

**IN THE SUPREME COURT OF INDIA**  
**ORIGINAL WRIT JURISDICTION**  
**(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**  
**WRIT PETITION (CIVIL) NO. 1410 OF 2023**

In the matter of:

Mahua Moitra

...Petitioner

Versus

Lok Sabha Secretariat and Ors.

... Respondents

**REPLY/ COUNTER AFFIDAVIT ON BEHALF OF**  
**RESPONDENT NO. 1**

1. That the petitioner has moved present writ petition under Article 32 of the Constitution of India *inter alia* challenging her expulsion from Lok Sabha vide Resolution of the Lok Sabha dated 08.12.2023 and the Gazette Notification in respect thereof dated 08.12.2023 bearing S.O. No. 5227(E).

Expulsion of the Petitioner from the House was recommended by the Lok Sabha Committee on Ethics on 09.11.2023, and vide its Resolution dt. 08.12.2023, the Lok Sabha accepted the

Committee's recommendations on the floor of the House and passed a resolution for her expulsion.

2. That the contents of the petition, including the synopsis and list of dates, questions of law and grounds set out therein, are denied by the answering Respondent to the extent that the same are contrary to the averments and submissions made in the present counter-affidavit. No allegation set out in the petition, including the synopsis and list of dates, questions of law and grounds set out therein may, as such, be deemed to have been admitted by the Respondent, merely on account of the same not having been specifically denied or traversed herein.
3. It is submitted that the present affidavit is being filed pursuant to the order of this Hon'ble Court dated 03.01.2024. The Respondent craves liberty to file a more detailed response at a later stage, if required, subject to leave of this Hon'ble Court.

### **Preliminary Submissions**

***Non-maintainability of the present writ petition under Article 32 of the Constitution of India***

4. That the present writ petition is not maintainable in light of Article 105 and Article 122 of the Constitution of India. The present petition does not satisfy the threshold of judicial review of legislative action that is permissible under the scheme of the Constitution of India.
5. That Article 122 envisages a framework wherein the Parliament is allowed to exercise its internal functions and powers without judicial intervention in the first instance as the Parliament is sovereign in respect of its internal proceedings. There is also an initial presumption that such powers have been regularly and reasonably exercised, not violating the law or the Constitutional provisions and courts will not lightly presume abuse or misuse thereof.
6. As such, proceedings of the Parliament (and its constituents) cannot be called into question alleging any irregularity of procedure and the House of the People is the sole judge of the lawfulness of proceedings before it.
7. That the right to be elected to the Parliament and the right to continue as such is not traceable to any of the rights under Part III

of the Constitution of India. This petition under Article 32 of the Constitution of India is, therefore, not maintainable.

8. That Article 105 of the Constitution of India, categorically provides under the latter part of Clause (3) thereof, that the powers, privileges and immunities of each House of the Parliament, and of the members shall be such as may be defined by the Parliament, and until so defined, shall be those of that House and of its members and committees immediately before coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

Prior to the introduction of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978, the law as it stood was that the powers would until so defined by the Parliament “*shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution,*”

Noticeably, this provision has firstly, not been expressly made “subject to the other provisions of the Constitution of India”, as is the case in Article 105(1) and secondly, does not comprise “law” made by the State to be limited by Part III of the Constitution of

India. The power of expulsion of a Member of Parliament by the House comes within this latter part of Article 105(3).

9. That the aforesaid interpretation of the latter part of Article 105(3) has expressly been recognised by the Constitution Bench decision of this Hon'ble Court in ***Pandit M.S.M Sharma v. Dr. Shree Krishna Sinha and Ors.***, 1959 Supp (1) SCR 806, where this Hon'ble Court held:

*“The conclusion sought to be pressed upon us is that that could not be the intention of the Constitution makers and, therefore, it must be held that the powers, privileges and immunities of the House of Commons and of its members and committees that are conferred by the latter part of Article 105(3) on each House of Parliament and the members and committees thereof and by the latter part of Article 194(3) on a House of the Legislature of a State and the members and committees thereof must be, like the powers, privileges and immunities defined by law, to be made by Parliament or the State Legislature as the case may be, subject to the provisions of Article 19(1)(a). We are unable to accept this reasoning. It is true that a law made by Parliament in pursuance of the earlier part of Article 105(3) or by the State Legislature in pursuance of the earlier part of Article 194(3) will not be a law made in exercise of constituent power like the law which was considered in *Sankari Prasad Singh Deo v. Union of India* [1952] 1 SCR 89 but will be one made in exercise of its ordinary legislative powers under Article 246 read with the entries referred to above and that consequently if such a law takes away or abridges any of the fundamental rights it will contravene the peremptory provisions of Article 13(2) and will be void*

