SUPREME COURT OF INDIA

Justice Ripusudan Dayal (Retd.)

Vs.

State of M.P.

(P.Sathasivam CJI., Ranjan Gogoi and Shiva Kirti Singh JJ.)

25.02.2014

JUDGMENT

P.SATHASIVAM, CJI.

1. The present writ petition, under Article 32 of the Constitution of India, has been filed by the petitioners challenging the validity of certain letters issued by Mr. Qazi Aqlimuddin – Secretary, Vidhan Sabha (Respondent No.4 herein) on various dates against them with regard to a case registered by the Special Police Establishment (SPE) of the Lokayukt Organisation, against the officials of the Vidhan Sabha Secretariat as well as against the concerned officials of the Capital Project Administration- the Contractor Company alleging irregularity in the construction work carried out in the premises of Vidhan Sabha.

2. It is relevant to mention that Petitioner No.1 herein was the Lokayukt of the State of Madhya Pradesh appointed under the provisions of the Madhya Pradesh Lokayukt Evam Uplokayukt Act, 1981 (hereinafter referred to as "the Lokayukt Act"). Petitioner No.2 was the Legal Advisor, a member of the Madhya Pradesh Higher Judicial Service on deputation with the Lokayukt and Petitioner Nos. 3 to 5 were the officers of Madhya Pradesh Special Police Establishment.

3. The petitioners herein claimed that the said letters violate their fundamental rights under Articles 14, 19 and 21 of the Constitution of India and are contrary to Article 194(3) and prayed for the issuance of a writ, order or direction(s) quashing the said letters as well as the complaints filed by Respondent Nos. 5, 6 (since expired), 7, 8 and 9 herein.

4. Brief facts

(a) An anonymous complaint was received on 21.06.2005 in the office of the Lokayukt stating that a road connecting the Vidhan Sabha with Vallabh Bhawan, involving an expenditure of about Rs. 2 crores, was being constructed without inviting tenders and complying with the prescribed procedure. It was also averred in the said complaint that with a view to regularize the above-said works, the officers misused their official position and got the work sanctioned to the Capital Project Administration in violation of the rules which amounts to serious financial irregularity and misuse of office. It was also mentioned in the said complaint that in order to construct the said road, one hundred trees had been cut down without getting the permission from the concerned department. The said complaint was registered as E.R. No.127 of 2005. During the inquiry, the Deputy Secretary, Housing and Environment Department, vide letter dated 18.08.2005 stated that the work had been allotted to the lowest tenderer and the trees were cut only after obtaining the requisite permission from the Municipal Corporation. In view of the said reply, the matter was closed on 22.08.2005.

(b) On 22.12.2006, again a complaint was filed by one Shri P.N. Tiwari, supported with affidavit and various documents, alleging the same irregularities in the said construction work by the officers of the Vidhan Sabha Secretariat in collusion with the Capital Project Administration which got registered as E.R. No. 122 of 2006. A copy of the said complaint was sent to the Principal Secretary, Madhya Pradesh Government, Housing and Environment Department for comments. In reply, the Additional Secretary, M.P. Government, Housing and Environment Department submitted the comments along with certain documents stating that the Building Controller Division working under the Capital Project Administration was transferred to the administrative control of the Vidhan Sabha Secretariat vide Order dated 17.07.2000 and consequently the Secretariat Vidhan Sabha was solely responsible for the construction and maintenance work within the Vidhan Sabha premises.

(c) On 26.06.2007, a request was made to the Principal Secretary, Housing and Environment Department to submit all the relevant records, tender documents, note sheets, administrative, technical and budgetary sanctions by 10.10.2007. By letter dated 17.07.2007, the Under Secretary of the said Department informed that since the administrative sanctions were issued by the Secretariat Vidhan Sabha, the materials were not available with them. In

view of the said reply, the Lokayukt-(Petitioner No.1 herein) sent letters dated 31.07.2007 addressed to the Principal Secretary, Housing and Environment Department, Administrator, Capital Project Administration and the Deputy Secretary, Vidhan Sabha Secretariat to appear before him along with all the relevant records on 10.08.2007. On 10.08.2007, the Principal Secretary, Housing and Environment appeared before the Lokayukt and informed that since the Controller Buildings of Capital Project Administration was working under the administrative control of the Vidhan Sabha Secretariat since 2000, all sanctions/approvals and records relating to construction and maintenance work were available in the Vidhan Sabha Secretariat. In view of the above reply, the Lokayukt summoned the Secretary and the Deputy Secretary, Vidhan Sabha, Respondent Nos. 10 and 11 respectively on 24.08.2007 to give evidence and produce all records/note-sheets of administrative and technical sanctions and budgetary and tender approvals relating to construction works carried out in MLA Rest House and Vidhan Sabha Premises in the year 2005-2006.

(d) The Secretary, Vidhan Sabha, Respondent No. 10 herein, in his deposition dated 24.08.2007, admitted giving of administrative approval to the estimated cost which was available with the office of the Lokayukta and stated that the relevant note-sheet was in the possession of the Hon'ble Speaker, therefore, he prayed for time to produce the same by 07.09.2007.

(e) Vide letter dated 07.09.2007, Respondent No.10 conveyed his inability to produce the same. After receiving information from the Chief Engineer, Public Works Department, Capital Project, Controller Buildings, Vidhan Sabha, Capital Project Administration and Chief Engineer, Public Works Department vide letters dated 11.09.2007, 13.09.2007 and 18.09.2007 respectively, the Legal Advisor –Petitioner No. 2 herein – a member of the M.P. Higher Judicial Service thoroughly examined the same and found that it is a fit case to be sent to the SPE for taking action in accordance with law. Petitioner No.1 was in agreement with the said opinion. Thereafter, Crime Case No. 33/07 was registered against the Secretary, Vidhan Sabha (Respondent No.10 herein), Shri A.P. Singh, Deputy Secretary, Vidhan Sabha, the then Administrator, Superintendent Engineer, Capital Project Administration and Contractors on 06.10.2007.

(f) After registration of the case, Petitioner No.1 received the impugned letters dated 15.10.2007 and 18.10.2007 alleging breach of privilege under

Procedures and Conduct of Business Rules 164 of the Madhya Pradesh Vidhan Sabha against him and the officers of the Special Police Establishment. In response to the aforesaid letters, by letter dated 23.10.2007, the Secretary, Lokayukt explained the factual position of Petitioner No.1 herein stating that no case of breach of privilege was made out and also pointed out that neither any complaint had been received against the Hon'ble Speaker nor any inquiry was conducted by the Lokayukt Organization against him nor his name was found in the FIR.

(g) On 26.10.2007, the Secretary, Vidhan Sabha – Respondent No.4 sent six letters stating that the reply dated 23.10.2007 is not acceptable and that individual replies should be sent by each of the petitioners.

(h) Being aggrieved by the initiation of action by the Hon'ble Speaker for breach of privilege, the petitioners have preferred this writ petition.

5. Heard Mr. K.K. Venugopal, learned senior counsel for the writ petitioners, Mr. Mishra Saurabh, learned counsel for the State-Respondent No. 1 and Mr. C.D. Singh, learned counsel for the Secretary, Vidhan Sabha- Respondent No.4.

