

**In the Supreme Court of Bangladesh  
High Court Division  
(Special Original Jurisdiction)  
Writ Petition No. 9416 of 2012**

**In the matter of :**

An application under Article 102 of the  
Constitution of the People's Republic  
of Bangladesh.

-And-

**In the matter of :**

Mr. A.K.M. Shafiuddin.

... Petitioner.

-Versus-

Bangladesh, represented by the  
Secretary, Ministry of Law, Justice  
and Parliamentary Affairs and others.

... Respondents

Mr. Rokanuddin Mahmood and  
Mr. Akhter Imam, Senior Counsel.

With

Mr. K.M. Saifuddin,  
Mr. Rashed Imam and  
Ms. Rashna Imam, Advocates.

... For the petitioner.

Mr. Biswojit Roy, D.A.G. with  
Mr. Md. Shafiquel Islam Siddique,  
Ms. Amatul Karim and  
Mr. Swarup Kanti Deb, A.A.Gs.

... For the respondents.

Heard and judgment on  
The 24<sup>th</sup> of July, 2012.

**Present :**

**Mr. Justice Hasan Foez Siddique**

**And**

**Mr. Justice A.B.M. Altaf Hossain.**

**Hasan Foez Siddique, J.**

By this petition, the petitioner has sought for declaration that the  
Ruling of the Hon'ble Speaker of the Jatiyo Sangsad dated 18.06.2012

that a certain Hon'ble Judge of the High Court Division has violated Article 78(1) of the Constitution and what reasonable action may be taken for such conduct is being left for the Hon'ble Chief Justice for necessary action in consideration of the matter is without lawful authority and of no legal effect.

It has been stated in the petition that the petitioner is a lawyer of the Supreme Court and firm believer in the rule of law and constitutionalism. He is keen to ensure that the tenets of the Constitution of Bangladesh are strictly adhered to, particularly, the doctrine of separation of power as enshrined in the Constitution so that there is no transgression by one organ into the domain of the other. The three organs of the State, namely- the Executive, Legislature and the Judiciary, each of which operates in its own domain free from dictation and encroachment from the others. It is in utmost public interest and for the preservation of the democratic process and the Rule of Law that these provisions of the Constitution dealing with the separation of powers are not in any manner violated by anyone. The petitioner stated that he has filed this petition in the greater interest of the people of Bangladesh as he believes that the independence of judiciary of Bangladesh has been put at risk by the impugned ruling of the respondent No. 3.

The factual background leading to the impugned ruling of the Hon'ble Speaker is that Writ Petition No. 1053 of 2011, popularly known as 'Sarak Bhabon case' was filed in a Division Bench of the

High Court Division wherein the rule was issued which was ultimately made absolute. The respondents of the writ petition failed to execute the orders. Accordingly contempt case being Contempt Petition No. 56 of 2012 was filed. The contemnors appeared in person before the Hon'ble Court and assured that Block-C of the Sarak Bhabon shall be vacated in its entirety by 02.05.2012 but they failed to comply with the order within the said period in its entirety. On 14.05.2012, the said Division Bench directed to handover the rest portion of Block-C by 05.06.2012 and two rooms in Block-A on that date. On 29.05.2012, an Hon'ble Member of the Parliament raised the sub-judice matter for discussion in the Parliament. During that discussion the Hon'ble Speaker made some observations.

It has further been stated that on 05.06.2012 the said Division Bench passed order in the said contempt case in the following manner :

“At the very incept, Mr. Anisul Haque representing the Respondents, intimated that our order dated 14<sup>th</sup> of May 2012 has been squarely adhered to by the Respondents by conveying possession of the residual part of Block-C as well as two rooms from Block-A to our Registrar. The Registrar confirmed the veracity of this assertion. Nothing could be more soothing and tranquil than this. We must express our generous appreciation for the move Mr. Anisul Hoque, and the Ministry of Transport and Communication has restored to, because this commendable venture has thwarted something that could swing to

an unpalatable predicament. During the proceedings, Mr. Manzill Murshid, the learned counsel for the Petitioner, brought to our notice certain media clippings. It transpires from the documents that the Hon'ble Speaker was not briefed on this matter with meticulous precision. Contrary to what he has been given to believe, there was no haste in adjudicating upon this matter. The truth has it that the Rule was issued more or less one and half year back and even after receipt of the contempt petition, we allowed three months to elapse.

The Hon'ble Speaker is not only the 3<sup>rd</sup> Man in the Republic, he is indeed the Patriarch of the Parliament, where all the representatives of the entire populace congregate. His position is, truly speaking, not only of utmost importance, but also unique. For us, most importantly, he is also an Advocate of this Hon'ble Court, although his membership may have been put in hibernation for the time being. He deserves inviolable reverence from all.

Given his dignified and irreproachable profile, we can aspire that the Hon'ble Speaker, in the interest of the independence of the Judiciary as enshrined in our Constitution, may persuade Hon'ble Members of Parliament to refrain from embarking upon a discussion on a matter that is sub-judice.

Harmonious relationship between the Parliament and the Supreme Court, two organs of the state, is absolutely indispensable. So, self restraint and refrainment from deliberation on sub-judice matter is also well expected. While on our part we must also not record any

observation on anything uttered in the Parliament, as we are doing so in the instant case, save, with a view to allay confusion that seems to have permeated into the mind of the Hon'ble Speaker, apparently because of the infusion of erroneous information, we are putting the misunderstood facts right and expressing our expectation as to sub-judice matters. Let this matter be reviewed again on 09.07.2012, when the Respondents shall intimate us about further developments.”

Thereafter, on 18.06.2012 the Hon'ble Speaker was pleased to give the Ruling. Being aggrieved by the Ruling of the Hon'ble Speaker on 18.06.2012 the petitioner moved this application.

Mr. Rokanuddin Mahmood and Mr. Akhter Imam, two learned Senior Counsel along with Mr. K.M. Saifuddin, Mr. Rashed Imam and Ms. Rashna Imam, the learned Advocates, appeared on behalf of the petitioner. On the other hand Mr. Biswojit Roy, the learned Deputy Attorney General appeared on behalf of the respondents.

