

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

17

SEVENTEENTH REPORT

**(Presented to Speaker, Lok Sabha on 17 December, 2008)
(Laid on the Table of Lok Sabha 19 December, 2008)**

SEAL

**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2008/Agrahayana, 1930 (Saka)

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

Shri V.Kishore Chandra S.Deo - Chairman

MEMBERS

2. Shri Omar Abdullah
3. Shri Sartaj Singh Chhatwal
4. Shri Anantkumar Hegde
5. Shri Virendra Kumar
6. Shri Hemlal Murmu
7. Shri Brajesh Pathak*¹
8. Shri Shriniwas Patil
9. Dr. Sebastian Paul
10. Shri Varkala Radhakrishnan
11. Shri Raju Rana
12. Shri D. Vittal Rao
13. Shri Iqbal Ahmed Saradgi
14. Choudhary Bijendra Singh
15. Shri Beni Prasad Verma

SECRETARIAT

- | | | |
|----------------------------|---|----------------------|
| 1. Shri V.K. Sharma | - | Additional Secretary |
| 2. Shri Ravindra Garimella | - | Deputy Secretary |
| 3. Shri Ashok Sajwan | - | Deputy Secretary-II |
| 4. Smt. Geeta Parmar | - | Legislative Officer |

* ceased to be member of Lok Sabha w.e.f.14 .11.2008

**SEVENTEENTH 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 their Seventeenth Report to the Speaker regarding casting of reflections and imputing motives to Speaker, Lok Sabha by Shri M.G. Dawood Miakhan, Secretary & Correspondent, the Quaide Milleth College, Chennai, Tamil Nadu in connection with certain petitions for disqualification filed by him against Shri K.M. Khader Mohideen, MP.

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

3. At their first sitting held on 12 November, 2008, the Committee considered in the matter. The Committee decided to hear Shri M.G. Dawood Miakhan in person in the matter at their next sitting.

4. At their second sitting held on 28 November, 2008, the Committee examined Shri M.G. Dawood Miakhan, Secretary & Correspondent, the Quaide Milleth College, Chennai, Tamil Nadu in the matter, on oath. He was represented by his advocate, Shri A. Palaniappan.

5. At their third sitting held on 15 December, 2008, the Committee considered their draft Report and adopted it.

II. Facts of the case

6. On 23rd April, 2005² Shri M.G. Dawood Miakhan, Secretary & Correspondent, the Quaide Milleth College, Chennai, Tamil Nadu, gave a petition against Shri K. M. Khader Mohideen, MP seeking his disqualification from the membership of the DMK Party under the Tenth Schedule to the Constitution on the ground that though Shri Mohideen belonged to DMK, he had also been functioning as President of Indian Union Muslim League, Tamil Nadu.

7. Shri Miakhan alleged that Shri K.M. Khader Mohideen, MP, who

² Please see Appendix-I

belonged to DMK had attended the meetings of DMK and Democratic Progressive Alliance(DPA) as a representative of Indian Muslim League, Tamil Nadu. He also enclosed copies of newspapers' clippings appearing in 'Dinamani' and 'Teekathir', a CPI(M) daily, in support of his contentions.

8. While processing his petition, the following provisions of The Members of Lok Sabha(Disqualification on ground of Defection) Rules, 1985 were taken into consideration:-

“6(1) No reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by petition in relation to such member made in accordance with the provisions of this rule.

6(2) A petition in relation to a member may be made in writing to the Speaker by any member...”

As Shri M.G. Dawood Miakhan was not a member of Lok Sabha, a view was, therefore, taken that he had no locus for filing a petition seeking disqualification of a member of Lok Sabha. Besides, there are no provisions either in the Tenth Schedule to the Constitution or the Rules made thereunder which provide for initiating disqualification proceedings against a member by

the Speaker, *suo motu*.

9. In view of the above, the petition of Shri Miakhan seeking disqualification of Shri Mohideen was rejected by the Speaker Lok Sabha on 11 May, 2005.

