

>17.37 hrs.

STATUTORY RESOLUTION RE: DISAPPROVAL OF TAXATION LAWS (AMENDMENT) ORDINANCE, 2003

AND

TAXATION LAWS (AMENDMENT) BILL, 2003

Title : Combined discussion on the motion for consideration of disapproval of Taxation Laws (Amendment) Ordinance, 2003 moved by Shri Basudeb Acharia and consideration of the Taxation Laws (Amendment) Bill, 2003, moved by Shri Jaswant Singh. (Not concluded).

MR. DEPUTY-SPEAKER: The House shall now take up Item No. 19 and 20 together.

SHRI BASU DEB ACHARIA (BANKURA): Sir, I beg to move :

"That this House disapproves of the Taxation Laws (Amendment) Ordinance, 2003 (No.2 of 2003) promulgated by the President on 8th September, 2003."

THE MINISTER OF FINANCE (SHRI JASWANT SINGH): Sir, I beg to move:

"That the Bill further to amend the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Expenditure-tax Act, 1987, be taken into consideration."

SHRI SHIVRAJ V. PATIL (LATUR): Sir, I am objecting to the Government having issued so many Ordinances. Certainly, the Constitution gives them a right to issue Ordinances but this right is given to the Executive to cope up with the difficult situations. When there is an urgency or an emergency, this is done, and not in ordinary course. Even when the House is meeting in one month's time, they are issuing Ordinances. And, the consequence of Ordinances is that when the Ordinance is placed before the House and when the Bill is moved here, it does not go to the Standing Committee.

Sir, this House has provided that the Bill should go to the Standing Committee for dispassionate examination by a small group of MPs who are interested in matters of this kind.

Now, here the Government is using this power of promulgating Ordinances in order to get any law passed by this House. This is denigration of legislature itself. Why has the Government done it? What is the explanation of the Government? What was the urgency? The Government has to explain this when the Ordinance is moved. We would like to know what the urgency was and why the Government has done it. We are not finding fault with any individual as such, but we are finding fault with the attitude of the Government to the legislature itself, the Parliament itself. What for this Parliament exists? You promulgate the Ordinance, you send it to the President and then you come here and say that this is an Ordinance and so, it has to be passed. What was the urgency? Why was it done? We would like to know that. Not one Ordinance was promulgated, but there are seven of them. Seven Ordinances have come to the House promulgated within a month's time. They could not wait even for one month or they could not wait for two months. What was the urgency? We would like to know that.

SHRI BASU DEB ACHARIA : This Government, during the inter-Session period, always promulgates a number of Ordinances. Last time also, this was pointed out by me. Last time, at least six Ordinances were promulgated during the inter-Session period.

This time, seven Ordinances were promulgated, and that too, all these Ordinances were promulgated within one week. The House was to meet on the first week of December. This Ordinance was promulgated on the 8th September 2003. There was no urgency, as I could see from the Statement of the Minister made in regard to the circumstances which had necessitated immediate legislation on Taxation Laws. Now, this Ordinance is to be replaced by an Act. But there was no urgency.

A number of times, there have been observations by the Chair that the Government should not ordinarily resort to

promulgation of Ordinance. The first Speaker of Lok Sabha, Shri Mavlankar, on 25th November 1950 had observed:

"The procedure of promulgation of Ordinance is inherently undemocratic. Whether an Ordinance is justifiable or not, the issue of a large number of Ordinances has psychologically a bad effect. The people carry an impression that Government is carried out by Ordinances. The House carries a sense of being ignored, and the General Secretariat perhaps get into the habit of slackness which necessitates Ordinances. And an impression is created that it is desired to commit the House to a particular legislation as the House has no alternative but to put its seal on matters that have been legislated upon by Ordinances. Such a state of things is not conducive to the development of the best parliamentary relations."

He again wrote a letter to the First Prime Minister of India on the 15th December 1950, wherein Shri Mavlankar had said like this.

"I think all of my colleagues will agree with me that the issue of Ordinance is normally not desirable and should be avoided except on special and urgent occasions. But when such an occasion may or may not arise, it is a matter of judgement. Not only Government of a State but private Members of Parliament are continually urging that new legislation should be passed. The parliamentary procedure is sufficient to give fullest opportunities for the consideration and debate and to check errors and mistakes creeping in. That is obviously desirable. But all this involves considerable delay. The result is, important legislation is held up. Every Parliament in the world has to face difficult problems and various proposals have been made to overcome them."

