

[2010] 3 S.C.R. 1059

RAMDAS ATHAWALE

v.

UNION OF INDIA AND ORS.

(Writ Petition (Civil) No. 86 of 2004)

MARCH 29, 2010

**[K.G. BALAKRISHNAN, CJI., S.H. KAPADIA, R.V.
RAVEENDRAN, B. SUDERSHAN REDDY,
P. SATHASIVAM, JJ.]**

Constitution of India, 1950:

Articles 87, 118, 122 – President's special address at the commencement of session – Requirement of, when the House resumed after it was adjourned sine die – Held: Resumption of House for the purpose of continuing its business would not amount to commencement of new session – No special address by President required – Rules of Procedure and Conduct of Business in Lok Sabha – Rule 15.

Articles 122, 32 – Speaker's decision directing resumption of House which was adjourned sine die – Writ petition questioning the propriety of Speaker's decision – Maintainability of – Held: Courts are precluded from making inquiry into proceedings of Parliament on the ground of any irregularity of procedure – Question whether the resumed sitting was to be treated as the second part of the session was essentially a matter relating purely to the procedure of Parliament and cannot be tested and gone into in a proceeding under Article 32 – Judicial review – Scope of.

Article 122 – Speaker – Powers and duties – Held: Speaker is the guardian of the privileges of the House and its spokesman and representative upon all occasions – He is the interpreter of its rules and procedure, and is invested with the power to control and regulate the course of debate

A *and to maintain order – Under Article 122 (2), the decision of the Speaker in whom powers are vested to regulate the procedure and the Conduct of Business is final and binding on every Member of the House.*

B *Article 32 – Scope of – Held: Petition under Article 32 not entertainable unless it is shown that the petitioner had some fundamental right.*

Article 85 – Prorogation and adjournment – Distinction between.

C **The Fourteenth Session of the Thirteenth Lok Sabha commenced on 2nd December, 2003 and was adjourned *sine die* on 23rd December, 2003. Thereafter on 20th January, 2004, the Secretary General of the Lok Sabha,**
 D **by way of a Notice informed all the Members of the Thirteenth Lok Sabha, duly stating that under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha, the Speaker has directed that the Lok Sabha, which was adjourned *sine die* on 23rd December, 2003 would resume its sittings on 29th January, 2004.**
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In a writ petition filed under Article 32 of the Constitution of India, a member of Lok Sabha challenged the constitutional validity of the proceedings in the Lok Sabha commencing from 29th January, 2004 on the
 F **ground that the Session commenced on 29th January, 2004 was the first Session of the Lok Sabha in the year 2004, and there was no address by the President informing the Parliament, the cause of its summons as provided for and required under Article 87 (1) of the**
 G **Constitution of India.**

Dismissing the writ petition, the Court

HELD: 1.1. The scheme of the Constitution, from the compendium of Articles 79, 83, 85 and 86 reveals that

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Union Parliament consists of the President and the Council of States and the House of the People unless dissolved earlier, the House of the People continues for five years from the date of its first meeting, and the expiration of five years operates as a dissolution of the House except that during proclamation of Emergency, the period of five years may be extended at a time not exceeding one year and not extending in any case beyond six months after such proclamation has ceased to operate. The President is under constitutional mandate to summon each House of the Parliament from time to time to meet at such time and place as he thinks fit. The President alone is vested with the power to summon the House from time to time and prorogue the House or either House; and to dissolve the House of the People. The President has a right to address either House or both the Houses together and for that purpose require the attendance of Members. He may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and the House to which message is sent is required to take the same into consideration. [Para 10] [1071-A-E]

1.2. A plain reading of Article 87 clearly suggests that (a) the President shall address at the commencement of the first session after each general election to the House of the People; and (b) at the commencement of the first session of each year. In the present case, the Winter session of the House of the People commenced on 2nd December, 2003 and was adjourned *sine die* on 23rd December, 2003. The resumption of its sittings on 29th January, 2004, by no stretch of imagination, could be characterized as commencement of a new session. The House merely resumed its sittings and continued the Session which actually commenced on 2nd December, 2003. As the House was adjourned *sine die* on 23rd

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A December, 2003, the resumption of its sittings is nothing but reconvening of the same Session after its adjournment *sine die*. It is the second part of the same session. [Paras 12 and 14] [1071-H; 1072-A, C, D]

B 1.3. The words "first session of the year" employed in Article 87 (1) has no reference to resumption of the adjourned session. The session commences with the President's summoning the House to meet. It is Article 85 which deals with the summoning of Sessions of Parliament, prorogation and dissolution of the House of
C People. The constitutional provision does not require summoning of every Session of Parliament which was adjourned for its own reasons after commencement of its Session pursuant to the summons of the President. It is only when a House is prorogued and a new Session
D thereafter summoned under Article 85(2) of the Constitution, the special address by the President as provided for under Article 87(1) is required with reference to the new Session so as to inform the Parliament of the cause of its summons. No such special address is
E needed, if a Sessions is adjourned *sine die* in the previous year and the sittings of the same Session is resumed in the next year. [Para 15] [1072-E-H]

