

ALAGAAPURAM R. MOHANRAJ & OTHERS

v.

TAMIL NADU LEGISLATIVE ASSEMBLY REP. BY ITS  
SECRETARY & ANOTHER

(Writ Petition (Civil) No. 455 of 2015)

FEBRUARY 12, 2016

**[J. CHELAMESWAR AND ABHAY MANOHAR SAPRE, JJ.]**

*Constitution of India – Arts. 14, 19(1)(g), 21, 105, 194 – Members of State Legislative Assembly – Suspension for breach of privileges – First assembly resolution whereby suspension of nineteen members including petitioners, from the House for the remainder period of the current Session – Members allegedly obstructed proceedings of the assembly – Thereafter, constitution of Privileges Committee which held that the actions of the petitioners amounted to breach of privilege, and recommended the action to be taken against them – Second Assembly Resolution passed whereby suspension of the petitioners for ten days of the next session of the House – Members not to be paid their salaries or given other benefits – Writ petition challenging the second Resolution – Held: By preventing the legislator from participating in the proceedings of the House, though there is a curtailment of the petitioner-members' right of free speech in the Legislative Assembly to which they are entitled u/Art. 194 but the impugned order does not violate fundamental rights of petitioners guaranteed under/Art. 19(1)(a) – Right to participate in the proceedings of the legislative bodies is not a fundamental right falling u/Art. 19(1)(g) – Member of the legislative assembly cannot be treated as pursuing an 'occupation' u/Art. 19(1)(g) – Further, the only material relied upon by the Privileges Committee to identify all the members and recommend action against them for breach of privilege was the video recording – It was the legal obligation of the Committee to ensure that a copy of the video recording was supplied to the members – Failure to supply a copy of the video recording or affording an opportunity to the petitioners to view the video recording resulted in the violation of the principles of natural justice-denial of a reasonable opportunity to meet the case – Thus, the second resolution passed*

- A *by the State Legislative Assembly set aside – Tamil Nadu Legislative Assembly Rules – r.121(2) – Principles of natural justice.*

*Arts. 105, 194, 19(1)(a) – Freedom of speech available to a member of the legislative body and freedom of speech inhering in a citizen – Scope and amplitude of – Held: Are totally different –*

- B *Citizen has a right to enter the legislative body and exercise his freedom of speech after he gets elected to a legislative body – After the cessation of the membership of the legislative body, legislator would not continue to enjoy the freedom of speech contemplated u/Arts. 105 and 194.*

- C *Judicial review – Scope of – In matters relating to action taken against members by the legislative bodies – Held: Is limited – Non-compliance with the principles of natural justice is one of the limited grounds.*

**Allowing the writ petition, the Court**

- D **HELD: 1.1 It is clear from the scheme of Articles 105 and 194 of the Constitution that the constitutional declaration of freedom of speech in the legislative bodies creates a constitutional right in favour of the members of such legislative bodies. The dimensions and contours of such right are greatly different from the dimensions and contours of the fundamental right of speech and expression guaranteed under Article 19(1)(a). Therefore, the scope and amplitude of the freedom of speech inhering in a citizen and available to a member of the legislative body are totally different. No citizen has a right to enter the legislative body and exercise his freedom of speech unless he first gets elected to**
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- F **such a legislative body in accordance with law. No legislator would continue to enjoy the freedom of speech contemplated under Articles 105 and 194 after the cessation of the membership of the legislative body. [Para 18] [622-A-B; 623-C; 624-A-B]**

- G **1.2 No doubt, when a legislator is prevented from participating in the proceedings of the House during the currency of the membership by virtue of some proceedings taken against such a legislator, there would be a curtailment of the legislator's constitutional right of free speech in the House of which such legislator is a member. But such curtailment is sanctioned by Constitution in view of the fact that such a right is made subject**
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to other provisions of the Constitution, the rules and standing orders regulating the procedure of the legislative bodies. Therefore, though there is a curtailment of the petitioners' right of free speech in the Legislative Assembly of Tamil Nadu to which they are entitled under Article 194 by virtue of the impugned order, the said impugned order does not, violate the fundamental rights of the petitioners guaranteed under Article 19(1)(a). [Paras 19, 20] [624-B-D]

1.3 The right to contest an election to the legislative bodies established by the Constitution is held not to be a fundamental right. Therefore, logically it would be difficult to accept that the right to participate in the proceedings of the legislative bodies can be a fundamental right falling under Article 19(1)(g). No citizen is entitled as of right either to become or continue for the whole lifetime as member of a legislative assembly. Acquisition of the membership depends on the decision of the electorate and is conferred by a process established by law. Even after election, the tenure is limited. Fundamental rights do not come into existence upon the volition of others. They inhere in the citizens and are capable of being exercised independently without the need for any action or approval of others subject only to the restrictions imposed by law. Any member of a legislative assembly holds office until such membership comes to an end by some process established by law. Any monetary benefit incidental to the holding of such offices is only to compensate for the time and energy expended by the holder of the office in the service of the nation. It is for this very reason that a member of a legislative assembly cannot be treated as holding office for the purpose of eking out a livelihood. The economic underpinnings of an 'occupation' under Article 19(1)(g) and the transient and incidental nature of economic benefits flowing from the office of a legislator must inevitably lead to the conclusion that a member of the legislative assembly cannot be treated as pursuing an 'occupation' under Article 19(1)(g). [Para 25, 26] [628-B-G]

1.4 This Court in *Raja Ram Pal* case held that salary and other benefits to which the members of a legislative body are entitled to during their tenure are purely incidental to the membership and they don't even create an independent and

A **indefeasible constitutional right. Therefore, the the deprivation of their salaries and other benefits incidental to the membership of the legislative assembly during the period of suspension amounted to deprivation of fundamental right under Article 21 does not arise.[Para 29] [629-D]**

