

# CALCUTTA HIGH COURT

Ansumali Majumdar

Vs.

State of West Bengal

Criminal Misc. Cases Nos. 325 of 1951 and 52 of 1952

(Harries, C.J., Das and Das Gupta, JJ.)

04.04.1952

## JUDGMENT

### **Harries, C.J.**

1. Miscellaneous Case No. 325 of 1951 concerns an application for a writ of habeas corpus made by one Ansumali Majumdar on behalf of Dr. Ranen Sen, who has been elected a member of the West Bengal Legislative Assembly, and Sri Bhupesh Chandra Gupta who has been elected a member of the Council of States. Both these persons are detained under orders made under the Preventive Detention Act.

2. Miscellaneous Case No. 52 of 1952 concerns an application by Benoy Krishna Chowdhury, Ganesh Ghosh and Dr. Ranen Sen for a writ of habeas corpus. As I have stated earlier, Dr. Ranen Sen is a member of the West Bengal Legislative Assembly under detention and so also are Benoy Krishna Chowdhury and Ganesh Ghosh members of that assembly.

3. The common point in both these cases is whether persons returned as members of a State Legislative Assembly or the Council of States can be detained under the provisions of the Preventive Detention Act whilst their membership of the Assembly or the Council of States continues.

4. I wish to make it quite clear at the outset that no point was taken on behalf of anyone of these four detenus that the orders detaining them were in any way unlawful. In the petition filed by Ansumali Majumdar on behalf of Dr. Ranen Sen and Bhupesh Chandra Gupta allegations of mala fides are made. Further it is said that the grounds of detention served upon the detenus were vague and uncertain. Mr. Atul Chandra Gupta who has appeared on behalf of these petitioners did not press any of these points and in both cases he confined the whole of his argument to the question whether or not persons duly elected as members of either the Legislative Assembly or

the Council of States could be detained.

5. Mr. Gupta contended that persons duly elected as members of either House of the Legislature were entitled to freedom from arrest during such membership. His contention was that election as a member of either house entailed important and onerous duties. Persons elected would be unable to represent their constituents or to perform the duties which they were elected to perform unless during their membership they had at all times free access to the house and freedom to perform the manifold duties which devolved upon members of a Legislative Assembly or the Council of States.

6. The powers, privileges and immunities of members of Parliament are dealt with in Article 105 of the Constitution of India. Clause (1) of this Article provides that subject to the provisions of the Constitution and to any rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament. Clause (2) provides that no member of Parliament shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in Parliament or any committee thereof and then follows immunity in respect of certain publications of the proceedings of the house.

7. Clause (3) is the most important clause for the purposes of this case which reads as follows :

"In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution".

8. There can I think be no doubt that the claim made by these detenus of freedom from arrest during their membership of either House of the Legislature is a claim to a privilege or immunity and therefore is governed by Article 105 of the Constitution.

9. As will be seen from Clause (3) of Article 105 the powers, privileges and immunities of members may be defined by law by Parliament and until they are so defined they shall be similar to the powers, privileges and immunities of members of the British Parliament. Mr. Gupta contends that Parliament has already by law given members of either House of the Central or any State Legislature immunity from arrest during such membership. In the alternative he has contended that if the Indian Parliament has not already granted such immunity freedom from arrest can be claimed, as such exists as a privilege of a member of Parliament in the United Kingdom.

10. The argument addressed on behalf of the petitioners is that Parliament under powers given by the Constitution has defined the qualifications for membership of either House and further has

laid down the disqualifications for such membership. It is argued that as preventive detention under the Preventive Detention Act neither disqualifies a person from being elected nor from continuing to be a member if so elected, such detention therefore cannot be enforced to prevent a person duly elected and not disqualified from performing the duties of a duly elected member.

11. Article 84 of the Constitution provides that no person shall be qualified to fill a seat in Parliament unless he has certain qualifications. He must be a citizen of India and above a certain age and further must possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

12. Parliament has enacted two statutes dealing with the qualifications of persons chosen to fill seats in Parliament.

13. Section 5(c) of the Representation of People Act, 1951, provides that a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless he is an elector for any Assembly constituency in that State. A similar qualification is required for a person chosen to fill a seat in the Council of State by reason of Section 6(1) of that Act.

14. Sections 16 and 19 of the Representation of People Act, 1950 set out who are disqualified for registration in an electoral roll. It follows therefore that if a person is not disqualified he shall be entitled to be registered in the electoral roll and therefore qualified to be chosen to fill a seat in either House of a State Legislature.