F 1.4. Articles 85 and 87 were amended so as to do away with the summoning of Parliament twice a year and the constitutional requirement of the President's special address at the commencement of each Session. The present constitutional position is that not more than six months are to elapse between the last Session and the
G first day of the following Session. The House is now prorogued only once a year and the President addresses both Houses of Parliament only at the commencement of the first Session of each year. Article 87, as it originally stood, provided for the President's address in 'every
H Session of the year'. The first amendment in 1951

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substituted the words "every Session" by "first Session of each year". By the first amendment, Articles 85 and 174 were also amended. [Paras 16 and 17] [1073-A-D] A

Special Reference No. 1 of 2002 (2002) 8 SCC 237, relied on. B

Kaul & Shakdher's Practice and Procedure of Parliament Fifth Edition; May's Parliamentary Practice, referred to.

1.5. An adjournment is an interruption in the course of one and the same session, whereas a prorogation terminates a Session. The effect of prorogation is to put an end with certain exceptions to all proceedings in Parliament then current. A Session commenced in terms of the order of the President summoning the House can come to an end only with the day on which the President prorogue the House or dissolves Lok Sabha. It is thus clear that whenever the House resumes after it is adjourned *sine die*, its resumption for the purpose of continuing its business does not amount to commencement of the session. The resumed sitting of the House, in this case, on 29th January, 2004, does not amount to commencement of the first Session in the year 2004. [Paras 20, 22, 23] [1073-B, G; 1076-D] C D E

2. Under Article 122 of the Constitution, the Courts are precluded from making inquiry into proceedings of Parliament. A plain reading of Article 122 makes it abundantly clear that the validity of any proceeding in the Parliament shall not be called in question on the ground of any irregularity of procedure. The prayer in the writ petition was to declare the proceedings in the Lok Sabha pursuant to the Notice dated 20th January, 2004 issued under the directions of the Speaker as unconstitutional. The petitioner essentially raised a dispute as to the regularity and legality of the proceedings in the House of the People and propriety of the Speaker's direction to H F G

- A resume sittings of the Lok Sabha which was adjourned *sine die* on 23rd December, 2003. The Speaker is the guardian of the privileges of the House and its spokesman and representative upon all occasions. He is the interpreter of its rules and procedure, and is invested
- B with the power to control and regulate the course of debate and to maintain order. The powers to regulate Procedure and Conduct of Business of the House of the People vests in the Speaker of the House. By virtue of the powers vested in him, the Speaker, in purported
- C exercise of his power under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha got issued notice dated 20th January, 2004 through the Secretary General of the Lok Sabha directing resumption of sittings of the Lok Sabha which was adjourned *sine die* on 23rd December, 2003. Whether the resumed sittings
- D on 29th January, 2004 was to be treated as the second part of the 14th session as directed by the Speaker is essentially a matter relating purely to the procedure of Parliament. The validity of the proceedings and business transacted in the House after resumption of its sittings
- E cannot be tested and gone into by this Court in a proceeding under Article 32 of the Constitution of India. [Paras 25, 26] [1079-D; G-H; 1080-A-F]

3. Article 118(1) provides that each House of
- F Parliament may make rules for regulating, subject to the provisions of the Constitution, its procedure and conduct of its business. The rules, in fact, are made and known as Rules of Procedure and Conduct of Business in Lok Sabha. Article 118(1) makes it perfectly clear that when
- G the House is to make any rules as prescribed by it, those rules are subject to the provisions of the Constitution which obviously include Fundamental Rights guaranteed by Part III of the Constitution. Article 122(2) confers immunity on the officers and members of Parliament in
- H whom powers are vested by or under the Constitution for

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regulating procedure or conduct of the business or for
maintaining order in Parliament from being subject to the
jurisdiction of any Court in respect of the exercise by him
of those powers. [Paras 27-29] [1080-G; 1081-C-H] A

4. The Notice dated January 20, 2004 is self-
explanatory and reveals that the House was adjourned
sine die on 23rd December, 2003 by the Speaker. It is the
Speaker's direction to resume its sittings from 29th
January, 2004 onwards. The Notice clearly says that it
was the second part of the fourteenth session and was
likely to conclude on 5th February, 2004. The Speaker's
decision adjourning the House *sine die* on 23rd
December, 2003 and direction to resume its sittings
relates to proceedings in Parliament and is of procedural
in nature. The Business transacted and the validity of
proceedings after the resumption of its sittings pursuant
to the directions of the Speaker cannot be inquired into
by the Courts. [Para 30] [1082-B-D] B C D

