1960

August 1.

PANDIT M. S. M. SHARMA

v.

DR. SHREE KRISHNA SINHA AND OTHERS.

(B. P. SINHA, C. J., JAFER IMAM, P. B. GAJENDRAGADKAR, A. K. SARKAR, K. SUBBA RAO, K. N. WANCHOO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

State Legislature—Breach of Privilege—Decision of Court, if res-judicata between parties—Constitution of India, Arts. 194(3), 19(1)(a).

The petitioner, the Editor of the Searchlight, an English daily newspaper published from Patna, was called upon to show cause before the Committee of Privileges of the Bihar Legislative Assembly why he should not be proceeded against for the breach of privilege of the Speaker and the Assembly for publishing an inaccurate account of the proceedings of the Legislative Assembly. He moved this Court under Art. 32 of the Constitution for quashing the said proceeding and the question for decision in substance was whether the said privilege conferred by Art. 194(3) of the Constitution was subject to the fundamental

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rights of a citizen under Art. 19(1)(a) of the Constitution. This Court by a majority found against the petitioner. Thereafter the Assembly was prorogued several times, the Committee of Privileges reconstituted and a fresh notice was issued to the petitioner. By the present petition the petitioner in substance sought to reopen the decision, raise the same controversy once again and contend that the majority decision was wrong. The question was whether he could be allowed to do so.

Held, that the general principles of res judicata applied and the judgment of this Court could not be allowed to be reopened and must bind the petitioner and the Legislative Assembly of Bihar and the reconstitution of the Committee of Privileges in the meantime could make no difference.

Raj Lakshmi Dasi v. *Banamali Sen,* [1953] S.C.R. 154, applied.

Since this Court had held that the Legislature had the power to control the publication of its proceedings and punish any breach of its privilege, there could be no doubt that it had complete jurisdiction to carry on its proceedings in accordance with its rules of business and a mere non-compliance with rules of procedure could be no ground for interference by this Court under Art. 32 of the Constitution.

Janardan Reddy v. *The State of Hyderabad,* [1951] S.C.R. 344, referred to.

Prorogation of the Assembly does not mean its dissolution and the only effect it has is to interrupt its proceedings which can be revived on a fresh motion to carry on or renew them. It was, therefore, not correct to contend that since the Assembly was prorogued several times since after the alleged breach of privilege, the proceeding must be deemed to be dead.

ORIGINAL JURISDICTION: Petition No. 176 of 1959.

Petition under Article 32 of the Constitution of India for enforcement of Fundamental Rights.

Basudeva Prasad, M. K. Ramamurthi, K. N. Keshwa and *R. Mahalingier,* for the petitioner.

Lal Narain Sinha, B. K. P. Sinha, L. S. Sinha and *S. P. Varma,* for the respondents.

M. C. Setalvad, Attorney-General for India, C. K. Daphtary, Solicitor-General of India, H. J. Umrigar and *T. M. Sen,* for the Attorney-General of India.

1960. August 1. The Judgment of the Court was delivered by

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SINHA C. J.—By this petition under Art. 32 of the Constitution the petitioner raises almost the same

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controversy as had been done in Writ Petition No. 122 of 1958, which was heard and determined by this Court by its judgment dated December 12, 1958, and by Writ Petition No. 106 of 1959, which was heard by this Court on November 10, 11 and 12, 1959, but which did not reach the stage of judgment by this Court, inasmuch as the petitioner's Advocate requested the Court to permit him to withdraw the petition and the Court allowed the prayer and permitted the petitioner to withdraw the petition. In each of these petitions the petitioner, who is a journalist by profession and is functioning as the Editor of "the Searchlight", an English daily newspaper published from Patna in the State of Bihar, impugned the validity of the proceedings before the Committee of Privileges and prayed for restraining the opposite party, namely, the Chief Minister of Bihar as Chairman of the Committee of Privileges, Bihar Legislative Assembly, Committee of Privileges and the Secretary of the Bihar Legislative Assembly, from proceeding against the petitioner for the publication in its issue dated May 31, 1957, of the Searchlight an account of the debate in the Legislative Assembly, Bihar, on May 30, 1957.