15. Article 102 of the Constitution provides for disqualifications for membership of either house. A person is disqualified who holds any office of profit under the State or is of unsound mind or is an undischarged bankrupt, or who is not a citizen of India and such like. He is also disqualified if he has been so disqualified by or under any law made by Parliament.

16. Parliament has made a law respecting disqualifications. Sections 7 and 8 of the Representation of the People Act, 1951 deal with such disqualifications. Section 7 provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly, or Legislative Council of a State if he has been convicted of certain offences connected with elections or has been found guilty of certain corrupt or illegal practices. Further clause (b) of this section provides that if, whether before or after the commencement of the Constitution, a person has been convicted by a court in India of any offence and sentenced to transportation or to imprisonment for not less than two years he is disqualified.

17. Section 8(1)(a) provides that if at the date of disqualification by reason of a conviction a person is a member of either House, the disqualification shall not take effect until a certain time has elapsed in order to allow of an appeal.

18. It will be seen from these provisions that preventive detention does not disqualify a member and there can be no doubt that a person against whom an order under the Preventive Detention Act has been made can be elected as a member of either House of the Legislature and if so elected, such an order does not disqualify him from membership.

Further if the order was made during his membership such would not disqualify him.

19. Mr. Gupta has contended that if an order under the Preventive Detention Act is no disqualification it cannot prevent a person duly elected from performing the duties of a member of either House and attending such House when in session. He urges that the Preventive Detention Act must have been well known to the Constituent Assembly and to Parliament when the Representation of People Acts were passed. As they did not make an order for preventive detention a disqualification, it is contended that Parliament must have intended that such order should not, in any way, prevent a person duly elected from performing his duties. In short, immunity from arrest, it is said, is implied in the provisions which I have set out, relating to qualifications and disqualification of members of either House. When a person is qualified to be elected and having been elected is not disqualified for any reason from sitting then no executive order, or in fact no order of a court, can prevent him from sitting and from performing the manifold duties which devolve on a member of either House.

20. If this argument is sound, it follows that persons convicted of certain offences and duly elected must be allowed to perform their duties and cannot be made to serve their sentence during the life of a Parliament.

21. As I have stated earlier convictions for serious offences make it impossible for a person to be elected a member of either House and further, if he is elected and then convicted such conviction disqualifies him. Convictions for all offences are not a disqualification. If a person is convicted of an offence and sentenced to imprisonment for a period less than two years he may be elected a member of either House, and further he would not be disqualified from such membership. This is clear from the provisions of Section 7(b) and Section 8(1)(a) of the Representation of People Act, 1951. That being so, a member of either House of the Legislature could be convicted of an offence involving moral turpitude or involving, for example, serious immorality and such conviction would not disqualify him from membership if the sentence imposed was less than two years. That being so, Mr. Gupta has to contend that such a person could not be imprisoned during the life of Parliament, because his conviction and sentence not being a disqualification they could not prevent him from attending to his duties.

22. I find it very difficult to believe that Parliament ever intended to protect members from certain terms of imprisonment following convictions merely because they happened to be members of either House of a Legislature. If the fact is that all persons duly qualified to be elected and not disqualified from sitting must be allowed to sit, then not only would persons

detained under orders made under the Preventive Detention Act be entitled to sit, but also certain convicted criminals. That is a position which is difficult to accept.

23. Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. If however he has been deprived of personal liberty by a procedure established by law then such imprisonment or detention is valid. Further Article 22 in clauses (3) to (7) expressly provides for preventive detention. It follows from these two Articles that if a person, whoever he may be, has been convicted of an offence under the law in a trial in accordance with the procedure laid down by law, or if a person, whoever he may be, has been detained by an order made under some valid law the procedure of that law being properly followed, such is valid. Articles 21 and 22 do not exempt members of either House of a Legislature, and apply to all.

24. Mr. Gupta however has urged that such an exception must be made, otherwise full effect cannot be given to the provisions relating to qualifications and disqualifications of members of either House of a Legislature. He has urged that the provisions of the Representation of the People Act are expressly made under the Constitution and therefore an exception to Articles 21 and 22 must be allowed.

25. The various Articles of the Constitution must be construed as a whole and effect, if possible, must be given to all of them. It would be impossible I think to hold that Articles 21 and 22 of the Constitution do not apply to members of the Legislature who have been convicted and sentenced to shorter terms of imprisonment and to persons detained under valid orders made under the Preventive Detention Act.

