

order and not a final order qua the petitioners. Therefore, the revision petition must be stated to be not maintainable.

(10) In that evident an argument was floated that inherent powers of the Court can be pressed into service to quash such an order which was against the law. At the outset, it may be stated that this Court for the moment is not expressing any opinion about the validity of the order passed by the trial court but where there is a specific bar by the Criminal Procedure Code, ordinarily inherent powers would not be utilized unless there is total abuse of the process of the court or the interest of justice so requires. Both the provisions namely Section 397(2) and 482. Cr. P.C. has to be harmoniously construed. Ordinarily this Court would not press into service the inherent powers in face of the specific bar imposed by the legislature. Merely because certain evidence has been taken to be admissible will not permit this Court to scrutinize the same in another form by exercising the inherent powers. The said contention also, therefore, must fail.

(11) For these reasons, the preliminary objection must prevail and it is held that the petition is not maintainable against the interlocutory order. Nothing said herein should be taken as an expression of opinion on the merits of the main case. The petition is dismissed.

S.C.K.

Before K. Sreedharan, C.J. N.K. Sodhi & Swatanter Kumar, JJ

OM PARKASH CHAUTALA,—*Petitioner*

versus

THE STATE OF HARYANA & OTHERS,—*Respondents*

CWP No. 10245 of 97

11th August, 1997

Constitution of India, 1950—Arts. 174 194(3), 212, 213 and 226—Ordinances 2 & 3 of 1997—Rules of Procedure and Conduct of Business in Haryana Legislative Assembly—Rls. 104 & 121—Suspension of member—Challenge to—Vidhan Sabha can be prorogued only by order of Governor—No provision for deemed prorogation of Assembly—Ordinances 2 & 3 of 1997 issued by mistake during session withdrawn under Art. 213 (2)(b)—Court

has jurisdiction to go into nature of proceedings inside the legislature and if they suffer from any illegality but not mere irregularity—Right to free speech within the House can be made subject only to Rules of Procedure framed by the House itself—Orders of suspension of members would lapse with an order of the Governor proroguing the House—Subsequently, no effective relief can be granted to the petitioner since the suspension cannot be continued into the next session Court, however, not examining the powers of the House to suspend members on the finding that the writ petition has become infructuous.

Held, that in the ordinances it is admitted by the Governor and Council of Ministers that Haryana Vidhan Sabha is not in session. That admission it was argued, can be taken to established the true state of affairs and thereby it is to be taken as that House was not in session. In other words, the House stood prorogued. On the advice of Council of Ministers, the Governor issued two ordinances, as though, the House was not in session. The petitioners have no case that the Governor issued any order proroguing the session. In the absence of such an order by the Governor, the statement made by the Council of Ministers that the House is not in session, was factually incorrect. When the House was in session, the Governor was not justified in issuing the ordinances. Consequently when the mistake was realised by the Council of Ministers, they got ordinances 2 & 3 of 1997 withdrawn under sub clause (b) of clause 2 of Article 213 of the Constitution. In such a situation, issuance of ordinances 2 & 3 of 1997 cannot advance the contention raised by the petitioners that the Haryana Vidhan Sabha stood prorogued when it was adjourned *sine die* on 21st March, 1997.

(Para 7)

Further held, that we are not in a position to accede to the request made on behalf of the respondents that these writ petitions are to be dismissed at the threshold on the ground that this Court has no jurisdiction to go into the nature of proceedings inside the legislature. Therefore, we do not find any merit in the contention raised by the respondents that this Court has only to dismiss the petitions on the ground that proceedings in the legislature are outside the purview of judicial review by this Court.

(Paras 9 and 10)

Further held, that controversy between the parties, are afraid, is not to be tackled in these cases because no effective relief can be given to the petitioners before us. Petitioners were suspended from attending the remaining part of the Budget Session, which started on 5th March, 1997—That Session has now been prorogued by the

Governor on 23rd July, 1997. Rule 7 of the Rules of Procedure of the Haryana Vidhan Sabha provides that when a session of the Assembly is prorogued all pending matters should lapse. By virtue of the above provision the orders passed against petitioners suspending them for rest of the Session have elapsed and petitioners are entitled to take part in the proceedings in the House when Governor summons the House next time. In view of the changed circumstances and in view of the fact that no effective relief can be given to the petitioner at this point of time, we refrain from examining the powers of the House to suspend one of its members for the rest of the session after suspending Rule 104 of the Rule of Procedure and Conduct of Business of Haryana Vidhan Sabha.

