

(1966) 08 MP CK 0008
Madhya Pradesh High Court
Case No: M.P. No. 204 of 1966

Yashwantrao Meghawale

APPELLANT

Vs

M.P. Legislative Assembly and
Others

RESPONDENT

Date of Decision: Aug. 29, 1966

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Representation of the People Act, 1951 - Section 150

Citation: (1966) LJ 833

Hon'ble Judges: P.V. Dixit, C.J; R.J. Bhawe, J

Bench: Division Bench

Advocate: Jagdish Swaroop, V.K.S. Choudhary and L.S. Baghel, for the Appellant; A.P. Sen, Advocate General, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.V. Dixit, C.J.

This order will also govern the disposal of Miscellaneous Petition No. 330 of 1966.

2. By these applications under Articles 226 and 227 of the Constitution the two Petitioners Shri Yeswant Rao Meghawale and Shri Pandhari Rao Kridutta seek a declaration that notwithstanding the passing of two resolutions by the Madhya Pradesh Legislative Assembly on 17th March 1966 expelling them from the House, their seats have not become vacant and pray that the Respondents the Madhya Pradesh Legislative Assembly, the Secretary of the Assembly and the State of Madhya Pradesh be restrained by a direction from giving effect in any manner to the resolutions and to the notifications published by the Secretary of the Assembly in the Extraordinary Gazette dated 19th March 1966. They also pray that the fourth Respondent, namely, the Election Commissioner, New Delhi, be also directed not to

hold bye-elections for filling their seats.

3. The circumstances in which the assembly passed two resolutions on 17th March 1966 expelling the Petitioners, as stated in the return filed on behalf of the State of Madhya Pradesh, are that on 16th March 1966 when a motion for suspending Shri Ram Swaroop Khare, who was obstructing the business of the House and defying the Chair, from the service of the House for the rest of the day, was moved, some Opposition members created a disorder and also obstructed the Marshal and the security force from taking away from the House Shri Haribhau Joshi who had been asked by the chair to leave the House and who had refused to do so. During the course of this disturbance and confusion, Yeswant Rao Meghawale leaving his seat ran up to the dais, jumped on it and assaulted the Deputy Speaker who was presiding over the sitting of the House and who was at that moment on his feet adjourning the House for a while. The house reassembled after a few minutes and in the resumed sitting the motion suspending Shri Khare was carried. Some members of the Opposition, including the two Petitioners, still continued to offer obstruction to the deliberations and create confusion and disorder to such an extent that the Deputy Speaker was compelled to adjourn the sitting of the House to the next day.

4. On 17th March 1966 the Deputy Speaker at the very commencement of the sitting named five members of the Assembly, including the Petitioner Pandhari Rao Kridutta, under Rule 265 of the Rules of Procedure and Conduct of Business for their conduct and behaviour during the previous day's sitting. Pandhari Rao Kridutta, who was present in the House, did not attempt to explain his conduct or the allegations made against him. After the motion, was put to vote and carried, Pandhari Rao Kridutta suddenly left his seat, came in front of his desk and standing there he abused the Chair and hurled a chappal (a footwear) at the Deputy Speaker. The chappel missed the Deputy Speaker thereupon, the applicant Pandhari Rao threw another chappal at the Deputy Speaker which touching his hair fell on the floor. Pandhari Rao then left the House.

5. After this incident Shri Rameshwar Agnibhoj, a member of the Assembly, moved, a motion for expulsion of Yeswant Rao Meghawale. Shri Umrao Singh, another member moved a motion for expulsion of Pandhari Rao. The motion moved Shri Rameshwar Agnibhoj was thus.

The Motion moved by Shri Umrao Singh stated:

Both these motions were put to vote and carried.

6. On 19th March 1966 there appeared in the Extra-ordinary Gazette of that date a notification under the signature of the Secretary of the Assembly saying;

Consequent on the adoption of a motion by the Madhya Pradesh Vidhan Sabha on the 17th March, 1966 expelling from the House Shri Yeshwant Rao Meghawale, a member elected to the Madhya Pradesh Vidhan Sabha from Kurud constituency, he

has ceased to be a member of the Madhya Pradesh Vidhan Sabha with effect from the 17th March, 1966, afternoon.

