

**COMMITTEE OF PRIVILEGES
(FOURTEENTH LOK SABHA)**

23

**TWENTY-THIRD REPORT
ON**

**“QUESTION OF PRIVILEGE GIVEN NOTICE OF BY SHRI
DEVENDRA PRASAD YADAV, MP AGAINST SHRI SUDHEENDRA
KULKARNI FOR PREMATURE DISCLOSURE OF PROCEEDINGS/
DOCUMENTS PRESENTED TO THE COMMITTEE TO INQUIRE
INTO COMPLAINT MADE BY SOME MEMBERS REGARDING
ALLEGED OFFER OF MONEY TO THEM IN CONNECTION WITH
VOTING ON THE MOTION OF CONFIDENCE, THEREBY HAVING
COMMITTED BREACH OF PRIVILEGE AND CONTEMPT OF THE
SAID COMMITTEE AS WELL AS OF THE HOUSE”**

(Presented to Speaker, Lok Sabha on 1 May, 2009)

SEAL

**LOK SABHA SECRETARIAT
NEW DELHI**

May, 2009/Vaishakha, 1931 (Saka)

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**PERSONNEL OF THE COMMITTEE OF PRIVILEGES
(FOURTEENTH LOK SABHA)**

Shri V.Kishore Chandra S.Deo - Chairman

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4. Shri Virendra Kumar
5. Shri Hemlal Murmu
6. Shri Shriniwas Patil
7. Dr. Sebastian Paul
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10. Shri D. Vittal Rao
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SECRETARIAT

- | | | |
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| 1. Shri V.K. Sharma | - | Additional Secretary |
| 2. Shri Ravindra Garimella | - | Deputy Secretary |
| 3. Shri M.L.K. Raja | - | Under Secretary |

TWENTY THIRD REPORT OF THE COMMITTEE OF PRIVILEGES

(FOURTEENTH LOK SABHA)

I. INTRODUCTION AND PROCEDURE

I, the Chairman of the Committee of Privileges, having been authorized by the Committee to submit the Report on their behalf, present this Twenty Second Report to the Speaker, Lok Sabha on the question of privilege given notice of by Shri Devendra Prasad Yadav, MP against Shri Sudheendra Kulkarni premature disclosure of proceedings/documents presented to the Committee to inquire into complaint made by some members regarding alleged offer of money to them in connection with the voting on the Motion of Confidence, thereby having committed breach of privilege and contempt of the said Committee as well as of the House.

2. The Committee held 3 sittings. The relevant minutes of these sittings form part of the Report and are appended hereto.

3. At their first sitting held on 28 January, 2009, the Committee considered the Memorandum in the matter. The Committee also decided to hear Shri Devendra Prasad Yadav, MP and Shri Sudheendra Kulkarni at their next sitting.

4. At their second sitting held on 9 February, 2009, since Shri Devendra Prasad Yadav had expressed his inability to appear before the Committee, the Committee examined on oath, Shri Sudheendra Kulkarni.

5. At their third sitting held on 29 April, 2009, the Committee considered the draft report and adopted it as amended.

II. Facts of the case

Background

6. On 22 July, 2008 during the debate on the Motion of Confidence in the Council of Ministers, at about 16.04 hrs. Shri Ashok Argal, Shri Faggan Singh Kulaste and Shri Mahavir Bhagora, MPs came to the well of the House with two bags. The members took out wads of currency notes from the bags with them and started placing the same on the Table of the House. Amidst pandemonium, the Deputy Speaker who was in the Chair adjourned the House. On 25 July, 2008, all the three members in their joint statement *inter-alia* alleged that they had been offered money to vote in favour of the Motion of Confidence and they wanted to expose the entire episode.

7. On 26 July, 2008, the Speaker, Lok Sabha appointed an Inquiry Committee namely, Committee to inquire into complaint made by some members regarding alleged offer of money to them in connection with the voting on the Motion of Confidence (Cash for Vote Inquiry Committee) consisting of seven members to look into the matter. Shri Devendra Prasad Yadav, MP was one of the seven members of the Inquiry Committee.