Contentions:

6. Mr. K.K.Venugopal, learned senior counsel for the petitioners raised the following contentions:-

(i) Whether the Legislative Assembly or its Members enjoy any privilege in respect of an inquiry or an investigation into a criminal offence punishable under any law for the time being in force, even when inquiry or investigation was initiated in performance of duty enjoined by law enacted by the very Legislative Assembly of which the breach of privilege is alleged?

(ii) Whether officials of the Legislative Assembly also enjoy the same privileges which are available to Assembly and its Members?

(iii) Whether seeking mere information or calling the officials of Vidhan Sabha Secretariat for providing information during inquiry or investigation amounts to breach of privilege?

(iv) In view of the letter dated 23.08.2007, sent by the Principal Secretary to Respondent Nos. 10 and 11, i.e., Secretary and Deputy Secretary, Vidhan Sabha respectively directing them to appear before the Lokayukt (as per the order of the Speaker), whether Respondent Nos. 10 and 11 can have any grievance that information was sought from them without sanction and knowledge of the Speaker?

7. On behalf of the respondents, particularly, Respondent No.4- Secretary, Vidhan Sabha, Mr. C.D. Singh, at the foremost submitted that the present petition under Article 32 of the Constitution of India invoking writ jurisdiction of this Court is not maintainable as no fundamental right of the petitioners, as envisaged in Part III of the Constitution, has been violated by any of the actions of Respondent No. 4. It is their stand that every action pertaining to the Assembly and its administration is within the domain and jurisdiction of the Hon'ble Speaker. The matter of privilege is governed under the rules as contained in Chapter XXI of the Rules of Procedure and Conduct of Business in the Madhya Pradesh Vidhan Sabha. Hence, it is stated that the writ petition is liable to be dismissed both on the ground of maintainability as well as on merits.

8. Before considering rival contentions and the legal position, it is useful to recapitulate the factual details and relevant statutory provisions which are as under:-

The legislature of the Central Province and Berar enacted the Central Provinces and Berar Special Police Establishment Act, 1947 (hereinafter referred to as 'the SPE Act'). Under the said Act, a Special Police Force was constituted which has power to investigate the offences notified by the State Government under Section 3 of the said Act, which reads as under:-

"3. Offences to be investigated by Special Police Establishment:- The State Government may, by notifications, specify the offences or classes of offences which are to be investigated by (Madhya Pradesh) Special Police Establishment."

9. On 16.09.1981, Legislative Assembly of the State of Madhya Pradesh enacted the Lokayukt Act with the following objective as has been stated in the preamble of the said Act:-

"An Act to make provision for the appointment and functions of certain authorities for the enquiry into the allegation against "Public Servants" and for matters connected there with."

Section 2(a) of the Lokayukt Act defines "officer" in the following manner:-

"officer" means a person appointed to a public service or post in connection with the affairs of the State of Madhya Pradesh."

Section 2(b) defines "allegation" as follows:-

"allegation" in relation to a public servant means any affirmation that such public servant,

(i) has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm to any person;

(ii) was actuated in the discharge of his functions as such public servant by improper or corrupt motives;

(iii) is guilty of corruption; or

(iv) is in possession of pecuniary resources or property disproportionate to his known sources of income and such pecuniary resources or property is held by the public servant personally or by any member of his family or by some other person on his behalf.

Explanation:- For the purpose of this sub-clause "family" means husband, wife, sons and unmarried daughters living jointly with him;"

The phrase "Public Servant" has been defined under Section 2(g) of the Lokayukt Act in the following terms:

"Public Servant" means a person falling under any of the following categories, namely:-

(i) Minister;

(ii) a person having the rank of a Minister but shall not include Speaker and Deputy Speaker of the Madhya Pradesh Vidhan Sabha;

(iii) an officer referred to in clause (a);

(iv) an officer of an Apex Society or Central Society within the meaning of Clause (t-1) read with Clauses (a-1), (c-1) and (z) of Section 2 of the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961).

(v) Any person holding any office in, or any employee of -

(i) a Government Company within the meaning of Section 617 of the Companies Act, 1956; or

(ii) a Corporation or Local Authority established by State Government under a Central or State enactment.

(vi) (a) Up-Kulpati, Adhyacharya and Kul Sachiva of the Indira Kala Sangit Vishwavidyalaya constituted under Section 3 of the Indira Kala Sangit Vishwavidyalaya Act, 1956 (No. 19 of 1956);

(b) Kulpati and Registrar of the Jawahar Lal Nehru Krishi Vishwavidyalaya constituted under Section 3 of the Jawaharlal Nehru Krishi Vishwavidyalaya Act, 1963 (No. 12 of 1963);

Kulpati Rector and Registrar of the Vishwavidyalay constituted under Section 5 of the Madhya Pradesh Vishwavidyalay Adhiniyam, 1973 (No. 22 of 1973)."

10. Thus, all persons, except those specifically excluded under the said definition, come within the domain of the Lokayukt Act and the Lokayukt can, therefore, entertain complaints and take actions in accordance with the said provisions. Section 7 of the said Act thereafter defines the role of the Lokayukt and the Up-Lokayukt in the following terms:-

"7. Matters which may be enquired into by Lokayukt or Up-Lokayukt:-

Subject to the provision of this Act, on receiving complaint or other information:-

(i) the Lokayukt may proceed to enquire into an allegation made against a public servant in relation to whom the Chief Minister is the competent authority.

(ii) the Up-Lokayukt may proceed to enquire into an allegation made against any public servant other than referred to in clause (i)

Provided that the Lokayukt may enquire into an allegation made against any public servant referred to in clause (ii).

Explanation:- For the purpose of this Section, the expression "may proceed to enquire", and "may enquire", include investigation by Police agency put at the disposal of Lokayukt and Up-Lokayukt in pursuance of sub-Section (3) of Section 13.

11. On 14.09.2000, the State Government issued a notification in exercise of powers under Section 3 of the SPE Act by which the Special Police Establishment was empowered to investigate offences with regard to the following offences:-

(a) Offences punishable under the Prevention of Corruption Act, 1988 (No. 49 of 1988);

(b) Offences under Sections 409 and 420 and Chapter XVIII of the Indian Penal Code, 1860 (No. XLV of 1860) when they are committed, attempted or abused by public servants or employees of a local authority or a statutory corporation, when such offences adversely affect the interests of the State Government or the local authority or the statutory corporation, as the case may be;

(c) Conspiracies in respect of offences mentioned in item (a) and (b) above; and

(d) Conspiracies in respect of offences mentioned in item (a) and (b) shall be charged with simultaneously in one trial under the provisions of Criminal Procedure Code, 1973 (No. 2 of 1974).

12. As per the provision of Section 4 of the SPE Act, the superintendence of investigation by the M.P. Special Police Establishment was vested in the Lokayukt appointed under the Lokayukt Act.