26. The fallacy of the argument addressed on behalf of the detenus appears to me to be the assumption that the Representation of the People Acts are concerned with the privileges and immunities of members of the Legislature. The preamble to both Acts clearly suggest that they are not concerned with such matters. The Constitution of India deals with the qualifications for membership and disqualifications for membership in Articles 84 and 102 and it deals with the privileges and immunities of members in Article 105. The makers of our Constitution therefore drew a sharp distinction between the qualifications and disqualifications of members and their privileges and immunities. The Representation of the People Acts merely deal with the qualifications and disqualifications of members. They do not purport to deal with the privileges and immunities of members. The Acts in question have been passed under powers given in Articles 84 and 102 of the Constitution. The Constitution envisages express legislation on these questions of privileges and immunities and mere legislation on qualifications and disqualifications will not touch the question. It appears to me therefore that Parliament has not yet defined any privileges or immunities of members. All that it has done is to lay down what should be the qualifications of a member and what will disqualify him. If he is not disqualified he will continue as a member with such privileges and immunities as now exist. As no legislation has yet been passed affecting such powers and immunities, the rights and privileges and

immunities of members of either House of the Legislature are those of members of Parliament of the United Kingdom. It appears to me that disqualification is a very different matter from any particular immunity claimed by members. If a member is not disqualified he remains a member. Whether as such member he can claim any particular immunity must depend upon express law relating to such immunities.

27. Clauses (1) and (2) of Article 105 of the Constitution make it clear that members of Parliament are entitled to speak freely in the House or in any committee of the House and they cannot be proceeded against in respect of any utterance made in the proceedings of the House. The Article however does not attempt to define in detail any of the other privileges or immunities, but merely states that until they are defined by Indian law they shall be those of members of the House of Commons in England.

28. It follows therefore that unless members of the House of Commons in England are immune from detention under an executive order made under an Act similar to the Indian Preventive Detention Act, no such immunity can be claimed for members of either House of the Legislature in this country.

29. It is clear that at the present time in England the privilege of freedom from arrest is limited to civil causes and has not been allowed to interfere with the administration of criminal justice. During the struggle between Parliament and the House of Commons in particular, and the Crown and the Executive, Parliament and the House of Commons fought valiantly for their privileges and for the immunity of their members from certain forms of arrest. Immunity from arrest for treason, felony, and breach of the peace was never claimed and in latter years the claim to immunity has been confined to imprisonment of a civil nature. Sir Erskine May in his book on Parliamentary Practice, 14th Ed., at page 77, deals with the matter in these words :

"In early time the distinction between 'civil' and 'criminal' was not clearly expressed. It was only to cases of 'treason, felony and breach (or surety) of the peace' that privilege was explicitly held not to apply. Originally, the classification may have been regarded as sufficiently comprehensive. But in the case of misdemeanors, in the growing list of statutory offences and, particularly, in the case of preventive detention under emergency legislation in times of crisis, there was a debatable region about which neither House had until recently expressed a definite view".

Then follows a quotation from the Journals of the House of Commons, 1939-40 :

"A review of the development of the privilege reveals a tendency to confine it more narrowly to cases of a civil character and to exclude not only every kind of criminal case, but also cases which, while not strictly criminal, partake more of a criminal than of a civil character. This development is in conformity with the principle laid down by the

Commons in a conference with the Lords in 1641 : 'Privilege of Parliament is granted in regard of the service of the Commonwealth and is not to be used to the danger of the Commonwealth'.

30. It appears to me that preventive detention partakes more of a criminal than of a civil character. The Preventive Detention Act only allows persons to be detained who are dangerous or are likely to be dangerous to the State. It is difficult to contend that an order of preventive detention is of a civil character. They are orders made when persons are suspected of serious criminal activities directed at the welfare of the State and of the community. It is true that such orders are made when criminal charges possibly could not be established, but the basis of the orders are a suspicion of nefarious and criminal or treasonable activities.

31. The House of Commons during the last War had to consider whether detention under orders made under powers given by the Defense of the Realm Act constituted a breach of privilege and whether a member of Parliament detained under such order could not be released at the instance of Parliament. The matter was referred to a Committee of Privileges which reported that the arrest and detention of such member, namely, one Capt. Ramsay did not amount to a breach of parliamentary privilege. The conclusions of the Committee of Privileges are summed up in these words :

"Your Committee's conclusions are as follows : The precedents lend no support to the view that Members of Parliament are exempted by privilege of Parliament from detention under Regulation 18-B of the Defense (General) Regulations, 1939. Preventive arrest under statutory authority by executive order is not within the principle of the cases to which the privilege from arrest has been decided to extend. To claim that the privilege extends to such cases would be either the assertion of a new Parliamentary privilege or an unjustified extension of an existing one."

