

FULL BENCH

Before Mehar Singh, C.J., Harbans Singh and D. K. Mahajan, JJ.

JAI SINGH RATHI AND OTHERS,—Petitioners.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ No. 463 of 1969

April 28, 1969.

Constitution of India (1950)—Articles 189, 194, 208, 212(2), 226 and 227—Rules of Procedure and Conduct of Business in Haryana Legislative Assembly—Rule 104—The Rule conferring power on the Speaker to suspend a member for contempt of the House—By making such Rule—Haryana Legislative Assembly—Whether loses for ever the power of suspension of a member—Suspension of a member of a Legislative Assembly—Whether causes vacancy in the House—Suspended member—Whether loses right of vote—Freedom of speech in the Assembly—Whether unrestricted—Vote in a House of Legislature—Whether can ever be mala fide—Article 212 and 227—Legislative Assembly—Whether a “Court” or “tribunal”—Speaker and secretary of such Assembly—Whether immune from the Jurisdiction of the High Court—Article 226—Affidavit in support of a petition not candid—High Court—Whether should refuse to examine the merits of the petition.

Heid, that the powers and privileges of a State Legislature as given and guaranteed by Sub-article (3) of Article 194 of the Constitution of India are to be those of the British House of Commons on the date of the coming into force of the Constitution in 1950. Unlike Sub-article (1) of Article 194, Sub-article (3) is not subject to the provisions of the Constitution. The powers and privileges thus given are complete and cannot be controlled by any rules made under Article 208(1). There is the right of the House to punish its own members for their conduct in the Legislature. Such a privilege, in spite of the rule relating to it, is not dependent upon the same for its existence. The Legislative Assembly does not lose its power of suspension of a member as a measure of punishment for its contempt because of his disorderly conduct or disobedience of the Chair, by making a rule by which the powers to that effect have been given to the Speaker. There inheres in the Haryana Legislative Assembly power which is necessary for its own functioning to punish its members for its contempt on account of their disorderly conduct or disobedience and defiance of the Chair. Hence by making Rule 104 of Rules of Procedure and Conduct of Business, conferring such power upon its Speaker, the Haryana Legislative Assembly does not lose for ever its power and privilege to punish a member of it for its contempt. Once it suspends the Rule, it retains to itself that power as it is inherent in this behalf. (Para 17)

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Held, that Sub-article (1) of Article 189 of the Constitution gives a right of vote to a member in determination of questions before the House of Legislature of a State, but the suspension of a member from the House in exercise of its power and privilege under Article 194(3) is not causing any vacancy in the House in the sense in which the same is used in the remaining Sub-articles of Article 189 and in Article 190. Suspension does not cause a vacancy in the House of Legislature, and it merely enforces absence from service of the House as a measure of punishment for contempt of the House, for example, on account of a member's disobedience and defiance of the Chair and for disorderly conduct. When such absence is enforced by the House in exercise of its power and privilege under Article 194(3), then the right of vote is not taken away from that member but he is only placed in the same position as if he was not present in the House. What is guaranteed as right of vote is to a member in the House. (Para 17)

Held, that right of freedom of speech in the House as referred to in Sub-article (1) of Article 194 of the Constitution is subject not only to the provisions of the Constitution but also to the Business Rules of a House of Legislature. So the right of freedom of speech as given in Sub-article (1) of Article 194 is not unrestricted and uncontrolled. (Para 17)

Held, that the vote in the House of Legislature cannot ever be said to be *mala fide*. If the House surpasses its constitutional limitations, its action will be open to question on the ground of unconstitutionality, but even then it will not be described as *mala fide*. (Para 19)

Held, that Article 227 of the Constitution of India gives superintendence to the High Court over all Courts and tribunals within its territorial jurisdiction, but a Legislative Assembly is neither a Court nor a tribunal subordinate to the High Court over which it has jurisdiction of superintendence according to that article. The power of the Speaker to regulate the procedure or the conduct of business in the House or for maintaining order in it is immune from the jurisdiction of the High Court under clause (2) of Article 212. Same or similar immunity is also available to other officers of a State Legislature, such as its Secretary. (Para 13)

Held, that if the court exercising powers under Article 226 of the Constitution comes to a conclusion that the affidavit in support of the application is not candid and does not fairly state the facts but states them in such a way as to mislead the court as to the true facts, the court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the court, but it should only be used in cases which bring conviction to the mind of the court that it has been deceived. (Para 20)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, or any other appropriate writ, order or direction be issued quashing the proceedings of the Haryana Vidhan

Sabha of February 5, 1969, relating to the suspension of the petitioners and declaring the suspensitn of the petitioners on the 5th February, 1969, for the duration of the rests of the session being invalid and unconstitutional, the subsequent proceedings of the Haryana Vidhan Sabha taken on the 6th, 7th, 10th and 11th and 12th of February, are also as invalid and unconstitutional.

M. C. CHAGLA, SENIOR ADVOCATE, ANAND SWARUP, SENIOR ADVOCATE, R. S. MITTAL, U. S. SAHNI, & S. S. KHANDUJA, ADVOCATES, for the Petitioners.

M. K. NAMBAYAR, SENIOR ADVOCATE, C. D. DEWAN, ADVOCATE-GENERAL, HARYANA, N. A. SUBRAMANYAM, P. S. DAULTA, ADVOCATES, with them for respondents, 1, 2, 5 & 6 and Nemo for Respondents 3 and 4.

JUDGMENT

MEHAR SINGH, C.J.—This is a petition under Articles 226 and 227 of the Constitution by four petitioners, namely, Mr. Jai Singh Rathi, Mr. Mahant Ganga Sagar, Mr. Ganpat Ram, and Mr. Fateh Chand Vij, petitioners 1 to 4, all members of the Haryana Legislative Assembly, for a writ, order or direction to quash the proceedings of the Haryana Vidhan Sabha of February 5, 1969, during the course of which the petitioners were suspended for the remainder of the session of the Legislative Assembly, and for quashing to all the subsequent proceedings of the Legislative Assembly leading to the passage of the appropriation bill for the year 1969-70 on February 12, 1969. The respondents to the petition are the State of Haryana, Mr. Bansi Lal, Chief Minister of Haryana, Mr. Ran Singh, Mr. Speaker of the Haryana Legislative Assembly, Secretary of the Haryana Vidhan Sabha, and Shrimati Chandra Vati and Mr. Banarsi Dass Gupta, members of the Haryana Legislative Assembly, respondents 1 to 6.

(2) There was a mid-term poll in Haryana State for the election to the Haryana Legislative Assembly on May 14, 1968. The total strength of the membership of the Assembly is 81. Congress party secured 48 seats, other various parties secured together 27 seats, and there were 6 independents. One member of the Congress party was elected Mr. Speaker, respondent 3, and so the strength of the parties in the House was 47 Congress as against 33 others, including 6 independents. So the Congress party had a clear majority in the House. Respondent 2 became the Chief Minister as leader of the Congress party. He, therefore, formed the Government.

