

16.45 hrs.

STATEMENT BY PRIME MINISTER *RE:*
BOFORS ISSUE

THE PRIME MINISTER (SHRI VISHWANATH PRATAP SINGH): Sir, we are trying to take the House into confidence on the Bofors issue because the Government has taken a decision to debar Bofors from future contract and also taken a decision to review the present contract. In that context, I am sharing with the House as to what was the background in which we have come to this decision,

Sir, ever since the news broke in April, 1987 that large payments had been made as commissions by Bofors into secret Swiss bank accounts in connection with the 155 mm gun contract with the Government of India, the entire nation has been most anxious to know all the facts. The Government of India immediately came out with the statement that the news-item was false, baseless and mischievous. The then Government also said that during negotiations it had "made it clear that the Company should not pay any money to any person in connection with the contract." Many felt assured that the Government would deal effectively with the culprits because the statement also promised that "Any breach of this policy by anyone will be most severely dealt with".

2. A few days later in April, 1987, the then Minister of Defence stated in Parliament that Government did not approve of the appointment of Indian agents acting for foreign suppliers and that the Defence Secretary had told the Companies bidding for the contract that the Government of India will disqualify a firm in case it comes to its notice that an agent had been appointed by a foreign firm.

3. The Report of the Swedish National Audit Bureau was made available to Government in June, 1987. Even though a vital portion of this Report was withheld by the Swedish Government, it clearly established that very large payments had been made by

Bofors to various persons in connection with the Indian contract. This demolished the then Government's case that the allegations earlier made in the media were false and baseless.

4. The records show that there was a flurry of activity on the receipt of the Swedish National Audit Bureau Report. The then Government immediately took the decision to go about setting up a Joint Parliamentary Committee to enquire into the whole matter. The then Rajya Raksha Mantri, Shri Arun Singh, recorded a note on 10th June, 1987, which I would like to quote in full. It reads as follows:—

"On 4 June, in meeting held in FNO, we were informed that the Swedish Government had forwarded a copy of their National Audit Bureau Report on the 'Bofors' case to our Government and that the Swedes were going to make the document public based on various discussions held on CCPA, Cabinet and with opposition leaders, Government of India announced it's decision to establish a Parliamentary Committee to examine the Swedish findings etc. Since then no further discussion have been held with us and no further announcements made. In sum, the Swedis have confirmed the following:—

- (a) Payments of 100000 SAK per month to Anatronc General Corporation in India.
- (b) Payments of 31.5 million SAK to an account in Switzerland in November/December' 86. The payee is not stated but could be 'Lotus' (whoever that is?)
- (c) Payments of something between 175-250 million SAK as 'winding-up' charges to 'others'.

In replying to the debate in the Rajya Sabha, I had made the following basic points:—

- (a) GOI policy was that no payments were to be made to anyone as commission in relation to this contract.
- (b) This policy had been communicated both to the company (Bofors) and to the Swedish Government.
- (c) This communication had been understood by both those parties and they had recommended that understanding to us.
- (d) Therefore, if any payments had been made, "there must be something wrong with that payment".

Taking this logic further, I then went on to say that we as Government are very interested in finding out if anything has been paid and, to quote: "If we find something has been paid, we will definitely pursue each of these questions: what? When? Where? how? to whom? and why?" It is my understanding that the National Audit Bureau Report has confirmed unequivocally that payments have been made and I stand by my statement in the Rajya Sabha that such payments are grossly violative of all stated GOI policy as communicated to and understood by both Bofors and the Swedish Government. It must therefore follow that we as GOI must pursue this matter to a logical conclusion in terms of the questions I myself had posed in my reply to the debate. Given the above, I have taken the liberty of asking officers of the Department of Defence to draft two letters—one to Bofors and one to the Swedish Government. In these we are seeking answers to our questions. I recommend that we send these to our Ambassador in Sweden for him to deliver. He should be told that he should inform both the Swedish Government and the company that unless they give us the information we want, we will have no alternative but to cancel the contract for the FH 77 B 155 mm Powitzers.

I am fully cognisant of the fact that this cancellation will have some negative impact on our Defence preparedness but you may

like to reconfirm with COAS whether we can live with that. In my view we must be prepared to go to this extent of cancellation because our very credibility as a Government is at stake and what is worse, the credibility of the entire process of Defence acquisitions is also at stake.