32. It is to be observed that Parliament took no action in respect of the detention of Capt. Ramsay which continued for many years. It seems to follow therefore that the English Parliament claims no privilege for its members against preventive detention or against executive order made under legislative authority. If no such privilege exists, or is claimed in the United Kingdom then it follows that no such privilege exists at the present moment in India.

33. Mr. Gupta on behalf of the detenus has suggested that Parliament did not claim any privileges in the case of Capt. Ramsay because the Regulations made under the Defense of the Realm Act only permitted detention in very, grave circumstances, that is, when the defense of the realm or the security of the realm was in jeopardy. He has urged that the Preventive Detention Act allows an order for preventive detention to be made where the maintenance of public order is concerned. See Section 3(1)(a)(ii), Preventive Detention Act, 1950 as amended by the 1951 Act. A perusal of Section 3 of the Act however makes it clear that preventive detention is only allowed when the safety of the State is involved or in very serious cases. It is true that an order may be made to

prevent a man acting in a manner prejudicial to the maintenance of public order, but that appears as an alternative to his acting in a manner prejudicial to the security of the State. What Section 3 really envisages is conduct detrimental to the State, its existence and security. It does not appear to me that the Preventive Detention Act in India allows detention in any cases really less serious than the cases in which Orders in Council were made under the Defence of the Realm Act in England.

34. Mr. Gupta further urged that the Defence of the Realm Act in England was a temporary statute enacted to meet the emergency created by the War. He has suggested that the Indian statute is very different, as any emergency created by the last Great War has long since passed. It must be remembered however that the Indian Act like the English Act is a temporary one and it has been enacted in India because of the belief of the legislature that India is passing through a state of emergency even at the present moment and the Act is deliberately made temporary so that it can be brought to an end when this emergency, which still exists in the view of the legislature, has passed.

35. Mr. Gupta has suggested that the English Parliament might well have claimed privilege if one of its members had been detained under an order similar to the present orders made under the Preventive Detention Act. Clause (3) of Article 105 of the Constitution simply gives to members of an Indian Parliament the privileges of members of the English Parliament. Members of the Indian Parliament can only claim the existing privileges of an English member of Parliament. All that the Indian courts can do is to state what privileges exist in England and I do not think that we can be asked to say what privileges should exist in England, or be asked to say what the English Parliament would do in a particular set of circumstances. We can declare what the existing privileges are, but I do not think we can be asked to say what privileges the English Parliament might in future claim and what might be admitted by the English courts. At present it is clear from the report of the committee of privileges of Parliament in the case of Capt. Ramsay that no privilege is claimed against detention under an executive order made under legislative authority. That being so, it appears to me that it is quite impossible for these detained members of the West Bengal Legislature to pray in aid any privileges of the English Parliament, as such will not assist them.

36. Mr. Gupta laid great stress on the fact that in India unlike England a member of Parliament who is absent for sixty days or more may vacate his seat. Clause (4) of Article 101 of the Constitution provides that if for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant.

37. It is contended that by reason of this clause no member of Parliament can be detained or imprisoned unless such is a disqualification, because it would render him liable to vacate his seat. It must be remembered however that absence for sixty days without permission of the House

does not automatically lead to vacation of the seat. The House in such a case may declare the seat vacant. But it may not, and I find it impossible to believe that a House of Parliament would declare a seat vacant by reason of absence where the cause of absence was due to detention, or imprisonment, unless the House thought that the conduct of the person concerned was such as really to make him unfit to be a member of the House. Though there is no such provision in England it cannot be overlooked that the House of Commons in England may expel a person for reasons which do not disqualify him and declaring a seat vacant under Article 101(4) of the Constitution in action very similar to expulsion and I imagine that action under that clause would never be taken except for good cause. That being so I cannot agree that the existence of Clause (4) of Article 101 really makes the position in India materially different from that obtaining in England.