B **1.5 The scope of judicial review in matters relating to action taken against members by the legislative bodies is limited. However, the non-compliance with the principles of natural justice is one of the limited grounds on which judicial review could be undertaken against the internal proceedings of the legislative bodies in appropriate cases. [Para 30] [629-F]**

C **1.6 From the writ petition, it appears that there was considerable correspondence between the Privileges Committee and the petitioners. The Privileges Committee called for an explanation from the six petitioners as to why action could not be taken against them, though it is not clear from the record as to**  
D **the basis on which the six petitioners were chosen out of the 19 MLAs who were suspended initially. Each of the petitioners gave their explanation by separate letters. After consideration of the explanation, the Privileges Committee concluded that there was indeed breach of privilege, and recommended action against them. This recommended action formed the basis of the assembly resolution. [Para 31] [630-B-D]**  
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**1.7 From the minutes of the Privileges Committee meeting, it is clear that the only material relied upon by the Committee to identify all the six petitioners and recommend action against them for breach of privilege was the video recording. The minutes of the Privileges Committee meeting clearly show that the video-recording played an important role in arriving at the conclusions that the Privileges Committee did. The video recording was specifically shown to the members of the Privileges Committee “since some of them would have forgot only the video recordings were shown again”, which indicates that the Committee was not willing to rely solely on the memory of the members of the Committee. The video recording served as the common factual platform for all the members of the Privileges Committee, from where the members discussed the actions of the six petitioners, and recommended action against them. [Paras 35, 38] [632-C, G; 633-A-B]**  
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1.8 The Privileges Committee should have necessarily offered the opportunity to see the video recording to the petitioners in order to make the process adopted by it with the requirements of Article 14. Perhaps they might have had an opportunity to explain why the video recording does not contain any evidence/material for recommending action against all or some of them or to explain that the video recording should have been interpreted differently. It is not the petitioners' burden to request for a copy of the video recording. It is the legal obligation of the Privileges Committee to ensure that a copy of the video recording is supplied to the petitioners in order to satisfy the requirements of the principles of natural justice. The failure to supply a copy of the video recording or affording an opportunity to the petitioners to view the video recording relied upon by the committee clearly resulted in the violation of the principles of natural justice i.e. a denial of a reasonable opportunity to meet the case. Therefore, the impugned resolution passed in the Tamil Nadu Legislative Assembly is set aside. The consequence thereof, is that the salary and other benefits incidental to the membership of the assembly stand restored to the six petitioners. [Paras 42, 43] [634-B-E]

*Raja Ram Pal v. Hon'ble Speaker, Lok Sabha & Others* 2007 (1) SCR 317:(2007) 3 SCC 184; *Gujarat State Financial Corporation v. Lotus Hotel* AIR 1983 SC 848: (1983) 3 SCC 379; *Air India Statutory Corpn. v. United Labour Union* AIR 1997 SC 645: (1997) 9 SCC 377:1996 (9) Suppl. SCR 579; *P.V. Narasimha Rao v. State (CBI/SPE)* 1998 (2) SCR 870:(1998) 4 SCC 626; *T.M.A Pai Foundation v. State of Karnataka* 2002 (3) Suppl. SCR 587:(2002) 8 SCC 481; *Sodan Singh v. New Delhi Municipal Committee* 1989 4 SCC 105; *Jagjit Singh v. State of Haryana* 2006 (10) Suppl. SCR 521: (2006) 11 SCC 1 – referred to.

Case Law Reference

2007 (1) SCR 317	referred to	Para 9
AIR 1983 SC 848	referred to	Para 12
1996 (9) Suppl. SCR 579	referred to	Para 12

A	1998 (2) SCR 870	referred to	Para 18
	2002 (3) Suppl. SCR 587	referred to	Para 22
	1989 4 SCC 105	referred to	Para 23
	2006 (10) Suppl. SCR 521	referred to	Para 40

B CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 455 of 2015.

Under Article 32 of the Constitution of India.

C Jaideep Gupta, Sanjay R. Hegde, Sr. Advs., S. Nithin, Prabhu Ramasubramaniam, Babu M, Anil Kumar Mishra-I, Advs. for the Appellant.

Shekhar Naphade, Subramonium Prasad, Sr. Advs., B. Balaji, Ms. Meha Aggrawal, Muthukishan, Advs. for the Respondents.

The Judgment of the Court was delivered by

D **CHELAMESWAR, J.** 1. This is a petition filed by six petitioners invoking Article 32 of the Constitution of India. They are members of the Tamil Nadu Legislative Assembly representing different constituencies. By a resolution of the assembly dated 19.02.2015, nineteen members of the assembly, including the six petitioners, have been suspended from the House for the remainder of the period of the then current Session. The resolution suspended the nineteen members for allegedly obstructing the proceedings of the legislative assembly. Subsequently, a Privileges Committee was constituted to inquire into whether the conduct of the members during the incident dated 19.02.2015 amounted to a breach of privilege. The Privileges Committee held that the actions of the six petitioners were a breach of privilege, and recommended the action to be taken against the six petitioners. Such a recommendation was passed by a resolution of the assembly dated 31.03.2015. Through this resolution, the petitioners were suspended for a period of ten days of the next session of the House. Further, it was resolved that the petitioners should not be paid their salaries or given other benefits which are due to them as members of the Legislative Assembly for the period of suspension.

