

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 4486 OF 2020

Mr.Gopichand Kundalik Padalkar,
Member of Legislative Council,
Age: Adult, Nationality: Indian,
Having address at: Padalkar Wadi,
Tal: Atpadi, Dist: Sangli 415 308.. ... Petitioner.

V/s.

1. The State of Maharashtra
through the Ministry of Parliamentary Affairs,
Mantralaya, Mumbai- 400 032.
2. Chairman,
1st Floor, Vidhan Bhavan,
Vidhan Bhavan Marg,
Mumbai- 400 032.
3. The Secretary,
Maharashtra Legislative Council,
Vidhan Bhavan,
Vidhan Bhavan Marg,
Mumbai- 400 032.
4. Dr.Neelam Divakar Gorhe,
Age: Adult,
Deputy Chairman,
Maharashtra Legislative Council,
having address at: Vidhan Bhavan,
Vidhan Bhavan Marg,
Mumbai- 400 032. ... Respondents.

Mr.Milind Sathe, Senior Advocate with Mr.Pralhad D. Paranjpe and Mr.Manish Kelkar for the Petitioner.

Mr.A.A.Kumbhakoni, Advocate General with Ms.Geeta Shastri, Addl.G.P. and Mr.Akshay Shinde for the State.

CORAM : **NITIN JAMDAR AND
MILIND N. JADHAV, JJ.**

DATE : **7 January 2021.**

JUDGMENT : (Per Nitin Jamdar, J.)

On 23 April 2020 the position of Deputy Chairman of the Maharashtra Legislative Council became vacant. On 8 September 2020 through a motion passed by majority, the Legislative Council chose the Respondent No.4 as its Deputy Chairman. The Petitioner, a member of the Legislative Council, has challenged the same by filing this writ petition under Articles 226 and 227 of the Constitution of India.

2. The State of Maharashtra has two Houses of Legislature: the Legislative Council and the Legislative Assembly. Chapter-III of the Constitution of India deals with the subject of State Legislatures. The composition of the Legislative Council is provided under Article 171. The offices of the Council that is Chairman and the Deputy Chairman of the Legislative Council are provided in Article 182. When

these offices become vacant, as soon as may be, the members of the Legislative Council choose two members to be Chairman and Deputy Chairman. The Secretariat of the State Legislature is provided under Article 187. Articles 188 and 189 deal with the conduct of the business. The powers, privileges and immunities of the State Legislatures and their members are enumerated in Article 194. Article 208 envisages rule-making power by the Legislative Council.

3. Maharashtra State Legislature has framed rules for conducting its business called the Maharashtra Legislative Council Rules of 2009. Part I of the Rules deals with the meetings of the Legislative Council. Rule 4 specifies at what time the meetings have to be held. Part II deals with officers of the Council. Rule 7 of the Rules of 2009 states that the procedure for the Deputy Chairman's election shall be the same as for the Chairman as specified under Rule 6. When the Deputy Chairman's office is vacant or about to fall vacant, the Chairman shall fix a date for holding of the Deputy Chairman's election, and the Secretary shall send to every member notice of the date so fixed. Under Rule 6(2) at any time before noon on the day preceding the date so fixed, any member may give notice in writing addressed to the Secretary, of a motion that another member be chosen as the Deputy Chairman. It has to be seconded by a third member and accompanied by a statement by the member whose name is

proposed. The motion is put to the vote. If the motion is carried, later motions are not called. The proviso to this Rule specifies that a member is not permitted to propose his name or second the motion proposing his name or propose or second more than one motion. Rule 19 contemplates a notice to be given to the members. Notice is to be sent to members at the registered address. When the Council is in Session and three days before the commencement of a Session, such notice shall be deemed to have been dispatched to each member if it is deposited in such place at the Council building as appointed by the Chairman. Under Rule 289, any member can move a motion that any rule may be suspended in its application to a particular motion before the Council and if the motion is carried, the rule in question shall be suspended for the time being. These are, in short, the relevant Constitutional provisions and the Rules for the election of Deputy Chairman of the Legislative Council in Maharashtra.