*to the extent of such contravention and it may well be that that is precisely the reason why our Parliament and the State Legislatures have not made any law defining the powers, privileges and immunities just as the Australian Parliament had not made any under section 49 of their Constitution corresponding to Article 194(3) up to 1955 when the case of The Queen v. Richards (1955) 92 C.L.R. 57 was decided. It does not, however, follow that if the powers, privileges or immunities conferred by the latter part of those Articles are repugnant to the fundamental rights, they must also be void to the extent of such repugnancy. It must not be overlooked that the provisions of Article 105(3) and Article 194(3) are constitutional laws and not ordinary laws made by Parliament or the State Legislatures and that, therefore, they are as supreme as the provisions of Part III. Further, quite conceivably our Constitution makers, not knowing what powers, privileges and immunities Parliament or the Legislature of a State may arrogate and claim for its Houses, members or committees, thought fit not to take any risk and accordingly made such laws subject to the provisions of Article 13; but that knowing and being satisfied with the reasonableness of the powers, privileges and immunities of the House of Commons at the commencement of the Constitution, they did not, in their wisdom, think fit to make such powers, privileges and immunities subject to the fundamental right conferred by Article 19(1)(a).*

....

*Article 19(1)(a) and Article 194(3) have to be reconciled and the only way of reconciling the same is to read Article 19(1)(a) as subject to the latter part of Article 194(3), just as Article 31 has been read as subject to Article 265 in the cases of Ramjilal v. Income-tax Officer, Mohindargarh [1951] 19 ITR174 (SC) and Laxmanappa Hanumantappa v. Union of India [1954] 26 ITR 754 (SC), where this Court has*

*held that Article 31(1) has to be read as referring to deprivation of property otherwise than by way of taxation. In the light of the foregoing discussion, the observations in the Madhya Bharat case A.I.R. (1952) M.B. 31, relied on by the petitioner, cannot, with respect, be supported as correct. Our decision in Gunupati Keshavram Reddy v. Nafisul Hasan AIR 1954 SC 636, also relied on by learned advocate for the petitioner, proceeded entirely on a concession of counsel and cannot be regarded as a considered opinion on the subject. In our judgment the principle of harmonious construction must be adopted and so construed, the provisions of Article 19(1)(a), which are general, must yield to Article 194(1) and the latter part of its clause (3) which are special.”*

*“Seeing that the present proceedings have been initiated on a petition under Article 32 of the Constitution and as the petitioner may not be entitled, for reasons stated above, to avail himself of Article 19(1)(a) to support this application, learned advocate for the petitioner falls back upon Article 21 and contends that the proceedings before the Committee of Privileges threaten to deprive him of personal liberty otherwise than in accordance with procedure established by law. The Legislative Assembly claims that under Article 194(3) it has all the powers, privileges and immunities enjoyed by the British House of Commons at the commencement of our Constitution. If it has those powers, privileges and immunities, then it can certainly enforce the same, as the House of Commons can do. Article 194(3) confers on the Legislative Assembly those powers, privileges and immunities and Article 208 confers power on it to frame rules. The Bihar Legislative Assembly has framed rules in exercise of its powers under that Article. It follows, therefore, that Article 194(3) read with the rules so framed has laid down the procedure for enforcing its powers, privileges and immunities. If, therefore, the Legislative Assembly has the powers,*

privileges and immunities of the House of Commons and if the petitioner is eventually deprived of his personal liberty as a result of the proceedings before the Committee of Privileges, such deprivation will be in accordance with procedure established by law and the petitioner cannot complain of the breach, actual or threatened, of his fundamental right under Article 21.”

(emphasis supplied)

10. That evidently, in the above quoted decision, the Constitution Bench of this Hon’ble Court made it amply clear that the power, privileges and immunities conferred by the latter part of Article 105(3) and its *pari materia* provision- Article 194(3) would not be void on occasion of their repugnancy with Part III of the Constitution, including all of its Articles.

The Rules framed to enforce them are Rules made by following due procedure established by law and are reasonable limitations on all fundamental rights provided under Part III of the Constitution of India. This decision reflects the core value of separation of powers segregating the authority of the legislative branch from judicial scrutiny, specifically concerning management of its own affairs within the Houses.

11. That this decision of the Constitution Bench was upheld by an 8-judge Constitution Bench of this Hon’ble Court in ***Pandit M.S.M.***

*Sharma v. Dr. Shree Krishna Sinha and Ors.*, 1961 (1) SCR 96, wherein this Hon'ble Court categorically deemed the fundamental rights guaranteed under Part III of the Constitution, subject to the latter part of the Article 105(3) and Article 194(3) of the Constitution. This Hon'ble Court held:

*“It now remains to consider the other subsidiary questions raised on behalf of the petitioner. 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 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 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. Courts have always recognised the basic difference between complete want of jurisdiction and improper or irregular exercise of jurisdiction. Mere noncompliance with rules of procedure cannot be a ground for issuing a writ under Article 32 of the Constitution vide Janardan Reddy v. State of Hyderabad.”*

(emphasis supplied)

12. That this Hon’ble Court in the above-quoted decision has clearly denied the applicability of fundamental rights in respect of exercise of powers, privileges and immunities of the Parliament by stating, even in context of Article 21, that, “*the petitioner has not the fundamental right claimed by him.*” Therefore even in the present case at hand, the claim of the Petitioner of violation of fundamental rights and the present writ petition in respect thereof, is beyond the scope of law and not maintainable.
  