2. Aggrieved by the same, the petitioners filed the instant writ petition praying as follows:-

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- a) Issue a writ of order declaring the impugned resolution dated 31.03.2015 passed in the Tamil Nadu Legislative Assembly, as unconstitutional, illegal, null and void. A
- b) Issue a writ of order and strike down the suspension beyond the second period.
- c) Issue a writ of order and permit the petitioners to use the office and their residential premises. B
- d) Issue a writ of order and restore all benefits other than that which is connected with the house.
- e) Issue a writ of certiorari calling for the records pertaining to the resolution of the Tamil Nadu Legislative Assembly dated 19.02.2015 and 31.03.2015 in awarding multiple punishments to the petitioners on the file of the first respondent so as to quash the same. C
- f) Issue a writ of order declaring the proceedings of breach of privilege against the petitioner herein, right from commencement of the proceedings by the 2<sup>nd</sup> respondent herein under Rule 226 of the Tamil Nadu Legislative Assembly framed under Article 208 of Constitution of India to the subsequent proceedings carried out by the privilege committee under rule 229 of the rules including the resolution of the house under rule 229(d) dated 19.02.2015 and 31.03.2015 respectively are illegal, failure to comply with the principles of natural justice, perverse, irrational and violative of the petitioners statutory right under the Tamil Nadu payment of salaries Act, 1951. D  
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- g) Pass such other/further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case." F

3. All the six petitioners are members of a political party known as DMDK. G

4. The basic facts leading to the present writ petition are as follows:-

On 19.2.2015, the petitioners allegedly resorted to unruly conduct while the session was in progress. When the Speaker directed the Marshalls to evict the first petitioner from the House because of the

A alleged unruly conduct, the remaining petitioners ran to the Speaker's podium allegedly to attack the Speaker. However, they were prevented by the Marshalls. Thereafter, the Speaker passed an Order suspending 19 members of the Legislative Assembly belonging to the DMDK party from the Assembly for the remainder of the Session with immediate effect.

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5. Such a decision was taken by the Speaker allegedly in exercise of the power under Rule 121(2) of the Tamil Nadu Assembly Rules.

C 6. The Speaker also referred to the Privileges Committee of this Assembly the incident dated 19.02.15 to identify those members who attempted to assault the Speaker and the Watch and Ward Staff. The Privileges Committee, after an inquiry, recorded a conclusion that the conduct of the six petitioners was in breach of the privileges of the House and, therefore, recommended to the House that these six petitioners be removed from the Assembly for 10 days from the commencement of the next session of the Legislative Assembly and also that during the said period, the petitioners be not paid the salary and be given other benefits to which the members of the House are entitled. Hence, the writ petition.

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7. Various submissions are made on behalf of the petitioners which can be summarized as follows:-

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(i) That the decision to suspend the petitioners not only for the current session in which the alleged breach of privilege occurred but also for a certain period of the next session is beyond the authority of the House and the Speaker under Article 194.

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(ii) The incidents which took place outside the premises of the Legislative Assembly could not form the basis for taking action on the ground that such incidents resulted in the breach of the privileges of the House.

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(iii) The non-supply of certain material (video recording) to the petitioners which was relied upon to record the conclusion that the petitioners are guilty amounted to denial of a reasonable opportunity and, therefore, non-compliance with the principles of natural justice vitiating the assembly resolution dated 31.03.2015.

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(iv) The State legislature and the Speaker do not have the authority to seize the office and the residential premises in the legislative hostel allotted to the petitioners by virtue of their membership in the Legislative Assembly. A

8. At the very threshold, the petitioners were called upon to satisfy this Court regarding the maintainability of the instant writ petition as for the maintenance of a writ petition under Article 32, the petitioners must demonstrate that there is an infraction of one of the fundamental rights guaranteed to the petitioners under Part III of the Constitution. B

9. The response of the petitioners is twofold.

(1) That the petitioners' fundamental rights guaranteed under Articles 19(1)(a), 19(1)(g), 14 and Article 21 of the Constitution have been violated by the impugned resolution; C

(2) This Court in the case of *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha & Others*, (2007) 3 SCC 184, examined the constitutionality of the proceedings of the Speaker of the Lok Sabha in exercise of its jurisdiction under Article 32 of the Constitution of India. Therefore, the present petition also is maintainable. D

10. We shall first deal with the second submission of the petitioners. The question whether a petition under Article 32 is maintainable to determine the legality of the action by legislative bodies against its members on the ground that they indulged in conduct which is in breach of the privileges of the House was never raised either by the respondents nor did the Court go into that question in *Raja Ram Pal case*. On the other hand, it appears from the said judgment that this Court was not only dealing with the writ petitions filed under Article 32 but certain transferred cases though exact details of those cases and from where they were transferred are not available from the judgment. In our opinion, *Raja Ram Pal case* is not an authority for the proposition that a writ petition such as the one on hand is maintainable under Article 32. The question must be examined independently. E F G

11. Article 32 of the Constitution guarantees the right to move this Court by appropriate proceedings for the enforcement of rights conferred by Part III of the Constitution. Article 32 insofar as it is relevant for the present purpose reads as follows:-

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A “32. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

B (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.”

C 12. The jurisdiction of this Court under Article 32 in contradistinction to the jurisdiction of the High Courts under Article 226 is limited. While the High Courts in exercise of the jurisdiction under Article 226 can issue writs for the enforcement of any right conferred by Part III and for “any other purpose”, the jurisdiction under Article 32 is only confined to the enforcement of the rights conferred under Part III of the Constitution. This distinction is well recognised by this Court in number of cases<sup>1</sup>. Therefore, in order to maintain the present petition, the question  
D whether there is any breach of fundamental rights of the petitioners is required to be examined.

E 13. It is argued on behalf of the petitioners that the impugned action is violative of the petitioners’ fundamental right of speech and expression guaranteed under Article 19(1)(a) and their fundamental right to carry on an occupation guaranteed under Article 19(1)(g). It is also the case of the petitioners that the alleged non-compliance with the requirement of the principles of natural justice in the process of enquiry into the alleged unruly conduct of the petitioners and award of the punishment is violative of Article 14. It is also argued that the impugned  
F action insofar as it deprives (although for a limited period) the petitioners of their salary and other facilities attached to their membership of the house is a violation of their fundamental right under Article 21 of the Constitution.

G 14. We proceed to examine the claim of the petitioners that by the impugned action their fundamental rights under Articles 19(1)(a) and (g) are violated.

