

Friday, 16th December, 1932

THE
COUNCIL OF STATE DEBATES

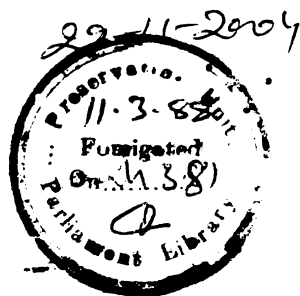
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COUNCIL OF STATE.

Friday, 16th December, 1932.

The Council met in the Council Chamber of the Council House at Eleven of the Clock, the Honourable the President in the Chair.

BENGAL SUPPRESSION OF TERRORIST OUTRAGES (SUPPLEMENTARY) BILL.

THE HONOURABLE MR. M. G. HALLETT (Home Secretary): Sir, I rise to move:

“That the Bill to supplement the Bengal Suppression of Terrorist Outrages Act, 1932, as passed by the Legislative Assembly, be taken into consideration.”

THE HONOURABLE RAI BAHADUR LALA JAGDISH PRASAD (United Provinces Northern: Non-Muhammadan): Sir, I rise to a point of order. Sir, my point of order is that the Bill which you want us to consider has not been properly and legally laid on the table. I refer to rule 25 of the Indian Legislative Rules which runs as follows:

“Every Bill which has been passed by the originating Chamber shall be sent to the other Chamber, and copies of the Bill shall be laid on the table at the next following meeting of that Chamber.”

My point is that a copy of this Bill was not laid on the table at “the next following meeting” of our Chamber. Mark the words “next following”. I think, Sir, that on Wednesday last when this House was sitting from 11 o'clock in the morning and continued its sitting up to about a quarter to five in the afternoon and the Legislative Assembly, having passed the Bill after the lunch hour that very day, the meeting of our Chamber that day which was already in progress and at which the Bill was laid on the table cannot possibly be the next following meeting. Another point, Sir, on which I must lay great stress and the importance of which I am sure you will realise is that this difficulty cannot be met by laying the Bill on the table of this House today or on any day hereafter because the words of the rule are imperative that the Bill should have been laid on the table of the House yesterday when we had a meeting. This defect cannot, in my opinion, be rectified now. And I am afraid that you, Sir, have not the power to amend, alter or suspend this rule because according to section 129A(1) of the Government of India Act, the rules made by the Governor General in Council with the sanction of the Secretary of State in Council shall not be subject to repeal or alteration by the Indian Legislature or by any local Legislature. And you, Sir, I am sure, will agree with me that, if the Indian Legislature has no power to repeal or alter any of these rules, you, as President, cannot possibly have that power. Such power can only be derived either under some rules or the Government of India Act or the Standing Orders; and none of these provide the power for you, I am afraid. Therefore, my contention and humble submission is that the Bill is not legally before the House and it is not possible now or hereafter to lay this Bill on the table of this House, as the next following meeting referred to in rule 25 was held yesterday. My further contention

[Rai Bahadur Lala Jagdish Prasad.]

is that you cannot rely on any practice that might have hitherto been followed in this House, if at all,—because I am not aware of any such practice,—as no practice or custom, however favourable it may be under the present circumstances, can possibly override the clear words of the rule made under the Government of India Act. So far as I can see, the rule is absolutely clear on the point and I ask you, Sir, to give a ruling in its favour.

Sir, please do not think that by raising this point of order I am moved by any obstructive or capricious spirit. That is farthest from my mind. I am raising this point of order in a helpful spirit because I feel that the whole proceedings with regard to this Bill will be illegal and may be questioned in a Court of Law hereafter that the Act was not legally passed.

THE HONOURABLE THE PRESIDENT: There is, no doubt, some force in the ingenious point of order which was raised by the Honourable Member from the United Provinces. The rule is as he has stated it. But he has asked me at the end not to rely on any practice set up in this House. Honourable Members are aware that on previous occasions Bills have been laid in this House on the same day in which they have been passed in another place. They are also aware that that practice was established and adopted solely for the convenience of the Honourable Members of this House. The Honourable Member might, of course, have raised this point in time the day before yesterday when late in the evening the Bill was laid. Had he done so, it would have been quite easy to regularise matters, if they were irregular, by having the Bill laid yesterday. He very rightly points out that the next following meeting now having passed, no laying of the Bill now would remedy any defect if there is one. The Chair is prepared to rely on the practice which has hitherto been adopted in applying rule 25 and to hold that the Bill was legally laid in this House.