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(3) In the petitioners' petition paragraphs 2 to 20 give details of internal strains in the functioning of the Congress party. Some allegations are made with regard to respondent 2, who has in his affidavit in return given denial to the same. It has, however, not been denied at the hearing of this petition that what is stated in those paragraphs concerns the internal political organisation and functioning of the Congress party and has nothing to do with the merit of controversy raised in this petition by the petitioners which is for consideration of this Court. The subject-matter of those paragraphs is completely irrelevant and the petitioners were ill-advised to bring in this petition such political matters with which this Court can possibly have no concern. This manner of using the forum of this Court with reference to Articles 226 and 227 of the Constitution to bring before it political matters, not that such matters are relevant to the controversy before the Court but merely to embarrass the opposite party, is clear indication of the irresponsible attitude of the petitioners and their advisors. In so far as these proceedings are concerned, it is much to be deprecated and it is hoped that this type of thing shall in future not find repetition. Respondent 2 in his affidavit very rightly complains that the allegations in those paragraphs deal with internal matters relating to the Congress Legislative party of which the petitioners are not members and with which they have no concern. It is affirmed that those allegations do not have the remotest bearing on the relief sought in the petition, having been made just to embarrass respondent 2 and to drag the question of his leadership of the party into controversy before this Court. This is a just grievance on the part of respondent 2. The conduct of the petitioners in this respect as also of those who advised the petitioners into a course of this type must be disapproved and, as I have said, repetition of this type is not expected in future in such proceedings or rather in any proceedings before this Court, because it has nothing to do with matters political.

(4) It appears that there were defections from the Congress party and also return to it of some members, in which connection an approach appears to have been made to the Governor of Haryana so as to claim that respondent 2 no longer commanded majority in the Haryana Legislative Assembly, but even with that part this Court has nothing to do. All that was a political intrigue in consequence of which shifting of political loyalties may have taken place.

but, as I have already said, a matter of this type is not the concern of the Court and cannot be aired and agitated before it.

(5) The Haryana Legislative Assembly having been summoned by the Governor to meet, it did so on January 28, 1969. Seat of one member of the Congress party had become vacant in consequence of acceptance by this Court of an election petition against this election. While the petitioners allege that on January 28, 1969, the strength of the Congress party was 39, that of the newly formed Samyukt Vidhayak Dal 36, and of the independents 6, thus claiming that the Congress party had become a minority party in the House, in his affidavit respondent 2 has, on the contrary, clearly stated that in spite of what happened on the political canvass of Haryana before January 28, 1969, he still had the support of 41 Congress legislators and 2 independent legislators, so that excluding Mr. Speaker and one member whose seat had become vacant on account of the success of the election petition against him, in a House of 79 he had the following of 43 members.

(6) The programme of the Haryana Legislative Assembly for its session commencing January 28, 1969, was to last, copy of the programme annexure 'A', till February 12, 1969. This programme, however, did not have in it for consideration the budget for the year 1969-70. The Governor of Haryana addressed the Legislative Assembly at 2 p.m. on January 28, 1969, and excluding two off days of February 1 and 2, 1969, the other four days from January 29 to February 4, 1969, were for discussion on the address of the Governor. On the last of those days, a privilege motion was moved by a member of the opposition that another opposition member, Mr. Joginder Singh, had been abducted and was thus being physically prevented from participating in the proceedings of the House. What followed on the move of the privilege motion is described by the petitioners just in these few lines in paragraph 22 of their petition—
"There was an uproar in the House during which the Speaker named the petitioners and asked them to leave the House. The petitioners, however, stated that their safety outside the House must be assured before they were asked to go out. After this the Speaker did not take any further action against the petitioners and asked the Chief Minister to reply to the debate on the Governor's address. Thereupon the Chief Minister moved the motion of thanks to the Governor, which was carried by voice vote and the House rose for

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the day." The statement, as it will appear from the reply to this paragraph in the affidavit of respondent 2, is the limit of oversimplification of facts of what transpired in the House on that day and, in substance, really amounts to a deliberate suppression of their own conduct by the petitioners in the House on that day. In the affidavit of respondent 2 by way of return to the petition, in paragraph 22, a fair and an accurate summary of what transpired in the House on that day is given. A copy of the proceedings of the House has been produced. At the hearing of this petition nobody on the side of the petitioners was able to say that what is affirmed in paragraph 22 of the affidavit of respondent 2 is not in any respect an accurate summary of what went on in the House on that particular day. In spite of Mr. Speaker having given his decision repeatedly a number of times that he had the notice of the privilege motion and that he would give early consideration to it, the members of the opposition persisted in discussion over the same, thus obstructing the continuance and completion of the discussion on the Governor's address. A good part of the summary of what happened in the House on that day on this aspect of the matter may be left out, but so far as this petition is concerned and so far as the petitioners are concerned, this is the relevant part of the summary giving a fair and an accurate description of their conduct in the matter—"When Ch. Jai Singh Rathi, petitioner No. 1 rose on a point of order, the Speaker observed, 'Well, if I find a wrong point of order is raised or that an unnecessary interference is being caused to the debate or to the discussion on the Governor's address, I shall name the member concerned. So I am telling you early.' Ch. Jai Singh Rathi again raised a point of order which was overruled. Thereafter, Shri Ganpat Rai, a Member of the Legislative Assembly, petitioner No. 3, raised a point of order. He wanted to quote an example that the Members sitting on the Treasury Benches did not behave properly with 'thin and lean' M.L.As. The Speaker ruled that this is no point of order at all and further observed, 'No, not now please. Let us resume discussion on Governor's Address'. Shri Ganpat Rai, M.L.A., went on persisting this point of order and the Speaker again ruled that this was no point of order. The Speaker said, 'The Hon'ble member should please take seat.' Shri Ganpat Rai did not resume his seat and the Speaker observed, 'If the Hon'ble Member does not resume his seat, he will be named.' Shri Mangal Sain said, 'I am prepared to be named.' The Speaker observed 'All right,

since he is defying the Chair, he is named.' The Members again raised the question, that the Speaker was the Custodian of the House and he had to give them necessary protection. The Speaker observed, 'Hon'ble Member should please take his seat. A procedure is laid down in the Rules of Procedure of this House and that should be followed.' Thereafter Dr. Mangal Sain tried to raise another point of order and the Speaker observed, 'I am sorry, I cannot allow you to make a speech. Hon'ble Member can rise on a point of order.' The Speaker further observed, 'If the Hon'ble Member does not resume his seat, he will be named.' The Speaker further said, 'Kindly one man should speak. All at one time cannot speak.' On this Ch. Jai Singh Rathi stood up and the Speaker asked him to sit down. Shri Jai Singh Rathi persisted to speak and the Speaker asked him to resume his seat. The Speaker observed, 'I am asking the Hon'ble Member, Shri Jai Singh Rathi, to resume his seat and this is the last time that I request him to take his seat. The Speaker repeated his request, but the Member did not take his seat. Thereupon, the Speaker named Shri Jai Singh Rathi but Ch. Jai Singh Rathi did not resume his seat. There was uproar in the House and the Speaker gave him another warning and observed, 'If the Hon'ble Member does not take his seat, he will be asked to withdraw from the House.' Shri Jai Singh Rathi continued to stand, and thereon the Speaker observed, 'The Hon'ble Member, Ch. Jai Singh Rathi, would you please withdraw from the House.' Ch. Jai Singh Rathi disobeyed the Chair when the Chair ordered him thrice to withdraw. Thereon, the Speaker observed, 'Since the Hon'ble Member, Ch. Jai Singh Rathi has continuously defied the Chair and he is not withdrawing from the House, the Marshal should please go and comply with my orders.' At this stage Marshal went to the seat of Ch. Jai Singh Rathi. Rao Birinder Singh, leader of the opposition said, 'Speaker Sahib, all these would remain in the Assembly. At this stage Shri Fateh Chand Vij petitioner No. 4 proceeded towards the seat of Shri Jai Singh Rathi and stood by his side and thus obstructed the Marshal in discharging his duties. The Speaker again asked Shri Jai Singh Rathi to please withdraw from the House. Shri Jai Singh Rathi replied, 'No, please.' The Speaker further observed, 'Those Hon'ble Members who are causing obstruction in the performance of duties by the Marshal will have to be named if they do not go back to their seats.' At this stage some Members covered Shri Jai Singh Rathi from both sides who remained standing his seat and thus all these Members prevented the