5. Under Article 122 (2), the decision of the Speaker
in whom powers are vested to regulate the procedure
and the Conduct of Business is final and binding on
every Member of the House. The validity of the Speaker's
decision adjourning the House *sine die* on 23rd
December, 2003 and latter direction to resume its sittings
cannot be inquired into on the ground of any irregularity
of procedure. The business transacted and the validity
of proceedings after the resumption of sittings of the
House pursuant to the directions of the Speaker cannot
be inquired into by the Courts. No decision of the
Speaker can be challenged by a member of the House
complaining of mere irregularity in procedure in the
conduct of the business. Such decisions are not subject
to the jurisdiction of any Court and they are immune from
challenge. [Para 31] [1082-E-G] E F G

In re, Under Article 143, Constitution of India (1965) 1 H

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- A SCR 413; *Indira Nehru Gandhi v. Raj Narain & Anr.* 1975 (Supp.) SCC 1, explained.

6. It is a right of each House of Parliament to be the sole judge of the lawfulness of its own proceedings. The Courts cannot go into the lawfulness of the proceedings of the Houses of Parliament. The Constitution aims at maintaining a fine balance between the Legislature, Executive and Judiciary. The object of the constitutional scheme is to ensure that each of the constitutional organs function within their respective assigned sphere. Precisely, that is the constitutional philosophy inbuilt into Article 122 of the Constitution of India. [Para 31] [1082-H; 1083-A-B]

- D *M.S.M Sharma v. Dr. Shree Krishna Sinha* AIR 1960 SC 1186, referred to.

7. One more aspect of the matter is that the petition has become infructuous, since the Lok Sabha was dissolved and thereafter two elections have been held. The issue raised in the petition was purely a hypothetical question. There is no existing *lis* between the parties. It is settled practice that this Court does not decide matters which are only of academic interest on the facts of a particular case. [Para 34] [1084-E-F]

- F *R.S. Nayak v. A.R. Antulay* (1984) 2 SCC 183, referred to.

8. It is equally well settled that Article 32 of the Constitution guarantees the right to a Constitutional remedy and relates only to the enforcement of the right conferred by Part III of the Constitution and unless a question of enforcement of a fundamental right arises, Article 32 does not apply. It is well settled that no petition under Article 32 is maintainable, unless it is shown that the petitioner has some fundamental right. There is not

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even a whisper of any infringement of any fundamental right guaranteed by Part III of the Constitution in the writ petition. Whenever a person complains and claims that there is a violation of any provision of law or a Constitutional provision, it does not automatically involve breach of fundamental right for the enforcement of which alone Article 32 of the Constitution is attracted. It is not possible to accept that an allegation of breach of law or a Constitutional provision is an action in breach of fundamental right. The writ petition deserves dismissal only on this ground. [Paras 37 and 38] [1085-B-F]

Northern Corporation v. Union of India (1990) 4 SCC 239, relied on.

Case Law Reference:

(2002) 8 SCC 237	relied on	Para 19	D
(1965) 1 SCR 413	explained	Para 29	
1975 (Supp.) SCC 1	explained	Para 31	
AIR 1960 SC 1186	referred to	Para 32	E
(1984) 2 SCC 183	referred to	Para 35	
(1990) 4 SCC 239	relied on	Para 37	

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 86 of 2004. F

Under Article 32 of the Constitution of India

H.K. Puri for the Appellant.

G.E. Vahanvati, Indira Jaisingh, ASG, A. Mariaputham, Devdatt Kamat, T.A. Vimal Dubey, Chinmoy Pradip Sharma Anil Katiyar, P. Parmeswaran for the Respondents. G

The Judgment of the Court was delivered by

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A **B. SUDERSHAN REDDY, J.** 1. This writ application under Article 32 of the Constitution of India has been filed by a Member of Lok Sabha, challenging the validity of the proceedings in the Lok Sabha commencing from 29th January, 2004 on the ground that the President has not addressed both Houses of Parliament as envisaged under Article 87 of the Constitution. The prayer in the writ petition is to issue appropriate Writ or direction or order declaring that the Session of the Lok Sabha called by the Notice dated January 20, 2004 is the first Session in the year 2004; and the proceedings of the Lok Sabha pursuant to the Notice dated 20th January, 2004 are unconstitutional, illegal, null and void.

2. The case set up by the petitioner is that the Session commenced on 29th January, 2004 was the first Session of the Lok Sabha in the year 2004, and there was no address by the President informing the Parliament, the cause of its summons as provided for and required under Article 87 (1) of the Constitution of India. The contention of the petitioner was that the "first Session" means, the Session, which is held first in point of time in a given year. According to him, the Session, which commenced on 29th January, 2004 was the first Session of the House of the year 2004. The sittings thereafter continued up to 5th February, 2004.

3. There is no dispute before us that the Fourteenth Session of the Thirteenth Lok Sabha commenced on 2nd December, 2003 and was adjourned *sine die* on 23rd December, 2003. Thereafter on 20th January, 2004, the Secretary General of the Lok Sabha, by way of a Notice informed all the Members of the Thirteenth Lok Sabha, duly stating that under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha, the Speaker has directed that the Lok Sabha, which was adjourned *sine die* on 23rd December, 2003 will resume its sittings on 29th January, 2004.

