IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.873 OF 2006

Shri Manjit Singh
S/o Moolsingh Sethi
aged 57 years, Occ: Business
R/o C/o Karishma Restaurant &
Bar Naigon Cross Road,
Dadar (East), Mumbai 400 014. ....Petitioner.

V/s

1. Maharashtra Assembly,
Maharashtra Legislative Assembly
Secretariat (Vidhan Bhavan)
Mumbai-32

2. The Honourable Speaker
Maharashtra State Legislative
Assembly,
Legislative Secretariat,
"Vidhan Bhavan, Assembly
Secretariat, Mumbai. ....Repondents.

Shri S.B. Talekar with Mr. J.G. Reddy for the petitioner.

Shri Ravi Kadam, Advocate General, appointed as amicus curiae.

Shri Iqbal Chagla, Senior Counsel, appointed as amicus curiae.

None for the Respondents, though served.

CORAM: V.G. PALSHIKAR
Dr. S. RADHAKRISHNAN &
V.M. KANADE, JJ.

DATE : 4th July, 2006

ORAL JUDGMENT : (Per V.M. Kanade, J.)

1. The Petitioner has filed this petition under Article 226 of the Constitution of India and is

seeking appropriate writ to quash the impugned order dated 11th/12th April 2006 whereby the petitioner was sentenced to undergo imprisonment of 90 days for the breach of privilege by the petitioner.

FACTS:

2. Brief facts which are relevant for the purpose of deciding this Writ Petition are as under:-

3. The petitioner is a citizen of India and President of Fight for Right Bar Owners' Association, Mumbai. A decision was taken by the Government of Maharashtra imposing a ban on the Dance Bars in various hotels in Mumbai. A meeting was organized by the Dance Bar Girls Association and it is alleged that the petitioner was invited to attend the meeting. Large number of bar girls attended the said meeting. A news item appeared in daily "Sakal" in its issue dated 31/3/2005. In the said news-paper, a report was published under the caption of "Wives of the Ministers shall not be allowed to move on streets". The news report further reported that the petitioner had used unparliamentary words and had abused the Deputy Chief Minister and the Home Minister of State Shri R.R. Patil. One Sudhir Mungantiwar, Member of Legislative

Assembly Chandrapur, submitted a breach of privilege motion under Rule 272 on 31/3/2005. The Hon'ble Speaker referred the matter for further examination and inquiry and directed the Special Privilege Committee to submit its report. A show-cause notice was issued to the petitioner which was received by him alongwith a copy of the breach of privilege motion which was filed by Shri Sudhir Mungantiwar dated 25/4/2005. The petitioner submitted reply to the show-cause notice on 6/6/2005.

4. The petitioner also filed separate application in which he expressed his desire to engage an advocate to defend himself. He also requested that summons may be issued to Editor, Printer, Publisher who had given the news item in daily "Sakal" for having committed breach of privilege or, in the alternative, requested that he may be called as a witness. He also requested that some of the witnesses such as Dance Bar Girls mentioned by him in the list of witnesses may also be summoned during the inquiry. The petitioner also requested that he may be supplied a copy of the rule which is applicable to the inquiry before the privilege Committee.

5. The extract of the relevant rules of the

Maharashtra Legislative Rules (New Edition) [hereinafter called "the said Rules] was supplied to the petitioner. Further, the relevant extracts of the directives issued by the Speaker were also supplied to him. The Privilege Committee held several meetings and notices of the meetings were served upon the petitioner and the petitioner participated in the said inquiry whenever the Privilege Committee held its meetings. The Privilege Committee, however, did not accept the request made by the petitioner for engaging an advocate and framed four issues which are as under:-

(1) Whether the petitioner gave a warning that the girls performing in Dance Bar will come on streets and would not allow the wives of Ministers to move on streets?

(2) Whether the statement of the petitioner was a critical note on the proceedings of the House which prevented the members and the House from discharging their functions fearlessly and further prevented them from discharging their statutory functions?

(3) Whether statement of the petitioner

amounted to breach of special privileges of members and contempt of the House?

(4) If so, what punishment shall be recommended against Shri Manjeethsingh Sethi?

6. The Privilege Committee examined two witnesses (1) Editor of Sakal and (2) one reporter Shri Patil of daily "Sakal" who was examined on 6/9/2005. The petitioner cross-examined both these witnesses. The petitioner also produced his witnesses on 26/10/2005. In the petition, petitioner has made averments of number of instances of irregularity of procedure which shall be discussed in detail later on.

7. The Privilege Committee submitted its report to the Assembly recommending 90 days jail term for the breach of privilege of the House. This report was put before the House and it was accepted unanimously. The petitioner applied for the copy of the report of the Privilege Committee which was tabled on the floor of the Legislative Assembly. The petitioner, thereafter, made an application under the Right to Information Act and asked for the copy of the documents which were mentioned in the said letter.

8. The Member Secretary of the Maharashtra Legislative Secretariat supplied the report of the Privilege Committee and also furnished proceedings including depositions recorded and other evidence adduced before the Privilege Committee to the petitioner. The Hon'ble Speaker issued warrant of arrest and the petitioner was arrested on 12/4/2006. On 21/6/2006, the Division Bench of D.G. Deshpande and S.A. Bobde, JJ directed that the matter may be placed before Hon'ble the Chief Justice for constituting a larger Bench. The Hon'ble Chief Justice accordingly constituted this Bench and taking into consideration the urgency, as made out by the petitioner, the matter was kept for final hearing on Monday i.e. 26/6/2006. The learned Counsel for the petitioner, however, took time and, therefore, the matter was fixed for final hearing on 28/6/2006. None appeared on behalf of the Government or the Hon'ble Speaker of the Maharashtra Legislative Assembly though the notice was served.

SUBMISSIONS:

9. The learned Advocate General Shri Ravi Kadam appeared as amicus curiae to assist the Court. We also requested Shri Iqbal Chagla, Senior Advocate, to

appear as friend of the court as amicus curiae to assist the court.

10. We have heard the learned Counsel appearing on behalf of the petitioner, the learned Advocate General Shri Ravi Kadam and the learned Senior Counsel Shri Iqbal Chagla.