8. At their fifth sitting held on 18 August, 2008, the Inquiry Committee examined on oath Shri Rewati Raman Singh, MP, and Sarvashri Sudheendra Kulkarni, Sanjeev Saxena and Suhail Hindustani, whose names were mentioned by Shri Ashok Argal and Shri Faggan Singh Kulaste, MPs during their evidence before the Committee. Sarvashri Kulkarni and Suhail Hindustani handed over their written submissions before the hearing and Shri Kulkarni handed over additional written submissions during his evidence. As per practice, before examining Shri Kulkarni, made an observation under the provisions of Rule 275 of the Rules of Procedure and Conduct of Business in Lok Sabha that the evidence given before the Committee “is to be treated as confidential till the Report of the Committee and its proceedings are presented to the Lok Sabha and that any premature disclosure or publication of the proceedings of the Committee would constitute a breach of privilege and contempt of the House.”

9. On 19 August, 2008 a news report under the caption, ‘Panel on cash-for-votes takes fresh evidence’ appeared in ‘The Hindu’ (relied upon by the member) wherein it had been *inter-alia* reported that “Although the submissions before the Committee are meant to be confidential and a matter of privilege, Mr. Hindustani’s submission was e-mailed to many correspondents by the office of Mr. Kulkarni.”

Notice of question of privilege

10. On 14 January, 2009 Shri Devendra Prasad Yadav, MP gave a notice¹ of question of privilege against Shri Sudheendra Kulkarni for having committed breach of privilege and contempt of the Inquiry Committee as well as of the House. Elaborating, Shri Devendra Prasad Yadav stated as follows:-

“Shri Sudheendra Kulkarni and Shri Suhail Hindustani *inter-alia* deposed before the Inquiry Committee on 18 August, 2008 in support of contentions made by the complainants in this case namely, Shri Faggan Singh Kulaste, Shri Mahavir Bhagora and Shri Ashok Argal, MPs. Before the sitting Shri Sudheendra Kulkarni and Shri Suhail Hindustani handed over their written submissions. During his evidence Shri Sudheendra Kulkarni handed over his additional written submissions. Subsequently, as per the news report in ‘The Hindu’ which appeared in 19 August 2008, the written submissions made by Shri Suhail Hindustani were e-mailed to many correspondents by the office of Shri Sudheendra Kulkarni.”

11. Shri Devendra Prasad Yadav also drew the attention to the observations made by the Inquiry Committee in their Report at paras 125, 126 and 127. The Inquiry Committee in their Report has observed as follows:

“125. ...While Shri Kulkarni during his evidence denied having the tapes in his possession, he did concede to the fact that he provided the transcripts to the complainants. He, however, could not explain as to how could he have the transcripts of the tapes

¹ Pl. see Appendix I

without having the tapes. A point to be noted here is that the complainants have been maintaining all through that the tapes were with the CNN-IBN team.

126. A critical point to be noted here is that the transcripts of tapes which were handed over to the Committee *vide* Shri Argal and Shri Kulaste's letter dated 3rd August, 2008, appeared in toto in the press on 4th August, 2008 even before the Committee could take cognizance of the same at their sitting scheduled that day.

127. The Committee find it very pertinent to point out that the transcript appearing in the press are identical to the ones provided by Shri Argal and Shri Kulaste and more importantly the transcripts match with the audio and video footage contained in the tapes provided by the CNN-IBN team.”

12. In view of this position, the member contended that it becomes clear that the said transcripts were provided to the press by none else than Shri Kulkarni. The member also contended that as per the said news items appearing in 'The Hindu' as also from the observations made by the Inquiry Committee in their report, it follows that 'Shri Sudheendra Kulkarni parted with the transcript of tapes in question which were in possession of the Inquiry Committee at a time when the report in the matter was yet to be presented to the House. Hence, the said acts of Shri Kulkarni amount to a breach of privilege and contempt of the Inquiry Committee as well as the House.

The member accordingly requested that the matter may be referred to the Committee of Privileges for examination, investigation and report.

13. On 16 January, 2009, the Speaker, Lok Sabha in exercise of his powers under Rule 227 of the Rules of Procedure and Conduct of Business in Lok Sabha, referred the matter to the Committee of Privileges for examination, investigation and report.