4. Learned counsel for the petitioner submitted that in terms of mandatory requirement as provided for in Article 87

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[B. SUDERSHAN REDDY, J.]

(1) of the Constitution of India, the President has to address both Houses of Parliament at the commencement of the Session every year and inform the Parliament of the causes of its summons. It was submitted that the commencement of the first Session of each year has to be with reference to the first Session of each year and year shall mean a year reckoned according to British calendar. The contention was that the sittings of the Lok Sabha from 29th January, 2004 were unconstitutional or it could not have been assembled at all in the absence of special address of both the Houses of Parliament by the President. The House of People could have assembled only after the special address by the President.

5. The learned Attorney General submitted that in the instant case the Winter Session of Parliament had commenced on 2nd December, 2003 and was adjourned *sine die* on 23rd December, 2003. The House resumed sitting of that adjourned Session in pursuance of the Notice of the Secretary General dated 20th January, 2004 under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha. It was submitted that the sitting commenced on 29th January, 2004 was not the commencement of a new Session, but was a continuation of Winter Session, which was adjourned on 23rd December, 2003. The learned Attorney General further submitted that the word "first Session" of the year in Article 87 cannot refer to the resumption of the adjourned Session. It must refer to a new Session. It was submitted that the distinction in procedure between the resumption of an adjourned Session and summoning of a new Session may have to be borne in mind for the purpose of interpretation of Article 87 (1) of the Constitution of India. The submission was that, for the resumption of an adjourned Session, the Speaker, under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha, directs issuance of a notice informing the Members of the next sitting of the Session. But if the House is prorogued, it is only the President who can summon the next Session of the Parliament. It was submitted that in the present case, Article

A 87 (1) has no application, as the Winter Session was only resumed on 29th January, 2004 and no new Session was summoned.

B 6. In dealing with these contentions, we shall follow the sequence of events and examine the constitutionality of each happening that would clearly demonstrate that the matter lies in a narrow compass than what has been made to appear.

C 7. In the United Kingdom the Queen and two Houses of Parliament constitutes the Legislature so that the Queen is an integral part of the Legislature.

D 8. In India the same model has been adopted. Article 79 of the Constitution provides that there shall be a Parliament for the Union, which consists of the President and the two Houses to be known respectively as the Council of the State and the House of the People. Article 83 (2) provides that the House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House, except during a proclamation of
E Emergency, the period of five years may be extended for a period not extending one year at a time, and not extending in any case beyond six months after such proclamation cease to operate. Under Article 85 (1), the President has to summon
F each House of the Legislature at such time and place as he thinks fit, so that six months do not intervene between its last sitting in one Session and its first sitting in the next. Article 85 (2) provides as follows:

"The President may from time to time—

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- (a) prorogue the Houses or either House; and
 - (b) dissolve the House of the People."

H 9. Article 86 speaks about Right of the President to address and send messages to Houses.

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[B. SUDERSHAN REDDY, J.]

10. The scheme of the Constitution, as is evident from the compendium of Articles referred to hereinabove, reveals that Union Parliament consists of the President and the Council of States and the House of the People unless dissolved earlier, the House of the People continues for five years from the date of its first meeting, and the expiration of five years operates as a dissolution of the House except that during proclamation of Emergency, the period of five years may be extended at a time not exceeding one year and not extending in any case beyond six months after such proclamation has ceased to operate. The President is under constitutional mandate to summon each House of the Parliament from time to time to meet at such time and place as he thinks fit. The President alone is vested with the power to summon the House from time to time and prorogue the House or either House; and to dissolve the House of the People. The President has a right to address either House or both the Houses together and for that purpose require the attendance of Members. He may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and the House to which message is sent is required to take the same into consideration.

11. Article 87 is an important Article for our present purpose and it reads as follows:

"87. Special address by the President:- (1) At the commencement of the first session after each general election to the House of the People and at the commencement of the first session of each year the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address."

12. A plain reading of Article 87 clearly suggests that (a)

- A the President shall address at the commencement of the first session after each general election to the House of the People; and (b) at the commencement of the first session of each year.

- B 13. The question is whether in this case was there any failure in complying with the requirement as provided for under Article 87 (1) of the Constitution?

- C 14. In the present case, the Winter session of the House of the People commenced on 2nd December, 2003 and was adjourned *sine die* on 23rd December, 2003. The resumption of its sittings on 29th January, 2004, by no stretch of imagination, could be characterized as commencement of a new session. The House merely resumed its sittings and continued the Session which actually commenced on 2nd December, 2003. As it is evident from the record, the House D was adjourned *sine die* on 23rd December, 2003, the resumption of its sittings is nothing but reconvening of the same Session after its adjournment *sine die*. It is the second part of the same session.

