

RAJYA SABHA

(1981)

Point of privilege

Alleged censoring of mail of members

Facts of the case and ruling by the Deputy Chairman

On 31st August, 1981, the Deputy Chairman (Shri Shyam Lal Yadav) observed¹ in the House as follows:

"On the 26th of August, 1981, Shri L.K. Advani and Dr. Bhai Mahavir gave almost identically worded notices of breach of privilege against Shri C.M. Stephen, Minister of communications, alleging that their postal mail was being intercepted, opened and censored. It was stated in these notices that this was being done 'with' the knowledge and consent of Shri Stephen. This was said to be an obstruction placed in the performance of parliamentary duties because much of the postal mail related to matters which people wish should be raised in Parliament.

Reference was also made to an article in the India Today (August 16-31, 1981, p. 18).

Under my order these notices were referred to the hon. Minister, who in his reply denied that any such interception or opening or censoring had taken place either with his knowledge or with his consent. He referred to section 26 of the Indian Post Office Act and stated that he would not offer any comments as to whether, in law, there was a case for breach of privilege but that he had not committed any breach of privilege but that against the two hon. members. He further pointed out as follows :

'In any case, it behoves me to mention that myself being a member of Lok Sabha, I come under the exclusive jurisdiction of the Lok Sabha for any action under the Law of Parliamentary privileges, as per well-settled convention.'

Under section 26(1) of the Indian Post Office Act, 1898, on the occurrence of any public emergency, or in the interest of public safety or tranquility, the Central Government or a State Government or any officer specially authorised in this behalf by that Government may, by order in writing, direct that any postal article or class or description of postal articles in course of transmission by post shall be intercepted or detained or shall be disposed of in such manner as the authority issuing the order may direct.

The Post Office Act was enacted more than eight decades ago but this blanket power has not been abrogated or curtailed even after nearly 35 years of our Independence. Our Constitution also did not include the right to inviolability of privacy as the American Constitution. Therefore, the power exists and has the sanction of law, depending on the occurrence of any public emergency, interests of public safety or tranquility. As the section stands, the Central Government, the State Government, and any officer specially authorised by the Central or State Government are, made the judges of the occasion for the exercise of the power. Before the adaptation of the

section in 1937, the authorisation could only be made by the Governor-General in Council. The section also does not exempt any person or class of persons from the operation of the section.

A claim to special privileges as individuals does not exist and it is therefore being claimed qua members of this House or in other words of Parliament. It has been well-settled that members of Parliament have no special status in the application of the Laws of the land. This matter is not res integra and indeed, it was passed upon in similar situations before. In 1960 when an hon. member of the Lok Sabha gave a notice of breach of privilege because his telephone was being tapped, Shr. M. A. Ayyangar, the then Speaker, ruled thus:

'Hon members are aware that it has been said repeatedly, both in England and here, that except in the discharge of their duties, for which they have some privileges here, members ought not to claim any special privileges outside which an ordinary citizen does not have. If the same thing had happened with respect to any ordinary citizen, it could not be brought up here as a breach of privilege these things may be taken up with the Government in other ways. Therefore, I refuse to give my consent.

Privileges Digest Vol. IV, P. 35)

I must say with respect that the reason that an ordinary citizen cannot move Parliament for breach of privilege was not a very apt one, but the other reason that there is no special protection to the members except in the discharge of their duties as such must be accepted.

On another occasion the Speaker disallowed a motion of breach of privilege, by a member who had complained of being kept under surveillance by authorities. Dr. Dhillon then observed:

There is no privilege involved. Whatever Govern ment does is administrative or for other security reasons. I am not there to judge about it... So far as any obstruction to the member is concerned. I am going to inquire into but, as a privilege, I am not entertaining it ... I cannot give any protection to any M.P. against any law'.

Privileges Digest 1978 Vol XXIII p. 1).

The last Precedent is of this month and relates to this very matter in the Lok Sabha last week. The Hon'ble the Speaker turned down a notice of breach of privilege. He quoted with approval a precedent from the Parliament of Commonwealth of Australia in 1944 and referred to the debates of the Madras Legislative Assembly where Shri Kalyanasundram in 1954 had made a similar complaint. In Australia it was ruled by a Special Committee thus:

'that the Opening by the censors of letters addressed to the members of the House is not a breach of any existing privilege of the House'.

The Speaker in the Madras Assembly therefore declined to take action. Following these precedents the Hon'ble Speaker, Shri Bal Ram Jakhar, ruled:

'In view of the above position, I hold that no question of privilege is involved in the matter and I do not therefore give my consent to raise the matter as a question of privilege under Rule 222.'

I think with this weight of authority I must hold that no question of privilege is involved in the manner the notices raise it, especially after the Speaker has ruled on it already.

I must, however, say that any malafide action or interference with the legitimate duties of honourable members of this House, if proved,, will not have the protection of this ruling. I also repeat with respect the observations of the Hon'ble the Speaker:

'I would permit myself one observation before concluding the subject and that is about communications sent by my office including the Lok Sabha Secretariat to Members. I hope the concerned authorities realise that such communications would not attract the attention of censoring authorities.'

The same will apply to this House mutatis mutandis.

With these words I withhold permission to the raising of the question as a breach of privilege."

The matter was, thereafter, closed.

1 R.S. Deb., dt. 31-8-1981.