11. The learned Counsel appearing on behalf of the petitioner submitted that there was a clear breach of the principles of natural justice. He submitted that though the application was made by him for permitting him to engage an advocate, that application was not accepted. He further submitted that the Privilege Committee did not follow the procedure which was laid down under the Rules and adopted the procedure which was clearly in breach of the provisions of the Evidence Act and the Code of Criminal Procedure. He then submitted that the complainant who had filed the breach of privilege motion had taken part in the proceedings and thus had acted as a prosecutor and a judge in his own case. He submitted that he also examined himself as witness and also asked questions to the petitioner and cross-examined him as a member of the Privilege Committee. It was submitted that, therefore, on this ground, the report of the Privilege

Committee itself was liable to be set aside. It was lastly submitted that the findings of the Privilege Committee were based on extraneous material and no notice of this material was given to him. He submitted that the Writ Petition, challenging the order communicated to the petitioner by the Hon'ble Speaker, convicting him for having committed breach of privilege and contempt of the House was maintainable under Article 226 of the Constitution of India and that this Court has power to judicially review the said order. He relied upon the judgment of the Supreme Court in the case of M.S.M. Sharma Vs. Sri Krishna Sinha and others, reported in **AIR 1959 SC 395** and also on 7 judges Bench of the Supreme Court in the case of Special Reference No.1 reported in **AIR 1965 SC 745** He also relied upon the other judgments in support of the said submissions. He also relied upon the judgment of the Supreme Court in the case of Rameshwar Prasad Vs. Union of India & Anr reported in **2006 AIR SCW 494**

12. The learned Senior Counsel Shri Iqbal Chagla submitted that the law on the question of maintainability of the Writ Petition is quite well settled and he submitted that the petition under Article 226 of the Constitution of India, challenging

the conviction on the ground of breach of privilege of the members of the Legislative Assembly was maintainable under Article 226 of the Constitution. He submitted that this Court has jurisdiction to decide whether a particular privilege existed or not. He, however, submitted that it was not open to the Court to examine the internal proceedings of the house in view of the specific bar under Article 212 of the Constitution of India. He submitted that this Court did have jurisdiction to set aside the order of breach of privilege if it found that the said order which was passed was malafide or was capricious. He further submitted that it was not open for the High Court to set aside the order on the ground of violation of Article 19(1)(A) of the Constitution of India. However, it was open for the Court to interfere in case it found that there was violation of Article 21 of the Constitution of India. He invited our attention to various paragraphs in the judgment of M.S.M. Sharma (supra) and judgment of the Supreme Court in Reference No.1, Keshavsingh's case repored in 1965 SC 745.

13. The learned Advocate General Shri Ravi Kadam submitted that it was open for this Court to consider the extent and existence of the privilege but not the

merits of the decision. He submitted that this Court also could examine whether the provisions of Article 21 have been complied with or nor. He submitted that, however, in view of the specific bar imposed by Article 212, the Court did not have jurisdiction to look into the internal procedure adopted by the Assembly and that it was open for the House for the Privilege Committee to deviate from the procedure which was prescribed under the Rules which were framed in view of the provisions of Article 208 of the Constitution of India. He submitted that since the Rules which were framed under Article 208 of the Constitution of India was creation of the Assembly, it was open for the House to adopt such procedure as it thought fit and proper. He submitted that it was not open for this Court to consider whether the order was malafide because malafide could not be attributed to the House which had voted after the report was tabled before it. He submitted that, in the present case, the petitioner had intimidated the members of the Legislative Assembly and, therefore, there was a breach of freedom of speech which was a privilege enjoyed by the members of the Legislature in view of the specific provision of Article 194 subclause (1). He submitted that a right to be represented by a lawyer was a statutory right and it was the discretion

of the Privilege Committee whether to allow the petitioner to engage the advocate. It was settled law that in cases where such discretion was vested by an act of giving permission to a person to engage an advocate, it was held that such a discretion if exercised against the petitioner would not be justiciable in the Court of law. The learned Advocate General invited our attention to the extract from Kaul & Shakdhar's Practice and Procedure of Parliament, 5th Edition and extract from Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament. He also invited our attention to the judgment of the Division Bench of this Court (A.C. Agarwal and D.K. Deshmukh, JJ) dated 28th/29th April 1999 in Writ Petition No. 2224 of 1999 in the case of Dnyandeo Chairman & Others Vs Maharashtra State Assembly through its Chairman and Others. Our attention was also invited to the Judgments in the cases of Keshav Singh Vs. Legislative Assembly U.P. reported in AIR 1965 All 365 and M.S. Sharma Vs. Shri Krishna Sinha [Searth Light II] reported in AIR 1960 SC 1186 and also in the cases of Yashwantrao Meghawale Vs. M.P. Legislative Assembly and others reported in AIR 1967 MP 95, A.M. Allison Vs. B.L. Sen reported in AIR 1957 SC 227, Full Bench decision of the Madras High Court in the case of K.A. Mathialagan Vs. P.

Srinivasan (FB) reported in AIR 1973 Madras 371 Then he invited our attention to the case of Board of Mining Examination vs Ramjee reported in 1977 SC 965 and also the Judgment in the case of Pradip Port Trust Vs. Their Workmen reported in AIR 1977 SC 36 He also invited our attention to the judgment in the case of Lingappa P. Appealwar Vs. State of Maharashtra reported in AIR 1985 SC 389.

FINDINGS AND CONCLUSION:

14. We have given our anxious consideration to the submissions which were made by the learned Counsel for the petitioner and the learned Advocate General Shri Ravi Kadam and the learned Senior Counsel Shri Iqbal Chagla, both of them appeared as amicus curiae to assist the Court. The following questions arise for determination are :-

(i) Whether a Writ Petition under article 226 of the Constitution of India, challenging the decision which is taken by the House, convicting a person on the ground of breach of privilege of the Assembly is maintainable?

(ii) Whether this Court can determine the

existence or otherwise of a privilege which is enjoyed by the members of the Assembly?

(iii) What is the scope and extent of judicial review by this Court while exercising its jurisdiction under Article 226 of the Constitution of India?

(iv) Whether this Court can go into the question of the procedure which is followed in the House in respect of the breach of privilege?

(v) Whether any case is made out by the petitioner for interfering with the impugned order?