A similar notification declaring that Pandhari Rao Kridutta ceased to be a member of the Assembly with effect from the afternoon of 17th March 1966 was also published in the Extra-ordinary Gazette of 19th March 1966. On 21st March 1955 the Secretary of the Assembly addressed two letters to the Secretary, Election Commission, New Delhi, informing him of the adoption by the Madhya Pradesh Legislative Assembly of the two motions expelling the Petitioners from the House and adding that the constituencies they represented had fallen vacant with effect from the afternoon of 17th March, 1966.

7. The Petitioners say that the resolutions passed by the Assembly expelling them are unconstitutional, ultra vires and void in law for the reason that under Article 194(3) of the Constitution the Assembly has not the power to expel any member and make his seat vacant; and that the seat of a member can become vacant only in the circumstances mentioned in articles 190, 191 and 192. They also contend that the privilege and power of expelling a member enjoyed by the House of Commons of the Parliament of the United Kingdom is not available to the Assembly as that power exercised by the House of Commons is an adjunct of the privilege and power to regulate its own constitution and the Legislative Assembly has no such power. It is also submitted by them that in the Rules of Procedure and Conduct of Business framed by the Assembly under Article 208 of the Constitution there is no rule for expulsion of members though there are rules for dealing with withdrawal and Suspension of members. The applicants also make a grievance that the resolutions were passed by the Assembly without giving them any opportunity to explain the allegations and to say that they were untrue.

8. In the returns filed by the State in each petition, a preliminary objection to the maintainability of the applications has been raised. It is to the effect that the Petitioners are not entitled to bring up, canvass or question before any Court of law, whether by a petition under Article 226 of the Constitution or otherwise, howsoever, the propriety, legality or validity of the proceedings within the four walls of the House; that the applicants cannot in this Court question the correctness of the factual statements contained in the two resolutions as to their conduct in the course of the sitting of the Assembly on 16th March 1966; that they cannot question in this Court the propriety, legality or validity of the two resolutions; and that in regard to the matters impugned the Respondent No. 1, the M. P. Legislative Assembly, and the Respondent No. 2, the Secretary of the Assembly, are not amendable to the jurisdiction of this Court. On merits, it is submitted by the State that by virtue of Article 194(3) of the Constitution the powers, privileges and immunities of the Assembly are those of the House of Commons of the Parliament of the United Kingdom at the commencement of the Constitution; and that on 26th January 1950 the House of Commons exercised the privilege and power of expelling any member

not as an adjunct of its privilege and power to regulate its own constitution but as a power to punish a member found guilty of a breach of privilege or contempt of the House. It has been stated in the return that the power to expel a member is inherent in every legislative body and it is a power of self-protection and the House is necessarily the sole judge of the exigency which justifies and requires its exercise; that Articles 190 (3) and (4) and 192 of the Constitution are not exhaustive of all cases of vacation of seats; that they deal with limited cases of disqualifications and that Article 194 (3) is an additional power given to the State Legislature to bring about vacation of a seat and is not abrogated by anything contained in Articles 190 or 191 or even 192. In the return of the State it has been pointed out that neither the resolutions passed by the House nor the notifications issued in the Extra-ordinary Gazette of 19th March 1966 profess to declare that the seats of the Petitioners have become vacant, and that the vacation of the seats was a direct consequence of the exercise by the Assembly of the power to expel the Petitioners. As regards the Rules of Procedure and Conduct of Business in the Madhya Pradesh Vidhan Sabha framed by the Assembly under Article 208 (1) of the Constitution, it has been said that they merely regulate the procedure and conduct of business in the House and do not define the powers, privileges and immunities of the House as contemplated by the first part of Article 194 (3); and that the absence of a rule concerning the procedure to be followed for expelling a member does not in any way affect the power of the House under Article 194 (3) to expel a member.

9. The Respondent No. 1, the M. P. Legislative Assembly, and the Respondent No. 2, the Secretary of the Assembly, have not entered appearance. The Respondent No. 4, Election Commission, New Delhi, has also not entered any appearance. In each petition, Shri Madan Gopal, Secretary of the Assembly, has, however, filed an affidavit stating the facts of the incidents that took place on 16th March 1966 and the facts and circumstances in which the resolutions expelling the Petitioners were passed by the Assembly on 19th March 1966. In those affidavits he has, however, added:

4. That I wish to make it clear that these points which I am putting on affidavit for the purpose of convenience of this Hon'ble Court are set out and affirmed by me on affidavit not on behalf of Madhya Pradesh Legislative Assembly as Respondent No. 1 nor on my behalf as Respondent No. 2 in the case but in my capacity only as the Secretary of Madhya Pradesh Legislative Assembly. I crave leave to add that this affidavit must not be considered or construed to be any appearance or affidavit on behalf of or as submission to the jurisdiction of this Hon'ble Court by either Respondent No. 1 Madhya Pradesh Legislative Assembly or Respondent No. 2 the Secretary to Madhya Pradesh Legislative Assembly.