I would be most grateful if this note and the draft letters could be forwarded by you to the Prime Minister after you have seen them."

Shri Arun Singh put up this note to the then Raksha Mantri, Shri K.C. Pant, with the request that the note along with the draft letters proposed to be addressed to Bofors and to the Swedish Government be forwarded to the Prime Minister. Shri Pant signed this note in endorsement on 11th June '87 and put it up to the former Prime Minister.

5. On this, the former Prime Minister recorded a minute which reads as follows:—

"It is unfortunate that MOS/AS has put his personal prestige above the security of the nation before even evaluating all aspects. I appreciate his feelings as he had been dealing with Defence almost completely on his own with my full support but that is not adequate reason to be ready to compromise the security of the nation. Has he evaluated the actual position vis-a-vis security? Has he evaluated the financial loss of a cancellation? Has he evaluated the degree of breach of contract by Bofors if any? Has he evaluated the consequences for all future defence purchases if we cancel a contract unilaterally? Has he evaluated how rival manufacturers will behave in the future? Has he evaluated how GOI prestige will plummet if we unilaterally cancel a contract that has not been violated? To the best of my belief the Swedish Audit report upholds GOI position and does not contradict it. What we need to do is to get to the roots and find out what precisely has been happening and who

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all are involved. Kneejerk reactions and stomach cramps will not serve any purpose. RRM has run the Ministry fairly well but there is no reason to panic, specially if one's conscience is clear."

6. Unfortunately, this minute recorded by the then Prime Minister on 15th June, 1987 was received in the Ministry of Defence only on 21st July, 1987 a few days after Shri Arun Singh demitted office on 18th July 87. In the meantime, however, communications were sent to the Swedish Government and to Bofors. The Ministry of Defence wrote a strong letter on 16th June, 1987 to Bofors charging them with violation of the contract and breach of a solemn assurance that no agent or middleman would be employed by them and demanding full and detailed information from the Company with regard to these payments.

7. Towards the end of June, 1987, the Ministry also sought the opinion of the Attorney General for India. In his opinion,—I am laying* that opinion on the Table of the House—received on 4th July, 1987, the AG expressed the view that "if AB Bofors have engaged an Indian agent, it is contrary to the condition precedent to the contract and Government of India has an option either to treat them as a breach and sue them for damages or to keep alive the contract and sue them for breach of warranty." He also maintained that there could be "no other payment which they could legitimately make for winding up of any alleged agency agreement as nothing of that sort was disclosed by them to Government of India except the service contract on payment of 100,000 SEK per month."

8. The AG also expressed the view that "Bofors has no right to claim that the Company has to maintain secrecy as of utmost importance especially within defence area." He said that if the matter goes into arbitration

or to Court, it would be governed by Indian law and Bofors "will be bound to disclose the particulars of the alleged middlemen and the payments made to them." The AG went on to advise that "the Government should take a firm stand even to the extent of threatening Bofors with the consequences of termination of the contract in view of the breach committed by them of the conditions precedent to the contract." At the same time, the AG cautioned that "in the event of cancellation, litigation by way of arbitration is inevitable. Though the Government of India has a strong case, one cannot always predict the outcome of litigation or arbitration."

The AG also noted that the Government may have to make alternative arrangements for the purchase of guns, if required. But "if Bofors persist and continue to adopt this persistent attitude of non-disclosure, there seems to be no other option left for the Government than taking stern steps."

9. Then there is the recommendation made by the former Chief of Army Staff, General Sundarji, conveyed in two notes in June-July, 1987. His note dated 15th July, 87 which is similar to the one recorded on 13th June, 1987 reads as follows:—

"Reference discussion in RRM (A)'s office of this morning. My views on the strategic implications are contained in the succeeding paragraphs.

"It is essential that we get the full information as to the moneys paid to various individuals by Bofors or their agents in connection with the gun deal. They may readily give us this information; however, we should go to the extent of threatening to cancel our contracts if they do not part with this information.

"M/s Bofors have invested vast amounts, marshalled a large workforce and commissioned a number of sub-contractors to execute the contract. A threat to cancel the contract will hurt

*[See No. LT.—265/90]

them enough to make them understand the inescapable requirement to part with complete information.