15. So far as question No.(i) is concerned, the position in this regard is now quite well settled. The Supreme Court while deciding the Reference which was made by the President of India under Article 143(1), has held that the High Court is entitled to entertain a petition under Article 226 of the Constitution of India where the order is passed by the House, alleging breach of privilege and such a petition need not be thrown out at the threshold which

view has been taken by the Supreme Court in Presidential Reference in the case of Keshav Singh Vs. U.P. State Legislative Assembly reported in **AIR 1965 SC 765**. This view has been approved by the Supreme Court in its subsequent judgments and the other High Courts also have consistently held that the Writ Petition under Article 226 is maintainable. Reference can be made to the judgment in the case of A.M. Paulraj Vs. The Speaker, Tamil Nadu Legislative Assembly, Madras and another reported in **AIR 1986 Madras 248** in which in para 25 the Court has observed as under:-

> 25.....The question of punishment for a breach of privileges is a matter exclusively within the jurisdiction of the Legislature and Art. 212 of the Constitution forecloses any scrutiny by the Court with regard to the procedure adopted by the Legislature. We may also point out that the Supreme Court in M.S.M. Sharma V. Sri Krishna Sinha, AIR 1959 SC 395 has clearly pointed out that where a person is deprived of his personal liberty as a result of proceedings before the Committee of Privileges, such deprivation will be in accordance with the

procedure prescribed by law.....

These observations give a complete answer to the contention raised by the learned counsel that he was entitled to relief from this Court under Article 226 of the Constitution of India on the ground that he was deprived of his liberty otherwise than in accordance with the procedure established by law."

. The Supreme Court in the case of Keshavsingh (supra) has observed as under:-

"59 Let us first take Art. 226. This Article confers very wide powers on every High Court throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, certiorari or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose. It is hardly necessary to emphasise that the language used by Art. 226 in conferring power on the High Courts is very wide. Art. 12

defines the "State" as including the Legislature of such State, and so, prima facie, the power conferred on the High Court under Art. 226(1) can, in a proper case, be exercised even against the Legislature. If an application is made to the High Court for the issue of a writ of habeas corpus, it would not be competent to the House to raise a preliminary objection that the High Court has no jurisdiction to entertain the application because the detention is by an order of the House. Art. 226(1) read by itself, does not seem to permit such a plea to be raised. Art. 32 which deals with the power of this Court, puts the matter on a still higher pedestal; the right to move this Court by appropriate proceedings for the enforcement of the fundamental rights is itself a guranteed fundamental right, and so, what we have said about Art. 226(1) is still more true about Ar. 32(1)."

60. Whilst we are considering this aspect of the matter, it is relevant to emphasise that the conflict which has arisen between the High Court and the House is, strictly speaking, not a conflict between the High Court and the House as

such,but between the House and a citizen of this country. Keshav Singh claims certain fundamental rights which are guaranteed by the Constitution and he seeks to move the High Court under Art. 226 on the ground that his fundamental rights have been contravened illegally. The High Court purporting to exercise its power under Art. 226 (1), seeks to examine the merits of the claims made by Keshav Singh and issues an interim order. It is this interim order which has led to the present unfortunate controversy. No doubt, by virtue of the resolution passed by the House requiring the Judges to appear before the Bar of the House to explain their conduct, the controversy has developed into one between the High Court and the House; but it is because the High Court in the discharge of its duties as such Court intervened to enquire into the allegations made by a citizen that the Judges have been compelled to enter the arena. Basically and fundamentally, the controversy is between a citizen of Uttar Pradesh and the Uttar Pradesh Legislative Assembly. That is why in dealing with the question about the extent of the powers of the House in dealing with cases of contempt

committed outside its four walls, the provisions of Art. 226 and Art. 32 assume significance. We have already pointed out that in the case of M.S.M Sharma (1959) Supp (1) SCR 806 : (AIR 1959 SC 395) (supra), this Court has held that Art. 21 applies when powers are exercised by the legislature under the later part of Art. 194(3). If a citizen moves the High Court on the ground that his fundamental right under Art. 21 has been contravened, the High Court would be entitled to examine his claim, and that itself would introduce some limitation on the extent of the powers claimed by the House in the present proceedings."

The first question therefore will have to be answered in the affirmative.

16. So far as question No (ii) is concerned, it would be relevant to consider Articles 105 and 194 of the Constitution of India. Article 105 deals with powers and privileges which are enjoyed by the members of the Parliament and Article 194 deals with the Privileges which are enjoyed by the State Assembly. The words which are used in Article 194 are identical as those which are used in Article 105 and these provisions apply

mutatis mutandis to those which are found in Article 105. When the Constituent Assembly was drafting the Article the questions regarding the privileges which were to be enjoyed by the members of the House were being considered. Dr. Babasaheb Ambedkar felt that it would be in the best interest of the House not to codify these privileges and it was not possible to contemplate the privileges which could be claimed by the House in order to ensure that the dignity of the House is not lowered in any manner. It was, therefore, felt that the privileges which were enjoyed by the House of Commons would be available to the Parliament and the State Assembly, which later on amended and now in the two Articles, it is mentioned that the members would be entitled to have the privileges which were available to them before 44th amendment came into force. This discussion is referred in the case of K. Anbazhagan and others vs. The Secretary, The Tamil Nadu Legislative Assembly, Madras and others reported in **AIR 1988 Madras 275** in which in para 61, the Court has observed as under:-

> 61.....
>
> When the provision in Art. 194(3) was being debated and a similar suggestion was once again made Dr. Ambedkar pointed out that the

privileges in relation to Parliament are much wider than the privilege of freedom of speech and immunity from arrest. He then said as follows:

"For instance, under the House of Commons powers and privileges it is open to Parliament to convict any citizen for contempt of Parliament and when such privilege is exercised the jurisdiction of the court is ousted. That is an important Privilege. Then again, it is open to Parliament to take action against any individual member of Parliament for anything that has been done by him which brings Parliament into disgrace. These are very grave matters e.g. to commit to prison... ... . NOR IS IT EASY TO SAY WHAT ARE THE ACTS AND DEEDS OR INDIVIDUAL MEMBERS WHICH BRING PARLIAMENT INTO DISREPUTE (underlining ours)

Dr. Ambedkar then proceeded to observe:

"It is not easy, as I said, to define what are the acts and deeds which may be deemed to bring Parliament into disgrace. That would

require a considerable amount of discussion and examination. That is one reason why we did not think of enumerating these privileges and immunities.

