 11 Ad & El 273 (B), was affirmed. Lord Coleridge, C.J., (sic) the following note of caution, meant both for the Courts of Law as also the Houses of Parliament:

Whether in all cases and under all circumstances the Houses are the sole judges of their own privileges, in the sense that a resolution of either House on the subject

has the same effect for a court of law as an Act of Parliament, is a question which it is not now necessary to determine. No doubt to allow any review or parliamentary privilege by a court of law may lead, has led, to very grave complications, and might in many supposable cases and in the privileges of the Commons being determined by the Lords.

But to hold the resolutions of either House absolutely beyond inquiry in a court of law may land us in conclusions not free from grave complications too. It is enough for me to say that it seems to me that in theory the question is extremely hard to solve; in practice it is not very important, and at any rate does not now arise.

Stephen, J., who was also a party to the judgment tool pains to show from relevant passages culled out from the decision of each of the learned judges, who decided the case of (1839) 9 Ad & El 1 (A), that the law had been correctly propounded even in that early stage, and then proceeded to observe as follows.

The Parliamentary Oaths Act prescribes the course of proceeding to be followed on the occasion of the election of a member of Parliament. In order to raise the question now before us, it is necessary to assume that the House of Commons has come to a resolution inconsistent with the Act; for, if the resolution and the Act are not inconsistent the Plaintiff has obviously no grievance. We must of course, face this supposition, and give our decision upon the hypothesis, of its truth.

But it would be indecent and improper to make the further supposition that the House of Commons deliberately and intentionally defies and breaks the statute law. The more decent and I may add the more natural and probable supposition is that for reasons which are net before us, and of which we are therefore unable to judge, the House of Commons considers that there is no inconsistency between the Act and the resolution.

They may think there is some implied exception to the Act. They may think that what the Plaintiff proposes to do is not in compliance with its directions. With this we have nothing to do. Whatever may be the reasons of the House of Commons for their conduct, it would be impossible for us to do justice without hearing and considering those reasons; but it would be equally impossible for the House, with any regard for its own dignity and independence to suffer its reasons to be laid before us for that purpose, or to accept our interpretation of the law in preference to its own.

It seems to follow that the House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned; and that, even if that interpretation should be erroneous, this Court has no power to interfere with it directly or indirectly.

There have been a few instances from the Courts in India and Australia to which I need briefly refer in this connection. Speaker of Legislative Assembly of Victoria v. Hugh Glass (1871) 3 PC 560 (E), was an appeal from the Supreme Court of the

Colony of Victoria. There also the Constitution Act provided that the Legislative Assembly of Victoria held and enjoyed like privileges, immunities and powers as were held and enjoyed by the House of Commons.

It could not be, therefore, successfully controverted that the power to commit and imprison persons guilty of breach of privileges of the House of Commons was not one of the powers and privileges which under the statute was held and enjoyed by that House. The argument, however, proceeded on the footing that the privilege was the privilege for committing for contempt only and the judging of contempt without appeal and the power of committing by general warrant were mere incidents or accidents applicable to England and not transferred to the Colony. The Privy Council repelled the contention in the following words:

They consider that there is an essential difference between a privilege of committing for contempt such as would be enjoyed by an inferior Court, namely, privilege of first determining for itself what is contempt, then of stating the character of the contempt upon a Warrant, and then of having that Warrant subjected to review by some superior Tribunal, and running the chance whether that superior Tribunal will agree or disagree with the determination of the inferior Court, and the privilege of a body which determines for itself without review, what is contempt, and acting upon the determination, commits for that contempt, without specifying upon the Warrant the character or the nature of the contempt.

The privileges, their Lordships think, as thus stated, are essentially different. The latter of the two privileges is a higher and more important one than the former. The ingredients of judging the contempt, and committing by a general warrant, are perhaps the most important ingredients in the privileges which the House of Commons in this Country possesses; and it would be strange indeed if, under a power to transfer the whole of the privileges and powers of the House of Commons, that which would only be a part, and a comparatively insignificant part, of this privilege and power were transferred.