- E 15. The words "first session of the year" employed in Article 87 (1) has no reference to resumption of the adjourned session. The session commences with the President's summoning the House to meet. It is Article 85 which deals with the summoning of Sessions of Parliament, prorogation and dissolution of the House of People. The constitutional provision does not require F summoning of every Session of Parliament which was adjourned for its own reasons after commencement of its Session pursuant to the summons of the President. It is only when a House is prorogued and a new Session thereafter summoned under Article 85 (2) of the Constitution, the special G address by the President as provided for under Article 87 (1) is required with reference to the new Session so as to inform the Parliament of the cause of its summons. No such special address is needed, if a Sessions is adjourned *sine die* in the previous year and the sittings of the same Session is resumed H in the next year.

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[B. SUDERSHAN REDDY, J.]

16. Articles 85 and 87 were amended so as to do away with the summoning of Parliament twice a year and the constitutional requirement of the President's special address at the commencement of each Session. The present constitutional position is that not more than six months are to elapse between the last Session and the first day of the following Session. The House is now prorogued only once a year and the President addresses both Houses of Parliament only at the commencement of the first Session of each year.

17. Article 87, as it originally stood, provided for the President's address in 'every Session of the year'. The first amendment in 1951 substituted the words "every Session" by "first Session of each year". By the first amendment, Articles 85 and 174 were also amended. While intervening in the debate Dr. B.R. Ambedkar, with reference to amendment to Article 85, stated:

"...due to the word summon, the result is that although Parliament may sit for the whole year adjourning from time to time, it is still capable of being said that Parliament has been summoned only once and not twice. *There must be prorogation in order that there may be a new session.* It is felt that this difficulty should be removed and consequently the first part of it has been deleted. The provision that whenever there is a prorogation of Parliament, the new session shall be called within six months is retained."

(emphasis supplied)

18. Kaul & Shakhder's Practice and Procedure of Parliament (Fifth Edition, at page 180) gives the background to the aforesaid amendment and observed:

"Before article 87(1) was amended in its present form by the Constitution (First Amendment Act, 1951, the article required the President to address both the Houses

A assembled together at the commencement of each session. Accordingly, the President addressed each of the three sessions held in 1950 of the Provisional Parliament.

B During the Third Session, a question arose whether the next session might commence with the President's Address or would the session be merely adjourned to meet again on 5 February, 1951, which would obviate the necessity of the President's Address. Speaker Mavalankar, in this connection, suggested that instead of the President addressing each session, it might be provided that he would give his Address at the commencement of the first session (First Amendment) Bill, 1951, as reported by the Select Committee, observed: "The real difficulty of course is that this (Address) involves a certain preparation outside this House which is often troublesome. Members are aware that when a coach and six horses come, all kinds of things have to be done for that purpose. Anyhow, that trouble does not fall on the House or members thereof, but on the administration of Delhi".

E **Distinction between Prorogation and Adjournment:**

19. In the matter of *Special Reference No. 1 of 2002*¹, a Constitution Bench of this Court while interpreting Article 85 (2) of the Constitution observed:

F "When the House is prorogued, all the pending proceedings of the House are not quashed and pending Bills do not lapse. The prorogation of the House may take place at any time either after the adjournment of the House or even while the House is sitting. An adjournment of the House contemplates *postponement of the sitting or proceedings of either House to reassemble on another specified date*. During currency of a session the House may be adjourned for a day or more than a day.

H ¹. (2002) 8 SCC 237.

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Adjournment of the House is also *sine die*. When a House is adjourned, pending proceedings or Bills do not lapse." A

(emphasis supplied)

20. An adjournment is an interruption in the course of one and the same Session, whereas a prorogation terminates a Session. The effect of prorogation is to put an end with certain exceptions to all proceedings in Parliament then current. B

21. In May's Parliamentary Practice, which has assumed the status of a classic on the subject and is usually regarded as an authoritative exposition of Parliamentary practice; it is stated: C

"A session is the period of time between the meeting of a Parliament, whether after the prorogation or dissolution, and its prorogation.....During the course of a session, either House may adjourn itself of its own motion to such as it pleases. The period between the prorogation of Parliament and its reassembly in a new session is termed as 'recess'; while the period between the adjournment of either House and the resumption of its sitting is generally called an 'adjournment'." D E

22. Kaul & Shakhder's Practice and Procedure of Parliament further explains the constitutional position succinctly stating "the session of Lok Sabha comprises the period commencing from the date and time mentioned in the order of the President summoning Lok Sabha and ending with the day on which the President prorogue or dissolves the Lok Sabha. It is thus clear that a Session commenced in terms of the order of the President summoning the House can come to an end only with the day on which the President prorogue the House or dissolves Lok Sabha. The Parliamentary Practice prevalent till then has been noticed in the same treatise which is to the following effect: F G

"The Eighth Session of the Eighth Lok Sabha commenced H

- A on 23 February, 1987 and was adjourned *sine die* on 12 May, 1987. The Lok Sabha, however, was not prorogued. On a proposal from the Minister of Parliamentary Affairs, the Speaker, exercising his powers under proviso to Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha, agreed to reconvene the sittings of Lok Sabha from 27 July to 28 August, 1987. The two parts, preceding and following the period of adjournment of Lok Sabha *sine die* on 12 May, 1987, were treated as constituting one session divided into two parts namely, Part I and Part II.
- B
- C On conclusion of the second part of the Eighth Session, Lok Sabha adjourned *sine die* on 28 August, 1987 and was prorogued on 3 September, 1987."