The learned Advocates appearing for the petitioner, submits that there is no provision either in the Constitution or in Rules of procedure of Parliament of Bangladesh empowering the Hon'ble Speaker to give such Ruling against the institution or person being the Supreme Court or judge thereof. They submit that making such observations the Hon'ble Speaker has usurped the powers and functions of the Supreme Judicial Council basing on hearsay and no more reliable source than print and electronic media, without taking into cognizance the verbatim record of the order dated 05.06.2012. They submit that

the Hon'ble Speaker and the Members of the Parliament ignored the provisions of Rules 53(2)(xx)(a) & (d), 63(xi) & (xii), 133 (iv) & (v), 134 and 165 of the Rules of Procedures of Parliament of the People's Republic of Bangladesh inasmuch as they are barred from initiating discussion on any sub-judice matter. They further submit that the privileges and immunities of Parliament and its members, including the Hon'ble Speaker, as provided for in Article 78 of the Constitution are not absolute. They further submit that by giving impugned Ruling inviting the Hon'ble Chief Justice of Bangladesh to take action, the Hon'ble Speaker has exceeded his jurisdiction inasmuch as he has no authority to ask/request the Chief Justice to take action against a Judge of the Supreme Court. If in the course of its proceeding, Parliament is found to have done any act or thing which impinges upon the independence of the Supreme Court in the exercise of its judicial functions, then Parliament cannot claim privilege under Article 78 as such a claim would render Article 94(4) nugatory.

Mr. Biswojit Roy, the learned Deputy Attorney General, appearing on behalf of the respondents, submits that the petitioner has got no locus standi to file the instant writ petition. His next submission is that the validity of the proceedings in Parliament shall not be called in question in any Court as per Provision of Article 78 of the Constitution so the instant writ petition challenging the proceedings of Parliament is not at all maintainable. Lastly he submits that this application should be disposed of with some observations for the

interest of the two organs of the State and for running their functions harmoniously which is absolutely indispensable.

We have heard the learned Advocates for the petitioner, the learned Deputy Attorney General for the respondents, perused the writ petition and other materials on record.

The object of filing this petition by an Advocate of this Court is to facilitate our higher judiciary to enjoy normal breathing of the unpolluted air of judicial independence, so that the indispensable independence of the judiciary is kept up. The questions to be discussed has got significance affecting the principle of independence of judiciary.

The relevant sentences, in the Ruling of the Hon'ble Speaker dated 18.06.2012 as quoted in the petition, which the petitioner has impugned here and cause of filing this petition, are:

029tg 2012 Zwi tL msm` Avgvi el "te"i tci tZ 5 Rp 2012 Zwi tL nvBtKvtUP GKRb gvbbxq wePvi cWZ msweavtbi 78(1) Abt"Q` j sNb Kti msm` mautK, Avgvi mautK th me gse` Kti tQb Zv tKvb we teKevb gvbj D"pvi Y Ki tZ cvti b wKbv Avgvi mt` n i tqtQ|0-----

----- 0 GKB mv t\_ ej tev , Av` vj tZi G ai tbi AvPi tb wK Ki bxq \_vKtZ cvti gvbbxq cavb wePvi cWZ tm wel quU tft e th e`e`nv Mhb Ki teb ZvtZ Avgvt` i mg\_0 \_vKte| Gi dtj Gaitbi NUbvi cbivevE tiva Kiv nqtZv mae nte|0

The relevant words used in first paragraph are “ nvBtKvtUP GKRb gvbbxq wePvi cWZ msweavtbi 78(1) Abt"Q` j sNY Kti ----- |0

According to the petitioner the Hon'ble Speaker stated in his ruling that Hon'ble Judge of the High Court Division has violated the provisions of Article 78(1) of the Constitution inasmuch as he is not legally empowered to draw such conclusion and the Constitution does not authorize him to make such remarks. It has been alleged that Hon'ble Speaker has transgressed his constitutional limits in making such observation.

Before discussion of the issues it is relevant here to quote a passage from the case of Farooq Ahmed Khan Leghari Vs. Federation of Pakistan reported in PLD 1999 SC. 57 which is, "Constitution is an organic document designed and intended to cater the needs for all times to come. It is like a living tree, it grows and blossoms with the passage of time in order to keep pace with the growth of the country and its people. Thus, the approach, while interpreting a constitutional provision, should be dynamic, progressive and oriented with the desire to meet the situation, which has arisen, effectively. The interpretation cannot be narrow and pedantic. But the courts efforts should be to construe the same broadly, so that it may be able to meet the requirements of ever changing society. The general words cannot be construed in isolation but the same are to be construed in the context in which they are employed. In other words, their colour and contents are derived from their context"

Thomax Huxlay said, "It is not who is right, but what is right, that is of importance : "We must learn what is true in order to do what



is right.” It is the duty of the court of law to find out the “right” and to say so without any hesitation. It is always the business of the Judge to find out the truth. Charles Dickens said, “It is a temptation that Judicial mind must be vigilant to resist.” It is the duty of a Judge to say what the law is, and not what it ought to be. Coke’s observation is “Truth is mother of Justice and Reason is the life of law”.

Article 78(1) of the Constitution says; “The validity of the proceeding in Parliament shall not be questioned in any Court”. In the fact and circumstances of the case, can it be said that the Hon’ble Judge violated Article 78(1) of the Constitution challenging the validity of a proceeding in Parliament, raising any question in his court or in any court. Challenging the validity of a proceeding in Parliament if any case is filed or any proceeding is initiated in any court, in that case, the said initiated case or proceeding would be barred under Article 78(1) of the Constitution. That is the clean and simple meaning and spirit of Article 78(1) of the Constitution. We do not find anything in the Ruling of the Hon’ble Speaker as quoted in the writ petition that before giving such Ruling by the Hon’ble Speaker the Hon’ble Judge raised any question initiating proceeding regarding the validity of any proceeding in Parliament in his Court or in any Court. Even the Hon’ble Speaker has not stated anything in his Ruling regarding filing or pendency of any case or proceeding questioning the validity of any proceeding of Parliament. That is, factual and legal foundations of making observation regarding violation of the provision of Article 78(1) are

absolutely absent here. Therefore, we are of the view that there was no violation of Article 78(1) of the Constitution as alleged.