There is another decision of the Privy Council, which arose from an appeal from the Supreme Court of Nova Scotia in Fielding v. Thomas (1896) AC 600 (F). The Nova Scotia Legislature had enacted that the privileges of that Legislature were the same as those of the House of Commons of the United Kingdom. The Respondent had been held guilty of breach of privileges and contempt and wilful disobedience to the orders of the Assembly to attend in reference to a libel reflecting on its members and they punished that breach by imprisonment. It was held that the Legislature of Nova Scotia had complete power to do so. In reviewing the earlier decisions of Burdett v. Abbot (C), and The Sheriff of Middlesex (B), the Lord Chancellor observed.

The authorities summed up in Burdett v. Abbot (C), and followed in the case of the Sheriff of Middlesex (B), establish beyond all possibility of controversy the right of the House of Commons of the United Kingdom to protect itself against insult and

violence by its own process without appealing to the ordinary courts of law and without having its process interfered with by those courts.

Some discussion of the relevant Indian decisions will be equally useful. In the case of Raj Narain Singh Vs. Atmaram Govind and Another, , Sapru, J., who delivered the judgment of the Bench, held that each House in Britain possesses (a) the right of being the exclusive judge of the legality of its own proceedings, (b) the right to punish its own members for their conduct in Parliament and (c) the rights to settle its own proceedings.

It is settled law that the House of Commons is not responsible to any external authority following the rules it lays down for itself for the transaction of its own business. It is open to the Housed to depart from them at its own discretion. Even where the procedure of the House or the tight of its members to take part in its proceedings is dependent on statute - and this is important - the House is immune from scrutiny by Courts as to the manner in which it interprets them. It follows from this that for such purposes the House can practically change or supersede the law.

The learned Judge further held that even an erroneous decision by the Speaker or the House in respect of a breach of privilege could not be the subject-matter of scrutiny by a Court of law. Finality attaches where under cover of it no new privilege is created by the House to a decision of the House in respect of a matter relating to its privileges. Obviously, the High Court is not, in any sense whatever a Court of appeal or revision against the Legislature or against the rulings of the Speaker, who, as the holder of an office of the highest distinction, has the sole responsibility cast upon him of maintaining the prestige and dignity of the House.

The case of Haridas Majumdar v. Sir Bejoy Prosad Singha Roy AIR 1946 Cal 121 (FB) (H), on which the learned Counsel for the Petitioner has strongly relied was a case, which arose under the old Constitution Act of India (Government of India Act, 1935) and therefore, it cannot be a satisfactory guide on the powers and privileges of the State Legislatures as vouchsafed under the present Constitution.

I have already shown that these powers and privileges did not exist under the old Act and therefore, at that stage it was open to the Courts to consider the propriety of the steps taken by the President or the members of the then Legislative Council, as permissible under the Rules; but even in that case, the Court refused to interfere and held that even in correcting a mistake the President did not strictly act in accordance with the rules and standing orders, it only meant that there was a lacuna in the rules and there was no reason why the Court should interfere when the President was doing a thoroughly sensible thing and the matter was absolutely trumpery and the Court was not satisfied as to the bona fides of the members challenging the action of the President. That decision, therefore, does not help the submissions of Mr. Goswami.

7. The legal position has been well summed up in a recent decision of Dixon, C.J., in R. v. Richards (1955) 92 CLR 15 (I). To quote his Lordship:

The question, what are the powers, privileges and immunities of the Commons House of Parliament at the establishment of the Commonwealth is one which the Courts of Law in England have treated as a matter for their decision. But the Courts in England arrived at that position after a long course of judicial decision not unaccompanied by political controversy. The law in England was finally settled about 1840.

The first question is, what is that law? It must then be considered whether that law is, by virtue of the provisions which I have read, in force in Australia and applies to the House of Representatives.

It is unnecessary to discuss at length the situation in England; it has been made clear by judicial authority. Stated shortly, it is this: It is for the Courts to judge of the existence in either House of Parliament of a privilege, but, given an undoubted privilege, it is for the House to judge of the occasion and of the manner of its exercise. The judgment of the House is expressed by its resolution and by the warrant of the Speaker.

If the warrant specifies the ground of the commitment the Courts may it would seem, determine whether it is sufficient in law as aground to amount to a breach of privilege, but if the warrant is upon its face consistent with a breach of an acknowledgeed privilege it is conclusive and it is no objection that the breach of privilege is stated in general terms.