15. It is well settled now that the fundamental rights guaranteed

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<sup>1</sup> See, *Gujarat State Financial Corporation v. Lotus Hotel*, AIR 1983 SC 848: (1983) 3 SCC 379; *Air India Statutory Corpn. v. United Labour Union*, AIR 1997 SC 645. 680 : (1997) 9 SCC 377.

under Article 19 are available only to the citizens of this country whereas the other fundamental rights under Articles 14 and 21 are available to every person who is subjected to the laws of this country. The six freedoms enumerated under Article 19 of the Constitution inhere in all the citizens, by virtue of their citizenship without the need for anything further.

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16. Two questions are required to be examined in the context; (i) when a member of a State Legislature participates in the proceedings of the House, is that member exercising a fundamental right of speech and expression under Article 19(1)(a)? (ii) Whether any action, either of that legislative body or any other authority, acting pursuant to any law, disabling either temporarily or otherwise a member from participating in the proceedings of the legislative body, amounts to deprivation of the fundamental right to freedom of speech under Article 19(1)(a) of such a legislator?

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17. To answer the above question, a closer scrutiny of some of the provisions of the Constitution is required. Articles 105 and 194 are relevant in the context<sup>2</sup>. These two articles deal with the Parliament and the State Legislature respectively. They declare *inter alia* that “there shall be freedom of speech” in the said legislative bodies. Articles 105(2) and 194(2) further declare that no member of either the Parliament or the State Legislature “shall be liable to any proceedings in any court in respect of any thing said” in such legislative bodies or any committee thereof.

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<sup>2</sup> **Relevant portions of the Articles:**

Article 105. (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, **there shall be freedom of speech in Parliament.**

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(2) No member of Parliament shall be liable to any proceedings in any court in respect of any thing said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

Article 194. (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, **there shall be freedom of speech in the Legislature of every State.**

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(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

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A 18. It is clear from the scheme of these two articles that the constitutional declaration of freedom of speech in the legislative bodies creates a constitutional right in favour of the members of such legislative bodies. Such a freedom had its origin in the privileges of the House of Commons<sup>3</sup>. The dimensions and contours of such right are greatly different from the dimensions and contours of the fundamental right of speech and expression guaranteed under Article 19(1)(a).

B (i) While the fundamental right of speech guaranteed under Article 19(1)(a) inheres in every citizen, the freedom of speech contemplated under Articles 105 and 194 is not available to every citizen except the members of the legislative bodies, though, by virtue of the operation of other provisions of the Constitution, citizenship of this country is a condition precedent for acquiring the membership of the legislative bodies; the constitutional right of free speech in the legislative bodies is not inherent to the citizenship but is to be acquired by getting elected to those bodies.

C (ii) The freedom of speech contemplated in Articles 105 and 194 is available only during the tenure of the membership of those bodies. No citizen can be deprived of its citizenship and therefore the fundamental right under Article 19(1)(a) is inalienable.

D (iii) The constitutional right of free speech under Articles 105 and 194 is limited to the premises of the legislative bodies. Whereas, the freedom of speech under Article 19(1)(a) has no such geographical limitations.

E (iv) While the freedom of speech guaranteed under Article 19(1)(a) is subject to reasonable restriction that could be imposed by law which is compliant with the limitations specified under Articles 19(1)(2), the right

<sup>3</sup> *PV Narasimha Rao v. State (CBI/SPE)* (1998) 4 SCC 626

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The privileges of the House of Commons, as distinct from those of the House of Lords, were defined as

G “the sum of the fundamental rights of the House and of its individual Members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords”.

The privileges of the House of Commons included the freedom of speech, which had been claimed in 1554. This comprised the right of the House to provide for the due composition of its own body, the right to regulate its own proceedings, the right to exclude strangers, the right to prohibit publication of its debates and the right to enforce observation of its privileges by fine, imprisonment and expulsion.

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of free speech available to a legislator, either under Articles 105 or 194, is not subject to any such limitation that could be imposed by law. However, such a freedom, as it appears from the opening clauses of these two articles, is subject to "other provisions of the Constitution and to the rules and standing orders regulating the procedure of the legislative bodies"<sup>4</sup>. One express limitation on such freedom is found under Articles 121 and 211 which prohibit, in express terms, any discussion in the legislative bodies with respect to the conduct of any Judge of Supreme Court or of the High Court in the discharge of his duties. Further, Articles 118 and 208 authorise the legislative bodies to make rules for regulating their procedure and the conduct of their business;

Therefore, the scope and amplitude of the freedom of speech inhering in a citizen and available to a member of the legislative body are

<sup>4</sup> *PV Narasimha Rao case*. (1998) 4 SCC 626

27. Clause (1) secures freedom of speech in Parliament to its Members. The said freedom is "subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament". The words "subject to the provisions of this Constitution" have been construed to mean subject to the provisions of the Constitution which regulate the procedure of Parliament, viz., Articles 118 and 121. (See: *M.S.M. Sharma v. Sri Krishna Sinha* SCR at p. 856 and *Special Reference No. 1 of 1964* also known as the *Legislative Privileges case* SCR at p. 441.) The freedom of speech that is available to Members of Parliament under Article 105(1) is wider in amplitude than the right to freedom of speech and expression guaranteed under Article 19(1)(a) since the freedom of speech under Article 105(1) is not subject to the limitations contained in Article 19(2)

109. By reason of sub-article (1) of Article 105, Members of Parliament enjoy freedom of speech subject only to the provisions of the Constitution and the rules and standing orders regulating the procedure of Parliament. That express provision is made for freedom of speech in Parliament in sub-article (1) of Article 105 suggests that this freedom is independent of the freedom of speech conferred by Article 19 and unrestricted by the exceptions contained therein. This is recognition of the fact that Members need to be free of all constraints in the matter of what they say in Parliament if they are effectively to represent their constituencies in its deliberations. Sub-article (2) of Article 105 puts negatively what sub-article (1) states affirmatively. Both sub-articles must be read together to determine their content. By reason of the first part of sub-article (2) no Member is answerable in a court of law or any similar tribunal for what he has said in Parliament. This again is recognition of the fact that a Member needs the freedom to say what he thinks is right in Parliament undeterred by the fear of being proceeded against.