4. In March 2020, the World Health Organization declared the coronavirus disease- COVID-19 as a Pandemic. The COVID-19 severely disrupted daily activities. Fearing community transmission, a lock-down was ordered in Mumbai City, which continued. During this period, on 23 April 2020, the post of Deputy Chairman of the Maharashtra Legislative Council became vacant. By July-August 2020, the State

Government had brought in measures to check the escalation of the Pandemic.

5. On 25 August 2020, a meeting of the Business Advisory Committee of the Council was held to fix the date for holding the Legislative Council's Monsoon Session in the backdrop of COVID-19 Pandemic. It was decided that the Session will be for two days, that is 7 September and 8 September 2020. Specific measures were decided to be implemented to prevent the spread of the virus during the Session. It was decided that only those tested Negative for COVID-19 will be granted entry in the House. On 26 August 2020, the Leader of Opposition wrote to the Respondent No.2 not to hold the election for Deputy Chairman's post during the Session and pointed out to the difficulties created by the Pandemic. A notification was issued by the Respondent No.3 that the Monsoon Session of the Legislative Council would be held on 7 and 8 September 2020 and business for both days was issued. It did not mention the election to the post of Deputy Speaker. On 4 September 2020, a notification was issued by the Secretary of the Maharashtra Legislative Council in furtherance of the Business Advisory Committee's decision that only those members who had tested Negative of COVID-19 would be allowed entry in the House. On 6 September 2020, the agenda for the Session to be held on 7 September

2020 was announced. It did not consist of the election for the Deputy Chairman.

6. On 6 September 2020, the Petitioner tested Positive for COVID-19.

7. As per Rule 4 of the Rules of 2009, the Session of the House began on 7 September 2020 at 12 noon. At the commencement, the Respondent No.2 announced that election to the position of Deputy Chairman would be held on 8 September 2020. A member of the Council moved a motion for the suspension of Rule 6(2) which required giving a notice of the motion to be moved for choosing the Deputy Chairman before the noon of the day preceding the date fixed for holding the election. This motion for the suspension of Rule 6(2) requiring 48 hours' prior notice was passed. Notice of the election due on 8 September 2020 was given to those who were present in the House. It was resolved that by 4.00 p.m. on Monday, 7 September 2020, the motion for choosing a Deputy Chairman as contemplated in Rule 7 would be submitted to the Secretary. On 7 September three members and the Petitioner wrote to the Respondent No.2 that the election be postponed. In the House, four motions were proposed. Two to propose Respondent No.4 and two others to propose one Mr. Vijay Girkar as Deputy Chairman of the Council. On 8 September 2020, the petitioner again sent a letter for

postponement of the election. On that day the motion for choosing Respondent No.4 as Deputy Chairman of the Council was moved, and the same was carried. In view of carrying this motion, the motion for choosing Mr. Vijay Girkar was not pressed. The members belonging to the opposition staged a walkout and went out of the House, leaving 33 members out of 60. These 33 members unanimously passed the motion for electing Respondent No.4 as Deputy Chairman. The Respondent No.2- Chairman declared Respondent No.4 elected as a Deputy Chairman of the Maharashtra Legislative Council. Respondent No.4 accepted the post of Deputy Chairman and a notification to that effect was issued by the Secretary of the Maharashtra Legislative on 8 September 2020.

8. The Petitioner has approached this Court filing a petition under Articles 226 and 227 of the Constitution of India praying that the record and proceeding concerning the election of Respondent No.4 as Deputy Chairman of the Maharashtra Legislative Council be called for and the notification No.12503/E-2 dated 8 September 2020 issued by the Secretary, Maharashtra Legislative Council be quashed and set aside.

9. A reply-affidavit is filed by Shri Bhupendra Murlidhar Gurav, In-charge Secretary, Parliamentary Affairs

Department, Mantralaya placing on record the factual position. An affidavit in rejoinder is also filed by the Petitioner.

10. We have heard Mr. Milind Sathe, learned Senior Advocate for the Petitioner and Mr. A.A.Kumbhakoni, learned Advocate General for the State of Maharashtra.

11. In view of Articles 194 and 212 of the Constitution of India, the first and obvious question would be whether judicial review in these facts and circumstances would be permissible. Articles 194 and 212 are reproduced below.

194. Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof.—

(1) *Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.*

(2) *No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.*

(3) *In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, [shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-fourth Amendment) Act, 1978.]*

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

* * * * *

212. Courts not to inquire into proceedings of the Legislature.

(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

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

12. As regards this question, the Petitioner submitted it maybe that Article 212 of the Constitution of India bars interference by the High Court under Article 226 from questioning the validity of the proceedings in the Legislature of the State on the ground of irregularity of the procedure, but the present case is not covered by Article 212 of the Constitution of India as the right of the Petitioner under Article 182 of the Constitution of India is breached by actions of the Respondents which are illegal and unconstitutional. It is contended that judicial review of the proceedings in the Legislative Council is permissible when it suffers from illegality or unconstitutionality. Since the result of the impugned

election is achieved by illegal and unconstitutional abrogation of the Petitioner's right under Article 182, the same should be quashed and set aside. The learned Advocate General submitted that the validity of any proceeding in the Council could not be called in question on the ground of any alleged irregularity of procedure. He contended that the bar under Article 212 is couched negatively. It is contended that the examination of the procedure of choosing the Deputy Chairman is covered by the restraint under Article 212. Learned Advocate General submitted that though the Petitioner may invoke Article 226 of the Constitution, judicial review is in restricted circumstances and not permissible in the case such as the one in hand.

13. The interplay between the power of judicial review and the Articles 115 and 212 has been considered by the Constitutional Benches in *M.S.Sharma v. Dr.Shree Krishna Sinha*¹; *Rajaram Pal v. Hon'ble Speaker, Lok Sabha*² and *Ramadas Athawale v. Union of India*³ and in the advisory jurisdiction by the Supreme Court the case of Special Reference No.1/1964 (also known as *Keshav Singh's case*⁴); Both, the Learned Counsel for the petitioner and the learned Advocate General have relied upon these decisions. The concurring opinion by C.K.Thakkar J in the case of *Rajaram*

1 AIR 1960 SC 1186

2 (2007) 3 SCC 184

3 (2010) 4 SCC 1

4 AIR 1965 SC 745 : (1965) 1 SCR 413

Pal is also relied upon. In the decision of the Constitution Bench, in the case of *M.S.Sharma*, the facts were that the Petitioner, a journalist was proceeded against by the Speaker of the Legislative Assembly. A member of the Legislative Assembly challenged the election of the Respondent therein as a Speaker of the Assembly. The Special Reference No.1/1964 (also known as *Keshav Singh's case*) arose from a summons issued by the Speaker of the Legislative Assembly to a citizen. Both, the High Court and the Legislative Assembly initiated actions against each other and perceiving an impasse, a presidential reference was made. In the case of *Rajaram Pal*, the Constitution Bench considered the interpretation of Article 105; the facts were that certain allegations were made against the members of the Parliament indulging into illegal practices leading to the expulsion of the members. In the case of *Ramadas Athawale*, the petitioner, a member of Lok Sabha filed a petition under Article 32 of the Constitution questioning the commencement of the proceedings of the House on the ground that they were not preceded by the President's address provided in Article 87(1). Though these decisions are rendered in the context of the Parliament, these principles apply to the High Court's power of judicial review of the proceedings in the State Legislature.

14. The legal position emerging from the above judgments of the Supreme court is encapsulated as follows.

Given the mandate of Article 212, the validity of the proceedings inside the Legislature of a State cannot be called in question on the ground that the procedure laid down by the law had not been strictly followed. However, it is possible to question the validity of proceedings of the State Legislature not on the ground of the irregularity of procedure but illegality. If the procedure adopted is illegal and unconstitutional, it would be open to the Court to scrutinize it under its power of judicial review. The Court can exercise judicial review of the actions of the Legislature having the character of a judicial or quasi-judicial decision. The Court is not barred from scrutinizing the validity of the action of the Legislature breaching the fundamental rights of the citizens. It is open to the aggrieved party to approach the Court against the action of the Legislature, and if the Court is satisfied that the action is unlawful and unconstitutional, it can set aside the same within the limited parameters of judicial review. However, the action should be "ex facie illegal, unlawful or unconstitutional". The Constitution of India maintains a balance between the Legislature, Executive, and Judiciary. The constitutional scheme is to safeguard that each of the constitutional organs function within their respective assigned sphere. No Court can go into the questions within the exclusive domain of the Legislature, and the Legislature has the power to conduct its own business. The Legislature is vested with complete