We must say we are unable to understand and appreciate the capacity in which Shri Madan Gopal has filed these affidavits.

10. On the arguments presented to the Court by learned Counsel for the Petitioners and the learned Advocate-General, which will be adverted to and dealt with presently, the questions that arise for determination are:

(1) Whether this Court can enquire whether the Assembly has the power and privilege of expelling a member found guilty of a breach of privilege or contempt of the House so as to render his seat vacant;

(2) Whether, if such a privilege is found to exist in the House, the Court can judge of the occasion and of the manner of its exercise; and

(3) Whether the legislative Assembly and its Secretary are amenable to the jurisdiction of this Court.

All these questions involve the construction of Article 194 (3) of the Constitution. The first two clauses of Article 194 deal with freedom of speech in the Legislature and immunity from any proceedings in any Court in respect of anything said or any vote given by a member in the Legislature or in any committee thereof and immunity to all persons in respect of the publication by or under the authority of the Legislature of any report, paper, votes or proceedings. Clause (3) then says:

(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.

It will be seen that the first part of Clause (3) enables the Legislature to define by law its powers, privileges and immunities and of the members and the committees of a House of the Legislature. There is till now no such legislation. The second part provides that until the powers, privileges and immunities of the House are so defined, the powers, privileges and immunities of the House 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 the Constitution. The language of Article 194 (3) is plain enough to show that whenever a power or privilege is claimed by the House there must be an enquiry whether that power or privilege was a subsisting one in the House of Commons on 26th January 1959 and was recognized by the English Courts. This enquiry can clearly be by the Court. In this connection it would be pertinent to refer to the observations of the Supreme Court in *In re: Under Article 143. Constitution of India* [In the matter of: Under Article 143 of the Constitution of India](#), at p, 761 paragraph 35. Dealing with Article 194 (3) the Supreme Court observed:

This clause requires that the powers, privileges and immunities which are claimed by the House must be shown to have subsisted at the commencement of the

Constitution, i.e. on the 26th January, 1950. It is well-known that out of a large number of privileges and powers which the House of Commons claimed during the days of its bitter struggle for recognition, some were given up in course of time, and some virtually faded out by desuetude; and so, in every case where a power is claimed, it is necessary to enquire whether it was an existing power at the relevant time. It must also appear that the said power was not only claimed by the House of Commons, but was recognised by the English Courts. It would obviously be idle to contend that if a particular power which is claimed by the House was claimed by the House of Commons but was not recognised by the English Courts, it would still be upheld under the latter part of Clause (3) only on the ground that it was in fact claimed by the House of Commons. In other words, the inquiry which is prescribed by this clause is: is the power in question shown or proved to have subsisted in the House of Commons at the relevant time?

11. This Court can, therefore, judge of the existence in the House of a privilege or power claimed. But once a privilege is found to exist, it is for the House to judge of the occasion and of the manner of its exercise. The Court cannot interfere with an erroneous decision by the House or its Speaker in respect of a breach of its privilege. This proposition cannot be disputed in view of the decision of the Supreme Court in [M.S.M. Sharma Vs. Sri Krishna Sinha and Others](#), . It is unnecessary to burden this judgment by entering into a lengthy discussion about the power of the Courts in England to judge of the existence in either House of Parliament of a power or privilege claimed. Briefly put, the position in England is that it is for the Courts to judge of the existence in either House of Parliament of a privilege; that neither House can create new privileges; but where one of the undoubted privileges of the House is infringed, then the Courts cannot interfere with the decision of either House and it is for the House to judge of the occasion and of the manner of its exercise. The foregoing discussion is sufficient to dispose of the preliminary objections raised by the State. As this Court has the power to enquire into the existence of a power or privilege claimed by the House, it is idle to contend that the M. P. Legislative Assembly and its Secretary are not amenable to the jurisdiction of this Court. If the Assembly, has the power and privilege of expelling a member resulting in the vacation of his seat, then the Petitioners cannot challenge in this Court the correctness, propriety, legality or validity of the resolutions passed by the Assembly on 17th March 1966 expelling them. The occasion, and the manner of the exercise of the power are matters of which the House alone is the judge. The validity of the proceedings in the Legislature leading to the passing of the resolutions expelling the Petitioners cannot be called in question in this Court as is clear from Article 212 (1) which lays down 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," The Petitioners' objection that the resolutions expelling them were passed without giving them any opportunity to explain the allegations against them cannot, therefore, be entertained here.