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The provisions of Article 194(2), therefore, indicated that the freedom of speech referred to in sub-article (1) thereof was different from the freedom of speech and expression guaranteed under Article 19(1)(a) and could not be cut down in any way by any law contemplated by Article 19(2).

A totally different. No citizen has a right to enter the legislative body and exercise his freedom of speech unless he first gets elected to such a legislative body in accordance with law. No legislator would continue to enjoy the freedom of speech contemplated under Articles 105 and 194 after the cessation of the membership of the legislative body.

B 19. No doubt, when a legislator is prevented from participating in the proceedings of the House during the currency of the membership by virtue of some proceedings taken against such a legislator, there would be a curtailment of the legislator's constitutional right of free speech in the House of which such legislator is a member. But such curtailment is sanctioned by Constitution in view of the fact that such a right is made subject to other provisions of the Constitution, the rules and standing orders regulating the procedure of the legislative bodies.

C 20. Therefore, we are of the opinion that though there is a curtailment of the petitioners' right of free speech in the Legislative Assembly of Tamil Nadu to which they are entitled under Article 194 by virtue of the impugned order, the said impugned order does not, in the context, violate the fundamental rights of the petitioners guaranteed under Article 19(1)(a).

D 21. Our view is fully supported by an opinion of this Court *In re under Article 143 of Constitution of India*, AIR 1965 SC 745<sup>5</sup>, which

E <sup>5</sup> 31. It will be noticed that the first three material clauses of Article 194 deal with three different topics. Clause (1) makes it clear that the freedom of speech in the legislature of every State which it prescribes, is subject to the provisions of the Constitution, and to the rules and standing orders, regulating the procedure of the legislature. While interpreting this clause, it is necessary to emphasise that the provisions of the Constitution to which freedom of speech has been conferred on the legislators, are not the general provisions of the Constitution but only such of them as relate to the regulation of the procedure of the legislature. The rules and standing orders may regulate the procedure of the legislature and some of the provisions of the Constitution may also purport to regulate it; these are, for instance, Articles 208 and 211. The adjectival clause "regulating the procedure of the legislature" governs both the preceding clauses relating to "the provisions of the Constitution" and "the rules and standing orders".

F Therefore, clause (1) confers on the legislators specifically the right of freedom of speech subject to the limitation prescribed by its first part. It would thus appear that by making this clause subject only to the specified provisions of the Constitution, the Constitution-makers wanted to make it clear that they thought it necessary to confer on the legislators freedom of speech separately and, in a sense, independently of Article 19(1)(a). If all that the legislators were entitled to claim was the freedom of speech and expression enshrined in Article 19(1)(a), it would have been unnecessary to confer the same right specifically in the manner adopted by Article 194(1); and so, it would be

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view was reiterated by a Constitution Bench in *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha & Others*, (2007) 3 SCC 184<sup>6</sup> and in *P.V. Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 626<sup>7</sup>. A

22. According to the petitioners, the term 'occupation' under Article 19(1)(g) is of the widest amplitude, and includes the office of a member of legislative assembly. B

For this proposition, the counsel places reliance on Paragraph 239 of the *T.M.A Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481.

"239. .... Article 19 confers on all citizens rights specified in sub-clauses (a) to (g). The fundamental rights enshrined in sub-clause (g) of clause (1) of Article 19 of the Constitution are to C

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legitimate to conclude that Article 19(1)(a) is not one of the provisions of the Constitution which controls the first part of clause (1) of Article 194.

32. Having conferred freedom of speech on the legislators, clause (2) emphasizes the fact that the said freedom is intended to be absolute and unfettered. Similar freedom is guaranteed to the legislators in respect of the votes they may give in the legislature or any committee thereof. In other words, even if a legislator exercises his right of freedom of speech in violation, say, of Article 211, he would not be liable for any action in any court. Similarly, if the legislator by his speech or vote, is alleged to have violated any of the fundamental rights guaranteed by Part III of the Constitution in the Legislative Assembly, he would not be answerable for the said contravention in any court. If the impugned speech amounts to libel or becomes actionable or indictable under any other provision of the law, immunity has been conferred on him from any action in any court by this clause. He may be answerable to the House for such a speech and the Speaker may take appropriate action against him in respect of it; but that is another matter. It is plain that the Constitution-makers attached so much importance to the necessity of absolute freedom in debates within the legislative chambers that they thought it necessary to confer complete immunity on the legislators from any action in any court in respect of their speeches in the legislative chambers in the wide terms prescribed by clause (2). Thus, clause (1) confers freedom of speech on the legislators within the legislative chamber and clause (2) makes it plain that the freedom is literally absolute and unfettered. D E F

<sup>6</sup> *Powers, privileges and immunities—Generally*

130. Taking note of *Pandit Sharma (I)* it was reiterated in *U.P. Assembly case (Special Reference No. 1 of 1964)* that clause (1) of Article 194 no doubt makes a substantive provision of the said clause subject to the provisions of the Constitution; but in the context, those provisions cannot take in Article 19(1)(a), because the latter article does not purport to regulate the procedure of the legislature and it is only such provisions of the Constitution which regulate the procedure of the legislature which are included in the first part of Article 194(1). G