jurisdiction to carry on its proceedings according to its rules of business. Even though the Legislature may not have strictly complied with the procedural requirements laid down for regulating its business, that cannot be a reason for intervention by the Courts. The Legislature is a co-ordinate organ, and its views do deserve deference. The Court will not question the truth or correctness of the material, nor will it go into the sufficiency of the material or replace its assessment for that of the Legislature. The Court will not easily presume abuse or misuse by the Legislature. The court would not interfere so long as there is some relevant material sustaining the action. Therefore, even if limited judicial review is permissible to question the proceedings in the State Legislature, the Court cannot be oblivious that the Legislature is one of three organs and is exercising powers under the same Constitution. The High Court should exercise its power of judicial review in such situations with prudence and circumspection.

15. The case at hand is not of a punitive action taken against the Petitioner, nor the Petitioner is questioning the exercise of powers akin to a quasi-judicial power by the House, but the challenge is to an election. Three decisions of the High Courts cited by the learned Advocate General are relevant for this type of challenge to the action of the Legislature. These are: (i) judgment of Division Bench of this Court in the case of

*Surendra Vasant Sirsat v. Legislative Assembly of State of Goa*⁵; (ii) judgment of Single Judge of Gujarat High Court in Special Civil Application No.16631/2007 and confirming judgment of the Division Bench of the Gujarat High Court in Letters Patent Appeal No.1944/2007 (*Jagdishbhai Thakore v. Chandrikaben Chudasma*); and (iii) the judgment of the Madras High Court in *K.A. Mathialagan v. P.Srinivasan*⁶. In the case of *Surendra Vasant Sirsat*, a challenge was raised to the election of speaker before the division bench of this Court. In the case of *Jagdishbhai Thakore v. Chandrikaben Chudasma*, the question that arose before the learned Single Judge and the Division Bench of the Gujarat High Court was whether a writ of mandamus could be issued against the Speaker of the State Legislative Assembly for the reason that the Speaker had not allowed the presentation of the report given by the Public Accounts Committee on the table of the House of the Legislature. The Full Bench of the Madras High Court in the case of *K.A. Mathialagan*, was considering a petition where the petitioner was seeking a writ of mandamus against the Respondents therein not to interfere with his right to continue to function as Speaker of the Legislative Assembly. In all these cases the High Courts held that the grievance of the petitioners could not be entertained in view of the mandate of Article 212 of the Constitution.

5 AIR 1996 Bom 10 : 1995 SCC Online 172

6 1973 SCC OnLine Mad 48 : AIR 1973 Mad 371 (FB)

16. Though various grounds have been pleaded in the Petition, during the oral arguments the Petitioner has limited them to the illegality and unconstitutionality in the course of and resulting from deprivation of the Petitioner's right under Article 182 of the Constitution of India. The Petitioner's primary contention is that the election of the Deputy Chairman held on 8 September 2020 pursuant to the decision on 7 September 2020 was in abrogation of Petitioner's right under Article 182 to take part in the election and that being the position the result of the election in favour of Respondent No.4 declared by Respondent No.2 is illegal and unconstitutional.

17. Since fulcrum of the Petitioner's argument is based on infringement of his right under Article 182; it will have to be seen whether such right exists and the quality of the same. Article 182 of the Constitution reads thus:

182. The Chairman and Deputy Chairman of the Legislative Council.—The Legislative Council of every State having such Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

According to the Petitioner, Article 182 confers three rights on the member of the Legislative Council. First, the right to

nominate a member as a Chairman and Deputy Chairman of the Legislative Council. Second, the right to get oneself nominated as a Chairman and Deputy Chairman of the Legislative Council. Third, the right to participate in the process of choosing a Chairman and Deputy Chairman of the Legislative Council. According to the Petitioner, all these three constitutional rights flowing from Article 182 were taken away by an illegal and unconstitutional course of action.

18. The learned Advocate General submitted that the Chairman and the Deputy Chairman of the Maharashtra Legislative Council are to be “chosen”. Article 182 does not use the term “elected”. Therefore, the Deputy Chairman is not to be “elected” and, thus, a member of the Council does not have any right as such of either 'casting a vote' or 'contesting an election' to this post. Accordingly, the Petitioner cannot claim that the Petitioner has a fundamental or constitutional right either to cast a vote in choosing the Deputy Chairman of the Council or to contest the election for that post/position. He submitted that to participate in any election process as a voter or candidate is not a fundamental right, and a member of the Legislative Council does not have a constitutional right or a fundamental right, to participate in choosing the Deputy Chairman.