(Para 21)

S.C. Mohunta, Senior Advocate with R.S. Kundu,
Advocate, *for the petitioner.*

H.L. Sibal, Senior Advocate with R.S. Surjewala, Advocate
and Reeta Kohli, Advocate. D.D. Thakur, Senior
Advocate with L. Nagendra Rao, Advocate.
H.S. Hooda, Advocate General with P.K. Mutneja,
Additional Advocate General, *for the Respondents.*

JUDGMENT

K. Sreedharan, C.J.

(1) Issues raised in these writ petitions are identical. Respondents in these cases are same. Arguments advanced on behalf of the petitioners are identical. so we consider it advantageous to dispose of these petitions by a common judgment.

(2) Writ petition No. 10245 of 1997 is at the instance of leader of Samta Legislature party, who is recognised as Leader of the opposition in the Haryana Vidhan Sabha. He is an Ex-Chief Minister of the State. Haryana Vidhan Sabha had its Budget session from 5th March, 1997 to 21st March, 1997. While Vidhan Sabha was in session, on 17th March, 1997, the petitioner took part in the discussion on the budget for 1997-98. He sought certain clarifications from the Education Minister, relating to certain anomalies in the pronouncements made by the Minister *vis-a-vis* proposals in the budget. Chief Minister felt embarrassed and irritated on the issues raised by the petitioner. Thereupon, it is alleged that the Chief Minister got up and asked the Speaker, "whether you are going to set them right or we set them right".

This stand taken by the Chief Minister, it is alleged was questioned by the petitioner and others. Without any further provocation, 4th respondent-Minister-in-Charge of Agriculture and Parliamentary Affairs, moved a motion for suspension of the petitioner from the House for the remainder of the session. That motion was carried by the House. The petitioner and members of his party staged a walk-out. He has thereafter not been allowed to attend the remaining part of the session which was adjourned *sine die* on 21st March, 1997. Legislature was not prorogued by the Governor as provided by Article 174 of the Constitution. Since petitioner was under *bona fide* belief that assembly session will be prorogued when it was adjourned *sine die*, after exhausting all the business scheduled for that session, he did not take any action to question his suspension from the session. Once session is prorogued, all proceedings pending at that time are to lapse. The Chief Minister deliberately did not advise Governor to prorogue the House. In the absence of the order proroguing the House, the session was deemed to be continuing. Speaker of the House issued telegrams/notices to the members of the Vidhan Sabha to attend the session commencing on 21st July, 1997. Petitioner and other three members who were suspended from the session were not informed of this. This action of the Speaker in connivance with the chief Minister for excluding the petitioner and three others from taking part in the Session is nothing but a fraud on the Constitution, motivated and tainted with gross *mala fides*.

(3) Governor of Haryana issued two ordinances; ordinance No. 2 and 3 of 1997, under Article 213 of the Constitution of India on the basis that the Vidhan Sabha is not in session. This action of the Governor, based on advice of the Council of Ministers, must be taken as a ground to treat the session as prorogued after it was adjourned *sine die* on 21st March, 1997. Thus the budget session must be deemed to have been prorogued and the session starting on 21st July, 1997 is to be treated as a new session. In such a situation, the suspension of the petitioner, which was effected by the motion of 17th March, 1997, cannot be a bar to his taking part in the new session. On these basis he prayed for issued of writ of certiorari quashing the motion, a copy of which is marked as Exhibit-P1, carried on 17th March, 1997 and for writ of prohibition restraining respondents No. 2 to 5 from preventing the petitioner and others in attending the session of Vidhan Sabha commencing from 21st July, 1997.

(4) No. CPW 10259/1997 is at the instance of leader of the

Congress Legislature Party in Haryana Vidhan Sabha. According to him on 18th March, 1997, he wanted to raise the issue of suspension of the petitioner in the other case before the legislature. He also wanted to bring to the notice of the House that a motion of no confidence has been moved against the Speaker. He wanted that motion be given precedence over all other business of the house. Immediately on making his submission to this effect Minister in charge of parliamentary Affairs moved a resolution to suspended him from the House. That resolution was carried. In the similar manner other two MLAs were also suspended for the remainder of the session. On succeeding days, the members of the opposition pleaded to the Government and Speaker to allow the suspended members to take part in the proceedings. That request fell on deaf ears. Since the session was ending on 21st March, 1997, no other action was taken by the petitioner against the suspension. House completed all its business set-out for the session and adjourned sine die on 21st march, 1997. The session was kept continuing without an order being issued proroging it. When the session was recalled to start on 21st July, 1997, the suspended members were not invited to attend the same. It is alleged that it was fraud, played by the Speaker and the Chief Minister, on the Constitution.

