

LOK SABHA

Wednesday, December 20, 1967/Agrahayana
29, 1889 (Saka)

The Lok Sabha met at Eleven of the
Clock

[MR. SPEAKER in the Chair]

ORAL ANSWERS TO QUESTIONS

POWERS OF GOVERNORS

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*782. SHRI SAMAR GUHA :
SHRI RABI RAY :
SHRI DEVINDER SINGH :

Will the Minister of HOME AFFAIRS
be pleased to state :

(a) whether the opinion of the Attorney-General has been sought by Government with regard to the powers of Governor *vis-a-vis* the summoning of the Assembly in West Bengal; and

(b) if so, the details thereof ?

THE MINISTER OF HOME AFFAIRS
(SHRI Y. B. CHAVAN) : (a) and (b). The general question of the powers of the Governor in regard to summoning of an Assembly was discussed with the Attorney-General who was of the view that the Governor has to act on the advice of the Council of Ministers in this matter.

SHRI SAMAR GUHA : In view of the fact that a serious apprehension has been expressed by the out-going Governor of Bihar, Shri Ananthasayanam Ayyangar, in which he has stated :

"If the present unfortunate trend in certain quarters in Delhi continued, one day there would be Central dictatorship all over the country and bureaucratic intrigues would dominate the political scene... that the duty of a Governor was to listen to the advice of a Chief Minister and his Council of Ministers and sustain a democratically elected Ministry through his own constructive opinion

rather than become an instrument to topple a Ministry brought to power through the process of democracy"

and, further, in view of the fact that the former Advocate General of West Bengal has said that the Governor has the authority to convene an Assembly but he has no right to dismiss a Government, and, in view of the fact that Indian Constitution does not provide a precise and clear-cut directive as to the authority of a Governor to convene an Assembly, dismiss a Ministry and deal with a situation as has been created by the tentative ruling of the West Bengal Assembly, will the Government consider it desirable to institute a Commission with three to five Supreme Court Judges to interpret the Constitution regarding the authority of a Governor in regard to convening an Assembly, dismissing a Ministry without the verdict of an Assembly and dealing with a situation as has been created by the ruling of the West Bengal Assembly ?

SHRI Y. B. CHAVAN : I do not know what is the question. He read from some documents which are not quite relevant to the Question under discussion. He has quoted some views of Mr. Ayyangar. I do not want to comment on the views of the ex-Governor. I may differ from him. But I do not want to comment on his views. As far as the constitutional position is concerned, about the summoning of the Assembly, the Governor has to accept the advice of the Chief Minister. That position is clear.

SHRI INDRAJIT GUPTA : I would like to know whether Government have also sought the opinion of the Attorney-General as to whether there is any constitutional provision whereby, in case the Speaker of an Assembly is considered to have adjourned the Assembly wrongly, the powers can be invoked under article 356 of the Constitution to either remove that Speaker or to have the Assembly suspended without being dissolved and have its powers delegated to the Parliament.

SHRI Y. B. CHAVAN : I will need a notice for this.

SHRI INDRAJIT GUPTA : They are discussing it day and night, all the 24 hours—they do not sleep because of that—and he wants notice. They are spending sleepless nights over it.

SHRI SAMAR GUHA : I want to know from the hon. Minister, if there was any precise and direct instruction in the Constitution as to the function of the Governor in dismissing a Ministry or convening an Assembly, why should there have been a necessity of having an interpretation of the right of the Governor by the Law Ministry ?

SHRI Y. B. CHAVAN : He has asked for my opinion. I thought he was trying to get some information from me. All these questions have been discussed and our opinions and views on this matter have been given here many times and I do not want to repeat the same here.

SHRI C. K. BHATTACHARYYA : Has the Government ascertained the opinion of the Attorney-General whether the Speaker of the Assembly has a right under the Constitution to declare on the legality or illegality of a Ministry formed by the Governor ?

SHRI Y. B. CHAVAN : These consultations go on from time to time. Whether this particular thing was done, I would give the same answer—I would require notice for it.