13. That even in ***Raja Ram Pal v. The Hon’ble Speaker, Lok Sabha and Ors.***, (2007) 3 SCC 184, the Constitution Bench of this Hon’ble Court has recognised that the 8-judge bench decision in *MSM Sharma (supra)* has upheld the 5-judge bench decision in *MSM Sharma (supra)*, and the same is applicable in respect of fundamental rights claimed by Members (and not a citizen who is

an outsider to the House) in relation to internal proceedings of the House. This Hon'ble Court held:

*“270. Last, but not the least, there are many differences between U.P. Assembly case (Special Reference No. 1 of 1964) and the one at hand. The entire controversy in the former case revolved around the privileges of the House in relation to the fundamental rights of a citizen, an outsider to the House. The decision expressly states that the Court was not dealing with internal proceedings, nor laying down law in relation to Members of the House.*

.....

*271. In the light of the above, we are of the opinion that the ratio of U.P. Assembly case (Special Reference No. 1 of 1964) 12 which was decided under significantly different circumstances, cannot be interpreted to have held that all the powers of the House of Commons enjoyed in its capacity as a court of record are unavailable to the Indian Parliament, including the power to punish for contempt.*

*272. The view that we are taking is in consonance with the decisions of this Court in the two cases of Pandit Sharma (I) and Pandit Sharma (II). In Pandit Sharma (I) this Court upheld the privilege of the Legislative Assembly to prevent the publication of its proceedings and upheld an action for contempt against a citizen. This decision was reiterated by a larger Bench of this Court in Pandit Sharma (II) when it refused to re-examine the issues earlier answered in Pandit Sharma (I). The cases involved contempt action by the legislature against an outsider curtailing his fundamental rights, and yet the Court refused to strike down such action.”*

(emphasis supplied)

14. That it is thus, most humbly submitted that the present petition under Article 32 of the Constitution of India seeking to enforce allegedly, the fundamental rights of a Member of the House, in respect of internal proceedings conducted by the House and the member's expulsion, is beyond the scope of judicial review, and is not maintainable. This question may be decided as a preliminary issue.
15. That, without prejudice to the aforesaid, *in arguendo*, it is further most humbly submitted that in any case, the present petition does not contemplate any action that amounts to substantive or gross illegality or unconstitutionality. None of the fundamental rights alleged to have been violated, even if presumed to vest with the Petitioner, have been violated.
16. That it is submitted that the impugned proceedings emanate from and have been conducted in accordance with the letter and spirit of the Rules and Procedures of the Lok Sabha.

Article 118(1) of the Constitution provides for each House of the Parliament to make its own set of rules to govern its internal conduct and business. In accordance therewith, the functioning of

the Lok Sabha is governed by the Rules of Procedure and Conduct of Business in Lok Sabha (hereinafter referred to as the 'Rules'). Significantly, Rule 316B requires a Committee of Ethics to examine complaints referred to the Committee by the Speaker and make such recommendations as it deems fit. According to Rule 316C, on a matter being referred to the Committee, a preliminary enquiry is to be conducted. If the Committee finds existence of a *prima facie* case, then Committee is required to take the matter for further consideration. Under Rule 316C(4), the Committee is empowered to lay down its own procedure for examination of matters from time to time. Thereafter, the Committee, according to Rule 316D, upon examination, is required to present a report of its findings to the Speaker, stating its observations as well as the procedure followed in arriving at the recommendations.

17. It is submitted that once the Committee's report is presented to the Speaker, the Chairperson or any member of the Committee may move the Report for consideration of the House, and a debate not exceeding half an hour prior to the putting the question to the House may be permitted. This is specifically provided in Rule 316E of the Rules. After the motion is agreed to, the Chairperson of Committee

or any Member may move that the House agrees or disagreed with the recommendation contained in the report. The consideration of the Report by the House is a matter of priority as is specifically provided in Rule 316F of the Rules. Copy of the relevant portion of the Rules of Procedure and Conduct of Business in Lok Sabha is hereby annexed herewith and marked as **ANNEXURE R-1/1** (pages 42 to 46) .

18. That all these procedures have been duly followed in the case of the Petitioner, and in any case, those internal procedures/actions are not amenable to the jurisdiction of this Hon'ble Court, as having been specifically excluded by the provision of Article 122 of the Constitution which provides that the validity of proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

***Proceedings before the Committee as well as the impugned Report are based on a detailed examination of the complaint.***

19. That upon receipt of complaint from Dr. Nishikant Dubey, a Member of Parliament, alleging 'unethical conduct', 'breach of privilege' and 'contempt of the house' against the Petitioner, on the ground of her direct involvement in sharing credentials of her

exclusive and privileged access to the login portal of Lok Sabha, the complaint *prima facie* appeared to be a complaint against unethical conduct by a Member of Parliament and was put up for consideration of the Hon'ble Speaker, Lok Sabha, who was pleased to refer the matter, in terms of Rule 233A(2) of the Rules, to the Committee of Ethics for Examination, Investigation and Report.

