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Bombay High Court

Case No: Public Interest Litigation (L) No. 131 of 2014, Writ Petition (L) No. 3070 of 2014 and Public Interest Litigation (L) 128 of 2014

Sanjay Lakhe Patil	APPELLANT
Vs	
Haribhau Bagade	RESPONDENT

Date of Decision: Dec. 4, 2014

Acts Referred:

- Constitution of India, 1950 - Article 105, 105(3), 121, 122, 122(1)

Citation: (2015) 3 ABR 591

Hon'ble Judges: V.M. Kanade, J; Anuja Prabhudesai, J

Bench: Division Bench

Advocate: B.A. Desai, Sr. Counsel and Manmohan Rao, Advocate for the Appellant; Sunil V. Manohar, Advocate General and A.B. Vagyani, Government Pleader, Advocate for the Respondent

Judgement

V.M. Kanade, J.
The learned Senior Counsel appearing on behalf of the Petitioners-Mr. Sanjay Lakhe Patil & Anr. in PIL (L) No. 131 of 2014, on instructions, seeks leave to withdraw the PIL(L) No. 131 of 2014. PIL(L) No. 131 of 2014 is allowed to be withdrawn and disposed of.

2. The other remaining Petitions viz. Writ Petition (L) No. 3070 of 2014 and PIL (L) No. 128 of 2014 can be disposed of by a common judgment since the relief claimed by the Petitioners in both these Petitions is more or less identical.

3. The Petitioner in Writ Petition (L) No. 3070 of 2014 was elected as MLA from Chandivli Constituency in recent Assembly Elections which were held on 15th October, 2014. He was a Cabinet Minister for Textile and Minority Development in previous Government. He claims to be filing this Petition on behalf of the Congress Legislature Party. He has stated that out of total 288 seats, the results, as announced by the Hon''ble Election Commission, were as follows:-

4. It is averred that the Chief Minister and his Council of Ministers must have support of 145 MLAs under Article 164 of the Constitution of India. It is contended in the Petition that Shri Devendra Fadnavis-Respondent No. 2 was appointed as a leader of the BJP Legislature party on 28th October, 2014 and His Excellency the Governor of Maharashtra called upon him to form his Council of Ministers and prove that his Government enjoys majority support in the Assembly within a period of 15 days by his letter dated 28th October, 2014 addressed to Shri Devendra Fadnavis. According to the Petitioner, the only course for testing the strength of the Ministry for proving the majority was by holding the Floor Test of the House, which, according to the Petitioner, was an objective test by division and counting of individual votes in favour and against Respondent No. 2''s party.

5. The gist of the allegations made by the Petitioner in Writ Petition (L) No. 3070 of 2014 is in para 7 of the Petition. He has stated that the Secretariat of the Maharashtra Legislative Assembly published the Business Agenda of the House on 12th November, 2014. Item No. 1 of the Agenda was to unanimously elect the Speaker. Item No. 2 was election of the opposition leader of the House and Item No. 3 was motion for vote of confidence. It is alleged by the Petitioner in the Petition that after Respondent No. 1 was unanimously elected as a Speaker, instead of taking Item No. 2 on the Agenda, he took Item No. 3 and called upon Shri Ashish Shellar, M.L.A. to move the vote of confidence and informed that Item No. 2 would be taken up later on. It is alleged that there was a pandemonium in the House and protest against the illegal change in the chronology of Agenda. According to the Petitioner, while this protest was going on, Respondent No. 1 called upon Shri Ashish Shellar to move the vote of confidence and after the motion was moved, Respondent No. 1 decided to take voice vote without there being any debate. According to the Petitioner, Shri Vijay Wadettiwar, M.L.A. & Deputy Leader of Congress Legislature Party in Maharashtra Assembly and many other Members demanded that the motion should be decided by poll or division but Respondent No. 1 did not accept this demand and proceeded to the next Item on the Agenda. On the basis of these averments, Petitioner has challenged the decision of the Speaker to take a voice vote and not vote by division. It is contended that the Chief Minister Shri Devendra Fadnavis and his Council of Ministers did not enjoy support of the majority in the House and, therefore, his Government was unconstitutional. Petitioner has, therefore, claimed the following reliefs:-

"a) The Petitioner submits that it may be declared item no. 3 in Agenda is not passed and the alleged illegal voice vote is of no effect and is non-est, void and unconstitutional and it also be declared that the Respondent No. 2 has not proved majority support in accordance with law and cannot continue as a Chief Minister of Maharashtra.

b) That this Hon''ble Court may be pleased to declare that the action of Respondents 2 to 11 purporting to act as Government are without authority of law.

c) The Hon''ble Court be pleased to issue the writ of Quo-warranto and/or any other appropriate writ, direction or order divesting the Respondent Nos. 2 to 11 of their respective offices and to vacate offices forthwith as Chief Minister and Council of Ministers.

d) The Hon''ble Court be pleased to issue the Writ of Mandamus and/or any other appropriate writ, direction or order restraining the Respondent No. 2 from acting as Chief Minister of State of Maharashtra and also restraining Respondents 3 to 11 from acting as Council of Ministers;"

6. The Petitioner in PIL(L) No. 128 of 2014 claims to be a voter from State of Maharashtra and he is supposed to be carrying on business of Yarn Dyeing and Manufacturing and is also associated with several NGOs and social activities. The Petitioner is also aggrieved by the trust vote conducted by Respondent No. 1 and for non-compliance of provisions of Rule 41 of the Maharashtra State Legislative Assembly Rules. The Petitioner has made relevant averments as to what transpired on 12th November, 2014 on which day the Hon''ble Speaker was to be appointed and, thereafter, the leader of the opposition and finally vote of confidence was to be taken. The Petitioner, though, he was not present on the Floor of the House, has stated to the best of his knowledge, what had transpired on that day in the House in para 14. He has also relied on the interview given by the Hon''ble Speaker in the Press Conference on 12th October, 2014 and has further relied on the transcript of the interview.