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Marshal to carry out the orders of the Hon'ble Speaker. The Speaker observed, 'Since the Hon'ble Members are defying the Chair and are not going to their seats to enable the Marshal to perform his duties I will have to name them'. The members remained standing on both sides of Shri Jai Singh Rathi and did not leave that place. Thereon, the Speaker said, 'Mr. Vij is also named. Mahant Ganga Sagar (Petitioner No. 2) is named Shri Ganpat Rai (petitioner No. 3) is also named. They should please leave the House. All the four Members named should please withdraw from the House'. On this there was a noise in the House. After some time the Speaker said, 'Order please; let me make an observation I find that absolutely undue interference is being caused by a number of Members which is extremely bad and disgraceful for the proper decorum and proper functioning of the House. I adjourn the House for 15 minutes and we will then see.' The House then adjourned. When the House re-assembled at 4.45 p.m., all the petitioners who had been named by the Speaker were still in the House and the Speaker observed, 'I find that Mr. Rathi is still here in his seat. I had requested him to withdraw. This will be a very rare occasion when the dignity and decorum of the House is flouted by a Member. I will again request him to withdraw from the House.' There was uproar in the House. The Speaker asked all the petitioners who were earlier named by him to withdraw from the House and observed, 'I cannot allow the decorum and the dignity of the House to be touched. I shall hear you only after the four Members have left the House.' But the noise and interruption continued. The opposition Members were persistently making interruption and noise. The Speaker observed, 'We cannot under any circumstance let down the decorum and dignity of the House. It is a matter of shame. I assure you it is a matter of shame that the four Members who have been named are still in the House. It is shameful. It is very bad, very poor.' When there was no stop to these interruptions and noises, the Speaker again observed, 'May I ask Shri Chand Ram to sit down. Since I find that there is a deliberate obstruction to the proceedings of the House, I will request the Leader of the House to reply to the debate.' Thereupon Malik Mukhtiar Singh, Member of the Opposition said, 'No, certainly not. He cannot make any speech at this stage.' The Leader of the House, thereupon, requested for closure of debate and the Speaker put the question and the closure motion was carried by voice vote. The amendment to the Motion of thanks was moved

by the Opposition (Shri Roop Lal Mehta), but this was lost. The Motion of thanks was put to vote and the same was carried by voice vote. All this happened during noise and interruptions and the opposition shouted slogans 'JOGINDER SINGH KO PESH KARO. DHAKE SHAHI NAHIN CHALEGI' and thereafter the House was adjourned by the Speaker for the 5th February, 1969. The demand by the petitioners for their safety outside the House was, however, frivolous. If one thing is apparent that is just this, that in spite of all what the petitioners have stated in their petition that respondent 2 was in danger of losing his majority, the fact of the matter is that the motion of thanks to the Governor for his address was carried by the Treasury Benches on just a voice vote, the opposition not even claiming a division in this respect. Apparently they were not in a position to bring down the majority with the Government on that day. The conduct of the petitioners as appears from the summary of the proceedings of the House given in paragraph 22 of the affidavit of respondent 2 hardly does credit to them. They persistently and continuously defied and disobeyed the Chair.

(7) The House when it met on February 5, 1969, had before it a motion moved by respondent 5 for suspension of rule 104 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly. An affidavit has been made by respondent 5 that the motion in that respect had been delivered by her personally to Mr. Speaker at 12 noon on that date. The motion was in this form— "To move that rule 104 of the Rules of Procedure and Conduct of Business in the House be suspended in its application to the motion regarding the suspension of Sh. Jai Singh Rathi (petitioner 1) and three others." There is an affidavit of respondent 6 that on the same day at about 12 noon he had personally delivered to Mr. Speaker a motion for the suspension of the petitioners for the rest of the session of the Assembly and that motion read—"That yesterday, the 4th February, 1969, four members of the House, namely, Sarvshri Jai Singh Rathi, Mahant Ganga Sagar, Fateh Chand and Ganpat Rai, having been named by the Hon'ble Speaker did not withdraw from the House and continued to defy his orders. They committed gross contempt of the House and breach of privilege. This House suspends them for the rest of the session and directs the aforesaid members to absent themselves from the meetings of this House for the remainder of the present session." These two motions had thus been delivered by respondents 5 and 6 to Mr. Speaker round about noon on

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February 5, 1969, before the House met for the business of the day. Both the motions were with Mr. Speaker.

(8) When the House met on that date, respondent 5 moved her motion for suspension of rule 104. It was passed by the House by a majority. According to the petitioners this motion was illegally admitted by Mr. Speaker and passed by force of the Government majority. According to the return affidavit of respondent 2, this motion was put to vote and was carried by 42 votes for and 33 votes against it, including the petitioners'. There is no averment by the petitioners that any objection was taken on the side of the petitioners or by any other member of the opposition in regard to any illegality or irregularity in the move of that motion before the House. After that respondent 6 moved his motion for suspension of the petitioners from service of the House for the rest of the session. It is admitted in the petition that this motion was also passed by the House with majority of the Government supporters, but it is stated clearly in the return affidavit of respondent 2 that this motion was also carried by a majority of votes, 41 voting for, and 32 (including the petitioners) against the motion. It has been the case of the petitioners that motion for suspension of rule 104 was illegal being contrary to rule 121 as when it was moved, there was no motion before the House for suspension of the petitioners. To this the reply rendered in the return affidavit of respondent 2 is that this averment on the side of the petitioners is not true, respondents 5 and 6 having already given notices of both the motions and delivered the same to Mr. Speaker before the House met, apart from this that in the motion of respondent 5 for suspension of rule 104 with regard to the petitioners it was clearly stated that the suspension of the rule was to be 'in its application to the motion regarding the suspension of Shri Jai Singh Rathi (petitioner 1) and three others', thus making it absolutely clear that the other motion of respondent 6 for suspension of the petitioners from service of the House was already with Mr. Speaker and was due to be formally moved before the House immediately. The petitioners do not again give the details of what transpired in the House when respondent 5 moved her motion for suspension of rule 104 *qua* the petitioners, but in paragraph 23 of his return affidavit respondent 2 again gives a fair and an accurate summary, unquestioned as to its correctness, in regard to the proceedings in the House on the move of her motion by respondent 5. This part of the summary is relevant here—'When a discussion was raised on the motion for suspending Rule 104 and a point was raised that no discussion

was permissible on such a motion, the Speaker ruled, 'I agree that normally no speeches are made on such a motion. But, since the Hon'ble Member asks for a permission to say something, I allow her to speak.' On this Rao Birinder Singh, Leader of the Opposition, raised a point of order. He said, 'I rise on a point of order. Sir, the subject-matter of this motion is already before you. The matter had been referred to the Privileges Committee of the House on a motion from the Treasury Benches. The Committee will consider the matter in all its aspects and give their report. Now where is the need for giving this motion.....'. Thereon the Speaker ruled, 'I will answer this question, but before I do that I will read the Privilege Motion.' It says, 'Yesterday, the 4th February, 1969, during the sitting of the Haryana Vidhan Sabha, Sarvshri Jai Singh-Rathi, M.L.A., Fateh Chand Vij, M.L.A., Ganpat Rai, M.L.A., Mahant Ganga Sagar, M.L.A., Dr. Mangal Sain, M.L.A., Rao Birinder Singh and Chand Ram, M.L.As., raised the slogans in the House and created disorder and defied the order of the Hon'ble Speaker and they have committed a breach of privilege of the House. Appropriate action should be taken against them. It will be seen that this privilege motion contained the slogans raised and the disorder created by certain Members and not the order of the Speaker which certain Members defied by refusing to withdraw from the House when asked to do so by the Speaker. On this Rao Birinder Singh said, 'Sir, the subject-matter is the same. It involves the whole affair. In fact, it covers the whole matter, that is, raising of slogans and objectionable behaviour which is the subject-matter of this privilege motion. The Privileges Committee of the House is going to consider this question. In any way, this matter is subjudice before the House or a Committee of the House and the Members of the Privileges Committee are going to take a decision on his motion. If it is now put before the House, this will be prejudging the issue before the Privileges Committee considers the matter and gives its report. So, the placing of this motion before the House will be against the privilege of the House itself. The Speaker ruled, 'I will just explain this question. As far as I can see from this side (Government side) they have made two issues. One was that certain members, the names of whom I have mentioned just now, indulged in slogans and also disobeyed the orders of the Chair. At that time they did not sit down and did not maintain proper order when the question was put to the House. The second issue appears to be that certain members were named and were ordered to withdraw from the House, but they did not leave the House. So, this is

