

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.905 OF 2008

Shri Nandlal,
Age 62 years,
The State Election Commissioner,
Maharashtra State,
Administrative Bldg.,
1st Floor, Opp: Mantralaya,
Mumbai-400 032.

.... Petitioner

- Versus -

1. The Principal Secretary,
Maharashtra Legislative
Assembly, Vidhan Bhavan,
Mumbai.
2. The Speaker,
Maharashtra Legislative
Assembly, Vidhan Bhavan,
Mumbai.
3. Mr. Chandrakant Chhajed,
The Convener of Legislative
Privilege Committee,
Vidhan Bhavan, Mumbai.
4. The Commissioner of Police,
Mumbai.

5. State of Maharashtra Respondents

Sarvasri Shrihari Aney, Senior Counsel a/w
Sachindra B. Shetye for the Petitioner.

Sarvasri Rafiq Dada, Senior Counsel as
Amicus Curiae.

Sri D.A. Nalawade, Government Pleader, for
the Respondent Nos.4 and 5.

CORAM: SRI R.M.S. KHANDEPARKAR &
SRI A.A. SAYED, JJ.

DATED: AUGUST 14, 2008

ORDER (Per Sri R.M.S. Khandeparkar, J.):

1. Heard. By the present petition the petitioner is seeking to challenge the special report of the Legislative Privilege Committee dated 26-3-2008 and further to quash and set aside the sentence of simple imprisonment which was imposed upon the petitioner upon the recommendations of the Legislative Privilege Committee.

2. On or about 7-3-2006 one of the Members of the Maharashtra Legislative Assembly, namely, Sri Janardan Chandurkar moved a privilege motion under Rule 273 of the Maharashtra Legislative Assembly Rules against the petitioner alleging that the order issued by the petitioner in his capacity as the Commissioner, State Election Commission amounted to breach of privilege of the Legislative Assembly. A show cause notice dated 27-3-2006 came to be issued to the petitioner to which the office of the petitioner, under the reply dated 26-6-2006, sought to explain that the order of the Commissioner dated 7-3-2006 did not amount to breach of privilege. A further notice came to be issued to the

petitioner on 27-6-2006 along with certain copies of the documents and the same was also sought to be replied by the office of the petitioner on 28-6-2006 which was followed by correspondence between the office of the State Election Commissioner and the office of the respondent No.1.

3. On 2-1-2008 a notice came to be issued to the petitioner by the Privilege Committee of the Maharashtra State Legislative Assembly through the Principal Secretary requesting the petitioner to remain present before the Committee for recording his deposition in the matter. The said notice was sought to be replied by the petitioner on 4-1-2008 and according to him it was appropriate to place his submissions before the Committee and the Members thereof with the expectation that the Committee would take appropriate and legal decision after taking into consideration the provisions of the Constitution of India and on analysing the judgments of the Supreme Court and the High Courts.

4. On 16-1-2008 the Legislative Privilege Committee, in its meeting, rejected the said submissions of the petitioner and held that since the petitioner had failed to remain personally present before the Committee, it was contempt of the Committee. The Privilege Committee thereupon recommended that the

petitioner should be sentenced for seven days civil imprisonment for not remaining present before the Committee and for not sending the reply under his signature.

5. Thereafter, the Maharashtra State Legislative Assembly adjudged the petitioner guilty of contempt of the Assembly for avoiding to submit his written explanation under his own signature to its Committee on Privileges and for declining to appear before the Committee for tendering the evidence and resolved that the petitioner be imprisoned in a civil prison for two days. The Speaker of the Maharashtra Legislative Assembly consequently issued the warrant of commitment on 27-3-2008 which was executed by a Senior Inspector of Police on the very day and on 28-3-2008, on completion of two days' imprisonment, the petitioner was released from the prison.

6. Though various grounds are sought to be enumerated in the petition, the learned senior counsel appearing for the petitioner, relying upon the decision of the Apex Court in the matter of **Raja Ram Pal v. Hon'ble Speaker, Lok Sabha and others**, reported in (2007) 3 SCC 184, has sought to restrict the challenge to the grounds enumerated under para 8(d), (f), (g), (h) and (j) of the memo of the petition.