The backdrop of the Hon'ble Speaker's aforesaid comment as has been stated in the petition is that on 29.5.2012 the Hon'ble Speaker made a statement in the Parliament in the following manner: “msmṭ` msm`-m`m`iv th AvBb,ṭjv cvk Kṭi b tm,ṭjv hw` RbMṭbi wei`ṭ× hvq, Zvnṭj tkl chṢ-RbMY Avgvṭ` i wei`ṭ× i`ṭL `vovṭZ cvṭi | ṭKvUṢGi wePvṭi hw` ṭ`ṭki gvbyl Ṣṭṭ nq Zvnṭj wePvi wefvṭMi wei`ṭ× gvbyl GKw` b nqṭZv i`ṭL `vovṭZ cvṭi | GKBFvṭe hw` ṭKvb mi Kvi `ṭṭPvix AvPiY Kṭi tmṭṢṭṢ RbMṭYi i`ṭL `vovṭbvi BwZnm AvṭQ | 0

From those sentences, it appear to us that the Hon'ble Speaker made those comments not only in respect of judiciary but also in respect of legislature as well as the executive.

However, on 18.6.2012 the Hon'ble Speaker in his ruling stated, inter alia, “cieZṭṢ MZ 5 Rṭ, 2012 ZwiṭṭL BṢUvi ṭbU I Bṭj KUwbK wgvWqvq G gṭgṢ msev` cwiṭekZ nq th, nvBṭKvUṢ teṭĀi GKRB gvbbxq wePvi cwiZ Avgvi el`e`ṭK ivóṭ`ṭwvZvi mwgj etj gṢe` KṭiṭQb Ges Avgvi I RvZxq msmṭ` i wei`ṭ× tek wKQy AwfṭhvM I AbvKvswLZ gṢe` KṭiṭQb | 0 Source of knowledge of the Hon'ble Speaker regarding aforesaid comment as it appears from the quoted observation is internet and electronic media . Perhaps the Hon'ble Speaker wanted to mean that due to his comment to the effect , 0ṭKvUṢ Gi wePvṭi hw` ṭ`ṭki gvbyl Ṣṭṭ nq Zvnṭj wePvi wefvṭMi wei`ṭ× gvbyl GKw` b nqṭZv i`ṭL `vovṭZ cvṭi,0 the Judge said that such comment of the Hon'ble Speaker is “ivóṭ`ṭwvZvi mwgj”. Finally, perhaps, the Hon'ble Speaker

assumed that making such comment the Hon'ble Judge has violated the provision of Article 78(1) of the Constitution. Even if we ignore the question of admissibility and reliability of the alleged comment published in media, one thing is required here to justify the Hon'ble Speaker's observation, that is, the Judge must challenge validity of the proceeding in Parliament in a Court. Such comment, if at all made, is no doubt, very unfortunate but the requirement of law that is, the validity of a proceeding of Parliament is being called in question in a Court, is absolutely a different thing. In the orders of "Sarak Bhabon Case" as quoted earlier, we do not find any such comment or challenge the proceeding of Parliament.

The learned Advocates for the petitioners submit that such allegations of violation of Constitution against a judge is serious one in view of the fact that said Judge has taken oath to protect, preserve and defend the Constitution. According to the learned Advocates for the petitioner by making such comment the Hon'ble Speaker has virtually assumed the power and functions of the Supreme Judicial Council because only the Supreme Judicial Council is constitutionally authorized to make such observation after holding an inquiry and on due compliance of the other provisions. As the guardian of the Constitution, it is the Supreme Court which is the arbiter in adjudicating violation of the Constitution and only the Supreme Judicial Council can say whether a Judge of the Supreme Court has violated the Constitution or not.

In the preamble of our Constitution it is affirmed that it is our sacred duty to safeguard, protect and defend the Constitution and to maintain its supremacy. It is the duty of the people at large to safeguard, protect and defend the Constitution. The oath of the Hon'ble Speaker, Deputy Speaker and the Judges of the Supreme Court is to preserve, protect and defend the Constitution. Everyone, whether individually or collectively is unquestionably under the supremacy of Constitution, whoever the person may be, however high he is or she is, no-one is above the law notwithstanding how powerful and how rich he or she may be. "The independence of the Judiciary as affirmed and declared by Articles 94(4) and 116 A is one of the basic pillars of the Constitution and can not be demolished, whittled down, curtailed or diminished in any manner whatsoever, except under the existing provision of the Constitution" (Ministry of Finance Vs. Mr. Md. Masder Hossain, reported in 2000 BLD (AD) 104). "The concept of independence of Judiciary is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity. If there is one principle which runs through the entire fabric of the constitution, it is the principle of the rule of law and under the Constitution, it is Judiciary which is entrusted with the task of keeping every organ of the State within the limit of law and thereby making the Rule of Law meaningful and effective" (Bhagwati J in S.P. Gupta Vs Union of India, AIR 1982 S.C. 149).

Parts V and VI of the Constitution provide the legislature and Judiciary respectively, that is, both the organs of the State are the creatures of the Constitution. Article 65 provides the provisions of establishment of Parliament. On the other hand, Article 95 provides the establishment of the Supreme Court. Article 74 provides that the Parliament shall elect its Hon'ble Speaker and Deputy Speaker. Articles 94 (2), 95 and 98 provide the provisions of appointment of Chief Justice of Bangladesh, Judges and Additional Judges of the Supreme Court. Article 78 provides the provision of privilege and immunities of the Parliament and its Members. The said provision runs as follows:

“78 (1) The validity of the proceedings in Parliament shall not be questioned in any court.

(2) A member or officer of Parliament in whom powers are vested for the regulation of procedure, the conduct of business or the maintenance of order in Parliament, shall not in relation to the exercise by him of any such powers be subject to the jurisdiction of any court.

(3) A member of Parliament shall not be liable to proceedings in any, court in respect of anything said, or any vote given, by him in Parliament or in any committee thereof.

(4) A person shall not be liable to proceedings in any court in respect of the publication by or under the authority of Parliament of any report, paper, vote or proceeding.