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a different issue as far as I can see. The ruling of the Speaker was again sought and he ruled 'My ruling is that as I have mentioned, these are two separate issues.' Again a point of order was raised and the Speaker ruled, 'Anyway, let me explain it again. The said disobedience relates to the incident when the Members on this (opposition side) side stood up and raised slogans while the other matter concerns the withdrawal of the members from the House. This is the difference as far as I can make out.' The matter was again raised and the Speaker ruled, 'In this they have made out two issues. The first issue relates to the time when the members were named and they were requested to leave the House. But they failed to obey the orders of the Chair. This is one thing. The other issue relates to the time when the question was put from the Chair. At that time some members got up and started raising slogans and shouting. At that time of course, if you remember I had said 'Order, order' So, these are two separate issues.' When the members from the opposition persisted to take up this question, the Speaker ultimately ruled, 'I have already said that there are two separate issues.' At one place the Speaker observes, 'Could you kindly take your seat now?' The fact remains that four Members had been requested to leave the House and it is very painful that it was not done. This was what really happened. It is a matter of shame and disgrace that the dignity and decorum of the House was not maintained. The official Report of the Assembly dated the 5th February is produced, and a true English translation thereof is also filed herewith. It is clear that the motion was before the House, admitted and passed by a majority. No objection to the legality of the admission can, therefore, be validly taken. I say that it was not even necessary to move a motion for suspending the rule. I submit that the House has always an inherent power to not merely suspend a member, but even to expel him, if considered necessary for the preservation of dignity and decorum of the House. It may be mentioned that even though the motion for suspending the petitioners was carried, the petitioners did not yet leave the House. They did not leave the House even though ordered by the Speaker. The Speaker consequently observed, 'I regret to say that the Members have not complied with the Chair's orders. It is bad again for our House and its dignity and decorum; also not very healthy for our democracy, and since there is non-co-operation from a certain section I adjourn the House till tomorrow.' It appears that on the previous day members of the opposition had shouted slogans and

with regard to that a privilege motion was before the Privileges Committee. The members of the Opposition in the wake of that endeavoured to persuade Mr. Speaker that the subject-matter of what was before the Privileges Committee was the same as the motion with regard to the suspension of the petitioners from the service of the House for the rest of the session. This whole discussion and the repeated decisions of Mr. Speaker on the point raised were with regard to the move of her motion by respondent 5 for suspension of rule 104 so far as the petitioners were concerned. It was after all this discussion that that motion was adopted by the House.

(9) In the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly, hereinafter referred to as 'the Business Rules', rule 104 reads—

"104. (1) The Speaker shall preserve order and have all powers necessary for the purpose of enforcing his decisions on all points of order.

(2) He may direct any member whose conduct is, in his opinion, grossly disorderly to withdraw immediately from the Assembly and any member so ordered to withdraw shall do so forthwith and shall absent himself during the remainder of the day's meeting. If any member is ordered to withdraw a second time in the session, the Speaker may direct the member to absent himself from the meetings of the Assembly for any period not longer than the remainder of the session and the member so directed shall absent himself accordingly. Such member shall be deemed to be absent from the meetings of the Assembly for purposes of section 3(2) (a) of the Punjab Legislative Assembly (Allowances of Members) Act, 1942, but shall not be deemed to be absent for the purposes of Article 190(4) of the Constitution."

And rule 121 says—

"121. Any member may, with the consent of the Speaker, move that any rule may be suspended in its application to a particular motion before the Assembly and if the motion is carried the rule in question shall be suspended for the time being."

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When these rules are taken together what has been the objection on the side of the petitioners is that respondent 5's motion for suspension of rule 104 could not be moved unless respondent 6's motion for suspension of the petitioners from the service of the House had already been moved, so that the application of rule 104 may be suspended to that motion of respondent 6.

(10) In their petition the petitioners come thereafter immediately to February 10, 1969, and express their surprise to having found a revised legislative programme lying on their seats at 2 p.m. on that day when the House met, according to which programme the budget for the year 1969-70 was to be presented by the Finance Minister on the very day and the session had been extended to February 18, 1969. However, in the return affidavit of respondent 2, in paragraph 24, it is stated that on February 7, 1969, an order of that date of the Governor recommending the presentation of the budget for 1969-70 was received and a list of business, copy annexure 'R. 2/1', of the very date, indicating that the Finance Minister would present the budget on February 10, 1969, was issued, and despatched to the members of the House by post. Respondent 2 claims that he received the list on the very day and says the other members must have received it about the same time, it not having been claimed by any member of the House by an affidavit that he had not received that communication. It is further pointed out by respondent 2 that a news item appeared in the Tribune of February 8, 1969, with regard to the introduction of the budget in the Haryana Assembly on February 10, 1969. It is, however, admitted that the revised programme was placed on the seats of the members on February 10, 1969. A copy of this revised programme in annexure 'B' to the petitioners' petition. The budget was to be taken up on February 10 and the appropriation bill was to come before the House on February 14, 1969. There followed two off days and the remaining two days of February 17 and 18, 1969, were allotted to legislative business of the House. The petitioners aver that having been the revised programme on their seats on February 10, 1969, the members were completely taken aback by the sudden change in the programme, which, according to them, went to show that respondent 2 and his supporters were not sure of their position and wanted to have the budget passed in an indecent haste after having had the petitioners illegally suspended from the House and also showed that

the action of the Government supporters in passing the motion of suspension was *mala fide* and taken in bad faith to obviate the possibility of the Government being defeated in the budget session. In the return affidavit of respondent 2 it is stated in reply that the intention of the Government right from the start was to introduce the budget in the session in the interest of economy if it could be got ready. Instructions were issued to all Departments much before the commencement of the session regarding the preparation of the budget estimates, but no firm indication could be given to the members at the commencement of the session because the Government was not certain that all the relevant information necessary for the preparation of the budget would be available in time. During the session it became evident that there would not be much difficulty in having the budget prepared for presentation during that very session. So there was change in the programme and the budget presented. It is denied that the resolution of the House suspending the petitioners was *mala fide* and taken in bad faith in order to obviate the possibility of the Government being defeated in the budget session. This allegation is described as baseless.