7. The learned senior counsel appearing for the petitioner, while contending that the action on the part of the Privilege Committee of the Maharashtra State Legislative Assembly to be in total violation of the fundamental right to personal liberty guaranteed under Article 21 of the Constitution of India, submitted that the report of the Privilege Committee and the recommendation thereof clearly disclose that the petitioner was held guilty of contempt of the Committee and further recommended for being sentence to civil imprisonment; however, before implementing the recommendations, neither the Privilege Committee nor the Assembly gave any notice to the petitioner to show cause as to why the Committee should not proceed against him for committing the contempt nor gave him opportunity to show cause why he should not be punished and sentenced for the alleged contempt of the Privilege Committee. The action on the part of the Privilege Committee in convicting the petitioner for contempt of the Committee and sentencing him to civil prison on that count, without giving any opportunity to defend the rights of the petitioner, is in defiance of the principles of natural justice and in clear violation of the fundamental right assured to the petitioner under Article 21 of the Constitution of India. The minimum that was expected from the Committee and the Assembly

was to give an opportunity to the petitioner of being heard before arriving at the finding of guilt as well as before committing the petitioner to the prison. The absence of just and fair procedure clearly amounts to arbitrary action on the part of the respondents and, therefore, the resolution of the Committee in that regard requires to be quashed. It is also sought to be contended on behalf of the petitioner that he was sought to be arrested even without issuance and service of the warrant of arrest, in totally high-handed manner, and in total disrespect to the liberty of the petitioner as also in disrespect to the constitutional office held by the petitioner and the same clearly shows total arbitrariness on the part of the respondents.

8. The learned senior counsel appearing for the petitioner also submitted that the challenge is on the ground specified in para 8(j) of the petition. The said ground relates to the contention that the order dated 7-3-2006, issued by the Election Commissioner, was the subject-matter of judicial proceedings before the High Court in Writ Petition No.1766 of 2006 and, therefore, the Privilege Committee should not have entertained any proceedings in that regard. However, no arguments whatsoever were advanced on behalf of the petitioner in that regard.

9. Shri R.A. Dada, Senior Advocate appointed as amicus curiae in the matter submitted that the records clearly reveal that the petitioner was afforded ample opportunity to submit the explanation under his signature which he failed to avail and when he was requested to appear before the Committee, he did not show any respect for the Committee, which is undisputedly an adjudicatory body and, therefore, non-compliance of the directions of the Committee would certainly amount to contempt of the Committee and being so, if the Committee proceeded to hold the petitioner guilty of contempt of the Committee, no fault can be found with such decision. He further submitted that the petitioner himself having chosen to remain absent before the Committee, it is too late for the petitioner to raise hue and cry about non-compliance of the principles of natural justice or violation of the fundamental right under Article 21 of the Constitution. According to the learned senior counsel, the conduct of the petitioner itself discloses that the Committee was left with no option than to proceed to hold him guilty and penalise him. The said order was passed in such a situation where the petitioner's explanation for avoiding the punishment, if any, could not be found on record solely on account of the petitioner having chosen to remain absent, knowing well the procedure which any adjudicatory body would follow in such circumstances.

If the party himself/herself chooses to remain absent, he/she cannot thereafter make grievance about the non-availability of the opportunity to put forth his/her say on the point of punishment imposed by such adjudicatory body, after holding the party to be guilty of contempt of such body. Further, drawing our attention to the decision of the Apex Court in **Raja Ram Pal's** case (supra) as well as of the Full Bench of this Court in **Manjit Singh Moolsingh Sethi v. Maharashtra Assembly & Anr.**, reported in 2006 (2) Bom.C.R. (Cri.) 177, the learned senior counsel submitted that it is always open for the Assembly to prescribe the procedure in exercise of powers assured under Article 208 of the Constitution and the Assembly is not bound by the provisions of the Criminal Procedure Code and/or the Evidence Act and further that the High Court in exercise of its writ jurisdiction cannot sit in appeal over the decision taken by the House or the Privilege Committee under the garb of judicial review and the Court's jurisdiction is restricted to consider whether the order is ex facie mala fide or is capricious.

10. The learned Government Pleader while reiterating the arguments by the learned amicus curiae drew our attention to the fact that before arrest of the petitioner, he was shown the warrant of arrest and the copy thereof was also furnished to the office of the

petitioner before the petitioner was arrested. Attention was drawn to the copies of the warrant which was issued by the Speaker and addressed to the Commissioner of Police as well as the letter of the Principal Secretary forwarding the warrant of arrest. He has further submitted that mere endorsement by the office of the petitioner to the effect that the warrant of arrest was forwarded to the office of the petitioner on 28-3-2008, which is apparently false, would not be sufficient to hold that the warrant was, in fact, issued on 28-3-2008.

11. As far as the power of the Privilege Committee to punish a person for contempt of the Committee is concerned, there is no dispute between the parties and the learned senior counsel appearing for the petitioner has fairly submitted that the petitioner does not want to dispute such power. The only contention which is sought to be canvassed is that before holding the petitioner guilty of contempt of the Committee and before sentencing the petitioner to suffer imprisonment in civil jail, it was necessary for the Privilege Committee to give the petitioner an opportunity of being heard and failure in that regard vitiates the decision of the Committee and renders the imposition of punishment bad in law.