12. There is no dispute that at the commencement of the Constitution the House of Commons had the power of expelling a member found guilty of contempt of the House. It is also not disputed that expulsion vacates the seat of the member expelled and a new writ is immediately issued by the House of Commons for filling the seat. The expulsion does not, however, disqualify the member expelled from contesting the election again. The controversy before us centered round the question whether the House of Commons exercised this power because of its power to regulate its own constitution or whether it exercised the power in its right to punish a member who has committed contempt against the House.

13. Shri Jagdish Swaroop, learned Counsel appearing for the Petitioners, urged that though the House of Commons has practically transferred to the Law Courts judicial cognizance of disputed election cases, it still has technically the right to settle disputed elections and to pronounce on the legality of an election and other qualifications for membership. The House of Commons has also the power of issuing writs for filling vacancies that arise in the House. It is because of this right to issue a writ for filling a vacancy that it has the right of expelling a member so as to render his seat vacant. Learned Counsel relied on the statement at page 105 in May's Parliamentary Practice, 17th Edition, namely,-

The purpose of expulsion is not so much disciplinary as remedial, not so much to punish members as, to rid the House of persons who are unfit for membership. It may justly be regarded as an example of the House's power to regulate its own constitution.

Learned Counsel proceeded to say that the M. P. Assembly has no power to regulate its own constitution: that its constitution is regulated by Chapter III of Part VI & Part XV of the Constitution and the Representation of the People Act 1950 & 1951; that a member once elected to the Assembly is entitled to continue to be a member for the period of the duration of the Assembly unless his seat becomes vacant Article 190 or he becomes disqualified under Article 191 for being a member of the Assembly; and that neither of these two Articles provides for a seat of a member becoming vacant on his expulsion by a House the Legislature. It was said that Articles 190 and 191 cannot be ignored while construing Article 194 (3) and that by applying the rule of harmonious construction the power of expelling a member so as to render his seat vacant cannot be conceded to the State Legislature. Learned Counsel added that the absence of a rule dealing with expulsion in the Rules of Procedure and Conduct of Business framed by the Assembly under Article 208 (1) was significant and indicative of the fact that the Assembly did not possess the power of expelling a member.

14. In support of his argument learned Counsel referred us to certain observations of the Supreme Court in *In re. Under Article 143, Constitution of India* (supra) to be found in paragraph 45 and paragraph 36 of the majority opinion. In paragraph 45 the Supreme Court said:

Mr. Seervai's argument is that the latter part of Article 194 (3) expressly provides that all the powers which vested in the House of Commons at the relevant time, vest in the House. This broad claim, however, cannot be accepted in its entirety, because there are some powers which cannot obviously be claimed by the House.

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The House of Commons also claims the privilege in regard to its own Constitution. This privilege is expressed in three ways, first by the order of new writs to fill vacancies that arise in the Commons in the course of a Parliament; secondly, by the trial of controverted elections; and thirdly, by determining the qualifications of its members in cases of doubt (Sir T. Erskine May's *Parliamentary Practice*, p. 175). This privilege again, admittedly, cannot be claimed by the House. Therefore, it would not be correct to say that all powers and privileges which were possessed by the House of Commons at the relevant time can be claimed by the House.

The observations in paragraph 36 which have been relied on are:

Nevertheless, if for other valid considerations, it appears that the contents of Clause (3) may not exclude the applicability of certain relevant provisions of the Constitution, it would not be reasonable to suggest that those provisions must be ignored just because the said clause does not open with the words "subject to the other provisions of the Constitution". In dealing with the effect of the provisions contained in Clause (3) of Article 194, wherever it appears that there is a conflict between the said provisions and the provisions pertaining to fundamental rights, an attempt will have to be made to resolve the said conflict by the adoption of the rule of harmonious construction.