In regard to Ordinances on financial matter and on taxation, a specific observation was made by the first Speaker of Lok Sabha. On 15th November 1971 when the Deputy Minister of Parliamentary Affairs sought to lay on the Table copies of 13 Ordinances issued by the President during preceding inter-Session period, an objection was raised that never before in the history of Parliament so many Ordinances were issued during any particular inter-Session. Then the Speaker observed:

"I agree with you that so many Ordinances should not have been issued. I personally think it is not a light matter to be ignored. "

In regard to Ordinances which had imposed certain levies, the Speaker observed:

"If you think that there should be some distinction between financial and non-financial and tax and non-tax Ordinances, there is nothing in my knowledge on which I can base my ruling. Shall I say that I do not approve of an Ordinance just at the time when the House is about to meet?"

Sir, these are the observations made by the first Speaker of Lok Sabha, Shri Mavalankar. Now these Ordinances were promulgated in the month of September. We find that there was no urgency. What is the proposal of the Government? It says that the interest rates prevailing in the market were falling and there was an urgent need to revive the interest rates payable by the assessee or payable to the assessee under Income Tax Act of 1961.

When did the Minister find that interest rate is falling and that an immediate Ordinance has to be promulgated to arrest it? Was it in the month of September? If it was in the month of July, why was a Bill not brought? The Standing Committees are there. The Speaker had observed that all the Bills which are introduced in the House should be sent to the Standing Committee and those Bills should be scrutinised by the Standing Committee. But when an Ordinance is promulgated, there is no scope for its scrutiny by the Standing Committee. It has to be passed by Parliament. Why is this wrong procedure being adopted and a wrong precedent is being set by this Government?

In the last Session, at least six Ordinances were promulgated and passed by this House and this time seven Ordinances have been promulgated and now they have been brought before the House. What was the necessity for this? Another reason has been given by the Minister that certain problems were being faced by the exporters of wood based handicraft items who despite exporting about 100 per cent of their said products, could not avail of the benefits which are available up to 100 per cent to export oriented units and units in the Special Economic Zones.

It is because they were unable to comply with the associated conditions such as custom bonded warehouses,

restrictions on transfer of goods, complete restrictions on the use of indigenous wood etc. In view of this, an urgent need was felt to provide for special deduction of 100 per cent of profit derived from the export of wood-based handicraft items. I support this proposal. But I do not find any urgency in this. The hon. Minister could have waited for this Session and brought in a Bill on this. The Standing Committee is always asked to give their recommendations expeditiously. Maybe, within 15 days the Standing Committee also could have scrutinised the Bill and it could have been brought before the House. But that procedure has not been adopted here. I do not find any urgency in this matter.

Sir, why is it only in case of wood-based handicraft items? When you are allowing it for wood-based handicraft items, why are you not allowing for other items as well? There are thousands of artisans who are dependent on an economic activity based on conch shells. The customs duty was increased to 30 per cent on this. Previously there was no customs duty for importing conch shells. The hon. Minister had reduced it but still there is a five per cent customs duty on this item. I requested him saying that when he has reduced it to five per cent, why can he not totally exempt the poor artisans from paying a duty on import of conch shells from countries like Sri Lanka? Thousands of artisans are dependent on an economic activity based on this in the State of West Bengal.

Sir, I do not find any urgency in regard to the concessions that is being proposed to be given to the ship wrecking industry not in our country but for those in foreign countries. This was not anything urgent. The Government could have waited for this Session.

Sir, I oppose this move of the Government of bringing in so many ordinances in order to avoid the Standing Committees. Without any urgency they have brought in all these ordinances. Also, the observations made by the former Speakers on a number of occasions are also not being complied with by this Government. I want your observations on this as to whether resorting to so many ordinances are undemocratic or not, an issue on which there have been so many observations by former hon. Speakers of this House. I would request you to give your observations.

MR. DEPUTY-SPEAKER: There are already precedents of such things. I can only repeat them.

SHRI BASU DEB ACHARIA : Sir, you please repeat them.