12. Perusal of the records and in particular the one relating to the proceedings before the Privilege Committee as also the correspondence between the office of the petitioner on the one hand and the office of the respondents on the other disclose that the Privilege Committee in its meeting held on 15-6-2006 decided to call for written explanation from the petitioner regarding certain orders issued by the petitioner on 7-3-2006. Pursuant to the issuance of such notice calling for an explanation, the Committee received a letter dated 26-6-2006 from the office of the State Election Commission under the signature of the Deputy Secretary thereof. The Committee considered the said letter in its meeting held on 3-7-2006 and decided to call for an explanation under the petitioner's own signature and not through any of the officers of his office. Pursuant thereto, another letter was received from the petitioner by the Privilege Committee being letter dated 6-7-2006 again under the signature of the Deputy Secretary to the State Election Commission. The same was considered in the meeting of the Privilege Committee held on 30-8-2006 and it was decided to give one more opportunity to the petitioner to submit his explanation under his own signature. On communication of the said decision to the petitioner, the reply dated 8-9-2006 was received by the Privilege Committee again under the signature of the Desk Officer of the State

Election Commission. After considering the said letter dated 8-9-2006, in its meeting held on 27-9-2006 it was decided by the Privilege Committee to request the petitioner to appear before the Privilege Committee for recording his testimony in the matter. A letter to that effect was addressed to the petitioner by the Committee Officer of the Maharashtra Legislature Secretariat requesting the petitioner to remain present at 12:00 noon on Wednesday, the 11th of October, 2006 in Room No.711, 7th Floor, Vidhan Bhavan, Mumbai for his deposition. The Committee also decided to obtain views from the Advocate General of the State of Maharashtra as also of the Secretary, Secretariat of the Maharashtra Legislative Assembly in the matter. The views expressed by the Secretary, Secretariat of the Maharashtra Legislative Assembly were considered by the Privilege Committee in its meeting held on 19-12-2007 and further in its meeting held on 26-12-2007 the Advocate General was sought to be requested to attend the Committee's meeting, to be held on 2-1-2008 to know his views in the matter. Accordingly, on 2-1-2008 the Advocate General appeared before the Committee and expressed his views in the matter. Thereafter, the Committee decided to give one more opportunity to the petitioner to appear before the Committee and to inform him accordingly to attend the meeting of the Committee to be held on 16-1-2008. Accordingly, under the letter dated 2-1-2008 the

petitioner was requested to appear before the Committee on Wednesday, the 16th of January, 2008 for recording of his deposition. In answer to the said letter, the petitioner under the letter dated 4-1-2008 informed the Principal Secretary of the Maharashtra Legislature Secretariat that according to him it was not necessary for the petitioner to remain present before the Privilege Committee and it would be appropriate to place his submissions before the Privilege Committee and the Members thereof and he expected that the Privilege Committee to take proper and legal decision after taking into consideration the provisions of the Constitution of India as also on analysis of the judgments of the Supreme Court and the High Courts. The Committee in its meeting held on 16-1-2008, on consideration of the said letter of the petitioner, decided to submit special report in that regard to the House. The draft of the special report was discussed and approved by the Committee on 26-3-2008 and thereafter the House while accepting the report, held the petitioner guilty of contempt of the Committee and imposed the punishment as stated above.

13. It is pertinent to note that even after failure on the part of the petitioner to respond to the notices issued by the Privilege Committee, ample opportunity was given to the petitioner to submit his explanation under

his own signature. What is further more important to note is that even after persistent failure in that regard on the part of the petitioner, before taking any drastic step, the Privilege Committee exhibited utmost restraint and took proper care to obtain legal opinion of the Advocate General as well as of the authority conversant with the legislative procedure and, even after obtaining such expert opinion in that regard, the Committee proceeded to give further opportunity to the petitioner by requesting him to appear before the Committee to record his deposition. When the petitioner failed to respond favourably to the repeated requests made in that regard, without hastening to take any decision in the matter, the Committee offered ample opportunities to the petitioner requesting him again to appear before the Committee to record his deposition. However, the petitioner chose to reply to such request in the following words:

"I do not want to mention anything other than the above submissions, and therefore, I do not think it necessary to remain present before the Privileges Committee. It would be appropriate to place my submissions before the Privileges Committee and the members thereof. It is expected that the

Privileges Committee shall take proper and legal decision after taking into consideration the provisions of the Constitution of India and also analysing the judgments given by the Supreme Court and High Courts."