20. That the Committee, while examining the complaint has followed each and every provision under the Rules and has complied with due procedure as required.
21. That the Committee, keeping in mind the sensitivity of the matter, had specifically summoned Dr. Nishikant Dubey, the Complainant (a Member of Parliament), as well as Shri Jai Anant Dehradai, Advocate (whose letter formed the basis of the complaint) to give oral evidence on 26.10.2023. Subsequently, the Committee had also summoned the Petitioner to depose before the Committee on 02.11.2023, and to respond to the averments of Dr. Dubey and Shri Dehradai.
22. That the main aspect of the enquiry carried out (and which formed the basis for expulsion of the Petitioner) was with respect to the

‘Unethical Conduct’ by the Petitioner for sharing her Lok Sabha Login Credentials, i.e., user ID and Password for the Lok Sabha “Members Portal” to an unauthorized person – Shri Darshan Hiranandani, who is a business tycoon, based in Dubai, United Arab Emirates.

23. That the Committee had also sought certain information on the material made available to a Member of Parliament through the secured portal of the Lok Sabha and confidentiality in respect thereof, from the Ministry of Home Affairs, Government of India.

It was revealed that the key functionalities of the portal include:

- (i) Dashboard.
- (ii) E-Summons.
- (iii) Provisional calendar of sittings, list of Business and Parliamentary Bulletins.
- (iv) List of Questions, previous Session’s questions and answers.
- (v) e-Notices- For submitting questions, short notice questions, half an hour discussion, adjournment motion, calling attention motion, notice under rule 377, notice for raising matter during zero hour, no confidence motion, short duration discussion, notice to oppose introduction of Bill, question of privilege, complaints etc.
- (vi) Bills.
- (vii) Parliamentary Committees- Circulation of meeting agenda papers, notices, minutes, background papers, draft reports, etc.

- (viii) Synopsis of debates and Debates.
- (ix) e-Petitions.
- (x) Assurances.
- (xi) Messages.
- (xii) Gallery pass.

24. That several of the above documents are not available in the public domain. These include draft bills which are circulated in advance for the Members' consideration. On this aspect, the Ministry of Home Affairs further stated:

*“Transfer of login credentials to unauthorized elements could provide an opportunity to such elements to access the system leading to several potential hazards. First, given the threats that the country is facing from State and non-State cyber actors, such leakage of credentials could render the system vulnerable to serious cyber-attacks and potentially disable the system entirely, thereby crippling the functioning of the Parliament of India. Second, such elements could plan material into the system that could impact national security by creating false documents or fake narratives, etc. Thirdly, it may be noted that Shri Darshan Hiranandani in the instant case is an Indian national but it is learnt that he has residency rights in UAE. Moreover, he has close relatives who are foreign nationals. This creates a serious risk of leakage of sensitive material to foreign agencies.”*

25. That it is further submitted that several of the above material are not available in public domain and specifically prohibited from being shared without proper authorization under the Rules. Such

material is privileged material and is exclusively made available and accessible to a person in the capacity of a Member of Parliament of India. The accessibility to such confidential material therefore comes with a huge responsibility to ensure its confidentiality. Such material is likely to have a direct nexus with the security and integrity of India and therefore, it is expected that a Member of Parliament would ensure highest standard of ethics and not permit unauthorised and unwarranted access to any third person. The fact of even granting access to an unauthorised third person would be a breach of such trust and would amount to unethical conduct.

- 26.** That in this regard, information was also sought from the Ministry of Electronics and Information Technology, Government of India in respect of the IP address from where the Lok Sabha login credentials of the Petitioner were operated during the period 2019-2023. It was found by the Ministry that the said portal was accessed using the login credentials of the Petitioner from Dubai on 47 occasions from the same IP Address 94.200.247.138.
- 27.** That Ministry of External Affairs was also contacted to verify the sworn affidavit that was made by Shri Darshan Hiranandani,

holder of Indian passport No. Z4976261, who is stated to have signed the said affidavit in the presence of Smt. Umi Asiwai, Vice Consul (Attestation) on 20<sup>th</sup> October 2023.

- 28.** That it is noteworthy that during the proceedings before the Committee, the Petitioner categorically admitted, in her affidavit, that she had in fact, given access to her login portal to Mr. Darshan Hiranandani through which questions are uploaded. She had also stated categorically that, “my login ID and password were shared with someone in his (sic: Mr. Hiranandani’s) office to upload it (sic: the questions)”. It is the “act of sharing” the confidential login credentials that has categorically been admitted by the Petitioner in her evidence to the Committee.
- 29.** That even in the petition before this Hon’ble Court, the Petitioner has admitted that she had, in fact, shared her login credentials to the Members portal of the Lok Sabha with Mr. Darshan Hiranandani.
- 30.** That this admission of the Petitioner was countenanced with an argument that the Lok Sabha encourages sharing its member ID and password with unauthorized personnel, citing sharing with

support staff and LAMP fellows. The Petitioner also asserted that she still had control as it was on her phone that an OTP (One-Time Password) for logging in yielded. Importantly, however, she admitted to having shared the OTP as well apart from the Member Login and Password details with Shri Hiranandani.