23. It is thus clear that whenever the House resumes after it is adjourned *sine die*, its resumption for the purpose of continuing its business does not amount to commencement of the session. The resumed sitting of the House, in this case, on 29th January, 2004, does not amount to commencement of the first Session in the year 2004.
- D

E Speaker's Ruling:

24. The very issue regarding propriety of convening of the first session of the House on 29th January, 2004 without the Presidential address was raised in the House. The Speaker gave a ruling declaring that as per the provisions of the Constitution, a session of the House comes to an end when the House is prorogued. As the House was not prorogued after its adjournment *sine die* on 23rd December, 2003, the session can, at best be treated as a second part of the 14th session of the 13th Lok Sabha "notwithstanding the fact that the calendar year has since changed". The session convened from 29th January, 2004 was held to be second part of the winter session. The ruling of the Speaker is reproduced hereunder:
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- G

"Tuesday, February 3, 2004/Magha 14, 1925 (Saka)

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[B. SUDERSHAN REDDY, J.]

Ruling by the Speaker – Regarding propriety of (i) terming 'Vote on Account' as the 'Interim Budget' in the Order Paper of the day; and (ii) convening of the first session of the year on 29 January, 2004 without the Presidential Address.

The Speaker, after hearing gave the following ruling:-

Let me at the outset make it clear that the rulings of the Speaker are generally in accordance with the rules, the rule book and also the Constitution of India. At times, it so happens that the issue requires ruling of Chair and in such circumstances the precedents are seen. If the precedents are not available, then the presiding officer has to make up his own mind and give a ruling on the issues which are raised. In this particular case, fortunately, there are rules of procedure as well as definitions to guide us. I have gone through Erskine May's Parliamentary Practice. I would like the House to listen carefully to the ruling which I am now going to give.

Firstly, let me refer to Erskine May who has given, fortunately, a definition of the term 'prorogation'. He has said:

'A prorogation terminates a session; an adjournment is an interruption in the course of one and the same session'.

Therefore, the point which was raised here about prorogation has been made clear by this definition.

.....
 But that was not the main point which was raised today. The main point which was raised by Shri Somnath Chatterjee was about the very holding of this Session and this point was also raised in the House by Shri Varkala Radhakrishnan and some other Members on 30th January,

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- A 2004 and the Hon'ble Minister of Parliamentary Affairs had responded to the points raised by the Members on that day. Shri Somnath Chatterjee has contended that was commenced on 29th January, 2004 was the first Session of the year. I would like to clarify that there is no mention of adjournment *sine die* of the House in the Constitution.
- B As per the provisions of the Constitution, a Session of the House comes to an end when the House is prorogued. As the House was not prorogued after its adjournment *sine die* on 23rd December, 2003 this Session can, at best, be treated as the second part of the Fourteenth Session of the Thirteenth Lok Sabha notwithstanding the fact that the calendar year has since changed.
- C

- D I am giving an illustration; I am giving a precedent regarding the Third Lok Sabha. On 11th December, 1962 the House adjourned to meet on 21st January, 1963.

- E This was treated as Part-II of the same Session. I may inform the House that in the past also there have been occasions when after adjournment *sine die* of the House, the Lok Sabha was re-convened before prorogation.

- F For example, the Eighth Session of the Eighth Lok Sabha was adjourned *sine die* on 12th May, 1987, but the House was not prorogued...and was reconvened after a gap of 75 days on 27th July, 1987 as the second part of the Session. Similarly, the 14th Session of the Eighth Lok Sabha was adjourned *sine die* on 18th August, 1989, but the House was not prorogued and was reconvened on 11th October, 1989 after a gap of 53 days as second part of the 14th Session.
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- H There are several other similar instances also. I have already made a reference to the case when the House was adjourned and thereafter, though it was reconvened in the next year, it was not treated as the fresh Session. Therefore I must make it clear that in this

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particular case also, this Session can be treated as the second part of the Winter Session. A

.....After listening to the arguments, I have treated this as the second part of the Winter Session. Since under the provisions of the sub-clause (a) of clause (2) of article 85 of the Constitution, the power to prorogue the House vests in the Hon'ble President – please remember that this power is with the Hon'ble President – I am not inclined to allow any more discussion on the issue and I hold both the points of order out of order.” B C