<sup>7</sup> See F/N 4 *supra*

A practice any profession, or to carry on any occupation, trade or  
business. We are concerned here with the right to establish  
educational institutions to impart education at different levels,  
primary, secondary, higher, technical, professional etc. Education  
is essentially a charitable object and imparting education is, in my  
B view, a kind of service to the community, therefore, it cannot be  
brought under “trade or business” nor can it fall under “profession”.  
Nevertheless, having regard to the width of the meaning of the  
term “occupation” elucidated in the judgment of the Hon’ble the  
Chief Justice, the service which a citizen desires to render by  
establishing educational institutions can be read in “occupation”.  
C This right, like other rights enumerated in sub-clause (g), is  
controlled by clause (6) of Article 19. The mandate of clause (6)  
is that nothing in sub-clause (g) shall affect the operation of any  
existing law, insofar as it imposes or prevents the State from making  
any law imposing, in the interests of the general public, reasonable  
D restrictions on the exercise of right conferred by the said sub-  
clause and, in particular, nothing in the said sub-clause shall affect  
the operation of any existing law insofar as it relates to or prevents  
the State from making any law relating to: (i) the professional or  
technical qualifications necessary for practicing any profession  
or carrying on any occupation, trade or business; or (ii) the carrying  
E on by the State, or by a corporation owned or controlled by the  
State, of any trade, business, industry or service, whether to the  
exclusion, complete or partial, of citizens or otherwise. Therefore,  
it may be concluded that the right of a citizen to run educational  
institutions can be read into “occupation” falling in sub-clause (g)  
F of clause (1) of Article 19 which would be subject to the discipline  
of clause (6) thereof.”

In our opinion, it does not, in any way, support the claim of the  
petitioner that the impugned action is violative of their fundamental right  
under Article 19(1)(g). To decide the correctness of the submission, we  
G need to examine both the etymological and contextual meaning of the  
expression occupation occurring in Article 19(1)(g).

23. This Court in *Sodan Singh v. New Delhi Municipal  
Committee*, 1989 4 SCC 105, had an occasion to examine the question  
and held;

H

“The guarantee under Article 19(1)(g) extends to practice any profession, or to carry on any occupation, trade or business. ‘Profession’ means an occupation carried on by a person by virtue of his personal and specialized qualifications, training or skill. **The word ‘occupation’ has a wide meaning such as any regular work, profession, job, principal activity, employment, business or a calling in which an individual is engaged.** ‘Trade’ in its wider sense includes any bargain or sale, any occupation or business carried on for subsistence or profit, it is an act of buying and selling of goods and services. It may include any business carried on with a view to profit whether manual or mercantile. ‘Business’ is a very wide term and would include anything which occupies the time, attention and labour of a man for the purpose of profit. It may include in its form trade, profession, industrial and commercial operations, purchase and sale of goods, and would include anything which is an occupation as distinguished from pleasure. **The object of using four analogous and overlapping words in Article 19(1)(g) is to make the guaranteed right as comprehensive as possible to include all the avenues and modes through which a man may earn his livelihood. In a nutshell the guarantee takes into its fold any activity carried on by a citizen of India to earn his living.** The activity must of course be legitimate and not anti-social like gambling, trafficking in women and the like.”<sup>8</sup>

Thus, it can be seen that the essence of the right is to pursue an activity which enables a citizen to earn livelihood.

24. In *T.M.A Pai Foundation* (supra), this court held that

“Article 19(1)(g) employs four expressions viz. profession, occupation, trade and business. ... Article 19(1)(g) uses the four expressions so as to cover all activities of a citizen in respect of which **income or profit** is generated, and which can consequently be regulated under Article 19(1)(6)”<sup>9</sup>

The amplitude of the term ‘occupation’ is **limited by the economic imperative of livelihood generation.** Therefore, all the activities contemplated under Article 19(1)(g) are essentially activities which enable

<sup>8</sup> Paragraph 28.

<sup>9</sup> Paragraph 20.

A a citizen to generate economic benefits. The primary purpose and thrust of Article 19(1)(g) is to generate economic benefit and to protect the fruits of one's labour.

25. The right to contest an election to the legislative bodies established by the Constitution is held not to be a fundamental right. Therefore, logically it would be difficult to accept the submission that the right to participate in the proceedings of the legislative bodies can be a fundamental right falling under Article 19(1)(g). No citizen is entitled as of right either to become or continue for the whole lifetime as member of a legislative assembly. Acquisition of the membership depends on the decision of the electorate and is conferred by a process established by law. Even after election, the tenure is limited. Fundamental rights do not come into existence upon the volition of others. They inhere in the citizens and are capable of being exercised independently without the need for any action or approval of others subject only to the restrictions imposed by law. Any member of a legislative assembly holds office until such membership comes to an end by some process established by law. Constitutional offices commencing from the office of the President of India are meant for and established for securing the goals adumbrated in the preamble to the Constitution. Each of these offices is a component in larger machinery established to make it possible for the people of this country to realise the goals indicated in the preamble of the Constitution. Any monetary benefit incidental to the holding of such offices is only to compensate for the time and energy expended by the holder of the office in the service of the nation. It is for this very reason that a member of a legislative assembly cannot be treated as holding office for the purpose of eking out a livelihood.

F 26. The economic underpinnings of an 'occupation' under Article 19(1)(g) and the transient and incidental nature of economic benefits flowing from the office of a legislator must inevitably lead to the conclusion that a member of the legislative assembly cannot be treated as pursuing an 'occupation' under Article 19(1)(g). We, therefore, reject the contention that the issue at hand involves the rights of the petitioners under Article 19(1)(g).

