

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 558 OF 2012

Kalpana Mehta and Others

Petitioner(s)

Versus

Union of India and Others

Respondent(s)

W I T H

WRIT PETITION (CIVIL) NO. 921 OF 2013

J U D G M E N T

Dipak Misra, J.

Though the present writ petitions were preferred in the years 2012 and 2013 and the debate had centered around on many an aspect relating to action taken by the Drugs Controller General of India and the Indian Council of Medical Research (ICMR) pertaining to approval of a vaccine, namely,

Human Papilloma Virus (HPV) manufactured by the respondent No. 7, M/s. GlaxoSmithKline Asia Pvt. Ltd. and the respondent No.8, MSD Pharmaceuticals Private Limited, respectively for preventing cervical cancer in women and the experimentation of the vaccine was done as an immunization by the Governments of Gujarat and Andhra Pradesh (before bifurcation, the State of Andhra Pradesh, eventually the State of Andhra Pradesh and the State of Telangana) with the charity provided by the respondent No.6, namely, PATH International. The issue also arose with regard to the untimely death of certain persons and grant of compensation. Certain orders were passed by this Court from time to time.

2. A stage came in the life span of this litigation, which is still in continuation, when the Court *vide* order dated 12th August, 2014, had posed the following questions:-

“i) Whether before the drug was accepted to be used as a vaccine in India, the Drugs Controller General of India and the ICMR had followed the procedure for said introduction?

ii) What is the action taken after the Parliamentary Committee had submitted the 72nd report on 30.08.2013?

iii) What are the reasons for choosing certain

places in Gujarat and Andhra Pradesh?

iv) What has actually caused the deaths and other ailments who had been administered the said vaccine?

v) Assuming this vaccine has been administered, regard being had to the nature of the vaccine, being not an ordinary one, what steps have been taken for monitoring the same by the competent authorities of the Union of India, who are concerned with health of the nation as well as the State Governments who have an equal role in this regard?

vi) The girls who were administered the vaccine, whether proper consent has been taken from their parents/guardians, as we have been apprised at the Bar that the young girls had not reached the age of majority?

vii) What protocol is required to be observed/followed, assuming this kind of vaccination is required to be carried out?"

3. In the said order, the Court had also directed as follows:-

"At this juncture, we are obligated to state the Union of India, who is required to assist this Court in proper perspective, shall direct its competent authority to produce the file by which the Drugs Controller General of India had approved the vaccine for introduction in India. Mr. Suri, learned senior counsel for the Union of India will produce the said file. Additionally, the relevant documents shall also be provided to the concerned counsel for the petitioners."

4. In the course of proceedings, affidavits were filed by the Union of India and the State of Gujarat. Learned counsel for

the petitioners, Mr. Colin Gonsalves in Writ Petition (C) No. 558 of 2012 and Mr. Anand Grover in Writ Petition (C) No. 921 of 2013 had drawn the attention of this Court to the 81st Report dated 22nd December, 2014 of the Parliamentary Standing Committee. Be it noted, when the report of the Parliamentary Standing Committee was produced, the question arose with regard to the “concept of consent” for administration of vaccine and the resultant illness suffered by the victims and such other issues and the Court had issued certain directions for filing of affidavits pertaining to steps that have been taken by the concerned Governments keeping in view the various instructions given from time to time including what has been stated in the report of the Parliamentary Standing Committee.

5. It is worthy to note here that certain affidavits were filed about the safety measures being undertaken with regard to the consent and the method of trial and the improvements made thereon. In essence, the stand of the Union of India and the States was that the vaccine was necessary and steps have been taken to avoid any kind of hazards. That apart, the factual allegations made by the petitioners were also

controverted.

6. On 18th November, 2015, an issue was raised by the learned senior counsel appearing for the respondent No. 8, MSD Pharmaceuticals Private Limited and by the learned Additional Solicitor General whether this Court while exercising the power of judicial review or its expansive jurisdiction under Article 32 dealing with the public interest litigation, can advert to the report of the Parliamentary Standing Committee and on that basis issue directions. After the said issue was posed, the learned counsel for the parties sought time to file written notes of submissions and argue the matter. Regard being had to importance of the matter, assistance of the learned Attorney General for India was sought.

