IN THE SUPREME COURT OF BANGLADESH
Appellate Division

PRESENT

Mr. Justice Hasan Foez Siddique, C. J.
Mr. Justice M. Enayetur Rahim
Mr. Justice Jahangir Hossain

CIVIL APPEAL NOS. 145-151 OF 2016

(From the judgment and order dated 13th of February 2014 passed by the High Court Division in Writ Petition Nos. 1606-1612) .

Government of Bangladesh, represented by the Secretary, Bangladesh Parliament, Sher-e-Bangla Nagar, Dhaka and others .....Appellar
(In all the ca

=Versus=

Md. Masud Rana .....Respondent.
(In C.A.No.145 of 2016)

Md. Abu Bakar Siddique .....Respondent
(In C.A.No.146 of 2016)

Md. Hamidul Islam .....Respondent.
(In C.A.No.147 of 2016)

Md. Mokbular Rahman .....Respondent
(In C.A.No.148 of 2016)

Md. Zahed Ali .....Respondent
(In C.A.No.149of 2016)

Md. Asraful Islam .....Respondent
(In C.A.No.150 of 2016)

Begum Samena Khatun .....Respondent
(In C.A.No.151 of 2016)

For the Appellants (In all the appeals)	:	Mr. A. M. Amin Uddin, Attorney General, with Mr. Mohammad Saiful Alam, Assistant Attorney General, instructed by Mr. Haridas Paul, Advocate-on-Record.
For the Respondent (In C.A.No.145 of 2016)	:	Mr. Probir Neogi, Senior Advocate with Ms. Tania Amir, Senior Advocate, instructed by Mr. Mvi. Md. Wahidullah, Advocate-on-Record
For the Respondents (In C.A.No.146-151 of 2016)	:	Mr. Zulhas Uddin Ahmed, Advocate, instructed by Mr. Mvi. Md. Wahidullah, Advocate-on-Record
Date of hearing	**:**	**The 8th and 16th day of August, 2023**
Date of judgment	**:**	**The 31st day of August, 2023**

JUDGMENT

M. Enayetur Rahim, J: These civil appeals, by leave, are directed against the judgment and order dated 13.02.2014 passed by the High Court Division in Writ Petition Nos.1606-1612 of 2010 making the Rules absolute. All the appeals have been heard together and they are being disposed of by this common judgment.

The facts, relevant for disposal of these appeals, in short, are that the petitioner in writ petition No. 1606 of 2010, presently respondent was appointed as "Receptionist" and petitioners in writ Petition Nos. 1607-1611 of 2010, presently respondents were appointed as "MLSS" and the petitioner in Writ petition No. 1612 of 2010, presently respondent was appointed as "Proof Reader" of Bangladesh Parliament Secretariat following the Recruitment Rules of Bangladesh Sangshad Sachibaloy, 1994.

In the writ petitions, it was contended that in response to the advertisement published in the Daily Newspapers inviting application for several posts for the office of Bangladesh Parliament Secretariat, the writ petitioners applied for their respective vacant posts. Written examination and viva-voce was held and upon duly concluding all the appointment procedure, the writ petitioners received their respective appointment letters as probationary employee for a period of 02 (two) years. After successful completion of two years probationary period they were confirmed effective from the date of their joining in the said service considering their satisfactory performance under Rule 6(3) (Ka) of the Sangshad Sachibaloya, Employees and Officers Appointment Rules, 1994.

All of a sudden the writ respondent No. 2 issued a letter dated 18.02.2010 relieving all the writ petitioners from their respective services.

Being aggrieved by the said order dated 18.02.2010 all the writ petitioners moved before the High Court Division by filing different writ petitions.

A Division Bench of the High Court Division upon hearing all the Rules together by a common judgment and order dated 13.02.2014 made all the Rules absolute.

Feeling aggrieved by the said judgment and order passed by the High Court Division, the writ-respondents as petitioners filed Civil Petitions for Leave to Appeal Nos. 1519, 1522-1526 and 1530 of 2014 before this Division and leave was granted on 07.02.2016. Hence, these appeals.

Mr. A.M. Amin Uddin, learned Attorney General, appearing on behalf of the appellants submits that the High Court Division erred in law in failing to appreciate that the impugned order was issued pursuant to a decision adopted in a proceeding of the Parliament on the basis of recommendations made by a Parliamentary Committee formed by the Speaker under Article 76(2) (C) (d) of the Constitution as well as under Rules laid down in the chapter XXVI of the Rules of Procedure of Parliament to enquire into the allegations relating to corruption, misuse of power, wastage of public fund by the then Speaker, Barrister Mohammad Jamiruddin Sirker, and the Proceedings of the Parliament is immuned from challenge under Article 78 of the Constitution and as such, the impugned judgment and order passed by the High Court Division is liable to be set aside.