III. EVIDENCE

Evidence Of Shri Sudheendra Kulkarni

14. Shri Sudheendra Kulkarni during his evidence before the Committee on 9 February, 2009, on being asked whether he violated the provisions of Rule 275 of Rules of Procedure and Conduct of Business in the Lok Sabha in respect to the newspaper item which had appeared in the Hindu which stated that the evidence that he had given was dispatched to various press people *inter-alia* stated “...I have not committed any offence and I have not conducted myself in any unethical manner.” On specifically being asked whether he had allowed his office to be used for dispatching those notes to the press, Shri Kulkarni stated, “*I have done it myself. It is not anybody in my office who has done it. I have done it myself*”.

The Committee took note of submissions as made by Shri Ashok Argal and Shri Faggan Singh Kulaste during their evidence before the Cash for vote Inquiry Committee that Shri Sudheendra Kulkarni had provided them with transcripts of the tapes of the whistle blowing/sting operations and they did not possess the said tapes. Besides, Shri Kulkarni too during his evidence

before the Cash for Vote Inquiry Committee did not confirm that he possessed the tapes.

15. In this context when the Committee sought clarification from Shri Kulkarni as to how did he prepare the transcripts of the tapes, he stated “...*I would like to say why I have not conducted myself in any unethical manner, nor committed any offence and I shall do so by referring to the freedom that I have under the Constitution of India which I consider my basic charter as a citizen. But let me first answer your specific question. On the letters that the three MP gave, I would like to submit as follows... They have themselves in their letter to the Speaker said that I was a facilitator and I have myself admitted and stated in my deposition that I was a facilitator in this whistle blowing operation. So, I facilitated this by helping our three MPs in whatever manner they sought from me...Article 19 (1)(a) of the Constitution of India says that all citizens have the right of speech and expression and free propagation of ideas is the necessary objective and this may be done on any platform or through the press. This propagation is secured by freedom of circulation. Liberty of circulation is essential to the freedom as the liberty of publication which means that freedom of press and an individual's freedom of circulation are on par. Explaining the scope of freedom of speech and expression, the Supreme Court has said that the words freedom of speech and expression must broadly be construed to include the freedom to circulate one's views. It, therefore, includes the right to propagate one's views through the print media or through any other communication channel and in this particular case, I used the channel of Internet. This freedom is only limited or restricted by reasonable restrictions under article 19 (2) of the Constitution. Now, what are the grounds on which the restrictions on the freedom of speech*

and expression can be imposed? They are security of State, friendly relations with foreign countries, public order, decency or morality, contempt of court, defamation, incitement to an offence, etc. I have not committed any of these offences. What I did was upon being called to depose before a committee that you happen to chair, I took the oath of secrecy but my written submission is the only thing that I have disclosed, which has been circulated. I have not spoken a word about what transpired in the Committee.”

16. On being pointed out that the written submissions that he had submitted to the Committee also forms part of evidence and the oath which he had taken at that time which clearly said that under rule 275 of the Rules of Procedure, the evidence which he gave before the Committee was to be treated as confidential until the report of the Committee and its proceedings are presented to the Lok Sabha, Shri Kulkarni responded by stating *“this whole matter refers to an event which took place which agitated the minds of every democracy loving citizen in the country. And everybody was interested in knowing what was happening and information is the heart of soul and debate. I could not have expected that even my written submission which anyway is included in the final report of the committee and after the final report itself included my submission, then there was no need for me to say anything more. The final report took several weeks to come out. So, my case ought to have been made a part of public debate and that is what I have contributed to and in doing so, I have not violated any law under the Constitution... If you think that I have violated a particular oath, then I am prepared to undergo any punishment.”*

17. When asked whether it was correct that the transcripts (of the tapes) furnished by Sarvshri Ashok Argal, Faggan Singh Kulaste & Mahavir Bhagora alongwith their Joint letter dated 3.8.08) emanated from the video recordings of the whistle blowing/sting operation by CNN-IBN team, Shri Kulkarni replied, “Certainly, it is. I do not want to avoid answering this question. What was this transcript all about? The transcript pertained to a video recording of a whistle blowing operation. The recording was not done by me. It was not done by any private individual. It was done by a news channel. The news channel approached us saying that they are investigating allegations of horse-trading in Parliament and they wanted our assistance. And we also wanted to expose it and hence, we worked together on the understanding that the news channel after recording would telecast. After all, a news channel does not use any recording for its own private purpose. A news channel's job is to let people know it. But the news channel in question did not perform its job for whatever reason and I do not wish to go into that. However, once this whole matter was referred to a committee, it was my duty as someone's who participated in the investigation and in exposing the scandal, to know what exactly they had recorded because the news channel behaved as if they have no accountability either to the Parliament or the people of India or even to us. They did not share it with us. So, I conclude that I made an effort to watch the entire recording and I succeeded in my effort and based on that, I prepared a transcript which I shared with Members of Parliament.”