25. The question that arises for consideration in this writ petition is whether the decision of the Speaker directing resumption of sitting of the Lok Sabha which was adjourned sine die on 23rd December, 2003 is susceptible to judicial review in a proceeding under Article 32 of the Constitution of India? Under Article 122 of the Constitution, the Courts are precluded from making inquiry into proceedings of Parliament. Article 122 reads as under: D

“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. E

(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.” F

26. A plain reading of Article 122 makes it abundantly clear that the validity of any proceeding in the Parliament shall not be called in question on the ground of any irregularity of procedure. The prayer in the writ petition is to declare the proceedings in the Lok Sabha pursuant to the Notice dated G H

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- A 20th January, 2004 issued under the directions of the Speaker as unconstitutional. The petitioner is essentially raising a dispute as to the regularity and legality of the proceedings in the House of the People. The dispute raised essentially centers around the question as to whether the Speaker's direction to
- B resume sittings of the Lok Sabha which was adjourned *sine die* on 23rd December, 2003 is proper? The Speaker is the guardian of the privileges of the House and its spokesman and representative upon all occasions. He is the interpreter of its rules and procedure, and is invested with the power to control
- C and regulate the course of debate and to maintain order. The powers to regulate Procedure and Conduct of Business of the House of the People vests in the Speaker of the House. By virtue of the powers vested in him, the Speaker, in purported exercise of his power under Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha got issued notice dated
- D 20th January, 2004 through the Secretary General of the Lok Sabha directing resumption of sittings of the Lok Sabha which was adjourned *sine die* on 23rd December, 2003. Whether the resumed sittings on 29th January, 2004 was to be treated as the second part of the 14th session as directed by the Speaker
- E is essentially a matter relating purely to the procedure of Parliament. The validity of the proceedings and business transacted in the House after resumption of its sittings cannot be tested and gone into by this Court in a proceeding under Article 32 of the Constitution of India.

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27. There are two Articles to which reference must be made. Article 118(1) provides that each House of Parliament may make rules for regulating, subject to the provisions of the Constitution, its procedure and conduct of its business. The rules, in fact, are made and known as Rules of Procedure and

G Conduct of Business in Lok Sabha. Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha provides that:

H

"(1) The Speaker shall determine the time when a sitting

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of the House shall be adjourned *sine die* or to a particular day, or to an hour or part of the same day:

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Provided that the Speaker may, if he thinks fit, call a sitting of the House before the date or time to which it has been adjourned or at any time after the House has been adjourned *sine die*.

B

(2) In case the House, after being adjourned is reconvened under the proviso to sub-rule (1), the Secretary General shall communicate to each member the date, time, place and duration of the next part of the session."

C

28. Article 118(1) makes it perfectly clear that when the House is to make any rules as prescribed by it, those rules are subject to the provisions of the Constitution which obviously include Fundamental Rights guaranteed by Part III of the Constitution.

D

29. Similarly, Article 122(1) makes a provision which is relevant. It lays down that the validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure. Article 122(2) confers immunity on the officers and members of Parliament in whom powers are vested by or under the Constitution for regulating procedure or conduct of the business or for maintaining order in Parliament from being subject to the jurisdiction of any Court in respect of the exercise by him of those powers. This Court *In re, Under Article 143, Constitution of India*² (also known as *Keshav Singh's case*) while construing Article 212(1) observed that it may be possible for a citizen to call in question in the appropriate Court of law, the validity of any proceedings inside the Legislature if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinized in a Court of law, though such scrutiny is prohibited if the complaint against the procedure is no more

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2. 1965 (1) SCR 413.

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A than this that the procedure was irregular. The same principle would equally be applicable in the matter of interpretation of Article 122 of the Constitution.

B 30. The Notice dated January 20, 2004 is self-explanatory and reveals that the House was adjourned *sine die* on 23rd December, 2003 by the Speaker. It is the Speaker's direction to resume its sittings from 29th January, 2004 onwards. The Notice clearly says that it was the second part of the fourteenth session and was likely to conclude on 5th February, 2004. The Speaker's decision adjourning the House *sine die* on 23rd December, 2003 and direction to resume its sittings in part C two essentially relates to proceedings in Parliament and is of procedural in nature. The Business transacted and the validity of proceedings after the resumption of its sittings pursuant to the directions of the Speaker cannot be inquired into by the D Courts.

E 31. Under Article 122 (2), the decision of the Speaker in whom powers are vested to regulate the procedure and the Conduct of Business is final and binding on every Member of the House. The validity of the Speaker's decision adjourning the House *sine die* on 23rd December, 2003 and latter direction to resume its sittings cannot be inquired into on the ground of any irregularity of procedure. The business transacted and the validity of proceedings after the resumption of sittings of the F House pursuant to the directions of the Speaker cannot be inquired into by the Courts. No decision of the Speaker can be challenged by a member of the House complaining of mere irregularity in procedure in the conduct of the business. Such decisions are not subject to the jurisdiction of any Court and they are immune from challenge as understood and explained G in *Keshav Singh's* case and further explained in *Indira Nehru Gandhi Vs. Raj Narain & Anr.*³ wherein it was observed that "the House is not subject to the control of the courts in the administration of the internal proceedings of the House." It is a

H 3. 1975 (Supp.) SCC 1.