31. That it is noteworthy that the OTP was shared by the Petitioner on 47 occasions, and the only justification that has been provided by the Petitioner in lieu thereof is that she needed “typographical” assistance to type her questions on 47 occasions from someone stationed in Dubai. She has stated, in her evidence, before the committee that she needed *secretarial assistance* and hence had shared this extremely sensitive and confidential information with someone stationed abroad. Such a defense is unfathomable.
32. All Members of the Lok Sabha are given adequate secretarial assistance, and such a defense of sharing extremely sensitive login credentials without any authorisation from the Lok Sabha or the Speaker on an alleged requirement of “secretarial assistant” is completely impermissible. The Petitioner had stated that she visited Dubai four times, not to meet Mr. Hiranandani, but in fact incidentally met him for lunch. Yet the Petitioner claims that she

needed “typing assistance” from his office to upload questions. Moreover, the Petitioner had shared her credentials when she was *not* in Dubai, and all 47 times when her login credentials had been used to login to the members portal from the same IP Address belonging to Mr. Hiranandani, were times when she was not in Dubai. She had very consciously shared the login credentials as well as OTP with Mr. Hiranandani, and a defence of “typing assistance” is not just unfathomable but also clearly an afterthought.

33. It is pertinent also to mention that the Committee has found *prima facie* evidence of a quid pro quo (though not necessary for taking action) between Mr. Hiranandani, a business tycoon and the Petitioner, which has been referred to the governmental authorities for investigation.
34. That, the need to share login credentials that are only accessible by virtue of being a Member of Parliament with an outsider, unauthorizedly, for *typographical* assistance, is a defence that is not fathomable or justifiable to any reasonable person.

35. That the averment of the Petitioner that the Committee did not permit her to cross examine the evidence of Dr. Dubey, Mr. Dehradai and Mr. Hiranandani, is inconsequential on account of the fact that it is her categorical admission that the Petitioner had indeed shared her Lok Sabha Login Credentials, i.e., user ID and Password for accessing the privileged Lok Sabha “Members Portal” to Shri Hiranandani. In view of such admission, the reason or motive or intention to share such Login credentials with an unauthorised person is not relevant since the matter pertains to unethical conduct of the Petitioner as a Member of Parliament.
36. That it was in lieu of this undisputed fact of her sharing the login credentials with unauthorized personnel, that the Committee observed that if the login credentials are given to any unauthorized personnel, it would enable the person to access all important, sensitive and confidential documents that are prohibited from being shared and may result into interfering in the affairs of the Parliament by manipulating the Parliamentary information to serve their commercial interests or for ulterior motives. The fact that such sharing makes it susceptible for the information on the portal to be misused and plainly violates the Rules was specifically borne

out of the admission of the Petitioner. The Committee also observed that such an act of sharing of login credentials of the “Lok Sabha Members-only” portal to unauthorized personnel could amount to violation of Section 66 read with Section 43 of the Information Technology Act, 2000, which is infact a punitive provision.

37. That the Petitioner always had the opportunity to contest the claim as to whether she had shared her login credentials with an unauthorised person, but she admitted the same. Thus, no occasion for cross-examination on the said issue was warranted. Further, the petitioner merely defended the admitted act of sharing the Login credentials by terming it as something encouraged by the Parliament, which the Committee did not deem to be an acceptable explanation to exonerate her. In view of the above, there is no violation of the principles of natural justice in the present case.

38. That in any case, in *Raja Ram Pal* (supra), this Hon’ble Court has categorically held in the context of expulsion of the members of Parliament from the House that principles of natural justice are flexible and cannot be cast in a rigid mould and put in a

straightjacket. Compliance of the same has to be considered on the fact and circumstances of the case.

39. That Committee proceedings of the Parliament, as noted by the Hon'ble Chairperson of the Committee, are proceedings in a "Court of Honour" as expressed by the first Speaker of Lok Sabha, Late Shri G.B. Mavlankar, and not a "Court of Law". Thus, technical requirements of cross examination, despite a categorical assumption of certain conduct, is not required and does not apply to these proceedings.
40. That after following due procedure mentioned in the Rules, the Committee had, vide its report dated 9<sup>th</sup> November 2023, recommended the expulsion of the Petitioner from the House on the sole ground of her "Unethical Conduct" and "Contempt of the House" for sharing her Lok Sabha login credentials, i.e., user ID and password of Lok Sabha 'Members Portal' to unauthorized person and its impact on National Security. This has been categorized as a serious misdemeanour on part of the Petitioner and has occasioned her expulsion, in lieu of violation of confidentiality requirements that are a part of the Rules.