Learned Attorney General further submits that as per section 14 of the Sangsad Sachibaloy Act, 1994, the Speaker is answerable to the National Parliament for all functions and actions relating to National Parliament Secretariat and any decision of the National parliament taken in its proceedings having been immuned from challenge and in such view of the matter, the impugned order issued pursuant to the said proceedings cannot be called in question in any court of law.

He also submits that the High Court Division failed to appreciate that the recruitment process was void *ab initio* since Parliamentary Committee upon its enquiry found that the recruitment process of the respondents-writ petitioners was tainted with serious irregularities, corruption, misuse of power and violation of the injunction imposed by the then Ministry of Establishment committed by the then Speaker of 8th Parliament upon which the Parliament in its proceeding adopted a decision to cancel the said appointments and in such view of the matter, the writ petitioners accrued no vested right and they do not come under the ambit of the Service Rules of Sangsad Sachibalay, Namely, Sangsad Schibalay Karmokarta-O-Karmochary Neog Bidhimala, 1994 and Jatio sangsad Sachibalay Kormokarta-O-Karmochary (Sringkhola-O-Appeal) Bidhimala, 2005 and hence, no show cause notice or departmental proceedings is required to relieve the writ-petitioners from their service.

Learned Attorney General also submits that the High Court Division erred in law in failing to appreciate that it is a settled principle of law that if the appointment is made without following the rules and procedure, no vested right is accrued and since the respondents-writ-petitioners got their respective appointment as a result of irregularities and corrupt practice, they have not therefore acquired any vested right in their service on such illegal appointments. Learned Attorney General having referred to the case of **Nuruzzaman (Md) and others Vs. Bangladesh others 64 DLR (HCD)406, 20 BLC (AD) 246, Rina Rani Sutradhar and others Vs. Bangladesh 20 BLC (2015) (AD) 246 (para II), Pankaj Gupta Vs. The State of Jammu and Kahsmir** reported in **8 SCC (2004) 353 and the Secretary, State of Karnataka Vs. Umadevi (2006)4 SCC, 01)** submits that the illegality and irregularity are so intermixed

with the whole process of selection that it becomes impossible to sort-out right from wrong and vice versa, the rules of natural justice cannot be put in a Straight Jacket **[Md. Fazle Rabbi Mia Vs. Professor Aftab Uddin Ahmed and others, 2 LNJJ (2013) 46]** and as such, the impugned judgment is liable to be be set aside.

Per contra, Mr. Probir Neogi, learned Senior Advocate and Mr. Zulhas Uddin Ahmed, learned Advocate appearing on behalf of the respondents made submissions in support of the impugned judgement and order of the High Court Division. In addition, it has been submitted that Article 78 of the Constitution only protects "proceedings of the parliament" from judicial review. The impugned orders do not come within the purview of parliamentary proceedings. It has been further submitted that the High Court Division categorically found the writ petitioners had "no hand" in the recruitment process. The Parliament Secretariat being independent and not being under any Ministry or Department of any Ministry, the appointments could not be held to be violative of any prohibitive order of the Ministry of Establishment and the appointments having been made in accordance with the provisions of the Bangladesh Parliament Secretariat Recruitment Rules 1994, the contention as to the petitioners' appointments being void *ab-initio* as propagated by the appellants does not have a sound leg to stand upon. For the same reason, the decision reported in 2 LNJ (2013) 46 as relied upon by the appellant in reason No. 4 are not at all attracted to the present case and, as such, the judgment and order passed by the High Court Division does not call for any interference by this Division.

We have considered the rival submissions of the learned Advocates for the respective parties, perused the impugned

judgment and order of the High Court Division and the materials as placed before us.