(5) Notice of petitions were served on all the respondents. The Chief Minister filed detailed written statement. It was contended by him that Haryana Vidhan Sabha cannot be deemed to have been prorogued on 21st March, 1997 and that it was in fact prorogued on 23rd July, 1997 only. Order of the Governor, proroging Vidhan Sabha, dated 23rd July, 1997 has been published in the Extraordinary Gazette. Order of suspension passed against the petitioners are co-terminus with the completion of the session. Thus both the petitions became infructuous on the prorogation of the Vidhan Sabha. Prorogation brought an end to the orders of suspension passed against the petitioners. Orders of suspension passed against the petitioners were not challenged for the past nearly four months, during which period the Vidhan Sabha must be deemed to be in session. On account of these laches, petitioners cannot challenge the orders of suspension either. Re-convening of the assembly by the Speaker on 21st July, 1997 cannot be treated as a fresh session of the Vidhan Sabha. It is so because Governor has not issued any order under Article 174 of the Constitution summoning the session. On 21st March, 1997, Speaker adjourned the Assembly and he reconvened the same on 21st July, 1997. Adjournment of the session and its reconvening were done by the

Speaker without intervention by the Governor, under Article 174 of the Constitution. Ordinances 2 & 3 of 1997 were issued by the Governor on the advice of Council of Ministers on a mistaken impression that the Assembly had been prorogued. Since the Assembly was not in fact prorogued, the said two ordinances were repealed retrospectively from the date of their issue because they were void *ab-initio*. It is further contended that resolutions passed by the House suspending the petitioners are not open to challenge before the High Court under Article 226 of the Constitution because of the provisions contained in Article 212 of the Constitution. Proceedings in the House are not open to the challenge on the ground of procedural irregularity. Powers and privileges of the House under Article 194(3) of the Constitution include the power to suspend a member in the event of his disorderly conduct in breach of the rules of procedure of the House. Their rights are controlled by the rules of the House framed under Article 203 of the Constitution. When a member commits a breach of the rule and exhibits disorderly behaviour, materially obstructing the course of proceedings, he is liable to be proceeded against, as was done in the instant case. Speaker has powers under Rule 104 of the Rules of Procedure of the House of preserve order, Rule 121 of the Rules in its application to any particular situation. When the house notices that the Speaker's warning was not followed by the member a motion can be moved for suspension of Rule 104. When that motion is carried another formal motion for suspension of a member can be moved. If such a motion is carried, member can be suspended for the remaining session of the House. In the instant case, suspension of Rule 104 for taking action against member, guilty of disorderly behaviour, was fully justified.

(6) Budget Session of Haryana Vidhan Sabha started on 5th of March, 1997. Business Advisory Committee of the Haryana Vidhan Sabha recommended the sittings of the house from 5th to 21st March, 1997 for transacting the business before it. Entire business as per the schedule adopted by the Committee was to be over by 21st March, 1997. Business thus allotted to various sittings of the house upto 21st March, 1997 were completed. Thereupon the Speaker adjourned the House *sine die*. As per clause 2 of Article 174 of the Constitution, Governor has to prorogue the house. In the absence of such an order of prorogation issued by the Governor, the session will be deemed to be continuing. There is no provision in the Constitution to infer an order proroging the Assembly. We scanned through May's Parliamentary Practice without any success

to find out whether there can be a deemed order proroging the House. In such a situation, the arguments advanced by the learned counsel representing the petitioners that the Haryana Vidhan Sabha must be deemed to have been prorogued when it was adjourned sine die on 21st March, 1997, cannot be accepted.

(7) Learned counsel brought to our notice the action on the part of the Council of Ministers in getting ordinances 2 & 3 of 1997 issued by the Governor. In the ordinances it is admitted by the Governor and Council of Ministers that Haryana Vidhan Sabha is not in session. That admission it was argued, can be taken to establish the true state of affairs and thereby it is to be taken as that House was not in session. In other words, the House stood prorogued. On the advice of Council of Ministers, the Governor issued two ordinances, as though, the House was not in session. The petitioners have no case that the Governor issued any order proroging the session. In the absence of such an order by the Governor, the statement made by the Council of Ministers that the house is not in session, was factually incorrect. When the House was in session, the Governor was not justified in issuing the ordinances. Consequently when the mistake was realised by the Council of Ministers, they got ordinances 2 & 3 of 1997 withdrawn under sub-clause (b) of clause 2 of Article 213 of the Constitution. In such a situation, issuance of ordinances 2 & 3 of 1997 cannot advance the contention raised by the petitioners that the Haryana Vidhan Sabha stood prorogued when it was adjourned *sine die* on 21st March, 1997.