7. Mr. Mukul Rohatgi, learned Attorney General for India has filed a written note of submission contending, *inter alia*, that the reports of the Parliamentary Standing Committee are at best external aids of construction in order to determine the surrounding circumstances or the historical facts for the purpose of discerning the mischief sought to be remedied, but not for any other purpose. He has referred to certain

authorities which we shall refer to in the course of our deliberation. We may clarify that though Mr. Rohatgi has filed the written note of submissions, today we have been assisted by Mr. Ranjit Kumar, learned Solicitor General, Mr. A.K. Panda and Mr. Ajit Kumar Sinha, learned senior counsel and Mrs. Rekha Pandey, learned counsel on behalf of Union of India.

8. Mr. Grover and Mr. Gonsalves, learned senior counsel appearing for the petitioners, who intend to reply on the report of the Parliamentary Standing Committee submitted that looking at the report of the Parliamentary Standing Committee by this Court in a writ petition preferred under Article 32 of the Constitution is only to be apprised about facts to arrive at a conclusion for the purpose of issue of necessitous directions and there cannot be absolute rule that it cannot be looked at. According to them, there is no impediment to rely on the said report as the reports of the Parliamentary Standing Committee are put on the website and in such a situation, the Court can always take aid of the report not only for the purpose of understanding the legislative intendment of a legislation, but also for taking the

facts into consideration to issue any prerogative writ. Learned senior counsel would contend that as long as the reference to report does not violate the freedom of speech of the members of the Committee or there is no attempt to impugn the report or criticize the same, reliance on the same should not be prohibited. It is urged by Mr. Gonsalves that the role of the Parliament in the modern democracy has gone beyond the traditional concept and the perception is to have a transparent society and when there is access to the report, there is no warrant not to utilize the same in a proceeding before the Court.

9. Learned senior counsel appearing for the Union of India would in reply submit that the arguments advanced by the learned counsel for the petitioners are to be tested on the constitutional parameters and various Articles of the Constitution are to be read in proper perspective. It is asserted by him that the constitutional scheme does not favour the interpretation which is sought to be placed by the learned counsel for the petitioners. According to the learned counsel for Union of India, the report of the Parliamentary Standing Committees are meant to guide the functioning of

the departments and work as a precursor to the debate in Parliament but not meant to be used in court as it does not countenance any contest in a court of law.

10. To appreciate the controversy, we may usefully refer to the Rules of Procedure and Conduct of Business of Lok Sabha Rules (for short, 'the Rules'). Rule 2 of the Rules defines the "Parliamentary Committee". For the sake of completeness, we reproduce the same:-

““Parliamentary Committee” means a Committee which is appointed or elected by the House or nominated by the Speaker and which works under the direction of the Speaker and presents its report to the House or to the Speaker and the Secretariat for which is provided by the Lok Sabha Secretariat.”

11. Chapter 26 of the Rules deals with Parliamentary Committees and the matters regarding appointment, quorum, decisions of the committee, etc. There are two kinds of Parliamentary Committees: (i) Standing Committees, and (ii) Adhoc Committees. The Standing Committees are categorized by their nature of functions. The Standing Committees of the Lok Sabha are as follows:-

- “a) Financial Committees;
- b) Subject Committees or Departmentally related standing committees of the two houses;

- c) Houses Committee i.e. the Committees relating to the day to day business of the House;
- d) Enquiry Committee;
- e) Scrutiny Committees;
- f) Service Committees;
- vi) A list of Standing Committees of Lok Sabha along with its membership is reproduced as under:

Name of Committee	Number of Members
Business Advisory Committee	15
Committee of Privileges	15
Committee on Absence of Members from the Sitzings of the House Committee on Empowerment of Women	15
Committee on Estimates	30
Committee on Government Assurances	15
Committee on Papers Laid on the Table	15
Committee on Petitions	15
Committee on Private Members Bills and Resolutions	15
Committee on Public Accounts	22
Committee on Public Undertakings	22

Committee on Subordinate Legislation	15
Committee on the Welfare of Scheduled Castes and Scheduled Tribes	30
House Committee	12
Joint Committee on Offices of Profit	15
Joint Committee on Salaries and Allowances of Members of Parliament	15
Library Committee	9
Rules Committee	15

- vi) Apart from the above, there are various departmentally related Standing Committees under various ministries.”