This statement of law appears to be in accordance with cases by which it was finally established, namely the case of the Sheriff of Middlesex decided in 1840 and reported in 11 Ad & El 273 (B).

So far as this country is concerned, it is established authoritatively by the decisions of the Privy Council in Dill v. Murphy (1864) 1 MPC 487 (J) and in (1871) 3 PC 560 (E).

8 Mr. Goswami has drawn a distinction between the present case and those discussed above, He contends that in almost all of them, there was either a resolution of the House to back up the warrant issued by the Speaker or the matter in question related to proceedings on the floor of the House itself; in the present case, he submits that there is absence of these factors. On the affidavits filed before us the contention does not appear to be altogether correct.

Though so far there is no resolution of the House, it appears that before directing the Secretary to issue notice on the Petitioner to appear before the privileges Committee, the Speaker made a statement before the House to that effect and apprised the House of the step which he proposed to take and the reasons which prompted him to do so. Besides, the summons issued by the Speaker has since been substituted by another at the instance of the Privileges Committee.

Apart from anything else and the powers which he enjoys as Speaker of the Legislative Assembly on the analogy of those enjoyed by the Speaker of the House of Commons in these matters, it appears from the Rules of Procedure and Conduct of Business framed by the Assembly on the authority of Article 208 of the Constitution that the Speaker was competent to act as he did, whatever else may be said about the propriety of the action taken.

9. This brings us to a consideration of the second point raised in the case. These Rules of Procedure have not been challenged before us as being ultra vires the Legislature. As at present advised, I agree that the language of Article 208 as held in Godavaris Misra Vs. Nandakisore Das, Speaker, Orissa Legislative Assembly, , is wide enough to cover these Rules. Chapter XX of the Rules deals with "Questions of Privilege."

The Rules contemplate that ordinarily any instance of a broach of privilege either of a member of the House or of a Committee thereof may with the consent of the Speaker, be brought to the no-lice of the House: (i) by a complaint from a member; (ii) by a petition; or (iii) by a report from a Committee; provided that if the breach is committed in actual view of the House, the House may lake action without a complaint (vide Rule 158).,

The Rules then provide for the notice of a complaint by a member; the condition for the admissibility of a question of privilege; the presentation of complaint; and that if the Speaker holds the matter proposed to be discussed in order, he should refer it to the Committee of Privileges (vide: Rules 160-162). Rule 163 authorises the Speaker to issue such directions as may be necessary for regulating the procedure in connection with all matters connected with (sic) consideration of the question of privilege, either in the Committee of Privileges or in the House.

I need not refer to the other Rules of procedure except to some of the general rules under that Chapter and the rules in Chapter XXVII in relation to interpretation and residuary powers. Rule 175 provides that except where the breach of privilege is committed in the actual view of the House or of a Committee the House shall at some proper stage of the proceedings before the sentence is passed give an opportunity to the persons charged to be heard in explanation or exculpation of the offence complained against.

Added to it is a significant proviso that if the matter has been referred to the Privileges Committee and the person charged has been heard before the Committee, it will not be necessary for the House to give him that opportunity unless the House directs otherwise. This proviso therefore, definitely contemplates that in certain instances, where the matter has been referred to the Privileges Committee, the person charged may be heard before the Privileges Committee.

There is of course no specific provision for issue of summons by the Privileges Committee nor is there any specific provision for issue of summonses by the House

for attendance of the person concerned. The House and the Committees cannot function by'' themselves; they have to function through individuals. Rule 176 states that the Speaker may summon the party charged by notice or warrant to appear before the House at any stage of the proceedings.

The Petitioner contends that Rule 176 authorises the Speaker to summon the party to appear only before the House when the proceeding is pending there and has to be read along with Rule 171 and the other ancillary rules, which contemplate of the matter being brought in a regular motion before the House. The learned Advocate-General contends that Rule 176 relates to any stage of the proceedings in the House and the House includes not only the floor of the House but also the Committees constituted under the Rules through which the House functions.

He submits that in this case, a statement had already been made by the Speaker on the floor of the House before making a reference to the Privileges Committee. From that stage onwards, according to the learned Advocate-General, the proceedings should be deemed to be pending before the House and at any stage of the proceeding under Rule 176, the Speaker will have authority to summon the party charged. The latter interpretation appears to be more consonant with the object of the rules in which there is otherwise no specific provision for summoning the party concerned by the Privileges Committee, though the proviso to Rule 175 does contemplate his appearance before that Committee.