15. In answer, Learned Advocate-General elaborating the pleas raised in the return of the State said that every legislative body has inherent power to do whatever may be absolutely necessary to carry on business in an orderly manner and if a member of the Assembly is found conducting himself in the House in a disorderly manner and offering obstruction to the deliberations of the body during its sitting, the legislative body has the power to expel the member; that this power of expulsion is necessary for self-preservation, self-security and self-protection; that the legislative body is necessarily the sole Judge of the exigency which may justify and require the exercise of the power; that the House of Commons has also this power of punishing a member found guilty of contempt or breach of privilege; and that this power is exercised by the House of Commons quite independently of its power to regulate its own constitution. Referring to paragraphs 893 and 905 of Halsbury's *Laws of England*, 3rd Edition, volume 28, learned Advocate-General said that the right or privilege which the House of Commons has to provide for its own proper constitution is one in addition to possessing a complete control over the regulation of its own proceedings and the conduct of its members and that the power of expulsion is exercised by the House in relation to the conduct of its members. It was

pointed out that in May's Parliamentary Practice, 17th Edition, at page 105, the power of expulsion, which the House of Commons has, has been regarded as one of the methods of punishment at the disposal of the House. Learned Advocate-General further argued that the privilege which, according to the observations of the Supreme Court in paragraph 45 of the majority opinion in *In re*, under Article 1-3, Constitution of India (supra), was not available to the State Legislature in India was the privilege which the House of Commons claimed to provide for its own proper constitution; and that this privilege was limited to the three matters mentioned by the Supreme Court on the basis of the statement in May's Parliamentary Practice at page 175 and did not include the right of the House to expel a member in the exercise of its power to control the conduct of its members.

16. It was further submitted that when a member is expelled he does not incur a disqualification and he can again seek election and be elected. That being so, Articles 190 and 191 which deal with disqualifications of members have no relevance in the construction of Article 194 (3). According to learned Advocate-General, Article 194 (3) operates independently of Articles 190 and 191 which are not exhaustive of all cases of vacation of seats and those Articles do not prohibit a seat of a member becoming vacant as a result of his expulsion. Learned Advocate-General strenuously contended that there is no justification whatsoever for putting a restricted meaning on the latter part of Article 194 (3) denying to the State Legislature the right of expelling a member so as to render his seat vacant when no Article of the Constitution imperatively demands such a restriction; that the exercise of this power by the State Legislature does not depend on any rule framed by the State Legislature under Article 208 (1); and that, therefore, the absence of a rule governing expulsion of a member in the Rules of Procedure and Conduct of Business of the M. P. Assembly cannot be taken as negating the power conferred by Article 194 (3) or prohibiting the exercise of that power.

17. We are unable to acquiesce in the contentions put forward by learned Counsel for the Petitioners. In order to determine the question whether the M. P. Assembly had the power of expelling the two Petitioners rendering their seats vacant, it is first necessary to consider the language of Clause (3) of Article 194 of the Constitution. The latter part of that clause says that until the powers, privileges and immunities of the Legislature are defined by an Act of the Legislature the powers, privileges and immunities of the Legislature shall be those of the House of Commons of the British Parliament. The language of Clause (3) is plain, unambiguous and apposite for vesting the Legislature with all the powers, privileges and immunities enjoyed by the House of Commons. The language is explicit in what it directs. The totality of the powers, privileges and immunities given to the State Legislature under Article 194 (3) can be cut down by denying to the Legislature a certain power, privilege or immunity enjoyed by the House of Commons at the commencement of the Constitution only if it is necessary to do so for reconciling Article 194 (3) with other provisions of the Constitution As observed by the Supreme Court in *In re*. Under

Article 143, Constitution of India (supra), if for valid consideration "it appears that the contents of Clause (3) may not exclude the applicability of certain relevant provisions of the Constitution, it would not be reasonable to suggest that those provisions must be ignored just because the said clause does not open with the words "subject to the other provisions of the Constitution". In that case the Supreme Court pointed out that if there is any conflict between Article 194 (3) and other provisions of the Constitution, an attempt to resolve it by the adoption of the rule of harmonious construction must be made. In earlier cases also the Supreme Court applied the principle of harmonious construction in order to reconcile with one another different provisions of the Constitution. In the case of [A.K. Gopalan Vs. The State of Madras](#), at p. 109, it was observed:

...the Indian Constitution is a very detailed one. The Constitution itself provides in minute details the legislative powers of the Parliament and the State Legislatures. The same feature is noticeable in the case of the judiciary, finance, trade, commerce and services. It is thus quite detailed and the whole of it has to be read with the same sanctity, without giving undue weight to Part III or Article 246, except to the extent one is legitimately and clearly limited by the other.