THE HONOURABLE MR. M. G. HALLETT: Sir, I do not think it is necessary for me to speak at any great length on this Bill. I am fully confident that this House will accept the motion which I have moved and will accept the further motion that this Bill be passed. My confidence has a substantial basis. It is based on the fact that in September last during the Simla session this House passed a Resolution moved by the Honourable Mr. Miller which was to the following effect:

“That this House, while deploring and expressing its horror at the outrage which occurred at Calcutta on Wednesday evening last, when a second attempt was made on the life of Sir Alfred Watson, urges upon Government the necessity for further immediate and drastic action with a view to crushing the terrorist movement in Bengal and for mobilising the forces of public opinion to this end”.

That motion was carried unanimously and Honourable Members showed their readiness to take what measures were considered necessary by Government against the terrorist movement. I ask them now to implement in a practical form the promise and undertaking that were then given.

To refer briefly to the provisions of the Bill, I must at the outset explain the provisions of the Bengal Act. It has a somewhat high-sounding title, but I trust that that title will be justified and that it will

have the effect of suppressing terrorist outrages in that province. That Act was, I may remind the Council, passed by a very large majority in the Bengal Council. It was passed by men who are living in the midst of this terrorist movement, who know the conditions prevailing in certain districts and who have full knowledge of the various outrages which have been committed in Bengal during the last two or three years. At the first reading it was passed by a majority of over 50; at the third reading there was very nearly as large a majority, and it was carried by 58 votes to 12. The Bengal Council showed that they were prepared to take the responsibility for legislating on these lines, and it is up to this Legislature to support them in every way that they can. The Bengal Act consists really of two parts. The first part, Chapter I, which is called "Emergency Powers", gives certain powers to the District Magistrate and other executive officers which have by experience been found necessary. They have in particular been found necessary in the district of Chittagong in order to enable the authorities to cope with the movement in that district, which as Members are well aware was more serious than in other parts of the Bengal Presidency. These powers were originally given by an Ordinance shortly after the Chittagong armoury raid which took place in April, 1930, and gave the local authorities power to deal with the absconders of that gang who are still at large in that district. I need not detail the powers. The Act gives, for instance, powers to the District Magistrate to exercise greater control over arms and ammunition and to prohibit access to certain places, and increased powers in regard to the issue of search-warrants and matters of that kind. That is one portion of the Act. The second portion of the Act deals with judicial procedure. In dealing with the terrorist movement it is essential that when cases are instituted, they should be completed without any of the harassing delays which sometimes occur, I regret to say, in the criminal courts of this country. They provide that the less important cases against terrorists shall be tried by Special Magistrates; the more important ones will continue to be tried as at present by the Tribunals which are established under the Bengal Criminal Law Amendment Act. The Special Magistrates will try the cases mentioned in the Schedule and will have in effect the powers given by the Criminal Procedure Code in section 90 to Magistrates in the non-regulation provinces, that is to say, they are empowered to try any case not punishable with death and are also empowered to impose a sentence up to seven years. That Act has been passed by the local Legislature. But the local Legislature has no power to pass any Act which affects the jurisdiction of the High Court of Judicature in Calcutta. It is therefore necessary for the Central Legislature to pass an Act which affects the jurisdiction of that Court. In the first place, it is necessary to provide for appeals to the High Court. The Bengal Act provides that in all cases tried by these Special Magistrates, whatever the sentence, however low it may be and for whatever period—in all cases where a sentence of fine or imprisonment is imposed, an appeal lies to the Court of Session. In Calcutta, however, there is no Court of Session, and therefore appeals in cases tried by the Special Magistrates in Calcutta must go before the High Court. Further it is thought desirable that where heavier sentences are imposed, that is to say, sentences of transportation for a term exceeding two years or imprisonment for a term exceeding four years, the appeal instead of going to the Court of Session should go direct to the High Court. Provision to that

[Mr. M. G. Hallett.]

effect is made in clause 3 of the present Bill. Clause 4 reproduces section 19 of the original Act. Section 19 of the original Act runs as follows :

“Except as provided in this Chapter—(that is, the Chapter dealing with the special powers given to the Executive to which I have referred briefly)—no proceeding or order purporting to be taken or made under this Chapter shall be called in question by any Court, and no civil or criminal proceeding shall be instituted against any person for anything in good faith done or intended to be done under this Chapter”.