We have already noticed that under Rule 163, the Speaker is entitled to issue such directions as may be necessary for regulating the procedure in connection with all matters connected with the consideration of the question of privilege either in the House or in the Committee of Privileges. These , three rules - Rules 163, 175 and 176 - read together lend strong support to the argument of the learned Advocate-General and the authority to summon by the Speaker of the party concerned may be safely spelled out of the above rules.

Rule 181 further provides that notwithstanding anything contained in the Rules of that Chapter, the Speaker may refer any question of privilege to the Committee of Privileges for examination, investigation or report. The Speaker is therefore not exclusively bound by the procedure laid down in Rule 158 and the other cognate rules and in special cases he can make a reference of any question of privilege to the Privileges Committee for appropriate action independently of the other rules. The learned Counsel for the Petitioner concedes to that position.

He does realise that the action of the Speaker in making a reference of the matter to the Committee of Privileges at his own initiative may be , justified under Rule 181; but his main objection is to the summons having been issued by him at this stage. Even that objection, in my opinion, cannot, be sustained in view of the other relevant rules, which I have discussed earlier. Besides, the question of interpretation of the rules lies with the Speaker.

Rule 314 says that if any doubt arises as to the interpretation of any of the rules, the decision of the Speaker shall be final; so that even if there was some substance in the complaint that the procedure adopted by the Speaker was irregular, it would not be open to this Court to go into the matter, because the decision of the Speaker has a finality on the point. Added to it is the fact that under Rule 315, the residuary powers are vested in the Speaker, so, that all questions not specially provided for in the, rules and all questions relating to the detailed working of the rules are intended to be regulated in such manner as the Speaker may from time to time direct.

These rules, therefore, purport to vest the Speaker with a large discretion in these matters of procedure which is not unusual to the dignity and responsibility of the high office which he holds. If once it is conceded, as it has to be conceded, that the Legislative Assembly has power to take steps against a person for commitment for contempt or alleged contempt or any such breach of privileges of the House then the procedure to be adopted is a matter of concern to the House or the Speaker thereof and in regard to the validity of which this Court would not be entitled to embark on an enquiry. In this context, I may quote a passage from Sir William Holds worth in his book: "A History of English Law", where the learned Professor observes as follows:

There are two maxims or principles which govern this subject. The first tells us that ''Privilege of Parliament is part of the law of the land;'' the second that ''Each House is the judge of its own privileges''. Now at first sight it may seem that these maxims are contradictory. If privilege of Parliament is part of the law of the land its meaning and extent must be interpreted by the courts, just like any other part of the law; and therefore, neither House can add to its privileges by its own resolution, any more than it can add to any other part of the law by such a resolution.

On the other hand if it is true that each House is the sole judge of its own privileges, it might seem that each House was the sole judge as to whether or no it had got a privilege, and so could add to its privileges by its own resolution. This apparent contradiction is solved if the proper application of these two maxims is attended to. The first maxim applies to cases like Ashby v. White and Stockdale v. Hansard (A), in which the question al issue was the existence of a privilege claimed by the House.

This is a matter of law which the courts must decide, without paying any attention to a resolution of the House on the subject. The second maxim applies to cases like that of the Sheriff of Middlesex (B), and Bradlaugh v. Gosset (D), in which an attempt was made to question, not the existence but the mode of user of an undoubted privilege. On this matter the courts will not interfere because each House is the sole judge of the question whether, when or how it will use one of its undoubted privileges.

The learned Professor has put the proposition in his own analytical way, but his conclusion is certainly entitled to much weight.

10. It would thus be seen that the action taken by the Speaker is not unwarranted under the Rules and, we are, therefore, unable to entertain the contention of the Petitioner challenging the action of the Speaker.

11. The learned Advocate-General has further argued that even if the summons issued by the Speaker is held to be irregular, the petition for writ in this case has become infructuous in view of the fact that the date for the appearance of the Petitioner''s given in the summons had already ex-pride before the application was fifed and there was; nothing in respect of which any writ or direction, could De issued. He therefore, contends that there is no infringement of any legal right of the Petitioner, which may entitle him to the benefit of a writ from this Court.

