

RAJYA SABHA

(1980)

Point of privilege

- (i) Arrest of a member and alleged ill-treatment meted out to him while in detention
- (ii) Delay in sending intimation about the arrest of a member

1. Arrest of Shri Sadashiv Bagaitkar, a member

Facts of the case and reference to the Committee of Privileges

On 26th December, 1980, Shri Sadashiv Bagaitkar was "detained" in Nagpur for defying prohibitory orders under section 37(3) of the Bombay Police Act, 1971 during a Dindi procession. He was released in the evening the same day. A wireless message dated 26th December, 1980 in this regard was received in the Rajya Sabha Secretariat on 29th December, 1980. The following formal communication dated 26th December, 1980 received from the Police Inspector, Police Station Sita buldi, Nagpur, on 30th December, 1980, was notified in the Bulletin Part II, No.26110 of the same date :

"I have the honour to inform you that I have found it my duty in the exercise of my powers under section 68/69 of the Bombay Police Act to direct that Shri Sadashiv Bagaitkar, M.P, be detained for defying prohibitory orders u/s 37(3) B.P. Act at Nagpur during Dindi procession. Shri Sadashiv Bagaitkar, M.P. was accordingly taken into custody at 14.00 hours on 26-12-1980 and is at present lodged in the open place at Police Line, Takali, Nagpur.

N.B. He was released on 26-12-1980 at 19.00 hours."

2. Shri Bagaitkar sent a telegram dated 28th December 1980 from Bombay to the Chairman stating that he was "detained from 8.45 A.M. to 9.00 P.M. in the Sonegaon Police Station, Nagpur, on 26th December, 1980, without lunch, tea and without written order in spite of demand". Subsequently, Shri Bagaitkar sent a letter dated 2nd January, 1981, to the Chairman giving details about his arrest and release and the treatment meted out to him by the Police at the Sonegaon Police Station.

3. On 17th February, 1981, referring to the Rajya Sabha Bulletin Part II, dated 30th September 1980, containing the intimation about his arrest and release. Shri Bagaitkar stated¹ in the House, inter alia as follows : -

"The whole thing is, if I may say so, a fabrication of imagination and a totally untrue picture has been given I was never arrested at the place mentioned or at the time mentioned nor was I released at the time mentioned in this. I was arrested and kept at a totally different place and released at 9.30 P.M. at a totally different place. So, if they deliberately mislead you to believe in this, I think there is a question of privilege involved in this and you should kindly allow me to move a privilege motion against the police officer concerned."

The Chairman (Shri M. Hidayatullah) then observed that he was looking into the matter.

4. On 19th February, 1981, Shri Bagaitkar gave, notice of a question of privilege against the Police Commissioner Nagpur. Besides giving his version of his arrest etc. Shri Bagaitkar raised the following points in the notice :-

(1) The information regarding place of arrest and detention, time of arrest and release was completely incorrect and contrary to facts and had not been conveyed accurately and truthfully as per rules in this regard.

(2) Arrest under section 68 of Bombay Police Act was unwarranted and interference with his duties as a member of Parliament.

(3) By deliberately misleading the Chairman, members and the House not only an attempt had been made to avoid account ability involved in the arrest and detention but a breach of privilege of the House had been committed.

5. On 16th March, 1981 the Chairman, after considering the matter in the light of the complaint made by Shri Bagaitkar and the factual information furnished by the Government of Maharashtra, referred the matter to the Committee of Privileges for examination, investigation and report.

Findings and recommendation of the Committee

6. The Committee of Privileges, after hearing Shri Sadashiv Bagaitkar and also the then Commissioner of Police, Nagpur, the Home Secretary, Maharashtra and other police officials concerned with the arrest of Shri Bagaitkar, in their Twenty First Report presented to the House on 9, September 1981, reported, inter alia, as follows:-

(i) "From the written comments of the Government of Maharashtra and the oral submissions of its officials and the police officials before the Committee, the following points seems to emerge :

(1) That the information regarding the time and place of arrest of Shri Bagaitkar and his release has not been correctly intimated to the Chairman, Rajya Sabha. The correct facts in this regard are that Shri Bagaitkar was arrested at 9.30 A.M. on December 26, 1980 under section 68 of the Bombay Police Act (instead of 1400 hrs. as stated in the communication). He was kept at the Sonegaon Police Station (instead of at Police Lines Takali as stated in the communication). Shri Bagaitkar was released on the same day at about 2130 hrs. (instead of at 1900 hrs. as stated in the communication). The police officials have stated that these discrepancies had occurred unintentionally and in the 'rush of work' on account of the Dindi procession in which a large number of persons including VIPs participated. The police officials also stated that there was no mala fide intention in conveying what has turned out to be factually wrong information.