12. From the aforesaid, it is quite clear that there are various departmentally related Standing Committees under various Ministries. It is apt to note here that in the case at hand, Rule 270 of the Rules which deals with the functions of the Parliamentary Committee meant for Committees Rajya Sabha is relevant. It reads as follows:-

“270. Functions

Each of the Standing Committees shall have the following functions, namely:—

- (a) to consider the Demands for Grants of the related Ministries/ Departments and report

thereon. The report shall not suggest anything of the nature of cut motions;

- (b) to examine Bills, pertaining to the related Ministries/ Departments, referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon;
- (c) to consider the annual reports of the Ministries/Departments and report thereon; and
- (d) to consider national basic long term policy documents presented to the Houses, if referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon: Provided that the Standing Committees shall not consider matters of day-to-day administration of the related Ministries/Departments.”

13. Rule 271 provides for applicability of provisions relating to functions. Rule 274 deals with the report of the Committee. The said Rule reads as follows:-

“274. Report of the Committee

- (1) The report of the Standing Committee shall be based on broad consensus.
- (2) Any member of the Committee may record a minute of dissent on the report of the Committee.
- (3) The report of the Committee, together with the minutes of dissent, if any, shall be presented to the Houses.”

14. Rule 274(3) is extremely significant, for it provides that

the report of the Committee together with the Minutes of the dissent, if any, is to be presented to the House. Rule 277 stipulates that the report is to have persuasive value. The said Rule is as follows:-

“277. Reports to have persuasive value.— The report of a Standing Committee shall have persuasive value and shall be treated as considered advice given by the Committee.”

15. Relying on the said Rule, it is argued by the learned counsel for the petitioners that the report of the Standing Committee has a persuasive value and hence, it can be taken note of for the purpose of fact finding by this Court. The learned counsel for the Union of India, on the contrary, would contend that as per the scheme of the Rules, it is meant to have persuasive value and considered as an advice given by the Standing Committee to the Parliament.

16. It is submitted on behalf of the Union of India that the Rules 277 – 279 deal with submission of the Report of the Committee and provide that if no time frame is given, the same would be submitted within a month from the appointment of the Committee and the reports shall be presented to the House by the Chairperson. It is further urged that the reports submitted by the different Committees

are examined/debated by the House and only thereafter they are adopted. Our attention has been drawn to Rule 277 and Rule 278 made for Lok Sabha which provide for Scope of Advice regarding reports submitted by Select/Joint Committees. In essence, the purpose of reliance is, it is a matter of concern to the debates in the Parliament.

17. At this juncture, we may look at the origin and working of the Parliamentary Committee. The Committee system in India, as has been stated in “The Committee System in India : Effectiveness in Enforcing Executive Accountability”, Hanoi Session, March 2015, is as follows:-

“The origin of the Committee system in India can be traced back to the Constitutional Reforms of 1919. The Standing Orders of the Central Legislative Assembly provided for a Committee on Petitions relating to Bills, Select Committee on Amendments of Standing Orders, and Select Committee on Bills. There was also a provision for a Public Accounts Committee and a Joint Committee on a Bill. Apart from Committees of the Legislative Assembly, members of both Houses of the Central Legislature also served on the Standing Advisory Committees attached to various Departments of the Government of India. All these committees were purely advisory in character and functioned under the control of the Government with the Minister-incharge of the Department acting as the Chairman of the Committee.

After the Constitution came into force, the position of the Central Legislative Assembly changed

altogether and the committee system underwent transformation. Not only did the number of committees increase, but their functions and powers were also enlarged.

By their nature, Parliamentary Committees are of two kinds: Standing Committees and Ad hoc Committees. Standing Committees are permanent and regular committees which are constituted from time to time in pursuance of the provisions of an Act of Parliament or Rules of Procedure and Conduct of Business in Lok Sabha. The work of these Committees is of continuous nature. The Financial Committees, Departmentally Related Standing Committees (DRSCs) and some other Committees come under the category of Standing Committees. Ad hoc Committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report. The principal Ad hoc Committees are the Select and Joint Committees on Bills. Railway Convention Committee, Joint Committee on Food Management in Parliament House Complex, etc. also come under the category of ad hoc Committees.”