SHRI SHIVRAJ V. PATIL (LATUR) : Sir, this is a very strange case. This is exactly surrendering the economic sovereignty of the country. Some of the foreign companies are wanting to have some kind of concessions and so this is being done. The Government should give them concessions by all means but not by avoiding the House. Heavens would not have fallen if it was brought in the form of a Bill. Seven ordinances have been promulgated. This Legislature should hold the Government accountable for this kind of a legislative activity. They are doing it in favour of some foreign companies. This is all the more reason for us to take objection to their promulgating ordinances. We are saying what we have to say. The former Presiding Officers have said what they wanted to say and yet this practice is being continued. Can they not be told that this is not to be done? If it is done, then it is neither favouring the Opposition nor the Ruling Party. This is patently wrong. The Constitution has given the Government the right to promulgate an ordinance but that is for overcoming a difficult situation. But this has become a regular practice. There are seven Ordinances. Seven Ordinances mean seven laws. If we are sitting here for 15 days, half of the period will be devoted to Ordinances. Should it be neglected? Should it not be considered by us and that too, when it is in order to favour somebody who is coming from outside? This is not correct. This should not be done. Why is it done? This point should be explained.

SHRI A.C. JOS (TRICHUR): Sir, I have also given notice on the promulgation of Ordinance.

MR. DEPUTY-SPEAKER: You may participate in the debate. Now there will be a reply for the Statutory Resolution.

SHRI A.C. JOS : Before the reply, I want to say something as I have also given notice.

MR. DEPUTY-SPEAKER: When there would be a proper discussion, the reply would also be there.

SHRI A.C. JOS : I have given a notice to speak on the promulgation of Ordinances. I associate myself with what my Deputy Leader as well as my hon. colleague have said. Normally, I would not have spoken. But, this has become the order of the day. This Government has become a Government of Ordinances. As Shri Acharia mentioned just now, six Ordinances have been promulgated during the inter-Session period and this is the seventh Ordinance.

As regards this amendment, it started from the Finance Bill. We passed the Finance Bill nearly a year back. At that time, the Government should have thought over all these things. Ordinance is meant for emergency and exigency, and for an urgent thing to be done. In this case, the Government, after having passed the Finance Bill, could have looked into the provisions. The Government has not looked into them. The Government has come *fait accompli* to us. It is pre-emptive action of this honourable House. We do not have to discuss anything. It has come now with *fait accompli* and these things are to be done. The hon. Deputy Leader suggested here that it is to favour some foreign

companyâ€¦â€¦ (Interruptions)

SHRI PRABODH PANDA (MIDNAPORE): Sir, I have also given notice.

SHRI A.C. JOS : Especially when action is taken on finance, when taxation law is amended or when laws relating to wealth tax is amended, these things are deliberated very seriously and elaborately in the House.

MR. DEPUTY-SPEAKER: Shri Jos, there is going to be a proper discussion for two hours. You will be getting a chance to speak.

SHRI A.C. JOS : We want your observation as well as a reply from the Government on this point.

MR. DEPUTY-SPEAKER: I have already given my observation. I am only joining my predecessors.

SHRI A.C. JOS : You are joining your predecessors and I am also joining mine. I am not going into it. What I am submitting before this honourable House is that the Government should not take this House for granted so far as this system of promulgation of Ordinances is concerned. The President is obliged to sign any Ordinance which is placed before him by the Cabinet. The Cabinet is taking us for a ride. This is not possible. That is why, we very strongly demand that Ordinances cannot be passed in this House and so, it should be withdrawnâ€¦... (Interruptions)

SHRI PRABODH PANDA : Sir, I associate with my hon. colleague, Shri Acharia.

MR. DEPUTY-SPEAKER: You will get a chance to speak. The Bill is going to be discussed for nearly two hours.

I want to go on record as repeatedly said by Shri Acharia and Shri Shivraj V. Patil. Unless and until emergencies and exigencies are there, promulgation of Ordinances should be avoided. Otherwise, it will be a sort of a short cut from this House. And the Government may take note of it.

SHRI JASWANT SINGH: Indeed, Sir. Mr. Deputy-Speaker Sir, there cannot be two opinions what you and other hon. Members have stated about the desirability or otherwise of Ordinances. Of course, ordinances are not desirable. It is much better not to take recourse to promulgation of Ordinances. They are infinitely pressurable on any day rather than the normal legislative process. However, as you recognise and, I am sure, the hon. Members of the Opposition recognise, we need to issue Ordinances on occasions of exigencies and hence, there is a constitutional provision.