10. Shri Miakhan gave another petition dated 25 February, 2008³ to the Speaker, Lok Sabha in which he *inter alia* made the following submissions:-

- (i) Indian Union Muslim League is a political party which is registered as National Party in accordance with the provisions of the Representative of Peoples Act, 1951. The Tamil Nadu State unit being Tamil Nadu State Union Muslim League, is a political party in the State of Tamil Nadu which is affiliated to the National Party, the Indian Union Muslim League. Like-wise the Kerala Unit known as the Muslim League Kerala State Committee, is a recognised political party in the State of Kerala and is provided with the symbol 'Ladder' in the State of Kerala and is affiliated to the National Party, the Indian Union Muslim League.
- (ii) Shri K.M. Khader Mohideen, MP was initially the Member and President of the Tamil Nadu State Indian Union Muslim League Party. An

³ Please see Appendix-II

alliance was forged between the Tamil Nadu State Indian Union Muslim League and the Dravida Munetra Kazghagam (DMK party) during the General Elections to the 14th Lok Sabha. Shri K.M. Khader Mohideen, MP in spite of being the member and President of the Tamil Nadu State Indian Union Muslim League had declared himself as a member of the DMK political party.

- (iii) The Tamil Nadu State Indian Union Muslim League is governed by its byelaws. Clause 9 (aa) clearly provides that the person who is a member of the said Tamil Nadu State Indian Union Muslim League shall not become a member of any other political party organization or shall not continue to be the member of any other political party or organization. Similar provisions in the bye laws of the DMK Party prohibit a person to be a member of another political party or organization.
- (iv) Shri Mohideen had contested the said election as a candidate set up by the DMK party in Vellore constituency under the “Rising Sun” symbol of the DMK party. Shri Mohideen had declared himself as a member of the DMK political party and sworn affidavit to that effect and had filed documents asserting the same before the Returning Officer at the time of filing nomination papers for contesting the election in the Vellore constituency as a member of the DMK political party. Shri Mohideen’s

nomination for contesting the election from Vellore constituency was accepted and he contested the election on DMK party symbol 'The Rising Sun'. The nomination form was filed on 19.4.2004 and he declared that he was set up by the DMK party as its candidate in the said Vellore constituency. Subsequently, Shri Mohideen won the election contesting under the symbol of DMK party and he was declared elected as Member of Parliament set up by the said DMK party in the 14th Parliament Election which was held on 10.5.2004.

(v) Shri Mohideen had attended various meetings convened by the DMK party on various political issues and he had represented the said meetings as the President of Tamil Nadu State Indian Union Muslim League. In the inter-party meeting also Shri Mohideen, had represented the Tamil Nadu State Indian Union Muslim League as its State President and had thus participated in meetings not as a member of DMK party.

(vi) Shri Mohideen, had been maintaining that the Tamil Nadu State Indian Union Muslim League is an independent party and that the same was not controlled by the Indian Union Muslim League.

On 2nd September 2007, the National party the Indian Union Muslim league had convened its National Executive meeting in Tamil

Nadu at Chennai and all the leaders of the National Party namely its President, General Secretary and all the party functionaries and the State Presidents of various state units of the said party had participated. In the said National Executive meeting Shri K.M. Khader Mohideen, MP was elected as the Vice-President of the National party the INDIAN UNION MUSLIM LEAGUE.

- (vii) The said act of Shri Mohideen constitutes voluntarily giving up the membership of the DMK Party.
- (viii) The Speaker, Lok Sabha may *suo motu* take necessary action against Shri Mohideen. According to Guwahati High Court, in Banjak Phom and others Vs The Nucho and other "There is nothing in paragraph 6 or any of the other provisions in Tenth Schedule to limit the jurisdiction of the Speaker to decide a question of disqualification only on a petition filed by a member of the House. There is nothing in these provisions to indicate that Speaker cannot act *suo motu* if the conditions requisite for disqualification come to his notice by some process or the other. To hold otherwise would, we are afraid, amount to reading something into Tenth Schedule which is not there and would also amount to frustrating the very object of 52nd Constitutional Amendment. The object is to preserve democratic structure of the legislature and safeguard political morality in

legislators. If motion by a member of the House is pre-requisite for an order of disqualification being passed by the Speaker, all that is necessary is that there should be a gentleman's agreement between the Members not to complain to the Speaker about any member incurring disqualification. Such a narrow interpretation of the provisions of paragraph 6 of the Tenth Schedule cannot be accepted."