18. In the said document in respect of Standing Committees of Parliament, it has been observed:-

“Standing Committees are those which are periodically elected by the House or nominated by the Speaker, Lok Sabha, or the Chairman, Rajya Sabha, singly or jointly and are permanent in nature. In terms of their functions, Standing Committees may be classified into two categories. One category of Committees like the Departmentally Related Standing Committees (DRSCs), Financial Committees etc., scrutinize the functioning of the Government as per their respective mandate. The other category of Committees like the Rules Committee, House Committee, Joint Committee on

Salaries and Allowances, etc. deal with matters relating to the Houses and members.”

19. We have referred to the same as a holistic reading of the said document conveys that the Parliamentary Standing Committee makes the executive accountable to it on certain issues. As is indicated hereinbefore, Mr. Grover and Mr. Gonsalves, learned senior appearing for the writ petitioners, would contend that the executive being accountable to the Parliamentary Standing Committee, the report of the Committee which is in the public domain and hence, that can be relied upon by them to buttress a fact situation and in any way, establish it. Learned counsel for the Union of India and the contesting respondents, *per contra*, would urge that the Parliamentary Standing Committee report cannot be tendered as a piece of evidence to prove a fact and once it is referred to, it invites a contest and criticism.

20. We may fruitfully state that the procedure of the Committee is neither inquisitorial nor adjudicative. It has its own character. The procedure is *sui generis*. In the Westminster system, Parliament also deals with the matter of accountability of the executive and standing Committees of

Parliament, on many an occasion, examine the propriety and wisdom of the conduct of the executive. The reports of the Committees are for the assistance of Parliament. The procedure for drawing up such reports, is entirely a matter for the Committee and it has authority to receive evidence from witnesses – but it is for their own assistance. No person has a right to be heard by the Committee even if the Committee is examining a matter which may result in an adverse comment on the conduct of such person. The principles of natural justice are not applicable.

21. It is apt to note here that Mr. Grover and Mr. Gonsalves have placed reliance on the authority of ***Raja Ram Pal v. Hon'ble Speaker, Lok Sabha and others***¹, wherein in paragraph 431(a), it has been said:-

“(a) Parliament is a coordinate organ and its views do deserve defence even while its acts are amenable to judicial scrutiny.”

22. Learned counsel for the petitioners have also placed reliance on a two-Judge Bench decision in ***Krishan Lal Gera v. State of Haryana and others***². In the said case,

¹ (2007) 3 SCC 184

² (2011) 10 SCC 529

the report submitted by the Parliamentary Standing Committee on Human Resources Development has been referred to. They have also cited certain English authorities which relate to reliance upon the report in trials without impugning the same.

23. At this stage, we may gainfully refer to the authorities cited by the learned counsel for Union of India and the contesting respondents. In ***A.K. Roy v. Union of India and others***³, it has been held thus:-

“But we find ourselves unable to intervene in a matter of this nature by issuing a mandamus to the Central Government obligating it to bring the provisions of Section 3 into force. The Parliament having left to the unfettered judgment of the Central Government the question as regards the time for bringing the provisions of the 44th Amendment into force, it is not for the court to compel the government to do that which, according to the mandate of the Parliament, lies in its discretion to do when it considers it opportune to do it. The executive is responsible to the Parliament and if the Parliament considers that the executive has betrayed its trust by not bringing any provision of the Amendment into force, it can censure the executive. It would be quite anomalous that the inaction of the executive should have the approval of the Parliament and yet we should show our disapproval of it by issuing a mandamus. The court's power of judicial review in such cases has to be capable of being exercised both positively and negatively, if needed it has that power: positively, by

3 (1982) 1 SCC 271

issuing a mandamus calling upon the government to act and negatively by inhibiting it from acting. If it were permissible to the court to compel the government by a mandamus to bring a constitutional amendment into force on the ground that the government has failed to do what it ought to have done, it would be equally permissible to the court to prevent the government from acting, on some such ground as that, the time was not yet ripe for issuing the notification for bringing the Amendment into force.”