श्री प्रकाशबीर शास्त्री : अभी हरियाणा, बिहार, पश्चिमी बंगाल—इन तीनों के राज्यपालों के अपने अपने ढंग के निर्णयों को लेकर न्याय शास्त्रियों में तरह तरह के विवाद उठ रहे हुये हैं। किन्हीं का कहना है कि वह उचित है और किन्हीं का कहना है कि उन्होंने अपनी सीमा से बाहर जाकर कार्य किया है। मेरा अपना विचार ऐसा है कि संविधान बनाते समय सम्भव है कि इस प्रकार की कल्पना उस समय संविधान शास्त्रियों के मस्तिष्क में न हो कि ऐसी भी स्थिति इस देश में आयेगी कि जिसमें राज्यपालों के अधिकारों और उन की शक्तियों पर

विवाद उठ खड़ा होगा। क्या इन सारी परिस्थितियों पर—राज्यपालों के अधिकार, उनकी सीमायें और उन की शक्ति—इन तीनों के सम्बन्ध में गृह मंत्री फिर से विचार कर रहे हैं, जिससे कि आगे चलकर फिर इस प्रकार की कठिनाइयाँ पैदा न हों या विधि वेत्ताओं को उनकी व्याख्या करनी पड़े।

SHRI Y. B. CHAVAN : There are no proposals because in order to achieve what the hon. Member has in mind, an amendment of the Constitution will have to be undertaken. There are no proposals to amend the Constitution because it is very difficult. Even if we try to meet some of the difficulties now by the proposed amendments, it will possibly not meet the situation that may develop ten years after or 20 years after. So, it is no use amending the Constitution on this point.

SHRI G. VISWANATHAN : Daily we get some news about the Central Government trying to find some solution for the deadlock in West Bengal. May I know from the Home Minister whether they have at least found some solution for the deadlock in West Bengal ?

Secondly, I want to know whether the Home Ministry has given any instruction to the Governor of West Bengal to bypass the Speaker and again reconvene the Assembly.

SHRI Y. B. CHAVAN : There is no question of giving any instruction from here to the Governor.

SHRI G. VISWANATHAN : The first part of my question has not been answered—whether a solution has been found for the deadlock in West Bengal ?

MR. SPEAKER : He has already replied to Mr. Indrajit Gupta on this point. The same question is being put in a different shape.

श्री शिव नारायण : क्या यह सत्य है कि गवर्नर राष्ट्रपति का रिप्रेजेंटेटिव होता है तथा चूंकि आज देश में एमरजेन्सी पावर्स लागू हैं, इस लिये जहां अराजकता उत्पन्न हो, अवैधानिकता उत्पन्न हो, वहां के गवर्नर को उस राज्य

के बारे में सम्पूर्ण अधिकार होता है? क्या इस पर सरकार प्रकाश डालेगी ?

SHRI Y. B. CHAVAN : I have been asked opinions on the Constitution. It is very difficult for me to give *ad hoc* opinions like that.

SHRI SWELL : The Governor of West Bengal and the Chief Minister of West Bengal have been frequent visitors to Delhi recently and we read in the Press of the confabulations that they have had with the Central Government over the impasse in West Bengal. May I know from the Home Minister whether he has ascertained from the Governor of West Bengal and the Chief Minister of West Bengal as to why they have not been able to convene, or they have not convened, the West Bengal Assembly so far ?

SHRI Y. B. CHAVAN : I have not discussed this question with them.

SHRI H. N. MUKERJEE : In view of the opinion of the Attorney-General that the Governor acts on the advice of the Ministry, may I know how it is that no notice was taken here in the Central Government in regard to the Governor of West Bengal refusing to act in accordance with the advice of the Ministry about the summoning of the Legislature on the 18th December—this was the advice given by the Ministry which has been ousted. How is it that even after 18th December, the Assembly has not been called and yet, no steps in regard to West Bengal, where the Constitution has virtually come to a standstill, have so far been taken ?

SHRI Y. B. CHAVAN : Sir, the position is very clear because the Assembly was called before the 18th December. That was really speaking the point that the Governor took into view that the urgency of the meeting was important. So he called the meeting and we know what happened at the meeting of the Assembly.

SHRI INDRAJIT GUPTA : If the Minister is so particular about . . .