The facts of the case have been stated in great detail in the majority judgment of this Court delivered by S. R. Das, C. J., in *M. S. M. Sharma* v. *Sri Krishna Sinha* (1). In the opening paragraph of this Court's judgment aforesaid, the parties before the Court have been enumerated and the anomaly pointed out. This Court held in effect that under Art. 194(3) of the Constitution a House of a Legislature of a State has the same powers, privileges and immunities as the House of Commons of the Parliament of the United Kingdom had at the commencement of the Constitution. The House of Commons at the relevant date had the power or privilege of prohibiting the publication of even a true and faithful report of proceedings of the House and had *a fortiori* the power or privilege of prohibiting the publication of an inaccurate or garbled version of such debate or proceedings. The powers or privileges of a House of State Legislature are the same as

(1) [1959] Supp. 1 S.C.R. 806.

those of the House of Commons in those matters until Parliament or a State Legislature, as the case may be, may by law define those powers or privileges. Until that event has happened the powers, privileges and immunities of a House of Legislature of a State or of its members and committees are the same as those of the House of Commons at the date of commencement of our Constitution. This Court also expressed the view that Legislatures in this country like the House of Commons will no doubt appreciate the benefit of publicity and will not exercise those powers, privileges and immunities, except in gross cases. The minority judgment delivered by Subba Rao, J., on the other hand, expressed the view that at the relevant date the House of Commons, even as the Legislatures in this country, had no privilege to prevent the publication of a correct and faithful report of the proceedings of those Legislatures, except those of secret sessions, and had only a limited privilege to prevent *mala fide* publication of garbled, unfaithful or expunged reports of the proceedings. He also held that the petitioner had the fundamental right to publish the report of the proceedings of the Legislature. In the result, this Court, in view of the judgment of the majority, dismissed the petition, but made no order as to costs. This Court further held that the Assembly of Bihar was entitled to take proceedings for breach of its privileges and it was for the House itself to determine whether there had in fact been any breach of any of its privileges.

After Writ Petition No. 122 of 1958 had thus ended, the petitioner again moved this Court under Art. 32 of the Constitution. That case was registered as Writ Petition No. 106 of 1959. On January 5, 1959, the petitioner received a notice that the case of breach of privilege against him would be considered by the Committee of Privileges of the Assembly on February 3, 1959. That hearing was postponed from date to date, until in August, 1959, the petitioner filed his petition under Art. 32 of the Constitution. He contended in that petition that, as a citizen of India, the petitioner had the fundamental right under Art. 19(1)(a) of the

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Constitution to freedom of speech and expression which included the freedom of publication and circulation and that the Legislature of the State of Bihar could not claim any privilege contrary to the right thus claimed. In effect, it was contended that the privilege conferred on the Legislature of a State by Art. 194(3) of the Constitution was subject to the fundamental right of a citizen contained in Art. 19(1)(a). It was also contended that the first respondent, the Chief Minister of Bihar, who, it was alleged, had control over the majority of the members of the Bihar Legislative Assembly and of the Committee of Privileges, was proceeding *mala fide* in getting the proceedings instituted against the petitioner for alleged breach of the privilege of the House. Though not in terms, but in effect, the points raised in this petition were a reiteration of those already determined by this Court in its judgment aforesaid of December 12, 1958. The prayer made in the petition was that the proceedings of the Committee of Privileges at its meeting held on August 10, 1958, might be quashed and the respondents restrained by a writ in the nature of a writ of prohibition from proceeding against the petitioner in respect of publication aforesaid of the proceedings of the Bihar Legislative Assembly of May 30, 1957. After the petitioner had made his writ application to this Court as aforesaid, the Bihar Legislative Assembly reconstituted the Committee of Privileges of the Assembly, and on that very date a member of the Legislative Assembly sought to move a motion in that Assembly for revival and re-reference of the matter of the alleged breach of privilege by the petitioner. Some members of the Bihar Legislative Assembly objected to the motion being moved and the Speaker of the Assembly deferred giving his ruling on that objection. At the instance of some of the members of the Assembly, the Speaker of the Assembly referred two questions to the Advocate General of Bihar for his opinion on the floor of the House on October 20, 1959, namely, (1) whether it was open to the Assembly to debate on an issue which might be *sub judice* in view of the writ petition aforesaid filed by the

petitioner in the Supreme Court under Art. 32; and (2) whether the matter which was dead by reason of prorogation of the House several times could be legally revived and restored. On October 20, 1959, the Advocate General of Bihar attended the House and gave his opinion, which it is not relevant to state here. The Writ Petition, 106 of 1959, was heard in part and allowed to be withdrawn, as indicated above, on November 12, 1959.

On November 24, 1959, the petitioner received a fresh notice from the Secretary of the Legislative Assembly, opposite party No. 3, calling upon the petitioner to show cause on or before December 1, 1959, why appropriate action should not be recommended against him for a breach of the privilege of the Speaker and the Assembly. The petitioner again instituted proceedings under Art. 32 of the Constitution complaining that the motion adopted by the Committee of Privileges of the Bihar Legislative Assembly at its meeting held on November 23, 1959, amounted to an abridgement of his fundamental right of speech and expression guaranteed under Art. 19(1) (a) of the Constitution and was an "illegal and *mala fide* threat to the petitioner's personal liberty in violation of Art. 21 of the Constitution of India and that the Committee of Privileges, respondent No. 2 had no jurisdiction or authority to proceed against the petitioner as threatened by the notice aforesaid".