13. On 22.12.2006, a complaint was received from one Shri P.N. Tiwari supported by affidavit and various documents making allegations that works had been carried out in the new Assembly building by the Capital Project Administration in gross violation of the rules, without making budgetary provisions and committing financial irregularities. The said complaint was registered as E.R. 122 of 2006. In the said complaint, it was mentioned that:

(a) An order had been issued to the Administrator, Capital Project Administration by Shri A.P. Singh, Deputy Secretary, Vidhan Sabha giving administrative approval for the estimate of the cost of construction against rules and without making budgetary provision vide order dated 19.10.2005 in respect of the following works: |S.No. |Name of works |Amount in | | | |lakhs | |(i) |Construction of 30 rooms in MLA Rest |Rs. 5.51 | | |House Block-2 | | |(ii) |Construction of toilets in Block 1-3 |Rs. 25.48 | | |of MLA Rest House | | |(iii) |Construction of shops in MLA Rest |Rs. 5.98 | | |House premises | | |(iv) |Up-gradation/construction of road from| | | |Mazar to Gate No. 5 of Vidhan Sabha | | | |(Old Jail) | | | |(a) Construction of road from Mazar to|Rs. 22.52 | | |Rotary | | | |(b) Construction of road from Rotary |Rs. 13.23 | | |to Jail Road | | |(v) |Construction of lounge for the Speaker|Rs. 6.80 | | |and Officers in Vidhan Sabha Hall | | |(vi) |Construction of new reception zone |Rs. 54.00 | | |(including parking/road) for Vidhan | | | |Sabha | | |(vii) |Upgradation work of campus lights and |Rs. 26.60 | | |electric work in MLA Rest House | | | |premises | | |(viii) |Construction of road from Vidhan Sabha| | | |to Secretariat (including development | | | |of helipad and connected area) and | | | |proposed upgradation and development | | | |work of M.P. Pool/spraypond: | | | |(a) Construction of new road from the |Rs. 10.85 | | |VIP entrance upto the proposed new | | | |gate | | | |(b) Construction of road from present |Rs. 21.56 | | |Char Diwari to Rotary | | | |(c) Construction of road from Rotary |Rs. 12.00 | | |to Secretariat | | | |Total sanctioned amount |Rs. 204.53 |

(b) the officers had abused their powers by getting the works carried out without making budgetary provisions and without getting approval from the Finance Department in respect of the works specified at item numbers (iv), (vi), (vii) and (viii) above.

(c) Following financial irregularities were also pointed out:

(i) Though administrative approval was accorded by Shri A.P. Singh, Deputy Secretary, Vidhan Sabha on 19.10.2005, works had already been executed and inaugurated in the presence of the then Chief Minister, Shri Babulal Gaur and the Speaker, Vidhan Sabha and other Ministers on 03.08.2005. The proper procedure is to first invite tenders and it is only after the acceptance of the suitable tenders that work orders are to be issued.

(ii) Budgetary head of the Vidhan Sabha is 1555. This head is meant for maintenance and not for new construction, but the administrative approval dated 19.10.2005 was accorded by Shri A.P. Singh, Deputy Secretary, Vidhan Sabha in respect of new works of total value of Rs. 160.76 lakh.

iii) Works of the value of Rs. 160.76 lakh were carried out without any budgetary provision and also without the approval of the Finance Department. Furthermore, a proposal had been sent by the Capital Project Administration for sanction of budget but the same was not approved by the Finance Department. Even then the works were got executed.

iv) As per the approval dated 19.10.2005, expenditure was to be incurred from the main budgetary head 2217 which is the head of Urban Development. From that head, construction activities in the Vidhan Sabha premises could not be carried out.

v) The Controller Buildings, Capital Project (Vidhan Sabha) executed the works in collusion with the other officers and in violation of the rules. It was stated that the officials had abused their powers to regularize their irregular activities. The works had been undertaken for the personal benefit of some officers and payments were made in violation of the rules.

14. By letter dated 04.01.2007, a copy of the complaint was sent to the Principal Secretary, Madhya Pradesh Government, Housing and Environment Department calling factual comments along with the relevant documents. The comments were submitted by the Additional Secretary, M.P. Government, Housing and Environment Department vide letter dated 15.05.2007. The comments, inter alia, stated that the Building Controller Division functioning under the Capital Project Administration was transferred to the administrative control of the Vidhan Sabha

Secretariat vide order dated 17.07.2000, consequently, Secretariat Vidhan Sabha is solely responsible for the construction and maintenance works within the Vidhan Sabha premises. On examination of the comments received along with the supporting documents, following discrepancies were revealed:

(a) Whereas the comments stated that budget provision had been made for an amount of Rs.204.53 lakh for the purpose of special repairs and maintenance of old and new Vidhan Sabha and MLA Rest House under Demand No. 21, main head 2217, sub main head 01, minor head 001, development head 1555 (3207), no amounts were specified under those heads, sub heads and minor heads which were related to new construction works;

(b) Whereas the comments stated that work had been executed through tenders, but tender documents had not been annexed.

(c) Whereas the comments stated that approval in respect of nine works had been accorded by the Secretariat, Vidhan Sabha on the request of the Controller Buildings on 21.03.2005, however, it is not clear from the letter dated 21.03.2005 that administrative approval had been accorded; and

(d) Whereas the comments stated that amended sanction was granted vide order dated 19.10.2005, while the letter dated 19.10.2005 does not indicate that it was an amended administrative sanction.

15. In view of the above preliminary observations, as noted above, a request was made to the Principal Secretary, Housing and Environment Department to submit all relevant records, tender documents, note-sheets, administrative, technical and budgetary sanctions by 10.07.2007. It was again informed by the Under Secretary, Housing and Environment Department, vide letter dated 17.07.2007 that since the administrative sanctions were issued by the Secretariat Vidhan Sabha, the note-sheets/records relating to such sanctions were not available with the Housing and Environment Department.

16. In view of the reply submitted by the Under Secretary, Housing and Environment Department, the Petitioner sent a letter dated 31.07.2007 addressed to the Principal Secretary, Housing and Environment Department, Administrator, Capital Project Administration and the Deputy Secretary, Vidhan Sabha Secretariat

to appear before the Lokayukt along with all relevant information/records on 10.08.2007.

17. On the date fixed for appearance, i.e., 10.08.2007, the Principal Secretary, Housing and Environment appeared before the Lokayukt. He informed that since the Controller Buildings of Capital Project Administration was working under the administrative control of the Vidhan Sabha Secretariat since the year 2000, all sanctions/approvals and records regarding construction and maintenance works carried out in MLA Rest House and Vidhan Sabha premises were available in the Vidhan Sabha Secretariat. On receiving such information, the Principal Secretary, Vidhan Sabha Secretariat, informed that the records relating to construction works were not with him and that such type of work was looked after by the Secretary and the Deputy Secretary, Vidhan Sabha. In this situation, Secretary and Deputy Secretary, Vidhan Sabha Secretariat and Controller Buildings, Vidhan Sabha, Capital Project Administration were summoned to give evidence and produce all records/note-sheets of administrative and technical sanctions and budgetary and tender approvals relating to construction works carried out in MLA Rest House and Vidhan Sabha premises in the year 2005-06 on 24.08.2007. Summons were issued as per the provisions of Section 11(1) of the Lokayukt Act, read with Sections 61 and 244 of the Code of Criminal Procedure, 1973. Summons were received by the Deputy Secretary, Vidhan Sabha, Shri G.K. Rajpal and the Controller Buildings, Shri Devendra Tiwari. Process Server of the Lokayukt Organisation tried to serve summons on Shri Israni in his office. Process Server contacted Shri Harish Kumar Shrivas, P.A. to Shri Israni. The P.A. took the summons to Shri Israni. After coming back, he asked the Process Server to wait till 4.00 p.m. Later, the P.A. told the Process Server to take permission of the Hon'ble Speaker to effect service of the summons on the Secretary. As such, summons could not be served on Shri Israni.