19. In the case of *Alagapuram R. Mohanraj v. Tamilnadu Legislative Assembly*⁷, relied upon by the learned Advocate General, the circumstances were that the petitioners therein were suspended for the remainder of the session by a resolution passed. They filed a petition in the Supreme Court under Article 32 of the Constitution. The Supreme Court framed two questions to be examined. First, when a member of a State Legislature participates in the proceedings of the House, whether that member is exercising a fundamental right of speech and expression under Article 19(10)(a). Second, whether any action, either of the legislative body or any other authority, acting pursuant to any law, disabling either temporarily or otherwise a member from participating in the proceedings of the legislative body, amounts to deprivation of the fundamental right to freedom of speech under Article 19(10)(a) of such a legislator. The Supreme Court opined that the office of a legislator of the legislative assembly could not be treated as pursuing an 'occupation' under Article 19(1)(g) and thus there is no fundamental right under Article 19(1)(g) of the Constitution. The dicta laid down by the Supreme Court in this decision is clear. Therefore, the three rights asserted by the Petitioner cannot be treated as fundamental rights. The Petitioner argued that if the Petitioner's rights are not fundamental rights, they are undoubtedly constitutional rights under Article 182. The Petitioner contended that the nature

⁷ (2016) 6 SCC 82

of the right under Article 182 has yet not been judicially determined. However, it is not necessary for us to determine this legal issue finally in the present case as our following discussion would show that there is no infraction of this right, even assuming it be a constitutional right, by the actions of the Respondents to lead to the reliefs sought for by the Petitioner.

20. Before we consider the Petitioner's contentions, it will be fruitful to reproduce the relevant rules from the Rules of 2009. The procedure for the election of the Deputy Chairman is under Rule 7 the same as the Chairman provided under Rule 6. These rules are reproduced below.

7. Election of Deputy Chairman.

When the office of the Deputy Chairman is vacant or is about to fall vacant, the Chairman shall fix a date for the holding of the election of the Deputy Chairman. The provisions of rule 6 shall, so far as may be, apply to such election.

* * *

6. Election of Chairman.

(1) When the office of Chairman is vacant or is about to fall vacant, the Governor shall fix a date for the holding of the election of the Chairman, and the Secretary shall send to every member notice of the date so fixed.

(2) At any time before noon on the day preceding the date so fixed, any member may give notice in writing addressed to the Secretary, of a motion that another member be chosen as the Chairman of the House and the notice shall be seconded by third member and shall be accompanied by statement by the member whose name is proposed in the notice that he is willing to serve as

Chairman, if elected:

Provided that a member shall not propose his own name or second the motion proposing his own name or propose or second more than one motion.

(3) A member in whose name a motion stands on the list of business may, when called, move the motion or withdraw the motion, and shall confine himself, to a mere statement to that effect.

*(4) The motions which have been moved and duly seconded shall be put one by one in the order in which they have been moved, and decided, *if necessary, by division. If any motion is carried, the person presiding shall without putting later motions, declare that the member proposed in the motion which has been carried, has been chosen as the Chairman of the House.*

Rule 19 requires a notice to be given to the members of the Legislative Council. The Rule reads thus.

19. Notice to members.

Every notice or other paper which is required by the rules to be given or sent to members shall be deemed to have been duly given or sent if a copy thereof is despatched to the address of every member as registered in the Council Office: Provided that when the Council is in Session and for three days before the commencement of a Session, such notice or paper shall be deemed to have been despatched to each member if it is deposited in such place at the Council building as may be appointed in this behalf by the Chairman.

Rule 289 permits suspension any Rule upon a motion moved by a member, which reads thus:

289. Suspension of Rules.

Any member may, with the consent of the Chairman, move that any rule may be suspended in its application to

a particular motion before the Council and if the motion is carried the rule in question shall be suspended for the time being.

