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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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A CASE STUDY ON PARLIAMENTARY PRIVILEGES: RAJA RAM PAL V. HON'BLE SPEAKER, LOK SABHA AND ORS. (2007) 3 SCC 184

AUTHORED BY - DR. MANISHA BANIK

Abstract

The purpose of this case study is to examine and analyze the scope of Parliamentary powers and privileges granted under the Constitution of India. Indian Constitution had adopted the principle of Parliamentary Privileges to provide protection and immunity to the Legislatures which in turn is helpful for the smooth functioning of the Parliament. But while doing so these powers and privileges come in direct conflict of the fundamental freedom of speech and expression of others by prohibiting subjects like press and media from publishing the proceedings of the Parliament and Assemblies. Moreover, another contradiction aroused when the Parliament in the pretext of its exclusive power and privileges took the freedom of initiating proceedings and expelling members of their membership on event of allegation of some wrongful act against them. This research paper examines if Parliament has power to expel a member and whether such power falls within the scope of Parliamentary Privileges provided under Article 105 (3) of the Constitution of India.

Keywords: Parliamentary Privileges, Article 105 (3) of the Constitution of India, Freedom of speech.

Introduction

Article 105 and Article 194 grants certain privileges and immunities to the members of Parliament and State Assemblies known as Parliamentary Privileges. The immunities granted include freedom of speech, immunity from criminal and civil proceedings and publication of proceedings. There are many landmarks cases dealing with the explanation of the principle of Parliamentary Privileges and its conflict with fundamental freedom.

In many cases the Hon'ble Supreme Court held that Fundamental freedom of speech and expression shall be subservient to Parliamentary Privileges by applying principle of

harmonious construction. However, in some of the landmark cases the Apex Court held that Article 212 would have an overriding effect on the parliamentary privileges and tried to determine the scope of these parliamentary powers, immunities and privileges.

This research paper is a detailed qualitative study of the analysis and inferences drawn in a particular landmark case of *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha and Ors.*

I. Facts of the Case- On 12.12.2005, a TV News Channel broadcasted video footage where some members of Parliament were taking bribes for raising questions and issues in the House. It was broadcasted with the caption 'Operation Duryodhan/Cash for Questions'. On the same day the Hon'ble Speaker of the House issued the following statement of taking stern action: "Hon'ble Members, certain very serious events have come to my notice as also of many other Hon'ble Members. It will be looked into with all the importance it deserves. I have already spoken to and discussed with all Hon. Leaders of different parties, including the Hon. Leader of the Opposition, and all have agreed that the matter is extremely serious if proved to be correct. I shall certainly ask the Hon. Members to explain what has happened. In the meantime, I am making a personal request to all of them 'please do not attend the Sessions of the House until the matter is looked into and a decision is taken'. I have no manner of doubt that all sections of the House feel deeply concerned about it. I know that we should rise to the occasion, and we should see that such an event does not occur ever in future and if anybody is guilty, he should be punished. Nobody would be spared. "We shall certainly respond to it in the manner which behaves us. Thank you very much."¹

On the same day the made a statement announcing the constitution of an Enquiry Committee consisting of five Parliamentarians and asking the alleged 10 members to submit their individual explanation. 'The Lok Sabha Secretariat sent communications dated 12.12.2005 to the ten members calling for their comments in regard to the improper conduct shown in the video footage. They were also instructed not to attend the sitting of the House till the matter was finally decided. The members submitted their responses and denied any wrongdoing on their part. The Speaker secured VCDs containing the video footage showing 'improper conduct' from the News Channel. The ten members were supplied copies thereof. The Enquiry Committee examined on oath Shri Aniruddha Bahl, Ms. Suhasini Raj and Shri Kumar Badal of the Portal "Cobrapost.Com" who had carried the sting operation. The Committee viewed all

¹*Raja Ram Pal v. Hon'ble Speaker, Lok Sabha and Ors.*, (2007) 3 SCC 184 available at <https://indiankanoon.org/doc/1757390/>

the VCDs containing the relevant video footage as also the unedited raw video footage and perused the transcripts. The ten members alleged that the video tapes were morphed/manipulated, but, however, refused to view the video clippings in the presence of the Committee and point out the portions which according to them were morphed/manipulated. They were not given any opportunity to cross-examine the sting operators, nor granted copies of the entire unedited video footage and other documents requested by them.²