(2) As regards the legality of the arrest, Shri Bagaitkar was arrested under section 68 of the Bombay Police Act and according to police officials it was not necessary to give written orders in regard to the arrest under that section. The police officials also maintained that the direction to restrain Shri Bagaitkar was, in the situation obtaining at that point of time, reasonable.

(3) As regards the treatment meted out to Shri Bagaitkar at the police station, the police officials maintained that arrangements were made to allow Shri Bagaitkar and others to take food at a nearby restaurant, and food packets were also made available at the police station."

(ii) "...the Committee has come to the conclusion that the facts relating to the time and place of arrest of Shri Bagaitkar and the time of his release were wrongly conveyed to the Chairman, Rajya Sabha by the police Inspector, Sitabuldi Police Station, Nagpur. It has been stated by the police officials before the Committee that due to rush of work, sequel to the massive Dindi procession wrong information came to be conveyed to the Chairman, Rajya Sabha. The committee feels that the police officials ought to have exercised adequate care in communicating the facts about Shri Bagaitkar's arrest and release. The casual and perfunctory manner in which information regarding arrest and release of a member has been communicated to the Chairman leaves much to be, desired. The communication has been sent in utter disregard of the sanctity of communication addressed to Chairman for the information of the Rajya Sabha. The Committee is not quite impressed with the alibi put by the police officials for conveying wrong information. However, in view of the fact that there was no want of bona fides on the part of the police official nor was there a deliberate attempt to mislead the House the Committee accepts the expression of regret and apology tendered by the concerned police officers before it. The Committee does hope that police officials will appreciate the importance and sanctity of such communication and verify facts with abundant care before communicating the same to the Chairman. Such laxity does credit to no one concerned."

(iii) "As regards the legality of the arrest of Shri Bagaitkar and other related issues, namely whether he was lawfully arrested under section 68 of the Bombay Police Act; whether his detention till 21.30 hrs. which was much beyond the hour when the demonstration was over, was reasonable or not; whether any orders were required to be given in writing to those arrested under the provisions of the Bombay Police Act-the Committee feels that these issues do not fall within the purview of the privilege jurisdiction of the Committee and the appropriate forum where these matters could be considered would be a court of law. The Committee would not, therefore like to extend its jurisdiction by considering the legality or propriety of Shri Bagaitkar's contentions mentioned above."

(iv) "In so far as Shri Bagaitkar's contention that-his detention was an interference with his normal work as a member of Parliament is concerned, the Committee will like to reiterate the following observations contained in para 7 of its 16th Report (Shri Niren Ghosh's case) which appositely apply in the present case :

The privilege is available to a Member only when he is obstructed or in any way molested while discharging his duties as member of Parliament. Thus, it would be a breach of privilege and contempt of the House to obstruct or molest a Member while in the execution of his duties as member i,e, while he is attending the House or any

of its Committees or when he is coming to, or going from the House or any of its Committees. The privilege, however, is not available in a case when the member is not performing any parliamentary duty.'

(v) "As regards the treatment meted out to Shri Bagaitakar while under arrest, the Committee will like to imphasise that members of Parliament are entitled to utmost consideration at the hands of the public servants. The police or any other authority should not do anything or act in manner which will hamper members of Parliament in their functioning as public men. The authorities concerned while dealing with the members of Parliament should act with great restraint and circumspection and show all courtesies which are legitimately due to the representatives of the people. The police should exercise utmost discretion and forbearance and should not put more fetters on the personal liberty of a citizen particularly of members of Parliament even for a short period than are reasonably necessary to meet a particular situation."

(vi) "While considering the case, the Committee noticed that the Government of Maharashtra in its comments to the Committee sent through the Union Ministry of Home Affairs inter alia stated that the allegations that Shri Sadashiv Bagaitkar was denied tea and meals are false and malicious'. The Committee takes strong exception to the use of the words 'false and malicious' in respect of the members' complaint. The Committee examined the Home Secretary and the Joint Secretary in the Department of Home of the Government of Maharashtra on this question. It is indeed sad that even though the communication was approved at the level of the Joint Secretary Home, no one appreciated the seriousness of this accusation. It is unthinkable that the member would have any malice against police officials in saying that he was denied tea and meals at the police station. Even the police officials have not stated anywhere that the member was motivated by malice in making this complaint. The Committee was hard put to make the police officials and others realise the seriousness of this accusation. It so looked as if these words were used by the police officials at the lower level without realising their import. This does not reflect a happy situation and more so when the communication passed through the hands of senior officials of the Government without anyone of them realising the seriousness of the accusation. However considering that an apology was tendered by the senior officials appearing before the Committee after realising the seriousness of the accusation, the Committee recommends that no further action in this regard was called for. The Committee does hope that due care and caution will be taken by all concerned while sending communications with regard to members of Parliament."

(vii) "In the view taken by the Committee and having regard to the apology tendered, the Committee recommends that no further action need to be taken by the House in the matter."

Action taken by the House

7. No further action was taken by the House in the matter.