

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

THIRTY-FIFTH REPORT

SHRI KHADILKAR (Khed) : I beg to present the Thirty-fifth Report of the Committee on Private Members' Bills and Resolutions.

GOLD (CONTROL) BILL

REPORT OF JOINT COMMITTEE

SHRI BAKAR ALI MIRZA (Secunderabad) : I beg to present the Report of the Joint Committee on the Bill to provide, in the economic and financial interests of the community, for the control of the production, manufacture, supply, distribution, use and possession and business in, gold, ornaments and articles of gold and for matters connected therewith or incidental thereto.

12.48 HRS.

DEMANDS FOR EXCESS GRANTS (RAILWAYS), 1965-66

THE MINISTER OF RAILWAYS (SHRI C. M. POONACHA) : I beg to present a statement showing Demands for Excess Grants in respect of the Budget (Railways) for 1965-66.

DEMANDS FOR SUPPLEMENTARY GRANTS (RAILWAYS), 1968-69

THE MINISTER OF RAILWAYS (SHRI C. M. POONACHA) : I beg to present a statement showing Supplementary Demands for Grants in respect of the Budget (Railways) for 1968-69.

12.49 HRS.

STATUTORY RESOLUTION RE : INDIAN PATENTS AND DESIGNS (AMENDMENT) ORDINANCE; INDIAN PATENTS AND DESIGNS (AMENDMENT) BILL; AND PATENTS BILL—Contd.

MR. SPEAKER : Shri Fakhruddin Ahmed was on his legs the other day. He may continue his speech.

THE MINISTER OF INDUSTRIAL DEVELOPMENT AND COMPANY AFFAIRS (SHRI F. A. AHMED) : Mr. Speaker, Sir, yesterday, before the discussion was adjourned, I was referring to the resolution moved by the hon. Member so far as the ordinance was concerned. I explained yesterday briefly the circumstances and reasons for promulgating the ordinance and bringing forward this amending Bill to replace that ordinance. Except Mr. Dandekar, no other member supported his resolution regarding the ordinance. But Mr. Narayana Rao wanted to know what was the positive action that Government wanted to take after their negative action in promulgating the ordinance. I would like to tell him that the ordinance was promulgated only for the purpose of keeping those petitions pending till the Bill is passed by this Parliament. Now the Bill seeking to replace that ordinance is before the House. If the period is not extended, all those applications which are pending will lapse and the applicants will be denied the benefits they may derive under the new Act. It is only for that purpose that the new amending Bill has been proposed. Secondly, we were also anxious that those applications should not be disposed of under the existing Bill because they will have certain rights and privileges which are inconsistent with the development of industries in our country. It is for that reason that the amending Bill is placed before the House. Therefore, it is not a negative measure, but a positive measure. On the one hand, we want to keep the applications alive and on the other, it would enable us to dispose of the applications under the new legislation when it is passed by Parliament. This is all that I would like to say about the ordinance and the Bill seeking to replace it.

So far as the main Bill is concerned, a number of observations have been made. Some hon. members have accused the Government for delaying this legislation. I would like to say that there is not the least desire on the part of Government to delay this. On the other hand, Government wanted that the Bill should be at once taken up for consideration without reference to a Select Committee. It

was only because of the overwhelming desire of the Members of Parliament in the Advisory Committee that against the will of the Government it has been decided to refer it to a Select Committee. I personally think that in a matter which had already been once referred to a Select Committee where we had spent considerable time examining witnesses from within and outside the country, there was no necessity to refer it again to a Select Committee. But I had to bow down to the wishes of the members of the Advisory Committee.

I hope that this Bill will be disposed of by the Select Committee as early as possible without the necessity of examining the same witnesses again and on the basis of the voluminous material and evidence already available, it will be possible for the Select Committee to make such proposals and amendments as they may consider necessary in the interests of the country.

Secondly, there was a criticism that this Bill—my hon. friend Shri D. C. Sharma is not here, it was he who made this criticism—is very inauspicious and very ominous. He did not like that it should have been piloted by such a lucky person as myself. I do not know what he actually meant by that criticism. But this certainly shows that a good deal of thought and a good deal of consideration to a matter which is of a controversial nature has been given. It is only after the appointment of a committee to inquire into the various facts and circumstances, after the matter had been gone into by a select committee which examined a large number of witnesses, that the Bill emerged and it was placed before this House. Unfortunately, it was placed on the list of business for purposes of consideration and also final stages of passing but that discussion did not take place and therefore the Bill lapsed and it had to be introduced in the new Parliament at the earliest opportunity. Therefore, Government cannot be blamed for the delay and I do not think there can be any justification for any person to think that it is an inauspicious or ominous Bill.