24. The aforesaid passage shows that the Court does not have the power to direct the Parliament to bring an Act into force. Drawing an analogy, it is canvassed that as the Court cannot issue a writ to implement the report of the Parliamentary Standing Committee or rely on it for the purpose of issuance of a writ.

25. Ms. Manisha Singh, learned counsel appearing for the respondent No.6, PATH International, contended that the report of the Parliamentary Standing Committee cannot be assailed as has been held in **M.S.M. Sharma v. Dr. Shree Krishna Sinha and Others**⁴. In this regard, she has drawn our attention to paragraph 431(o) of **Raja Ram Pal** (supra) which states thus:-

“The truth or correctness of the material will not be

⁴ AIR 1960 SC 1186

questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the legislature.”

26. Reliance has been placed on the aforesaid conclusion to lay thrust on the point that there cannot be a combat or dispute over the report of the Parliamentary Standing Committee in a court of law and, therefore, the respondents are debarred from contesting the same and that is the singular ground not to place reliance upon the same.

27. In ***Sarojini Ramaswami vs. Union of India and others***⁵, the Court observed that a finding of guilt recorded by the Parliamentary Standing Committee on the charges is not conclusive and final and the Parliament can still hold that charges levelled against the person concerned do not amount to misbehavior and may decide not to adopt the motion. Though the decision was rendered in a different context, it has been taken aid of to bolster the proposition that the report of the Parliamentary Standing Committee does not attain finality, inasmuch as it is subject to debate in the Parliament and subject to further action taken by the Parliament.

28. Inspiration has also been drawn from the authority in

5 (1992) 4 SCC 506

Arun Kumar Agrawal vs. Union of India and others⁶, wherein it has been stated in the context of the report of the Comptroller and Auditor General of India (CAG) that the report of the CAG is always subject to Parliamentary debates and it is possible that the Parliamentary Accounts Committee can accept the Ministry's objection to the CAG report or reject the report of the CAG. What has been stated is that CAG though indisputably is an independent constitutional functionary, yet it is for the Parliament to decide whether after receiving the report, i.e. the Parliamentary Accounts Committee to make its comments on the CAG's report. The emphasis is on the areas of demarcation of power of the Parliament and its supremacy within its sphere.

29. On behalf of the Union of India, two decisions, namely, ***R v. Murphy***⁷ and ***Office of Government Commerce v. Information Commissioner***⁸ have been referred to highlight that there has been exclusion of discussion of the Parliamentary report.

30. At this juncture, we may note with profit, how this Court has taken aid of the debates of the Constituent

⁶ (2013) 7 SCC 1

⁷ (1986) 5 NSWLR 18

⁸ [2008] EWHC 737 (Admin)

Assembly, Parliamentary notes, speeches given in the Parliament and the report of the Parliamentary Standing Committee. In ***Indra Sawhney v. Union of India***⁹, Jeevan Reddy, J., speaking for the majority, held that debates in Constituent Assembly can be relied upon as an aid to interpretation of a constitutional provision and for the said purpose the learned Judge relied upon the decisions in ***Madhu Limaye, In re***¹⁰, ***Union of India v. Harbhajan Singh Dhillon***¹¹ and several opinions in ***Kesavananda Bharati Sripadagalvaru v. State of Kerala and another***¹².

31. In ***Manoj Narula v. Union of India***¹³, the majority of the Constitution Bench relied on the Constituent Assembly debates while dealing with the concept of constitutional trust.

32. As the Constituent Assembly debates are referred to for interpretation of a constitutional provision and especially to understand the context, similarly judicial notice of

9 1992 Supp (3) SCC 217

10 (1969) 1 SCC 292

11 (1971) 2 SCC 779

12 (1973) 4 SCC 225

13 (2014) 9 SCC 1

parliamentary proceedings can be taken note of for the purpose of appreciating the intention of the legislature.

33. In ***Jyoti Harshad Mehta and others v. Custodian and others***¹⁴, it has been held that reports of the Joint Parliamentary Committee are admissible only for the purpose of tracing the legal history of the legislation.