18. Thereafter, D.O. letter dated 14.08.2007 was received from the Principal Secretary, Vidhan Sabha stating that as per the direction of the Hon'ble Speaker, he was informing the Lokayukt Organization that:

> (a) The Vidhan Sabha Secretariat was not aware as to the complaint which was being inquired into;
>
> (b) All proceedings relating to invitation of tenders, technical sanction, work orders and payment etc. were conducted through the Controller Buildings,

Capital Project Administration and, therefore, all the records relating to these works should be available with them;

(c) If, a copy of the complaint, which is being inquired into, is made available to the Vidhan Sabha Secretariat, it would be possible to make the position more clear. That was the reason why the Speaker had not granted permission to the Deputy Secretary to appear in the Office of the Lokayukt; and

(d) Under the provisions of Section 2(g)(ii) of the Lokayukt Act, the Speaker, the Deputy Speaker and the Leader of Opposition are exempted from the jurisdiction of the Lokayukt.

19. Shri Israni appeared before the Lokayukt on 24.08.2007 when his deposition was recorded. In his deposition, he stated that the administrative approval to the estimated cost dated 19.10.2005 was given, which was available with the office of the Lokayukt. He further stated that note-sheet relating to administrative approval had been prepared which was in possession of the Speaker. Accordingly, he was required to produce the same by 07.09.2007.

20. Information was called for from the Chief Engineer, Public Works Department, Capital Project Administration, Controller Buildings, Vidhan Sabha, Capital Project Administration and Chief Engineer, Public Works Department. The same was received vide letters dated 11.09.2007, 13.09.2007 and 18.09.2007 respectively.

21. Scrutiny note was prepared by the Legal Advisor, Mrs. Vibhawari Joshi, a member of the Madhya Pradesh Higher Judicial Service, on deputation to the Lokayukt Organization, with the assistance of the Technical Cell, with the approval of the Lokayukt. After examination of the information and records received from the various authorities concerned, she prima facie found established that:

(a) contracts in respect of construction of roads and reception plaza and renovation of toilets were awarded at rates higher than the prevailing rates;

(b) works were got executed even when there were no budgetary provisions. Demand for budget was made from the Finance Department but the same had not been accepted;

(c) new construction works of the value of Rs. 173.54 lakh were got executed from the maintenance head, which was not permissible, since the maintenance head is meant for maintenance works and not for new works;

(d) for new construction works of the value of Rs.173.54 lakh, administrative approval and technical sanction had been accorded by the authorities, who were not competent to do so;

(e) works of Rs.205.61 lakh were got executed without obtaining administrative approval and technical sanction;

(f) records show that measurements of WBM work were recorded after the Bitumen work (tarring) had been completed. Proper procedure is that first the measurements of WBM work are recorded, thereafter Bitumen work is executed and it is only thereafter measurements of Bitumen work are recorded. Discrepancies in the recording of measurements create doubt;

(g) Rules provide that in the Notice Inviting Tenders (NIT), schedule of quantities is annexed so that the tenderers may make proper assessment while quoting rates, but in the present case, in the NIT for roads in Schedule-I, quantities were not specified. So, it was difficult for the tenderers to make proper assessment while quoting rates. This throws doubt on the legitimacy of the process.

(h) (i) Road was to be constructed within the diameter of 300 meters. For this small area, work was split up into five portions and four contractors were engaged. Rules provide that for one road, there should be one estimate, one technical sanction and one NIT. In the present case, five estimates were prepared, five technical sanctions were granted, five tenders were invited and four contractors were engaged. This throws doubt on the legitimacy of the process;

(ii) There are three processes involved in the construction of roads, i.e., WBM, Bitumen and thermoplastic. As per the rules and practice, for all the three processes, there should be one tender, but in the present case, the work was split up into three portions inasmuch work of WBM was given to two contractors, work of Bitumen to one other and work of thermoplastic to still another;

(iii) Cement concrete road was constructed for a small part of the same road. For this small part of the road another separate NIT was invited and work was awarded to a separate contractor, i.e., the fifth contractor;

(i) The Secretary and the Deputy Secretary of Vidhan Sabha Secretariat and Administrator, Superintending Engineer and Controller Buildings of Capital Project Administration in collusion with the contractors, in order to give undue benefits to them by abusing their official position caused loss of Rs.12,62,016/- to Rs.20,71,978/- to the Government.

In view of the above, the Legal Advisor (Petitioner No.2 herein) recorded her opinion that it is a fit case to be sent to the SPE for taking action in accordance with law. The Lokayukt Petitioner No. 1 agreed with the note of the Legal Advisor and observed that it is a fit case to be dealt with further by the SPE. The case was accordingly sent to the SPE.

22. The SPE, thereafter, registered Crime Case No. 33/07 on 06.10.2007 against Shri Bhagwan Dev Israni, Secretary Vidhan Sabha, Shri A.P. Singh, Deputy Secretary Vidhan Sabha, the then Administrator, Superintending Engineer, Capital Project Administration and Contractors. Soon after the registration of the criminal case, the petitioners received the impugned notices dated 15.10.2007 wherein allegations of breach of privilege were made against the petitioners. The petitioners understood that the said letters had been issued on the basis of some complaints by the Members of Legislative Assembly. The petitioners received further notices for breach of privilege on the basis of the complaint made by Shri Gajraj Singh, MLA.

23. In response to the aforesaid letters, the Secretary of the Lokayukt Organization, on the direction of the Petitioner No. 1 sent a letter dated 23.10.2007, to Respondent No. 4-Shri Qazi Aqlimuddin, Secretary, Vidhan Sabha giving in details about the constitutional, legal and factual position stating that no case of privilege was made out. It was also pointed out that neither any complaint had been received against the Speaker, Respondent No. 1 nor any inquiry was conducted by the Lokayukt Organization against him nor was he named in the FIR.

24. Respondent No. 4, i.e., Secretary, Vidhan Sabha, thereafter sent six letters dated 26.10.2007 to the petitioners. By the said letters, the petitioners were informed that the reply dated 23.10.2007 had not been accepted and it was directed that individual replies should be sent by each of the petitioners. Being aggrieved by

the initiation of action by the Speaker for breach of privilege against the petitioners, as noted above, the petitioners herein filed the present writ petition.

Maintainability of the writ petition under Article 32 of the Constitution:

25. Mr. C.D. Singh, learned counsel appearing for Respondent No.4, by drawing our attention to the relief prayed for and of the fact that quashing relates to letters on various dates wherein after pointing out the notice of breach of privilege received from the members of Madhya Pradesh Assembly sought comments/opinion within seven days for consideration of the Hon'ble Speaker, submitted that the proper course would be to submit their response and writ petition under Article 32 of the Constitution of India is not maintainable.

26. Mr. Venugopal, learned senior counsel for the petitioners submitted that as the impugned proceedings which are mere letters calling for response as they relate to breach of privilege, amount to violation of rights under Article 21 of the Constitution, hence, the present writ petition is maintainable. In support of his claim, he referred to various decisions of this Court.

