

**RAJYA SABHA
(1968)**

Point of privilege

Procedure to be followed by police when a member states something on the floor of the House which may be directly relevant to investigation of a criminal case.

Facts of the case and reference to the Committee of Privileges

On the 26th March, 1968, Shri Bhupesh Gupta and some other members drew¹ the attention of the House to a Photostat copy of the Punjab Appropriation Bill, 1968. Shri Bhupesh Gupta contended that that copy showed that the Appropriation Bill had been signed by the Governor of Punjab without any certificate thereon signed either by the Speaker or the Deputy Speaker of the Punjab Legislative Assembly.

On the 29th April and 2nd May, 1968, Shri Bhupesh Gupta stated² in the House that a Police officer from Chandigarh had called at his residence in connection, with the investigation of a case of alleged theft of the original, the photostat copy of which he had mentioned in the House on the 26th March, 1968.

3. Shri Gupta stated inter alia that "a member of Parliament has been subjected to enquiry on the ground of theft of a document he had referred to in the House." He felt that such visits by a police officer would be a serious interference with the work of members of Parliament and would indeed amount to a gross breach of privilege of the House. He added, however, that he did not propose to adopt that course, but would be satisfied if the Minister of Home Affairs made a statement explaining the circumstances under which the police officer visited his house.

4. The Chairman (Shri V. V. Giri) observed that the matter be left to him.

5. On the 6th May, 1968, the Rajya Sabha Secretariat received a communication from the Ministry of Home Affairs setting out the following facts relating to the police officer's visit :

"The facts ascertained from the Chandigarh Administration are that a case under section 380 IPC and section 5 of the Official Secrets Act was registered in Police Station, Central Chandigarh, on the basis of F.I.R. filed by Shri Inder Singh, Inspector CID, Punjab, on March 29, 1968. The F.I.R. was to the effect that a sheet of Punjab Appropriation Bill No. 9 which bore the scored off Singh, Inspector CID, Punjab, on been stolen from the office of the Legal Remembrancer, Punjab and had been made over to some unauthorised individuals. The case was entrusted to the

1. R.S. Deb dt. 26-3-1968, cc 6507-11.

2. Ibid. dt. 29-4-1968, cc 134-41, dt. 2-5-1968 cc. 775-76.

Chandigarh CID for investigation. Shri Kuldip Singh, Inspector, CID, was deputed to contact, Shri Bhupesh Gupta M.P., Delhi, in connection with the investigation of this case. Shri Kuldip Singh has been deputed to request Shri Bhupesh Gupta, M.P., to hand over the original sheet which was reported to be in his possession as its, was wanted in a cognizable case. Shri Gupta refused to give him the same and thereupon Shri Kuldip Singh, inspector CID, returned to the headquarters."

6. on receipt of the above facts from the Ministry of Home Affairs, the Chairman wrote to the Minister of Home Affairs On the 4th May 1968, asking him to make a statement in the House.

7. On the 11th May, 1968, the Minister of Home Affairs replied to the Chairman stating that he had no objection in disclosing to the Rajya Sabha the facts of the case as reported earlier to the Rajya Sabha Secretariat. He, however, added that "if the conduct of the investigation officer in this case were to be regarded as in any manner unusual, it might be useful that the police administration in general and investigating agencies in particular were to be given clear guidance as to how they should proceed in such cases".

He, therefore, suggested that if the Chairman considered it proper, the question might be referred to the Committee of Privileges "whose findings would provide the necessary guidance to officers who have a statutory duty to perform in such matters".

8. The Chairman referred the matter to the Committee of privileges.

Finding and recommendation of the Committee

9. The Committee of Privileges in their Twelfth Report presented to the House on 6th December, 1968, reported inter alia as follows:

Issues before the Committee

(i) "The Committee framed, the following issues for examination:

1. Can a member be questioned in any court or place out of Parliament for any disclosure he makes in Parliament?

2. Will not such questioning, if permitted, amount To impeding we member in the discharge of his duties as a member of parliament; will it also not amount to morestation of the member?

3. Will it not amount to interference with his freedom of speech guaranteed under Article 105 of the Constitution?

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The Law and the Precedents

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(ii) "The privilege of freedom of speech contained in article 105 of the Constitution of India had received statutory recognition in the U.K. as early as --by the 19th article of the Bill of Rights:

"That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

It is well known, though not exactly construed by the Courts, that the term proceedings in Parliament includes everything said or done by a member in the exercise of his functions as a member in a Committee of either House, as well as everything said or done in either House in the transaction of parliamentary business.