Two sets of arguments have been advanced. One set favoured the considera-

tion of this legislation and the other did not consider that such a legislation is desirable or is in the interest of the country. So far as the category of persons who say that this legislation is not necessary because it will stand in the way of research and inventions are concerned, I must say that today no one in this House and no one in the Government is opposed to any research or to any inventions. There is no such thing that we are opposed to taking any inventions which are taking place outside or even within our own country. What we are saying or what is actually intended by bringing this legislation is that we should welcome all research and all inventions whether relating to food, drugs, medicines or other items but it should not be at the cost of the country, at the cost of the consumers in our country. The purpose of patents if they have to be given should be subservient to the purpose of providing the need to a hungry man in our country or removing distress if a person is ill or sick and they should not be taken advantage of by preserving that right for a certain set of people only for the purpose of giving monopoly or giving the right of import.

What are the facts so far as our country is concerned? If hon. Members would be pleased to look at it, nearly over 90 per cent of the patents are patents taken by people from outside the country and in the name of patents we are doing nothing else or we are tolerating nothing else except export promotion from outside the country within our own country. I would like to place before this House not only what we think about it but also what is the opinion of the countries outside.

MR. SPEAKER : How much more time will the hon. Minister take ?

SHRI F. A. AHMED : I will take another 15 minutes.

MR. SPEAKER : We may adjourn now for lunch and he may continue when we meet again at 14.00 hours after lunch.

13.00 HRS.

The Lok Sabha adjourned for Lunch till two of the Clock.

The Lok Sabha re-assembled after Lunch at five minutes past Fourteen of the Clock.

[MR. DEPUTY-SPEAKER *in the Chair.*]

STATUTORY RESOLUTION RE :
INDIAN PATENTS AND DESIGNS
(AMENDMENT) ORDINANCE;
INDIAN PATENTS AND DESIGNS
(AMENDMENT) BILL; AND PAT-
ENTS BILL—*Contd.*

SHRI F. A. AHMED : Sir, before the Lunch break I was referring to the fact that in India particularly all the patents relating to food, drugs and medicines are owned by foreign interests and hence the question, which has been posed before us, that if we pass the present legislation, it will stand in the way of inventions and research. But, as I have already pointed out, we are not opposed to research or new inventions; what we are opposed to is the evil effects which these patents have brought into existence in our country.

So far as that matter is concerned, I will not give my own opinion but the opinion expressed in the most advanced country, the United States, which will show what kind of evil effects these patents are having in our country. In recent times particularly this question, whether inventions in the field of food, drugs and medicine should be patentable, has assumed so much importance not only in India and other undeveloped countries but also in industrially advanced countries. In the United States of America a sub-committee on anti-Trust and monopoly, with the late Senator Kefauver as chairman, appointed by the Committee on the Judiciary, United States Senate, made a thorough study of the whole matter. Part III of the report deals exclusively with the question of patents and research in drugs, the relationship between patents and prices in the world markets and the prices of drugs in countries with and without patents. It is interesting to find that with reference to the position in India the Committee has observed :—

“India, which does grant patents of drug products, provides an interesting case example. The prices in India for the broad spectrum antibiotics, Aureomycin and Aeromysin, are among the highest in the world. As a matter of fact in drugs generally, India ranks among the highest priced nations in the world—a case of an inverse relationship between per capita income and the level of drug prices.”

I feel that it is not necessary for me to advance any other argument but to quote this passage from an advanced country like the United States to show what evil effects these patents in our country are having.