SHRI Y. B. CHAVAN : This is the only point. It is not my being particular about it. The question is : whether the Governor can summon the Assembly against the wishes of the Chief Minister. The

answer is that he cannot. Whether in this particular matter, the Governor gave them the advice to call the Assembly—that was a different situation altogether. We are rather trying to mix up these two sets of things. The only constitutional position that arose was : whether the Governor,—if he disagreed with Mr. Ajoy Mukerji, could not himself under the Constitution summon the Assembly. That is the main point.

SHRI H. N. MUKERJEE : We have been told earlier that according to the Attorney-General's view, which, I hope, the Government shares, the Governor acts on the advice of the Ministry. The ousted Ministry in West Bengal had advised the Governor to call the Assembly on the 18th of December which is day before yesterday. The Governor disregarded that advice and what has happened for the whole month since that time is that the Constitution in West Bengal is on the shelf and life has become impossible. What is the Central Government doing in regard to this? That is what I want to know in view of the clear advice in regard to the legal aspect by the Attorney General and what has happened since.

SHRI Y. B. CHAVAN : The hon. Member his either not understood the question or I have not been able to convey my ideas. Either of the two is happening.

AN HON. MEMBER . Both.

SHRI Y. B. CHAVAN : The question is : what is the constitutional position of the Governor about summoning the Assembly? Can he call the Assembly on his own or is he to accept the advice of the Chief Minister in this matter? And the advice of the Attorney General is that he can only summon the Assembly on the advice of the Chief Minister. Now, Sir, what is the position? What happened in West Bengal is not merely the question, there are many other factors going into it. I do not want to discuss the West Bengal situation as such here.

SHRI HEM BARUA : Since the Indian Governors are the descendants of the British colonial system and the Indian legislatures, although they were described as repositories of the democratic rights and privileges of the people, are the progeny of the Mother of Parliament in Westminster, The

[Shri Hem Barua]

there is a sort of imbalance in the relation of the Governor with the legislative body. In view of that, may I know whether Government is contemplating to evolve any ways and means so as to do away with that imbalance in relationship?

SHRI Y. B. CHAVAN : I do not agree with the first analysis that the Governors are the descendants of the imperial Governors. I do not agree with him in that matter.

The position of the State legislature and the Governor are very well defined in the Constitution and the position under the Constitution is very clear as far as I can see.

SHRI HEM BARUA : Like poetry, the powers of the Indian Governors are indefinable. You have not defined them in the Indian Constitution.

SHRI TENNETI VISWANATHAM : Sir, with reference to the summoning of the Assembly, the Home Minister was pleased to say that the Governor was to act under the advice of the Chief Minister and that was the opinion given by the Attorney General. Was that opinion available before Mr. Ajoy Mukerji's Ministry was dismissed?

SHRI Y. B. CHAVAN : Of course it was.

SHRI TENNETI VISWANATHAM : So, in spite of that advice he was dismissed?

MR. SPEAKER : That is a different question.

श्री सरजू पाण्डेय : क्या माननीय गृह मंत्री के ध्यान में यह बात आई है कि सुप्रीम कोर्ट के 50 वकीलों ने जो बंगाल के गवर्नर ने वहां की सरकार को डिसमिस किया उस के खिलाफ उन्होंने जवाइंट स्टेटमेंट दिया है और साथ ही वहां आन्दोलन भी हो रहा है और साथ ही इस बात को देखते हुये कि अनकांस्टीट्यूशनल ऐक्ट जो गवर्नर ने किया है तो क्या केन्द्रीय सरकार वहां के गवर्नर को रिक्वायर करने का विचार कर रही है ?

SHRI Y. B. CHAVAN : No, Sir.

श्री सिद्ध नारायण : 50 वकीलों की कीमत है कि 50 वकीलों की कीमत है ?

SHRI RANGA : May I know, Sir, whether the Government have refreshed their memory as to what happened in the Constituent Assembly in regard to the suggestion that an Instrument of Instructions should be drafted and supplied to all these Governors and they should be enabled to function in the light of that Instrument of Instructions and without any fear of interference from the Home Ministry from time to time.