7. On the basis of these averments, the Petitioners in both these Petitions have challenged the decision of the Speaker to hold voice test as a test to prove the majority in the House. According to both the Petitioners, this decision is unconstitutional and there was non-compliance of Rule 41. The burden of the Song is that the Speaker has not committed mere procedural irregularity but the procedural illegality and, therefore, despite the prohibition of interference by the Court as envisaged under Article 212 of the Constitution of India, on account of the law settled by the Supreme Court this Court has jurisdiction and the authority to issue an appropriate writ, order or direction declaring that the decision of the Speaker was unconstitutional and, therefore, did not establish that Respondent No. 2 and his Council of Ministers had majority support of the House and, consequently, the vote of confidence was not passed in accordance with law. In support of this submission, reliance was placed on certain judgments of the Supreme Court and other High Courts.

8. Following questions fall for our consideration:-

(i) Whether this Court has the jurisdiction to question the decision taken by the Speaker on the Floor of the House and the extent to which this Court can interfere with the said decision?

(ii) Whether majority support can be established only by division i.e. test by each member present and voting in the House?

(iii) Whether the voice test is constitutionally valid way of proving the majority in the House?

(iv) On whom the onus of establishing the fact that illegality was committed by the Speaker on the Floor of the House, lies?

9. The first question which falls for our consideration is: whether this Court has the jurisdiction to question the decision taken by the Speaker on the Floor of the House and the extent to which this Court can interfere with the said decision?

10. Before we take into consideration the rival submissions, it is necessary to see the relevant provisions of the Constitution of India. Articles 211 and 212 are relevant. Upon conjoint reading of these two provisions which are applicable to the State Assembly and corresponding provisions viz. Articles 121 and 122 which are applicable to the Parliament, it is evident that under the Scheme of the Constitution, three Organs of the State viz. Legislature, Executive and Judiciary are supposed and expected to operate in different fields, so that there is no overlapping of jurisdiction of each Organ over other. The Constitution, therefore, envisages that conduct of judges when they decide cases in the Court should not be discussed on the Floor of the House, either in the Parliament or in the Assembly and the same courtesy has to be extended by the Courts to proceedings which take place in the Parliament and in the Assembly. What is obviously expected is that both the Organs exercise self-restraint over the proceedings which take place before each other.

11. The Apex Court in its decisions which were taken in 50s and 60s had restrained itself from interfering with the decisions which were taken on the Floor of the House. The First judgment on this point which was delivered by the Apex Court is in The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others, . In the said case, constitutional validity of three State Enactments was questioned on various grounds. One of the contentions which was raised by the Petitioners was that the Madhya Pradesh Act was not duly passed, as no question was put by the Speaker at the third reading of the Bill on the motion that it be passed into law, as required by the provisions of Rule 20(1) of the Rules governing the legislative business. It was contended that the omission was not a mere "irregularity of procedure". The Apex Court in the said judgment in para 22 has observed as under:-

"22. It was contended by Mr. Somayya that the Madhya Pradesh Act was not duly passed as no question was put by the Speaker, at the third reading of the bill, on the motion that it be passed into law, as required by the provisions of rule 20 (1) of the rules governing legislative business then in force, and that the omission was not a mere "irregularity of procedure" which the court is barred from enquiring into under article 212(1) of the Constitution. Rule 20(1) read as follows:

"A matter requiring the decision of the Assembly shall be decided by means of a question put by the Speaker on a motion made by a member".

What appears to have happened in this. One of the Ministers moved that "The C.P. and Berar Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Bill 1949, (No. 64 of 1949) as considered by the House be passed into law". Thereupon the Speaker read the motion to the House, and this was followed by several speeches welcoming the measure, amid general acclamation in the House, as a great boon to the tillers of the soil. The official report of the proceedings prepared by the Secretary under rule 115 (1), however, did not record that the Speaker put the question in the usual form: "The question is etc." and that the motion was carried. It was argued that the official report being the only "authentic record of the proceedings of the Assembly" under rule 115 (2) it must be taken to be conclusively established that the motion was not put to the House and carried by it. There is, in my opinion, no substance in the objection. The original Bill signed and authenticated by the Speaker was produced before us, and it contains an endorsement by the speaker that the Bill was passed by the Assembly on 5th April, 1950. The endorsement was signed by the Speaker on 10th May, 1950. The official report of the proceedings appears to have been prepared on 21st June, 1950, and was signed by the Speaker on 1st October, 1950. When he signed the report the Speaker did not apparently notice the omission as to the motion having been put and carried. Such omission cannot, in the face of the explicit statement by the Speaker endorsed on the Bill, be taken to establish that the Bill was not put to the House and carried by it. In any case, the omission to put the motion formally to the House, even if true, was, in the circumstances, no more than a mere irregularity of procedure, as it is not disputed that the overwhelming majority of the members present and voting were in favour of carrying the motion and no dissentient voice was actually raised."
(Emphasis supplied)