I would also like to quote from a Minute of Dissent to our Joint Committee Report where it has quoted a witness before the Joint Committee :—

“A witness stated that some time ago Liberium a tranquilizer—introduced in the Indian market by a Swiss firm, which was importing the same during the year 1963-64 at about Rs. 5,555 per kilogram C.I.F.; but the same material is said to have been imported by a firm in Delhi at C.I.F. price at about Rs. 312 per kilogram. Another firm in India has been charging in this country for Vitamin B12 Rs. 230 per gram whereas the international price at which it is available in other countries is between Rs. 90 to 100 per gram. Similarly another firm which holds the patent for DEXAMATHA-ZONE was charging Rs. 60,000 per kilogram. But when warned by the Import Controller it readily cut the price to Rs. 16,000. The case of Talbutamide patented by Hoechst is one more example of exorbitant prices charged by foreign firms. It is sold in India at Rs. 187 per 100 Tablets while it is available for Rs. 50 to 60 maximum elsewhere in the world.”

These are examples which I have cited from the report on the basis of evidence given before the Joint Committee which will show what evil effects some of the patents in our country are having. Therefore the question which has been posed before this House that this Bill is intend-

ed to prevent research and development of the country is not borne out by facts.

So far as our country is concerned, there are two opinions. One opinion is that there should be no patent at all. In this connection, I would like also to inform the House that as long ago as 1960, our late Prime Minister Pandit Jawaharlal Nehru was also of the opinion at that time that there should be no patents so far as medicines and drugs were concerned. But having regard to the fact that we are not industrially advanced and that research in our country has not advanced to such an extent as will be able to give the best quality of medicines and drugs in our country, we have adopted a *via media* that while we have no intention of disallowing patents in our country at the same time we want that those patents must be allowed under certain conditions namely that they would not undermine or make the interests of the people of this country subservient. It is for that purpose that this Bill has been introduced.

Some hon. Members have levelled charges against us that Government did not know their mind, and they have said that they could not understand the purpose for which this legislation had been introduced. I wish that those very Members who had advocated the very cause of the people which was advocated before me when I went abroad—the same cause was advocated before me when some of their representatives came before me—had read the provisions of this Bill, and if they had read the provisions of the Bill they would not have made such a serious allegation against Government that Government did not know their own mind when they had brought this measure forward.

I would only like to mention that the Patents Bill contains very salutary provisions regarding Government's power to import patented articles for its own use and patented medicines and drugs for distribution in Government hospitals and other similar approved institutions in public interest, Government's power with regard to terms of patents, grant of compulsory licences, automatic endorsement of patents relating to chemical substances and items in the field of foods, drugs and medicines, licensing of related

patents, that is, patents already granted, use of patented inventions by Government and Government undertakings and acquisition of patents by Government in public interest and payment of compensation and so on. I am sure that if my hon. friends had read all the provisions of the Bill they would not have levelled that charge that Government did not know their own mind and that was why they had brought forward before this House a measure which was of a negative nature and which had no positive direction. My submission is that there are plenty of provisions in this Bill which is before this House which have positively suggested a remedy to many of the evils which are existing in our country.

The argument has also been advanced that any restriction on patents will stand in the way of the development of research in our country. I may point out that during the past so many years when the patent was in existence and patents were allowed freely in our country, the extent of research and inventions was not very much. I was trying to find out whether there was any research or whether there was any invention which had secured patents outside our country. My information is that not more than three or four such cases are there. But from other countries we are importing so many of these things. In spite of the facilities and in spite of the scope that we have had for so many years to do research and to make inventions which could secure patents outside our country, our country has not been able to do much in this regard. I could understand the question of patents where two advanced countries are concerned. But as regards one advanced country and another country which is still under-developed and which is trying to develop itself, there can be no justification for giving protection and creating a monopoly which is detrimental to the interests of the people. It is for these reasons that this Bill has been placed before this House.

Another serious objection has been made to the need for two provisions regarding the acquisition of patents. I wish the hon. Members had read carefully those provisions also. In the case of one provision, namely clause 48, where we

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want to acquire a patent or import a patent, it is an enabling clause. That is a case where Government want to do it for the purpose of research and where they want to do it for non-commercial purposes, as for instance, in the case of an epidemic, where Government want to import some medicine; in such cases, no compensation has, therefore, been allowed. It is an enabling provision which will be taken advantage of only in those cases where the acquisition will not be for commercial purposes but will be in the interests of research and will be in the interests of inventions and will be for looking after the health of the people. There, no compensation is provided. But where for commercial purposes these patents will be acquired, compensation has been provided for. It is for this reason that the question of acquisition has been considered and has been provided for under two separate categories. We surely do not want to deprive a patentee when his patent is being acquired for some commercial purposes.