21. It is an admitted position that Petitioner did not attend the proceedings of the House on 7 and 8 September 2020 and did not participate in the proceedings for choosing the Respondent No.4 as the Deputy Chairman. The core issue is the reason why the Petitioner did not participate in the proceedings.

22. According to the petitioner, it is because of the respondents' illegal and unconstitutional actions that the Petitioner lost his right under Article 182 of the Constitution to participate in the election of the Deputy Chairman. The Petitioner's contentions are as follows. The Maharashtra Legislative Council Rules have been framed under Article 208(1) of the Constitution of India and Rules 6 and 7 thereof deal with the elections to the post of Deputy Chairman. Rule 6 contemplates that the date of election would be declared and a notice is sent to every member any time before noon on the preceding day of the date so fixed. Therefore, the notice has to be sent to all the members, and the election has to be two days after the announcement. The Respondent No.2 declared at 12.00 noon on 7 September 2020 that an election would be held on 8 September 2020, contrary to Rules 6 and 7 of the

Rules and the Constitutional mandate. As the Session opened the Respondent No.3 declared at 12.00 noon on 7 September 2020 that an election will be held on 8 September 2020 and at that time, Rule 6(2) which mandates prior notice was in force. After that, upon a motion moved by one member, the same was suspended, and the proposals had to be submitted by 4.00 p.m. on 7 September 2020. The motion was moved for the suspension of Rule 6(2) after the declaration of holding the election, and the same was not valid and proper and was illegal. The pronouncement of the election itself was thus illegal. The Petitioner had requested that election not be conducted on 7 September 2020 and 8 September 2020, as he was tested Positive for COVID-19. Despite this request, the election was held on 8 September 2020. After restricting the Petitioner from entering the House on 7 September and 8 September 2020, no alternate arrangement was made, and the Petitioner could not exercise his right. Even after Rule 6(2) was suspended, the proposals could not have been called for by 4.00 p.m. on the very day and doing so was a gross illegality. The decision of Respondent No.2 dated 7 September 2020 to hold the election for the post of Deputy Chairman was a whimsical decision contrary to the rules, conventions, past practices and traditions of the House.

23. The learned Advocate General submitted that the alleged right of the Petitioner could not be exercised because of peculiar circumstances that the Petitioner tested Positive for COVID-19 and not by the actions of the Respondents. That being the position and rest of the arguments being covered by the embargo under Article 212, no interference is warranted. We find merit in the submission of the learned Advocate General for the following reasons.

24. Factual position is placed on record by way of an affidavit in reply. Though the Petitioner contended that the Petitioner was not aware of what transpired in the House, his correspondence contradicts this assertion. Be that as it may, we will proceed on the factual basis presented before us by the learned Advocate General and the affidavit-in-reply.

25. Due to COVID-19 Pandemic, several measures had to be taken if the session of the Legislative Council was to be conducted safely. A decision was taken on 25 August 2020, which was communicated to all on 4 September 2020 that only those who have been certified as COVID-19 Negative should attend. Even those certified as Negative were informed that they should travel in a vehicle with a maximum of two persons who were also certified as COVID-19 Negative. As per the meeting held on 25 August 2020, the Secretary of

the Legislative Council issued a Circular dated 4 September 2020 declaring that the session will be held on 7 September 2020 and laid down various stipulations to avoid spread of COVID-19 Pandemic. These were general and uniform directions.

26. It was thereafter the Petitioner tested Positive for COVID-19 on 6 September 2020. On 7 September 2020, when the members of the Council were informed that the election would be held on 8 September 2020 and the proposal should be given by 4.00 p.m. on 7 September 2020, the Petitioner wrote two letters to the Chairman of the Legislative Council on 7 September 2020 and 8 September 2020. The Petitioner stated that because the Petitioner was tested COVID-19 Positive, he cannot attend the Session and vote. In the letter dated 8 September 2020, he wrote that he could not contest the election because he was tested COVID-19 Positive.

27. Therefore, by the Petitioner's own case, the Petitioner could not attend the proceedings because of the general order issued on 4 September 2020. Nothing is demonstrated as to how the direction dated 4 September 2020 issued in the members' health and safety is illegal or unconstitutional. Most importantly the Circular dated 4 September 2020 and the decision of 25 August 2020 have not been challenged.