34. In this regard, we may also usefully state that the speeches of Ministers in the Parliament are referred to on certain occasions for limited purposes. A Constitution Bench in ***State of W.B. v. Union of India***¹⁵ has held:-

“It is however well-settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. But we cannot use this statement as an aid to the construction of the enactment or to show that the legislature did not intend to acquire the proprietary rights vested in the State or in any way to affect the State Governments’ rights as owners of minerals. A statute, as passed by Parliament, is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, of the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute.”

14 (2009) 10 SCC 564

15 AIR 1963 SC 1241

35. In ***K.P. Varghese v. Income-tax Officer, Ernakulam***

and another¹⁶ the Court while referring to the budget speech of the Minister ruled:-

“Now it is true that the speeches made by the Members of the Legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. This is in accord with the recent trend in juristic thought not only in western countries but also in India that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. In fact there are at least three decisions of this Court, one in *Loka Shikshana Trust v. CIT*¹⁷, the other in *Indian Chamber of Commerce v. Commissioner of Income Tax*¹⁸ and the third in *Additional Commissioner of Income Tax v. Surat Art Silk Cloth Manufacturers’ Association*¹⁹ where the speech made by the Finance Minister while introducing the exclusionary clause in Section 2, clause (15) of the Act was relied upon by the Court for the purpose of ascertaining what was the reason for introducing that clause.”

36. Similar references have also been made in ***Ramesh***

Yeshwant Prabhoo v. Prabhakar Kashinath Kunte²⁰.

16 AIR 1981 SC 1922

17 AIR 1976 SC 10

18 AIR 1976 SC 348

19 AIR 1980 SC 387

20 (1996) 1 SCC 130

That apart, Parliamentary debates have also been referred to appreciate the context relating to the construction of a statute in ***Novartis AG v. Union of India***²¹, ***State of M.P. v. Dadabhoy's New Chirimiri Ponri Hill Colliery Co. (P) Ltd.***²², ***Union of India v. Steel Stock Holders' Syndicate***²³, ***K.P. Varghese*** (supra) and ***Surana Steels (P) Ltd. v. CIT***²⁴.

37. We have referred to these authorities to highlight that the said speeches have been referred to or not referred to for the purposes indicated therein and when the meaning of a statute is not clear or ambiguous, the circumstances that led to passing of the legislation can be looked into to ascertain the intention of the legislature.

38. Thus observed, the reference to Constituent Assembly debates, reports of the Parliamentary Standing Committee and the speeches made in the Parliament or for that matter, debates held in Parliament are only meant for understanding the Constitution or the legislation, as the case may be. It is quite different than to place reliance upon Parliamentary Standing Committee report as a piece of evidence to establish

21 (2013) 6 SCC 1

22 (1972) 1 SCC 298

23 (1976) 3 SCC 108

24 (1999) 4 SCC 306

a fact. We have been commended to the authority by the learned counsel appearing for the Union of India reported in

R. v. Secretary of State for Trade and others ex parte

Anderson Strathclyde plc²⁵:-

“In my judgment there is no distinction between using a report in Hansard for the purpose of supporting a cause of action arising out of something which occurred outside the House, and using a report for the purpose of supporting a ground for relief in proceedings for judicial review in respect of something which occurred outside the House. In both cases the court would have to do more than take note of the fact that a certain statement was made in the House on a certain date. It would have to consider the statement or statements with a view to determining what was the true meaning of them, and what were the proper inferences to be drawn from them. This, in my judgment, would be contrary to art 9 of the Bill of Rights. It would be doing what Blackstone said was not to be done, namely to examine, discuss and adjudge on a matter which was being considered in Parliament. Moreover, it would be an invasion by the court of the right of every member of Parliament to free speech in the House with the possible adverse effects referred to by Browne J.”

39. In this regard, a reference to a three-Judge Bench decision in ***State Bank of India through General Manager v. National Housing Bank and others***²⁶ would be apposite.