I do not think that this argument is quite sound. The summons issued by the Speaker could be disobeyed by the Petitioner only at his peril and at the risk of further proceedings for contempt or breach of privileges. It is true that the Petitioner asked for time and eventually the Privileges Committee extended the time for his Appearance; but, in the meantime, he obtained this Rule.

Therefore, if we had otherwise held that the summons was without jurisdiction, we would have been bound to interfere in favour of the Petitioner as it compelled him to appear before the Committee which, if unauthorised, he was not bound to do; but, as we have seen earlier in the circumstances of this case, we do not think that we have any right to interfere with the processes of the Legislative Assembly, which purport to have been issued by the Speaker or the Committee to answer a charge of alleged breach of a well recognised right by privilege of the Legislative Assembly.

12. Mr. Goswami has endeavoured to remind us of the role of the Judiciary and the Rule of Law and in a free country in a democratic set up for the preservation of the rights and liberties of the people and for the existence of a free Press to enlighten public opinion on questions of urgent public importance. He has also laboured to show that a Court, of Justice or the Government or the Legislature of a State which executes or registers the will of the people, should not be hypersensitive of its rights and privileges so long as the criticism offered is a fair and legitimate criticism and offered in the best interest of the administration and does not overstep the bounds of law.

He has with a view to fortify his submissions, cited numerous passages from the Tagore Law Lectures, delivered in July, 1955, by Mr. Justice Douglas of His Lordship''s Supreme Court of America. To a trained jurist of His Lordship''s undoubted ability and experience, it would not be difficult to detect the affinities, which exist on many points between the basic principles of the Indian and the American Constitutions, both of which are fundamentally democratic Constitution. To quote the choice expression of. His Lordship:

Both India and the United States reject the philosophy that the end justifies the means. The vitality of civil rights depends as much on respect for procedure as it

does on recognition substantive rights. Legal history shows I think that man''s struggle to be free is in large degree a struggled be free of oppressive procedures - the right to be free from torture, the right to know the charge and to have a fair opportunity to defend, the right have a system of laws that is not a pitfall for As innocent.

He further points out:

Power is indeed a heady thing whether it be a King, a President, a Legislature, a Court of an Administrative agency that is concerned. Power is feeds the ego and begets more power. Power is more satisfying to some than wealth. In a monarchical fascist, or communist regime all power is concentrated in a few hands at the top of the. The judicial, legislative, and executive power are all combined. The select few appoint and remove judges, make and repeal laws, and administer the affairs of state.

The struggle of man throughout recorded history has been to be free of that kind of regime. Power being a heady thing should not be absolute. All power needs some restraint, some check, lest it become an instrument of oppression. That is the Indian and American philosophy and it is reflected in the checks and balances written into the basic law of each.

These general comments upon the Constitutions of both the countries are, if I may say so with great respect, absolutely apposite. It is true to a large extent of the Indian Constitution as it is true of the American Constitutional system, that there is a series of checks and balances by which the there branches of Government - Legislative, Executive and Judicial - serve as restraints on one another.

That is to say, some processes of Government are delegated exclusively to one branch; others are made dependent on the concurrence of the Legislative and the Executive, and the Judiciary function in at least a limited role to determine whether the other two branches comply with the mandates of the Constitution. It has been therefore, the duty and the privilege of the Judiciary to respect and, enforce the mandates of the Constitution whenever any such occasion has arisen and I am certain that even in future, the Judiciary will not shirk that important responsibility which it owes to the Constitution and the people, who have given such a Constitution to themselves; but, as the learned Jurist has rightly emphasised, both in the American and the Indian Constitution, the very division of powers among three branches of the State is definitive of the lines between the political and the justiciable question.

A strong independent Judiciary is undoubtedly great bulwark of the people and if the Judiciary bows to expediency or is swayed by considerations non-judicial, it ceases to serve its purpose and be comes a political instrument in itself. As pointed out by the learned author, the Constitution is the measure of their duty. Therefore, deference to other departments also makes it necessary or appropriate for the

Judiciary to steer clear of certain areas of controversy and avoid conflict of jurisdiction which is so essential for the preservation of the confidence, which the Judiciary inspires.