38. In any event, it appears to me that if the claim, to privilege is based on the privileges and immunities of members of the English Parliament then these applications are premature. Even assuming that privilege could be claimed because it was recognized in England, such could only be claimed within a period of forty days from the summoning of Parliament. In England the immunity from arrest, existed for forty days before the sitting of Parliament and for forty days after prorogation. The Assembly of this State has not yet been summoned. In fact the elections for the Council of States have only just concluded. Both Houses of the State Legislature may not meet for more than forty days and until it is known when they are to meet it would be difficult to say that privilege existed even if the case was governed by English privilege. The point however is of no importance, because I am bound to hold that the privilege claimed does not exist.

39. For these reasons therefore the applications for writs of habeas corpus must be dismissed and the Rule in each case discharged.

**Das, J.**

40. I agree.

**S.R. Das Gupta, J.**

41. In these cases the question which arises for our consideration is whether a person after being returned to Parliament or to the Legislative Assembly or to the Legislative Council of a State has immunity from being kept under detention under the Preventive Detention Act.

42. Mr. Atul Gupta, in support of his contention that a person after being so returned enjoys such immunity, in the first place, drew our attention to Article 105 of the Constitution of India. Article 105 deals with the question of powers, privileges and immunities of Parliament and its members. Sub-clause (1) of that Article provides for freedom of speech in Parliament. Sub-Clause (2) provides for immunity of a member from any proceedings in any Court in respect of anything

said or any vote given and in respect of any publication of any report, paper, votes or proceedings. Sub-clause (3) of Article 105, on which Mr. Gupta relies, lays down that in other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom. Mr. Gupta contended before us that the Parliament has defined by law the powers, privileges and immunities of a member of the Parliament. For that purpose, Mr. Gupta relied on the Representation of the People Act, 1950 and the Representation of the People Act, 1951 and drew our particular attention to Section 7, and sub-clause (a) of Section 8 of the Representation of the People Act, 1951.

43. Section 7 of the said Act states that, a person, shall be disqualified, for being chosen as and for being a member of either House of Parliament or of the Legislative Assembly or of the Legislative Council of a State if he is convicted of any of the offences mentioned in sub-clauses (a) and (b) or fails to do an act mentioned in sub-clause (c) or has a share or interest in a contract as mentioned, in sub-clause (d) or if he is a director or managing agent of any concern mentioned in sub-clause (e) or if he had been dismissed from any office held under the State for corruption or disloyalty as mentioned in sub-clause (f) of the said Section.

44. Sub-clause (a) of Section 8 lays down that in case of a disqualification under clause (a) or Clause (b) of Section 7, if at the date of such disqualification the person so disqualified is already a member of Parliament or of the Legislature of a State such disqualifications will not be operative until 3 months have elapsed from the date of disqualification and if an appeal or petition for revision has been filed until the appeal or the petition is disposed of.

45. Mr. Gupta contended before us that detention under the Preventive Detention Act has not been mentioned either in Section 7 or Section 8 as a disqualification for being chosen as or for being a member of either House of Parliament. In other words, detention under the Preventive Detention Act has not been considered by Parliament to be a disqualification. Mr. Gupta lays stress upon the words "for being a member of the House of Parliament" and contends that if his clients can be members of Parliament then it must follow that his clients would enjoy immunity from detention under Preventive Detention Act.

46. I am unable to accept Mr. Gupta's contentions. The short answer to Mr. Gupta's contentions seems to me to be that the said Acts, namely, the Representation of the People Act 1950 and the Representation of the People Act, 1951 do not at all deal with the question of powers, privileges and immunities of the Parliament or of its members. In other words, the said Acts do not define the powers, privileges and immunities of the House of Parliament or its members. The Representation of the People Act, 1951 only lays down amongst others the qualifications and disqualifications for membership of Parliament. Section 4 of the said Act lays down that a person shall not be chosen to fill a seat in the House of People unless - in the case of seats reserved for

Scheduled castes or Scheduled Tribes or Scheduled Tribes in the autonomous district of Assam he is a member of the Scheduled Castes, or of Scheduled Tribes or of the Scheduled Tribes of the autonomous district of Assam as the case may be and in the case of any other seat, he is an elector for any Parliamentary constituency. Section 5 lays down the qualifications for membership of a Legislative Assembly of a State. Section 6 lays down the qualifications for membership of Legislative Council of a State. Sections 7 and 8 of the said Act sets out the disqualifications for being chosen as and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State. It seems to me to be quite clear that the said Act inter alia sets out the qualifications and disqualifications for being chosen as and for being such a member. It has nothing to do with the question of privileges or immunities of a member.