25 [1983] 2 All ER 233

26 (2013) 16 SCC 538

The Court was dealing with an appeal preferred under Section 10 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act 27 of 1992. In the said case, this Court noticed that the learned Judge of the Special Court had extensively relied upon the Second Interim of the Janakiraman Committee²⁷ on the ground that the same was filed by the first defendant. The Court in that context held:-

“50. It is well settled by a long line of judicial authority that the findings of even a statutory commission appointed under the Commissions of Inquiry Act, 1952 are not enforceable *proprio vigore* as held in *Ram Krishna Dalmia v. Justice S.R. Tendolkar*²⁸ and the statements made before such Commission are expressly made inadmissible in any subsequent proceedings civil or criminal. The leading judicial pronouncements on that question were succinctly analysed by this Court in *T.T. Antony v. State of Kerala*²⁹, SCC paras 29-34. Para 34 of the judgment *inter alia* reads:

“34. ... In our view, the courts, civil or criminal, are not bound by the report or findings of the Commission of Inquiry as they have to arrive at their own decision on the evidence placed before them in accordance with law.”

51. Therefore, courts are not bound by the conclusions and findings rendered by such commissions. The statements made before such commission cannot be used as evidence before any civil or criminal court. It should logically follow that even the conclu-

27 Committee set up by RBI on 30.04.1992 which submitted six reports and the Final Report was on

07.05.1993

28 AIR 1958 SC 538

29 (2001) 6 SCC 181

sions based on such statements can also not be used as evidence in any court. The Janakiraman Committee is not even a statutory body authorised to collect evidence in the legal sense. It is a body set up by the Governor of Reserve Bank of India obviously in exercise of its administrative functions,

“... the Governor, RBI set up a committee on 30-4-1992 to investigate into the possible irregularities in funds management by commercial banks and financial institutions, and in particular, in relation to their dealings in government securities, public sector bonds and similar instruments. The Committee was required to investigate various aspects of the transactions of SBI and other commercial banks as well as financial institutions in this regard.”³⁰

And again:-

“53. The report of such a committee in our view can at best be the opinion of the Committee based on its own examination of the records of the various banks (including the plaintiff and the first defendant) and the statements recorded (by the Committee) of the various persons examined by the Committee. In our considered view the report of the Janakiraman Committee is not evidence within the meaning of Evidence Act which the Special Court is bound to follow.”

40. We have referred to the said authority as this Court has thought it appropriate to state following the precedents that the report of a statutory committee cannot be received as evidence of facts stated in the report.

41. Having dwelled upon this aspect, we may refer to certain

30 See the Janakiraman Committee's first interim report, May 1992, p. 1.

relevant Articles of the Constitution. Article 105 deals with powers, privileges, etc. of the Houses of Parliament and of the members and committees thereof. To have a complete picture, the said Article is reproduced in entirety:-

“105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.– (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) 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 no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) 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 that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.”

42. What is necessary to understand from Article 105(2) is

that no member of the Parliament can be made liable for any proceeding in any court because of what he has stated in a committee. The Parliamentary Standing Committee is a committee constituted under the Rules and what a member speaks over there is absolutely within the domain of that committee. Freedom of speech of a member of a Committee is only guided subject to provisions of the Constitution and the Rules and standing orders regulating the procedure of Parliament. It is also seemly to note that Article 105(4) categorically lays the postulate that clauses 1, 2 and 3 shall apply to any committee of the Parliament.

43. Article 118 deals with rules of procedure. Clause 1 of the said Article stipulates that each House of Parliament may make rules for regulating, subject to the provisions of the Constitution, its procedure and the conduct of its business. Thus, the said Article empowers the Parliament to regulate its procedure apart from what has been stated directly in the Constitution.

44. Article 121 provides restriction on discussion in Parliament. The same is extracted below:-

“121. Restriction on discussion in Parliament.– (1) No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.”

45. The aforesaid Article makes it vivid that the Parliament shall not discuss as regards the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties, except upon a motion been presented before the President of India praying for removal of the Judge as provided in the Constitution. Thus, the discussion of the Parliament is restricted by a constitutional provision.

46. Article 122 stipulates a restraint on courts to inquire into proceedings of the Parliament. The said Article being absolutely significant is reproduced below:-

“122. Courts not to inquire into proceedings of Parliament.– (1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.”