14. Prior to the said last letter dated 2-1-2008, from which the above para has been quoted, even in the letters which were sent from the office of the State Election Commission under the signature of either the Deputy Secretary of the State Election Commission or the Desk Officer thereof, it is seen that the officers of such high constitutional body did not observe the required restraint while replying to the letters received from the office of another constitutional body comprising of the elected members. In the letter dated 3-10-2006, under the signature of the Desk Officer, it was stated that:

"It is published in newspapers that Shri. Janardan Chandurkar, Member of the Legislative Assembly has made some undesirable comments in the Legislative Assembly with regard to the Courts and Judges in India and also the State Election Commissioner. The action

taken in this regard may be intimated to the State Election Commission.

By order of the State Election Commissioner,"

15. It is also to be noted that in every letter which was addressed from the office of the State Election Commission, it has been repeatedly informed to the Privilege Committee that it may take legal decision in accordance with the provisions of law and the petitioner was not required to send the reply under his signature in respect of official action taken by him.

16. The undisputed facts which are placed on record, therefore, unequivocally disclose that the petitioner was given ample opportunities to put forth his case before the Privilege Committee and even after failure to avail such opportunities, the petitioner was given further opportunity to appear in person before the Committee so that the Committee could record his statement in the matter. However, inspite of repeated opportunities given on both the counts, the petitioner decided not to appear before the Committee and left it to the Committee to take appropriate decision in the matter. The point which arises in such circumstances, in view of the contention sought to be raised regarding

violation of the fundamental right guaranteed under Article 21 of the Constitution of India is that whether the petitioner was deprived of his personal liberty in total disregard to the procedure established by law, in the sense that the petitioner was not afforded opportunity of being heard before the penalty of imprisonment was imposed upon the petitioner. The settled law speaks of fair procedure or reasonable and just procedure in the context of Article 21. At the same time, whether the procedure followed in a particular case is a fair one or just and reasonable one, will all depend upon the facts of that particular case. The law in that regard is also well-settled. {vide: the decision of the Apex Court in **Chamanlal Sahu v. Union of India**, reported in AIR 1990 SC 1480 = 1990 (1) SCC 613}.

17. The narration of the facts which preceded the action of arrest of the petitioner and particularly the conduct of the petitioner, without forgetting the fact that the petitioner occupied a constitutional post, it is apparent that the petitioner himself had invited a situation whereby the adjudicating body i.e., the Privilege Committee had no occasion to hear the petitioner on the point of punishment for non-compliance of the directions issued by the Committee, and that too, inspite of repeated warnings issued to the petitioner

that non-compliance of the directions of the Committee would amount to contempt of the Committee. It is also to be noted that before taking the drastic step of imposing punishment, the Committee took due care of ascertaining the views of the learned Advocate General on the matter as also of the Secretariat of the Maharashtra Legislative Assembly. In the facts and circumstances of the case, the Privilege Committee having taken its decision after taking due precaution of knowing the provisions of law and taking into consideration the conduct of the petitioner and the attitude of defiance clearly exhibited by the petitioner althroughout the proceedings, can it be said that the Committee has acted in defiance of the mandate of Article 21 of the Constitution of India vis-a-vis the right of the petitioner thereunder? In our considered opinion, the materials on record nowhere persuades us to find any fault with the decision of the Privilege Committee and the action taken by the competent authorities for due compliance of the decision of the Privilege Committee.

18. It is high time for the everyone to realise that while claiming protection for the liberty, no citizen can ignore his obligations he is bound to comply with. Undoubtedly, no liberty of any citizen can be taken away without following the procedure established by law.

That does not, however, give liberty to the citizens to act in defiance of the provisions of law and in utter disregard to their statutory obligations. When an adjudicatory body is empowered under the law to issue notices to deal with the issues which arise for consideration of such adjudicatory body, and for proper and complete adjudication of such issues the adjudicatory body requires the assistance or presence of any person, including a constitutional authority, before it, unless the person or the constitutional authority to which a notice is addressed by such adjudicatory body to appear before it, is lawfully exempted from such appearance or the process initiated in that regard by such adjudicatory body is either obstructed or halted by due process of law by the judicial body empowered to cause such obstruction or to halt such process, it cannot be said that the addressee of such notice by himself/herself choose to defy the mandate of such adjudicatory body, more particularly when such adjudicatory body also enjoys constitutional sanction for issuance of such process. Whether such an adjudicatory body is duly empowered to summon any other constitutional body or not, in the absence of any statutory provision in that regard, can only be decided by the Courts having plenary jurisdiction and no other authority can assume such power and try to defy the mandate or notice issued by any such adjudicatory body.