That section is designed to protect the executive officers in carrying out their dangerous duties in combating this movement. Their action might be rendered entirely ineffective, if, for instance, when a Magistrate has issued a search-warrant to search a house, somebody went to the civil court and obtained an injunction that that warrant should not be executed. It is also to protect the police officers and others who are often risking their lives in dealing with this movement from the harassment which they might be subjected to if any discontented person brought against them subsequently a civil suit or a criminal proceeding. It is to be noted that this clause only applies to what has been done in good faith by these officers. The Bengal Council have thought fit to exclude the jurisdiction of the local civil courts in these matters, and this Council is now asked to supplement that by excluding the jurisdiction of the High Court. As I have explained, Calcutta stands in a different position from the rest of Bengal. In Calcutta the High Court has original jurisdiction. The Bengal Council having taken away the original jurisdiction of the civil courts in Bengal, clause 4 of the present Bill has the effect of taking away the original jurisdiction in these matters from the High Court of Calcutta. The remaining clause, clause 5, is designed to expedite the trial of cases under this Act before Special Magistrates, to take away the power of revision ordinarily exercised by the High Court and to prevent any delay in the trial of those cases. As I have said, the accused in these cases have a full right of appeal. They have in fact a further right of appeal than that given by the Criminal Procedure Code, and hence the necessity for revision is not so great. As is well known to Members of this Council and as pointed out while discussing the Bill in the last session for amending a certain section of the Criminal Procedure Code, cases may be very seriously delayed by means of dilatory motions filed before the superior appellate court. It is that which we want to avoid in these cases.

Those, Sir, are the provisions of this simple Bill. It is one of the measures necessary to deal with the terrorist movement, a movement which has been universally condemned, which has been condemned on two occasions by this House and which this House, I feel sure, will continue to condemn until the movement finally comes to an end. It is a movement directed not merely against the present Government, not merely with the object of changing the present Government, but it aims also, as one can see from the various pamphlets and bulletins which are issued by the leaders of this party, at making a complete change, a revolutionary change, by the most foul methods of the whole system of society as it exists at present in Bengal. If that movement spreads, if that movement is not got under control, it will be a serious menace not only to Bengal but also to the rest of India, for the disease is an infectious one. I admit there are other methods of combating a movement of this kind, but we have got to use every weapon that may be available, and

if there is any relaxation on the part of Government, then the evil will again grow as it grew during the years 1929-30. I am glad to say that there are signs, small signs I admit but some signs, that conditions in Bengal are improving, or at any rate, not to be unduly optimistic, that they are not deteriorating. The measures which have been taken, the passing of this Act by the Bengal Legislature, the deputation of troops to several different centres in the province, have had a re-assuring effect on the population. In the chief towns of Eastern Bengal committees have been formed to do what they can to assist the authorities in dealing with the terrorists, and I am glad to say that some Members of this Council have taken their share in that work. All that is for the good, but in addition to the efforts of private individuals, in addition to the mobilisation of public opinion which was referred to in the Resolution passed last September, Government and its executive officers must have full and sufficient powers to deal with these misguided youths who, with the aid of the bomb and the revolver, place the lives of Government servants in danger from day to day in the districts of Eastern Bengal. Sir, I ask the House to support this motion that the Bill be taken into consideration.

THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE (East Bengal: Non-Muhammadan): Sir, I can not record my silent vote for the passage of the Bill before us, without making any observation on its provision that curtails the powers of the High Court. Sir, terrorism being a canker in the body-politic of the country, especially in the province where I come from, it should be removed by all possible means and there can be no two opinions about it. Terrorism can never "deliver the goods" nor can it reach the people even somewhere near the "Promised land." Terrorism has besmirched the fair name of Bengal and it is high time that it was extirpated out of the country with the help of Legislatures, both local and central. Sir, the Bengal Legislative Council has passed the Bill by a thumping majority and it is no use asking this Honourable House to throw it out now when we have no sympathy, either direct or tacit, with this movement. I should not take up the further time of this House by digressing on terrorism and the incalculable harm it is doing. In a word, Sir, it is retarding the progress of the country and a patriot or nationalist who calls himself a nationalist should always condemn it as a thing that stands in the way of our attaining Dominion Status. Sir, what I want to say is that even the terrorists, the worst enemies of the country and the State, must be given the chance to be tried in the High Court. Sir, clause 5 of this Bill—however amended by the Honourable the Law Member—so far as I have been able to understand, takes away the right of appeal to the High Court from persons sentenced to two years or under, under this Act

THE HONOURABLE MR. M. G. HALLETT: Sir, might I explain on that point? The right of appeal to the High Court is not taken away by section 5.

THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE: I am glad to hear that. Sir, people have faith—implicit faith—in the traditional justice of the High Court and it is very regrettable that this Bill would restrict the right of such persons to prefer appeals to the High Court for justice. However, considering the situation in the country I do not oppose the Bill as it is intended to suppress the terrorists, but Government should always remember that they are also striking terror in the hearts of the people

[Mr. Jagadish Chandra Banerjee.]

by some unnecessary harsh laws. And, when we say that terrorism must go, it must go from the country as well as from the powers-that-be; otherwise enactment of such laws will not be able to remove the discontent from the minds of the people.

THE HONOURABLE DIWAN BAHADUR G. NARAYANASWAMI CHETTI (Madras: Non-Muhammadan): Sir, I rise to support the motion before the House. The Central Legislature is asked to give certain powers to the High Court, but as a matter of fact this Bill clearly indicates that every accused has a right of appeal. Under the provisions of section 107 of the Government of India Act, the High Court's power of superintendence is not taken away by section 5 of this Bill. That is beneficial to the accused persons. They have always had the right of appeal to the High Court. Terrorism must be put down with an iron hand, and I am sure this House, as promised in the Simla session, will give a unanimous vote for the enactment of these provisions and this House will not be divided. I am glad to hear that my friends of the Progressive Party are all going to support it and that this Council will give its unanimous support. I need hardly say that there should not be protracted trials in these cases. The House will remember the enormous cost with which the Government are faced on the Meerut trial. I need not mention the other case as it is still *sub judice*. But these provisions will, I hope, put down terrorism as quickly as possible. Sir, I have great pleasure in supporting the Bill.

THE HONOURABLE MR. BIJAY KUMAR BASU (Bengal: Nominated Non-Official): Sir, I am greatly re-assured by the speech just delivered by my Honourable friend the Whip of the Progressive Party. Sir, I thought that the Ordinance Bill which we considered only the other day aimed at three faiths, communism, civil disobedience and terrorism. I should have thought that the views now expressed by my Honourable friend Mr. Banerjee should have made him support the other Bill also. I say, Sir, that it took my breath away when I read the proceedings of this Council of the September session in Simla. My friend the redoubtable Deputy Leader of the Progressive Party, who unfortunately is not present in his seat now, and my friend, the Honourable Mr. Natesan, a journalist and publicist of 36 years' standing, had in no uncertain terms said in Simla that they were going to support the Government in any drastic measure that they might propose to introduce to suppress the terrorist movement. If you, Sir, would allow me the liberty, I shall quote the exact words used by my Honourable friend Mr. Hussain Imam on that occasion. It was on the 26th September, 1932 that Mr. Hussain Imam said:

"We can have nothing but condemnation for any form of movement which wants to subvert or remove a settled form of Government. We are all united with the Government in every possible effort that it wants to make to erase this evil, and I hope, Sir, that when the Government bring forward their measure they will find that these are not empty words"

To my mind they are very pregnant words which were belied when he voted against the Ordinance Bill the other day. My friend, Mr. Natesan, said practically the same thing on the 30th September, 1932:

"In so far as Government initiates measures even of a drastic character to put down this movement I will give my most cordial support and I trust that people not only here but also elsewhere who are interested in rooting out terrorism will do so cheerfully and faithfully"

Sir, I confess that it took my breath away when I found these two Honourable Members voting against the Ordinance Bill. I join in the request of the Honourable the Home Secretary that at least on this Bill they will vote for the measure before us so that the House may be unanimous. A great American thinker has said that consistency is the foible of weak minds, and certainly I cannot accuse my friend the Deputy Leader of the Progressive Party or my friend Mr. Natesan, a publicist and journalist of 36 years' standing, of possessing weak minds.

Sir, with regard to the provisions of the Bill, the Honourable the Home Secretary has made them perfectly clear before the House. In the Bengal Council this Bill was passed by a very large majority. They knew what they were about; they are the people on the spot, and their having passed the Bill by a very big majority shows that the province wants that this sort of weapon should be in the Government armoury to cope with the terrorist movement; and I may remind the House that the Legislative Assembly also has passed this Bill by a very large majority. I appeal to this House therefore not to divide on this question but to support this Bill unanimously. The terrorist movement, although it is now confined to Bengal and another province, may go on from province to province like an infectious disease and be a real menace to a settled and peaceful form of Government.