47. The purpose of referring to the aforesaid Articles is that

while exercising the power of judicial review or to place reliance on the report of the Parliamentary Standing Committee, the doctrine of restraint has to be applied by this Court as required under the Constitution. What is argued by the learned counsel for the petitioners is that there is no question of any kind of judicial review from this Court or attributing anything on the conduct of any of the members of the Committee, but to look at the report for understanding the controversy before us. The submission “looking at the report,” as we perceive, is nothing but placing reliance thereupon. The view of a member of the Parliament or a member of the Parliamentary Standing Committee who enjoys freedom of speech and expression within the constitutional parameters and the rules or regulations framed by the Parliament inside the Parliament or the Committee is not to be adverted to by the court in a *lis*.

48. In this regard, it is appropriate to refer to the observations made by the House of Lords in ***Hamilton v. Al***

Fayed³¹:-

“The Court of Appeal held, first, that apart from any question of parliamentary privilege the principle in

31 [2001] 1 A.C. 395

Hunter's case [1982] AC 529 had no application: a parliamentary decision was not analogous to a decision of the court. Next, the Court of Appeal held that the proceedings before the PCS, his report and its acceptance by the CSP were all "parliamentary proceedings" and therefore any attempt to investigate or challenge any of the procedures adopted constituted a breach of parliamentary privilege: they constituted a "questioning" of parliamentary procedures. They therefore held that the judge had been in error and had himself breached parliamentary procedure by criticizing the procedures adopted by the PCS. The conclusion of the Court of Appeal on these two points met the concerns of the Solicitor General. The Court of Appeal were clearly correct on these points and they were not further challenged on appeal to your Lordship's House....

Presumably because of the way the case was presented to them, the Court of Appeal never considered the relevant question (viz whether there should be a fair trial stay) raised by question 2 of the summons. The only way in which Mr Al Fayed could justify his defamatory statements was by detailed challenge to Mr Hamilton's conduct in Parliament, which challenge would be precluded by parliamentary privilege. That being so it would in my judgment have been impossible for Mr Al Fayed to have had a fair trial in this action if he had been precluded from challenging the evidence produced to the parliamentary committees on behalf of Mr. Hamilton. Had it not been for section 13, the court should, in my judgment, have stayed the libel action brought by Mr. Hamilton by making an order under paragraph 2 of the summons. However, section 13 does apply to this case and provides a complete answer to it."

49. We will be failing in our duty if we do not note another submission of the learned Solicitor General that for issuance

of a writ of mandamus, it is primary to establish that one has a right and, in the case at hand, an effort has been made to rely on the Parliamentary Standing Committee's report to create a right which is legally not permissible.

50. The controversy has to be seen from the perspective of judicial review. The basic principle of judicial review is to ascertain the propriety of the decision making process on the parameters of reasonableness and propriety of the executive decisions. We are not discussing about the parameters pertaining to the challenge of amendments to the Constitution or the constitutionality of a statute. When a writ of mandamus is sought on the foundation of a factual score, the Court is required to address the facts asserted and the averments made and what has been stated in oppugnation. Once the Court is asked to look at the report, the same can be challenged by the otherside, for it cannot be accepted without affording an opportunity of being heard to the respondents. The invitation to contest a Parliamentary Standing Committee report is likely to disturb the delicate balance that the Constitution provides between the constitutional institutions. If the Court allows contest and

adjudicates on the report, it may run counter to the spirit of privilege of Parliament which the Constitution protects.

51. As advised at present, we are *prima facie* of the view that the Parliamentary Standing Committee report may not be tendered as a document to augment the stance on the factual score that a particular activity is unacceptable or erroneous. However, regard being had to the substantial question of law relating to interpretation of the Constitution involved, we think it appropriate that the issue be referred to the Constitution Bench under Article 145(3) of the Constitution. We frame the following questions for the purpose of reference to the Constitution Bench:-

- (i) Whether in a litigation filed before this Court either under Article 32 or Article 136 of the Constitution of India, the Court can refer to and place reliance upon the report of the Parliamentary Standing Committee?
- (ii) Whether such a Report can be looked at for the purpose of reference and, if so, can there be restrictions for the purpose of reference regard being had to the concept of parliamentary

privilege and the delicate balance between the constitutional institutions that Articles 105, 121 and 122 of the Constitution conceive?

52. Let the papers be placed before Hon'ble the Chief Justice of India for constitution of appropriate Bench.

.....J.
[Dipak Misra]

.....J.
[Rohinton Fali Nariman]

New Delhi
April 05, 2017.