(5) Subject to this article, the privileges of Parliament and of its committees and member may be determined by Act of Parliament.”

Article 94(4) of the Constitution provides that subject to the provisions of the Constitution the Chief Justice and the other Judges shall be independent in the exercise of their judicial functions. Article 96 of the Constitution provides :

96. (1). Subject to the other provisions of this article, a Judge shall hold office until he attains the age of sixty-seven years.

(2) A Judge shall not be removed from his office except in accordance with the following provisions of this article.

(3) There shall be a Supreme Judicial Council, in this article referred to as the Council, which shall consist of the Chief Justice of Bangladesh, and the two next senior Judges:

Provided that if, at any time, the Council inquiring into the capacity or conduct of a Judge who is a member of the Council, or a member of the Council is absent or is unable to act due to illness or other cause, the Judge who is next in seniority to those who are members of the Council shall act as such member.

(4) The function of the Council shall be –

- (a) to prescribe a Code of Conduct to be observed by the Judges; and
- (b) to inquire into the capacity or conduct of a Judge or of any other functionary who is not removable from office except in like manner as a Judge.

(5) Where, upon any information received from the Council or from any other source, the President has reason to apprehend that a Judge –

- (a) may have ceased to be capable of properly performing the functions of his office by reason of physical or mental incapacity, or
- (b) may have been guilty of gross misconduct, the President may direct the Council to inquire into the matter and report its finding.

(6) If, after making the inquiry, the Council reports to the President that in its opinion the Judge has ceased to be capable of properly performing the functions of his office or has been guilty of gross misconduct, the President shall, by order, remove the Judge from office.

Article 96(5) constitutionally mandates that only the Hon'ble President of the Republic, receiving information from the Supreme Judicial Council or from any other source that a Judge may have ceased to be capable of properly performing the functions of his office by

reason of physical or mental incapacity or guilty of gross misconduct, may direct the council to hold inquiry into the matter and report its finding. If the Council upon inquiry makes it report that in its opinion that Judge is so incapacitated or has been guilty of gross misconduct, the President shall remove the Judge from office. That is the only constitutional provision in that regard. The second impugned observation of the Hon'ble Speaker is to the effect, GKB mvt\_ ej tev Av`vj tZi G ai tbi AvPi tb wK Ki bxq \_vKtZ cvti gybbxq c`avb wePvi cwZ tm weI quU tftte th e`e`v Mhb Ki teb----- |, is not consistent with provision of Article 96 (5) of the Constitution.

The relevant Rules of Procedure of the Parliament which have not been followed as pointed out by the learned Advocates for the petitioner are :

53 | (2) tKvb c`k`e Mhb thvM`Zvi Rb` wb`ewZ kZ`ej x ciY Kiv Avek`K t

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(` ) Bnv`Z evsj v` tki th tKvb Gj vKvq AvI Zvm`ubæ tKvb Av`vj tZi

wePvi vaxb tKvb weI q m`u`K`Kvb Z` Pvl qv nBte bv

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(b) Bnv`Z

(A) i v`UciZ ev mptg tKv`U` RR` i AvPi Y m`u`K`Kvb Kuv`|cvZ \_wKte

bv |



63| 61 weia Abhvqx tKvb gj Zex c<sup>r</sup> Zve Dì vctbi AwaKvi w<sup>b</sup>ewYZ  
m<sup>x</sup>gve×Zvmg<sup>†</sup>ni Øviv w<sup>b</sup>q<sup>†</sup>šZ nBte t

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(I) c<sup>r</sup> Zvte evsj v<sup>†</sup> tki th tKvb Astki Avl Zvf† " tKvb AvBb-Av`vj †Zi  
m<sup>†</sup>šL wePvi vaxb tKvb wel q m<sup>†</sup>ú†K<sup>©</sup>KQvej v nBte bv , Ges

(J) c<sup>r</sup> Zvte evsj v<sup>†</sup> tki iv<sup>®</sup>UcwZ ev m<sup>†</sup>šg tKv†U<sup>®</sup> tKvb wePvi†Ki AvPiY  
m<sup>†</sup>ú†K<sup>©</sup>tKvb KUv¶| \_vmKte bv |

133| Ggb tKvb w<sup>m</sup>×vš--c<sup>r</sup> ve Mhb†hvM" nBte bv, hvntZ w<sup>b</sup>g<sup>†</sup>wj wLZ kZ<sup>®</sup>ej x  
cwj Z nq bvB, h\_vt-

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(4) Bnv evsj v<sup>†</sup> tki th tKvb Astki Avl Zvm<sup>†</sup>úbæ tKvb AvBb-Av`vj †Zi  
wePvi vaxb tKvb wel q m<sup>†</sup>ú†K<sup>©</sup> nBte bv |

(5) Bnv†Z ivó<sup>†</sup>cwZ ev m<sup>†</sup>šg tKv†U<sup>®</sup> tKvb wePv†i i c†Z tKvb KUv¶| \_vmK†Z  
cw†te bv |

165| we†kl AwaKv†i i ckeDì vctbi AwaKvi w<sup>b</sup>g<sup>†</sup>wbZ kZ<sup>®</sup>ej xi Øviv w<sup>b</sup>q<sup>†</sup>šZ nBte,  
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(5) ck<sup>†</sup>†Z ivó<sup>†</sup>cwZi e<sup>w</sup>³MZ AvPi†Yi ev wePvi wefvMxq KZ<sup>®</sup> cvj bi Z tKvb  
AvBb-Av`vj †Zi c†Z KUv¶| \_vmKte bv |