Therefore the actions of the Respondents will have to be judged based on the Circular dated 4 September 2020, which is not challenged.

28. Regarding the Petitioners' right to get chosen as a Deputy Chairman, the proviso to Rule 6(2) stipulates that no member can propose his own name. Therefore, the Petitioner could not have proposed his own name. Nothing stopped the other members present in the House to propose the name of the Petitioner. No such case is pleaded that they were prevented from doing so. So far as Petitioner nominating the name of other member is concerned, the Petitioner could have asked any other member of his party to nominate any member of petitioner's choice, and no such case is pleaded that even he was prevented from doing this as well. It is not the case of the Petitioner that he could not contact other members for this purpose or that his name was nominated, but he could not give a statement. Regarding the Petitioner's absence in the House is concerned, as stated earlier, it is due to the Circular issued on 4 September 2020.

29. Except for the directive in the Circular dated 4 September 2020, no other impediment is pointed out to us for the Petitioner's absence from the House. The said direction was general and not specific to the Petitioner. It was after the

Session was announced and a direction was issued on 4 September 2020 that the Petitioner tested positive. Had the Petitioner not tested Positive for COVID-19, he could have attended the Session. A position where a person is not able to exercise his right due to circumstances attributable to him and where his right is specifically abrogated by direct acts of the others, are two different legal concepts. The remedies for these two eventualities are not the same. The argument of the Petitioner that to elect the Respondent No.4, the Respondents deliberately breached the right of the Petitioner, is incorrect. The election of the Respondent No.4, therefore, cannot be set aside on these grounds.

30. As regards submissions on violation of Rules and the procedure adopted on 7 September 2020 is concerned, it is to be kept in mind that the Rules of 2009, is an internal procedure framed by the Legislature. Rule 289 provides for the suspension of a Rule. The Legislature can deviate from the rules and procedure or suspend the operation of a rule after following the prescribed procedure for some time and the Court cannot inquire into the validity of the legislative proceedings on the ground that a rule framed under Article 208 of the Constitution ought not to have been suspended or deviated from. Under Rule 289 of the Rules of 2009, a member could move a motion that any Rule may be suspended

in its application to a particular motion. In the case at hand, the Session was restricted to two days of functioning. A motion was duly made on 7 September 2020, the requirement of prior notice was suspended. Nominations were duly filed by 4 pm same day and by majority vote on the next day, the Respondent No.4 was chosen as Deputy Chairman.

31. The Petitioner has placed on record extracts from the past proceedings of the House. This is to argue that earlier on request of the members elections have been postponed and agendas have been deferred and not doing so now at the request of the members was a whimsical, arbitrary and a decision inconsistent with the settled practice. First and foremost, the circumstances prevailing on 7 and 8 September were not normal circumstances. The post of Deputy Chairman had fallen vacant on 23 April 2020, during COVID-19 Pandemic. Article 182 stresses that such a post should not be kept vacant by employing the phrase "as soon as may be". Because COVID-19 Pandemic brought about an unprecedented situation and in such an emergent situation, the proceedings in the Council had to be held, and the post of Deputy Chairman was to be filled in, the Chairman and the House decided not to postpone the Session any further. Though the Petitioner has questioned this decision contending that an alternate arrangement could be made in law and it was not necessary to fill up the post, it is not for us to sit in appeal

over this decision. This decision is clearly within the domain and internal autonomy of the Legislature. Even the argument that the subject of the election of the Deputy Chairman was not on the agenda on 7 September 2020 and was introduced at the last minute is at the most a procedural irregularity. Ultimately the motion was put to the vote and was carried by the majority. Therefore, this argument is not available to be advanced in the Court in view of the embargo under Article 212 of the Constitution.

32. The Petitioner contends that the method by which provision for issuance of notice was dispensed with is illegal and unconstitutional. A challenge is also raised on the ground of breach of principles of natural justice. There is no merit in this challenge. Even to consider the challenge on this count, prejudice flowing from the same should be *ex facie* apparent. It is clear from the Petitioner's letters written on 7 September 2020 and 8 September 2020 that the Petitioner was fully aware that election would be held on 8 September 2020. Therefore, it cannot be urged that the Petitioner suffered prejudice for knowledge of the election. The Petitioner is calling upon the Court to undertake an inquiry into the propriety of the procedure adopted by the Legislative Council, which is impermissible in view of Article 212 of the Constitution of India.