H 27. Coming to the question of violation of fundamental right under Article 21 of the petitioners, the case of the petitioners is that by virtue of the impugned action the petitioners have been deprived of their salaries and other benefits incidental to the membership of the legislative assembly

during the period of suspension and, therefore, it is violative of their fundamental right under Article 21. A

28. No clear authority is cited before us, nor any tenable submission is made to demonstrate that there is violation of Article 21 except a bare assertion. On the other hand, in *Raja Ram Pal case*, it was argued that such deprivation resulting from the expulsion of a member from the house would result in violation of the 'constitutional rights' of the members of the parliament<sup>10</sup> and therefore the expulsion would be bad. B

29. This Court repelled the submission and held:

"... in the present case, where there is a lawful expulsion, the Members cannot claim that the provisions relating to salaries and duration of the House create such rights for the Members that would have supremacy over the power of expulsion of the House." C

In other words, this Court held that salary and other benefits to which the members of a legislative body are entitled to during their tenure are purely incidental to the membership and they don't even create an independent and infeasible constitutional right. Therefore, the question that the deprivation of such benefits amounted to deprivation of fundamental right under Article 21 does not arise at all. D

30. We now deal with the submissions of the petitioners that the impugned proceedings are violative of the fundamental right of the petitioners under Article 14. According to the petitioners, the said proceedings have been taken in violation of the principles of natural justice. It is settled law that the scope of judicial review in matters relating to action taken against members by the legislative bodies is limited. However, it is likewise well settled that the non-compliance with the principles of natural justice is one of the limited grounds on which judicial review could be undertaken against the internal proceedings of the legislative bodies in appropriate cases.<sup>11</sup> E F

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<sup>10</sup> Para 151. It was further argued by the petitioners. that provisions in the Constitution relating to salary and the term for which they serve in the House are constitutional rights of the Members and the power of expulsion, by terminating their membership violates these constitutional rights. G

<sup>11</sup> Jagjit Singh v. State of Haryana, (2006) 11 SCC 1. "We may hasten to add that howsoever limited may be the field of judicial review, the principles of natural justice have to be complied with and in their absence, the orders would stand vitiated." — Para 14.

See also paragraphs 671 and 672 of *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha and Others*, (2007) 3 SCC 184. H

A           31. We now examine the petitioners' claim that there has been a violation of the principles of natural justice. It is rather difficult to cull out from the body of the clumsily drafted writ petition (the counter is no better though very long) the precise factual grievance of the petitioners. The substance we could cull out is that a copy of the videograph relied upon by the Privileges Committee was not provided to them. From a reading of paragraphs 3.12 to 3.18 of the writ petition, it appears that there was considerable correspondence between the Privileges Committee and the petitioners. The Privileges Committee called for an explanation from the six petitioners herein as to why action could not be taken against them, though it is not clear from the record as to the basis on which the six petitioners were chosen out of the 19 MLAs who were suspended initially. Each of the petitioners gave their explanation by separate letters. After consideration of the explanation, the Privileges Committee concluded that there was indeed breach of privilege, and recommended action against the six petitioners. This recommended action formed the basis of the assembly resolution dated 31.03.2015.

D           32. It is argued before us that the Privileges Committee relied upon certain video recordings for arriving at the conclusion that the petitioners are guilty of conduct which is in breach of the privileges of the house but a copy of the video recording was not provided to the petitioners<sup>12</sup>.

E           33. It is clear from the record that the video recording played a crucial role in the deliberations of the Privileges Committee.<sup>13</sup> Upon

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F           <sup>12</sup> Apart from the vague reference in Para 3.12 of the facts, the petitioners take it as a ground (Ground No. 38) in the instant writ. Para 3.12 reads "The petitioner No.1 sent his reply to the letter seeking explanation by the Privilege Committee: The letter was received by the Petitioner only on 23.2.2014, but the explanation was sought for on or before 27.2.2015. Further, the petitioner sought permission to give further explanation immediately when the video clipping of the incident. A true copy of the letter sent by Petitioner No.1 to Secretary of the Legislative Assembly dated 27.2.2015 is annexed herewith and marked as Annexure-P7." Ground No. 38 reads "The respondents never gave a copy of the alleged videography". Apart from this one sentence, the petitioners do not elaborate any further.

G           <sup>13</sup> From a perusal of the minutes of the privileges committee meeting dated 20.02.2015, it is evident that the viewing of a video recording of the incident dated 19.2.2015 formed the basis for application of mind by the members of the privileges committee. Tellingly, the minutes read

[Chairman of the Privileges Committee]-

H           "After viewing the video clippings each member can record their own opinion"

viewing the recording of the incident dated 19.02.2015 in which nineteen members belonging to the DMDK party were allegedly involved, the Privileges Committee reached a conclusion that the conduct of the six petitioners is in breach of the privilege of the house. The proceedings of the Privileges Committee make repeated references to video recording. A

34. FIR No. Cr. No. 09/2015 dated 20.2.2015 filed by Mr. Vijayan, B

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[Chairman of the Privileges Committee]-

“After viewing the video clippings each member can record their own opinion”

[Chairman of the Privileges Committee]-

“I request the members of the committee that **before recording your opinion I request to view the video recordings taken on 19.02.2015 in the House.** I request you to record your opinions after viewing the video recordings” C

“This meeting is held to **find out the members who are all have involved** in the undue acts **after viewing the video records** and to **decide as to what action** can be taken against them”

...

“Let [us] first view the video footage and then the committee shall come to a conclusion”

[Mr. J.C.D. Prabhakar, member, privileges committee]-

“Here you showed the video recording to the members clearly ...” D

This member then goes on to discuss the events as depicted in the video recording and individuates the six petitioners as indulging in actions which amount to a breach of privilege.

[Mrs. S. Vijayadharani, member, privileges committee]-

“The expressing of the anger by V.C. Chandira Kumar is very clearly seen from the video clipping”. E

This member then goes on to record her opinion that one of the petitioners is not involved in the scuffle.