Thereafter, the Apex Court in Mangalore Ganesh Bedi Works Vs. The State of Mysore and Another, has also taken the similar view. In the said case, the grievance of the Appellant was that according to the Mysore Sales Tax Act, he was liable to sales tax at the rate of 3 pies for every rupee on the turnover and calculated on that basis the amount of tax would be Rs. 91,690/- but after the amendment of the Indian Coinage Act (Act 3 of 1906) by the Amending Act 31 of 1955 the rate of sales tax which was levied on the appellant''s Beedis was.02 Nps per rupee and thus the Appellant was called upon to pay Rs. 25,038/- more than he would have paid if he had been charged at the rate of 3 pies per rupee. It was argued that by the substitution of 2 naya Paisas in place of 3 pies there was a change in the tax exigible by the Mysore Sales Tax Act and this could only be done if that enactment had been passed according to the procedure for Money Bills in the manner provided by Articles 198, 199 and 207 of the Constitution and as no such Money Bill was introduced or passed for the enhancement of the tax, the tax was illegal and invalid. The Apex Court held

that Article 212 prohibited the validity of any proceedings in a legislature of a State from being called in question on the ground of any alleged irregularity of procedure. The Apex Court in the said judgment in para 5 has observed that the irregularity of procedure could not be questioned since Article 212 specifically prohibited the validity of any proceedings being challenged on the ground of irregularity of procedure. Paras 5 and 6 of the said judgment read as under:-

"5. Two objections were taken to the validity of the tax: Firstly it was argued that by the substitution of 2 naya paisas in place of 3 pies there was a change in the tax exigible by the Mysore Sales Tax Act and this could only be done if that enactment had been passed according to the procedure for Money Bills in the manner provided by Arts. 198, 199 and 207 of the Constitution and as no such Money Bill was introduced or passed for the enhancement of the tax, the tax was illegal and invalid. In our opinion by substitution of new coinage i.e. naya paisas in place of annas, pice and pies no enhancement of tax was enacted but it was merely a substitution of one coinage by another of equivalent value. Even assuming that it is a taxing measure its validity cannot be challenged on the ground that it offends Arts. 197 to 199 and the procedure laid down in Art. 202 of the Constitution. Article 212 prohibits the validity of any proceedings in a legislature of a State from being called in question on the ground of any alleged irregularity of procedure and Art. 255 lays down that requirements as to recommendation and previous sanction are to be regarded as matters of procedure only. It provides:

Art. 255 "No Act of Parliament or of the Legislature of a State, and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given-

(a) where the recommendation required was that of the Governor, either by the Governor or by the President;

(b).....

(c) ..... "

"6. Consequently the tax cannot be challenged on the ground that it is contrary to the provisions of the Constitution."

The Apex Court then in Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others, has also held that the irregularity of procedure in Legislature could not be called in question and no Court would go into those questions which are within the special jurisdiction of the Legislature. The Apex Court in the said judgment in para 10 has observed as under:-

"10. It now remains to consider the other subsidiary questions raised on behalf of the petitioner. It was contended that the procedure adopted inside the House of the Legislature was not regular and not strictly in accordance with law. There are two answers to this contention, firstly, that according to the previous decision of this

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

The Apex Court in Ramdas Athawale Vs. Union of India (UOI) and Others, has observed in paras 31, 36, 38 and 40 as under:-

"31 The Speaker is the guardian of the privileges of the House and its spokesman and representative upon all occasions. He is the interpreter of its rules and procedure, and is invested with the power to control and regulate the course of debate and to maintain order. The powers to regulate Procedure and Conduct of Business of the House of the People vests in the Speaker of the House. By virtue of the powers vested in him, the Speaker, in purported exercise of his power under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha got issued notice dated 20-1-2004 through the Secretary General of the Lok Sabha directing resumption of sittings of the Lok Sabha which was adjourned sine die on 23-12-2003. Whether the resumed sittings on 29-1-2004 was to be treated as the second part of the 14th session as directed by the Speaker is essentially a matter relating purely to the procedure of Parliament. The validity of the proceedings and business transacted in the House after resumption of its sittings cannot be tested and gone into by this Court in a proceeding under Article 32 of the Constitution of India."

"36 This Court Under Article 143, In the matter of: Under Article 143 of the Constitution of India, (also known as Keshav Singh case) while construing Article 212(1) observed that it may be possible for a citizen to call in question in the

appropriate Court of law, the validity of any proceedings inside the Legislature if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinized in a Court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular. The same principle would equally be applicable in the matter of interpretation of Article 122 of the Constitution."

"38. Under Article 122(2), the decision of the Speaker in whom powers are vested to regulate the procedure and the Conduct of Business is final and binding on every Member of the House. The validity of the Speaker''s decision adjourning the House sine die on 23-12-2003 and latter direction to resume its sittings cannot be inquired into on the ground of any irregularity of procedure. The business transacted and the validity of proceedings after the resumption of sittings of the House pursuant to the directions of the Speaker cannot be inquired into by the Courts."

"40. It is a right of each House of Parliament to be the sole judge of the lawfulness of its own proceedings. The Courts cannot go into the lawfulness of the proceedings of the Houses of Parliament. The Constitution aims at maintaining a fine balance between the Legislature, Executive and Judiciary. The object of the constitutional scheme is to ensure that each of the constitutional organs function within their respective assigned sphere. Precisely, that is the constitutional philosophy inbuilt into Article 122 of the Constitution of India."

However, in the said judgment, the Apex Court has observed in para 42 as under:-

"42. In the present case, there is no complaint of infringement of any guaranteed fundamental rights and therefore it may not be necessary to dilate on the question as to parameters and extent of judicial review that may be available in case of infringement of any guaranteed fundamental rights of a member of the House."

The Apex Court then in Amarinder Singh Vs. Special Committee, Punjab Vidhan Sabha and Others, has observed in para 54 as under:-

"54. Hence, we are empowered to scrutinize the exercise of legislative privileges which admittedly include the power of a legislative chamber to punish for contempt of itself. Articles 122(1) and 212(1) make it amply clear that Courts cannot inquire into matters related to irregularities in observance of procedures before the legislature. However, we can examine whether proceedings conducted under Article 105(3) or 194(3) are ''tainted on account of substantive or gross illegality or unconstitutionality''. The facts before us do not merely touch on a procedural irregularity. The appellant has contended that the Punjab Vidhan Sabha has committed a substantive jurisdictional error by exercising powers under Article 194(3) to inquire into the appellant''s actions which were taken in his executive capacity. As explained earlier, the relevant fact here is not only that the allegations of wrongdoing pertain to an executive act, but the fact that there is no conceivable

obstruction caused to the conduct of routine legislative business."