The Committee submitted its report on 22.12.2005 establishing the alleged members guilty and concluded that the continuation of the alleged offenders as members of Lok Sabha was untenable and made recommendation for their expulsion. On 23.12.2005, the Leader of the House moved the following Motion in the House and expelled the alleged 10 members from the Lok Sabha:

"That this House having taken note of the Report of the Committee to inquire into the allegations of improper conduct on the part of some members, constituted on 12th December, 2005, accepts the finding of the Committee that the conduct of the ten members of Lok Sabha namely, Shri Narendra Kumar Kushawaha, Shri Annasaheb M. K. Patil, Shri Manoj Kumar, Shri Y. G. Mahajan, Shri Pradeep Gandhi, Shri Suresh Chandel, Shri Ramsevak Singh, Shri Lal Chandra Kol, Shri Rajaram Pal and Shri Chandra Pratap Singh was unethical and unbecoming of members of Parliament and their continuance as members of Lok Sabha is untenable and resolves that they may be expelled from the membership of Lok Sabha."³

Subsequently, 11 petitions were filed before the Apex Court challenging the proceedings initiated against the alleged members by the Parliament, the reports submitted by the Enquiry Committee and the notifications expelling the persons as members of Parliament.

Facts in Issues

The first issue was to decide if Parliament can expel its members other than Article 101 and 102 and if such cessation of membership was permissible.

The second issue was whether the Parliamentary privileges include the power to expel its members permanently from their membership.

II. Central Concerns and Arguments of the Parties-

Central Characters- The Petitioners were the expelled members of Parliament, and the

² Raja Ram Pal v. Hon'ble Speaker, Lok Sabha and Ors., (2007) 3 SCC 184 available at <https://indiankanoon.org/doc/1757390/>

³ Ibid

defendants were Hon'ble Speaker of Lok Sabha, Union of India and others represented by the Attorney General.

Summary of Arguments of both the Parties-

The argument on behalf of the petitioners was that the only manner by which there can be cessation of membership of both the Houses of Parliament is in accordance with Article 101 and 102 of the Constitution of India. There is no room for cessation of membership by expelling the member in the Constitution. It was argued that a person can be disqualified from membership of Parliament on corruption basis only if he is convicted for the same. It was also argued that new grounds for cessation of membership can only be added by making a law for the same under Article 102 (1) (e) or by constitutional amendment. Further, it was stated on behalf of the petitioners that power of expulsion cannot be included within the parliamentary privileges as provided under Article 105(3). Hence, it was submitted by the petitioners that the Parliament has no power to expel any person from their membership of Parliament and the alleged notification of expulsion of the members was unconstitutional.

The argument submitted on behalf of the defendants was on the other hand that the list of grounds for vacancies provided under Article 101 of the Constitution was not exhaustive. It was further submitted that the powers, privileges and immunities conferred on the Parliament under Article 105 (3) were very important to maintain the balance of power between three pillars of the State. It was an exclusive benefits and powers bestowed on the Parliament to maintain its integrity and independence. On the same line of thought the power of Parliament to expel a member falls within the ambit and scope of Parliamentary privileges and it is distinct and separate from the disqualification under Article 102 of the Constitution of India.

III. Major Findings and Insights-

Action taken by Parliament is subjective to Judicial Review if unconstitutional-The Apex Court highlighted that even though the prompt action taken by the Hon'ble Speaker and the Parliament was commendable and was done to maintain the integrity of the Parliament, but the Court has to interpret the constitutionality of the action taken in the circumstances when it is challenged. The Apex Court tried to determine the extent of parliamentary power and privilege, and whether the action challenged is in exercise of such power and privilege. Justifying itself the Apex Court referred to the words of Bhagwati, J. in *State of Rajasthan v. Union of India* [AIR 1977 SC 1361]:

"But merely because a question has a political complexion, that by itself is no ground why the Court should shrink from performing its duty under the Constitution if it raises an issue of constitutional determination, the Court cannot fold its hands in despair and declare "Judicial hands off." So long as a question arises whether an authority under the constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. Indeed, it would be its constitutional obligation to do so. This Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of Government, whether it is limited, and if so, what the limits are and whether any action of that branch transgresses such limits. It is for this Court to uphold the constitutional values and to enforce the constitutional limitations. That is the essence of the rule of law."⁴

Constitutional Interpretation- Sovereignty lies with the British Parliament and so they have the exclusive right to make or unmake any law which is not subjective to any Court or body. But, in India the Sovereignty lies with the Constitution and Parliament is created by the Constitution. Hence, an organ created by the Constitution must act within the scope of its power as provided by the Constitution and is subjective to the limitations prescribed by the Constitution. Any act or action of the Parliament contrary to the constitutional limitations will be void.

