

therefore before the merger of the two States, had to be decided at all stages according to the law then in force, i.e., in accordance with the provisions of section 28 of the Land Acquisition Act without the Punjab amendment. This section reads—

The State of
Punjab
v.
Karanbir Singh
Falshaw, C.J.

“If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court.”

In my opinion there is force in the contention advanced by the learned counsel for the respondent. The acquisition proceedings took place and the reference was made to the Court of the District Judge under section 18 of the Land Acquisition Act as applied to Pepsu and was to be decided in accordance with those provisions. The mere fact that no enhancement of compensation was made until some years later by a learned Judge of this Court appears to me to be wholly immaterial. Under the terms of section 28, the right to interest on any enhanced compensation clearly dates back to the date on which the Collector took possession of the land, and in my opinion the rate of interest must be in accordance with the law in force at that time. I would accordingly dismiss the appeal with costs.

MEHAR SINGH, J.—I agree.

Mehar Singh, J.

K.S.K.

CRIMINAL MISCELLANEOUS

Before H. R. Khanna, J.

MAKHAN SINGH TARSIKKA,—*Petitioner.*

versus

THE PUNJAB STATE AND OTHERS,—*Respondents*

Criminal Writ No. 63 of 1965.

Constitution of India (1950)—Article 371—Non-obstante clause in—Whether confers special immunity or privilege on a member of Regional Committee—Member of the Legislature or of Regional Committee—Whether immune in the matter of preventive detention—Such member—Whether can claim that arrangement be made for his attendance at the meeting of the legislature or Regional Committee.

1965

September, 1st

Held, that the non-obstante Clause in Article 371 of the Constitution is intended to dispel any doubts which might possibly be entertained with regard to the validity of the formation of Regional Committees in view of the provisions like those relating to State Legislatures. This clause cannot have the effect of conferring some special immunity and privilege on a member of the State Legislature by reason simply of his being a member of a Regional Committee.

Held, further that a member of the Legislature or that of the Regional Committee enjoys no special privilege or immunity in the matter of preventive detention and during the period of such lawful detention, he cannot claim that the authorities detaining him should arrange for his attendance at the meetings of the Legislature or the Regional Committee.

Petition under Article 226 read with Article 102 and Article 105 of the Constitution of India praying that the State Government be directed to arrange for the participation of the petitioner in the meetings of Punjabi Regional Committee to be held on 30th August, 31st August and 1st September, 1965 at Vidhan Bhawan, Chandigarh as it is necessary to safeguard the petitioner's rights under the Constitution of India, and further praying that the petitioner be ordered to be produced before your Lordship to argue his case personally and seek justice.

B. S. KHOJI, ADVOCATE, for the Petitioner.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL AND MANMOHAN SINGH, ADVOCATE, for the Respondents.

ORDER

Khanna, J.

KHANNA, J.—This is a petition under Article 226 of the Constitution of India by Shri Makhan Singh Tarsikka for issuance of a writ to the respondents to arrange for the participation of the petitioner in the meetings of the Punjabi Regional Committee fixed for 30th and 31st August, and 1st September, 1965. The respondents in the petition are the State Government of Punjab, the Home Secretary, Punjab, the Chief Minister, Punjab and the Home Minister, Punjab.

The facts of the case are not in dispute. The petitioner is a Member of the Punjab Legislative Assembly and represents Jandiala Constituency of the Amritsar District. The petitioner was detained under rule 30 of the Defence of India Rules by the order, dated 29th December, 1964 of the Punjab Government. While in detention the petitioner received summons, dated 10th August, 1965, from the Chairman,

Punjab Regional Committee for participating in the meeting of the Punjab Regional Committee to be held on 30th and 31st August, and 1st September, 1965. The petitioner claims that it is his right to attend the above meetings of the Regional Committee. He has, accordingly, prayed for the issuance of a direction to the respondents to arrange for his participation in the said meetings.

Makhan Singh
Tarsikka
v.
The Punjab
State and
others

Khanna, J.