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right of each House of Parliament to be the sole judge of the
lawfulness of its own proceedings. The Courts cannot go into
the lawfulness of the proceedings of the Houses of Parliament.
The Constitution aims at maintaining a fine balance between
the Legislature, Executive and Judiciary. The object of the
constitutional scheme is to ensure that each of the constitutional
organs function within their respective assigned sphere.
Precisely, that is the constitutional philosophy inbuilt into Article
122 of the Constitution of India.

32. In *M.S.M Sharma Vs. Dr. Shree Krishna Sinha*⁴, a
Constitution Bench of this Court held that the validity of the
proceedings inside the Legislature of the State cannot be
called in question on the allegation that the procedure laid down
by the law had not been strictly followed. Sinha, C.J. speaking
for the Court observed:

"It was contended that the procedure adopted inside the
House of the Legislature was not regular and not strictly
in accordance with law. There are two answers to this
contention, firstly, that according to the previous decision
of this Court, the petitioner has not the fundamental right
claimed by him. He is, therefore, out of Court. Secondly,
the validity of the proceedings inside the Legislature of a
State cannot be called in question on the allegation that
the procedure laid down by the law had not been strictly
followed. Article 212 of the Constitution is a complete
answer to this part of the contention raised on behalf of
the petitioner. No Court can go into those questions which
are within the special jurisdiction of the Legislature itself,
which has the power to conduct its own business. Possibly,
a third answer to this part of the contention raised on
behalf of the petitioner is that it is yet premature to
consider the question of procedure as the Committee is
yet to conclude its proceedings. It must also be observed
that once it has been held that the Legislature has the

4. air 1960 sc 1186.

- A jurisdiction to control the publication of its proceedings and to go into the question whether there has been any breach of its privileges, the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance with its rules of business. Even though it may not have strictly
- B complied with the requirements of the procedural law laid down for conducting its business, that cannot be a ground for interference by this Court under Article 32 of the Constitution."

- C 33. In the present case, there is no complaint of infringement of any guaranteed fundamental rights and therefore it may not be necessary to dilate on the question as to parameters and extent of judicial review that may be available in case of infringement of any guaranteed fundamental rights of a member of the House.

- D 34. One more aspect of the matter. The petitioner in this writ petition under Article 32 of the Constitution has challenged the validity of proceedings in the Lok Sabha commencing from 29th January, 2004 on the grounds stated hereinabove, with
- E which we have dealt with in the preceding paragraphs. The petition has become infructuous, since the Lok Sabha was dissolved and thereafter two elections have been held. The issue raised in the petition is purely a hypothetical question. There is no existing *lis* between the parties. It is settled practice that
- F this Court does not decide matters which are only of academic interest on the facts of a particular case.

35. In *R.S. Nayak Vs. A.R. Antulay*⁵, a Constitution Bench of this Court observed:

- G "We propose to adhere to the accumulated wisdom which has reopened into a settled practice of this Court not to decide academic questions."

36. Though the writ petition has become infructuous, having

H 5. (1984) 2 SCC 183.

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regard to the constitutional issues raised, we have considered the question as to the interpretation of Articles 85 and 87 of the Constitution of India. A

37. It is equally well settled that Article 32 of the Constitution guarantees the right to a Constitutional remedy and relates only to the enforcement of the right conferred by Part III of the Constitution and unless a question of enforcement of a fundamental right arises, Article 32 does not apply. It is well settled that no petition under Article 32 is maintainable, unless it is shown that the petitioner has some fundamental right. In *Northern Corporation Vs. Union of India*⁶, this Court has made a pertinent observation that when a person complains and claims that there is a violation of law, it does not automatically involve breach of fundamental right, for the enforcement of which alone, Article 32 is attracted. B C D

38. We have carefully scanned through the averments and allegations made in the writ petition and found that there is not even a whisper of any infringement of any fundamental right guaranteed by Part III of the Constitution. We reiterate the principle that whenever a person complains and claims that there is a violation of any provision of law or a Constitutional provision, it does not automatically involve breach of fundamental right for the enforcement of which alone Article 32 of the Constitution is attracted. It is not possible to accept that an allegation of breach of law or a Constitutional provision is an action in breach of fundamental right. The writ petition deserves dismissal only on this ground. E F

39. We accordingly find no merit in this writ petition and is accordingly dismissed without any order as to costs. G

D.G.

Writ Petition dismissed.

6. (1990) 4 SCC 239. H