

will have to decide our future course of action, and we will come before the House with that immediately. But beyond that, at this stage, this is not possible to go.

Many things can be argued. If the court has really held that the ratification by the Parliament of the imposition of the President's Rule was unconstitutional and therefore, there is no Government now in U.P. or if there is, anybody claims that there is Government, that is unconstitutional Government, then it is also unconstitutional for the court who has given time upto 26th December. What for have they given time? If according to some friends here, the whole thing is unconstitutional, there is no Government there then, why have they given time upto 26th December? It does not make any logic, it does not make any sense.

Therefore, Sir, whatever we decide to do, we will do and we will inform the House as soon as we receive the copy of that judgement or the report of the judgement. Here, we are well aware of the fact that certified copy of the judgement takes considerable time to come. But the report on the judgement can be obtained. After all, what is the PTI's report? That is also a report. Certainly, as soon as we receive the report which we are awaiting from Lucknow, on that basis, we will decide our future course of action and then we will come before the House with that. We cannot be in a hurry to jump to the conclusion.

Shri Shivraj Patil has said, in my view, everything that should be said and constitutionally proper attitude he has taken. Being a former Speaker of this House, he reacted very sharply to the possibility of there being conflict created between the different organs of the State. Therefore, we have to be cautious and careful.

I may tell you, Sir, though it is my personal opinion, that tomorrow in this country, the way things are being developed... (Interruptions)

MR. SPEAKER : Please listen to him. What is this? You are not understanding, what he is saying.

SHRI INDRAJIT GUPTA : Sir, the way the things are developing in a political situation in this country, there is every possibility that in more than one State, in future, a situation may arise when no party is able to command the majority in the Assembly and may not also be able to form the coalition. Then what will happen? We have to think about these things from now. If such a situation arises what to do? There may be a largest single party — it may not always be the BJP, it may be some other party also.

But I do not know, if the judgement of the court - which we have not had the good fortune to study yet - leads to the conclusion that the largest single party every time should be called in case nobody has got a majority, then that would be setting a completely new precedent and new course of action to follow.

So, we must go into all these matters and I would only humbly request the hon. Members opposite to hold their patience till the judgement is available and further hold the judgement till 26th December.

That is all. I have to say.

MR. SPEAKER : I think, it is okay.

Now, the Legislative Business, Bills for consideration—Item No. 17, Shri Indrajit Gupta.

15.30 hrs.

RE: UTTAR PRADESH STATE LEGISLATURE
(DELEGATION OF POWERS) BILL*

[Translation]

SHRI PRAMOD MAHAJAN (Mumbai-North East) : I have objection on this only.

(Interruptions)

[English]

MR. SPEAKER : Let me see, what he is going to do.

SHRI RAM NAIK (Mumbai North) : Sir, when a discussion on any Bill is to start, normally the Minister makes a statement. Now, the Home Minister should make, first, the statement as to what it contains. He should guide us in this regard and then the debate can start.

MR. SPEAKER : I am calling him for that only.

THE MINISTER OF HOME AFFAIRS (SHRI INDRAJIT GUPTA) : First, Sir, I should be allowed to move the motion for consideration and then I will make a short statement.

JUSTICE GUMAN MAL LODHA (Pali) : Sir, the leave may be granted subject to my objection. I may be heard on that point.

SHRI INDRAJIT GUPTA : By virtue of the Proclamation issued by the President on 17th October, 1996 under Article 356 of the Constitution, the powers of the Legislature of the State of Uttar Pradesh are now exercisable by or under the authority of Parliament. Under Article 357 (1) (a) of the Constitution, Parliament is competent to confer on the President the power of the Legislature of the State to make laws, and to authorise him to delegate, subject to such conditions as he may think fit to impose, the powers so conferred to any other authority to be specified by him in that behalf.

* Published in the Gazette of India, Extraordinary Part-II, Section-2 dated 19.12.96

In view of the otherwise busy schedule of the two Houses, it may not be possible for Parliament to deal with various legislative measures that may be necessary in respect of the State of Uttar Pradesh during the period that it remains under President's rule. There may also be problems if a situation arises which may call for emergent situation...*(Interruptions)*

MR. SPEAKER : He wanted the statement.

SHRI RAM NAIK : When a Minister is making a statement, a point or order can be raised by any Member.

[Translation]

SHRI PRAMOD MAHAJAN : Mr. Speaker, at least I was under impression that you will do something after one and half hour discussion.

[English]

JUSTICE GUMAN MAL LODHA : I have given a written objection, but you are not allowing me to speak. You must permit me to develop the written objection which I have given that constitutionally it has become infructuous and therefore it cannot be moved. Kindly permit us to speak and then you may allow or disallow the written matter.

[Translation]

SHRIMATI SUSHMA SWARAJ : Mr. Speaker, Sir, they haven't moved the Supreme Court as yet, that is why at the moment High courts decision is right and valid.

[English]

SHRI INDRAJIT GUPTA : I was asked to make a statement. Therefore I am making a statement.

MR. SPEAKER : Yes.