(11) According to the averments of the petitioners on February 10, 1969, nineteen bills were passed by the Haryana Legislative Assembly in ninety minutes, and during its second sitting there was a general discussion on the budget. On February 12, 1969, respondent 2 and his ruling party became so desperate and were in such a hurry that they did not stick to the published programme and the demands for grants on budget were placed for voting during the first sitting and the appropriation bill on the budget estimates which was originally to be considered on February 14, 1969, was actually brought in the second sitting of the House and passed. The petitioners say that 'the whole consequence of events narrated above clearly shows that respondents 2, 5 and 6 have been actuated by *mala fide* and in order to illegally keep the present Ministry in power, all the time apprehending the loss of the uncertain support of the independent members and three others, resorted to the tactic of getting the petitioners suspended from the House and bringing the budget estimates for the consideration of the House after revising the programme of business at the eleventh hour.' This really again does not give the real picture of what happened and, as will appear from the reply of respondent 2 in his return affidavit, much has

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been suppressed by the petitioners. It is explained in that return that twenty bills were passed and one referred to the Select Committee on the first sitting of the House on February 11, 1969. The second sitting on February 11, and the two sittings on February 12 were for general discussion on the budget and vote on demands for grants and passing of Appropriation (No. 2) Bill, 1969, in accordance with the provisions of rule 29. On February 10, the entire opposition walked out before the speech of the Finance Minister and the presentation of the budget of 1969-70. On February 11, after question hours, the opposition again walked out and thereafter did not participate in the deliberations of the Assembly for the remainder of the session. It is pointed out that the whole of the legislative business for which otherwise two full days and two half days had been allotted, was concluded in the first sitting of February 11. According to the programme, the second sitting of that day was for general discussion on the budget which was done. On February 12 no legislative business was left over and so vote on demands for grants on budget, otherwise intended to be taken in the first and second sittings of February 13, was taken up and concluded in the first sitting on that day. In the second sitting on the very day, the appropriation bill on the budget estimates, otherwise intended to be taken up on February 14, was taken up and carried. That concluded the entire business of the Assembly for which the session had been extended to February 18, 1969. Respondent 2 further points out that in the circumstances the entire business was concluded earlier than scheduled because there was no opposition.

(12) It is on the facts and circumstances as above that the petitioners have challenged the legality of their suspension from the service of the House on February 5, 1969, till the end of the session and have claimed that as that was illegal and they as members of the House were prevented from exercising their constitutional right, all proceedings, subsequent to that, of the Haryana Legislative Assembly including the passage of appropriation bill for 1969-70 have been illegal. The grounds given in the petition are (a) that according to sub-rule (2) of rule 104, the power to order a member to withdraw immediately from the Assembly for disorderly conduct and to suspend him has been given to Mr. Speaker, and so the power to suspend a member having been vested in Mr. Speaker by law could not be exercised by the House; (b) that the suspension of rule 104 could not re-vest the power of suspension in the House; (c)

that the motion of suspension of rule 104 was itself illegal being contrary to rule 121 as when that motion was moved the motion for suspension of the petitioners was not before the House; (d) that the Haryana State Legislature cannot claim the power to suspend a member under Article 194(3) of the Constitution as such power is inconsistent with the rights of the members given to them by Articles 189 and 194(1) and the basic concepts of Parliamentary Government recognised by the Constitution; (e) that even if the Haryana Legislative Assembly has such a power, its exercise in the present case has been *mala fide* and amounts to an abuse of power and bad faith having regard to the sequence of events before and after the exercise of that power as that was done with the ulterior object of ensuring a majority for the ruling party during the discussion and voting on the budget estimates and appropriation bill for the year 1969-70; and (f) that the suspension of the petitioners from the session amounted to a fraud on the Constitution. Respondent 2's reply in his return affidavit to these grounds has been (a) that part from the power of Mr. Speaker under rule 104, the House itself possesses the power under Article 194(3) of the Constitution to take appropriate action, including an action to suspend its members, in the event of the breach of its privileges, and it is a breach of the privilege of the House amongst the established privileges if a member thereof indulges in disorderly conduct, defies the authority of the Chair, disobeys the lawful command of the Chair and thus commits contempt of the House; (b) that the House possesses its own inherent power, apart from rule 104, and there is no question of any revesting of the power in it on the suspension of that rule; (c) that both the motions were with Mr. Speaker when respondent 5's motion for suspension of rule 104 was moved and the opposition members were aware of the second motion because of reference to the suspension of the petitioners in respondent 5's motion and because of the reference of the substance of respondent 6's motion by members of the opposition during the discussion on respondent 5's motion; (d) that the operation of Article 194(3) is independent of anything said in any other article of the Constitution in so far as its operation has not been made subject to the provisions of the Constitution (e) that the allegation of the petitioners that the power exercised by the House in suspending them is *mala fide* and amounts to abuse of power, bad faith or fraud is baseless and so is the allegation of ulterior object attributed by the petitioners in regard to

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securing majority; and (f) that the suspension of the petitioners does not amount to a fraud on the Constitution. Some preliminary objections on the side of the respondents may also be noticed (a) that Article 227 of the Constitution is not attracted even on the averments and allegations of the petitioners because the Haryana Legislative Assembly is not a Court or tribunal inferior to this Court, (b) that respondents 3 and 4, Mr. Speaker and the Secretary of the Haryana Legislative Assembly, are not amenable to the jurisdiction of this Court because of Article 212(2) of the Constitution, and (c) that the Haryana Legislative Assembly is supreme and has exclusive control and jurisdiction in all its internal affairs and is the sole judge of the lawfulness of its own proceedings, so that no part of its proceedings concerning the suspension of the petitioners is justiciable in this Court.

(13) There is merit in the first two preliminary objections on the side of the respondents, but the third objection concerns the merit of the controversy in this petition. Article 227 gives superintendence to this Court over all Courts and tribunals within its territorial jurisdiction, but the Haryana Legislative Assembly is neither a Court nor a tribunal subordinate to this Court over which it has jurisdiction of superintendence according to that article. The power of Mr. Speaker to regulate the procedure or the conduct of business in the House or for maintaining order in it is immune from the jurisdiction of this Court under clause (2) of Article 212. Same or similar immunity is also available to other officers of a State Legislature, such as its Secretary. So Mr. Speaker and the Secretary of the Haryana Legislative Assembly are unnecessary parties to this petition. No relief has been claimed against them—Neither has filed any return to this petition. Although these two preliminary objections on the side of the respondents have merit, there still remains for consideration the main controversy in this petition.

(14) The first argument of Mr. M. C. Chagla, learned counsel for the petitioners, was that the resolution of the Haryana Legislative Assembly suspending rule 104 with regard to the petitioners was not legal inasmuch as it did not conform to rule 121. The two rules have already been reproduced above. He said that there was no motion before the House for suspension of the petitioners when respondent 5 moved her motion for suspension of rule 104 with

regard to the suspension of the petitioners. In reply, on behalf of the respondents, Mr. M. K. Nambyar, learned counsel for them, pointed out that there was reference in the motion of respondent 5 for suspension of rule 104 to the suspension of the petitioners in connection with which that rule was to be suspended, and then he referred to the brief account given in the return affidavit of respondent 2 in regard to the discussion on that motion to show that in fact the opposition members knew that the other motion of respondent 6 for suspension of the petitioners from service of the House was already with Mr. Speaker. He, therefore, contended that as both the motions were with Mr. Speaker, respondent 5 and 6 having made affidavits to that effect, before the House met, and were before him when respondent 5 moved her motion for suspension of rule 104, so there was really no substantial infringement of rule 121. He also pointed out with reference to observations of their Lordships in *M. S. M. Sharma v. Sri Krishna Sinha* (1), at page 411, paragraph (29a), that no objection was taken by any member of the opposition when respondent 5 moved her motion for suspension of rule 104 and when that motion was carried by a majority of the House. This was one of the considerations which prevailed in rejecting a somewhat similar arguments by their Lordships in the case just cited above.