Article 212 would have an overriding effect on the parliamentary privileges- Article 212 allows a citizen to challenge a proceeding held within legislative chamber if it's illegal being unconstitutional before a court of law. Thus, Article 212 would have an overriding effect over Parliamentary privilege if the action is unconstitutional.

Expulsion cannot cause cessation of membership- The Apex Court emphasized that the membership of Parliament can come to an end or become vacant only under the circumstances as laid down under Article 101 and article 102 of the Constitution. The Constitution of India does not provide for cessation of membership of Parliament by expulsion.

IV Considerations and Inferences the Court Held

The Hon'ble Apex Court while deciding the matter emphasized that the Constitution of India was significantly different from the Constitution of other Countries like England. Indian

⁴ Raja Ram Pal v. Hon'ble Speaker, Lok Sabha and Ors., (2007) 3 SCC 184 available at <https://indiankanoon.org/doc/1757390/>

Constitution included specific provisions to maintain balance of power between the three pillars and also left room to make further provisions granting it flexibility. The Apex Court explained that the Constitution of India has laid down specific provisions providing circumstances in which there can be cessation of membership of Parliament Article 101 and 102. Hence, concluded that the cessation or termination of membership of the House could not fall under the privileges granted under article 105(3).

The Hon'ble Supreme Court also emphasized on the point that under no circumstances the 'incidental powers' granted under Article 105 (3) can be stretched to include the power to expel a member. However, the Apex Court agreed that the appropriate course in case of allegation of taking bribe against a Member of Parliament is criminal prosecution as established by law.

The Apex Court while deciding the second issue held that as the answer of the first issues was not affirmative, the second issues does not survive to be considered. Answering the second one, the Apex Court clearly stated that the power and privileges granted under Article 105 and 194 authorizes the Legislature to define the same but as no such legislation or amended or law was enacted, at this point the cessation of membership could only be done under Article 101 or 103. 'The provision for 'powers, privileges and immunities' in clause (3) occurs after referring to the main privilege of freedom of speech in Parliament, in clause (1) of Article 105, and the main immunity against court proceedings in clause (2) of Article 105. Therefore, clause (3) is intended to provide for 'non-main' or 'incidental' or miscellaneous powers, privileges and immunities which are numerous to mention. Two things are clear from clause (3). It is not intended to provide for the matters relating to nomination/election, term of office, qualifications, disqualification/cessation, for which express provisions are already made in Articles 80, 81, 83, 84, 101 and 102. Nor is it intended to provide for important privilege of freedom of speech or important immunity from court proceedings referred to in Clause (1) and (2) of Article 105.'⁵

Hence, it was held that the expulsion of the membership of the alleged petitioners had violated Articles 101 to 103 of the Constitution, and the Petitioners were allowed to continue as Members of Parliament.

Conclusion

⁵ Raja Ram Pal v. Hon'ble Speaker, Lok Sabha and Ors., (2007) 3 SCC 184 available at <https://indiankanoon.org/doc/1757390/>

The above case is a landmark judgment as it clearly stated that under no circumstances the powers and privileges granted Article 105(3) can be stretched to include the power to expel the member of a Parliament other than expressed Constitutional provisions laid down under Article 101 to 103. The Constitution of India have laid down specific provision regarding the procedure by which a member ceases to be a Member of Parliament and nowhere it has included expulsion as a method to cause cessation of membership. Further, when a person becomes disqualified to be a member according to the Constitution it is imperative that his membership would come to an end and there is no requirement of expulsion. Thus, giving upper hand to Constitutional rights over Parliamentary Privileges. However, the Parliament has the power to amend the Constitution or make any law which would include power to expel within the scope of power and privileges granted to the Parliament under Article 105(3) of the Constitution. In absence of such legislation the Parliament has the power to suspend the alleged member temporarily to prevent him from participating in the Parliamentary Proceedings and once he is proven guilty under criminal proceeding taken against him, he automatically become disqualified to be a Member of Parliament and there is no requirement of expulsion.

Hence, the concept of Parliamentary Privileged does not have overriding effect over the express provisions of the Constitution of India and is mainly aimed to enable the Houses of the Parliament to carry out their functions effectively without fear or favour and interference from the outsiders of the Parliament.

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