*Proceedings before House on the basis the Report of the Committee are entirely legal, and have followed all due procedure*

41. That without prejudice to the averment that any alleged irregularity of procedure in the Parliament cannot be subjected to a judicial scrutiny due to the operation of Article 122, the allegations in the present Petition that the proceedings in the House leading to the impugned notifications dated 08.12.2023 expelling the Petitioner from being a member of the House, were improper and violated the fundamental rights of the Petitioner are vehemently denied as the right to be a member of Parliament and right to continue as such are not fundamental rights. It is categorically submitted that due process, in terms of the procedure laid out in the Rules was followed.
42. That the revised List of Business of the Lok Sabha of 08.12.2023 was published on the Members portal which had various other items apart from the discussion on the Report of Committee on Ethics concerning the Petitioner. This was in consonance with Rule 316F of the Rules of Procedure and Conduct of Business in Lok Sabha. Copy of the relevant portion of revised List of Business of the Lok Sabha dated 08.12.2023 is annexed herewith and marked as **ANNEXURE R-1/2** (pages 47 to 48).

43. That the allegation that requisite procedures of making the report of the Committee available, prior to the motion being moved in the Parliament, have not been followed is vehemently denied. The first trench of the Report of the Ethics Committee was laid in the House on 08.12.2023 at 12:03 PM. The English version of the said Report was first made available on the Members Portal. Notably, this is the same portal, the access to which was shared by the Petitioner to an unauthorized personnel. The Hindi version of the same, in its first trench, was made available on the Members Portal at 12:30 PM. Thereafter, the second trench of the Report was made available at 01:03 PM. Additionally, by 01:20 PM, all volumes of the Report were made available to all Members who were present in the House, on their respective individual Multi-Media device installed before them in the House. This included all volumes of the Report and was made available in both English and Hindi. It is only on the Members Portal that the third trench of the English version was made available by 01:33 PM. Thus, the English version of all volumes of the Report of the Committee was made available on the Members portal, and was visible in both English and Hindi on their respective, individual Multi-media device

present in the House much prior to the Motion being moved by the Minister, Parliamentary Affairs on 08.12.2023 at 2:02 PM. Thus, it is categorically submitted that the Report was made available to all members prior to the Motion having been moved, and initiation of discussion/debate in respect thereof.

44. That discussion under Rule 316E(2) of the Rules started only at 2:02 PM. This debate was conducted for sufficient amount of time as per the aforesaid Rule and only after a proper debate/discussion, voting on the motion of expulsion of the Petitioner was initiated at 08.12.2023 at 03:06 PM. Thus, the averments in the Writ Petition stating that the contents of the Report were not shared in a timely manner and were not made available prior to initiation of the discussion are incorrect and vehemently denied.
45. That the contention that a line whip was issued by the ruling party to all its members through twitter, in light of the presentation of the said report, is completely irrelevant and is only being put as a frivolous attempt to prejudice this Hon'ble Court. The answering respondent has no concern with the internal matters of any political party.

46. That all of the requirements of due process have been duly followed in the House, and every averment of the Petitioner of *mala fide, partisan* conduct, violation of principles of natural justice or lack of adequate discussion and application of mind, are incorrect and vehemently denied.

***Re: Simple majority for expulsion of a Member***

47. That challenge to the expulsion of a Member by way of a simple majority of votes in the House is completely unfounded. The averment that a simple majority voting for adopting the recommendations of the Committee of Ethics for expelling the Petitioner from the House is contrary to the democratic structure of the Constitution is wholly denied as being in teeth of the Constitution of India.

48. That Article 100 of the Constitution of India clearly provides that save as otherwise provided in the Constitution, all questions at any sitting of either house shall be determined by a majority of votes of members present and voting other than the Chairman or Speaker. The only exception to this is provided in the Constitution itself under Article 368, where notwithstanding anything in the

Constitution, the Parliament can amend the Constitution by a majority of not less than two-thirds of the members of the House present and voting. Given Article 368 of the Constitution of India has no application at the case at hand, any argument that a simple majority is not enough for the House to adopt the recommendations of the Committee is clearly against the scheme and the provisions postulated in the Constitution.

49. That it is further submitted that one-tenth quorum is the *only* prerequisite to conduct a meeting. In the instant case, presence of one-tenth quorum during the passing the resolution of expulsion has not been challenged by the Petitioner as the quorum was, in fact, present.

***Re: Seriousness of Allegations and prior instances of breach of confidentiality of the Lok Sabha***

50. That the Petitioner has, before the Committee, as well as in the present petition, categorically admitted to having shared the login credentials of the Members Portal to the Lok Sabha with an unauthorized personnel stationed abroad. This categorical admission is borne out of the Petitioner's oral examination

captured at para. 43 of the Report of the Committee of Ethics as well as Grounds HH, II and JJ of the present writ petition.