The Apex Court cited with approval the said two judgments; one in Ramdas Athawale (supra) and the other in Amarinder Singh (supra) in Dr. Satish Chandra Vs. Speaker, Lok Sabha and Others, and refused to entertain the SLP which was filed, seeking direction to the Speaker of the Lok Sabha to withhold payment of salary/wages and all perks/privileges of the Members of Parliament disrupting the House and other consequential reliefs.

The Full Bench of the Madras High Court in A.M. Paulraj Vs. The Speaker, Tamil Nadu Legislative Assembly, Madras and Another, of its judgment has observed as under:-

"13. In any case, it would not be possible for this Court under Art. 226 to sit in judgment over the decision of the Speaker to allow the matter to be raised, even if it may appear that a matter which is allowed to be raised was not of recent occurrence. The rules vest an absolute discretion in the Speaker to decide whether he will permit a question of privilege to be raised or not. Even otherwise, rules framed under Art. 208 of the Constitution are essentially procedural in character, and Art. 212 does not permit the validity of any proceedings in the Legislature of a State to be called in question on the ground of any irregularity of procedure. The correctness of such decision cannot be challenged in a Court of law."

The Full Bench of the Bombay High Court in Shri Manjit Singh Sethi Vs. Maharashtra Assembly, Maharashtra Legislative Assembly and The Honourable Speaker, Maharashtra State Legislative Assembly, of its judgment has observed as under:-

"34. As far as submission of the learned Counsel at (d) above is concerned, it cannot be said that the action was malafide because the complainant also happened to be the member of the Privilege Committee. The Privilege Committee had scrutinized each and every aspect which is evident from the proceedings and, thereafter, the decision was tabled before the house which was passed unanimously. It cannot be said in this case that the House had acted with malafide intention as it is difficult to attribute malafides to the House. Secondly, this Court cannot sit in appeal over the decision which is taken by the or by the House."

The Division Bench of this Court in Narsingrao Gurunath Patil and Others Vs. Arun Gujarathi, Speaker and Others, has observed in para 53 as under:-

"53. In the light of the decision in Kihota Hollohon, the power of judicial review is very limited one and Court will not interfere unless decision of the Speaker is perverse. The concept of perversity is a concept as explained by Lord Diploc in (Council of Civil Service Unions v. Minister for the Civil Services) 38, 1985 (1) A.C. 374.

"By irrationally I mean what can be now succinctly referred to as Wednesbury unreasonableness" (see Associated Provincial Picture House Ltd. v. Wednesbury Corporation). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to

the question to be decided could have arrived at it."

The test was adopted by the Supreme Court in the case of Union of India and another Vs. G. Ganayutham (Dead) by LRs., , and it was observed in para 28 as under: (at page 3395)

"(1) To judge the validity of any administrative order or statutory discretion, normally, the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The Court would not interfere with the administrators decision unless sit was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards."

In our opinion, the view taken by the Speaker is a possible view and we are unable to hold that the said decision is any way unreasonable, irrational or perverse. No interference is, therefore, warranted with the said decision of the Speaker."

The Apex Court in Jagdambika Pal Vs. Union of India and Others, gave directions in the form of Orders dated 24-2-1998 and 27-2-1998 which are as under:-

"ORDERS

(1)

1. We have heard learned counsel for the petitioner. We have also heard learned counsel for the caveators. On hearing them, the order which commends to us is as follows:

(i) A special Session of the Uttar Pradesh Assembly be summoned/convened for 26-2-1998, the Session commencing forenoon.

(ii) The only Agenda in the Assembly would be to have a composite floor-test between the contending parties in order to see which out of the two contesting claimants of Chief Ministership has a majority in the House.

(iii) It is pertinently emphasised that the proceedings in the Assembly shall be totally peaceful and disturbance, if any, caused therein would be viewed seriously.

(iv) The result of the composite floor test would be announced by the Speaker faithfully and truthfully.

2. The result is expected to be laid before us on 27-2-1998 at 10.30 A.M. when this Bench assembles again.

3. Ancillary directions are that this order shall be treated to be a notice to all the MLAs, leaving apart the notices the Governor/Secretariat is supposed to issue. In the interregnum, no major decisions would be made by the functioning Government except attending to routine matters, not much of any consequence.

4. To come up on 27-2-1998 as part-heard.

(2)

ORDER dated 27-2-1998

1. We stand informed through the statements made at the Bar as also through the fax communication from the Speaker, U.P. Assembly that the composite floor-test, in strict compliance of our order dated 24-2-1998 did take place orderly and peacefully and as a result thereof 225 votes were secured by Shri Kalyan Singh and 196 votes by Shri Jagdambika Pal, claimants in rivalry to the Chief Ministership of the State. This position concededly has emerged as of late.

2. Conduct of the Speaker in one respect has been severely criticized in his withholding verdict in the disqualification case of 12 members under the Anti Defection Law, despite the fact that he had concluded the hearing day before yesterday on 25-2-1998 raising pursuant expectations which stand belied. We would rather reserve comment thereon at present in view of the wide margin of the votes gathered. Even when those 12 members are taken to have voted in favour of Shri Kalyan Singh, their votes when subtracted from those polled still leaves him to be the one having majority in the House. Correspondingly, those 12 votes do not go to Shri Jagdambika Pal who would still be in minority. We, therefore, need not pursue this aspect any further.