During the pendency of the main petition, the petitioner filed an application making a prayer for the same relief which had been made by him in the main petition. Notice of this application was issued to the respondents for today. Mr. Khoji on behalf of the petitioner and learned Deputy Advocate-General on behalf of the respondents, at the hearing of the application, prayed that as the matter involved in the application was the same as that in the main petition, the main petition itself may be decided. Arguments were, accordingly, heard in the main petition.

The petition has been resisted on behalf of the respondents, and after hearing the arguments addressed at the Bar. I am of the view that there is no merit in the petition. I may state at the outset that though in the petition it was mentioned that the meetings of the Regional Committee had been fixed for 30th and 31st August, and 1st September, 1965, at the hearing of the petition Mr. Khoji has stated that, according to the revised programme, the meeting was to be held only on 31st August and 1st September, 1965. The learned Deputy Advocate-General, however, has brought to my notice that the business of the Committee was finished in the meeting held on 31st August, 1965 and that because of that the meeting fixed for 1st September, 1965, has been cancelled. As the meeting for attending which the present petition had been filed has already taken place, the present petition in the very nature of things has become infructuous and as such is liable to be dismissed. As the matter is of some importance I have, all the same at the request of the learned counsel for the petitioner as well as the learned Deputy Advocate-General, gone into the merits of the petition.

The Regional Committees have been constituted by the President in exercise of the powers conferred by Article 371 of the Constitution, clause (1) of which reads as under:—

“371. (1) Notwithstanding anything in this Constitution, the President may, by order made with respect to the State of Andhra Pradesh or Punjab,

Makhan Singh
Tarsikka
v.
The Punjab
State and
others

Khanna, J.

provide for the constitution and functions of regional committees of the Legislative Assembly of the State, for the modifications to be made in the rules of business of the Government and in the rules of procedure of the Legislative Assembly of the State and for any special responsibility of the Governor in order to secure the proper functioning of the regional committees.”

Notification No. S.R.O. 3524, dated 4th November, 1957, was issued by the President about the formation of the Punjab Regional Committees. According to this order there shall be two regional committees of the Assembly, one for the Punjabi region and the other for the Hindi region, consisting respectively of the members of the Assembly who for the time being represent the constituencies within that region. Amritsar District from which the petitioner has been elected to the Assembly has been mentioned in the First Schedule appended to the above order to be in Punjabi region. Para 10 of the Order provides that the Governor shall have special responsibility for securing the proper functioning of regional committees in accordance with the provisions of the Order.

Mr. Khoji has argued that as Article 371 starts with the words “Notwithstanding anything in the Constitution” the above *non obstante* clause goes to show that Article 371 overrides all other provisions of the Constitution and as the regional Committees have been formed under the above Article the petitioner cannot be prevented from attending the meetings of the regional Committee. The above contention, in my opinion, is not well-founded. Chapter III in Part VI of the Constitution deals with the State Legislatures. According to Article 168 under that Chapter the Legislature of a State shall consist, besides the Governor in the case of some of the States which have been specified therein, of two Houses and in other States of one House. There are further provisions about the composition of the Legislative Assemblies and Legislative Councils, duration and sessions of the State Legislatures, and other connected matters. The *non obstante* clause in Article 371 of the Constitution was, in my opinion, intended to dispel any doubts which might possibly be entertained with regard to the validity of the formation of regional Committees in view of the provisions like those relating to State Legislatures. The above *non*

obstante clause, however, could not have the effect of conferring some special immunity and a privilege on a member of the State Legislature by reason simply of his being a member of a regional Committee.

Article 194 of the Constitution deals with the privileges of a House of a Legislature, and according to clause (3) of that Article, the powers, privileges and immunities of a House of the Legislature of a State and of a member and the Committee of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution. It is not disputed that the powers, privileges and immunities of the members of Punjab Legislative Assembly have not so far been defined by a law of Legislature. They would, in the circumstances, be governed by those of the House of Commons of the Parliament of United Kingdom, and of its members and committees, at the commencement of this Constitution. The question as to whether a member of Parliament could be detained under a Preventive Detention Regulation arose in the United Kingdom in 1940 under these circumstances. Captain Ramsay was a Member of Parliament in 1940. He was detained in pursuance of an order issued by Sir John Anderson, Secretary of State for the Home Department, under Regulation 18B of the Defence (General) Regulations, 1939. Captain Ramsay then approached the Speaker of the House of Commons alleging that by his detention his immunity from arrest as Member of the House of Commons had been infringed. On this the Speaker referred the matter to the Committee of Privileges. The Committee, after giving the necessary hearing, arrived at the following conclusion:

“The precedents lend no support to the view that Members of Parliament are exempted by privilege of Parliament from detention under Regulation 18B of the Defence (General) Regulations, 1939. Preventive arrest under statutory authority by executive order is not within the principle of the cases to which the privilege from arrest has been decided to extend. To claim that the privilege extends to such cases would be either the assertion of a new Parliamentary privilege or an unjustified extension of an existing

Makhan Singh
Tarsikka
v.
The Punjab
State and
others

Khanna, J.

Makhan Singh
Tarsikka

v.

The Punjab
State and
others

Khanna, J.

one. No question of any infringement of the privilege of freedom of speech arises."

It was further observed—

"It is plain that arrest in civil proceedings is a breach of privilege and that arrest on a criminal charge for an indictable offence is not. But they further observed that these statements did not cover preventive detention by order of the executive authority which was the matter involved in the case of Captain Ramsay. The Committee further discussed the principle laid down by the House of Commons as early as 1641 and found that "Privilege of Parliament is granted in regard to the service of the Commonwealth and is not to be used to the danger of the Commonwealth."

Sir Gilbert Campion, during the deliberations of that Committee, observed that during the last two hundred years privilege from arrest had not been successfully claimed except in civil cases. The report of the above Committee was relied upon by a Division Bench of the Madras High Court (Govinda Menon and Krishnaswami Nayudu, JJ.) in the matter of *Pillalamarri Venkateswarlu v. The District Magistrate, Guntur and Superintendent, Central Jail, Cuddalore* (1), and it was held that a member of the Madras Legislature could not claim immunity from being detained under the Madras Maintenance of Public Order Act, and that consequently no writ of *habeas corpus* would issue. A case more to the point is *in re. K. Anandan Nambiar* (2), decided by a Division Bench (Mack and Somasundaram, JJ.). The petitioner in that case was a member of the Madras Legislative Assembly. He was arrested on 4th May, 1949, and detained under the Maintenance of Public Order Act. After filing two earlier petitions the petitioner filed a petition under Article 226 of the Constitution contending that he had a right to attend the sittings of the Legislative Assembly even from prison under prison escort. The above contention was repelled and it was observed:—

"Once a member of a Legislative Assembly is arrested and lawfully detained, though without

(1) A.I.R. 1951 Madras 269.

(2) A.I.R. 1952 Madras 117.

actual trial under any Preventive Detention Act, there can be no doubt that under the law as it stands, he cannot be permitted to attend the sittings of the House. A declaration by us that he is entitled to do so, even under armed escort is entirely out of the question. We however readily concede the contention of Mr. Kumaramangalam that if a party in power detains a political opponent or continues his detention with the *mala fide* object of stifling opposition and prejudicing the party to which he belongs in a forthcoming election, there would be an undermining of the basis of the Constitution, putting in jeopardy the second pillar to which we have adverted. That contention is wholly irrelevant for the purposes of this petition, which proceeds on the basis that detention is lawful, *bona fide* and for proper grounds."

Makhan Singh
Tarsikka
v.
The Punjab
State and
others

Khanna, J.

A somewhat similar question arose before a Division Bench of Travancore-Cochin High Court (Koshi, C.J. and Menon, J.) in *A. Kunjan Nadar v. The State* (3). In that case the petitioner, who was a member of the Travancore-Cochin Legislative Assembly, had been arrested in connection with some matter and his bail application was rejected. The petitioner then filed a petition praying for a writ of mandamus directing the State and other respondents to enable him to attend the Session of the Legislative Assembly. The petition was dismissed and reliance for this purpose was placed upon May's Parliamentary Practice, 15th Edition, 1950, page 78, according to which the privilege of freedom from arrest would not be claimed in respect of a criminal offence or statutory detention. It was further observed that the aforesaid freedom is limited to civil cases and had not been allowed to interfere with the administration of criminal justice or emergency legislation.