27. There is no dispute that all the impugned proceedings or notices/letters/complaints made by various members of the Madhya Pradesh Assembly claimed that the writ petitioners violated the privilege of the House. Ultimately, if their replies are not acceptable, the petitioners have no other remedy except to face the consequence, namely, action under Madhya Pradesh Vidhan Sabha Procedure and Conduct of Business Rules, 1964. If any decision is taken by the House, the petitioners may not be in a position to challenge the same effectively before the court of law. In The Bengal Immunity Company Limited vs. The State of Bihar and Others, [1955] 2 SCR 603, seven Hon'ble Judges of this Court accepted similar writ petition. The said case arose against the judgment of the High Court of Patna dated 04.12.1952 whereby it dismissed the application made by the appellant- Company under Article 226 of the Constitution praying for an appropriate writ or order quashing the proceedings issued by the opposite parties for the purpose of levying and realising a tax which is not lawfully leviable on the petitioners and for other ancillary reliefs. As in the case on hand, it has been argued before the seven-Judge Bench that the application was premature, for there has, so far, been no investigation or finding on facts and no assessment under Section 13 of the Act. Rejecting the said contention, this Court held thus:

"…. In the first place, it ignores the plain fact that this notice, calling upon the appellant company to forthwith get itself registered as a dealer, and to submit a return and to deposit the tax in a treasury in Bihar, places upon it considerable hardship, harassment and liability which, if the Act is void under article 265 read with article 286 constitute, in presenti, an encroachment on and an infringement of its right which entitles it to immediately appeal to the appropriate Court for redress. In the next place, as was said by this Court in Commissioner of Police, Bombay vs. Gordhandas Bhanji, [1952] 3 SCR 135 when an order or notice emanates from the State Government or any of its responsible officers directing a person to do something, then, although the order or notice may eventually transpire to be ultra vires and bad in law, it is obviously one which prima facie compels obedience as a matter of prudence and precaution. It is, therefore, not reasonable to expect the person served with such an order or notice to ignore it on the ground that it is illegal, for he can only do so at his own risk and that a person placed in such a situation has the right to be told definitely by the proper legal authority exactly where he stands and what he may or may not do.

Another plea advanced by the respondent State is that the appellant company is not entitled to take proceedings praying for the issue of prerogative writs under article 226 as it has adequate alternative remedy under the impugned Act by way of appeal or revision. The answer to this plea is short and simple. The remedy under the Act cannot be said to be adequate and is, indeed, nugatory or useless if the Act which provides for such remedy is itself ultra vires and void and the principle relied upon can, therefore, have no application where a party comes to Court with an allegation that his right has been or is being threatened to be infringed by a law which is ultra vires the powers of the legislature which enacted it and as such void and prays for appropriate relief under article 226. As said by this Court in Himmatlal Harilal Mehta vs. The State of Madhya Pradesh (supra) this plea of the State stands negatived by the decision of this Court in The State of Bombay vs. The United Motors (India) Ltd. (supra). We are, therefore, of the opinion, for reasons stated above, that the High Court was not right in holding that the petition under article 226 was misconceived or was not maintainable. It will, therefore, have to be examined and decided on merits…. …."

28. In East India Commercial Co., Ltd., Calcutta and Another vs. The Collector of Customs, Calcutta, [1963] 3 SCR 338, which is a three-Judge Bench decision, this

Court negatived similar objection as pointed out in our case by the State. In that case, the appellants-East India Commercial Co. Ltd., Calcutta had brought into India from U.S.A. a large quantity of electrical instruments under a licence. The respondent, Collector of Customs, Calcutta, started proceedings for confiscation of these goods under Section 167(8) of the Sea Customs Act, 1878. The appellants mainly contended that the proceedings are entirely without jurisdiction as the Collector can confiscate only when there is an import in contravention of an order prohibiting or restricting it and in that case the Collector was proceeding to confiscate on the ground that a condition of the licence under which the goods had been imported had been disobeyed. The appellants, therefore, prayed for a writ of prohibition directing the Collector to stop the proceedings. The objection of the other side was that the appellant had approached the High Court at the notice stage and the same cannot be considered under Article 226 of the Constitution. Rejecting the said contention, this Court held:

> "…..The respondent proposed to take action under Section 167(8) of the Sea Customs Act, read with Section 3(2) of the Act. It cannot be denied that the proceedings under the said sections are quasi-judicial in nature. Whether a statute provides for a notice or not, it is incumbent upon the respondent to issue notice to the appellants disclosing the circumstances under which proceedings are sought to be initiated against them. Any proceedings taken without such notice would be against the principles of natural justice. In the present case, in our view, the respondent rightly issued such a notice wherein specific acts constituting contraventions of the provisions of the Acts for which action was to be initiated were clearly mentioned. Assuming that a notice could be laconic, in the present case it was a speaking one clearly specifying the alleged act of contravention. If on a reading of the said notice, it is manifest that on the assumption that the facts alleged or allegations made therein were true, none of the conditions laid down in the specified sections was contravened, the respondent would have no jurisdiction to initiate proceedings pursuant to that notice. To state it differently, if on a true construction of the provisions of the said two sections the respondent has no jurisdiction to initiate proceedings or make an inquiry under the said sections in respect of certain acts alleged to have been done by the appellants, the respondent can certainly be prohibited from proceeding with the same. We, therefore, reject this preliminary contention."

29. In Kiran Bedi & Ors. vs. Committee of Inquiry & Anr. [1989] 1 SCR 20, which is also a three Judge Bench decision, the following conclusion in the penultimate paragraph is relevant:

> "47 As regards points (v), (vi) and (vii) suffice it to point out that the petitioners have apart from filing special leave petitions also filed writ petitions challenging the very same orders and since we have held that the action of the Committee in holding that the petitioners were not covered by Section 8B of the Act and compelling them to enter the witness box on the dates in question was discriminatory and the orders directing complaint being filed against the petitioners were illegal, it is apparently a case involving infringement of Articles 14 and 21 of the Constitution. In such a situation the power of this Court to pass an appropriate order in exercise of its jurisdiction under Articles 32 and 142 of the Constitution cannot be seriously doubted particularly having regard to the special facts and circumstances of this case. On the orders directing filing of complaints being held to be invalid the consequential complaints and the proceedings thereon including the orders of the Magistrate issuing summons cannot survive and it is in this view of the matter that by our order dated 18th August, 1988 we have quashed them. As regards the submission that it was not a fit case for interference either under Article 32 or Article 136 of the Constitution inasmuch as it was still open to the petitioners to prove their innocence before the Magistrate, suffice it to say that in the instant case if the petitioners are compelled to face prosecution in spite of the finding that the orders directing complaint to be filed against them were illegal it would obviously cause prejudice to them. Points (v), (vi) and (vii) are decided accordingly."

> It is clear from the above decisions that if it is established that the proposed actions are not permissible involving infringement of Articles 14 and 21 of the Constitution, this Court is well within its power to pass appropriate order in exercise of its jurisdiction under Articles 32 and 142 of the Constitution. Further, if the petitioners are compelled to face the privilege proceedings before the Vidhan Sabha, it would cause prejudice to them. Further, if the petitioners are compelled to face the privilege motion in spite of the fact that no proceeding was initiated against Hon'ble Speaker or Members of the House but only relating to the officers in respect of contractual matters, if urgent intervention is not sought for by exercising extraordinary jurisdiction, undoubtedly, it would cause prejudice to the petitioners.