3. In view of these developments, the impugned interim order of the High Court in putting Shri Kalyan Singh in position as Chief Minister should be and is, hereby, made absolute subject of-course to Democratic process. Shri Kalyan Singh had at a point of time offered to the Governor facing floor-test which was declined. On his dismissal his rival on being sworn in as the Chief Minister was required to undergo the floor-test in a time frame. We have facilitated both in one go. Both have had their measure of strength. In these circumstances, keeping any attendant issues alive in the form of the writ petition before the High Court would now be not conducive to political peace and tranquility, as also overall harmony.

4. The Special Leave Petition, as also the Writ Petition before the High Court, would stand disposed of. All orders precedent thereto, and connected therewith, be they administrative, executive or judicial would stand submerged under the present order. Ordered accordingly."

Perusal of these orders indicate that these orders apparently have been passed by the Apex Court while exercising its special power vested in it under Article 142 of the Constitution of India.

The Apex Court in Anil Kumar Jha vs. Union of India and Others (2005) 3 SCC 150 gave various interim directions for appointment of pro tem Speaker and for holding the floor test which are found in para 5 of the said judgment. It is obvious that the said directions have been given by the Apex Court while exercising its power under Article 142 of the Constitution of India.

The Apex Court in Raja Ram Pal Vs. The Hon''ble Speaker, Lok Sabha and Others, has considered the scope of judicial review and effect of Article 122 from para 357 onwards. The Apex Court in the said judgment has observed in paras 359, 360, 362, 398 and 399 as under:-

"359. In Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others, while dealing with the questions raised as to the regularity of the procedure adopted by the House of the legislature, this Court inter alia observed as under at SCR p. 105 : (AIR p. 1190, para 10)

"The validity of the proceedings inside the legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. Article 212 of the Constitution is a complete answer to this part of the contention raised on behalf of the petitioner. No court can go into those questions which are within the special jurisdiction of the legislature itself, which has the power to conduct its own business."

(emphasis supplied)"

"360. The question of extent of judicial review of Parliamentary matters has to be resolved with reference to the provision contained in Article 122(1) that corresponds to Article 212 referred to in Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others, . On a plain reading, Article 122(1) prohibits "the validity of any proceedings in Parliament" from being "called in question" in a court merely on the ground of "irregularity of procedure". In other words, the procedural irregularities cannot be used by the court to undo or vitiate what happens within the four walls of the legislature. But then, ''procedural irregularity'' stands in stark contrast to ''substantive illegality'' which cannot be found included in the former. We are of the considered view that this specific provision with regard to check on the role of the judicial organ vis-�-vis proceedings in Parliament uses language which is neither vague nor ambiguous and, therefore, must be treated as the constitutional mandate on the subject, rendering unnecessary search for an answer elsewhere or invocation of principles of harmonious construction."

"362. The above indeed was a categorical clarification that Article 122 does contemplate control by the courts over legality of Parliamentary proceedings. What

the provision intended to prohibit thus were cases of interference with internal Parliamentary proceedings on the ground of mere procedural irregularity."

"398. We are of the view that the manner of exercise of the power or privilege by Parliament is immune from judicial scrutiny only to the extent indicated in Article 122(1), that is to say the Court will decline to interfere if the grievance brought before it is restricted to allegations of "irregularity of procedure". But in case gross illegality or violation of constitutional provisions is shown, the judicial review will not be inhibited in any manner by Article 122, or for that matter by Article 105. If one was to accept what was alleged while rescinding the resolution of expulsion by the 7th Lok Sabha with conclusion that it was "inconsistent with and violative of the well-accepted principles of the law of Parliamentary privilege and the basic safeguards assured to all enshrined in the Constitution", it would be partisan action in the name of exercise of privilege. We are not going into this issue but citing the incident as an illustration."

"399. Having concluded that this Court has the jurisdiction to examine the procedure adopted to find if it is vitiated by any illegality or unconstitutionality, we must now examine the need for circumspection in judicial review of such matters as concern the powers and privileges of such august body as the Parliament."

In the said judgment, the parameters of judicial review was summarized in para 431 of the said judgment, which read as under:-

"Summary of the Principles relating to Parameter of Judicial Review in relation to exercise of Parliamentary Provisions

431. We may summarize the principles that can be culled out from the above discussion. They are:

(a) Parliament is a co-ordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;

(b) Constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere co-ordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of action which part-take the character of judicial or quasi-judicial decision;

(c) The expediency and necessity of exercise of power or privilege by the legislature are for the determination of the legislative authority and not for determination by the courts;

(d) The judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature;

(e) Having regard to the importance of the functions discharged by the legislature under the Constitution and the majesty and grandeur of its task, there would always be an initial presumption that the powers, privileges etc have been regularly and reasonably exercised, not violating the law or the Constitutional provisions, this presumption being a rebuttable one;

(f) The fact that Parliament is an august body of co-ordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power;

(g) While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable & manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;

(h) The Judicature is not prevented from scrutinizing the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens;

(i) The broad contention that the exercise of privileges by legislatures cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct;

(j) If a citizen, whether a non-member or a member of the Legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this Court to examine the merits of the said contention, especially when the impugned action entails civil consequences;

(k) There is no basis to claim of bar of exclusive cognizance or absolute immunity to the Parliamentary proceedings in Article 105(3) of the Constitution;

(l) The manner of enforcement of privilege by the legislature can result in judicial scrutiny, though subject to the restrictions contained in the other Constitutional provisions, for example Article 122 or 212;

(m) Articles 122(1) and Article 212(1) displace the broad doctrine of exclusive cognizance of the legislature in England of exclusive cognizance of internal proceedings of the House rendering irrelevant the case law that emanated from courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by Constitution of India.