47. In the preamble of the Act of 1951 it is stated that it is :

"an Act to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt and illegal practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections."

It is clearly not an Act defining the powers, privileges and immunities of each House of Parliament or of the members as contemplated in Section 105 of the Constitution of India. Again in the preamble of the Act of 1950, it is stated that it is :

"an Act to provide for the allocation of seats in, and the delimitation of constituencies for the purpose of elections to the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, and matters connected therewith".

The sections of the said Acts deal only with those matters mentioned in their respective preambles. They do not deal with the question of privileges or immunities of Parliament or of its members.

48. Mr. Gupta in support of his contention drew our attention to Article 102 of the Constitution of India. That Article, it seems to me, instead of supporting his contention goes against it. The said Article inter alia provides :

"A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament -

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(e) if he is so disqualified by or under any law made by Parliament".

It seems to me that the Representation of the People Acts of 1950 and 1951 on which Mr. Gupta relies have been enacted for the purpose of and to give effect to the said provisions of Article 102 of the Constitution. In other words, in enacting the said Acts, the Parliament has only set out the grounds of disqualification which the Parliament was required to do under sub-clause (e) of Article 102 of the Constitution. The said Acts were not brought into existence for the purpose of or to give effect to the provisions of sub-section (3) of Article 105 of the Constitution which contemplates that the Parliament would by law define the powers, privileges and immunities of each House of Parliament and of the members.

49. As for the contention of Mr. Gupta that the words "for being a member" used in Section 7 of the Representation of the People Act, 1951 show that a person can be a member inspite of being detained under the Preventive Detention Act and therefore he must necessarily be free to exercise the rights of a member that is to say right to vote and to be present at the sittings of the Parliament, it seems to me that the same is covered by my view already expressed as to the scope and object of the Representation of the People Act, 1951. Qualifications and disqualifications for being a member of the Parliament, which the said Act lays down, are something different from the rights and privileges of a member. A person may be qualified for being a member but it does not follow there from that he is privileged from arrest or detention under the law of the land. To take a simple illustration, if a person commits a theft and is convicted and sentenced to undergo imprisonment for a period less than the period mentioned in sub-section (b) of Section 7 of the said Act then he may be qualified for being chosen as and for being a member but it by no means follows therefrom that he would be exempted from undergoing the said period of imprisonment. Such privilege, if any, has to be conferred by an Act of Parliament. The Acts on which Mr. Gupta relies are not such Acts.

50. I am clearly of opinion that the contentions of Mr. Gupta should fail.

51. There is of course the wider question, namely, whether even if we assume that under the said Acts a person after being returned to Parliament has immunity from being kept under detention under the Preventive Detention Act would not the said Acts, be ultra vires the Constitution, inasmuch as they run contrary to the provisions of Article 22 of the Constitution. In view, however, of the fact that I am clearly of the opinion that the Representation of the People Acts, 1950 and 1951 are not concerned with the question of privileges and immunities of the House of Parliament or of the members, it is unnecessary for me to decide this question.

52. The next question that arises for our consideration is whether a member of the House of Commons of the United Kingdom enjoys the immunity from being kept under preventive detention. Mr. Gupta could not show us any instance where such a privilege has been recognized. On the other hand in the case of Captain Ramsay who was detained without trial by executive

order under Regulation 18B of the Defence (General) Regulations, 1939 during the last war and whose case was referred to the Committee of Privileges of the House of Commons such privilege was not recognized. The said Committee in its report to the House came to the following conclusions :-

"The precedents lend no support to the view that members of the Parliament are exempted by privilege of Parliament from detention under Regulation 18B of the Defense (General) Regulations, 1939. Preventive arrest under statutory authority by executive power is not within the principle of the cases to which privilege from arrest has been decided to extend. To claim that the privilege extends to such cases would be either the assertion of a new Parliamentary privilege or an unjustified extension of the existing one. No question of any infringement of freedom of speech arises.

"Your Committee are consequently of opinion that the detention of Captain Ramsay under Regulation 18B of the Defense (General) Regulations 1939 does not constitute a breach of the privileges of the House."

53. In my opinion, therefore, Mr. Gupta's contentions, even on this ground, cannot succeed.

54. 'By the Court' : In our opinion, these cases involve a substantial question of law as to the interpretation of the Constitution, and we grant a certificate to that effect under Article 132(1) of the Constitution. We of course express no opinion as to whether the order in question is a final order and therefore appealable.

Rules discharged.