But there is not the slightest doubt in my mind and I am sure also in the mind of the drafting Committee that Parliament must have certain privileges, when that Parliament would be so much exposed to calumny, to unjustified criticism that the Parliamentary institution in this country might be brought down to utter contempt and may lose all the respect which Parliamentary institutions should have from the citizens for whose benefit they operate."

Dr. Ambedkar also referred to the difficulties in enumerating all the privileges of the Parliament and made particular reference to May's Parliamentary Practice as will be clear from the following paragraph.

"It seems to me, if the proposition was accepted that the Act itself should enumerate the privileges of Parliament, we would have to follow three courses. One is to adopt them in

the constitution, namely to set out in detail the privileges and immunities of Parliament and its members. I have very carefully gone over May's Parliamentary Practice which is the source book of knowledge with regard to the immunities and privileges of Parliament. I have gone over the index to May's Parliamentary Practice and I have noticed that practically 8 or 9 columns of the index are devoted to the privileges and immunities of Parliament. So that if you were to enact a complete code of the privileges and immunities of Parliament based upon what May has to say on this subject, I have not the least doubt in my mind that we will have to add not less than twenty five pages relating to immunities and privileges of Parliament. I do not know whether the members of this House would like to have such a large categorical statement of privileges and immunities of Parliament extending over twenty or twenty five pages. That I think is one reason why we did not adopt that course."

He justified the present form of Art. 194(3) in the following words :

"The third course open to us was the one which we have followed, namely, that the privileges of Parliament shall be the privileges of the House of Commons. It seems to me that except for the sentimental objection to the reference to the House of Commons I cannot see that there is any substance in the argument that has been advanced against the course adopted by the Drafting Committee. I therefore suggest that the article has adopted the only possible way of doing it and there is no other alternative way open to us. That being so, I suggest that this article be adopted in the way in which we have drafted it".

17. Since these privileges are not codified, this Court is entitled to consider whether the privilege claimed by the House, exists or not.

18. This proposition cannot be disputed in view of decision of the Supreme Court in the case of M.S.M. Sharma Vs. Sri Krishna Sinha and others reported in **AIR 1959 SC 395** Therefore, we are of the view that this Court can decide whether the privilege claimed by the House exists or not.

19. The Supreme Court in Keshav Singh's case [AIR 1965 SC 745] in para 42 of its judgment observed as under:-

> "42. There is another aspect of this matter which must also be mentioned; whether or not there is distinct and rigid separation of powers under the Indian Constitution, there is no doubt that the Constitution has entrusted to the Judicature in this country the task of construing the provisions of the Constitution and of safeguarding the fundamental rights of the citizens. When a statute is challenged on the ground that it has been passed by a Legislature without authority, or has otherwise unconstitutionally trespassed on fundamental rights, it is for the Courts to determine the dispute and decide whether the law passed by the legislature is valid or not. Just as the legislature are conferred legislative authority and their functions are normally confined to legislative functions, and the functions and authority of the executive lie within the domain of executive authority, so the jurisdiction and authority of the Judicature in this country lie within the

domain of adjudication. If the validity of any law is challenged before the courts, it is never suggested that the material question as to whether legislative authority has been exceeded or fundamental rights have been contravened, can be decided by the legislatures themselves. Adjudication of such dispute is entrusted solely and exclusively to the Judicature of this country; and so, we feel no difficulty in holding that the decision about the construction of Art. 194(3) must ultimately rest exclusively with the Judicature of this country. That is why we must over-rule Mr. Seervai's argument that the question of determining the nature, scope and effect of the powers of the House cannot be said to lie exclusively within the jurisdiction of this Court. This conclusion, however, would not impair the validity of Mr. Seervai's contention that the advisory opinion rendered by us in the present Reference proceedings is not adjudication properly so-called and would bind no parties as such."

The question No. (ii), therefore, also will have to be answered in the affirmative i.e. this Court can

determine whether a particular privilege exists or not.

20. So far as the question No.(iii) is concerned, a consistent view which has been taken by the Supreme Court is that it is not open for a citizen to claim breach of his fundamental right under Article 19(1)(a) i.e. his freedom of speech and expression and this fundamental right cannot override the right which is given to the Legislature under Article 194. This majority view in the case of M.S.M. Sharma has been accepted by the Supreme Court in Keshav Singh's case (supra). It would be relevant to note here that in M.M. Sharma's case Subbarao, J. had given a dissenting judgment on this aspect. In N. Ravi's case, reported in (2005) 1 SCC 603, the Supreme Court has referred Keshavsingh's case and M.S.M. Sharma's case to its 7 Judges' Bench. We must mention here that though the opinion which is given by the Supreme Court on a presidential reference may not have a binding force as a judgment which is given in a case decided by it as per Article 141, yet this advise and opinion has been referred to in the other judgments of the High Courts. This can also be noticed in case of the opinion given by the Supreme Court in Re Delhi's Laws Act 1912 reported in (1951) SCR 747.

21. The Supreme Court in the case of M.S.M. Sharma(supra) in its judgment in para 29 and 29a observed as under:-

> "29.....Article 194(3) on the Legislative Assembly those powers, privileges and immunities and Art. 208 confers powers on it to frame rules. The Bihar Legislative Assembly has framed rules in exercise of its powers under that Article. It follows, therefore, that Art. 194(3) read with the rules so framed has laid down the procedure for enforcing its powers, privileges and immunities. If, therefore, the Legislative Assembly has the powers, privileges and immunities of the House of Commons and if the petitioner is eventually deprived of his personal liberty as a result of the proceedings before the Committee of Privileges, such deprivation will be in accordance with procedure established by law and the petitioner cannot complain of the breach, actual or threatened of his Fundamental Right under Art. 21."

"29a.....It is impossible for this Court to prescribe a particular period for moving a privilege motion so as to make the subject matter of the motion a specific matter of recent occurrence.

22. It is further held that right from M.S. Sharma's case (supra) [Search Light-1 and Search Light 2], AIR 1960 SC 1186, Keshav Singh's case (supra), it would be open for the High Court under its writ jurisdiction to consider and examine whether there is breach of the provisions of Article 21 of the Constitution of India which mandates that life and liberty of an individual cannot be taken away without following the procedure established by law.