SHRI Y. B. CHAVAN : There is no question of the Governors entertaining any fears of the Home Ministry at all because the Governors have got their own constitutional position in this matter.

As far as the Instrument of Instructions is concerned, even when the Constitution was being drafted, this idea was considered, and it was the discretion of the Constituent Assembly or rather the decision of the Constituent Assembly not to do so.

SHRI RANGA : It could be incorporated.

SHRI Y. B. CHAVAN : If there has to be an Instrument of Instructions then it becomes a part of the Constitution, but that was not the intention of the Constituent Assembly. I think the hon. Member himself was a Member of the Constituent Assembly at that time and I think he must be knowing about it also. But what we were discussing sometimes on the floor of the House was whether we could lay down certain guidelines for the guidance of the Governors to function when governments are formed. That was the issue that was being discussed at that time. I had raised this question with some leading constitutional lawyers in the country and their views have been obtained in this matter and I have conveyed those views to some of the leaders of the parties and I am meeting them this afternoon on this point.

श्री जार्ज करनेन्डीज : अध्यक्ष महोदय, गृह मंत्री महोदय ने यह बात कही है कि ऐटार्नी जनरल की सलाह केन्द्रीय सरकार को, बंगाल गवर्नर द्वारा वहां की सरकार को हटाने के पहले मिल गई थी तो मेरा प्रश्न यह है कि क्या केन्द्रीय सरकार ने उस सलाह को जोकि उसे ऐटार्नी जनरल से प्राप्त हो गई थी उस सलाह

को बंगाल के गवर्नर तक पहुंचाने का काम किया था ?

दूसरे अगर नहीं पहुंचाया तो जो एक नई परिस्थिति का वहां निर्माण हुआ है जिसमें गवर्नर को अधिकार न रहते हुये भी उस ने मंत्रि-मंडल को हटाने का काम किया, ऐदानीं जनरल की सलाह केन्द्रीय सरकार के पास रहने के बावजूद भी आप ने उनको उनके काम से नहीं रोका तो यह संविधान की जो पूरी पूरी हत्या हो रही है या जो हो चुकी है उसमें से इस संविधान का संरक्षण करने के लिये सरकार आज क्या सोच रही है ?

SHRI Y. B. CHAVAN : I think there is some misunderstanding about this opinion. The right of the Governor to dismiss a Ministry is a completely different thing. What happened in West Bengal was not merely a question of the acceptance of the advice of the Chief Minister. The only question is whether when the Chief Minister has advised him not to call the Assembly he could call the Assembly. On this point the position is that he cannot do it. But in this particular case of Bengal, the Governor had advised him on the plea that he had lost the majority in the House, to call the Assembly early. When he refused to do that, the Governor took some other action, namely the dismissal of the Ministry. These are absolutely different propositions. This particular constitutional position is not inconsistent with what the Governor did.

SHRI HUMAYUN KABIR : Have Government examined the anomalous situation created by the legal advice that.....

SOME HON. MEMBERS : He is a traitor.

SHRI HUMAYUN KABIR : I will not tolerate this kind of remark by people who are themselves traitors....

SOME HON. MEMBERS : Traitor ! Traitor !

SHRI HUMAYUN KABIR : People who are conspiring with other countries are calling me a traitor in this House. Sir, I seek your protection.

MR. SPEAKER : Order, order. He is an hon. Member of the House and he has a right to participate in this debate.

SHRI HUMAYUN KABIR : I would not tolerate this. This remark should be expunged.

MR. SPEAKER : The remark might have been made for the first time, but I find that it is uttered for a second time. That is not proper. He is an hon. Member of the House.

SHRI HUMAYUN KABIR : Have Government examined the anomalous situation revealed by the advice of the legal advisers to Government that while the Governor cannot summon the Assembly he could dismiss the Ministry for refusing to summon the Assembly ? This is a very anomalous position so far as ordinary commonsense is concerned. Has that been examined by Government ?

SHRI Y. B. CHAVAN : I do not think that there is any inconsistency in this matter. Let me explain one thing. The Governor has no right to summon the Assembly against the advice of the Chief Minister. In the case of West Bengal, the Chief Minister had given him advice to call it on the 18th December, but the Governor wanted it to be called earlier.