11. However, in the light of decision of the Speaker, Lok Sabha on the earlier petition dated 23 April, 2005 of Shri Miakhan, no action was taken on the petition. Shri Miakhan was also suitably apprised of the position obtaining in the matter *vide* Secretariat's letter dated 30 May, 2008.

12. Thereafter, Shri M.G. Dawood Miakhan filed one more petition dated 15 July, 2008⁴, wherein he requested the Hon'ble Speaker to review the petitions given by him against Shri K. M. Khader Mohideen, MP.

Shri Miakhan stated that "Rule 6(2) of the Members of Lok Sabha (Disqualification on ground of defection) Rules, 1985 only amounted to an enabling clause and the same is not mandatory." Shri Miakhan had contended that if the Speaker is satisfied that the act of the said Shri K. M. Khader

⁴ Please see Appendix-III

Mohideen, MP is in flagrant violation of the provisions of the Tenth Schedule to the Constitution based upon the various documents produced, action can be initiated by the Speaker in his capacity as quasi judicial authority in deciding the issue of violation of Tenth Schedule to the Constitution, hence he contended that rejection of his petition had no legal basis.

In support of his contentions, Shri Miakhan had enclosed (i) Press clippings from 21 newspapers (Tamil dailies); (ii) Membership card issued by DMK to Shri K. M. Khader Mohideen, MP; (iii) From- A regarding communication with respect to authorised persons to intimate name of candidates set up by recognized/registered political parties submitted to concerned Returning Officer; (iv) From-B regarding notice as to name of candidate set up by the political party submitted to concerned Returning Officer; (v) Proceedings of Returning Officer, Vellore dated 24.4.2004; and (vi) Certificate of Election issued by Returning Officer certifying that Shri K. M. Khader Mohideen, who had been sponsored by DMK to have been elected to Lok Sabha from Vellore Parliamentary Constituency.

13. After examining the petition, a view was taken that there had not been any material change in the circumstances as per the provisions of Rule 6(1) & (2) of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules

1985 and hence a petition made by a person other than a member cannot be taken cognizance of. Under these circumstances, no action was taken on the this petition too of Shri Miakhan.

Press statement by Shri Miakhan casting reflections on Speaker, Lok Sabha

14. Shri Miakhan on 13 September, 2008 issued a Press Statement⁵ wherein he *inter-alia* took objection to the proposal made by Shri E. Ahamed, Minister of State of External Affairs for convening the National Executive Meeting of the Indian Union Muslim League in New Delhi on 14 September, 2008. He stated that Shri E. Ahamed is a Member of Muslim League, Kerala State Committee(which is a separate recognized political party in the State of Kerala) and is also holding the post of Treasurer of the said party. Shri Mohideen who presently claims to be the Vice-President of the Indian Union Muslim League, had declared himself to be the member of DMK Party to which Party he belongs as a Member of Lok Sabha.

In this context, Shri Miakhan further stated that:

“In spite of several representations as against Mr. K.M. Khader Mohideen, for his actions attracting the provision of the Tenth

⁵ Please see Appendix IV

Schedule of the Constitution the Hon'ble Speaker had remained mute and had failed to initiate proceedings on untenable and baseless grounds. The inaction of the Speaker in having failed to react on the flouting of the mandate of the Tenth Schedule of the Constitution and the present convening the National Executive Committee meeting of the Indian Union Muslim League at the Speaker's Hall, Constitution Club, New Delhi-1 by the said persons expatiates the said bias of the Hon'ble Speaker in the issue and that he is acting in the alleged partisan manner championing of the cause of the ruling UPA though holding the Constitutional Post of Speaker.”