(8) Learned counsel representing the respondents raised the contention that the proceedings which took place in the Haryana Vidhan Sabha are not open to challenge before any Court. Reliance was placed on Article 212 of the Constitution to support their above arguments. That provision only states that the proceedings in the legislature shall not be called in question on the ground of any alleged irregularity of procedure. If the proceedings in the legislature is attacked on the ground of illegality or unconstitutionality, judicial review of such a proceeding is not barred by Article 212. The Apex Court in *In Re* under Article 143 of the Constitution of India, AIR 1965 SC 745 stated the law as "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 not more than this that the procedure was irregular”.

(9) In the light of this statement of law, we are not in a position to accede to the request made on behalf of the respondents that these writ petitions are to be dismissed at the threshold on the ground that this Court has no jurisdiction to go into the nature or proceedings inside the legislature.

(10) Judiciary in India, under the constitution, is entrusted with the duty to keep the Executive and Legislature within the limits or powers conferred upon them by the constitution. This power of judicial review is conferred on the Judiciary under Articles 32 & 226 of the Constitution. This duty is one of the basic features of the Constitution,— *vide* reference case under Article 143 i.e. *A.I.R. 1975 SC 745 and L. Chandra Kumar v. Union of India* (1). Therefore, we do not find any merit in the contention raised by the respondents that this Court has only to dismiss the petitions on the ground that proceedings in the legislature are outside the purview of judicial review by this Court.

(11) Learned counsel representing the petitioners argued that republican and democratic form of Government adopted by Constituent Assembly is a basic structure of the Indian constitution *vide Keshvananda v. State of Kerala* (2). No one can be allowed to act in a manner undermining the same. Since the action of the respondents is aimed to destroy this basis structure, this Court should set aside the impugned orders, it was argued.

(12) What is democracy? According to Abraham Lincon, democracy is the Government of the people, for the people and by the people. It is a form of Government wherein the ruling power of the State is vested not in any particular class or classes, but in the members of the community as a whole. It is a political method by which every citizen has the opportunity of participating through discussion in an attempt to reach voluntary agreement, as to what shall be done for the good of the community as a whole. Since the public at large cannot take part in decision making process, they have their elected representatives to put forth their views at the discussion. These representatives should have widest latitude to express their views on issues of policy. Only on the basis of such

1. AIR 1997 S.C. 1125
2. AIR 1973 S.C. 1461

discussion a consensus on any policy which will be more suitable to the common man can be arrived at. Any action which will go to scuttle the same will be the death knell of democracy. All steps taken by respondents are aimed to achieve that goal. The elected representatives in the Assembly must have their full say on all issues before it. It is for that purpose they are given complete freedom of speech inside the legislature under Article 194 (1) & (2) of the Constitution. Indian Constitution has thus given full freedom of speech and expression inside the legislative chamber. This freedom has been recognised by the Apex Court when their Lordships observed in the reference case observing "(But) the significant effect still remains that the Constitution makers thought it necessary to make the specific provision by Article 194(2) and that is the limit to which the constitution has gone in its objective of securing complete freedom of speech and expression within the four walls of the legislature chamber". This liberty can be controlled by rules and standing orders framed by the legislature for regulating its procedure.

(13) Haryana Vidhan Sabha framed Rules of Procedures and Conduct of Business in Haryana Legislative Assembly under Article 208 of the Constitution of India. That gives power to the Speaker under Rule 104 to order a member to withdraw from the House during the remainder of the day's meeting or for any period not longer than the remainder of the session. This power to direct a member to absent himself from the house, it is contended by the petitioners, is available only to the Speaker. It cannot be usurped by the leader of the House or at his instance by majority of the members, who support him. The position of the Speaker in the House is that of an impartial arbitrator. He has the duty to enforce the observance of all rules and orders for preserving order in the proceedings before the house. The primacy of the Speaker is recognised by the Apex Court in *Kihota Hollohon v. Zachilhu*, (3), wherein their Lordships were dealing with the constitutionality of 10th Schedule to the Constitution of India. Their Lordships quoted the following passage from the speech of Pandit Nehru in Parliament to highlight the importance and status of the august of Speaker :—

"The Speaker represents the House, He represents the dignity of the House, the freedom of the House and because the House represents the nation, not a member, the Speaker becomes a symbol of nation's freedom and

liberty. Therefore, it is right that should be the honoured position, a free position and should be occupied always by men of outstanding ability and impartiality”.