(n) Article 122(1) and Article 212(1) prohibit the validity of any proceedings in legislature from being called in question in a court merely on the ground of irregularity of procedure;

(o) The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the legislature;

(p) Ordinarily, the legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the Court may examine the validity of the said contention, the onus on the person alleging being extremely heavy.

(q) The rules which the legislature has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution;

(r) Mere availability of the Rules of Procedure and Conduct of Business, as made by the legislature in exercise of enabling powers under the Constitution, is never a guarantee that they have been duly followed;

(s) The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny;

(t) Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action;

(u) An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity;"

12. From the conspectus of cases referred to hereinabove, it is clear that the scope and jurisdiction of this Court to interfere with the decision taken by the Speaker on the Floor of the House is very limited.

13. The second question which falls for consideration before this Court is: whether majority support can be established only by division i.e. test by each member present and voting in the House?

14. Shri Andhyarujina, the learned Senior Counsel has strenuously urged that the appointment of Respondent No. 2 as Chief Minister is illegal since the Speaker had put the motion to vote by voice test alone and not by division of votes. It was urged that this action was unconstitutional and that it was only a farce to establish the majority support.

15. On the other hand, the learned Advocate General Shri Sunil Manohar appearing on behalf of the State and Shri Aney, the learned Senior Counsel appearing on behalf of the State in PIL(L) No. 128 of 2014 submitted that the word "Floor Test"

does not connote vote only by division or individual vote but also included voice test.

16. Shri Andhyarujina, the learned Senior Counsel appearing on behalf of the Petitioner relied on the judgment of the Apex Court in S.R. Bommai and others Vs. Union of India and others etc. etc., He has also referred to various other paragraphs of the said judgment.

17. On the other hand, the learned Advocate General relied on Rule 41 of the Rules of Business which were framed under the power vested in Assembly under Article 208 of the Constitution of India.

18. In our view, there is no merit in the submissions made by the learned Senior Counsel Shri Andhyarujina appearing on behalf of the Petitioner that the word ''Floor Test'' means voting by division and not by voice test. In this context, it will be relevant to take into consideration the relevant provision of the Constitution. Article 208 of the Constitution of India empowers the Legislative Assembly to frame Rules for the conduct of its business. Article 208 reads as under:-

"208. Rules of procedure.-(1) A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the corresponding Province shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council as the case may be.

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council may make rules as to the procedure with respect to communications between the two Houses."

19. Pursuant to the power vested in Assembly by virtue of Article 208, Rules have been framed for regulating conduct of business in the Assembly. The relevant Rule of Maharashtra Legislative Assembly Rules is Rule 41 which reads as under:-

"41(1) On the conclusion of the debate on a motion, the Speaker shall put the question by asking those who are in favour of it to say "Aye" and then those who are of the contrary opinion to say "No". The Speaker shall then declare whether, in his opinion, the "Ayes" or the "Noes" have it. Any member may then request that the question should be decided by a division and his request shall be granted unless the Speaker is of opinion that division is unnecessarily claimed in which case he may after the bell is rung for five minutes ask members to rise in their seats for the purpose of counting votes or ask them to record their votes by operating the automatic vote recorder. If the member who claimed the division so desires, the

Speaker shall also record his name and the names of such other members who vote on the side on which he votes.

(2) Notwithstanding anything contained in sub-rule(1), the Speaker, may, in his discretion, announce that the bell shall be rung for ten minutes instead of five minutes.

(3) The Speaker shall determine the method of taking votes by division.

(4) If a member by mistake goes into the wrong lobby and records his vote, his vote shall be reckoned as given in that lobby. If the member, however, brings his mistake to the notice of the Speaker before the result of the division is announced, he may be allowed to correct his mistake.

(5) A member who is unable to go to the division lobby owning to sickness or infirmity may, with the permission of the Speaker, have his vote recorded at his seat.

(6) When the tellers have brought the division lists to the Secretary''s table, a member who has not up to that time recorded his vote but who then wishes to have his vote recorded may do so with the permission of the Speaker.

(7) The result of a division shall be announced by the Speaker and shall not be challenged.

(8) If the numbers of a division are incorrectly reported by the tellers, the Speaker shall, if possible, correct the error before the result of the division is announced. If the err is discovered after the result of the division has been announced, a note of it shall be taken in the official report of proceedings, but the decision of the Assembly as already announced shall not be changed.

Similarly, Article 164 also is relevant which reads as under:-

"164. Other provisions as to Ministers.-(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor:

Provided that in the States of [Chattisgarh, Jharkhand], Madhya Pradesh and [Odisha], there shall be a Minister in charge of tribal welfare who may in addition to be in charge of the welfare of the Scheduled castes and backward classes or any other work.

[(1A) the total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative Assembly of that State.

Provided that the number of Ministers, including the Chief Minister, in a State shall not be less than twelve:

Provided further that where the total number of Ministers, including the Chief Minister, in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent or the numbers specified in the first proviso, as the case may be, then the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint.]

[(1B) A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.]

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule."