(15) In rule 121, it is provided that there may be suspension of any rule in its application to a particular motion before the House, and if the motion is carried the rule in question shall be suspended for the time being. It is apparent that there was not strict and literal compliance with this rule in so far as the motion for suspension of the petitioners from service of the House had not been moved by respondent 6 when respondent 5's motion for suspension of rule 104 came before the House for consideration. The fact of the matter, however, is that both the motions had been given by respondents 5 and 6 nearabout noon on the particular date to Mr. Speaker before the House met. So both the motions were with Mr. Speaker when respondent 5 moved her motion for suspension of rule 104. The factual statement made by Mr. Speaker remains uncontroverted that in the motion of respondent 5 for suspension of rule 104 there was reference to the purpose for which rule 104 was to be suspended, that is in regard to the suspension of the petitioners, and in the discussion on that motion the members of the opposition really

(1) A.I.R. 1959 S.C. 395.

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referred to the question of suspension of the petitioners, because they pressed Mr. Speaker not to allow the motion as the subject-matter was already before the Privileges Committee. So, as I have already said, even having regard to all these facts, there still was not motion of suspension of the petitioners before the House when respondent 5's motion for suspension of rule 104 in its application to the suspension of the petitioners was moved and strictly and literally there was not compliance with rule 121. It is, however, apparent that this is no more than a mere procedural irregularity in the proceedings of the House, and the validity of those proceedings on this account is not open to question in view of clause (1) of Article 212. So this argument on the side of the petitioners that the move of respondent 5's motion for suspension of rule 104 and the passing of the resolution to that effect by the House were attended by illegality does not prevail. It amounted to no more than an irregularity of procedure in the proceedings of the House.

(16) It was next contended by Mr. Chagla that even if the suspension of rule 104 was good or a mere irregularity of procedure not open to question in this Court in view of Article 212(1), rule 104 having been suspended, there remained no power in the House and none was, in the circumstances, re-vested in the House to suspend the petitioners from service of the House. He said that the privilege of suspending a member of the House had to be exercised by Mr. Speaker according to rule 104 and as, on account of its suspension, it was not operative, the House could not suspend petitioners, nor could the House create a situation in which it could depart from rule 104. He referred to this passage at page 104 in May's *Parliamentary Practice, Seventeenth Edition*,—"Suspension from the service of the House was a punishment employed by the House of Commons under its power of enforcing discipline among its Members, long before it was prescribed by standing order for particular offences, such as disregard of the authority of the Chair, or obstruction, and it can still be imposed at the discretion of the House, although, of course, not under the summary procedure authorised by that standing order", and then to this passage at page 468—"A standing order passed on 28th February, 1880, and amended on 22nd November, 1882, provides that when a Member is named by the Speaker for grossly disorderly conduct, disregarding the authority of the Chair or abusing the rules of the House by persistently and wilfully obstructing the business of the House or otherwise, a motion may be

made "That such Member be suspended from the service of the House, upon which the Speaker forthwith puts the question, no amendment, adjournment or debate being allowed." This he has pointed out is provided in Standing Order 24 which appears at page 1073 of the same book. At page 469, it is further stated—"A Member who is suspended from the service of the House under this order must forthwith withdraw from the House. If he does not withdraw the Speaker directs him to do so. If he does not comply with the direction, the Speaker, orders the Serjeant at Arms to summon the Member to obey the Speaker's direction. If he still refuses to obey, the Speaker calls the attention of the House to the fact that recourse to force is necessary in order to compel obedience to his direction, and directs the Serjeant to remove the refractory Member. The standing order provides that in such a case the Member shall thereupon, without any further question being put, be suspended from the service of the House for the remainder of the session (S.O. No. 24(4)". He pointed out that in the Rules of Procedure and Conduct of Business in the Lok Sabha there is rule 3.74 which is exactly the same as Standing Order 24 of the House of Commons. It is only in the Lok Sabha that the power of suspension of a member for disorderly conduct and disobedience of the Chair has been retained by the House, but so far as the Haryana Legislative Assembly is concerned, the power has been passed on to Mr. Speaker under rule 104. So Mr. Speaker alone in the Haryana Legislative Assembly can exercise such a power and no residuary power in this respect has been left to the House, nor has the House been given disciplinary jurisdiction in this respect. Suspension of rule 104 having deprived Mr. Speaker of this power, the suspension of that rule does not give that power back to the House. He then referred to Article 189 of the Constitution which in sub-article (1) provides that "Save as otherwise provided in this Constitution, all questions at any sitting of a House of the Legislature of a State shall be determined by majority of votes of the members present and voting other than the Speaker or Chairman, or person acting as such', and urged that forcibly excluding the petitioners from the House, they were prevented from taking part in the debate of the House and voting therein contrary to sub-article (1) of Article 189. Such exclusion, according to him, is not contemplated by the Constitution because the substantial effect of such exclusion is to cause a vacancy in the House when there is no power in the House to do so under any Article of the Constitution. So he pressed that the deprivation of

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the petitioner of their right to vote in the determinations of the House was violative of sub-article (1) of Article 189. Referring to sub-article (1) of Article 194, which provides that "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", he contended that by preventing the petitioner from attending the House and from the service of the House there was denial of the right of freedom of speech in the House to them, which was violative of sub-article 9(1) of Article 194. It was not a mere irregularity of procedure in the proceedings of the House as referred to in sub-article (1) of Article 212 but an illegality which can be called into question by the petitioners. He relied in this respect on the observations of their Lordships in the case reported as *In the matter of Special Reference No. 1 of 1964 under Article 143 of the Constitution*, (2), at pages 767 and 768, — "Similarly, Article 212(1) makes a provision which is relevant. It lays down that the validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. Article 212(2) confers immunity on the officers and members of the Legislature in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature from being subject to the jurisdiction of any court in respect of the exercise by him of those powers. Article 212(1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the Legislative Chamber 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 scrutinised 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." So he pressed that the petitioners had a fundamental right of freedom of speech in the House and it was a denial of that right when they were prevented from exercising it on account of their having been forcibly excluded from being present in the House. This was an illegality in the proceedings of the Haryana Legislative Assembly and not a mere irregularity. If such a thing was countenanced, he said, not only one member of the House may be suspended but the whole opposi-

(2) A.I.R. 1965 S.C. 745.

tion may be wiped out, thus defeating the very purpose of the Constitution and the very conception of democracy. The only other thing that he said in this respect was that what happened on February, 4 came to an end and the chapter was closed by the adjournment of the House at the end of the session on that day and there was nothing that happened on February, 5, 1969, which invited the House to suspend the petitioners so as to exclude them from the service of the House denying them their rights to vote in regard to the determinations in the House and to have freedom of speech in the House in relation to the debate in the same. To this argument on the side of the petitioners, the reply by Mr. Nambyar on behalf of the respondents was that the power of a State Legislature to make rules regulating its procedure and the conduct of its business has been expressly made subject to the provisions of the Constitution according to sub-article (1) of Article 208. It is, therefore, subject to sub-article (3) of Article 194 dealing with the powers, privileges and immunities of State Legislatures and their members. So the Rules of Procedure and Conduct of Business of Haryana Legislative Assembly have not the effect of abrogating the powers, privileges and immunities of the Haryana Legislative Assembly as conferred on it by Article 194(3), nor can these rules detract from those powers, privileges and immunities. According to that constitutional provisions the powers, privileges and immunities of the Haryana Legislative Assembly are the same as those of the British House of Commons on the date of the coming into force of the Constitution in 1950. His contention was that in spite of rule 104, the Haryana Legislative Assembly has retained the power and privileges of punishing a recalcitrant member of the House for contempt of the House because of his conduct in disobeying the Chair and for being disorderly in the House. He referred to these statements in May's Parliamentary Practice — "The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are 'absolutely necessary for the due execution of its powers'. They are enjoyed * * * by each House for the protection of its Members and the vindication of its own authority and dignity". (page 42); "Such powers are essential to the authority of every legislature. The functions, privileges and disciplinary powers of a legislative body are thus closely connected. The privileges are the necessary complement of the functions, and the disciplinary powers of the privileges" (page 43) ; "Article 9 of