Clause (2) of article 105 of the Constitution specifically lays down 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.

This secures to members of Parliament immunity from proceedings, civil or criminal, on account of anything said or done by them in their capacity as members and is a necessary corollary to the privilege of freedom of speech and debates or proceedings in Parliament.

(iii) "It is today the settled procedure in the two Houses of Parliament in India that-

no member or officer of the House should give evidence in respect of any proceedings of the House or any committee thereof or any document relating to or connected with any such proceedings or in the custody of officers of the House or produce any such document, in a court of law without the leave of the House being first obtained."

(iv) "Under Section 161 of that Code (Criminal Procedure Code), a police officer may, during the course of such investigation, examine orally any person supposed to be acquainted with the facts and circumstances of the case and that person is bound to answer all questions other than those the answers to which would have a tendency to expose the person to a criminal charge or to a penalty or forfeiture. It is, however, interesting to note that though section 161 enacts that such person is bound to answer questions put to him by the police officer, a refusal to answer such questions is not punishable under the Indian Penal Code. This is settled by judicial decisions which have held that a person answering questions put to him by a police officer under section 161 of the Cr. P.C. is not bound to answer 'truly' and so he does not come within the mischief of section 179 which makes refusing to answer a public servant authorised to question penal only when the person questioned is required to answer 'truly'."

(v) "Section 160 of the Criminal Procedure Code, which precedes section 161, lays down that any police officer making an investigation under chapter XIV of the Code

may, by an order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information give or otherwise appears to be acquainted with the circumstances of the case: and such person shall attend as so required. If instead of proceeding under section 161 the police officer had proceeded against Shri Gupata under section 160 of the Criminal Procedure Code, and if Shri Gupta failed to attend before the police officer in answer to such order, he would have made himself liable to punishment under section 174 of the Indian Penal Code. If Shri Bhupesh Gupta had permitted the police to interrogate him, there was a possibility that he might have subsequently found himself in the dock as a result though an indirect result of what he said in the House. The prosecution of the member in such circumstances would according to the opinion of Sir Gilbert Campion, be an accusation tending to call words spoken under the protection of the House in question before a court of justice under the pretended denomination of an offence not entitled to the privilege of the House', and consequently be a breach of privilege and contempt of the House. Furthermore during the course of the trial of the criminal case in relation to which the member was interrogated by the police, there was a possibility of the member being called as a witness, and if during the course of his evidence before the court of law he were to say anything about the proceedings of the House, he would be violating the rule which Parliament itself has made of prohibiting a member from giving evidence elsewhere in relation to the proceeding of the House without the leave of the House."

(vi) "The right of a member to obtain information (including secret information) from any source he chooses, in the performance of his parliamentary duties, and to disclose such information in the House is today unquestioned. Both in the Rajya Sabha and the Lok Sabha there have been instances of such disclosures. In the case relating to what was described as the C.B.I. Report concerning the affairs of a Chief Minister and certain other Ministers of Orissa, Mr. Speaker of the Lok Sabha rules:-

`(1) A member can ordinarily quote from a document that is treated by Government as secret or confidential, and which Government have not disclosed in public interest.

x x x x

(6) It is a fact that a document, which is treated by the Government as secret or confidential, can be obtained through leakage or stealth or in an irregular manner, but the Chair would not compel the member to disclose the source from which copies have been obtained by the member.

(7) As I said above the member has right to quote from such a document subject to the conditions that I have specified above. But there is an over-riding authority with the Speaker and under his inherent powers he can stop a member from quoting from a document in the national interest where security of country is involved. Such cases, I admit, shall be rare, but such a power exists in the Speaker and he can exercise it without assigning reasons.'

It is important to note that by this ruling a member may not be compelled even by the Chair to disclose the source of his information."

(vii) "The legal provisions and the precedents we have quoted above clearly establish that it would be impeding a member of Parliament in the discharge of his duties as such member if he is to be questioned in any place outside Parliament for a disclosure that he may make in Parliament. The right of a member of Parliament to function freely and without fear or favour is in India as in the U.K., a constitutional guarantee. This guarantee is subject only to the rules of the House and ultimately to the disciplinary jurisdiction of the House itself. While we do not minimise the difficulties of the Executive in dealing with a case like the present, particularly in the course of a criminal investigation, we would like to emphasise that nothing should be done either by the Executive or any other outside agency which would impinge upon or detract from the right of a member to freely function in relation to his parliamentary duties."