15. On 17 September, 2008, the Speaker, 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

Submissions of Shri A. Palaniappan, Counsel for Shri M.G. Dawood Miakhan, Secretary and Correspondent, Quaide Milleth College, Chennai, Tamil Nadu

16. Shri A. Palaniappan, Counsel for Shri M.G. Dawood Miakhan during his submissions before the Committee on 28 November, 2008 in the matter inter-alia submitted as under:

“..... My respectful submission to this hon. august body is that there is no inclination or intention of whatsoever nature to undermine or in any manner cast aspersions on the hon. Speaker. Our respectful submission was that one of the sitting Members had done actions which will attract the specific provisions of the Tenth Schedule to the Constitution. We have clearly given that in our representation. If your honours could kindly see those representations, in them we have clearly stated the instances as to how it would attract the specific provisions of anti-defection. For that the reply had come last on 30-5-2008. By the terms of the reply it was clear that none of the averments that were made in the petition were considered by the hon. Speaker. He had extracted two provisions of the Rules wherein it is stated, “No reference to any question as to whether a Member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such Member in accordance to the provisions of this rule.” And he had said, “A petition in relation to a Member may be made in writing to the Speaker by any other Member.” Only on this technical ground this was rejected.

Again we gave a representation stating that this is only the rule. Kindly see the scheme of the Constitution which is violated. That was a representation. We had not at any point of time tried to undermine the authority or power of the Speaker. We had no intention of whatsoever nature to undermine the authority of the Speaker at any point of time. Our respectful submission is only one thing. If your honour would kindly appreciate, the concerned Member was a Member set up by DMK political party; he had been elected as a Member of the said party. Even at the time of election he had affirmed to be a Member of Tamil Nadu State Indian Union Muslim League. Subsequently, recently he has affirmed that he has become the Vice President of Indian Union Muslim League which is a national party. I am not taking instances with regard to dates. Much more recently, he has become the General Secretary of the Indian Union Muslim League. That clearly attracts the Tenth Schedule of the Constitution. This is

what we had tried to bring to the notice of the Speaker. This was not appreciated in terms of the merits.”

17. When the Committee drew his attention to the contents of the Press Statement dated 13 September, 2008 issued by Shri Miakhan wherein he had cast aspersions on the Speaker, Lok Sabha and was pointed out that in this case a clear breach of privilege had taken place, Shri Pallaniappan responded as follows:

“We supplicate our unconditional apology because it was not our intention. Without any reservation of whatsoever nature we supplicate, we have no other words except to say that we supplicate our unconditional apology with regard to this. One submission, I crave your Lordship’s indulgence to kindly bear with me in saying this. Insofar as this particular matter is concerned, we were not really aware whether the Speaker was fully seized of the matter as such and with that element of submission we had added some of it, which was never our intention. We are fully convinced with regard to the august institution and the body of the Speaker as such and it was never our inclination. One thing which we thought would go to the realm of the Speaker is that IUML is a different identity and a political party. IUML is definitely a different political party”.

18. On being pointed out that the specific issue for consideration before the Committee was the matter relating to casting of reflections on the Speaker, Lok Sabha by Shri Miakhan through his impugned Press Statement, Shri Palaniappan stated as follows:

“If that is the confinement, my respectful submission is, we place our utmost unconditional apology and we have no reservations of whatsoever nature with regard to it. We had never in our mind intended to anyway malign or even say anything with regard to the Speaker on that issue. We were only trying to bring to the attention as to whether the fact had been known to the Speaker or not. This fact

was running into our mind and we had put it in this way. My client had no intention of whatsoever nature to hurt the Speaker.”

19. On being pointed out that Shri Miakhan may file the petition before the President of the DMK or the President, Muslim League and if no action is taken by them, he can go to a court of law by filing, a writ petition and the court will declare him as disqualified, but by saying that the Speaker, Lok Sabha was acting in the partisan manner championing the cause of the ruling UPA, though holding the constitutional post of Speaker, amounted to casting aspersion on the Speaker, Lok Sabha, Shri Miakhan stated as under:

“Sir, in addition to what my advocate has said, I would like to say that there was no intention to cast aspersion on the Speaker or to malign his authority or his position...Sir, what you have read out is a statement which I wanted to send to the Press which I later on withheld. It was not published in any newspaper whatsoever. But again for the information of the Speaker, I sent it to his address. But it was not circulated to the Press at all except one or two. Moreover, that is not an official petition. It is a Press statement.”