[Mr. A. Lasar, member, privileges committee]-

“We have seen the video footage with respect to that incident. Hence we are speaking here in the way that in this regard that hereafter these types of incidents should not happen”

[Mr. K.S.N. Venugopalu, member, privileges committee]-

“ ... I saw from my seat that the incident happened yesterday on 19.02.2015 was very much brutal. We have again see in in the video. ... I give the opinion that the 6 members who involved in this terrible act namely Mr. Alagapuram R. Mohan Rah, Mr. V.C. Chandra Kumar, Mr. C. H. Sekhar, Mr. K. Dinakaran, Mr. S.R. Parthiban, Mr. L. Venkatesan should be suspended for one year in such a way that they should not come to the house.”. F

[Mr. Challenger Dorai @ Doraisamy]-

“We have also seen the incident in the video footage also ...”. G

[Hon’ble leader of the house]-

“All the members present here all are included in the Legislative Assembly. **Hence you would have seen the incidents happened with your eyes Not only was that, the video recordings also shown. Since some of them would have forgot only the video recordings were shown again**” H

A a special sub-inspector deployed in the Tamil Nadu legislative assembly, which is one of the pieces of evidence used against the petitioners, mentions the names of only two of the six petitioners (Petitioner No. 4 and Petitioner No.5). In his FIR, Mr. Vijayan makes an omnibus statement that all members belonging to the DMDK party rushed to the Speaker's chair in an unruly fashion and were ordered to be sent out of the house for that reason. He then proceeds to specifically state the two accused (Petitioner No. 4 and Petitioner No.5) attacked him.

35. In this light, the question is: How did the Privileges Committee identify six members as having breached the privilege of the house? From the minutes of the Privileges Committee meeting, it is clear that the only **material** relied upon by the Committee to identify all the six petitioners and recommend action against them for breach of privilege was the video recording.

36. The petitioners' case, though not elegantly pleaded, is that they have not been granted the opportunity to watch the video recording or comment on the content and authenticity of the video. In the questions of law raised in the writ petition, the petitioners raised the question of "Whether denial of the right to comment on the video material would amount to breach of natural justice?" In the grounds taken by the petitioners, they pray for the writ to be allowed "because on the question of authenticity of videography and as to how far it can be pressed into service, further, the respondents never gave a copy of the alleged videography to the petitioner".

37. It is the case of the respondents, that the disciplinary proceedings are not based solely on the video clippings. At para 76 of the counter affidavit, it is stated that the violent incidents on 19.2.2015 had been witnessed by all Members in the House including those in the Privileges Committee and thus the videograph is not the sole basis for award of punishment.<sup>14</sup>

38. The minutes of the Privileges Committee meeting clearly show that the video-recording played an important role in arriving at the conclusions that the Privileges Committee did. The video recording was

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<sup>14</sup> Even at Para 70 of the counter affidavit, the respondents assert that as the incident on 19.2.2015 happened inside the assembly chamber, the speaker and other present members were eye-witnesses to the incident, and that the nature of the incident was known to all members in the house, including the members of the privileges committee.

specifically shown to the members of the Privileges Committee “since some of them would have forgot only the video recordings were shown again”<sup>15</sup>. Giving some allowance for bad translation - the said sentence only indicates that the Committee was not willing to rely solely on the memory of the members of the Committee. At the risk of repetition, we reiterate that the video recording served as the **common factual platform** for all the members of the Privileges Committee, from where the members discussed the actions of the six petitioners, and recommended action against them. A B

39. This Court in *Raja Ram Pal case*, while dealing with the question of the rules of natural justice in the context of proceedings in the legislative bodies, held as follows: C

“As already noted the scope of judicial review in these matters is restricted and limited. Regarding non-grant of reasonable opportunity, we reiterate what was recently held in *Jagjit Singh v. State of Haryana* that the principles of natural justice are not immutable but are flexible; they cannot be cast in a rigid mould and put in a straitjacket and the compliance therewith has to be considered in the facts and circumstances of each case.”<sup>16</sup> D

40. In *Jagjit Singh v. State of Haryana*, (2006) 11 SCC 1, this Court discussed the scope of the principles of natural justice in the context of the proceedings in the legislature (action under X<sup>th</sup> Schedule of the Constitution) and held thus: E

“Undoubtedly, the proceedings before the Speaker which is also a tribunal albeit of a different nature have to be conducted in a fair manner and by complying with the principles of natural justice. However, the principles of natural justice cannot be placed in a straitjacket. These are flexible rules. Their applicability is determined on the facts of each case...”<sup>17</sup> F

41. The principles of natural justice require that the petitioners ought to have been granted an opportunity to see the video recording. Perhaps they might have had an opportunity to explain why the video recording does not contain any evidence/material for recommending G

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<sup>15</sup> See F./N 12.

<sup>16</sup> Extracted portion is a part of Paragraph 446 in the judgment.

<sup>17</sup> The extracted portion is a part of paragraph 44 in the judgment. H

A action against all or some of them or to explain that the video recording should have been interpreted differently.

42. The Privileges Committee should have **necessarily offered this opportunity**, in order to make the **process** adopted by it compliant with the requirements of Article 14. Petitioner No. 1 in his reply letter to the notice issued by the Privileges Committee seeks permission to give further explanation when the video recording is provided to him. The Petitioner No. 3 in his reply letter states that he believes his version of his conduct will be proven by the video recording. The other petitioners do not mention the video recording in their reply letters. However, it is not the petitioners' burden to request for a copy of the video recording. It is the legal obligation of the Privileges Committee to ensure that a copy of the video recording is supplied to the petitioners in order to satisfy the requirements of the principles of natural justice. The failure to supply a copy of the video recording or affording an opportunity to the petitioners to view the video recording relied upon by the committee in our view clearly resulted in the violation of the principles of natural justice i.e. a denial of a reasonable opportunity to meet the case. We, therefore, have no option but to set aside the impugned resolution dated 31.03.2015 passed in the Tamil Nadu Legislative Assembly. The same is accordingly set aside.

E 43. The **consequence** of setting aside the impugned resolution of the Tamil Nadu Legislative Assembly dated 31.3.2015 is that the salary and other benefits incidental to the membership of the assembly stand restored to the six petitioners herein.

F 44. In view of the conclusion recorded above, we see no need to deal with the other submissions advanced by the petitioners.

45. The writ petition is allowed as indicated above.

Nidhi Jain

Writ Petition allowed.