(viii) "In all the circumstances of the case, therefore, we have no hesitation in coming to the conclusion that any investigation outside Parliament of anything that a member says or does in the discharge of his duties as a member of Parliament would amount to a serious interference with the member's right to carry out his duties as such member."

(ix) "The answers to the three issues that we addressed to ourselves would thus be :

(1) No.

(2) Yes.

(3) Yes."

(x) "Having answered, the issues, we would like to proceed to consider how the police should proceed in a case when it finds from disclosures made by a member on the floor of the House that he is in possession of vital information in a criminal case which is under investigation by the police. Normally, we should expect every member of Parliament to consider it his duty to assist in the due process of law. It is, however possible that a distinction may be sought to be made between a member's right to expose something in Parliament in the public interest with impunity and his duty to assist a legally constituted investigating authority on the basis of the personal knowledge of the member. We have given anxious thought to this question. We assume that no member would deliberately do anything or act in a manner against the interests of the due process of law. Keeping these factors in mind and with due regard to the special position and duties of a member of Parliament we would propose the following Procedure :

If in a case a member states something on the floor of the House which may be directly relevant to a criminal investigation and is, in the opinion of the investigating authorities, of vital importance to them as positive evidence, the investigating authority may make a report to the Minister of Home Affairs accordingly. If the Minister is satisfied that the matter requires seeking the assistance of the member concerned, he would request the member to meet him. If the member agrees to meet the Home Minister and also agrees to give the required information, the Home Minister will use it in a manner which will not conflict with any parliamentary right or the member. If however, the member refuses to respond to the Home Minister's request, the matter should be allowed to rest there."

Action taken by the House

10. On the 20th December, 1968 Shri M. C. Setalvad,¹ member of the Committee of Privileges, moved:

"That the Twelfth-Report of the Committee of Privileges. presented to the Rajya Sabha on the 6th December, 1968, be taken into consideration".

11. To the above motion, the following amendments were moved :

(i) by Shri Raj Narain:

"That the question which forms the subject-matter of this Report be recommitted to the Committee of Privileges".

(ii) by Shri A. P. Jain

"That on page 12, for the word 'Minister of Rome Affairs' wherever it occurs in the last paragraph, the word 'Chairman' may be substituted".

12. After several members had spoken, Shri M. C. Setalvad observed--

"In view of what my hon. friend, Mr. Bhupesh Gupta, has said, I am suggesting, the deletion of one sentence on page 3 of the Report. The sentence to be deleted will be :-

'In fact, Shri Bhupesh Gupta himself did not raise this matter in the House as a question of privilege.'

That will be deleted, and the next sentence will begin a little differently, thus :-

Shri Bhupesh Gupta's object was to bring to the notice of the House etc.

And in view of Mr. Ajit Prasad Jain's suggestion, I will try to meet it half way. And if I may suggest, on page 12 after this sentence 'If the Minister is satisfied that the matter requires seeking the assistance of the member concerned, he would request the member' I would add three words 'through the Chairman' so that the Chairman will request the member. The rest will be there."

13. The amendment moved by Shri Raj Narain was put to the vote of the House and was negatived.

14. Shri M. C. Setalvad then moved:

1R.S. Deb. dt. 20-12-1968.

"That the House agrees with the Report subject to the following amendments: -

(i) that at page 3, in lines 29 to 31, the words, 'In fact, Shri Bhupesh Gupta himself did not raise this matter in the House as a question of privilege; be deleted: and in

line 31, for the words 'his objection' the words 'Shri Bhupesh Gupta's object' be substituted.

(ii) that at page 12 in lines 35-36 after the words 'he would request the member' the words 'through the Chairman be inserted.'

15. The amendment moved by Shri A. P. Jain was also put to the vote of the House and negatived.

16. Thereafter, Shri M. N. Kaul, moved the following amendment.

"That for the words 'agrees with the Report' the words 'while agreeing with the Report of the Committee directs the Home Minister to prepare a set of instructions for the guidance of the Police officers who are investigating a criminal case and in that connection wish to make an enquiry from a member of Parliament regarding any document divulged in or statement made In the House by him and to make a report to this House' be substituted:

17. Shri Vidya Charan Shukla, the Minister of State in the Ministry of Home Affairs assured the House that :

"....we would prepare a set of instructions and circulate them to the State Governments so that they can follow the procedure as suggested by the Committee....."

The Minister also stated that the proposed instructions would be shown to the Presiding Officers of Parliament.

18. In view of the assurance given by the Minister Shri M. N. Kaul withdrew his amendment.

19. The motion moved Shri M. C. Setalvad (See para 14 above) was then put to the vote of the House and adopted.