In the instant cases it is undeniable fact that the 9th Parliament in its 1st session on 19th March, 2009 adopted a resolution to make inquiry with regard to the illegalities and irregularities of the appointments, misuse of power, corruption, wastage of public fund by the then Speaker Barrister Mohammad Jamiruddin Sirker and the Speaker on that day on the basis of the decision adopted in the House, formed a 12 members inquiry committee amongst the Members of Parliament headed by Mr. Md. Fazle Rabbi Mia, M.P.(Gaibandha-5). The said parliamentary inquiry committee after holding inquiry placed its report before the Parliament making some recommendations. The relevant portion of the recommendations are as follows:

৩.৬ 'কমিটির সিদ্ধান্ত/সুপারিশঃ

(ক) বাংলাদেশ জাতীয় সংসদ সচিবালয়ের জনবল নিয়োগের সাবেক স্পীকার ব্যরিষ্টার মুহম্মদ জমির উদ্দিন সরকার কোটা না মেনে, বেআইনীভাবে বয়স প্রমার্জন করে, পুলিশী প্রতিবেদনে বিরূপ মন্তব্য থাকা সত্বেও সংশ্লিষ্ট কর্মচারীদের চাকুরীতে বহাল রেখে, সংসদ চালু না থাকা সত্ত্বেও স্থায়ী পদে এম.এল.এস.এস নিয়োগ, সংসদীয় স্থায়ী কমিটি না থাকা সত্ত্বেও তাঁদের ব্যক্তিগত সহকারীগণের চাকুরী ৩০.০৬.২০০৭ পর্যন্ত বর্ধিত করে সরকারী কোষাগার থেকে তাদের বেতন ভাতা প্রদান করে গুরুতর আর্থিক অনিয়ম করেছেন। এছাড়া তিনি দেশে বিদ্যমান আইন কানুন এবং সংবিধানের অপব্যাখ্যা দিয়ে স্বেচ্ছাচারিতার আশ্রয় গ্রহণ করেছেন এবং ক্ষমতার চরম অপব্যবহার করেছেন। যার ফলে পবিত্র জাতীয় সংসদের মর্যাদা জনমানসে ভুলুণ্ঠিত হয়েছে। তিনি তাঁর শপথের মর্যাদা ক্ষুন্ন করেছেন। সাবেক স্পীকারের এ জাতীয় স্বেচ্ছাচারি ক্ষমতার অপব্যবহার দুর্নীতি, গুরুতর আর্থিক অনিয়ম এবং সরকারী অর্থ অপচয়ের বিষয়ে সিদ্ধান্ত গ্রহণের জন্য এ কমিটি সুপারিশ করছে।

(খ) কোটা না মানা, বেআইনীভাবে বয়স প্রমার্জন করে নিয়োগের ক্ষেত্রে সহায়তা দানকারী সংসদ সচিবালয়ের সংশ্লিষ্ট বাছাই কমিটি ও জড়িত অন্যান্য কর্মকর্তা/কর্মচারীগণের বিষয়ে আইনগত সিদ্ধান্ত গ্রহণের জন্য কমিটি সুপারিশ করছে।

(গ) কোটা না মেনে যাদেরকে নিয়োগ দেয়া হয়েছে তাদের ব্যাপারে আইনানুগ সিদ্ধান্ত গ্রহণের জন্য কমিটি সুপারিশ করছে।

(ঘ) বিরূপ পুলিশি প্রতিবেদন থাকা সত্ত্বেও সংশ্লিষ্ট কর্মচারীদের চাকুরী বহাল রাখার সাথে যে সকল কর্মকর্তা ও কর্মচারী জড়িত তাদের বিষয়ে সিদ্ধান্ত গ্রহণের জন্য কমিটি সুপারিশ করছে।

(ঙ) সংসদ না থাকা সত্ত্বেও সংসদীয় কমিটির সভাপতিগণের জন্য স্থায়ী পদে ৪২ জন এম.এল.এস.এস নিয়োগ এবং সংসদীয় কমিটি না থাকা সত্ত্বেও সভাপতিগণের জন্য নিয়োজিত ব্যক্তিগত

সহকারীদের চাকুরি ৩০.০৬.২০০৭ পর্যন্ত বর্ধিত করে এবং তাদের বেতন ভাতা প্রদান করে সর্বমোট ৬২,৯৯,১৭৯/২৭ (বাষট্টি লক্ষ নিরানব্বই হাজার একশত উনাশি টাকা সাতাশ পয়সা সরকারী অর্থের যে অপচয় করা হয়েছে সে সম্পর্কে সিদ্ধান্ত গ্রহণের জন্য কমিটি সুপারিশ করছে।