THE HONOURABLE MR. G. A. NATESAN (Madras: Nominated Non-Official): Sir, I am exceedingly sorry to find that the speeches of one of my colleagues and myself have resulted, particularly after Mr. Basu's recovery from a recent illness, in more or less his breath being stopped. I am very sorry that it should have done so. But if he had cared, as a lawyer and as an attorney who is supposed to be much more careful than the average lawyer or barrister, to note the facts and study the case, he would have noted at least so far as my utterance was concerned, my observation was made with regard to terrorism. That stands and that will stand. I am quite consistent; but if my Honourable friend Mr. Basu, who has needlessly dragged in all this, had cared to understand the scope of the Bill and the nature of its effect, he would have seen that the Ordinance Bill which we passed the other day adopts measures not only to deal with terrorism, but civil disobedience and a number of other things. Supposing, for instance, a barber thought that a certain gentleman was unpatriotic or highly objectionable, if he would not shave, under the provisions of the last Bill we have passed, he is liable to punishment. I can quite understand regulations and measures to compel, for instance, a shopkeeper to sell articles if for any reason he refuses to do so. Wide and drastic powers which are given under the Bill that we passed on the last occasion are different from measures adopted to suppress terrorism and terrorism only.

THE HONOURABLE MR. BIJAY KUMAR BASU: That Bill included terrorism also.

THE HONOURABLE MR. G. A. NATESAN: If the Bill was confined to terrorism only I should have supported it. But my Honourable friend knows—it is only an interpretation of English and I hope he will give me some credit for understanding—that it referred to terrorism, civil disobedience and a number of other things and I certainly think that I was perfectly within my rights in opposing the last Bill.

THE HONOURABLE MR. BIJAY KUMAR BASU: I never questioned the Honourable Member's rights.

THE HONOURABLE MR. G. A. NATESAN: That Bill referred also to the press. The Emergency Press Act of the last session was considerably amended. I had myself intended to say a few words on the last occasion but I got no opportunity. I think we are quite consistent. There are many other Bengali gentlemen who blow hot and cold; I daresay my Honourable friend Mr. Basu is an exception, an enviable exception. There are many others who want to suppress terrorism, but they, I understand show their sympathy to terrorism in different other ways. That is what I hear happens in Bengal. At least so far as my province is concerned there is no such necessity, and I think my Honourable friend Mr. Basu, before he tries to set right others, may try to set right his own countrymen. I am very sorry that he has thought fit to make these observations. I did say that I would stand by any measure to suppress terrorism and this Bill is solely confined to that and that only. I therefore give my support so that Mr. Basu may breathe in peace.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab: Non-Muhammadan): Sir, I had no mind to speak today as I had only decided to support this Bill when that motion came before us, but the attack of the Honourable Mr. Basu on the Honourable Mr. Syed Hussain Imam has prompted me to say a few words in defence. The Progressive Party decided to oppose the Ordinance Bill, not because they were in favour of the civil disobedience movement in any of its forms, but because it did not approve of the method of the measure which was put before it by the Government to suppress civil disobedience. What we thought was that the Government ought to have gone to the root of the trouble and not to have gone only to the superficiality. We find that the severer the punishment more people would care to take it easy. I myself opposed the Bill because I thought that the Government were gradually going to methods adopted in olden times. If this measure did not succeed, Government would bring in some more severe measures and then perhaps resort to punishments inflicted in olden times, *viz.*, a thief would be punished by having his hands cut off and if a speaker uttered what was objectionable under the law his tongue would be cut off, and legs cut off of one convicted of picketing and so on and so forth. So, it is not because that we are in sympathy with the civil disobedience movement in any of its forms that we opposed the measure but we did so as we did not approve of the method adopted. We are as eager as the Government to get the civil disobedience movement suppressed (Hear, hear), but we differ as regards the procedure that has been adopted. Mr. Basu's attack is quite unfair.

THE HONOURABLE MR. E. C. BENTHALL (Bengal Chamber of Commerce): Sir, this debate began with expressions of unanimity. Subsequently I observed some slight difference of opinion, but I am convinced that it will end in unanimity, and I should like to make one observation only, that without the devoted service of the officers of the Government concerned in suppressing this movement we should not be able to put this Act into force and the House would not be able to see its wishes fulfilled. I am sure that I am voicing the sentiments, the unanimous sentiments, of the whole of this House in expressing our appreciation of

the staunchness of the officers of Government concerned, be they Europeans, Moslems or Hindus, in combating this movement under the constant threat of assassination.

THE HONOURABLE THE PRESIDENT: The question is:

“That the Bill to supplement the Bengal Suppression of Terrorist Outrages Act, 1932, as passed by the Legislative Assembly, be taken into consideration.”

The motion was adopted.

Clauses 2, 3, 4 and 5 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. M. G. HALLETT: Sir, I rise to move:

“That the Bill, as passed by the Legislative Assembly, be passed.”

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Saturday, the 17th December, 1932.