SHRI PRAMOD MAHAJAN : I thought that the Minister would seek the permission of the House to withdraw the Bill after hearing the judgement of the High Court.

SHRI RAM NAIK : It appears that though the Proclamation has been declared *ultra vires*, he still wants the House to consider it.

SHRIMATI SUSHMA SWARAJ : The Government has no authority, Sir.

JUSTICE GUMAN MAL LODHA : What I have submitted in the written objection is that on account of the judgement this has become infructuous, unconstitutional and therefore kindly permit me to mention my objection.

SHRI INDRAJIT GUPTA : You may have to deal with the point which is being raised.

MR. SPEAKER : I will deal with this point.

JUSTICE GUMAN MAL LODHA : Kindly permit me to submit my objection. Under the Constitution, Article 357 permits moving of such a Bill for giving the powers of the Parliament to the President for the purpose of legislative business. However, there is a precondition bedrock for this. That bedrock is, When the Proclamation under Article 356 of the Constitution is in force in a particular State and therefore there is a vacuum, how the legislative business is to be transacted. Article 357 says that Parliament can grant these powers to the President of India by passing a law. On this short point I would like to refresh the hon. House about the powers which have been mentioned under Article 357 of the Constitution which I would like to quote to be very precise on this point. While interpreting the Constitution it is always better that we must be precise and exact rather than vague and political. I quote Article 357.

"(1) Where by a Proclamation issued under clauses (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent -

(a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf."

If your honour were to pursue the UP State Legislature (Delegation of Powers) Bill, 1996 which has been introduced, you would know what this in turn says. I am referring to the Statement of Objects and Reasons.

Under the proclamation issued by the President on the 17th October, 1996, the powers of the Legislature of the State of Uttar Pradesh are now exercisable by or under the authority of Parliament. It may not be possible for Parliament to find sufficient time to deal with legislative measures which may have to be enacted. It is therefore proposed that Parliament may, in accordance with the provisions of sub-clause (a) of clause 1 of article 357, which I have just now read, of the Constitution, confer by law on the President the powers of the Legislature of the State of Uttar Pradesh to make laws for the State. The Bill seeks to achieve the aforesaid objects.

Now, I would like to refer to Section 2 of the Bill, which says : "In this Act, 'the proclamation' means 'the proclamation issued on the Seventeenth day of October, Nineteen Hundred and Ninety-six under article 356 of the Constitution by the President and published with the notification of the Government in the Ministry of

Home Affairs of the said date". The power of the Legislature', says clause 3, 'of the State of Uttar Pradesh to make laws which have been declared by the Constitution to be exercised by or under the authority of Parliament is hereby conferred on the President'...(Interruptions)

SHRI G.M. BANATWALLA (Ponnani) : Is he conducting a class? Let him come to the point.

JUSTICE GUMAN MAL LODHA : Kindly try to understand this.

MR. SPEAKER : You have made your point.

JUSTICE GUMAN MAL LODHA : I am raising my objection. The objection precisely in this. Whatever may be the debate on the question of a Government in existence or not in existence; on the question of reasons for placing the proclamation: whether it was on account of initial default or the initial unconstitutionality or on account of subsequent ratification by Parliament - it may be right or wrong - the basic point, the fundamental point is that the proclamation under Article 356 has been...(Interruptions)

MR. SPEAKER : I think, you have made your point.

JUSTICE GUMAN MAL LODHA : On the judgement by the Full Bench of the High Court of Allahabad, there is no dispute. Even Shri Shivraj V. Patil had said...(Interruptions)

MR. SPEAKER : I think, that is enough.

JUSTICE GUMAN MAL LODHA : Kindly try to understand this point because you have to give a ruling.

MR. SPEAKER : I have understood you thoroughly.

JUSTICE GUMAN MAL LODHA : You have to give a ruling on a very important point, on a constitutional point and the whole country is looking as to what ruling is going to be given by the Chair.

What I would submit is this. On the point of placing of notification or proclamation under article 356 of the Constitution, there is no controversy. The controversy is regarding the reasons and the controversy is regarding the propriety and such other issues. Once the bedrock of the proclamation under Article 356 and 357 is removed or once it extinguishes or disappears, then, the question of invoking Article 357 cannot arise. My submission therefore is that the Bill at present, in the background of placing of the proclamation under Article 356 is redundant, unconstitutional, unwarranted. Therefore, it should not be allowed to be discussed.

The hon. Minister of Home Affairs, if he wants to withdraw...(Interruptions)

MR. SPEAKER : Judges should be very, very precise.

JUSTICE GUMAN MAL LODHA : If he wants to consult the Government as to whether it should be withdrawn, he can take time till he studies the implications of the judgement. But, as it stands today, my submission is that it should not be allowed to be discussed, debated and passed.

[Translation]

SHRI PRAMOD MAHAJAN : Mr. Speaker, Sir, I want to request you, this House and the Government to look into this subject apart from the technicalities involved in it. Whether we have made any mistake or not, this will be decided later on. But, at least we shouldn't do any new mistake now. Whatsoever is the Judgement of Allahabad High Court, whatsoever are the reasons behind it and whatsoever are the differences over it but one thing is clear that Article 356 exists in Uttar Pradesh till 25th December.