৩.৭ <u>সার্বিক মন্তব্যঃ</u>

২নং সংসদীয় সাব কমিটির সদস্যবৃন্দ কমিটি বৈঠকে উপস্থিত থেকে তাঁদের সক্রিয় অংশগ্রহন এবং গুরুত্বপূর্ণ মতামত প্রদান করে রিপোর্ট প্রণয়নে অনন্য অবদান রেখেছেন। দুর্নীতিমুক্ত একটি গণমুখী রাষ্ট্র ব্যবস্থা কায়েমে প্রশাসনে স্বচ্ছতা, জবাবদিহিতা এবং সুশাসন প্রতিষ্ঠার কোন বিকল্প নেই। উন্নয়নমুখী প্রশাসন এবং শক্তিশালী গণতান্ত্রিক মুল্যবোধ প্রতিষ্ঠার মুল চাবিকাঠি হলো সুশাসন। ২নং সংসদীয় সাব কমিটির মাননীয় সদস্যবৃন্দ মনে করেন এ কমিটির গৃহীত সিদ্ধান্ত ও সুপারিশসমূহ বাস্তবায়িত হলে প্রশাসনে স্বচ্ছতা, জবাবদিহিতা ও সুশাসন প্রতিষ্ঠার ক্ষেত্রে উল্লেখযোগ্য অগ্রগতি সাধিত হবে।"

On 13.10.2009 a good number of Members of Parliament including both ruling party and the oppositions discussed on the said report. At the time of discussion on the report, various suggestions and recommendations were given by the Members of Parliament and ultimately, the report was accepted by the House.

The relevant proceedings of the Parliament is as follows:

"সংসদীয় তদন্ত কমিটি'র রিপোর্ট সম্পর্কে সংসদ কর্তৃক সর্বসম্মতিক্রমে গৃহীত সিদ্ধান্ত।

.....।

মাননীয় সদস্যবৃন্দ, সংসদীয় তদন্ত কমিটির রিপোর্ট সম্পর্কে এতক্ষণ মাননীয় সংসদ-সদস্যগণ যে সকল বক্তব্য এবং প্রস্তাব পেশ করেছেন তৎসম্পর্কে আমার বক্তব্য হল-সংসদে আপনাদের দাবীর প্রেক্ষিতে আপনাদের Sentiment-এর প্রতি শ্রদ্ধা জানিয়ে জাতীয় সংসদ সচিবালয়ে সংঘটিত অনিয়ম, দুর্নীতি, সরকারি অর্থ আত্মসাৎ ইত্যাদি বিষয়ে তদন্তের জন্য বিগত ১৯শে মার্চ ২০০৯ তারিখে এই সংসদীয় তদন্ত কমিটি গঠন করা হয়েছিল। এই কমিটির রিপোর্টের উপর আপনারা যে আলোচনা করেছেন তা আমি মনোযোগ দিয়ে শুনেছি। আশা করি আপনারাও শুনেছেন।

এখানে আমি বলতে চাই, আমাদের দেশে সংসদীয় গণতন্ত্রের চর্চা দীর্ঘ সময়ের নয় গণতান্ত্রিক ব্যবস্থা সফলভাবে কার্যকর করার জন্য আমাদের দেশে যে সকল গণতান্ত্রিক প্রতিষ্ঠান রয়েছে, সেগুলোকে দুর্নীতি, অনিয়ম ইত্যাদি থেকে মুক্ত রাখতে হবে। জাতীয় সংসদ এ দেশের সর্ববৃহৎ গণতান্ত্রিক প্রতিষ্ঠান। জনগণ এ প্রতিষ্ঠানের মাধ্যমে সরকারকে তাদের নিকট জবাবদিহি করতে বাধ্য করে। জাতীয় সংসদ-কে দায়িত্ব পালনে সহায়তা করার জন্য প্রতিষ্ঠিত হয়েছে জাতীয় সংসদ সচিবালয়। এ সচিবালয়কে সকল দুর্নীতির উর্ধ্বে রেখে নজির প্রতিষ্ঠার জন্য আমাদের সকলকে সর্বদা সচেষ্ট থাকতে হবে।

তদন্ত রিপোর্টের বিষয়ে আপনারা যে আলোচনা করেছেন সে বিষয়ে কি করণীয় তা সংসদে সিদ্ধান্ত গ্রহণের মাধ্যমে আপনারাই ঠিক করবেন। একটি বিষয়ে আমি আপনাদের দৃষ্টি আকর্ষণ করতে চাই। কমিটির তদন্ত রিপোর্টের সমন্বিত সুপারিশসমূহের মধ্যে সাবেক মাননীয় স্পীকার ব্যারিষ্টার মুহম্মদ জমির উদ্দিন সরকারের ৯ম জাতীয় সংসদের সংসদ সদস্য পদ খারিজ করার সুপারিশ করা হয়েছে। এই সুপারিশটি