Then, there was an objection as to why Government had shed their powers and had not taken powers so far as royalty was concerned. I would submit that on the one hand we are accused of encouraging corruption. On the other hand, when we make certain provisions which will reduce the chances of corruption, we are accused of not taking the power and keeping it in our hands.

Some hon. Members have wanted that so far as the question of royalty is concerned, that ought not to have been fixed but Government ought to have taken power to fix the royalty from time to time as circumstances demanded. What we have now proposed to provide is that a royalty of 4 or 5 per cent will be provided; beyond that, royalty will not be given. But that does not mean that Government do not have the power to reduce the royalty from 5 to 4 or 3 per cent where the circumstances demand such a reduction. We have taken the power to fix the royalty but at the same time, we have also fixed a limit beyond which Government cannot go so far as the question of fixation of royalty is concerned.

In regard to the term of patent also, we have reduced the period in the case of food, drugs and medicines from 16 to 10 years. We have done so far two purposes. On the one hand it is said that science and technology have so much advanced, that a drug which has been found today would become obsolete after a period of four or five years and, therefore, the period of ten years which has been provided for is quite long; on the other hand, it has been urged that ten years is quite an inadequate period for the inventor to get adequate compensation for his invention and that some longer period should be allowed for the drug to be effective and so on. With the development of science and technology, I am sure that drugs and medicines would become obsolete within a period of four or five years. On the other hand, one purpose of the legislation is that we do not want the patentee to have more than adequate compensation for his invention. If we allow a period of 16 years in such cases, that would be considered as a long period. Even in advanced countries like the United Kingdom, there is a suggestion that this term should be curtailed or reduced. If that is the thinking in countries where development has taken place and where they have gone in for patents, I do not see any justification why we should not reduce the period. After all, this is a matter which the Joint Committee will go into and they can fix the proper period; if necessary they can increase it or reduce it and so on. These are matters which the Joint Committee will go into.

The other objection which has been raised is in regard to our denying patents so far as products are concerned. My submission is that even advanced countries have done away with patents of products. They have only permitted or allowed patents of processes. In fact, under our existing law also, though the provisions permit patents of products, yet in practice during the last few years we have not been allowing patents of products because there is no justification why a product should not be allowed to be produced by new processes and it is only the processes which have to be considered so far as the patents are concern-

ed and not the products itself. That is the thinking of the advanced countries. I can give a list of about 16 or 17 countries where they have done away with the question of patents of products and where they are only confining themselves to the patents of processes.

Sir, these are the few observations which I would like to place before this House in reply to the various observations that were made by the hon. Members here. At this stage, I would not like to go into greater details because this matter has been referred to the Joint Committee. But what I would appeal to the House and to the Members is that this matter has been pending before the country for a considerable time and already there has been a large number of witnesses who have been examined in this connection both from within the country and outside the country and I hope, when we meet in the Joint Committee, we shall, without considering the necessity of repeating the process of examining the witnesses, on the basis of the material which is available with us we shall give due consideration to the various proposals and complete the task of the Joint Committee as early as possible so that the whole matter may come before this House, if possible during the next session, and before the year is out, we may be able to pass this legislation I can tell the House that Government is very anxious that this legislation should be enacted as early as possible and, therefore, there is no justification in the charge that we intend to delay this legislation.

With these words, I move my motion for commendation of the House.

SHRI N. DANDEKER (Jamnagar) : Mr. Deputy-Speaker, Sir, I am only concerned with the approval or disapproval of the Ordinance. I have suggested that the Ordinance should be disapproved and, consequently, I am also concerned with the amending Bill but not with the main Bill. I must confess, however, on listening to the Minister just now about the main Bill, I am really tempted to touch also upon the main Bill. But that is now outside my province.

Sir, the defence that was urged by the Minister for making use of the powers

under Rule 47 of the Defence of India Rules, then embodying those powers in an Ordinance and now seeking to embody those powers in the amending Bill is, to my mind, most weak; and, indeed, it amounts to his admitting the charge that I had specifically made, namely, that the Defence of India Rule was misused. The Defence of India Rule, in particular, relating to this matter is Rule 47,—I am now reading from the statement on the Ordinance—empowering the Central Government to issue directions for delaying action on any class of applications for patents if the Central Government considered it necessary or expedient so to do for the defence of India and civil defence or the efficient conduct of military operations or the maintenance of supplies and services. Now, anybody who knows the first thing about law, knows the expression *sui generis*, that is to say, when you get a number of things of that kind sprung together and you get at the tail-end of that something of this description, such as the maintenance of supplies and services essential to the life of the community, the normal rules of interpretation, in relation to a thing like this, within the Defence of India Rules, would mean matters falling within the same sort of things that have been mentioned before it.