In view of the above quoted provisions of Rules of Procedure, the Judges of the Supreme Court and other judicial authorities should be free from criticism in the Parliament. The right to freedom of speech in the House is circumscribed by the constitutional provision and the Rules of Procedure which also guard against making unwarranted allegations against Judges. The conduct of a Judge in relation to the discharge of his duties cannot be the subject matter of action in exercise of the powers and privileges of the House. Such type of discussion and ruling ignoring the constitutional provisions and Rules of Procedure may affect the independence of Judiciary. Independence of Judiciary is the sine qua non of modern democracy. The eloquent words of Justice Krishna Ayer in this regard are: Independence of the Judiciary is not genuflexion; nor is it opposition of Government. It is neither judiciary made to opposition measure nor Government's pleasure". In the case of Union of India Vs Sankal Chand Himatlal (AIR 1977 S.C. 2328) Bhagwati J observed that the independence of Judiciary is a fighting faith of the Constitution. Fearless justice is a cardinal creed of this foundation document. Indian Supreme Court in the case of S.C. Advocates-on-record Vs Union of India, reported in AIR 1994 S.C. page 268 observed, "The independence of Judiciary is the livewire of the judicial system and if that wire is snapped, the 'dooms day' of Judiciary will not be far of. Bhagwati, J, further said in the case of S.P. Gupta Vs Union of India (AIR 1982 S.C. 149)

that the Judges should be of stern staff and fought fibre, unbending before power, economic or political, and they must uphold the core principle of the rule of law which says, “Be you ever so high. Once the King sent a message to the Judges saying that they must not proceed further with the case until he had been consulted. Sir Edward Coke, the then Chief Justice of the Kings Bench resolutely refused. He said, “ Obedience to His Magesty’s command to stay proceedings would have been a delay Justice, contrary to the law, and contrary to Oaths of the Judges”. The question was put to all twelve Judges: Ought they not to stay proceedings till His Magesty has consulted them? All the Judges save Coke said: yes, yes, yes. But Coke said : no. After words the King dismissed him . But the attitude of Coke was fully approved by the people of England. The Article 94(4) of the Constitution and Rule of Procedure are implied limitation on the freedom of speech on the members of Parliament.

Francis Becon in his “Essay of Judiciary” said, “Let Judges also remember that Solomon’s throne was supported by lions on both sides, let them be lions, but yet lions under the throne; being circumspect that they do not check or oppose any points of sovereignty. In terms of the above Biblical apoloque in the old Testament has a great constitutional significance affecting our judicial system. Question is whether the present day “Solomon’s throne (symbolizing the majesty of our justice system) is fully

supported by the “Lions” (symbolizing the legislature and executive) on both sides?

In our country which possess a written Constitution the legislature is bound by the Constitution and the Constitutional Court can declare the acts of Parliament invalid on the ground that they are unconstitutional. Montesquieu’s saw the dangers of power. “It is the experience of history”, he said, “ that power tends to be abused, so power must be used to check power”. The guarantee against its misuse lies in establishing mutual checks between the legislative, judicial and executive functions . The paradigm example of Montesquieu’s doctrine in the United States of America, where the separation is guaranteed by the Constitution, guarded by the Courts. The Federal legislative power is vested in Congress, the federal executive power in the President and his cabinet and the federal Judicial Power in the Supreme Court; and a great deal of inter relation exists between them. We have accepted the doctrine of separation of powers. The legislative power is vested with the Jatyo Sangshad, executive Power with the Prime Minister and his cabinet and Judicial Power in the Court. The power of each of the three organs have to be exercised as fundamentally subject to the provisions of the Constitution relating to that organ individually as well as to the provisions relating to other organs. The basic tenet of the Rule of law is that Power is derived from, and is to be exercised according to law. These basic tenets remain relevant and significant

in every democratic country. It is the respect that is accorded by one organ of the State to the others that ensures the healthy working of the Constitution. One can not be accorded superiority over another so that the provisions can operate harmoniously.

The Hon'ble Speaker in his Ruling has made some remarks which disclosed his ultimate expression to all the three organ of the State including the Judiciary and Hon'ble Judge as well, which are:

“ GUV cĭYavbĭhMĭ” th ĩvĭtŏĭ wZbĭU Aĭ½ĭ gĭa” Avšm̄úK̄Ī mgbq, cvi ĩúwĭ K k̄vĭeva, h\_vh\_ Check & Balance Mĭto ĩZvj vi Rb” c\_w\_exi AĭbK ĩ`k kZ kZ eQi wbi šĭ cĭPŏv Pwĭj ĩq ĩMĭQ| Kvi Y Avgiv mevB AeMZ th Democracy is not a System only, it is a culture too Avgivĭ GB gnvb msmĭ` ĩmB MYZwšĭK ms`wZ ARĭbi cĭPŏv Pwĭj ĩq hw”Q----- Gĭci Awĭg th K\_v\_ ĩj v etj wQ Zvi mvi gg”ĭt”Q gnvĭvb” Av`vj ĩZĭ cĭZ Avgvĭ` ĩ mevi k̄v AvĭQ| Av`vj Z m̄úȲĪ ĩ`ĭaxb ĩ wbi ĩcĭĭ | ----- Av`vj ĩZĭ gvbbxq wPvi ĩKi gšĭe”ĭ mĭĭ aĭi AĭbĭKB wĭtkĭ Kĭi cĭĭ cĭwĭ Kvq GĭK msmĭ` ĩ mvĭ\_ wPvi wĭfvMĭK gĭLvgĭL `wW Kwi ĩqQ gĭg”Dĭj ĩ Kĭi ĩQb|msm` ĩ wPvi wĭfvĭMi gĭa” Avmĭj GĭU ĩKvb `eĭxZv bq| ----- ĩvĭtŏĭ wZbĭU AstĭMi gĭa” ĩĭqQ 40 eQi aĭi Mĭto DVv Mfxi m̄úwZ ĩ Av`nvi m̄úK̄Ī cvi ĩcĭwĭ K G m̄m̄úĭK̄Ī Kvi ĩbB AĭbK PwĭB DrĭvB ĩcĭwĭ ĩq Gĭ`kĭU AvR mvĭĭbi w`ĭK GwMĭq hvĭ”Q|Awĭg GKRB msm` m`m` wnmvĭe Ges ĩ`úxKvi wnmvĭe memgq wĭkym Kwi ĩvĭtŏĭ wZbĭU A½ AvBb, wPvi ĩ wĭbeĭx wĭfvM GĭK Actĭi cĭwĭ cĭK Ges cĭZ”ĭK wR wR ĩĭĭĭĭ ĩ`ĭaxb | Gĭĭĭĭĭ Kg”c̄xwZ wĭfbmĭZ cvĭi wKš-j ĭĭ”