আমাদের দেশের প্রেক্ষাপটে আমার কাছে অতি কঠোর বলে মনে হচ্ছে। কমিটি এরূপ সুপারিশের সমর্থনে ভারত, কানাডা ও যুক্তরাজ্যের সংসদীয় রীতি-নীতির উল্লেখ করেছে। আমাদের সংবিধানে বা জাতীয় সংসদের কার্যপ্রণালী-বিধি অথবা বিদ্যমান বিধি-বিধানে একজন মাননীয় স্পীকারের তদন্ত রিপোর্টে উল্লিখিত দুর্নীতি, অনিয়মের জন্য সংসদ-সদস্য পদ খারিজ করার সুস্পষ্ট কোনো বিধান নেই। আমাদের দেশের সংসদীয় গণতন্ত্রের ইতিহাসে ঐ সব কারণে সংসদ-সদস্য পদ বাতিলের কোনো নজিরও নেই। এ দেশের উন্নত গণতান্ত্রিক ব্যবস্থার চূড়ান্ত উৎকর্ষ সাধন হলে সে সময় অন্যান্য দেশের ন্যায় এরূপ বিষয়ে বিবেচনা করে দেখা যেতে পারে। এ পর্যায়ে সংসদ সদস্য পদ বাতিলের সিদ্ধান্ত গ্রহণ করা যথাযথ হবে না বলে আমি মনে করি।

মাননীয় সদস্যবৃন্দ, আশা করি আপনারাও আমার সাথে একমত পোষণ করবেন। কাজেই মাননীয় সংসদ-সদস্য জনাব রাশেদ খান মেনন কার্যপ্রনালী বিধির ২৯২ বিধি অনুযায়ী যে প্রস্তাব এনেছেন তন্মধ্যে সাবেক মাননীয় স্বীকার, ব্যারিষ্টার মুহম্মদ জমিরউদ্দিন সরকারের ৯ম জাতীয় সংসদের সদস্য পদ খারিজ করা সংক্রান্ত প্রস্তাব ব্যতীত অন্যান্য প্রস্তাবগুলো আমি এখন ভোটে দিচ্ছি।

সংসদের সামনে প্রশ্ন হচ্ছে,

মাননীয় সংসদ-সদস্য জনাব রাশেদ খান মেনন কার্যপ্রণালী বিধির ২৯২ বিধি অনুযায়ী যে প্রস্তাব এনেছেন তন্মধ্যে সাবেক মাননীয় স্পীকার ব্যারিষ্টার মুহম্মদ জমিরউদ্দিন সরকারের ৯ম জাতীয় সংসদের সদস্য পদ খারিজ করা সংক্রান্ত প্রস্তাব ব্যতীত অন্যান্য প্রস্তাবগুলো গ্রহণ করা হউক।

যাঁরা এ প্রস্তাবের পক্ষে আছেন, তাঁরা "হ্যাঁ" বলুন।

[ধ্বনিভোট গ্রহণের পর-]

যাঁরা এ প্রস্তাবের বিপক্ষে আছেন, তাঁরা "না" বলুন।

[ধ্বনিভোট গ্রহণের পর-]

আমার মনে হয়, "হ্যাঁ" জয়যুক্ত হয়েছে, "হ্যাঁ" জয়যুক্ত হয়েছে, "হ্যাঁ" জয়যুক্ত হয়েছে।

অতএব, সাবেক মাননীয় স্পীকার ব্যারিষ্টার মুহম্মদ জমিরউদ্দিন সরকারের ৯ম জাতীয় সংসদের সংসদ সদস্য পদ খারিজ করা সংক্রান্ত প্রস্তাব ব্যতীত অন্যান্য প্রস্তাবগুলো সংসদে সর্বসম্মতিক্রমে গৃহীত হলো।"

It is pertinent to mention here that Mr. Rashed Khan Manon, M.P. proposed to adopt the following proposal under rule 292 of the **'বাংলাদেশ জাতীয় সংসদ কার্যপ্রণালী-বিধি'** ঃ

''(ক) সাবেক মাননীয় স্পীকার ব্যারিস্টার মুহম্মদ জমির উদ্দিন সরকার, সাবেক ডেপুটি স্পীকার জনাব আখতার হামিদ সিদ্দিকী এবং সাবেক চীফ হুইপ খোন্দকার দেলোয়ার হোসেন অনিয়ম ও দূর্নীতি করে যে অর্থ আত্মসাৎ এবং অপচয় করে সরকারের যে আর্থিক ক্ষতি করেছেন তা আইনী ব্যবস্থা গ্রহণের মাধ্যমে তাদের নিকট থেকে আদায় করা হউক:

(খ) সাবেক মাননীয় স্পীকার ব্যারিস্টার মুহম্মদ জমির উদ্দিন সরকার সরকারি বিধি বিধান অমান্য করে নিয়ম বহির্ভূত পন্থায় যে সকল কর্মকর্তা/কর্মচারী নিয়োগ দিয়েছেন সে সকল নিয়োগ বাতিল করা হউক:''

Pursuant to the said resolution of the parliament, the Secretariat of Bangladesh Jatio Shangshad cancelled the appointment of the respective writ petitioners vide its official letter on 18.02.2010.