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the Bill of Rights * * * * * lays down that 'freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament' (page 59) ; ".....There are three principal matters involved in the statement of the law contained in this Article :—

- (1) The right of each House to be the sole judge of the lawfulness of its own proceedings ;
- (2) The right implied to punish its own Members for their conduct in Parliament ;

Further, there is the question,

- (3) What is the precise meaning of the term 'Proceedings in Parliament?'" (page 60);

and "It seems that the Speaker, in his petition, also sought for the Commons the right to punish any Member who, by his conduct, might offend the House. This privilege is now partly embodied in S.O's No. 23, No. 24 and No. 25, which prescribe a **summary procedure for enforcing discipline** but is not dependent upon them for its existence" (pages 61 and 62). He endeavoured to demonstrate by these citations that although in the British House of Commons Standing Order No. 24 deals with the question of suspension of a member for disobedience of the Chair and for disorderly conduct, but the power is not dependent upon that standing order and is independent of it, and further that the House may depart from any such standing order while exercising its inherent power to punish a member for its contempt. He urged that it is one of the **privileges of House of Legislature** in a State to punish a member for its contempt of the nature of disobedience of the Chair and disorderly conduct in the House, by way of suspension and to regulate its own proceedings, relying in this respect on the observations of their Lordships of the Supreme Court in *M. S. M. Sharmas's case*, at page 403, paragraph 18, and *In the matter of Special Reference No. 1 of 1964*, at page 771, paragraph 74. He also referred in this respect to *Yashwant Rao Meghawale v. Madhya Pradesh Legislative Assembly*, (3), at page 103, paragraph 25, that one of the powers and **privileges of a State Legislature is to expel a member for disorderly conduct even though there is no rule to that effect in the rules made**

under Article 208(1). So he urged that by the suspension of rule 104 in the Haryana Legislative Assembly in no way ever lost its privilege and power of punishing a member for its contempt for his having disobeyed and denied the Chair and for his disorderly conduct in the House. The power and privilege in this respect, so Mr. Nambyar said, continues to exist in spite of rule 104, and there was no question of revesting of any such power or privilege in the House on the suspension of rule 104. Such power or privilege is not dependent, as shown from May's Parliamentary Practice at pages 60 to 62, upon any standing order or rule with regard to the matter of suspension of a member for such conduct. On the date of the coming into force of the Constitution, the British House of commons possessed the power and privilege to punish a member for its contempt on account of his disobedience of the Chair or disorderly conduct, in spite of Standing Order No. 24, and Mr. Nambyar contended that the position is exactly the same in the Haryana Legislative Assembly in view of Article 194(3). The House, he said, is complete master of its own proceedings and what goes on in it, and merely because it has by rule 104 given its power of suspension of a member of it to Mr. Speaker, that does not mean that the House has for ever lost the power. In regard to Article 189(1), his argument was that the right referred to therein is subject to other provisions of the Constitution and hence subject to Article 194(3) in regard to the powers, privileges and immunities of the House. He pointed out that in fact no vacancy had been caused in the Haryana Legislative Assembly by the suspension of the petitioners who were only compelled to be absent, in the circumstances, to the end of the session. The right of freedom of speech in the Legislature, as referred to in Article 194(1) he pointed out, is subject to the rules and standing orders regulating the procedure of the Legislature, as are made under Article 208(1) of the Constitution which in turn are again subject to the provisions of the Constitution, so that the rules must be subject to Article 194(3). In this way the claim of the petitioners to a right of vote in the House and to freedom of speech therein is subject to Article 194(3). He referred to *In the matter of Special Reference No. 1 of 1964*, page 762, paragraph 38, in regard to the observation of their Lordships that Article 194(3) of the Constitution is the sole foundation of the powers, and no power which is not included in it can be claimed by a House of Legislature. He pointed out that while sub-article (1) of Article 194 is made 'subject to the provisions of this Constitution',

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that is not so far as sub-article (3) of that Article is concerned, so that the powers, privileges and immunities given to a House of Legislature are uncontrolled by any other provisions of the Constitution like those in Articles 189(1) and 194(1). In this respect he made reference to *The Queen v. Richards*, (4), in which the learned Judges considered the provisions of the Australian Constitution, section 40, which corresponds to Article 194(3), and section 50, which corresponds to Article 208(1), and observed, at page 169,—

“The material words of section 50 are that each House may make rules and orders with respect to the mode in which its powers, privileges, and immunities may, be exercised. The argument, I think, may be stated in more than one way. It may be stated that the issue of the warrant and the giving it a conclusive character is merely a mode of exercising the powers given by section 49 and therefore falls within section 50. It may also be stated in a much wider way, namely, in effect that the powers under section 49 are contingent upon the Houses exercising their authority under section 50 and making rules and orders with respect to the mode by which the powers, privileges and immunities may be exercised. As the House has not made such rules in relation to matter of this description, it is suggested that the power under section 49 has not arisenThe argument is ill-founded, in our opinion. Section 50 is a mere power. It is clear that section 49 has an operation which is independent of the exercise of the power of section 50. It seems clear too that the operation of section 50 is permissive or enabling and that section 49 carries with it the full powers of the House of Commons, including the power which is now in question, even although nothing is done under section 50.” He has thus emphasised that the powers, privileges and immunities of a House of Legislature as guaranteed in Article 194(3) are not subject, in any way, either to sub-article (1) of Article 194 or Article 189, and, if anything, those two provisions have to be taken to be subordinate to sub-article (3) of Article 194. In this way the powers and privileges of the Haryana Legislative Assembly are not controlled by the Business Rules, including rule 104 or for that matter the suspension thereof. On the matter of Article 194(1) and the right of freedom of speech in the Legislature claimed by the petitioners, Mr. Nambyar further pointed out that the right in that sub-article is expressly made subject to the rules regulating the procedure of

(4) (1954) 92 Commonwealth Law Reports 157.

the Legislature. Rule 97(ii) and (ix) of the Business Rules says— "Whilst the Assembly is sitting, a member —(ii) shall not interrupt any member while speaking by disorderly expression or noises or in any other diordesely manner ;(ix) shall not obstruct proceedings, hiss or interrupt and shall not make running commentaries when speeches are being made in the Assembly"; then rule 99(2) says— "A member who desires to speak shall speak from his place, shall rise when he speaks and shall address the Speaker. At any time if the Speaker rises any member speaking shall resume his seat;" and then rule 100(2)(vii) further says—"A member while speaking shall not use his right of speech for the purpose of obstructing the business of the Assembly." Mr. Nambyar very rightly said that any right of freedom of speech in the House claimed by the petitioners has been made subject to the aforesaid rules and so the right claimed by them is not unrestricted and unqualified.