The grounds of attack raise substantially the same questions that were agitated on the previous occasions in this Court. It was contended before us that the petitioner, as a citizen of India, had the fundamental right of freedom of speech and expression which included the freedom of obtaining the earliest and most correct intelligence of the events of the time including the proceedings of a Legislature and publishing the same and that no Legislature of a State could claim a privilege so as to curtail that right. It was, therefore, contended that the majority decision of this Court in *Pt. M. S. M. Sharma* v. *Shri Sri Krishna Sinha* (1) was wrong. In this connection it was also contended that

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the rule of construction adopted by this Court in its previous decision had been wrongly applied. It was further contended that even if the House of a State Legislature had the same powers, privileges and immunities as those of the House of Commons, those will be only such as were being actually exercised at the date of the commencement of the Constitution and the right to prevent publication of its proceedings was not one of those powers, privileges or immunities. An appeal was also made to Art. 21 of the Constitution and it was contended that no citizen could be deprived of his personal liberty, except in accordance with the procedure established by law. Hence, it was further contended that the *mala fide* act of respondents 1 and 2 calling upon the petitioner to show cause was a threat to his fundamental right, and, finally, it was contended that after several prorogations, the previous proceedings for breach of privilege were dead and the House of the Assembly had, therefore, no power or jurisdiction to issue the fresh notice in accordance with the motion of November 23, 1959, reviving the proceedings.

It will thus appear that in the present proceedings also the very same questions which were discussed and decided in Writ Petition No. 122 of 1958 are sought to be raised once again. In effect, it is sought to be argued that the previous decision of this Court has proceeded on a wrong appreciation of the legal position. In short, it is insisted that the petitioner has the fundamental right of publishing the proceedings of the Bihar Legislature and that the Legislature has no power to restrict or control the publication of its proceedings.

The Government Advocate of Bihar, on behalf of the opposite party, has contended, in the first instance, that the present writ petition against the parties, namely, the Chairman and the Members of the Committee of Privileges, respondents 1 and 2, is barred by the principle of *res judicata* and, therefore, not maintainable. His contention also is that the writ cannot issue either against an individual member or against the House of the Legislature as a whole in

respect of what has been done by it in exercise of its privilege of prohibiting or, at any rate, controlling the publication of its proceedings.

On behalf of the petitioner it was contended by Mr. Basudeva Prasad that respondent No. 2, the Committee of Privileges, has been reconstituted as aforesaid after the first decision of this Court which is sought to be availed of as *res judicata* and that therefore the rule of *res judicata* is inapplicable. In this connection it may be pointed out that in Writ Petition No. 122 of 1958, Sri Krishna Sinha, Chief Minister of Bihar, was impleaded as opposite party No. 1 in his capacity as the Chairman of the Committee of Privileges of the Bihar Legislative Assembly and opposite party No. 2 was cited as Committee of Privileges, Bihar Legislative Assembly, without any names being given. In the present writ petition, opposite party No. 1 is the same. Opposite party No. 2 is impleaded as the (New) Committee of Privileges of Bihar Legislative Assembly and then a number of names are given including that of Dr. Sri Krishna Sinha, the Chief Minister, as Chairman. Would it make any difference that though opposite party No. 2 is the Committee of Privileges, its personnel is different from that of the Committee of Privileges constituted as it was in 1958? In our opinion, it does not make any difference. So long as the Assembly remains the same it is open to the Assembly to reconstitute its Committees according to the exigencies of the business of the Assembly. The Committee of Privileges is one of the agencies through which the Assembly has to transact its business. It is really the Assembly as a whole which is proceeding against the petitioner in purported exercise of its powers, privileges and immunities as held by this Court in its judgment in Writ Petition No. 122 of 1958. This Court has laid it down in the case of *Raj Lakshmi Dasi* v. *Banamali Sen* (1) that the principle underlying *res judicata* is applicable in respect of a question which has been raised and decided after full contest, even though the first Tribunal which decided