I Df'f'k" GK Ges Zv mef'nvq Rbm'Yi Kj 'vY mvab| f'k I RvwZi Kj 'v'Y  
 G m'uk'AUJ tnvK GUVB f'kevmxi cZ'vkv| ----- iv'of' wfwE msweavb|  
 ----- msweavb Avgv' i c'Z'f'Ki 'wqZi m'bw' Kti w' f'q'Q| Avgiv mevB  
 wR wR Ae'nvfb f'f'K msweavb'K mg'pZ ivL'tev- f'kevmx GUVB cZ'vkv  
 Kti |”

From the above quoted portions of the Ruling; the impugned sentences, the provisions of Articles 78(1), 94(4) and 96(5) of the Constitution and the relevant portions of Rules and procedure of the Parliament it appears to us that impugned observations are inconsistent with the above quoted portions of Ruling as well as inconsistent with the Constitutional provisions and Rules of Procedure of Parliament. The Hon'ble Speaker himself has further said, “Avcbiv mevB w'v'S-w'f'j Avgvi Rb" Zv Binding n'q hvq| m'w'K w'f'Pbvq th'nZiG ai'f'bi K'f'vi c' f'c M'fb mg'p'xb n'te e'j Avgv g'f'b Kw' bv, ZvB Avgv w'bxZ'f'v'te Ab'f'iva Ki'tev msm' Avcbv' i D'f' w'cZ c'v'w'j Avcbiv Avgvi mv'f' GKgZ n'q cZ'v'v'vi Ki'teb | ----- Avgv Avkv Ki'tev, gvbbxq w'Pvi c'w'Zi msm' m'uk' g's'te"i w'f'q gvbbxq msm' m'e'x', w'Pvi w'f'v'f'Mi gvbbxq w'Pvi K I w'Á AvBbR'x'x'e'x', m'k'x'j mg'v'f'ri m's'w'bZ c'f'Z'w'w'aMY, m's'w'bZ e'j'x'R'x'x, m's'w'bZ mv'sew' Kmn me t'ckvi gv'f'j, m'tev'w'vi Avgvi cig k'f'x'q I w'c'q f'f'ki Avcv'gi Rbm'v'avi b' f'q w'f'Pbvq g'j'v'qb Ki'teb |----- iv'of' wfwE msweavb| msweav'f'bi g'j' w'c'msm' | GB msm' B iv'of'w'Z w'be'P'b Kti | iv'of'w'Z c'v'bg's'x' I c'v'b w'Pvi c'w'Z'f'K w'f'q'v'M f'f'b| GB c'x'w'Z'f'ZB Rbm'f'bi m'v'f'f'g'Zi c'f'Z'w'Z n'q| msweavb Avgv' i c'Z'f'Ki 'wqZi m'bw' Kti

ॱ ॱ ॱ ॱ ॱ | Avgi v mevB ॱbR ॱbR Ae<sup>-</sup>nv†b †\_†K msweav†K mgjbz̄ i vL†ev- †`kevkx  
 GUVB cZ<sup>~</sup>vkv K†i |

Avkv Kwi, Avgi G el“e” c<sup>†</sup>v†bi ga” ॱ ॱ ॱ G Av†j vPbvi Aemvb n†e |  
 Avcbv†` i mKj †K A†kl ab<sup>~</sup>ev` |” If we read the Ruling of the Hon’ble  
 Speaker as a whole it would be clear that he has expressed his  
 intention requesting the members of the Parliament to withdraw the  
 proposal and opined that each organ of State shall exercise its  
 power and authority sanctioned by the Constitution and all  
 concerned shall uphold the provision of the Constitution.  
 Legislature, Judiciary and the Executive are three organs under the  
 Constitution and the Constitution is the Supreme Authority. Every  
 organ is free to act in its own field according to powers conferred on  
 it. If it is not done and one organ transgresses the limit, there is a  
 provision of Constitution under Article 102 whereby a Judicial  
 review of its action is possible. It is the Judiciary which is entrusted  
 with the task of keeping every organ of the State within the limits of  
 law. Any attempt by the legislature to usurp the judicial function is  
 Ultra-vires.

In view of the constitutional provisions, Rules of Procedure of  
 Parliament, factual background of the dispute, above quoted  
 expressions of the Hon’ble Speaker, interpretations of the apex  
 courts and discussion made above our considered opinion is that  
 the impugned observations “that a certain Judge has violated the  
 provision of Article 78(1) of the Constitution and what reasonable

action may be taken for such conduct is being left for Hon'ble Chief Justice for necessary action" of the Hon'ble Speaker have got no legal effect and those are "non est" in the eye of law. The Hon'ble Speaker himself dropped the screen.

After dropping the screen of the controversy specifically by the Hon'ble Speaker creation of any further issue may obstruct the spirit of harmony and understanding of the two organs which is desirable for the nation as a whole. From the circumstances discussed above, we are of the view that the impugned observations have got no imperative force.

In this connection it is necessary to remember that status, dignity and importance of two respective institutions, the legislatures and the judicature, are derived primarily from the status, dignity and importance of the respective causes, that are assigned to their charge by the constitution. These two august bodies, as well as the executive, which is another important constituent of a democratic state, must function not in antinomy nor in a spirit of hostility but rationally, harmoniously and in a spirit of understanding within the respective spheres, for such harmonious working of the three constituents of the democratic state alone will help the peaceful development, growth and stabilization of the democratic way of life in the country ( Ref: AIR 1965 S.C. page 745 Special Ref. No.1 of 1964. Popularly known as U.P. Assembly



case). While answering the question of maintainability of this petition this cited case may be relied on.