If Supreme Court delivers a Judgement contrary to the verdict of High Court, only then there can be some change, otherwise according to the Judgement of Allahabad High Court Article - 356 exists for a week only which includes 3 public holidays. In such a condition, if you take over all the rights of Uttar Pradesh Legislature—which have almost revived by the Supreme Court its necessity is beyond my understanding because how long it will exist for, how long we will exercise these rights, about this Bill says that these rights will exist till Article-356 is in practice there. In the prevalent situation Article-356 will remain in force till 25th December, and not beyond that, and Article-357 derives its source from Article-356. And when imposition of Article 356 itself in question lasting only for 5 days then, in such a condition it does not make any sense why is Government in hurry? When Judgement of Allahabad High Court declares it unconstitutional then what is reason for introducing this bill in a hurried manner and taking over rights of the State legislature, I do not understand this. So my submission is that you must not go in its technicalities, this is my request.

MR. SPEAKER : All right, your point is over.

[English]

SHRI JASWANT SINGH : Sir, I want to speak just three sentences. The question relates to the legislative competence. My point of order is about legislative competence. Now, we are at the stage of introduction.

MR. SPEAKER : No, we are at the stage of consideration.

SHRI JASWANT SINGH : Yes, we are at the stage of consideration.

I am raising the point of legislative competence. I seek you guidance in this. This is a very serious issue. I do not think that this House has ever been engaged

in such a problem earlier...*(Interruptions)* So, my first question is: is the House legislatively competent to consider a Bill on a subject which is exactly the same subject on which a Court has just given its ruling? In effect, the court's ruling has placed it on stay. My second question is: is the House legislatively competent to consider and legislate on a subject which is almost *sub judice*?

MR. SPEAKER : Yes, I will give my ruling.

As I have pointed out earlier, as the judgement of the Allahabad High Court will come into effect only on 26th December, 1996, as of today Parliament is competent to consider it. I think I am very clear.

However, I am inclined to agree with Shri Pramod Mahajan. Keeping in view the discussion that took place in the House, I defer the consideration of the Bill to tomorrow. We will take it up tomorrow.

[English]

15.38 hrs.

**PROVISIONS OF THE PANCHAYATS
(EXTENSION TO THE SCHEDULED
AREAS) BILL***

MR. SPEAKER : Let us take up this Bill for consideration.

THE MINISTER OF RURAL AREAS AND EMPLOYMENT (SHRI KINJARAPPU YERRANNAIDU) : Sir, I beg to move :

"That the Bill to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas, as passed by Rajya Sabha, be taken into consideration".

MR. SPEAKER : Motion moved :

"That the Bill to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas, as passed by Rajya Sabha, be taken into consideration".

(Interruptions)

MR. SPEAKER : Mr. Ram Naik, it was agreed that this Bill would be passed without discussion.

(Interruptions)

SHRI RAM NAIK (Mumbai North) : What was agreed was that this Bill might be passed without discussion. But if some hon. Members want to say something, ten or fifteen minutes should be given...*(Interruptions)* We have to raise many important issues regarding this Bill.

SHRI NIRMAL KANTI CHATTERJEE (Dumdum) : What he says is that this Bill may be passed without discussion within fifteen minutes.

SHRI RAM NAIK : There are many issues which are important...*(Interruptions)*

MR. SPEAKER : Rajya Sabha has already passed it. I think it has to be passed because the election are pending.

(Interruptions)

MR. SPEAKER : I think we should pass it now.

(Interruptions)

SHRI RAM NAIK : Sir, I only want to take two minutes. I welcome this Bill. I myself had raised this issue in the last Session...*(Interruptions)*

SHRI SONTOSH MOHAN DEV (Silchar) : Sir, we have told our Members that they cannot speak on this Bill. But if some Members discuss it from that side, then it becomes a problem. There are five Members from our side, but we told them that they cannot speak...*(Interruptions)*

MR. SPEAKER : Shri Ram Naik, we were very clear in the BAC and you are a member of the BAC.

(Interruptions)

SHRI RAM NAIK : Sir, what I am saying is that this Bill gives the right of vote to the zilla parishads, gram panchayats, etc. But those municipalities which are in the Scheduled Areas are not being given the right. There are nine municipalities in my State where elections are not being held. So, from that point of view, I would like to positively have an assurance from the hon. Minister.

SHRI KINJARAPPU YERRANNAIDU : Sir, Shri Ram Naik's point is confined to the Urban Development Ministry. On the day of discussion of this Bill in the Rajya Sabha, the Minister concerned agreed to introduce a Bill in that regard also. It comes under the Seventy-Fourth Amendment which is dealt with by the Urban Affairs Ministry. But this is regarding the Rural Development Ministry...*(Interruptions)*

SHRI RAM NAIK : But are you bringing a Bill for that?

SHRI KINJARAPPU YERRANNAIDU : Okay.

* Published in the Gazette of India, Extra-ordinary, Part-II Section 3, dated 18.12.96.