23. The High Court, similarly, in our view, can also consider and examine whether the order which is passed is ex facie malafide or is utterly capricious. It would be relevant in this context to consider the observations made by the Supreme Court in the case of Keshav Singh (supra) wherein the Supreme Court in para 127 has observed as under:-

"127. As we have already indicated we do not propose to enter into a general discussion as to the applicability of all the fundamental rights to the cases where legislative powers and privileges can be exercised against any individual citizen of this country, and that we are dealing with this matter on the footing that Art. 19(1)(a) does not apply and Art. 21 does. If an occasion arises, it may become necessary to consider whether Art. 22 can be contravened by the exercise of the power of privilege under Art. 194(3). But for the moment, we may consider Art. 20. If Art. 21 applies, Art. 20 may conceivably apply, and the question may arise, if a citizen complains that his fundamental right had been contravened either under Art. 20 or Art. 21, can he or can he not move this Court under Art. 32? For the purpose of making the point which we are discussing the applicability of Art. 21 itself would be enough. If a citizen moves this Court and complains that his fundamental

right under Art. 21 had been contravened, it would plainly be the duty of this Court to examine the merits of the said contention, and that inevitably raises the question as to whether the personal liberty of the citizen has been taken away according to the procedure established by law. In fact, this question was actually considered by this Court in the case of Sharma, (1959) Supp (1) SCR 806 : (AIR 1959 SC: 395). It is true that the answer was made in favour of the legislature; but that is wholly immaterial for the purpose of the present discussion. If in a given case the allegation made by the citizen is that he has been deprived of his liberty nor in accordance with law, but for capacious or mala fide reasons, this Court will have to examine the validity of the said contention, and it would be no answer in such case to say that the warrant issued against the citizen is a general warrant and a general warrant must stop all further judicial inquiry and scrutiny. (Underlining supplied by us) In our

opinion, therefore, the impact of the fundamental constitutional right conferred on Indian citizens by Art. 32 on the construction of the latter part of Ar. 194(3) is decisively against the view that a power or privilege can be claimed by the House, though it may be inconsistent with Art. 21. In this connection, it may be relevant to recall that the rules which the House has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution under Art. 208(1)."

24. It will also be profitable to consider the observations made by the Allahabad High Court Keshavsingh's case in para 17 and 18 of the said Judgment which have been referred to and relied upon by the Division Bench of this Court in the case of Dnyandeo Ingale (supra), read as under:-

"17. The petitioner is not entitled to challenge the commitment either on the ground of violation of the principles of natural justice or on the ground that the

facts found by the Legislative Assembly do not amount to its contempt. Once we come to the conclusion that the Legislative Assembly has the power and jurisdiction to commit for its contempt and to impose the sentence passed on the petitioner, we cannot go into the question of the correctness, propriety or legality of the commitment. This Court cannot, in a petition under Article 226 of the Constitution, sit in appeal over the decision of the Legislative Assembly committing the petitioner for its contempt. The Legislative Assembly is the master of its own procedure and is the sole judge of the question whether its contempt has been committed or not. In this connection, we may mention that learned counsel for the petitioner also contended that Rules 74 and 76 of the Rules of Procedure and Conduct of Business of the U.P. Legislative Assembly are ultra vires. Rule 74 reads as follows:-

. "74. Opportunity to person charged - Except where the breach of privilege is

committed in the actual view of the House, the House shall give an opportunity to the person charged to be heard in explanation or exculpation of the offence against him, before the sentence is passed:

. Provided that if the matter has been referred to the Committee on privileges and the person charged has been heard before the Committee, it will not be necessary for the House to give him that opportunity unless the House directs otherwise"

The validity of this rule was challenged on two grounds namely,

(1) that it violated the principles of natural justice: and

(2) that it violated the provisions of Article 22(1) of the Constitution.

With respect to the first ground, it is sufficient to say that rules of natural justice only apply when the statute or statutory rules are silent as to the procedure but no statutory provision or

statutory rule can be struck down where it makes a provision excluding the application of rules of natural justice. Rule 74 has been framed in pursuance of the power conferred by Article 208(1). It cannot be challenged on the ground of violation of the principles of natural justice. With regard to the second ground, it is unnecessary in the present case either to consider whether Article 22(1) applies to proceedings before the Legislative Assembly or to consider whether Rule 74 violates Article 22(1) for the reason that no complaint has been made in the writ petition that the petitioner desired to consult and to be defended by any legal practitioner. Indeed, from his attitude before the Legislative Assembly it is clear that he had no desire to participate at all in the proceedings. Rule 76 lays down the punishments that may be inflicted upon a person found to have committed a breach of privilege of the Legislative Assembly. We cannot appreciate how the striking down of Rule 76 can help the petitioner. Under Article 194(3) the Legislative Assembly has

the power to inflict the same punishments which the House of Commons can inflict for breach of its privilege and Rule 76 does not provide for any punishment which may be said to be severer than that which the House of Commons can inflict. Even if Rule 76 had not been there, the Legislative Assembly could very well have inflicted the punishment upon the petitioner which it has imposed on him in the present case. It is, therefore, unnecessary to consider the question of the validity of this Rule."

"18. The fourth contention of learned counsel for the petitioner is that the Superintendent, District Jail, Lucknow, respondent No.4, had no power to receive and detain the petitioner in the District Jail on the basis of the warrant issued by the Speaker of the Legislative Assembly. In support of this contention, he relies upon section 3 of the Prisoners Act, 1900 (Act. No. 3 of 1900) which runs as follows:

. "3. The officer in charge of a prison shall receive and detain all persons duly

committed to his custody under this Act or otherwise by any court according to the exigency of any writ, warrant or order by which such person has been committed, or until such person is discharged or removed in due course of law."

He relies upon the words "by any Court" and contends that the Superintendent could receive and detain only those persons who are committed to his custody by any Court and could not receive persons sent by any other authority. We cannot agree with his contention. Section 3 is not exhaustive. It contains no prohibition against the Superintendent of a jail receiving persons sent by a competent authority other than a Court of law. Since the House of Commons has the power to commit any one for its contempt and to confine him in one of Her Magesty's prisons, the Legislative Assembly also has a similar power to confine any person, whom it commits for breach of its privilege, in any prison. Since the Legislative Assembly has, under Article 194(3), the constitutional right to direct

that the petitioner, who has been committed for its contempt, be detained in the District Jail, Lucknow, the Superintendent of that jail was bound to receive the petitioner and to detain him in accordance with the warrant issued by the Speaker. The detention by respondent No.4 cannot be said to be illegal on this ground."