30. Accordingly, we reject the preliminary objection raised by the counsel for Respondent No.4 and hold that writ petition under Article 32 is maintainable.

31. With the above factual background and the relevant statutory provisions, let us examine the rival submissions.

32. Now, we will consider the contentions raised by Mr. Venugopal. As mentioned earlier, Petitioner No. 1 is the Lokayukt appointed under the provisions of the Lokayukta Act exercising powers and functions as provided under the Act. In the course of the performance of the said functions, the Lokayukt Organization received a complaint regarding certain irregularities in the award of contracts. Petitioner Nos. 1 and 2, therefore, conducted preliminary inquiry in the matter and on finding that a prima facie case under the Prevention of Corruption Act was made out, the matter was referred to the SPE established under the provisions of the M.P. Special Police Establishment Act, 1947 to be dealt with further, and thereafter, a case was registered by the said Establishment under the provisions of the Prevention of Corruption Act, 1988.

33. Article 194(3) of the Constitution provides for privileges of the Legislative Assembly and its members which reads as under:

> "194. Powers, privileges, etc, of the House of Legislatures and of the members and committees thereof
>
> (1) ***
>
> (2) ***
>
> (3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 26 of the Constitution forty fourth Amendment Act, 1978."

34. Article 194 is similar to Article 105 of the Constitution, which provides for the privileges of Parliament and its Members. The said Articles provide that the

privileges enjoyed by the legislature shall be such as may from time to time be defined by the legislature by law. It is relevant to mention that any law made by the Parliament or the legislature is subject to the discipline contained in Part III of the Constitution. The privileges have not been defined but the above Article provides that until the same are so defined (i.e. by the legislature by law), they shall be those which the House or its members and committees enjoyed immediately before the coming into force of Section 26 of the Constitution Forty-fourth Amendment Act, 1978.

35. As per Chapter XI of the 'Practice and Procedure of Parliament' (Fifth edition), by M.N. Kaul and S.L. Shakdher in interpreting parliamentary privileges at Page 211 observed:

> "…regard must be had to the general principle that the privileges of Parliament are granted to members in order that they may be able to perform their duties in Parliament without let or hindrance. They apply to individual members only insofar as they are necessary in order that the House may freely perform its functions. They do not discharge the member from the obligations to society which apply to him as much and perhaps more closely in that capacity, as they apply to other subjects. Privileges of Parliament do not place a Member of parliament on a footing different from that of an ordinary citizen in the matter of the application of laws unless there are good and sufficient reasons in the interest of Parliament itself to do so.
>
> The fundamental principle is that all citizens, including members of Parliament, have to be treated equally in the eye of the law. Unless so specified in the Constitution or in any law, a member of Parliament cannot claim any privileges higher than those enjoyed by any ordinary citizen in the matter of the application of law."

36. It is clear that in the matter of the application of laws, particularly, the provisions of the Lokayukt Act and the Prevention of Corruption Act, 1988, insofar as the jurisdiction of the Lokayukt or the Madhya Pradesh Special Establishment is concerned, all public servants except the Speaker and the Deputy Speaker of the Madhya Pradesh Vidhan Sabha for the purposes of the Lokayukt Act fall in the same category and cannot claim any privilege more than an ordinary citizen to whom the provisions of the said Acts apply. In other words, the privileges are available only insofar as they are necessary in order that the House may freely perform its functions but do not extend to the activities undertaken

outside the House on which the legislative provisions would apply without any differentiations. In view of the above, we reject the contra argument made by Mr. C.D. Singh.

37. As rightly submitted by Mr. K.K. Venugopal, in India, there is rule of law and not of men and, thus, there is primacy of the laws enacted by the legislature which do not discriminate between persons to whom such laws would apply. The laws would apply to all such persons unless the law itself makes an exception on a valid classification. No individual can claim privilege against the application of laws and for liabilities fastened on commission of a prohibited Act.

38. In respect of the scope of the privileges enjoyed by the Members, the then Speaker Mavalankar, while addressing the conference of the Presiding Officers at Rajkot, on 03.01.1955, observed:

> "The simply reply to this is that those privileges which are extended by the Constitution to the legislature, its members, etc. are equated with the privileges of the House of Commons in England. It has to be noted here that the House of Commons does not allow the creation of any privileges; and only such privileges are recognized as have existed by long time custom."

39. The scope of the privileges enjoyed depends upon the need for privileges, i.e., why they have been provided for. The basic premise for the privileges enjoyed by the members is to allow them to perform their functions as members and no hindrance is caused to the functioning of the House. Committee of Privileges of the Tenth Lok Sabha, noted the main arguments that have been advanced in favour of codification, some of which are as follows:

> "(i) Parliamentary privileges are intended to be enjoyed on behalf of the people, in their interests and not against the people opposed to their interests;
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> *** *** ***
>
> (iii) the concept of privileges for any class of people is anarchronistic in a democratic society and, therefore, if any, these privileges should be the barest minimum – only those necessary for functional purposes – and invariably defined in clear and precise terms;

(iv) sovereignty of Parliament has increasingly become a myth and a fallacy for, sovereignty, if any, vests only in the people of India who exercise it at the time of general elections to the Lok Sabha and to the State Assemblies;

(v) in a system wedded to freedom and democracy – rule of law, rights of the individual, independent judiciary and constitutional government – it is only fair that the fundamental rights of the citizens enshrined in the Constitution should have primacy over any privileges or special rights of any class of people, including the elected legislators, and that all such claims should be subject to judicial scrutiny, for situations may arise where the rights of the people may have to be protected even against the Parliament or against captive or capricious parliamentary majorities of the moment;

(vi) the Constitution specifically envisaged privileges of the Houses of parliament and State Legislatures and their members and committees being defined by law by the respective legislatures and as such the Constitution-makers definitely intended these privileges being subject to the fundamental rights, provisions of the Constitution and the jurisdiction of the courts;

*** *** ***

(viii) in any case, there is no question of any fresh privileges being added inasmuch as (a) under the Constitution, even at present, parliamentary privileges in India continue in actual practice to be governed by the precedents of the House of Commons as they existed on the day our Constitution came into force; and (b) in the House of Commons itself, creation of new privileges is not allowed."

40. The Committee also noted the main arguments against codification. Argument no. (vii) is as under:

"(vii) The basic law that all citizens should be treated equally before the law holds good in the case of members of Parliament as well. They have the same rights and liberties as ordinary citizens except when they perform their duties in the Parliament. The privileges, therefore, do not, in any way, exempt members from their normal obligation to society which apply to them as much and, perhaps, more closely in that as they apply to others."

41. It is clear that the basic concept is that the privileges are those rights without which the House cannot perform its legislative functions. They do not exempt the Members from their obligations under any statute which continue to apply to them like any other law applicable to ordinary citizens. Thus, enquiry or investigation into an allegation of corruption against some officers of the Legislative Assembly cannot be said to interfere with the legislative functions of the Assembly. No one enjoys any privilege against criminal prosecution.