Under the Defence of India Rules, one can say that the main objective was the defence of India or civil defence or efficient conduct of military operations or the maintenance of supplies and services essential to the life of the community in a state of Emergency and of defence and of military operations and so on. Therefore, I submit, the defence argument which is being urged for having held up for all these years the applications for new patents is totally indefensible.

Secondly, the Minister is indeed admitting virtually that it was a misuse of power because he went on to say,—quite unwittingly the cat is out of the bag,—that it was true these applications were held up because, from 1964 or 1963 onwards, they have been intending to pass a new Patents Bill. A Patents Bill was, in fact, put before the House during the earlier Parliament's life in 1964 or in

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1965. And, indeed, the Minister admitted in his reply that while that Bill was under consideration, they did not want to deal with patents. And that, Sir, was the *real* objective; and I do suggest that, if that was the objective, as indeed it was, and the reason why these applications were, in fact, held up was because the Government hoped that the then Patents Bill would be passed by the last Parliament, it was a deliberate,—not merely gross misuse,—but deliberately gross misuse of the powers under the Defence of India Act and the Rules.

Thirdly, the Minister went on to say, —which I thought was an even more extraordinary proposition—that the delaying action was not in the interest of defence or anything at all, but that the delaying action was necessary even now, (although there is a patent law in this country) merely because he has got in hand now the new Patent Bill. Until this new Patent Bill becomes law, he wants to continue the delaying action, *i.e.*, holding up something like 5,800 or 6,000 applications for patents. He wants to hold them up notwithstanding the assurance of late Shri Lal Bahadur Shastri, which only resulted in this that some of these patent applications have been examined and they are ready to be advertised,—those of them that are to be granted. They are ready to be sealed but, Sir, the Minister insists that this action shall not be proceeded with merely because there was an old Bill that was on the anvil and that Bill lapsed and now there is a new Bill on the anvil. Heaven knows how long this will take. I appreciate the Minister's anxiety that this new Bill should be passed in the next session; but I doubt it because the issues involved are very serious. Hence, as a matter of fact, I see no reason whatever, not a single justification in the Minister's statement, either for the way Rule 47 was operated or for the Ordinance or for the Amendment Bill. I, therefore, press my motion that the Ordinance be disapproved.

MR. DEPUTY-SPEAKER: I shall now put Mr. Dandeker's motion to the vote of the House.

The question is :

"This House disapproves of the Indian Patents and Designs (Amendment) Ordinance, 1968 (Ordinance No. 8 of 1968) promulgated by the President on the 6th July, 1968."

The motion was negatived.

14.25 HRS.

INDIAN PATENTS AND DESIGNS

(AMENDMENT) BILL—*Contd.*

MR. DEPUTY-SPEAKER: There is an amendment given by Shri Shiv Chandra Jha for circulation of the Bill for the purpose of eliciting opinion thereon. I now put that amendment to the vote of the House. The question is :

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st November, 1968." (10)

The motion was negatived.

MR. DEPUTY-SPEAKER: Mr. Beni Shanker Sharma is not present.

Now the question is :

"That the Bill further to amend the Indian Patents and Designs Act, 1911, be taken into consideration."

The motion was adopted.

MR. DEPUTY-SPEAKER: Now we take up clause-by-clause consideration.
Clause 2—(Insertion of new sections 78B, 78C, 78D and 78E.)

There are amendments given by Mr. Srinibas Misra, Mr. Lobo Prabhu and Mr. Dandeker.

SHRI SRINIBAS MISRA (Cuttack) : I beg to move :

Page 2, line 9,—

for "by order, prohibit or restrict," substitute "issue directions prohibiting or restricting"(1)

Page 2, lines 27 and 28,—

omit "and thereafter at intervals not exceeding twelve months," (2)

Page 2, line 34,—

for "every" substitute "the" (3)