Mr. Goswami has also referred to certain passages in those, lectures, which deal with the investigative powers of the Congress and has cited instances to show that those powers are limited and the powers being derived from the Constitution, could rise no higher than its source and even in its limited sphere, exist only in so far as it is congenial, to, other Constitutional rights and guarantees. Its exercise in a given, situation must be judged and appraised in the light of the Constitution as an organic whole Certain passages dealing with Rule of Law and the importance of the Judiciary have also, been pressed to our attention. For instance where the learned author says:

Man''s long struggle has been to Jive under a government of Taws, not of men. Man''s search has been for equal justice under law for a system of law applicable to all alike. Man has sought to escape regime that dispenses justice according to the political or religious'' ideology of the litigant or the whim or caprice of the government official.

A judiciary dedicated to a government of laws creates confidence in the body politic and a sense of responsibility both in lawmakers and in those who administer the law.

The Indian courts also exemplify that tradition.

The soundness of these principles cannot be doubted, but we have to remember that in this case, the Constitution has guaranteed the same powers and privileges to the State Legislature and its members as those of the House of Commons, and in dealing with the limitations of those powers and privileges, we cannot depend very much upon American precedents. In this respect, our Constitution is patterned more upon the lines of the Australian Constitution than upon the powers of the Congress in America.

13. Mr. Goswami has lastly appealed to us in the name of a free and independent Press in a democratic set up and its role in educating public opinion on topics of interest. He contends that the Constitution under Article 19(1)(a) has guaranteed the freedom of the Press, which should be free to criticise the public activities of individuals and politicians and any encroachment on such freedom from any quarter calculated to stifle fair criticism should be strongly suppressed. The learned Counsel has referred to another felicitous passage from Mr. Justice Douglas'' lectures wherein the eminent Judge observes:

Democracy requires an informed citizenry, and an important factor in keeping the citizens informed is a free press. Newspapers and magazines which are free to print the whole truth, even when it may prejudice the position of some vested interest

serve the, cause of an enlightened public opinion. By presenting the ''pros'' and ''cons'' of the major issues, of the day, they help keep public opinion in a healthy state of thoughtful ferment.

He has placed before us the publication in question and the English translations thereof in order to show that there is nothing in the article to which exception could be taken on the ground of unfairness or illegitimate criticism, much less on the found of contempt or breach of privileges of the case or its members. We are however, precluded from entering into the merits of that question. Granting that Sri Goswami''s contentions are well founded, it simply amounts to this that in a given situation, Speaker "A" may not have taken the same steps, which Speaker "B" has done, but as Ii have shown in this case, it is not for this Court to pronounce upon the propriety of the Speaker''s action.

We cannot anticipate the decision of the Privileges Committee or that of the House and have no reason to assume that with due consciousness of their responsibility in the matter, these important Bodies working under high sanctions will not do what they think right and proper. We appreciate that two members of the Privileges Committee have personally appeared to show, cause in response to toe Rule issued by this Court and while adopting the arguments of the learned Advocate-General, they had the additional advantage of being present in the proceedings throughout.

14. For the reasons discussed above, we are unable to entertain this petition and accordingly; discharge the Rule; but, we would make no order as to the costs of-this application.

H. Deka, J.

15. I have had the privilege of reading, the judgment prepared by my Lord the Chief Justice with which I substantially agree. I would however, like to dispose of tin''s petition under Article 226 of the Constitution on a short point, - namely that the Speaker could act in the manner as he has done, to refer the matter to the Privileges Committee for consideration as provided by Rule 131 of the Rules of Procedure and Conduct of Business, framed by the Assembly On the authority of Article 208 of the Constitution.

The summons issued on 28-4-58 has practically used itself up though it was not without any force and the summons that now remains is from the Privileges Committee and is issued with the authority of the Speaker which he enjoys under Rule 163, of the set of Rules mentioned above. In my opinion, Rule 176 does not apply in terms, - nor am I prepared at this stage to consider the privileges enjoyed, by the House under Article 194(3) of the Constitution, or the prerogatives- of the Speaker. I need not dilate upon the Rules. I have mentioned since they have been elaborately discussed in the judgment of the Hon''ble C.J. With these words-I agree that the rule may be discharged.