Learned Attorney General candidly submits that since the impugned order was issued pursuant to a decision adopted in a proceeding of the Parliament on the basis of the recommendation made by the Parliamentary Committee, formed by the Speaker under Article 76 (2)(c)(d) of the Constitution as well as under the Rules laid down in Chapter XXIV of the Rules of Parliament as such the proceedings as well as the decision taken on the basis of such proceedings is immuned from judicial review as per provision of Article 78 of the Constitution.

The Article 78 (1) of the Constitution speaks as follows:

> "সংসদের কার্যধারার বৈধতা সম্পর্কে কোন আদালতে প্রশ্ন উত্থাপন করা যাইবে না।"
>
> *[The validity of the proceedings in parliament shall not be questioned in any Court].*

Mr. Probir Neogi, Learned Senior Advocate, appearing for the writ petitioners-respondents submits that in the instant cases since the service of the writ petitioners-respondents have been made permanent following the relevant Service Rules, and since they have been serving for a quite long period, they cannot be dismissed from the service without following the relevant Service Rule, i.e. সংসদ সচিবালয় কর্মকর্তা ও কর্মচারী নিয়োগ বিধিমালা, ১৯৯৪ and the doctrine of parliamentary privilege will not be applicable in these particular cases.

In view of Article 78(1) of our Constitution the proceedings in Parliament shall not be questioned in any Court.

However, a pertinent question is required to be addressed that in what circumstances and situations Court can exercise its power under judicial review on a Parliamentary proceeding, and how far its proceeding is immuned from judicial review.

In the case **of Raza Ram Paul vs. Honb'le Speaker, Loksobha [MANU/SC/0241/2007=Supreme Court cases, 2007, Vol. iii (2007)3 SCC page-184],** the Supreme Court of India has dealt with the issue of parliamentary privilege and having considered of its earlier various judgments/decisions held that *no power is absolute but subject to checks and balances and judicial review*. In the said case, the Supreme Court of India has formulated the principles relating to the parameters of judicial review in relation to the exercise of parliamentary provisions:

> ***"Summary of the principles relating to parameters of judicial review in relation to exercise of parliamentary provisions:***
>
> *431. We may summarise the principles that can be culled out from the above discussion. They are:*
>
> *(a) Parliament is a coordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;*
>
> *(b) The constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere coordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of actions which partake the character of judicial or quasi-judicial decision;*
>
> *(c) The expediency and necessity of exercise of power or privilege by the legislature are for the determination of the legislative authority and not for determination by the courts;*
>
> *(d) The judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature;*
>
> *(e) Having regard to the importance of the functions discharged by the legislature under the Constitution and the majesty and grandeur of its task, there would always be an initial presumption that the powers, privileges, etc. have been*

regularly and reasonably exercised, not violating the law or the constitutional provisions, this presumption being a rebuttable one;

(f) The fact that Parliament is an august body of co-ordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power;

(g) While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;

(h) The judicature is not prevented from scrutinising the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens;

(i) The broad contention that the exercise of privileges by legislatures cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct;

(j) If a citizen, whether a non-Member or a Member of the legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this Court to examine the merits of the said contention, especially when the impugned action entails civil consequences;

(k) There is no basis to the claim of bar of exclusive cognizance or absolute immunity to the parliamentary proceedings in Article 105(3) of the Constitution;

(l) The manner of enforcement of privilege by the legislature can result in judicial scrutiny, though subject to the restrictions contained in the other constitutional provisions, for example Article 122 or 212;

(m) Article 122(1) and Article 212(1) displace the broad doctrine of exclusive cognizance of the legislature in England of exclusive cognizance of internal proceedings of the House rendering irrelevant the case-law that emanated from courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by the Constitution of India;

(n) Article 122(1) and Article 212(1) prohibit the validity of any proceedings in legislature from being called in question in a court merely on the ground of irregularity of procedure;

(o) The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the legislature;

(p) Ordinarily, the legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the court may examine the validity of the said contention, the onus on the person alleging being extremely heavy;

(q) The rules which the legislature has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution;

(r) Mere availability of the Rules of Procedure and Conduct of Business, as made by the legislature in exercise of enabling powers under the Constitution, is never a guarantee that they have been duly followed;

(s) The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny;

(t) Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action;

(u) An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.