On being further asked whether he meant to say that the transcript was not imaginary and it emanated from the video recording, Shri Kulkarni affirmed by stating that, “Certainly. In fact, that transcript has further been

corroborated by the tapes that were submitted to the parliamentary committee which were subsequently shared with the Members of Parliament and whatever was stated in the transcript has been subsequently corroborated. So, it was not imaginary at all.”

18. On being enquired, whether he gave any formal notice not to disclose the contents of that document, as premature disclosure of the documents was his case and did he specifically inform that this is a secret document and should not be divulged, Shri Kulkarni replied that “No, I did not state that nor was it my understanding that it is a secret document. What is secret about it? If hon. Members need to see that my written submission which I have brought with me, you may have a look at it. My intention was to share the information of what happened with the members of the public and I did not state that it is a secret document.”

19. When the Committee asked whether he violated any rules, Shri Kulkarni said, “I do not think that I have violated any rule”. On being further asked about the approximate date of the circulation of his transcription document he said, “It was the day on which I deposed before the committee...For the kind information of all hon. Members, I did not disclose it before I went to depose before the committee. I submitted it to the Committee and only thereafter I have circulated it. So, I do not even understand how it is premature. If this is premature, I do not know what is not premature and what is mature.”

IV. Findings and Conclusions

20. The issues before the Committee is whether sending through e-mail to correspondents the written submission of Shri Suhail Hindustani which was confidential at the relevant point of time, by the office of Shri Kulkarni and making public the transcripts of the tapes/DVDs/CDs that was given to the Inquiry Committee by the three MPs would amount to breach of privilege and contempt of the House.

21. The Committee note that the crux of the plea taken by Shri Sudheendra Kulkarni before the Committee is that:

- (i) He has not violated any rule, as he did not disclose the documents to the press before he went to depose before the committee. He had circulated it only after he submitted the same to the Committee. Hence, it is not pre-mature disclosure.
- (ii) Article 19 (1)(a) of the Constitution of India says that all citizens have the right of speech and expression and free propagation of ideas is the necessary objective and this may be done on any platform or through the press. This propagation is secured by freedom of circulation. It includes the right to propagate one's views through the print media or through any other communication channel and in this particular case, he used the channel of Internet. This freedom is only limited or restricted by reasonable restrictions under article 19 (2) of the Constitution and he has not committed any of the offences.

- (iii) He took the oath of secrecy but his written submission is the only thing that he had disclosed, which he had circulated. He had not spoken a word about what transpired in the committee.
- (iv) He had not expected that even his written submission given to the committee would be a part of the Report.

22. As regards the making public the transcripts of the tapes/DVDs/CDs that was given to the Inquiry Committee by the three MPs is concerned Shri Kulkarni replied that he was a facilitator in the whistle blowing operation and made an effort to watch the entire recording and succeeded in his efforts and based on that, he prepared a transcript which he shared with Members of Parliament.

23. After examining Shri Sudheendra Kulkarni on oath, the Committee observe that the transcripts of the DVDs/CDs which were provided by the three MPs to the Committee were prepared by Shri Sudheendra Kulkarni in his personal capacity. It is however not very clear as to how he could successfully prepare the transcripts without having access to the tapes, declared by him in his testimony. However since the main issue which emanates out of the question of privilege given notice of by Shri Devendra Prasad Yadav is the premature disclosure of proceedings/documents presented to the Inquiry Committee, this Committee would like this matter relating to the transcript to rest here.

24. As regards the dispatching of documents to the press, Shri Kulkarni in his testimony has confessed that he had himself sent through e-mail to correspondents the written submissions of Shri Suhail Hindustani which was confidential at the relevant point of time.