The petitioner is at present under detention and for the purpose of the present proceedings it would have to be assumed that the order of the Punjab Government for the detention of the petitioner was a valid one. As was observed in *Harkishan Singh Surjit v. The State of Punjab* (Criminal Writ No. 4 of 1965), decided on 26th July, 1965,

Makhan Singh
Tarsikka
v.
The Punjab
State and
others

Khanna, J.

detention in the very nature of things brings in its wake restrictions upon the person detained and he cannot claim a good many rights which are otherwise possessed by a free man. It was further observed that it would not be a correct approach to consider the case of a detained man in the context of the rights of a free man because the resultant effect of the detention of a person necessarily is that a number of personal rights come to an end while the others get considerably curtailed. Reliance in this context was placed upon the observations made in *A. K. Gopalan v. State of Madras* (4), Das, J., in that case observed—

“It follows that the rights enumerated in Article 19(1) subsist while the citizen has the legal capacity to exercise them. If his capacity to exercise them is gone by reason of a lawful conviction with respect to the rights in sub-clauses (a) to (e) and (g) or by reason of a wrongful compulsory acquisition with respect to the right in sub-clause (f), he ceases to have those rights while his incapacity lasts. It further follows that if a citizen's freedom of the person is lawfully taken away otherwise than as a result of a lawful conviction for an offence, that citizen, precisely the same reason, cannot exercise any of the rights attached to his person including those enumerated in sub-clauses (a) to (e) and (g) of Article 19(1). In my judgment, a lawful detention, whether punitive or preventive, does not offend against the protection conferred by Article 19(1) (a) to (e) and (g), for those rights must necessarily cease when the freedom of the person is lawfully taken away. In short, those rights end where the lawful detention begins.”

Although, the above observations were made in the context of the argument that preventive detention of the petitioner was illegal and it struck against the fundamental rights possessed by him under Article 19 of the Constitution, the observations because of their comprehensive and general nature have a direct bearing.

Argument has also been advanced that a party in power having a precarious majority might resort to the subterfuge of detaining some of the members of Legislature

belonging to the opposition party in order to keep itself in power. This, it is contended, would be the death-knell of democracy. I agree, that it would be so, if the facts proved are those canvassed in the contention, but in such a case, the order of detention would be struck down on the ground of being *male fide*. The above contention can, however, prove to be of no avail, if the order for detention is not shown to be *mala fide*, and for the purpose of this petition it would have to be assumed, as stated above, that the petitioner has been detained under a lawful and not a *mala fide* order.

Makhan Singh
Tarsikka
v.
The Punjab
State and
others

Khanna, J.

I have given the matter my earnest consideration and am of the view that a member of the Legislature or that of the Regional Committee enjoys no special privilege or immunity in the matter of preventive detention and during the period of such lawful detention he cannot claim that the authorities detaining him should arrange for his attendance at the meetings of the Legislature or the Regional Committee.

The petition consequently fails and is dismissed.

K.S.K

INCOME-TAX REFERENCE.

Before S. S. Dulat and Shamsher Bahadur, JJ.

DAULAT RAM NARULA,—Petitioner.

versus

COMMISSIONER OF INCOME-TAX, DELHI AND
RAJASTHAN,—Respondent.

Income-Tax Reference No. 56 of 1962.

Income-tax Act (XI of 1922)—Ss. 3 and 23—Assessee becoming partner in a firm and entering into partnership with other persons in respect of his share therein—Profit accruing to him from the firm—Whether assessable as his income or the income of himself and his other partners.

1965

September, 2nd

The assessee was a partner in the firm Daulat Ram-Hans Raj & Co., to the extent of 47.25 pies in the rupee. In respect of this share there was a partnership between the assessee and nine other persons and the partnership-deed recited that all the ten persons were partners in the share of 47.25 pies held by the assessee in the firm Daulat Ram-Hans Raj & Co., and that the profits and losses arising out of that share were to be divided