20. On the conjoint reading of Article 164(1) and the conduct of business rules viz. Maharashtra Legislative Assembly Rules, it is evident that after the Chief Minister is appointed by the Governor, he is expected to establish majority support within 15 days after he is nominated as Chief Minister. It has to be noted here that though in the conduct of business rules, there is a separate rule for establishing vote of no confidence, there is no rule which in terms speaks about procedure which has to be followed on the motion for establishing the vote of confidence. Under these circumstances, in our view Part-IV of the said Rules would be applicable. The contention of Shri Andhyarujina, the learned Senior Counsel appearing on behalf of the Petitioner and Shri B.A. Desai, the learned Senior Counsel also appearing on behalf of the Petitioner that these Rules are not applicable for the purpose of establishing majority support of the House is without any substance. Article 208 in terms authorizes the Legislative Assembly to frame its own Rules regarding the procedure which has to be followed for the conduct of business and, accordingly,

the Rules have been framed by the Assembly. These Rules in Part-IV refer to the procedure which has to be followed whenever any motion is tabled before the House. The vote of confidence is also a motion which has to be tabled before the House and, therefore, as a natural corollary, it is clear that these Rules in Part-IV of the said Rules would be applicable in a case where vote of confidence has to be established. The relevant Rule 41 gives a discretion to the Speaker either to follow the procedure of voice vote where those in favour have to say "Aye" and those who are against, have to say "No". In the alternative, the Speaker may, in a given case, opt for vote by division i.e. by separating that group which is in favour and other group which is against and then take individual voting in favour or against the motion and, lastly, it can be done by electronic voting. Rule 41 in terms mentions that a discretion is vested in the Speaker to discard the method of voting by division. It can be seen from the phrase which is found in Rule 41(1), which reads as under:-

"41(1)..... unless the Speaker is of opinion that the division is unnecessarily claimed,..... "

From the wording used in Rule 41(1), it is clear that the Speaker has to take a decision whether voting has to be done by voice vote, division or by electronic voting. In this case, the Speaker has chosen to adopt the procedure of voice vote, obviously when he came to the conclusion that vote by division is unnecessary. The submission of both the learned Senior Counsel appearing on behalf of the Petitioner is, therefore, without any substance.

21. Shri Andhyarujina, the learned Senior Counsel appearing on behalf of the Petitioner has relied on the judgment of the Apex Court in S.R. Bommai and others Vs. Union of India and others etc. etc., in support of the submission that the Floor Test is the only way of establishing result and that the Floor Test means voting by division. In this context, he relied on some of the paragraphs of the said judgment. In our view, the said submission cannot be accepted. It is necessary to see the context in which the said judgment was delivered by the Apex Court in S.R. Bommai (supra). The law of precedent is well settled. The Apex Court in Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, as under:-

"Precedent

254. Are we bound hands and feet by Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, The answer to the question must be found in the law of precedent. A decision, it is trite, should not be read as a statute. A decision is an authority for the questions of law determined by it. Such a question is determined having regard to the fact situation obtaining therein. While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. A judgment, as is well known, must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it. (See Punjab

National Bank Vs. R.L. Vaid and Others, .

255. Although decisions are galore on this point, we may refer to a recent one in State of Gujarat and Others Vs. Akhil Gujarat Pravasi V.S. Mahamandal and Others, wherein this Court held: (SCC p. 172, para 19)

"It is trite that any observation made during the course of reasoning in a judgment should not be read divorced from the context in which it was used."

256. It is further well settled that a decision is not an authority for a proposition which did not fall for its consideration. It is also a trite law that a point not raised before a court would not be an authority on the said question. In M/s. A-One Granites Vs. State of U.P. and Others, it is stated as follows: (SCC p. 543, para 11)

"11. This question was considered by the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. (1941) 1 KB 675 and it was laid down that when non consideration was given to the question, the decision cannot be said to be binding and precedents sub silentio and without arguments are of no moment"

[See also State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, , Arnit Das Vs. State of Bihar, , Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, , Cement Corporation of India Ltd. Vs. Purya and Others, , Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate, and Kalyan Chandra Sarkar etc. Vs. Rajesh Ranjan @ Pappu Yadav and Another, .]"

22. Keeping in view the aforesaid principles mentioned hereinabove and the law of precedent, it will have to be examined whether the judgment of the Apex Court in S.R. Bommai and others Vs. Union of India and others etc. etc., is applicable to the facts of the present case.

23. In S.R. Bommai and others Vs. Union of India and others etc. etc., , the facts were that the Governor of Karnataka submitted a personal report to the President of India informing him that the existing Government did not have majority support and on the basis of the said report, the President was pleased to impose President''s Rule. The said action of the President and the Governor was challenged. The Apex Court in the context of these facts came to the conclusion that the Governor ought to have given a direction to the Chief Minister to establish that he had majority support on the Floor of the House and only thereafter the President could have taken a decision whether President''s Rule should be imposed or not. In this context, the Apex Court has held in the said judgment that the Floor Test was the only way to test the majority support. The Apex Court in the said case also in para 328 of its judgment made it clear that the observations of the Apex Court were not applicable to the newly elected Government. Para 328 of the said judgment reads as under:-

"328. We make it clear that what we have said above is confined to a situation where the incumbent chief Minister is alleged to have lost the majority support of the confidence of the House. It is not relevant to a situation arising after a general

election where the Governor has to invite the leader of the party commanding majority in the House or the single largest party/group to form the government. We need express no opinion regarding such situation."

24. In view of the clear observations made by the Apex Court in para 328 of its judgment in S.R. Bommai and others Vs. Union of India and others etc. etc., , ratio of the said judgment and the observations made by the Apex Court therein would not apply to the facts of the present case. The said judgment of the Apex Court also does not consider the proposition that the Floor Test means test of vote by division only.

25. So far as other judgments on which reliance has been placed by the learned Senior Counsel for the Petitioner viz. the judgments in Jagdambika Pal Vs. Union of India and Others, , Raja Ram Pal Vs. The Hon''ble Speaker, Lok Sabha and Others, , and in Amarinder Singh Vs. Special Committee, Punjab Vidhan Sabha and Others, are concerned, in our view, even the ratio of the said judgments will not apply to the facts of the present case on the point that the Floor Test means the test by division and not a voice test.

26. The third question which falls for our consideration is: Whether the voice test is constitutionally valid way of proving the majority in the House?