IV Findings and Conclusions

20. The issue before the Committee is whether Shri M.G. Dawood Miakhan, Secretary & Correspondent, the Quaide Milleth College, Chennai, Tamil Nadu, in his Press Statement had cast reflections and imputed motives to the Speaker, Lok Sabha.

21. The Committee at this juncture would like to invite attention to the well established position as laid down in “Practice and Procedure of Parliament” by Kaul & Shakdhar (5th edn.) that reflections on the character and impartiality of the Speaker in the discharge of his duty, constitute a breach of privilege and contempt of the House.

22. The Committee also note that in Erskine May’s treatise on “The Law, Privileges, Proceeding and usage of Parliament”, it has been laid down that the “reflections on the character of the Speaker and the accusation of partiality in the discharge of his duty have been held to constitute breaches of privileges and contempt.”

23. The Committee note that Shri M.G. Dawood Miakhan, Secretary & Correspondent, the Quaide Milleth College, Chennai, Tamil Nadu vide his petitions dated 23rd April, 2005 and 25 February, 2008 had alleged that Shri K.M. Khader Mohideen, MP, who belongs to DMK had attended the meetings of DMK and Democratic Progressive Alliance(DPA) as a representative of Indian Muslim League, Tamil Nadu and on this ground he had sought his disqualification from the membership of the DMK Party under the provisions of the Tenth schedule to the Constitution of India and Rules made thereunder.

24. The Committee further note that Shri Dawood Miakhan, miffed that no action was taken on his petitions (which is any event could not have been taken under the relevant Rules) issued a Press Statement making derogatory reference to the Speaker, Lok Sabha which in turn imputed motives to and cast reflections on him in discharge of his duties. The Committee are pained to note that Shri Miakhan did so mainly to drive home his point of view. Undoubtedly, such remarks were nothing but an attack on the dignity and impartiality of the office of the Speaker, Lok Sabha.

25. The Committee further find the allegations made by Shri Miakhan in the Press Statement, which during his evidence before the Committee he claimed not to have issued, are baseless and needlessly allege bias casting reflections on impartiality of the Speaker thereby lowering the dignity of the office of the Speaker, Lok Sabha.

26. The Committee, are therefore, of the view that Shri M.G. Dawood Miakhan, Secretary & Correspondent, the Quaide Milleth College, Chennai, Tamil Nadu in his Press Statement dated 13 September, 2008 made remarks that imputed motives to the Speaker, Lok Sabha and

cast reflections on him in discharge of his duties. Shri Miakhan is, therefore, guilty of breach of privilege and contempt of the House.

27. The Committee of Privileges of Seventh Lok Sabha, in their First Report presented to the House on 8 May, 1981, observed *inter alia* as follows:

“The Committee feel that it adds to the dignity of one and all if power in a democratic system is exercised with restraint; the more powerful a body or institution is, the greater restraint is called for particularly in exercising its penal jurisdiction.”

28. In the case under consideration, Shri M.G.Dawood Miakhan has sought for unconditional apology for making remarks in his Press Statement which cast reflections on the Speaker, Lok Sabha in discharge of his duties.

29. The Committee also note that it is the tradition of the House that unqualified and unconditional regrets sincerely expressed by the persons guilty of breach of privilege and contempt of the House are accepted by the House and the House normally decides in such cases to best consult its own dignity by taking no further notice of the matters.

30. The Committee, keeping in view the well established tradition and the apologies tendered by Shri M.G. Dawood Miakhan, Secretary &

Correspondent, the Quaide Milleth College, Chennai, Tamil Nadu, are of the view that no further action needs to be taken in the matter.

V. Recommendation

31. The Committee in the light of the findings and conclusions recommend that the matter be treated as closed.

NEW DELHI
Dated:

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