33. One more facet was pointed out by the learned Advocate General that since the Deputy Chairman enjoys the support of the majority, it would be futile to issue any writ setting aside the election. The Petitioner contends that principle akin to one under Section 100(1)(c) of the Representation of the People Act, 1951 will have to be applied in the case because once the Petitioner is deprived of an opportunity to participate then the fact that the election would not be materially affected, is irrelevant and the election must be set aside.

34. The full strength of the Maharashtra Legislative Council is seventy eight members. The election was held on 8 September 2020. The position on 8 September 2020 was as follows. Some vacancies arose regarding the members whose term had expired. There were twelve more vacancies of the members to be nominated under Article 171(5) since they were not nominated by the Governor of Maharashtra. Thus, the total number of members was 60. As per the reply filed, the political affiliation of 60 members was that 35 members belonged to the Ruling Parties and 25 members to the Opposition. Though it was orally contended by the Petitioner that if the election is held again, this position can change, nothing is established how it will. We will have to proceed

based on the record before us. The learned Advocate General's contention that the writ will be futile as the same result would follow, though not a standalone ground, is not an irrelevant factor in the totality of the circumstances for the exercise of the writ jurisdiction. Further, the choice of the Respondent no.5 reflects the wish of the majority of members .

35. To recapitulate; the Deputy Chairman's position was vacant since April 2020, and as per the Constitutional mandate under Article 182 the Deputy Chairman had to be chosen 'as soon as may be'. The Session of the Legislative Council on 7 and 8 September was held during the COVID-19 Pandemic. In the interest of health and safety of the members, a general notice was issued on 4 September 2020 only to allow those members who were certified Negative for COVID-19 to attend the Session of the Council. After that, the Petitioner tested Positive for COVID-19. The Petitioner could not attend the proceedings and participate in choosing a Deputy Chairman because of the directive of 4 September 2020, which the petitioner has not challenged. Therefore, the right of the Petitioner under Article 182 as claimed was not exercised due to the general direction issued in the interest of health and safety of the members. The decision to hold the Session on these dates and for a two-day duration and not postpone an item are matters of the State Legislature's internal autonomy.

Taking up a subject not on the agenda can, at the most, be considered as an irregularity of procedure. After the announcement of Deputy Chairman's election, by a validly passed motion, the requirement of issuance of 48 hours' notice for holding the elections was changed. Even assuming the Legislature is bound by the Rules it has framed, the Rules of 2009 permitted the suspension of a particular rule by moving a motion. Nominations were duly filled in by a majority and the Respondent No.4 was chosen as a Deputy Chairman. Thus, even assuming judicial scrutiny in these procedural aspects is permissible, there is no *ex facie* gross illegality or unconstitutionality in the action of choosing Respondent No.4 as a Deputy Chairman. The Respondent no.4 enjoys the support of majority of the members. Apart from the Petitioner's contention regarding the breach of his right, which we have already dealt with, the other contentions are based on alleged irregularity of procedure in the proceedings and because of the mandate of Article 212 and the law laid down by the judicial precedents, no further enquiry is possible.

36. While the High Court, in restricted circumstances, can exercise its power of judicial review to ensure that there is no abuse of power by the Legislature in respect of its proceedings, the Court must tread with caution and judicial restraint. This is so because the High Court is not an appellate

body over the State Legislature, nor the State Legislature is an inferior organ to the High Court. The Constitution of India envisages that the High Court and the State Legislature recognize the institutional autonomy of each other. A conjoint reading of Articles 211 and 212 also makes it evident. Article 211 prohibits any discussion in the State Legislature concerning any judge of the Supreme Court or the High Court in the discharge of duties. Article 212 prohibits the Courts from inquiring into the proceedings of the State Legislature on the ground of any irregularity of procedure. These Articles are part of a Constitutional scheme of mutual deference by the High Court and the State Legislature regarding their internal functioning. For the High Court to exercise its power of judicial review in these matters, the case should be of such gravity that it transcends this scheme of mutual deference. No such case is established by the Petitioner.

37. The Writ Petition is dismissed. No Costs.

(MILIND N. JADHAV, J)

(NITIN JAMDAR, J)