(17) The powers and privileges of a State Legislature as given and guaranteed by sub-article (3) of Article 194 are to be those of the British House of Commons on the date of coming into force of the Constitution in 1950. Unlike sub-article (1) of Article 194, sub-article (3) is not subject to the provisions of the Constitution. The powers and privileges so far given are complete and cannot be controlled by any rules made under Article 208(1). It has been shown from May's Parliamentary Practice, page 60, that there is the right of the House to punish its own members for their conduct in the Legislature, and, at page 62, that such a privilege in spite of standing order or rule relating to it is not dependent upon the same for its existence. It is pointed out by the author at page 469 that 'Members ordered to withdraw from the House in pursuance of S.O. No. 23 or suspend from the service of the House in pursuance of S.O. No. 24 must withdraw forthwith from the precincts of the House. A Member suspended from the service of the House on a motion not made pursuant to S.O. No. 24 is not excluded from the precincts of the House unless the order for his suspension expressly provides therefor.' It is thus apparent that in the British House of Commons suspension from the service of the House may be made under Standing Order, No. 24 or otherwise than by that standing order, and in either case the effect is different, for when it is made under Standing Order No. 24, the member concerned must withdraw from the precincts of the House, but not so when

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it is made on a motion not pursuant to that standing order. It clearly means that in spite of that standing order the House of Commons retains the power and privilege to suspend a member as a measure of punishment for its contempt for the member disobeying the Chair and for disorderly conduct in the House. So the argument on the side of the petitioners that by making rule 104 the Haryana Legislative Assembly for ever lost the power of suspension of a member of it as a measure of punishment for its contempt because of his disorderly conduct or disobedience of the Chair is untenable. The approach urged on the side of the petitioners cannot be correct because unless the Haryana Legislative Assembly had the power to suspend a member of it in the circumstances as explained above, it could not confer such power upon its Speaker, and, it having conferred that power on him in the shape of rule 104, once it suspends that rule, it retains to itself that power as it is inherent in this behalf. An argument is unacceptable that although it had this power which it conferred upon its Speaker under rule 104, but by making that rule it lost that power for ever and after the making of the rule the power can only be exercised by Mr. Speaker or not at all. Rule 104 is one of the Business Rules, and rule 121 within the same contains a provision for suspension of any rule made by the House. There is nothing referred to either in the Business Rules or in any provision of the Constitution which justifies the argument that by making rule 104 the Haryana Legislative Assembly lost its power and privilege to punish a member of it for its contempt as explained above. So this argument does not prevail on the side of the petitioners. Sub-article (1) of Article 189 gives a right of vote to a member in determination of questions before the House of Legislature of a State, but the suspension of a member from the House in exercise of its power and privilege under Article 194(3) is not causing any vacancy in the House in the sense in which the same is used in the remaining sub-articles of Article 189 and in Article 190. Suspension does not cause a vacancy in the House of Legislature, and it merely enforces absence from service of the House as a measure of punishment for contempt of the House, as in this case, on account of a member's disobedience and defiance of the Chair and for disorderly conduct. When such absence is enforced by the House in exercise of its power and privilege under Article 194(3) then the right of vote is not taken away from that

member but he is only placed in the same position as if he was not present in the House. What is guaranteed as a right of vote is to a member present in the House. So far as the right of freedom of speech in the House as referred to in sub-article (1) of Article 194 is concerned, in that very sub-article it is clearly stated that such a right is subject not only to the provisions of the Constitution but also to the Business Rules of a House of Legislature, and it has already been pointed out that the Business Rules of the Haryana Legislative Assembly require a member to obey the Chair and to conduct himself in the House in an orderly manner. Apart from the rules, there inheres in the Haryana Legislative Assembly power which is necessary for its own functioning to punish its members for its contempt on account of their disorderly conduct or disobedience and defiance of the Chair. So the right of freedom of speech in the House as in sub-article (1) of Article 194 is not unrestricted and uncontrolled as has been contended on the side of the petitioners. **The suspension** of the petitioners was thus not illegal and so the jurisdiction of this Court with regard to the proceedings of the House on February 5, 1969, is expressly barred by Article 212(1). Consequently this argument on the side of the petitioners cannot be accepted.

(18) The third argument of the learned counsel for the petitioners was that the whole of the proceedings of the Haryana Legislative Assembly after February 5, 1969, up to the date of passing of the appropriation bill for the year 1969-70 must also be struck down as illegal and unconstitutional, but the argument had its basis in the last argument on the side of the petitioners as above. It was urged by the learned counsel that because the suspension of the petitioners was illegal and not according to the Constitution, therefore, all proceedings of the House, after the petitioners were forcibly prevented from exercising their right of vote in it according to Article 189(1) and right of freedom of speech according to Article 194(1) on account of their suspension, were illegal and contrary to those provisions of the Constitution. So everything done and every decision taken, or proceedings had or bills passed by the Haryana Legislative Assembly after February 5, 1969, were illegal and unconstitutional. It is, as stated, immediately apparent that this could only come in for consideration if the second argument on the side of the petitioners, as above, had prevailed, but that argument having not been accepted, this approach obviously

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cannot be accepted either. There was nothing illegal or unconstitutional in the suspension of the petitioners and the consequence as urged on the side of the petitioners, therefore, does not follow.

(19) The last argument urged by Mr. M. C. Chagla, on behalf of the petitioners was that the suspension of the petitioners was *mala fide*, an argument which at least has not been comprehensible to me. If, as has been found to be the power and privilege of the Haryana Legislative Assembly, the House in exercise of such power and privilege suspended the petitioners from the service of the House in a lawful and constitutional manner, how could the vote of the House be described as *mala fide*? How can any motive be attributed to the vote in the House? In my opinion the vote in the House of Legislature cannot ever be said to be *mala fide*. If the House surpasses its constitutional limitations, its action will be open to question on the ground of unconstitutionality, but even then it will not be described as *mala fide*. The learned counsel for the petitioners urged that there was political intrigue in the Congress party, there were defections and re-defections, and there prevailed uncertainty on the political canvass of Haryana, and so it was to ensure majority of his party that of the respondents, respondent 2 manoeuvred to obtain suspension of the petitioners. This ignores undenied facts. The opposition had not the courage to challenge the Government to a division on the motion of thanks to the address of the Governor, which was carried in the House by voice vote; the opposition was defeated on the motion for suspension of rule 104 by nine votes; and it was defeated on the motion for actual suspension of the petitioners again by a margin of nine votes; and all the time the petitioners were voting in opposition. Thereafter the opposition did not have the courage to stay in the House and contribute its share of the responsibilities and duties to the House as a responsible opposition, because it walked out of the House, never attending the proceedings. At no stage was there the least possible chance of respondent 2's Government being ever defeated when the question came to a vote before the House. What went on behind the scene is a matter utterly and entirely irrelevant so far as this Court is concerned, and, as I have said, it is to be regretted that such matters were brought in as part of the averments and allegations by the petitioners in their petition. Factually, therefore, there is no basis in the allegation of *mala fide* on the side of the petitioners as far as any of the respondents

and particularly respondent 2 is concerned. It is an allegation which has been made in a most reckless manner and has not, in the least, even a shadow of suggestion in fact in support of it. So this argument obviously must be rejected.

(20) It was pointed out by Mr. Nambyar that in their petition the petitioners have totally suppressed their part of the conduct both on February 4 and 5, 1969, in that they persistently disobeyed and defied the Chair and their conduct was not, in the least, orderly in the House. They also suppressed the fact that after the introduction of the budget the opposition walked out and took no part in the proceedings of the House in regard to the acceptance of budget estimates, money grants and the passage of the appropriation bill. He referred to this observation of Viscount Reading, C.J., in *Rex v. Kensington Income-Tax Commissioners* (5), at page 495,—“Where an *ex parte* application has been made to this Court for a rule *nisi* or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived”. On this consideration also the petitioners are not entitled to the exercise of the discretion of this Court in their favour so far as Article 226 of the Constitution is concerned.

(21) In consequence, this petition of the petitioners is dismissed with costs, counsel's fee being Rs. 500.

HARBANS SINGH, J.—I agree,

D. K. MAHAJAN, J.—I agree.

R. N. M.