25. As regards the contention of Shri Kulkarni that he had forwarded the documents to the press only after he had deposed before the Inquiry Committee and thus it was not premature, the Committee observe that the Inquiry Committee was seized of the matter at that relevant point of time. In this context the Committee of Privileges find it relevant to note that according to Kaul and Shakdher:-

“It is well established that it is a breach of privilege and contempt of the House to publish any part of the proceedings or evidence before, or any document presented to a Parliamentary Committee before such proceedings or evidence or documents have been reported to the House.”
(Fifth edn. p.283)

26. The Committee further note that **Rule 275 of the Rules of Procedure and Conduct of Business in Lok Sabha** provides as follows:

“275 (1) A Committee may direct that the whole or a part of the evidence or a summary thereof may be laid on the Table.

(2) No part of the evidence, oral or written, report or proceedings of the Committee which has not been laid on the Table of shall be open to inspection by any one except under the authority of the Speaker.

(3) The evidence given before a Committee shall not be published by any member of the Committee or by any other person until

it has been laid on the Table.

27. The position in this respect is also well-explained in **Erskine May's Parliamentary Practice (23rd Edn. p.139-142)** which *inter-alia* states that “as early as the mid-seventeenth century it was declared to be against the custom of Parliament for any act done at a Committee to be divulged before being reported to the House... according to the undoubted privileges of this House, and for the due protection of the public interest, the evidence taken by any select committee of this House and the documents presented to such committee which have not been reported to the House ought not to be published by any member of such Committee, or by any other person... The publication or disclosure of debates or proceedings of committees conducted with closed doors or in private, or when publication is expressly forbidden by the House, or of draft reports of committees before they have been reported to the House will, however, constitute a breach of privilege or a contempt.”

28. Shri Kulkarni forwarded the documents to the press before such proceedings/ evidence/documents were reported to the House in violation of the provisions of Rule 275 and well established convention and thereby committed breach of privilege and contempt of the House.

29. The Committee find that Shri Kulkarni tried to justify his act of premature disclosure by seeking refuge under the provisions of Article 19(1) of the Constitution of India saying that he had right to propagate his views by circulation through print media.

30. In this regard, the Committee find it pertinent to state that the privileges are part and parcel of the Constitution and, therefore, of what is known as the

‘fundamental law’. As held by the Supreme Court in the *Searchlight Case*, (MSM Sharma v. Sri Krishna Sinha [(AIR 1959 SC 395)]) the provisions of article 105(3) and article 194(3) are constitutional laws and not ordinary laws made by Parliament or the State legislatures and they are, therefore, as supreme as the provisions of Part III i.e. fundamental rights. As further pointed out by the Supreme Court in this case, article 19(1)(a) and article 194(3) have to be reconciled and the only way of reconciling the same is to read article 19(1)(a) as subject to the latter part of article 194(3). The principle of harmonious construction must be adopted and so constructed the provisions of article 19(1)(a) which are general, must yield to article 194(1) and the latter part clause (3) thereof which are special.

31. It is therefore clear that in case of clash between the fundamental right to speech as enumerated in article 19(1) and article 105 of the Constitution, 19(1) must yield to the provisions of article 105(1) and article 105(3).

32. The Committee observe that in the present case since Shri Kulkarni cannot seek immunity from privilege proceedings for his act on the plea that he enjoys the right to freedom of speech and expression. As already held by the Committee, the disclosure of documents to the print media made by Shri Kulkarni is premature and clear case of breach of privilege of the Committee and the House thereof.

33. The Committee therefore hold that Shri Sudheendra Kulkarni has committed a breach of privilege of the Committee to inquire into

complaint made by some members regarding alleged offer of money to them in connection with the voting on the Motion of Confidence and also of the House.

34. The Committee wish to emphasise that it was inappropriate on the part of Shri Sudheendra Kulkarni, who claims to have long years of journalistic experience as also having worked in PMO earlier, to act in a manner which is wholly unacceptable and militates against the basic norms and tenets of parliamentary democracy. His act is also against the journalistic ethics. The Committee strongly condemn and express their resentment over the conduct of Shri Kulkarni which smacks of his scant-regard for parliamentary conventions and his penchant for making a mockery of our democratic institutions. The Committee further wish to bring to fore the serious ramifications of acts like those of Shri Kulkarni's and the need for dealing with severity such incident.

Recommendations

35. The Committee recommend that their observations and displeasure as expressed in paras 30 to 34 may be conveyed to Shri Kulkarni.

**(V. KISHORE CHANDRA DEO)
CHAIRMAN
COMMITTEE OF PRIVILEGES**

New Delhi
Date:30.4.2009