18. The whole question then is reduced to this Whether the exercise of the power by the State Legislature to expel a member rendering his seat vacant, which power was admittedly and undoubtedly enjoyed by the House of Commons at the commencement of the Constitution and recognized by the English Courts, would be incompatible with any provision of the Constitution or the structure of the Constitution. The grounds which learned Counsel for the Petitioners urged for a restrictive construction of Article 194 (3) denying to the State Legislature the power of "expulsion are: first, that the House of Commons exercised this power because of its privilege to regulate its own constitution and that under our Constitution the State Legislature has no power to regulate its own constitution; and secondly that the vacation of a seat of a member once elected can only be in the circumstances mentioned in Articles 190 and 191 and that these Articles do not provide for the vacation of a seat of a member by his expulsion from the House.

19. It is true that it is the privilege of the House of Commons to provide for its own proper constitution as established by law. This privilege, as stated in May's Parliamentary practice at page 175, is expressed in three ways: "first by the order of new writs to fill vacancies that arise in the House of Commons in the course of a Parliament; secondly, by the trial of controverted elections; and thirdly, by determining the qualifications of its Members in cases of doubt." It is true that under our Constitution the State Legislature has no power to issue writs for filling vacancies in the House, or to try election petitions, or to determine the qualifications of its members. But it is erroneous to say that the House of Commons has the right to expel its members because it has the privilege to provide for its own proper constitution in the three ways indicated by May. The House of Commons has this

power as something essential for enabling it to perform its high functions, as a power which is necessary for its protection, self-security and self-preservation. It has been stated in May's Parliamentary Practice at page 43:

Each House also claims the right to punish actions, which while not breaches of any specific privilege, are offences against its authority or dignity,...

Except in one respect, the surviving privileges of the House of Lords and the House of Commons are justifiable on the same ground of necessity as the privileges enjoyed by legislative assemblies of the independent Members of the Commonwealth and certain British colonies, under the common law as a legal incident of their legislative authority.

Such powers are essential to the authority of every legislature. The functions, privileges and disciplinary powers of a legislative body are thus closely connected. The privileges are the necessary complement of the functions, and the disciplinary powers of the privileges.

Later, May has mentioned at page 104 expulsion as one of the penalties available to the House of Commons for punishing cases of contempt committed against it. Then at page 105 it has been stated by May that-

The purpose of expulsion is not so much disciplinary as remedial, not so much to punish Members as to rid the House of persons who are unfit for membership.

It is thus plain from the above statements contained in May's Parliamentary Practice and the instances mentioned in the book of members expelled from the House of Commons that the House of Commons exercises the power of expelling a member not because it has the power to regulate its own proper constitution but because it finds it necessary for its proper functioning, protection and self preservation to expel a member who has offered obstruction to the deliberations of the House during its sitting by his disorderly conduct or who has conducted himself in a manner rendering him unfit to serve as a member of the Parliament.

20. The statements contained in paragraphs 893 and 905 of Halsbury's Laws of England (3rd Edition, Volume 28) also support this view. In paragraph 893 it has been stated:

893. Claim to rights and privileges.-The House of Lords and the House of Commons, which together constitute the High Court of Parliament, claim for their members, both individually and collectively, certain rights and privileges which are necessary to each House to maintain its independence of action and the dignity of its position. Each House is the guardian of its own privileges and claims to be the sole Judge of any matter that may arise, which in any way infringes upon them, and, if it deems it advisable, to punish any person whom it considers to be guilty of a breach of privilege or a contempt of the House.

Paragraph 905 contains the statement:

In addition to possessing a complete control over the regulation of its own proceedings and the conduct of its members, the House of Commons claims the exclusive right of providing, as it may deem fit, for its own proper constitution.