27. In our view, none of the judgments on which reliance has been placed by the learned Senior Counsel appearing on behalf of the Petitioner establishes that voice test is not a constitutionally valid way of proving the majority in the House. In fact, Rule 41 in terms prescribes the voice test as one of the ways of proving the majority in the House and a discretion is vested in the Speaker to decide which mode has to be adopted viz. voice test or division. In fact, as rightly pointed out by the learned Advocate General Shri Sunil Manohar, that in the past also voice test was adopted as a mode of proving the majority in the House. The fact that voice test was adopted in the earlier years has not been disputed, though it was contended by Shri B.A. Desai the learned Senior Counsel also appearing on behalf of the Petitioner that since there was no dispute that the Government was in majority, voice test was permissible. He, however, submitted that BJP''s Government did not have absolute majority and it was a minority Government and, therefore, mode of voice test to prove the majority was unconstitutional. Be that as it may, the fact remains that in the following cases, voice test was adopted and no objection was taken by any one:-

We are, therefore, of the view that no illegality was committed by the Speaker by adopting the mode of voice test for proving the majority in the House which is also an accepted procedure under Rule 41.

28. The fourth question which falls for our consideration is: on whom the onus of establishing that illegality was committed by the Speaker on the Floor of the House, lies?

It is quite well settled that onus of establishing this fact is on the person who makes that assertion. In the present case, both the Petitioners have not made any averments nor have they established that BJP Government did not have majority support. There are no averments to the effect that the Congress Party alongwith NCP and Shiv Sena were against the BJP. No other factual averments are made to establish this fact. The Apex Court has held in several cases that onus of establishing that the illegality was committed by the Speaker is squarely on the person who makes that assertion.

We are of the view that the Petitioners in both these Petitions viz. Writ Petition (L) No. 3070 of 2014 and PIL(L) No. 128 of 2014 have made bald allegations. The Petitioner in PIL (L) No. 128 of 2014 was not present in the House when the voting had taken place and the averments which are made by him are on the basis of hearsay. So far as the Petitioner in Writ Petition (L) No. 3070 of 2014 is concerned, he has not made any factual averments to prove the alleged illegality committed by the Speaker of the House. Therefore, even on that ground the submission made by the learned Senior Counsel appearing on behalf of the Petitioner is unsustainable.

29. Shri Anturkar, the learned Senior Counsel appearing on behalf of the PIL Petitioner-Rajkumar Awasthi, submitted that the Speaker did not permit any debate on the motion and straightaway tabled the motion for a voice vote. He submitted that this is contrary to Rule 41(1) read with Rule 38(1). It is, therefore, submitted that essential ingredients of Rule 38(1) are not satisfied in the present case and Rule 41(1) continued to operate in its entirety and is not eclipsed by the said provision. It is submitted that, therefore, debate as contemplated under Rule 41(1) ought to have been conducted by the Hon''ble Speaker before putting the question regarding the motion of confidence before the House. He relied upon the judgments of the Apex Court in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, and in S.R. Bommai and others Vs. Union of India and others etc. etc., . He submitted that the Apex Court had held that democratic form of Government is a part of the basic structure of the Constitution. He also relied upon the observation made by the Apex Court in Shri Kihota Hollohon Vs. Mr. Zachilhu and others, and more particularly in para 43 of the said judgment, which reads as under:-

"43. Parliamentary democracy envisages that matters involving implementation of policies of the Government should be discussed by the elected representatives of the people. Debate, discussion and persuasion are, therefor, the means and essence of the democratic process. During the debates the Members put forward different points of view. Members belonging to the same political party may also have, and may give expression to, differences of opinion on a matter. Not unoften the view expressed by the Members in the House have resulted in substantial modification,

and even the withdrawal, of the proposals under consideration. Debate and expression of different points of view, thus, serve an essential and healthy purpose in the functioning of Parliamentary democracy. At times such an expression of views during the debate in the House may lead to voting or abstinence from voting in the House otherwise than on party lines."

30. The said submission made by Shri Anturkar, the learned Senior Counsel appearing on behalf of the said PIL Petitioner is without any substance. Firstly, the burden of establishing this fact is entirely on the Petitioner. The Petitioner admittedly was not present in the House when the said motion was tabled. There is no specific plea or allegation nor any proof is furnished in the Petition. Secondly, Rule 41 prescribes the procedure which is to be followed by the Speaker on a motion being tabled before the House. A discretion, therefore, vests in the Speaker regarding the procedure which is to be adopted after the motion is tabled. Even assuming that the Speaker did not allow any debate to take place, that would not make the procedure which is followed as illegal or unconstitutional and, at the best, it can be said to be a procedural irregularity. Reliance placed on the observation made by the Apex Court in Shri Kihota Hollohon Vs. Mr. Zachilhu and others, cannot be taken out of context and has to be read in the context in which it was made in the said judgment. In our view, the said observation would not apply to the facts of the present case.

31. Both the learned Senior Counsel appearing on behalf of the Petitioners argued on the nature of power exercised by the Speaker and it was contended that the said power is in the nature of quasi judicial function. Reliance was placed on the judgment in Indian National Congress (I) Vs. Institute of Social Welfare and Others, . In our view, it is not necessary to go into the question as to whether the power which is exercised by the Speaker is quasi judicial since we are of the view that, in any case, in view of the settled position in law, jurisdiction which is exercised by this Court under Article 226 of the Constitution of India to interfere with the decision of the Speaker is very restricted.

32. There is, therefore, no substance in the submissions made by the learned Senior Counsel appearing on behalf of both the Petitioners. Both these Petitions viz. Writ Petition (L) No. 3070 of 2014 and PIL (L) No. 128 of 2014 are dismissed in limine.