SHRI S. M. BANERJEE : Why ?

SHRI Y. B. CHAVAN : That was his decision. I have given the reason for it namely that he felt that the Chief Minister had lost the majority.

SHRI S. M. BANERJEE : He had no right to do so.

SHRI Y. B. CHAVAN : That is his view. That is not my view. Let him try to understand the constitutional position at least as I understand it. He may have different views. I am not quarrelling about it.

The question now is whether the Governor, disregarding the advice of the previous Ministry, could have called the Assembly earlier. The answer was 'No'.

SHRI TENNETI VISWANATHAM : We never asked that question.

SHRI Y. B. CHAVAN : The hon. Member may not have asked that question, but other Members have raised that question, namely whether the Governor could have called the Assembly earlier, dis-

regarding the advice of the Chief Minister. The answer is 'No'.

SHRI S. KUNDU : One of the important aspects of the fourth general election in India is that some of the provisions are being given a trial only after this election. So far as the provisions concerning the powers of the Governor are concerned, two things have emerged in these discussions in the Lok Sabha. One is the question whether the Governor can dismiss a Ministry from his own drawing room and appoint another.

MR. SPEAKER : It is all repetition.

SHRI S. KUNDU : Secondly, what is the content of the advice of the Council of Ministers? The point is that if democracy is to remain in this country, these things should not be left to the interpretation of individuals or political parties. Therefore, I would ask the hon. Member whether he is thinking of bringing forward a constitutional amendment defining the scope of the powers of the Governor....

MR. SPEAKER : Next question.

SHRI S. KUNDU : He must reply. It is a very important question. We swear in the name of democracy.

MR. SPEAKER : Let him resume his seat.

SHRI Y. B. CHAVAN : He is asking whether a constitutional amendment can be undertaken to make that point clear. I have answered that it is not proposed to do so.

~~TRANSISTOR RADIO SETS MADE IN~~
PILANI

*783. **SHRI S. C. SAMANTA :** Will the Minister of EDUCATION be pleased to state :

(a) whether it is a fact that the Central Electronics Engineering Research Institute (CEERI), Pilani, took more than two years in developing a table model transistor radio;

(b) if so, the reasons therefor; and

(c) the steps being taken for its commercial exploitation?

THE MINISTER OF EDUCATION (DR. TRIGUNA SEN) : (a) Yes, Sir.

(b) The development of multi-band table model receivers had to be kept in abeyance

for about one year because during that period higher priority had to be given for the development of a single band transistorised receiver at the request of the Federation of the Associations of Small Scale Industries which had made an offer to the Government to supply low-cost receivers.

(c) The process has been given wide publicity by the National Research Development Corporation and negotiations for licensing the process are in progress.

SHRI S. C. SAMANTA : What percentage of our demand is met from the Pilani Institute and other indigenous sources and which are the countries from which parts are imported and assembled here also?

DR. TRIGUNA SEN : Regarding the model that has been built in the Pilani Institute, the worth of the indigenous component parts was Rs. 189 and the cost of imported components is Rs. 4.90 for a multiband transistor.

SHRI S. C. SAMANTA : Is any other institute in India being encouraged to manufacture these transistors so that the public will be able to get them at lower cost?

DR. TRIGUNA SEN : I do not know which other firms have got the licenses to manufacture them. We in the Pilani Institute have been carrying out research to make an indigenous receiving set. It was completed in 1964. It is in use and we are trying to make the know-how available to anyone who wants to exploit it.

श्री बसवन्त : क्या यह सच है कि हाल ही में छोटे इलेक्ट्रॉनिक निर्माताओं की मीटिंग बुलाई गई थी? यदि हां तो क्या उस में इस पर भी विचार किया गया था कि देश में कम मूल्यों वाले ट्रांसिस्टर रेडियो का जनता के लिये निर्माण किया जाए?

DR. TRIGUNA SEN : Yes, the National Research Development Corporation are, as I said, negotiating with the Federation of the Associations of Small-scale Industries and the cost has been calculated to be about Rs. 85 for single band.

SHRI SRADHAKAR SUPAKAR : Recently there was a news item appearing in the papers that Hong Kong is prepared to