These statements leave no doubt that the rights and privileges, which the House of Commons has, are necessary to maintain its independence of action and dignity of its position; that it has the privilege of completely controlling the conduct of its members; and that the right which the House of Commons has of providing for its own proper constitution is in addition to the privileges it has of completely controlling the conduct of its members. One of the ways in which the conduct of its members is controlled by the House of Commons is by exercise of the power of expulsion against him. It has been stated in paragraph 906 of Halsbury's Laws of England (3rd Edition, Vol. 28) that if in the opinion of the House a member has conducted himself in a manner which renders him unfit to serve as a member of Parliament, he may be expelled from the House.

21. Learned Counsel for the Petitioners has strongly relied on the statement in May's Parliamentary Practice at page 105, namely, that the power of expulsion "may justly be regarded as an example of the House's power to regulate its own constitution." This statement occurs immediately after the statement that the purpose of expulsion is to rid the House of persons who are unfit for membership. If this earlier statement and the statement at page 175 explaining the ways in which the privilege of the House of Commons to provide for its own proper constitution is expressed are borne in mind, it is clear that the "regulation of constitution" spoken of by May at page 105 is not the regulation of its own constitution by the House of Commons in the three ways already referred to in which the House exercises its privilege to provide for its own proper constitution, but is the "regulation" which is necessarily involved when a member is expelled from the House. If the words "the House's power to regulate its own constitution" occurring at page 105 in May's Parliamentary Practice are understood in this sense, then clearly it may be said that the State Legislature under our Constitution regulates its own constitution when it expels a member. What is important to note is that the power of expulsion is not exercised by the House of Commons because of the privilege it has to provide for its own proper constitution as established by law and which privilege is expressed in the three ways mentioned at page 175 in May's book.

22. Shri Jagdish Swaroop, learned Counsel for the Petitioners, also sought to draw support from the observations made by the Supreme Court in paragraph 45 of the majority opinion in *In re under Article 143, Constitution of India* (supra). Those observations, which the Supreme Court made while rejecting the broad claim made by Shri Seervai that all the powers which vested in the House of Commons at the relevant time vest in the State Legislatures in India, have been reproduced earlier. It is clear from those observations that the privilege which, according to the Supreme

Court, cannot be claimed by the State Legislatures in India is the privilege of the House of Commons to provide for its own proper constitution and which privilege is expressed in the three ways mentioned by May. If, as we have just endeavoured to point out, the power of expulsion the House of Commons has, is not because of its privilege dealt with by May at para 175 to provide for its own proper constitution but quite independently of it as a power which is necessary for its protection, self-security and self-preservation, then it is plain that the observations of the Supreme Court relied on by learned Counsel for the Petitioners are of no assistance to the applicants. The Supreme Court had no occasion to consider whether the power of expulsion which vested in the House of Commons at the relevant time vests in the State Legislatures in India. The observations of the Supreme Court cannot, therefore, be read as employing that the power of expelling a member cannot be claimed by a State Legislature in India as it involves regulation of its own constitution.

23. It would be pertinent to mention here that the Privy Council has repeatedly held that while the colonial legislative bodies do not possess the powers, privileges and immunities which the British Parliament has, they have inherent power to do whatever may be absolutely necessary to carry on business in an orderly manner and can, in the exercise of this power, remove, or exclude a member for a time, or even expel him, if business could not be carried on without his expulsion. (See *Doyle v. Falconer* (1865-67) LR 1 PC 328 at 340, and *Barton v. Taylor* (1886) 11 AC 197 at p. 203. If the inherent power to expel a member has been conceded to a subordinate legislative body established and functioning under a Statute of the British Parliament and which has under the Statute no power to regulate its own constitution, then a fortiori when Article 194 (3) says that the powers, privileges and immunities which vested in the House of Commons at the commencement of the Constitution vest in the State Legislature it must be held that the State Legislature has inherent power to expel a member for its protection, self-security and self-preservation and for the orderly conduct of its business.