25. Keeping in view the observations which are made by the Supreme Court in these cases and the observations made by the Full Bench of the Madras High Court in its judgment and also the Judgment of the Division Bench of this Court, it is abundantly clear that the scope and power of the High Court is very limited and the High Court while exercising its writ jurisdiction cannot sit in appeal over the decision which is taken by the House and can only examine the decision within the narrow parameters which have been discussed in the preceding paragraphs.

26. So far as question No. (iv) is concerned, it is not possible in our view to consider the correctness of the decision which is taken by the House in view of the express bar which is laid down under Article 212 of the Constitution of India. Article 212 reads as

under:-

> "212. Courts not to inquire into proceedings of the Legislature.- (1) 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.
>
> (2) No Officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of exercise by him of those powers."

27. A bare perusal of the said Article discloses that the procedure which is followed in the House cannot be the subject matter of the inquiry in any court of law. So far as the procedure which is followed in cases of breach of proceedings, rules have been framed by the House while exercising the power which is vested in it under Article 208. Accordingly, the rules have been framed in respect

of the procedure which is followed. Similarly, the Hon'ble Speaker also has given certain directions regarding the manner in which the Privilege Committee has to conduct the proceedings. The directions which are relevant for the purpose of this Writ Petition are as under:-

Directions:-

"2. All persons, other than the members of the Committee, the officers of the Maharashtra Legislature Secretariat and such other persons as may be expressly permitted by the Chairman to attend the meetings, shall withdraw from the sittings of the Committee."

"6. (a) The proceedings of the Committee including is report or any conclusions arrived at, tentatively or finally, shall be treated as confidential until their presentation to the House and the Committee may direct that the whole or a part of the proceedings of the Committee or a summary thereof may be laid on the table of the House."

"8. After a question of breach of privilege has been referred by the Speaker to the

Committee of Privileges either under Rule 277 or 284 the Chairman shall, as soon as practicable, call a preliminary meeting of the Committee to consider the said question of privilege an to determine, subject to the specific provisions made in this behalf in the Rules and the directions, the procedure generally to be followed in regard to the matter under inquiry, which, in its opinion, is most suited for the purpose."

"12. The Committee may in the examination of witnesses be guided, wherever necessary so far as procedural matters are concerned, by the principles of ordinary law of the land such as the Civil Procedure Code, the Criminal Procedure Code and the Law of Evidence, etc. and the principles of natural justice."

28. From the above Articles and the Rules which are framed, it can be seen that the Rules for the purpose of conducting the breach of privilege proceedings have been framed by the Maharasthra State Assembly, the State Legislature and, therefore, it cannot be said that there is no procedure which is established by law and on that ground there is a breach of

principles of natural justice.

29. In view of the above position, we will consider the contentions and submissions which are made by the learned Counsel for the petitioner. The gist of the submissions made by the learned Counsel for the petitioner is that there is breach of principles of natural justice on account of (a) the petitioner not being given permission to be represented by a lawyer, (b) the Privilege Committee did not conduct the proceedings as per the procedure which is laid down under the Evidence Act and the Code of Criminal Procedure and also it has deviated from the Rules which have been framed by the House and the directions which are given by the Speaker, (c) that there was no breach of privilege inasmuch as the decision which was criticized by the petitioner was taken by the Hon'ble Home Minister Shri R.R. Patil while exercising his Executive Function and he had merely pronounced that decision in the House and, therefore, the members of the House would not claim a breach of privilege in respect of the criticism of executive function, (d) that the complainant Subhash Mungantiwar was the member of the Privilege Committee and, therefore was the prosecutor and judge in his own case, (e) that the decision which is taken by the

Privilege Committee is based on extraneous consideration and it does not pertain to the recent occurrence and lastly (f) the petitioner had not made the said statement but had conveyed it on behalf of the bar girls through some of the press reporters and that he had not given any interview to the reporter of daily "Sakal" and, therefore, he was not the author of that statement.

30. We are unable to accept the submissions made by the learned Counsel appearing on behalf of the petitioner at (a) above. It is settled position in law that whenever discretion is vested in authority to decide the application seeking permission to engage the advocate, it is held that the said discretion is not justiciable. The Supreme Court in its judgment in the case of Lingappa Pochanna Appealwar Vs. State of Maharashtra and another reported in **AIR 1985 SC 389** has observed in para 34 as under:-

> "34. The contention that an advocate enrolled under the Advocates Act, 1961 has an absolute right to practise before all Courts and Tribunals can hardly be accepted. Such a right is no doubt conferred by S. 30 of the

Advocates Act. But unfortunately for the legal profession. S. 30 has not been brought into force so far though the Act has been on the Statute Book for the last 22 years. There is very little that we can do in the matter and it is for the Bar to take it up elsewhere. A person enrolled as an advocate under the Advocates Act is not ipso facto entitled to a right of audience in all Courts unless S. 30 of that Act is first brought into force. This is a matter which is still regulated by different statutes and the extent of the right to practise must depend on the terms of those statutes. The right of an advocate brought on the rolls to practise is, therefore, jut what is conferred on him by S. 14(1)(a), (b) and (c) of the Bar Councils Act, 1926. The relevant provisions reads as follows:

"14(1) An advocate shall be entitled as of right to practise:

(a) subject to the provisions of sub-s (4) of S.9 in the High Court of which he is an advocate, and

(b) save as otherwise provided by sub-s. (2) or by or under any other law for the time being in force in any other Court and before any other Tribunal or person legally authorized to take evidence, and

(c) before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practise."

In view of the various authorities on the subject, we cannot but hold that S. 9A of the Act is not an unconstitutional restriction on advocates to practise their profession."

In view of the above, it cannot be said that refusal on the part of the Privilege Committee to permit the petitioner to appoint an advocate would amount to breach of the principles of natural justice. Apart from that, the rules and directions which are given by the Speaker clearly provide a discretion which is vested in the Privilege Committee either to permit or

not to permit a person to engage an advocate.