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Otherwise, the Constitution would not have provided it.

MR. DEPUTY-SPEAKER: Mr. Minister, how much time do you need to complete because I have to extend the time of the sitting of the House?

SHRI JASWANT SINGH: I will finish in about five minutes.

MR. DEPUTY-SPEAKER: Is it the pleasure of the House to extend the time of the sitting of the House till the hon. Minister finishes his speech?

SEVERAL HON. MEMBERS: Yes.

MR. DEPUTY-SPEAKER: The time is extended till the hon. Minister finishes his speech.

SHRI JASWANT SINGH: The statement under the Rules of Procedure and Conduct of Business in Lok Sabha has accompanied the Ordinance proper, but I would very briefly explain that the Government was to place this Taxation Laws (Amendment) Bill before the Parliament during the last Session itself. I will not go into the reasons as to why the Government could not do it. We had prepared the Bill. It was in the list of pending Bills. We could not do it.

Now, I wish to particularly refer to an observation made by certain hon. Members that we are giving benefit to some foreign companies through this Ordinance. Let me explain that the Government had entered into an agreement – this is an old agreement – with the Nordic Investment Bank which has been set up by the Nordic countries, by all the Nordic countries together. It was agreed that that Investment Bank will have certain taxation benefits. In the Finance Bill of 2003, inadvertently this was left out. In terms of the agreement, it was required that the interest paid to the Bank on loans advanced by the Bank to Indian concerns was to be exempt from tax. This was to be introduced in the last Finance Bill itself. Inadvertently it could not be done. As it involved an international agreement, the Ordinance was brought. It is not as if the Government went out of its way to provide benefits to some foreign concerns. Such benefits are available to a number of concerns as this was an extension of the commitment of that agreement. That is why it was brought in.

The other aspect of the Bill has been properly discussed. Large representations were received from a number of State Governments that traders across the country have pointed out certain difficulties on these rates of tax specified, considering the normal profit margins of the business. As it is the routine, even after the Finance Bill is passed, quite often the Finance Ministry or the Finance Ministers do carry out certain fine tuning of the tax rates so that neither the revenue nor the assessee is made to suffer.

The other aspect relate to benefit provided to 100 per cent Export-oriented Units like wood-based, handicraft and artisan-based industries. Representations were received from the State Governments also that this is in fact hurting the interests of the artisans. That is why it was done.

Ship-wrecking industry has developed as one of the major industries in certain coastal States of India, particularly in Gujarat. In fact, what has happened in Gujarat is that it has taken away the ship-wrecking industry from Karachi. Ship-wrecking industry has become an industry which was concentrated in Karachi. Through the enterprise of the ship-wrecking industries here in India, it was taken away from Karachi.

SHRI SHIVRAJ V. PATIL : What is the urgency?

SHRI JASWANT SINGH: I am explaining this.

The urgency was that in a ship-wrecking industry, when a ship is obtained, the whole ship is obtained before wrecking on certain credit. Tax Deducted at Source provisions that we have were inhibiting the ship-wrecking industry. Again on representations from State Governments and to ensure that what has become a major employment industry is developed so that we do not hurt it and we do not again enable the ship-wrecking industry to go to Karachi, we have moved through this Ordinance. We had earlier intention to have the Bill in the last Session.

But because we could not do it and it was necessary to make these corrections, therefore, the Government made these corrections. I would request the House also to simultaneously consider these corrections.

MR. DEPUTY-SPEAKER: Motions moved:

"That this House disapproves of the Taxation Laws (Amendment Ordinance, 2003 (No.2 of 2003) promulgated by the President on 8 September, 2003."

"That the Bill further to amend the Income-tax Act, 1961, the Wealth-tax Act, 1957 and the Expenditure-tax Act, 1987, be taken into consideration."

The House stands adjourned to meet tomorrow, the 9th December, 2003, at 11 a.m.

18.05 hrs.

*The Lok Sabha then adjourned till Eleven of the Clock
on Tudesday, December 9, 2003/ Agrahayana 18, 1925 (Saka).*