In the cited case the Legislative Assembly of the State of Uttar Pradesh, India, committed one Keshov Singh, not one of its members, to prison for contempt. The warrant it issued was a general warrant, in that it did not set out the facts which had been found to be contumacious, Keshov Singh moved a petition under Article 226 of the Constitution of India challenging his committal and he prayed for bail. Two learned Judges of the Lucknow Bench of the High Court ordered that Keshov Singh be released on bail pending the decision on the writ petition. The Legislative Assembly passes a resolution requiring the production in custody before it of Keshov Singh, the advocate who had appeared for him and the two Judges who had granted him bail. The Judges and the advocate filed writ petitions before the High Court of Allahabad. A Full Bench of the High Court admitted their petitions and ordered the stay of the execution of the Assembly's resolution. The Legislative Assembly modified its earlier resolution so that the two judges were now asked to appear before the House and offer an explanation. The President of India thereupon made the Special Reference. Briefly put, the questions he asked were: Whether the Lucknow Bench could have entertained Keshov Singh's writ petition and released him on bail; whether the Judges who entertained the petition and granted bail and Keshov Singh and his Advocate had committed

contempt of the Assembly; Whether the Assembly was competent to require the production of the Judges and the advocate before it in custody or to call for their explanations; whether the Full Bench of the High Court could have entertained the writ petitions of the two Judges and the advocate and could have stayed the implementation of the resolution of the Assembly; and whether a Judge who entertained or dealt a writ petition challenging any order of a Legislature imposing penalty or issuing process against the petitioner for its contempt or for infringement of its privileges and immunities committed contempt of the Legislature and whether the Legislature was competent to take proceedings against the Judge in the exercise of its powers, privilege and immunities.

The answers of the Supreme Court of India were:

“(1) On the facts and circumstances of the case, it was competent for the Lucknow Bench of the High Court of Uttar Pradesh, consisting of N.U. Beg and G.D. Sahgal J.J., to entertain and deal with the petition of Keshav Singh challenging the legality of the sentence of imprisonment imposed upon him by the Legislative Assembly of Uttar Pradesh for its contempt and for infringement of its privileges and to pass orders releasing Keshav Singh on bail pending the disposal of his said petition.

(2) On the facts and circumstances of the case, Keshav Singh by causing the petition to be presented on his behalf to the

High Court of Uttar Pradesh as aforesaid, Mr. B. Solomon, Advocate, by presenting the said petition, and the said two Hon'ble Judges by entertaining and dealing with the said petition and ordering the release of Keshov Singh, did not commit contempt of the Legislative Assembly of Uttar Pradesh.

(3) On the facts and circumstances of the case, it was not competent for the Legislative Assembly of Uttar Pradesh to direct the production of the said two Hon'ble Judges and Mr. B. Solomon, Advocate before it in custody or to call for their explanation for its contempt.

(4) On the facts and circumstances of the case it was competent for the Full Bench of the High Court of Uttar Pradesh to entertain and deal with the petitions of the said two Hon'ble Judges and Mr. B. Solomon, Advocate, and to pass interim orders restraining the Speaker of the Legislative Assembly of Uttar Pradesh and other respondents to the said petitions from implementing the aforesaid direction of the said Legislative Assembly, and

(5) In rendering our answer to this question which is very broadly worded, we ought to preface our answer with the observation that the answer is confined to cases in relation to contempt alleged to have been committed by a citizen who is not a member of the House outside the fourwalls of the Legislative Chamber, A Judge of a High Court who entertains or deals with

a petition challenging any order or decision of a Legislature imposing any penalty on the petitioner or issuing any process against the petitioner or issuing any process against the petitioner for its contempt, or for infringement of its privileges and immunities, or who passes any order on such petition, does not commit contempt of the said Legislature; and the said Legislature is not competent to take proceedings against such a Judge in the exercise and enforcement of its powers, privileges and immunities. In this answer, we have deliberately omitted reference to infringement of privileges and immunities of the House which may include privileges and immunities other than those with which we are concerned in the present Reference”.

In special reference No.1 of 1995 reported in 47 DLR (AD) 111 their Lordships of the Appellate Division of this Court have observed,

“To understand the argument of Mr. Syed Ishtiaq Ahmed it will be necessary to discuss a little about the scheme of our constitution in respect of the three organs of the State. Our constitution makes broad distribution of powers in the three organs of Government, the executive, the legislature and the judiciary. Though the constitution brought distribution of powers, it does not envisage separation of power in its rigid form. In our Constitution scheme, Parliament is vested with the legislative power of the Republic . But Parliament’s legislative power is subject to the provisions of the Constitution.

The Supreme Court being the apex court has been given the power of judicial review to see that the Parliament does not over step the limits set up by the Constitution. The judiciary as an organ of the State is another co-ordinated and co-equal organ with the executive and the legislature to see that the other two organs of the Government do not transgress the limits of constitutional bounds. Constitution must act within the limits and bounds of the Constitution. The Supreme Court is a creature of the Constitution and we the judges have taken the solemn oath under the constitution to preserve, protect and defend the constitution and the laws of Bangladesh. It is our solemn duty to see that the other two organs of the State do not act in violation of the Constitution. The Parliament being vested with the legislative power of the Republic can only make laws which are not inconsistent with the fundamental rights as guaranteed under the Constitution and any law made in violation of the constitution shall be declared as void to the extent of the inconsistency. Thus the Parliament in the name of making legislation cannot infringe the Constitution at all”.

In the recent case of Raja Rampal Vs. Hon’ble Speaker, Lokshava, reported in (2007) 3 SCC 184 wherein the Supreme Court of India answered the similar questions. Questions amongst others were: “Does the Supreme Court, within the constitutional scheme have the jurisdiction to decide the content and scope of powers, privilege and

immunities of the legislature and its Members and does the court have the jurisdiction to interfere the exercise of the said power or privilege conferred on parliament on its Members or Committees and, if so, is this jurisdiction circumscribed by certain limit?" The Supreme Court of India on elaborate discussions over the issues summarized the principles which are as follows:

- “(a) Parliament is a coordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny,
- (b) The constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere coordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of actions which partake the character of judicial or quasi-judicial decision;
- (c) The expediency and necessity of exercise of power or privilege by the legislature are for the determination of the legislative authority and not for determination by the court;

- (d) The judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature;
- (e) Having regard to the importance of the functions discharged by the legislature under the Constitution and the majesty and grandeur of its task, there would always be an initial presumption that the powers, privileges, etc. have been regularly and reasonably exercised, nor violating the law or the constitutional provisions, this presumption being a rebuttable one;
- (f) The fact that Parliament is an august body of coordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power,
- (g) While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards, there is no foundation to the

plea that a legislative body cannot be attributed jurisdictional error;

- (h) The judicature is not prevented from scrutinizing the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens.
- (i) The broad contention that the exercise of privileges by legislatures cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct.
- (j) If a citizen, whether a non-Member or a Member of the legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this court to examine the merits of the said contention, especially when the impugned action entails civil consequences;
- (k) There is no basis to the claim of bar of exclusive cognizance or absolute immunity to the parliamentary proceedings in Article 105(3) of the Constitution;
- (l) The manner of enforcement of privilege by the legislature can result in judicial scrutiny, though subject to the restrictions contained in the other constitutional provisions, for example Article 122 or 212.



