

GOMES
V.
M. H. MOHAMED, SPEAKER OF PARLIAMENT

COURT OF APPEAL.

WIJEYARATNE, J., AND EDUSSURIYA, J.

C. A. APPLICATION NO. 1000/91.

NOVEMBER 27, 1991.

Mandamus and Certiorari - Constitutional duty under Article 38 (2)(c) of the Constitution - Parliament (Powers and Privileges) Act, No. 21 of 1953.

The entertainment of the resolution under Article 38(2)(a) of the Constitution by the respondent as Speaker and the fact that the respondent subsequently "ceased to entertain" the resolution and any orders made thereon are part of the proceedings of Parliament and cannot be questioned in any Court of Law whether by way of writ or otherwise.

In its narrow sense the expression "proceedings in Parliament" is used to denote the formal transaction of business in the House or in committees. In its wider sense the expression includes matters connected with or ancillary to the formal transaction of business.

Cases referred to:

1. *A. G. v. Samarakkody* 57 N.L.R. 419, 421
2. *Bradlaugh v. Gossett* 1884 - 12 Q.B.D. 273
3. *British Railways Board v. Pickin* (1974) 2 W.L.R. 208

APPLICATION for writs of Mandamus and Certiorari in respect of orders made by the speaker.

P. Dharmadasa Gomes in person.

December 04, 1991.

WIJEYARATNE, J.

The petitioner has filed this application on 13.11.1991 against the respondent (the Speaker of the Parliament) stating that a member of Parliament has given notice to the respondent on 28.08.1991 of a resolution under Article 38(2)(a) of the Constitution setting out certain allegations against His Excellency the President and that the respondent has entertained the same and informed His Excellency accordingly.

The petitioner avers that His Excellency has obtained the advice of the Attorney-General. This advice was sent to the Presidential Secretariat on 12.09.1991 and thereafter conveyed to the respondent. A copy of the advice of the Attorney-General is annexed to this application, marked as P2.

Thereafter it is averred that the respondent had sent a letter to His Excellency stating that the resolution had been duly accepted.

The petitioner alleges that the respondent did not carry out the statutory functions that he was bound to perform, namely, to place the resolution before the Parliament but, instead of performing his constitutional and statutory functions under Article 38(2)(c), on 08.10.91 had informed His Excellency that he "ceased to entertain" the resolution, which he had accepted on 28.08.91.

The petitioner has filed this application to compel the respondent to perform his constitutional duty and to lay this resolution before the Parliament under Article 38(2)(c).

Therefore the petitioner prays for a mandate in the nature of a Writ of Mandamus "commanding" the respondent to place the said resolution before the Parliament and to quash by a Writ of Certiorari the decision of the respondent made on 08.10.91 that he "ceased to have entertained" the said resolution.

The petitioner also moves to have this case referred to the Supreme Court under Article 125 of the Constitution if this court is of the view that a question of interpreting the Constitution is involved.

When appearing in support the petitioner submitted that his rights as a citizen and voter have been violated by the respondent.

Section 67 of the Constitution of 1978 lays down as follows:—

“The privileges, immunities and powers of Parliament and of its Members may be determined and regulated by Parliament by law, and until so determined and regulated, the provisions of the Parliament (Powers and Privileges) Act, shall, *mutatis mutandis*, apply”.

The Parliament (Powers and Privileges) Act, No. 21 of 1953, as amended by Law No. 5 of 1978 and Acts Nos. 17 of 1980, 25 of 1984 and 37 of 1987 is applicable in this matter.

In passing it should be mentioned that this enactment, along with certain other enactments which were in force on 31.12.80, has not been reproduced in the 1980 Revised Edition (Unofficial) of the Legislative Enactments for the reason (as stated in the Preface thereto) “that such enactments were to be repealed or likely to lapse in the near future”. So far this Act has not been repealed or replaced.

However this Act (without the above amendments) appears as Chapter 383 in the Revised Edition of the Legislative Enactments of 1956.

Provision has been made by section 7 of our Act for our Parliament to hold, enjoy and exercise the same privileges, immunities and powers for the time being held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof.

The word "member" has been defined in section 2 of our Act to include the "Speaker".

These privileges are necessary for Parliament to maintain its independence of action and the dignity of its position. The basis of the claim is that it is an essential part of the constitution and working of Parliament that the members who comprise it should be able to attend to their duties without interruption or molestation.