31. So far as the submission of the learned Counsel for the petitioner at (b) above is concerned, the same cannot be accepted because it is the prerogative of the House to prescribe the procedure for the purpose of conducting the inquiry in respect of the breach of Privilege Motion and by virtue of the provisions of Article 208, the power is vested in the House to frame its own rules. Since the rules are the creation of the House, in view of the express power which is given under Article 208, in our view, it is always open for the House to prescribe the procedure and the House would not be bound by the provisions of Criminal Procedure Code and the Evidence Act. The contention of the petitioner that two witnesses which were called by the Committee viz. the Editor and the Reporter of daily "Sakal" were allowed to remain present throughout the proceedings, including the time when the petitioner was examined before the Committee and during his cross-examination and, therefore, there was a breach of the provisions of the Evidence Act and the provisions of Criminal Procedure Code, cannot be accepted. Mere deviation or irregularity in the procedure would not by itself vitiate the proceedings which are taken by the Breach

of Privilege Committee. The same is true in respect of the submission that Subhash Mungantiwar was the complainant and was also a member of the Privilege Committee and was, therefore, a prosecutor and a judge in his own case. This submission, though at the first blush, appears to be attractive, on the closer scrutiny of the relevant provisions it falls to the ground and, therefore, cannot be accepted which can be seen from the observations which are made in the following cases:-

. Para 19 of the Full Bench Judgment of the Madras High Court in the case of K. A. Mathialagan Vs. P. Srinivasan and others reported in **AIR 1973 Madras 371,** reads as under:-

> "19. The Legislative Assembly of a State is undoubtedly the fountain source of its power and the rules framed under Article 208 of the Constitution being the creatures of such power are succeptible to modification or deviation at the discretion of the majority of the member of the Assembly. The power to make a rule implies a power to deviate from the rule if the exigencies of circumstances require and if the party vested with the

power is inclined to so act. B.W. Ridges in his book "Constitutional Law of Englad" dealing with the subject "What is the precise meaning of the terms ‘proceedings in Parliament’ would say-

. "Another collective right of the House is to settle its own code of procedure. This is such an obvious right - it has never been directly disputed - that it is unnecessary to enlarge upon it except to say that the House is not responsible to any external authority for following the rules it lays down for itself, but may depart from them at its own discretion.....This holds good even where the procedure of a House or the right of its members or officers to take part in its proceedings is dependent on statute. For such purposes the House can ‘practically change or practically supersede the law’." The same author dealing with "jurisdiction of courts of law in matters of privileges" at page 176, 18th Edn. observes -

. "The problem thus became one of reconciling law of privilege with the general

law. The solution gradually marked out by the courts is to insist on their right in principle to decide all questions of privilege arising in litigation before them with certain large exceptions, in favour of Parliamentary jurisdiction. Two of these, which are supported by a great weight of authority, are the exclusive jurisdiction of each House over its own internal proceedings, and the right of either House to commit and punish for contempt."

It is therefore well settled that over its own internal proceedings the jurisdiction of the House was exclusive and absolute and cannot be interfered with by Courts. Again, another learned author, Hood Philips in his 'Constitutional and Administrative Law' 3rd Edn. at page 184, dealing with 'exclusive right to regulate its own proceedings' says-

. "The courts must presume that so august an Assembly as the House of Commons discharges its functions lawfully and properly. They will therefore not take cognisance of matters arising within the walls of the House, and

they will accept the interpretation put by the Commons upon a statute affecting their internal proceedings."

. Para 13 of the Judgment of the Supreme Court in the case of The Chairman, Board of Mining and anr. Vs. Ramjee reported in **AIR 1977 SC 965** reads as under:-

"13. The last violation regarded as lethal objection is that the Board did not enquire of the respondent, independently of the one done by the Regional Inspector. Assuming it to be necessary, here the respondent has, in the form of an appeal against the report of the Regional Inspector, sent his explanation to the Chairman of the Board. He has thus been heard and compliance with Reg. 26, in the circumstances, is complete. Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditional by the facts and circumstances of each situation, no breach of

natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt - that is the conscience of the matter."

. Para 10 of the Judgment of the Supreme Court in the case of M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and others reported in **AIR 1960 S.C. 1186** reads as under:-

"10. It now remains to consider the other subsidiary questions raised on behalf of the petitioner. It was contended that the procedure adopted inside the House of the Legislature was not regular and not strictly in accordance with law. There are two answers to this contention, firstly, that according to the previous decision of this Court, the petitioner has not the fundamental right claimed by him. He is, therefore, out of Court. Secondly, the validity of the

proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. Article 212 of the Constitution is a complete answer to this part of the contention raised on behalf of the petitioner. No Court can go into those questions which are within the Special jurisdiction of the Legislature itself, which has the power to conduct its own business. Possibly, a third answer to this part of the contention raised on behalf of the petitioner is that it is yet premature to consider the question of procedure as the Committee is yet to conclude its proceedings. It must also be observed that the Legislature has the jurisdiction to control the publication of its proceedings and to go into the question whether there has been any breach of its privileges, the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance with its rules of business. Even though it may not have strictly complied with the requirements of the procedural law laid down for conducting its business, that cannot be a ground for

interference by this Court under Art. 32 of the Constitution. Courts have always recognized the basic difference between complete want of jurisdiction and improper or irregular exercise of jurisdiction. Mere non-compliance with rules of procedure cannot be a ground for issuing a writ under Art. 32 of the Constitution: Vide Janardan Reddy vs. State of Hyderabad, 1951 SCR 344 : (AIR 1951 SC 217)."

. Para 34 of the Judgment of the Supreme Court in the case of M.S.M. Sharma Vs. Sri Krishna Sinha and others reported in **AIR 1959 SC 395** reads as under:-

"34. Finally, the petitioner denies that the expunged portions have been published. We do not think we should express any opinion on this controversy, at any rate, at this stage. If the Legislative Assembly of Bihar has the powers and privileges it claims and is entitled to take proceedings for breach thereof, as we hold it is, then it must be left to the House itself to determine whether there has, in fact, been any breach of its

privilege. Thus, it will be for the House on the advice of its Committee of Privileges to consider the true effect of the Speaker's directions that certain portions of the proceedings be expunged and whether the publication of the speech, if it has included the portion which had been so directed to be expunged, is, in the eye of the law, tantamount to publishing something, which had not been said and, whether such a publication cannot be claimed to be a publication of an accurate and faithful report of the speech, it will, again, be for the House to determine whether the Speaker's ruling made distinctly and audibly at a portion of the proceedings be expunged amount to a direction to the Press reporters not to publish the same, and whether the publication of the speech, if it has included the portion directed to be so expunged, is or is not a violation of the order of the Speaker and a breach of the privilege of the House amounting to a contempt of the Speaker and the House."