42. According to Erskine May, the privilege of freedom from arrest has never been allowed to interfere with the administration of criminal justice or emergency legislation. Thus, in any case, there cannot be any privilege against conduct of investigation for a criminal offence. There is a provision that in case a member is arrested or detained, the House ought to be informed about the same.

43. With regard to "Statutory detention", it has been stated, thus:

> "The detention of a member under Regulation 18B of the Defence (General), Regulation 1939, made under the Emergency Powers (Defence) Acts 1939 and 1940, led to the committee of privileges being directed to consider whether such detention constituted a breach of Privilege of the House; the committee reported that there was no breach of privilege involved. In the case of a member deported from Northern Rhodesia for non-compliance with an order declaring him to be prohibited immigrant, the speaker held that there was no prima-facie case of breach of privilege.
>
> The detention of members in Ireland in 1918 and 1922 under the Defence of the Realm Regulations and the Civil Authorities (Special Powers) Act, the speaker having been informed by respectively the Chief Secretary of the Lord Lieutenant and the secretary to the Northern Ireland Cabinet, was communicated by him to the House."

44. The committee for Privileges of the Lords has considered the effect of the powers of detention under the Mental Health Act, 1983 on the privileges of freedom from arrest referred to in Standing Order No. 79 that 'no Lord of Parliament is to be imprisoned or restrained without sentence or order of the House unless upon a criminal charge or refusing to give security for the peace'. The Committee accepted the advice of Lord Diplock and other Law Lords that the provisions of the statute would prevail against any existing privilege of Parliament or of peerage.

45. In Raja Ram Pal vs. Hon'ble Speaker, Lok Sabha and Others, (2007) 3 SCC 184, this Court observed:

> "71. In U.P. Assembly case (Special Reference No. 1 of 1964), while dealing with questions relating to powers, privileges and immunities of the State Legislatures, it was observed as under:
>
> "70. … Parliamentary privilege, according to May, is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus, privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law. The particular privileges of the House of Commons have been defined as 'the sum of the fundamental rights of the House and of its individual Members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords'.
>
> … …. The privileges of Parliament are rights which are 'absolutely necessary for the due execution of its powers'. They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity (May's Parliamentary Practice, pp. 42- 43)."
>
> The privilege of freedom from arrest has never been allowed to interfere with the administration of criminal justice or emergency legislation.
>
> 87. In U.P. Assembly case (Special Reference No. 1 of 1964) it was settled by this Court that a broad claim that all the powers enjoyed by the House of Commons at the commencement of the Constitution of India vest in an Indian Legislature cannot be accepted in its entirety because there are some powers which cannot obviously be so claimed. In this context, the following observations appearing at SCR p. 448 of the judgment should suffice: (AIR p. 764, para 45)
>
> "Take the privilege of freedom of access which is exercised by the House of Commons as a body and through its Speaker 'to have at all times the right to

petition, counsel, or remonstrate with their Sovereign through their chosen representative and have a favourable construction placed on his words was justly regarded by the Commons as fundamental privilege' [Sir Erskine May's Parliamentary Practice, (16th Edn.), p. 86]. It is hardly necessary to point out that the House cannot claim this privilege. Similarly, the privilege to pass acts of attainder and impeachments cannot be claimed by the House. The House of Commons also claims the privilege in regard to its own Constitution. This privilege is expressed in three ways, first by the order of new writs to fill vacancies that arise in the Commons in the course of a Parliament; secondly, by the trial of controverted elections; and thirdly, by determining the qualifications of its members in cases of doubt (May's Parliamentary Practice, p. 175). This privilege again, admittedly, cannot be claimed by the House. Therefore, it would not be correct to say that all powers and privileges which were possessed by the House of Commons at the relevant time can be claimed by the House."

195. The debate on the subject took the learned counsel to the interpretation and exposition of law of Parliament as is found in the maxim lex et consuetudo parliamenti as the very existence of a parliamentary privilege is a substantive issue of parliamentary law and not a question of mere procedure and practice."

46. In A. Kunjan Nadar vs. The State, AIR 1955 Travancore-Cochin 154, the High Court while dealing with the scope of privileges under Article 194(3) of the Constitution held as under:-

"(3) Article 194(3) deals with the powers, privileges and immunities of the Legislature and their members in Part A states and Article 238 makes those powers, privileges and immunities available to legislatures and its members in the Part B states as well. Article 194(3) deals with the privileges and immunities available to the petitioner in a matter like this and they are according to that clause "such as may time to time be defined by the legislature by law" and until so defined, those of a member of the House of Commons of the Parliament of the United Kingdom at the commencement of the constitution.

(4) As stated before, there is no statutory provision granting the privilege or immunity invoked by the petitioner and it is clear from May's Parliamentary Practice 15th Edn. 1950, p. 78 that "the privilege from freedom from arrest

is not claimed in respect of criminal offences or statutory detention" and that the said freedom is limited to civil clauses, and has not been allowed to interfere with the administration of criminal justice or emergency legislation.

Xxxx xxxx xxxx

(8) …… So long as the detention is legal – and in this case there is no dispute about its legality – the danger of the petitioner losing his seat or the certainty of losing his daily allowance cannot possibly form the foundation for relief against the normal or possible consequences of such detention."

47. In Dasaratha Deb case (1952), the Committee of Privileges-Parliament Secretariat Publication, July 1952, inter alia, held that the arrest of a Member of Parliament in the course of administration of criminal justice did not constitute a breach of privilege of the House.

48. On 24.12.1969, a question of privilege was raised in the Lok Sabha regarding arrests of some members while they were stated to be on their way to attend the House. The Chair ruled that since the members were arrested under the provisions of the Indian Penal Code and had pleaded guilty, no question of privilege was involved.

49. In order to constitute a breach of privilege, however, a libel upon a Member of Parliament must concern his character or conduct in his capacity as a member of the House and must be "based on matters arising in the actual transaction of the business of the House." Reflections upon members otherwise than in their capacity as members do not, therefore, involve any breach of privilege or contempt of the House. Similarly, speeches or writings containing vague charges against members of criticizing their parliamentary conduct in a strong language, particularly, in the heat of a public controversy, without, however, imputing any mala fides were not treated by the House as a contempt or breach of privilege.

50. Similarly, the privilege against assault or molestation is available to a member only when he is obstructed or in any way molested while discharging his duties as a Member of the Parliament. In cases when members were assaulted while they were not performing any parliamentary duty it was held that no breach of privilege or contempt of the House had been committed.

51. Successive Speakers have, however, held that an assault on or misbehaviour with a member unconnected with his parliamentary work or mere discourtesy by the police officers are not matters of privilege and such complaints should be referred by members to the Ministers directly.

52. 45th Report of the Committee of Privileges of the Rajya Sabha dated 30th November, 2000 stated as under:

> "6. The issue for examination before the Committee is whether CRPF personnel posted at Raj Bhawan in Chennai committed a breach of privilege available to Members of Parliament by preventing Shri Muthu Mani from meeting the Governor in connection with presentation of a memorandum.
>
> 7. The Committee notes that privileges are available to Member of Parliament so that they can perform their parliamentary duties without let or hindrance. Shri Muthu Mani had gone to the residence of Governor for presentation of a memorandum in connection with party activities. Before Shri Muthu Mani reached there, two delegations of his party had been allowed to meet the Governor. It appears that due to security related administrative reasons the entry of another delegation of which Shri Muthu Mani was a Member, was denied by the Police officers. Since Shri Muthu Mani was present in connection with the programme of his political party, apparently along with other party workers, it cannot be said that he was in any way performing a parliamentary duty. As such preventing his entry by lawful means cannot be deemed to constitute a breach of his parliamentary privilege."