- (m) Article 122(1) and Article 212(1) displace the broad doctrine of exclusive cognizance of the legislature in England of exclusive cognizance of internal proceedings of the House rendering irrelevant the case law that emanated from courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by the Constitution of India;
- (n) Article 122(1) and Article 212(1) prohibit the validity of any proceedings in legislature from being called in question in a court merely on the ground of irregularity of procedure;
- (o) The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the legislature;
- (p) Ordinarily, the legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or malafide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the court may examine the validity of the said contention, the onus on the person alleging being extremely heavy;

- (q) The rules which the legislature has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution;
- (r) Mere availability of the Rules of Procedure and Conduct of Business as made by the legislature in exercise of enabling powers under the Constitution, is never a guarantee that they have been duly followed;
- (s) The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny;
- (t) Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action;
- (u) An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reasons such as gross illegality, irrationality, violation of constitutional mandate, malafides, non-compliance with rules of natural justice and perversity.”

In the cited case Supreme Court of India further observed that the decisions taken, orders made, findings recorded or conclusions arrived at by Indian Legislatures are subject to judicial review, on

limited grounds and parameters. The Supreme Court will not hesitate in discharging its duty by quashing the order or setting aside unreasonable action. In that case it has further been observed that Parliament, like other organs of the State, is subject to the provisions of the Constitution and is expected, nay, bound to exercise its powers in consonance with the provisions of the Constitution. Any act or action of Parliament contrary to the Constitutional limitation will be void. But it has been held that the scope for judicial review in the matters concerning parliamentary proceedings is limited and restricted. The area of powers, privileges and immunities of the legislature is exceptional and extraordinary and its acts particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards.

Our Legislature has undoubtedly plenary powers, but these powers are controlled by the Constitution itself and can be exercised within the jurisdiction as provided by the Constitution. The supremacy of the Constitution is protected by an independent Judicial body which is the interpreter of the scheme of distribution of powers. On the other hand object of the privilege and immunity is to ensure the independence of the Legislature. Such independence is necessary for healthy functioning of the system of Parliamentary democracy as

adopted in the Constitution. All the organs of the State derive their authority, jurisdiction and powers from the Constitution and allegiance to it. The judicial organ of the State has been made the final arbiter of constitutional issues and its authority and jurisdiction in this respect is an important and integral part of the basic structure of the Constitution. The Constitution can be altered but can not be disregarded.

The Supreme Court is vested with the power and duty to oversee that no public functionary oversteps the limit set by the Constitution. The limit of privileges depends upon interpretation of Article 78 which is in the exclusive domain of the Supreme Court. The Parliament cannot claim to be the final arbiter of its privileges. Article 7 of the Constitution provides the sovereign power of the people. The people through the Constitution have limited the boundry of all the three organs of the State. It has been given only such power to the Parliament to legislate as are not to be confirmative with the provisions of the Constitution.

The learned Deputy Attorney General submits that the petitioner has got no locus standi to institute the instant writ petition because he is not the person aggrieved.

It has been stated in the writ petition that the petitioner is an Advocate of this Court. He is keen to ensure that the tenets of the Constitution of Bangladesh are strictly adhered to, particularly, the doctrine of separation of powers as enshrined in the Constitution so

that there is no transgression by one organ into the domain of the other. In fact, he has filed this application in the form of public interest litigation. Since the petitioner is an Advocate of the Supreme Court of Bangladesh, we are of the view that the application made by him is maintainable.

Kaul in his *Practice and Procedure of Parliament*, (Fifth Edition) has observed, “It is the absolute privilege of the Legislature and members thereof to discuss and deliberate upon all matters pertaining to the governance of the country and its people. Freedom of speech on the floor of the House is the essence of Parliamentary democracy, certain restrictions on this freedom have, to a limited degree, been self imposed. One of such restriction is that the discussions on matters pending adjudication before courts of law should be avoided on the floor of the House, so that the Courts function uninfluenced by anything said outside the ambit of trial in dealing with such matters..... It is a well established rule that discussion on a matter which is sub-judice is out of order”. A democratic legislature, as suggested by Justice Bhagwati, (in the case of *Bachan Singh Vs. Union of India* reported in (1983) 3 S.C.C. page 24) may make laws, but its power should not be unfettered, and that there should be an independent judiciary to protect the citizen against the excesses of executive and legislative power”. Alexander Hamilton said, “There can be no liberty if the power of Judging be not separated from the legislative and executive powers”. Hazrat Omer (RA) virtually

separated judiciary from administration. He appointed Abu Darda (RA) Justice in Medina, Abu Musa Al- Ashary (R.A.) in Kufa and Suray (R.A.) in Basra and issued a “Farman” to act independently and in accordance with the Holly Quran and Sunnah and to do Justice to all treating all equal in the eye of law.

Lord Denning in his “What Next in the Law” said, “We have to respect all that Parliament has done, and may do, in the granting of powers – and of rights and immunities – but let us bind up a body of law to see that – these powers are not misused or abused combined with upright Judges to enforce the law. It is a task which I commend to all. If we achieve it, we shall be able to say with Milton :

“Oh now comely it is and how reviving,  
 To the Spirits of Just men long oppressed  
 When God into the hands of their deliverer  
 Put invincible might.

The might of the law itself.”

The learned Advocates for the petitioner and the learned Deputy Attorney General for the respondents submit that proper course would be to dispose the matter with the observation. Accordingly we have decided to dispose this matter with observations.

Consequently, this application is disposed of with the observations made above.