32. The contention of the learned Counsel at (c) above

is also not acceptable. In the present case what is alleged is a breach of privilege of the freedom of speech of the members of the legislature. This privilege is expressly mentioned in Article 194(1) of the Constitution of India. What is alleged is that the petitioner had intimidated a member of the House and had threatened him that if he perused with the decision which was taken by him as a member of the House, his wife would not be permitted to walk on the street. The existence of such a right of freedom of speech which is enjoyed by a member of the House cannot be disputed as it is found under the provisions of Article 194(1) itself. That such intimidation amounts to breach of privilege also has been accepted in various decisions, some of which have been discussed by Erskine May in his book Treatise on The Law, Privileges, Proceedings & Usage of Parliament, Twentieth Edition, where he has observed as under:-

> Attempted intimidation of Members.- To attempt to influence Members in their conduct by threats is also breach of privilege.
>
> Acts tending indirectly to obstruct Members in the discharge of their duty.

33. What was, therefore, discussed in the House of the Assembly by the member of the House was not only a criticism but a threat was given to all the Hon'ble Ministers of dire consequences if they did not withdraw their decision. Therefore, in our view, the said submission that the decision being merely conveyed by the Hon'ble Home Minister on the floor of the House and, therefore, it was not the exercise of legislative function and, therefore, it did not amount to breach of privilege, cannot be accepted. Apart from that, we have already held in para 33 above, about the existence of privilege which is claimed by the House.

34. As far as submission of the learned Counsel at (d) above is concerned, it cannot be said that the action was malafide because the complainant also happened to be the member of the Privilege Committee. The Privilege Committee had scrutinized each and every aspect which is evident from the proceedings and, thereafter, the decision was tabled before the house which was passed unanimously. It cannot be said in this case that the House had acted with malafide intention as it is difficult to attribute malafides to the House. Secondly, this Court cannot sit in appeal over the decision which is taken by the Privilege Committee or by the House.

35. As regards the submission at (e) above is concerned, we are unable to accept the submission made by the learned Counsel. What essentially has to be considered while examining the decision of the House by this Court is, whether there is a breach of the provisions of Article 21 of the Constitution of India and whether the order is malafide or capricious. In the present case, it cannot be said that no opportunity was given to the petitioner. A show cause notice was issued to him. Sufficient time was given to him to give his reply which was submitted by him to the Secretary of the Maharashtra Legislative Assembly. All documents on which reliance was placed by the Privilege Committee were supplied to him. The application which was filed under the Right to Information Act was also granted. Alongwith the show-cause notice, he was also given a copy of the motion which was moved by Subhash Mungantiwar The names of all witnesses were tendered to him. The entire proceedings of the Committee were also supplied to him. He was allowed to cross-examine the witnesses. The submission of the learned Counsel for the petitioner that no proper opportunity was given cannot be accepted. The proceedings disclose that the motion which was moved by Subhash Mungantiwar clearly mentioned that the petitioner had intimidated the

Hon'ble Ministers with a view to prevent them and to dissuade them from perusing their decision. The Committee also had seen his earlier speeches which were recorded and on the basis of the earlier statements made by the petitioner, they had satisfied themselves that the conduct of the petitioner was such that the threat which was given now was not a farce and it was essential to take a serious view of the same. The submission of the learned Counsel of the petitioner, therefore, that the decision was based on extraneous consideration cannot be accepted.

36. As regards the last contention of the learned Counsel appearing for the petitioner at (f) above is concerned i.e. he was not the author of the statement and that he was merely a spokesman and, therefore, the order has to be set aside on this ground also cannot be accepted since, as stated above, power of this Court is very limited and this Court cannot sit in appeal over the decision taken by the House. This Court, at the most, can examine whether there is a breach of provisions of Article 21 and whether the action is malafide. Apart from that, from the perusal of the reply which is given by the petitioner to show cause notice, shows that the petitioner proceeds on the assumption that he has made that statement and has tried

to justify the statement so made, the petitioner, therefore, cannot blow hot and cold at the same time. In any event, it is not open for this Court to examine the correctness or otherwise of the decision which is taken by the House.

37. In the result, it is not possible for this Court to interfere with the order passed by the House while exercising its jurisdiction under Article 226 of the Constitution of India and this petition will have to be dismissed.

38. Before parting, we would like to quote the observation made by the Supreme Court in Keshavsingh's case supra in para 142 of its judgement which reads as under:-

> "142. Before we part with this topic, we would like to refer to one aspect of the question relating to the exercise of power to punish for contempt. So far as the courts are concerned, Judges always keep in mind the warning addressed to them by Lord Atkin in Andre Paul V. Attorney-General of Trinidad, AIR 1936 PC 141. Said Lord Atkin, Justice is not a cloistered virtue: she must be allowed to suffer the

scrutiny and respectful even though out-spoken comments of ordinary men." We ought never to forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or statuts of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct. We venture to think that what is true of the Judicature is equally true of the Legislatures."

39. In the present case, none appeared on behalf of the respondents before us. As a result, we had to decide the case by taking assistance of the Learned Advocate General Shri Ravi Kadam and the learned Senior Counsel Shri Iqbal Chagla. The Legislature and the Judiciary are the two Organs of the State which discharge their

Constitutional functions and the goal of both these Organs is ultimately welfare of the citizens. There cannot be therefore any controversy between the Legislature and the Judiciary. The controversy, if any, is between the citizen and the Legislature as is observed in Keshavsingh's case.

40. The two Organs of the Government have to function in harmony. Though we do not wish to say anything in respect of what should and what should not be done by the respondents, we feel that the best interest of the Nation and the welfare of the citizens would be ensured and protected if the Government is represented through its Counsel so that both the Organs can function harmoniously.

41. Petition is accordingly dismissed. Rule is discharged.

42. We would like to express our appreciation to the Advocate General Shri Ravi Kadam and the learned Senior Counsel Shri Iqbal Chagla for assisting this Court as amicus curiae.

(V.G. PALSHIKAR, J.)

(S. RADHAKRISHNAN, J.)

(V. M. KANADE, J.)