Section 9 of the said Act reads as follows:—

"All privileges, immunities and powers of the House shall be part of the general and public law of Ceylon, and it shall not be necessary to plead the same, but the same shall in all courts in Ceylon be judicially noticed"

Hence it is the duty of this court to take judicial notice of the privileges, immunities and powers of Parliament.

Section 3 of the said Act reads as follows:—

"There shall be freedom of speech, debate and proceedings in the House and such freedom of speech, debate or proceedings shall not be liable to be impeached or questioned in any court or place out of the House".

This section follows the English law and is an adaptation of Article 9 of the Bill of Rights.

(See the observations of H. N. G. Fernando, J., in *The Attorney - General v. E. P. Samarakkody and another*)

Erskine May's *Treatise on The Law, Privileges, Proceedings and Usage of Parliament* (20th Edn. 1983) at page 88 states as follows:—

“Right to exclusive cognizance of proceedings in Parliament

Article 9 of the Bill of Rights, confirming the long-standing claims of each House of Parliament to exclude all outside interference within its own walls - claims which had only been seriously challenged in the case of the House of Commons - lays down that ‘freedom of speech and debate or proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament.’”

In the case of *Bradlaugh v. Gossett* (2) it was recognised by the courts in England of their incompetence to inquire into internal proceedings of a House of Parliament. Mr Justice Stephen in the said judgment at page 278 states as follows:—

“I think that the House of Commons is not subject to the control of Her Majesty’s Court in its administration of that part of the Statute law which is related to its own internal proceedings”

Parliament is the guardian of its own privileges and is the sole judge of the lawfulness of its own proceedings.

In the case of *British Railways Board v. Pickin* (3) a respondent before the House of Lords in 1973 advanced the allegation that in obtaining the enactment of section 18 of the British Railways Act 1968 in their favour, the British Railways Board had fraudulently concealed certain matters from Parliament and its officers, and had thereby misled Parliament into granting certain rights to them. The House of Lords found unanimously that the respondent was not entitled to ‘go behind’ the Act of 1968 to show that section 18 should not be enforced, nor was he entitled to examine proceedings in Parliament in order to show that the appellants, by fraudulently misleading Parliament, caused him loss.

Lord Morris of Borth-y-Gest in the said case stated as follows:—

“It must surely be for Parliament to lay down the procedures which are to be followed before a Bill can become an Act. It must be for Parliament to decide whether its decreed procedures have in fact been followed. It must be for Parliament to lay down and to construe its standing orders and further to decide whether they have been obeyed; it must be for Parliament to decide whether in any particular case to dispense with compliance with such orders. It must be for Parliament to decide whether it is satisfied that an Act should be passed in the form and with the wording set out in the Act. It must be for Parliament to decide what documentary material or testimony it requires and the extent to which Parliamentary privilege should attach. It should be impracticable and undesirable for the High Court of Justice to embark upon an enquiry concerning the effect or the effectiveness of the internal procedures in the High Court of Parliament or an enquiry whether in any particular case those procedures were effectively followed”

These principles are embodied in section 3 of our Act quoted earlier and proceedings in the House shall not be liable to be impeached or questioned in any court.

Then the question arises as to what is meant by “proceedings in Parliament”. Halsbury’s Laws of England - Hailsham - (4th Edn. 1980) Vol. 34 at page 598 states as follows in reference to the United Kingdom:—

“An exact and complete definition of ‘proceedings in Parliament’ has never been given by the courts of law or by either House. In its narrow sense the expression is used in both Houses to denote the formal transaction of business in the House or in committees..... In its wider sense ‘pro-

ceedings in Parliament' has been used to include matters connected with, or ancillary to, the formal transaction of business".

Therefore the "entertainment" of this resolution under Article 38(2)(a) of the Constitution by the respondent as Speaker and the fact that the respondent subsequently "ceased to entertain" the resolution and any orders made thereon are part of the proceedings of Parliament and cannot be questioned in any court of law whether by way of writ or otherwise.

Finally the petitioner made a submission that the Constitution is supreme and that the respondent has to act in terms of the Constitution and carry out his statutory duties laid down therein. Undoubtedly these are statutory duties laid down in the Constitution but nevertheless they are part of the proceedings of Parliament, therefore this court is precluded from examining these matters.

There is no question involving the interpretation of the Constitution that arises in this case. The matter is governed by the Parliament (Powers and Privileges) Act, No. 21 of 1953.

For these reasons this court has no jurisdiction to go into this matter. Therefore I refuse notice on the respondent and dismiss the application.

Edussuriya, J. — I agree.

Application dismissed.