24. The second ground resting on Articles 190 and 191 of the Constitution urged by learned Counsel for the Petitioners for denying to the State Legislature the power to expel a member so as to render his seat vacant is also not well-founded. Articles 190 and 191 deal with disqualifications of member and the result of the disqualifications. They are not general provisions dealing exhaustively with all cases of vacation (sic) of seats. When a member is expelled by a House, he does not become subject to any disqualification. He is entitled to contest the election again and it is open to his constituency to re-elect him. The exercise of the power of expulsion by the Legislature does not create a disqualification. Thus, articles 190 and 191 have no bearing in the construction of Article 194 (3) and do not in any way touch the power of the State Legislature to expel a member so as to render his seat vacant. Merely because those Articles do not provide for the seat of a member becoming vacant on his expulsion, it does not follow that the Legislature has no power to expel a

member and render his seat vacant. Indeed, as when a member is expelled, his seat becomes vacant as a result of his expulsion and not because of any disqualification, no provision for vacation of seats as a result of expulsion could have been made in Articles 190 and 191 which deal with disqualifications of members. Learned Counsel for the Petitioners said that the vacation of a seat of a member as a result of his expulsion by the House of Commons was only the consequence of the exercise of the power and not a privilege in itself; and that, therefore, the M. P. Assembly could not claim the privilege of creating a vacancy by expelling a member. The argument is altogether fallacious. It is true that the privilege or right which the House of Commons has is of expelling a member and the vacation of a seat is only the result of expulsion. But the M. P. Assembly is not claiming any privilege of creating a vacancy and of expelling a member for that purpose. It is also not claiming the right to issue a direction for filling a seat when a member is expelled. If a member's seat becomes vacant as a result of his expulsion, then the seat is filled in accordance with the Representation of the People Act, 1951, holding a bye-election. Section 150 of the Representation of the People Act, does not contain anything to rule out the application of that provision to a case where the seat of member becomes vacant as a result of his expulsion. If the learned Counsel by his argument intended to suggest that the M. P. Assembly could expel a member but could not make his seat vacant and thus exclude him from the sittings of the House for all time, then the suggestion must be rejected as altogether untenable. If it were to be accepted, it would mean recognizing in the M. P. Assembly a power which did not vest even in the House of Commons at the material time. A member cannot be expelled by suspending him from the service of the House for all time. As the Privy Council said in *Barton v. Tavor* (supra at p. 205):

To argue that expulsion is the greater power, and suspension the less, and that the greater must include all degrees of the less seems to their Lordships fallacious. The rights of constituents ought not, in a question of this kind to be left out of sight. Those rights would be (sic) more seriously interfered with by an unnecessary prolonged suspension than by expulsion, after which a new election would immediately be held.

In our opinion, it cannot be contended with any degree of force that as there is no express provision in the Constitution providing for a member's seat becoming vacant as a result of his expulsion by the State Legislature, the right or privilege of expelling a member cannot be claimed by the Legislature. So far as the exercise of the power of expulsion by the State Legislature is concerned, Article 194 (3) operates quite independently of Articles 190 and 191 or any other article. There is nothing in the Constitution afford-ing any ground or justification for subtracting from the powers, privileges and immunities declared as belonging to the State Legislature the power of expelling a member having the result of making vacant the seat of the member expelled. The argument based on Articles 190 and 191 cannot, therefore; be accepted.

25. It remains to consider the effect of the absence in the Rules of Procedure and Conduct of Business framed by the M. P. Assembly of a rule dealing with expulsion of members. The absence of a rule is in no way indicative of the fact that the Legislature has not the power of expelling a member rendering his seat vacant or of precluding the exercise of the power. The powers, privileges and immunities vested in the State Legislature by virtue of Article 194 (3) are not contingent upon a House of Legislature exercising its authority under Article 208 (1) of the Constitution of making rules for regulating its procedure and conduct of its business. Article 194 (3) has an operation which is independent of the exercise power under Article 208 (1). Therefore even if no rule has been framed by the Assembly under Article 208 (1) with respect to the mode in which the power of expulsion may be exercised by the house, yet it has the authority to exercise that power vested in it under Article 194 (3).

26. For the foregoing reasons, our conclusion is that the M. P. Legislative Assembly has the power of expelling a member so as to render his seat vacant and the two Petitioners' expulsion on 17th March 1966 was in exercise of this power: and that it is not open to the Petitioners to canvass here that there was no justification for their expulsion or no opportunity of explaining the allegations made against them was given before the resolutions were passed. The reliefs claimed by the petitioners must, therefore, be refused.

27. In the result, both these petitions are dismissed with costs of the Respondent-State. Counsel's fee in each case is fixed at Rs. 250/-. The outstanding amount of the Security deposit in this case (M. P. No. 204 of 1966) after deduction of costs be refunded to the Petitioner Meghawale.