51. That the Petitioner has thus admitted to committing the very serious act of providing unauthorized access to a portal, exclusively meant to be accessed by the Members of the Parliament.
52. That the assertions of the Petitioner that such sharing is permissible and in fact encouraged the Parliamentary custom, is incorrect and vehemently denied. The Members Portal of the Lok Sabha provides access to very sensitive information as well as various Draft Bills under consideration, as well as Committee Reports that are confidential, and not available in public domain and are not meant to be shared to any unauthorized personnel.
53. That Rules 269, 275 and 278 of the Rules of Procedure and Conduct of Business in Lok Sabha clearly enunciate confidentiality of Reports of Committees as well as the confidentiality of the evidence therein. These Reports are made available to the Members through their Login Portal, credentials to which have been shared by the Petitioner to an unauthorized

person. The Petitioner's action, thus, is in clear violation of the Rules of Procedure and Conduct of Business in Lok Sabha.

54. That moreover, as submitted above, the Committee, in its report, had categorically sought information from the Ministry of Home Affairs, Government of India on the contents of the aforesaid portal. The Ministry has clarified that key parliamentary functions are available only through the portal including access to list of questions, Bills, Meeting agenda papers, notices, background notes as well as draft Reports which are highly confidential information. These documents are not to be made available in the public domain.
55. That sharing credentials to the login portal can be susceptible to potential national security hazards and can, not only render the system of the Lok Sabha to cyber-attacks, and potentially disable the system, but can also potentially cripple the functioning of the Parliament of India. These are valid concerns of national security as well as the dignity and independence of Parliamentary functioning.

56. That the Petitioner has also admitted to have not only shared the Login credentials of the MP Portal – the login and password – but also the OTP, which is generated every time one attempts to login to the Portal using the aforesaid credentials. Generation of OTP is an additional security feature, whereby whenever one attempts to login using the aforesaid credentials, an OTP is generated and sent to the MP's mobile number so as to enable the MP to prevent any unauthorised access. It is only upon entering the OTP (the additional layer of security) that one can enter the MP Portal. The fact that the Petitioner shared even the OTP every time Mr. Hiranandani wanted to access the confidential portal shows that the Petitioner had consciously permitted illegal, impermissible and unwarranted access to the privileged MP Portal by an unauthorised third party.
57. That there have been earlier instances of unethical conduct of a Member of Parliament, which have formed as precedents for the Committee. During the proceedings of the sixteenth Lok Sabha, the Parliamentary Committee in its Report to enquire into the improper conduct of a Member, being Shri Bhagwant Mann, MP, had presented its Report dated 08.12. 2016, clearly observing that

the publication or distribution of any paper or document connected with the business of the House, unless so authorized by the Speaker, is contrary to Rules, specifically Rules 334A and 382 of the Rules of Procedure and Conduct of Business in Lok Sabha. The same was held to have amounting to misconduct and was unbecoming of a Member of the House.

Copy of the Report of the Parliamentary Committee to enquire upon the improper Conduct of Shri Bhagwant Mann, MP [Sixteenth Lok Sabha] presented on 08.12.2016 is annexed herewith and marked as **ANNEXURE R-1/3** (pages 49 to 149).

- 58.** Thus, providing access to such confidential information available exclusively to Members and their support staff, who are authorized to access these by the Speaker, to an unauthorized personnel is a gross violation of the Rules of Procedure, as well as amounts to misconduct, unbecoming of a Member, that can be independently examined to be a ground of expulsion from the House by the Lok Sabha.

***Re: Expulsion and its basis- proportionality***

59. That this Hon'ble Court has, in the judgment of *Raja Ram Pal* (supra), clearly recognised that expulsion is well within the jurisdiction and the power of contempt exercised by the House.

This Hon'ble Court has, in fact, held that:

*“293. It is axiomatic to state that expulsion is always in respect of a Member. At the same time, it needs to be borne in mind that a Member is part of the House due to which his or her conduct always has a direct bearing upon the perception of the House. Any legislative body must act through its Members and the connection between the conduct of the Members and the perception of the House is strong. We, therefore, conclude that even if Parliament had only the limited remedial power to punish for contempt, the power to expel would be well within the limits of such remedial contempt power.*

*294. We are unable to find any reason as to why legislatures established in India by the Constitution, including Parliament under Article 105(3), should be denied the claim to the power of expulsion arising out of remedial power of contempt.”*

60. That the Petitioner's averment that the expulsion is disproportionate is not in consonance with the decision of this Hon'ble Court in *Raja Ram Pal* (supra), wherein this Hon'ble Court has categorically held that:

*“451. It is the contention of the petitioners that the evidence relied upon by the two Houses of Parliament does not inspire confidence and could not constitute a case of breach of privilege. Their argument is that the*

*decision of expulsion is vitiated since it violated all sense of proportionality, fairness, legality, equality, justice or good conscience, and it being bad in law also because, as a consequence, the petitioners have suffered irreparable loss inasmuch as their image and prestige had been lowered in the eyes of the electorate.*