53. Now, with regard to the contention of Mr. Venugopal, viz., about the privileges available to the Assembly and its Members, in case of arrest of employees of the Legislature Secretariat within the precincts of the House, the Speaker of the Kerala Legislative Assembly, disallowing the question of privilege, ruled that the prohibition against making arrest, without obtaining the permission of the Speaker, from the precincts of the House is applicable only to the members of the Assembly. He observed that it is not possible, nor is it desirable to extend this privilege to persons other than the members, since it would have the effect of putting unnecessary restrictions and impediments in the due process of law.

54. The officers working under the office of the Speaker are also public servants within the meaning of Section 2(g) of the Lokayukt Act and within the meaning of

Section 2 (c) of the Prevention of Corruption Act, 1988 and, therefore, the Lokayukt and his officers are entitled and duty bound to make inquiry and investigation into the allegations made in any complaint filed before them.

55. The law applies equally and there is no privilege which prohibits action of registration of a case by an authority that has been empowered by the legislature to investigate the cases relating to corruption and bring the offenders to book. Simply because the officers happen to belong to the office of the Hon'ble Speaker of the Legislative Assembly, the provisions of the Lokayukt Act do not cease to apply to them. The law does not make any differentiation and applies to all with equal vigour. As such, the initiation of action does not and cannot amount to a breach of privilege of the Legislative Assembly, which has itself conferred powers in the form of a statute to eradicate the menace of corruption. It is, thus, clear that, no privilege is available to the Legislative Assembly to give immunity to them against the operation of laws.

56. In the present matter, the petitioners have not made any inquiry even against the members of the Legislative Assembly or the Speaker or about their conduct and, therefore, the complaints made against the petitioners by some of the members of the Legislative Assembly were completely uncalled for, illegal and unconstitutional. The Speaker has no jurisdiction to entertain any such complaint, which is not even maintainable.

57. Thus, it is amply clear that the Assembly does not enjoy any privilege of a nature that may have the effect of restraining any inquiry or investigation against the Secretary or the Deputy Secretary of the Legislative Assembly.

58. Thus, from the above, it is clear that neither did the House of Commons enjoy any privilege, at the time of the commencement of the Constitution, of a nature that may have the effect of restraining any inquiry or investigation against the Secretary or the Deputy Secretary of the Legislative Assembly or for that matter against the member of the Legislative Assembly or a minister in the executive government nor does the Parliament or the Legislative Assembly of the State or its members. The laws apply equally and there is no privilege which prohibits action of registration of a case by an authority which has been empowered by the legislature to investigate the cases. Simply because the officers belong to the office of the Hon'ble Speaker of the Legislative Assembly, the provisions of the Act do not cease to apply to them. The law does not make any differentiation and applies to all with equal vigour. As such, the initiation of action does not and cannot amount

to a breach of privilege of the Legislative Assembly, which has itself conferred powers in the form of a Statute to eradicate the menace of corruption.

59. The petitioners cannot, while acting under the said statute, be said to have lowered the dignity of the very Assembly which has conferred the power upon the petitioners. The authority to act has been conferred upon the petitioners under the Act by the Legislative Assembly itself and, therefore, the action taken by the petitioners under the said Act cannot constitute a breach of privilege of that Legislative Assembly.

60. By carrying out investigation on a complaint received, the petitioners merely performed their statutory duty and did not in any way affect the privileges which were being enjoyed by the Assembly and its members. The action of the petitioners did not interfere in the working of the House and as such there are no grounds for issuing a notice for the breach of Privilege of the Legislative Assembly.

61. Also, in terms of the provisions of Section 11(2) of the Lokayukt Act, any proceeding before the Lokayukt shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code and as per Section 11(3), the Lokayukt is deemed to be a court within the meaning of Contempt of Courts Act, 1971. The petitioners have merely made inquiry within the scope of the provisions of the Act and have not done anything against the Speaker personally. The officers working under the office of the Speaker are also public servants within the meaning of Section 2(g) of the Lokayukt Act and, therefore, the Lokayukt and his officers were entitled and duty bound to carry out investigation and inquiry into the allegations made in the complaint filed before them and merely because the petitioners, after scrutinizing the relevant records, found the allegations prima facie proved, justifying detailed investigation by the Special Police Establishment under the Prevention of Corruption Act, and the performance of duty by the petitioners in no way affects any of the privileges even remotely enjoyed by the Assembly or its Members.

62. In the present matter, the petitioners have not made any inquiry against any member of the Legislative Assembly or the Speaker or about their conduct and, therefore, the complaints made against the petitioners by some of the members of Legislative Assembly were completely uncalled for, illegal and unconstitutional.

63. Further, the allegations made in the complaint show that while dealing with the first complaint (E.R. 127/05), the Lokayukt found that there was no material to

proceed further and closed that matter since the allegations alleged were not established. While inquiring into the second complaint since the Lokayukt found that the allegations made in the complaint were prima facie proved, SPE was directed to proceed further in accordance with law.

64. On behalf of the petitioners, it is pointed out that the facts and circumstances in the present matter show that complaints have been filed by the Members not in their interest but for the benefit of the persons involved who all are public servants. It is also pointed out that the action of breach of privilege has been instituted against the petitioners since the officers, against whom the investigation has been launched, belong to the Vidhan Sabha Secretariat.

65. We are of the view that the action being investigated by the petitioners has nothing to do with the proceedings of the House and as such the said action cannot constitute any breach of privilege of the House or its members.

66. It is made clear that privileges are available only insofar as they are necessary in order that House may freely perform its functions. For the application of laws, particularly, the provisions of the Lokayukt Act, and the Prevention of Corruption Act, 1988, the jurisdiction of the Lokayukt or the Madhya Pradesh Special Police Establishment is for all public servants (except the Speaker and the Deputy Speaker of the Madhya Pradesh Vidhan Sabha for the purposes of the Lokayukt Act) and no privilege is available to the officials and, in any case, they cannot claim any privilege more than an ordinary citizen to whom the provisions of the said Acts apply. Privileges do not extend to the activities undertaken outside the House on which the legislative provisions would apply without any differentiation.

67. In the present case, the action taken by the petitioners is within the powers conferred under the above statutes and, therefore, the action taken by the petitioners is legal. Further, initiation of action for which the petitioners are legally empowered, cannot constitute breach of any privilege.

68. Under the provisions of Section 39(1)(iii) of the Code of Criminal Procedure, 1973, every person who is aware of the commission of an offence under the Prevention of Corruption Act is duty bound to give an information available with him to the police. In other words, every citizen who has knowledge of the commission of a cognizable offence has a duty to lay information before the police and to cooperate with the investigating officer who is enjoined to collect the evidence.

69. In the light of the above discussion and conclusion, the impugned letters/notices are quashed and the writ petition is allowed as prayed for. No order as to costs.