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the matter may have no jurisdiction to try the subsequent suit and even though the subject-matter of the dispute was not exactly the same in the two proceedings. In that case the rule of *res judicata* was applied to litigation in land acquisition proceedings. In that case the general principles of law bearing on the rule of *res judicata*, and not the provisions of s. 11 of the Code of Civil Procedure, were applied to the case. The rule of *res judicata* is meant to give finality to a decision arrived at after due contest and after hearing the parties interested in the controversy. There cannot be the least doubt that, though *eo nomine* opposite party No. 2 were not the same, but there is no escape from the conclusion that the Committee of Privileges is the same Committee irrespective of its personnel at a given time so long as it was a Committee constituted by the same Legislative Assembly. The question decided by this Court on the previous occasion was substantially a question affecting the whole Legislature of the State of Bihar and was of general importance and did not depend upon the particular constitution of the Committee of Privileges. It cannot, therefore, be said that the question decided by this Court on the previous occasion had not been fully debated and had not been decided after due deliberation. That there was difference of opinion and one of the Judges constituting the Court held another view only shows that there was room for difference of opinion. It was a judgment of this Court which binds the petitioner as also the Legislative Assembly of Bihar. For the application of the general principles of *res judicata*, it is not necessary to go into the question whether the previous decision was right or wrong.

In our opinion, therefore, the questions determined by the previous decision of this Court cannot be reopened in the present case and must govern the rights and obligations of the parties which, as indicated above, are substantially the same. It is manifest, therefore, that the petitioner has no fundamental right which is being threatened to be infringed by the proceedings taken by the opposite party.

It now remains to consider the other subsidiary

questions raised on behalf of the petitioner. It was contended that the procedure adopted inside the House of the Legislature was not regular and not strictly in accordance with law. There are two answers to this contention, firstly, that according to the previous decision of this Court, the petitioner has not the fundamental right claimed by him. He is, therefore, out of Court. Secondly, the validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. Article 212 of the Constitution is a complete answer to this part of the contention raised on behalf of the petitioner. No Court can go into those questions which are within the special jurisdiction of the Legislature itself, which has the power to conduct its own business. Possibly, a third answer to this part of the contention raised on behalf of the petitioner is that it is yet premature to consider the question of procedure as the Committee is yet to conclude its proceedings. It must also be observed that once it has been held that the Legislature has the jurisdiction to control the publication of its proceedings and to go into the question whether there has been any breach of its privileges, the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance with its rules of business. Even though it may not have strictly complied with the requirements of the procedural law laid down for conducting its business, that cannot be a ground for interference by this Court under Art. 32 of the Constitution. Courts have always recognised the basic difference between complete want of jurisdiction and improper or irregular exercise of jurisdiction. Mere non-compliance with rules of procedure cannot be a ground for issuing a writ under Art. 32 of the Constitution vide *Janardan Reddy* v. *The State of Hyderabad* (1).

It was also sought to be argued that the subject-matter of the proceedings in contempt, whatever it was, took place more than three years ago, and that, therefore, it has become much too stale for proceeding

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against the petitioner in contempt. In our opinion, this is also a matter within the jurisdiction of the Legislature which must decide whether or not it was recent enough to be taken serious notice of, or whether any punishment in the event of the petitioner being found guilty is called for. These are matters with which this Court is in no way concerned. Mr. Lal Narain Sinha, the Government Advocate of Bihar, who appeared on behalf of the respondents, informed the Court that the Legislature was interested more in the vindication of its constitutional rights than in inflicting any punishment on the petitioner. Hence, no more need be said on this aspect of the matter.

It remains to consider one other point sought to be made on behalf of the petitioner that the Assembly had no power to proceed against the petitioner for breach of privilege in May, 1957 when we know as a fact that the Assembly was prorogued several times between May 31, 1957 and November 23, 1959. In our opinion, there is no substance in this contention, for the simple reason that the prorogation of the Assembly does not mean its dissolution. The House remains the same; only its sessions are interrupted by prorogation of the House according to the exigencies of public demands on the time and attention of the members of the Assembly and the volume of business of the Assembly itself. In this connection reliance was placed on the following passage in May's Parliamentary Practice, 16th Edition, p. 279 :—

"The effect of a prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed, except impeachments by the Commons and appeals before the House of Lords. Every bill must therefore be renewed after a prorogation, as if it were introduced for the first time."

The observations quoted above do not support the extreme contention raised on behalf of the petitioner that the proceedings in contempt are dead for all time. The effect of the prorogation only is to interrupt the proceedings which are revived on a fresh motion to

carry on or renew the proceedings. In this case, it is not necessary to pronounce upon the question whether dissolution of the House necessarily has the effect of completely wiping out the contempt or the proceedings relating thereto.

In our opinion, for the reasons given above, no grounds have been made out for the exercise by this Court of its powers under Art. 32 of the Constitution. The petition is accordingly dismissed. There will be no order as to costs.

Petition dismissed.