19. In the case in hand, the materials on record clearly reveal that it was to the knowledge of the petitioner that the Privilege Committee in exercise of its adjudicatory powers had issued the notice to the petitioner calling upon his explanation in the matter. Obviously, the minimum that was expected from the petitioner was to submit the explanation under his signature, irrespective of the fact whether the acts performed by the petitioner were in his official capacity or otherwise. Nobody can be heard to say that he would defy the notice of the adjudicatory body which has constitutional sanction for exercise of such powers and function. Merely because the petitioner was occupying a constitutional post, in the absence of power duly sanctioned by the Constitution or statutory provision, could not have assumed existence of such power to defy the notice of the Privilege Committee. A person himself committing wrong giving cause for a creation of a situation prejudicial to his own interest, cannot blame others for his own creation.

20. It is not to be understood that the Privilege Committee is not bound to follow the rules of natural justice or that it can pass orders without hearing the party. Undoubtedly, it is settled law that every citizen is entitled for protection against exercise of

arbitrary authority by the State or its officers and this rule also will apply to all the wings of the Government. The Apex Court in **Scheduled Caste and Weaker Section Welfare Association (Regd.) and another v. State of Karnataka and others**, reported in (1991) 2 SCC 604 has clearly observed that:

"If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power and the rule of natural justice operates in areas not covered by any law validly made."

At the same time, the Apex Court has clarified that:

"What particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the body of persons appointed for that purpose."

In other words, the grievance of non-observation of the rules of natural justice cannot be entertained ignoring the facts of the case. It will have to be considered

bearing in mind the facts in which the issue is sought to be raised in the matter.

21. The contention that the petitioner was arrested even without the warrant of arrest and that the warrant of arrest was served only on 28-3-2008, after release of the petitioner from jail, does not appear to be borne out from the record. The letter dated 29-3-2008 by the petitioner addressed to the Commissioner of Police, Mumbai clearly discloses the statement to the effect that when the petitioner had asked the police officer who had gone to arrest him about the arrest warrant, he had shown the petitioner the photocopy of the letter written by the Hon'ble Speaker, addressed to the Superintendent of Jail. Apparently, the records nowhere disclose any letter written by the Hon'ble Speaker to the Superintendent of Jail. On the contrary, the records disclose the warrant addressed to the Commissioner of Police by the Hon'ble Speaker for the arrest of the petitioner and further direction that the Commissioner of Police should ensure production of the petitioner before the Superintendent of Central Prison for the custody of the petitioner.

22. A contention was sought to be raised on the basis of an inward entry in the office of the petitioner on the copy of the warrant that it was received in the

office only on 28-3-2008. The contention does not appear to be borne out from the records. In fact, the contention that the copy of the warrant was received in the office of the petitioner on 28-3-2008 itself appears to be totally incorrect, if not false, as the inward entry stamp apparently discloses the date of 29-3-2008 to have changed to appear the same to be 28-3-2008 in the said stamp on the said copy of the warrant as the figure of "9" apparently appears to have been changed to "8" as far as it relates to date of receipt of the copy of the warrant. The changes made can be easily noted by naked eyes even in the zerox copy of the said document. Being so, there is no substance in the contention of the petitioner that the arrest of the petitioner was without any warrant.

23. The applicability of the rules of natural justice cannot be considered de hors the factual matrix of a given case. Its applicability will depend upon the facts of each case. Certainly, the conduct of a person making grievance about violation of such rules by others will also be a relevant factor for deciding the matter.

24. The materials no record, therefore, clearly convince us to hold that in the given situation, which was nothing but the creation of the petitioner himself, the Privilege Committee had no other option left than to

take appropriate steps which, in our considered opinion, the Committee took in the matter. Merely because the petitioner is occupying a constitutional post, it does not permit him to defy the orders issued by adjudicatory bodies in exercise of their powers and performance of duties which have constitutional sanction.

25. As already stated above, as regards the ground comprised under para 8(j), apart from contending that the petitioner has also raised the said issue, no submissions have been made in that regard, nor it is explained as to how merely because the matter was being considered by the High Court in Writ Petition No.1766 of 2006, it prohibited the Privilege Committee from proceeding with the matter in the absence of any restraint being imposed either by constitutional mandate or statutory provision or any other order of the Supreme Court or of this Court.

26. In the circumstances, we find no case for interference in the matter.

27. In the result, therefore, the petition fails and is hereby dismissed.

(A.A.Sayed, J.)

(R.M.S.Khandeparkar, J.)

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