432. It can now be examined if the manner of exercise of the power of expulsion in the cases at hand suffers from any such illegality or unconstitutionality as to call for interference by this Court." (Underlines supplied).

In view of the above propositions, Courts power of judicial review on the proceedings of Parliament is not absolutely ousted. In certain facts and circumstance, in particular on the grounds of lack of jurisdiction or it being a nullity for some reasons such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity, Court has the jurisdiction to exercise its power under judicial review.

Let us now consider the submissions of learned Attorney General in the light of the above principles coupled with the facts and circumstances of the present case.

From the facts as it reveals in the instant cases that the Parliament in its sessions adopted a resolution to make inquiry with regard to the alleged illegal and irregular appointments made by the then Speaker Mohammad Jamiruddin Sirker and accordingly, an inquiry committee was formed. Thereafter, the said inquiry committee after holding an inquiry placed its report before the Parliament and an open discussion was held on the said inquiry report by the members of Parliament and, thereafter, the Speaker put the resolution proposed by Mr. Rashed Khan Manon, M.P. before the House for adoption and the House had adopted the said resolution cancelling all the illegal appointments, and pursuant to the said resolution, the impugned order has been issued and communicated by the Parliament Secretariat to the respective writ petitioners. The learned Advocates for the writ petitioners-respondents have failed to show us that in taking such recourse by the Parliament, the Parliament or the Speaker has violated any rule of Rules of Procedure of Parliament as well as the Constitution. The House and the inquiry committee

discussed various aspects on the issue in question. Since the Constitution and Rules of Procedure have not been violated in the proceeding of Parliament, it is our considered view that there is no scope of judicial review to adjudicate the propriety of the said proceedings and resolution adopted by the Parliament and, as such, we have no hesitation to accept the submission of the learned Attorney General that in these particular cases the impugned decision and the above proceedings of the Parliament is immuned to be questioned before any Court.

The learned Advocates for the writ petitioners-respondents have tried to convince us that before taking the impugned action cancelling the appointments of the respective respondents, they were not given any opportunity of being heard and thereby principle of natural justice has been violated, since their service has been confirmed by the authority as per relevant Service Rules.

It is now well settled that if the appointments have been made without following the Rules of Procedure, the concerned employees have not acquired any vested right in the office on the basis of such irregular and illegal appointment. In the case of **Nuruzzaman Md. and others vs. Bangladesh and others,** reported in **64 DLR (HC) 406** it has been held that:

> *"Since the appointments have been made without following the rules and procedures, and in the inquiry report it has been opined that the petitioners managed to get their appointments by way of irregularities and corrupt practice, we are of the view that the petitioners have not acquired any vested right in the office on the basis of their appointments. There is no illegality and irregularity in the order of cancellation as made by the respondents".*

The High Court Division in making the above observations relied on the case of **Pankaj Gupta vs. the State of Jammu and**

Kashmir, reported in **8 SCC (2004)353,** wherein it has been held that:

> *"No person illegally appointed or appointed without following the procedure prescribed under the law is entitled to claim that he should be continue in the service."*

The above judgment of the High Court Division has been affirmed by this Division **in Civil Petition for Leave to appeal No. 245-152 of 2003,** reported in **20 BLC (AD) 246** wherein this Division has held that:

> *"Considering the report of the inquiry committee, the Government cancelled the order of appointments and that it could not be said that letter impugned before the High Court Division was arbitrary. The High Court Division further found that the appointments had been made without following the rules and procedures and that in the inquiry report it had been opined that the petitioners managed to get their appointments by way of irregularities and corrupt practice. The High Court Division also found that the petitioners had not acquired any vested right in the office on the basis of their appointments. Therefore, the High Court Division concluded that there was no illegality or irregularity in the order of cancellation made by the respondents.*
>
> *The finding of the High Court Division having been based on proper appreciation of law and fact do not call for interference."*

In the case of **Md. Fazle Rabbi Mia vs. Aftab Uddin Ahmed and others,** reported in **2 LNJ (2013) 46,** a Division Bench of the High Court Division has held that-*there is no violation of the rules of natural justice wherein illegalities, irregularities, arbitrariness and abuse of power in the process of creating of posts, selection and appointments are so intermixed that it becomes impossible to sort out the right from wrong and vice versa.*

In the Case of **Krishan Yadav and Ors. vs. State of Haryana and Ors.[Manu/SC/0456/1994]** the Supreme Court of India having found that the selection was done without interview,

fake and ghost interviews, tempering with the final records, fabricating documents and forgery has observed as under:

> *"It is highly regrettable that the holders of public offices both big and small have forgotten that the offices entrusted to them are sacred trusts. Such offices are meant for use and not abuse. From a Minister to a menial everyone has been dishonest to gain undue advantages. The whole examination and the interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode. It shocks our conscience to come across such a systematic fraud. It is somewhat surprising the High Court should have taken the path of least resistance stating in view of the destruction of records it was helpless. It should have helped itself. Law is not that powerless.*
>
> *In the above circumstances, what are we to do? The only proper courses open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalised for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as "Fraud unravels everything". To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly we hereby set aside the selection of Taxation Inspectors.*
>
> *The effect of setting aside the selection would mean the appointments held by these 96 candidates (including the respondents) will have no right to go to the office. Normally speaking, we should require them to disgorge the benefit of these ill-gotten gains. That means they will have to repay the entire salary and perks which they have received from the said office. But, here we show a streak of sympathy. For more than 4 years they were enjoying the benefit of "office". The proper lesson would be learnt by them if their appointments are set aside teaching them that dishonesty could never pay.*
>
> *All these efforts by us are aimed at cleansing the public administration. No doubt, it may be stupendous task but we do hope this small step will make great strides in the days to come. Accordingly, the appeals stand allowed."* (Underlines supplied).

In the case of **Union of India Vs. J.N. Sinha (MANU/SC/0500/1970)** the Supreme Court of India held that *rules of natural justice are not attracted in such a case where the appropriate authority forms the requisite opinion bona fide and its opinion cannot be challenged before the Courts.* In the

case of **Baikantha Nath Das and others vs. Chief District Medical Officer, Baripada and others [MANU/SC/0193/1992]** it has been held that *as action had been taken on subjective satisfaction of Government, there is no room for importing facet of natural justice in such a case*.

In view of the above propositions, we are unable to accept the submission of Mr. Neogi that in cancelling the order of appointments of the writ petitioners, which were the result of corrupt, illegal and male practice, the principle of natural justice has been violated.

In the case of **Jagit Singh vs. State of Hariyana,** reported in **(2006) 11 SCC 1,** the Supreme Court of India has held that *the principles of natural justice are not immutable but are flexible; they cannot be cast in a rigid module and put in a straitjacket and the compliance therewith has to be considered in the facts and circumstances of each case*.

Section 5(1) and section 14 of the জাতীয় সংসদ সচিবালয় আইন, ১৯৯৪ are as follows:

> *"**সংসদ সচিবালয়ের কর্তৃত্ব-** ৫। (১) সংসদ সচিবালয়ের প্রশাসনিক দায়িত্ব স্পীকারের উপর ন্যস্ত থাকিবে।*
>
> *and*
>
> ***সংসদের নিকট স্পীকারের দায়িত্ব-** ১৪। সংসদ সচিবালয়ের যাবতীয় কর্মকান্ডের জন্য স্পীকার সংসদের নিকট দায়ী থাকিবেন।"*

This Division in the Case of **Maves Jasmin and others vs. Ruhul Amin,** reported in **26 BLC (AD)239** has observed that:

> *"The ordinary rule of construction of a statute must be construed in accordance with the language used depending upon the context. The Court should adopt purposive interpretation of the statute to articulate the felt necessities of the time. Article 79 of the constitution has been provided with the object that the Secretariat attached to the parliament should have staff, which should be under the effective control with the head of the parliament. The idea is to crystallise the position regarding supremacy of the Speaker and to give*

constitutional authority. The Speaker is the framer, operator and interpreter of the Rules and consequently he can amend the Rules from time to time following the related laws."

If we consider the provisions of sections 5(1) and 14 of the জাতীয় সংসদ সচিবালয় আইন, ১৯৯৪ coupled with above proposition of law, then it would be abundantly clear that the Speaker of the Parliament has been entrusted with all the administrative power of the Parliament Secretariat but at the same time he or she is answerable to the House for his or her conduct and activities relating to *'সংসদ সচিবালয়ের যাবতীয় কর্মকান্ড'* and, as such, the House in taking the action on the illegal conduct/activities of the Ex-Speaker did not violet any Rules of Procedure of the Parliament or any provision of the Constitution.

Having considered and discussed above, we find merit in all the appeals. Accordingly, all the appeals are allowed. The impugned judgment and order passed by the High Court Division is set aside.

However, there is no order as to costs.

C. J.

J.

J.

B.S./B.R./*Words-5,583*