(14) A person holding such high office has been entrusted with the duty to maintain the order in the House under Rule 104 of the Rules of Procedure. Thereafter, according to the learned counsel representing the petitioners, House cannot take upon itself the authority to suspend a member on the allegation that he is not behaving in an orderly manner. If such a power is conceded, it is argued, a Chief Minister who is clinging on to his position on a slender majority in the House will get the chance to keep members of the opposition out of House. This will undermine the democratic feature of the Constitution, and will result in imposing the authoritarian views of Chief Minister on the common man without even showing the courtesy to hear the views of the opposition. Under no circumstances can such a situation be envisaged in the working of the Indian Constitution.

(15) In 1970, a Full Bench of this Court *Jai Singh Rathi v. State of Haryana* (4), took the view :—

“The approach urged on the side of the petitioners cannot be correct because unless the Haryana Legislative Assembly had the powers 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.”

(16) Another Full Bench of this Court consisting of 5 Judges in *Hardwari Lal v. The Election Commission of India* (5), concurred with the above view and observed :—

“The imposable punishment for contempt of the House are known and well settled as being admonition, reprimand, suspension from the service of the House for the session, fine and lastly the keystone in this context being the power to commit the contemner to prison.”

(17) Above mentioned two decisions are authorities for the position that inspite of Rule 104 of Rules of Procedures, the Haryana

4. 1979 PLR 145

5. ILR 1997 (2) P&H 269

Vidhan Sabha retains with it the power to suspend a member from the House for the session:

(18) The view taken by the above two Full Benches, according to the counsel for petitioners require re-consideration. It is their argument, that a member chosen by the electorate in a general election, in the ordinary circumstances, is entitled to serve that constituency for a for a period of 5 years. This right is not the sole privilege of the elected member but is of the people of the constituency to have their representative in the House for the specified period. If the House is suspending him from the legislature, whatever be the cause, it will affect the right conferred on the people of the constituency to be represented in the legislature. Their representative has got the absolute freedom of speech within the four walls of the House, under Article 194(1) and (2) of the Constitution. That right can be made subject only to Rules of Procedure framed by the House. The Speaker and the Speaker alone has the power to control the members for maintaining order in the House. When the House suspends Rule 104, it is argued, the House will not regain any power to suspend a member. Hence the House cannot suspend a member for the remaining part of the session. In this view, the learned counsel prayed for placing these cases before a Full Bench of seven Judges to consider the correctness or otherwise of the earlier Full Bench decisions, referred to above.

(19) Learned counsel representing the petitioner went on to argue that Constitution of India is an organic document. It should be interpreted in the light of the experience. It has to be flexible and dynamic to adapt itself to the changing condition. It must act itself in a pragmatic way to attain the goals of national development. In this view, the Court should endeavour to interpret the Constitution in such a way that it helps to sustain democracy from being thwarted by a Chief Minister, who carries on the administration with slender majority. In support of this argument, reliance was made on observations made by Sabyasachi Mukharji, J. in the judgement in *Synthetic & Chemicals Ltd. v. State of U.P.* (6).

(20) In replay to the above submission made by counsel on behalf of the petitioners it was argued on behalf of the respondents that the powers of the Haryana Vidhan Sabha as recognised by the above two Full Benches cannot now be questioned in view of Section 26 of the Constitution (44th amendment) Act, 1978. By that section,

the powers, privileges and immunities of the Haryana Vidhan Sabha are those which the House and its members had prior to the coming into force of section 26. The powers of the House and its members prior to the coming into force of Section 26, namely 30th April, 1979 were those recognised by this Court in the above two Full Benches, Consequently, counsel representing the respondents argued that those rights and privileges of the members of the Haryana Vidhan Sabha recognised by the Full Benches, have now got constitution's protection and are, therefore, immune from judicial scrutiny.

(21) The above mentioned controversy between the parties, we are afraid, is not to be tackled in these cases because no effective relief can be given to the petitioners before us. Petitioners were suspended from attending the remaining part of the Budget Session, which started on 5th March, 1997. That Session has now been prorogued by the Governor on 23rd July, 1997. Rule 7 of the Rules of Procedure of the Haryana Vidhan Sabha provides that when a session of the Assembly is prorogued all pending matters should lapse. Learned Advocate General representing the Speaker and the Chief Minister stated before the Court that by virtue of the above provision the orders passed against petitioners suspending them for rest of the Session have elapsed and petitioners are entitled to take part in the proceedings in the House when Governor summons the House next time. In view of the changed circumstances and in view of the fact that no effective relief can be given to the petitioner at this point of time, we refrain from examining the powers of the House to suspend one of its members for the rest of the session after suspending Rule 104 of the Rule of Procedure and Conduct of Business of Haryana Vidhan Sabha.

(22) The writ petitions have become infructuous and these are accordingly dismissed.

R.N.R.