*452. We are of the considered view that the impugned resolutions of Lok Sabha and Rajya Sabha cannot be questioned before us on the plea of proportionality. We are not sitting in appeal over the decision of the legislative chambers with regard to the extent of punishment that deserved to be meted out in cases of this nature. That is a matter which must be left to the prerogative and sole discretion of the legislative body. All the more so because it is the latter which is the best judge in exercise of its jurisdiction the object of which is self-protection. So long as the orders of expulsion are not illegal or unconstitutional, we are not concerned with the consequences for the petitioners on account of these expulsions.”*

(emphasis supplied)

61. That moreover, this Hon’ble Court has further held that the decision of the Parliament cannot be re-examined on facts, as to whether it was appropriate to expel the member concerned, for the allegation made or not. This Hon’ble Court has clearly held:

*“453. In these proceedings, this Court cannot not (sic)\* allow the truthfulness or correctness of the material to be questioned or permit the petitioners to go into the adequacy of the material or substitute its own opinion for that of the legislature. Assuming some material on which the action is taken is found to be irrelevant, this*

*Court shall not interfere so long as there is some relevant material sustaining the action.”*

62. It is submitted that the decision arrived at by the Parliament as a sovereign organ under the Constitution after following the internal procedure cannot be tested on the basis of doctrine of proportionality as any such exercise will be contrary to the doctrine of separation of powers, which is a basic feature of the Constitution of India.
63. Thus, the contention of the Petitioner that the decision of expulsion was disproportionate and against the fundamental notions of justice is not assailable before this Hon’ble Court, and in any case, the proportionality of the decisions of the Parliament, and the facts relied upon, cannot be reappreciated as a court of appeal. The contentions on this are, thus, wholly unfounded.
64. That the Petitioner has also, incorrectly contended that the Right to Vote of people from the constituency of the Petitioner is being thwarted by the act of her expulsion. In ***Raja Ram Pal*** (supra), this Hon’ble Court has clearly held that:

*“162. While it is true that the right to vote and be represented is integral to our democratic process, it must be remembered that it is not an absolute right.”*

*There are certain limitations to the right to vote and be represented. For example, a citizen cannot claim the right to vote and be represented by a person who is disqualified by law or the right to be represented by a candidate he votes for, even if he fails to win the election. Similarly, expulsion is another such provision. Expulsion is related to the conduct of the Member that lowers the dignity of the House, which may not have been necessarily known at the time of election. It is not a capricious exercise of the House, but an action to protect its dignity before the people of the country. This is also an integral aspect of our democratic set-up. In our view, the power of expulsion is not contrary to a democratic process. It is rather part of the guarantee of a democratic process. Further, expulsion is not a decision by a single person. It is a decision taken by the representatives of the rest of the country. Finally, the power of expulsion does not bar a Member from standing for re-election or the constituency from electing that Member once again.*

*163. Thus, we hold that the power of expulsion does not violate the right of the constituency or any other democratic principles.*

(emphasis supplied)

65. Thus, the contention of the Petitioner that the Right to Vote or democratic principles of polity are thwarted by the expulsion of the Petitioner by the House is vehemently denied, incorrect and in ignorance of the decision of a Constitutional bench of this Hon'ble Court.

### **Reply to the Petition**

66. That the averments in paragraph 1-7 and 8-41 are vehemently denied, unless a matter of record. There is no *malafide*, violation of principles of natural justice, of fundamental rights or of the due process of law that has taken place in the proceedings before the Committee as well as the Lok Sabha, leading to the expulsion of the Petitioner. The Respondent No. 2 craves leave to refer to the preliminary submissions and objections above to specifically answer all averments in the writ petition, which have been dealt with above.
67. That the broad issues raised by disparate, non-consecutive Grounds in the Petition have already been dealt with above in the Preliminary Submissions and the same are not being repeated for the sake of brevity. It is denied that the impugned action is *ex-facie* without jurisdiction, unwarranted, illegal unlawful or unconstitutional or a gross abuse of the process of law in any manner whatsoever or that the same called for interference by this Hon'ble Court. On the contrary, the impugned proceedings have been conducted strictly in accordance with the rules and procedures of the Parliament and do not amount to a transgression in any manner whatsoever.

68. That the contents of the Prayer clause are denied in their entirety and it is submitted that the present petition is not maintainable in so far as it is wholly misconceived, premature and bereft of any merit, and is outside the purview of this Hon'ble Court's jurisdiction.
69. That in view of the aforesaid submissions, the Respondent no. 1 is not filing a specific para-wise reply. The Respondent no. 1, however, reserves its liberty to file additional reply / documents / submissions if so required or as directed by this Hon'ble Court. The broad issues outlined in the Petition have already been dealt with above in the Preliminary Submissions.
70. In view of the foregoing facts and submissions, it is most respectfully submitted that the writ petition filed by the Petitioner is liable to be dismissed forthwith.

Filed on: 09.03.2024  
Place: New Delhi

FILED BY:



(RAVI BHARUKA)  
Advocate for the Respondent No.1