"If the threat does not work, and in the worst case leads to the cancellation of the contract, I believe that the delay in procurement of 155 mm guns would perhaps be about 18 months to 2 years. I believe that we could live with this delay and take a calculated risk. Negotiations will have to be re-opened soonest with France and the UK, so that we can get a near matching weapon system to fill the large void in vital artillery support to our field formations. If we negotiate with both France and the UK, the former will not be able to hike up their prices.

"In sum, I recommend that in the interest of vindicating National Honour we apply full pressure on Bofors to part with the information needed for legal action against the culprits and accept the risk that this might in the worst case lead to a cancellation of the contract."

10. The first and only significant disclosures by Bofors were made in their discussions with the officers of the Government of India in September, 1987. It then came out that an amount in excess of 319 million kroners, corresponding to Rs. 64 crores at the then prevailing rate of exchange, had been paid by Bofors to three companies, namely, Svenska, AE Services and Pitco-Moresco-Molneao. Even though the record of discussion stands already published in the various newspapers, it would be useful to take note of certain facts contained in the records. While giving details, Bofors admitted that in the case of the Moresco the payments were made into code-named accounts viz. that of Lotus. They have also admitted that except for Moresco, the payments were made through normal banking channels. It is interesting that payments to Moresco were not made through banking channels. *Prime facie*, this is strong evidence to indicate the clandestine nature of those irregular payments.

11. Certain definite conclusions emerge from the facts recapitulated by me on the basis of the record. In brief, these are:

One, that Bofors committed a violation of the Contract and a breach of solemn assurances not to use agents or middlemen in connection with the Indian contract. This conclusion has been clearly recorded in June '87 by the Defence Secretary, by Shri Arun Singh, Minister of State, and by the Defence Minister, Shri K.C. Pant. It was also the opinion given by the Attorney General for India on 4th July, 1987.

Two, it was also established that Bofors had paid large sums of money relating to the Indian Contract and had entered into an agreement with one company, namely, AE Services, in November, 1985, well after they were clearly informed of Government of India policy in day, 1985. It is of course obvious that they did not agree to divulge this information to the Government of India despite repeated requests.

Three, Legal opinion is available on record, holding that the company's conduct amounted to an actionable wrong and that the Government were entitled to know the names of the recipients and to recover the amounts.

12. It is established on record that the officers and Ministers concerned at that time were all of the view that action should be taken against Bofors on these grounds. This was supported by legal opinion. In fact the Attorney General also mentioned in his opinion that if Bofors plea of secrecy were tenable then, and I quote, "they can violate the condition precedent insisted upon by the Government of India and agreed to by them to the effect that there should be no middlemen. They can with impunity enter into a contract with a middleman and on the pretext of secrecy can refuse to divulge particulars. This cannot be the true position....."Unquote.

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In other words, the condition itself becomes futile if they are allowed with impunity to avoid disclosing the details.

13. The decision of the present Government to debar Bofors from future contracts is a natural consequence of the facts established and the views available on the records of the Defence Ministry.

14. As regards the existing contracts it is important to recognise that the situation prevailing in 1987 was one in which a cancellation, or the threat of cancellation, would have been very effective. In mid-1987, the fulfilment of the Contract was still in the initial stages and its cancellation, therefore, would have meant a real and significant loss of business to the supplier. Moreover, the consequent loss of employment may well have caused serious concern not merely to Bofors but also in other quarters. Of the two contracts, namely, the Supply Contract and the Licence Agreement for Licence Production in India, the Supply Contract stands nearly fulfilled and the Company has already received the bulk of the payment due to them.

15. The preparatory work for the implementation of this Licence Agreement is near the stage of finalisation, but its implementation has not commenced. We have now to review all relevant aspects pertaining to these contracts.

16. The enquiries conducted so far have failed to inspire public confidence. Only a preliminary enquiry has been instituted by the CBI as late as in November, 1988 and that too for tax evasion and concealment of income. The Public Prosecutor of Stockholm in Sweden had started enquiries in this case and had made a request for assistance through Interpol in September 87. This request was considered in a meeting held on 1st October 1987. taken by the Home Minis-

ter, and attended by the Minister of State, Shri Chidambaram, Special Secretary (A) of PMO and Defence Secretary, and it was decided to divert this request to JPC. It seems that no response was made and no cooperation was extended to the Public Prosecutor in Stockholm, Sweden.

17. As regards the exercise undertaken by the JPC in which the Opposition parties declined to participate it is too well-known for me to repeat it again here. Considerable time has elapsed since the allegation first made in April 87 and those involved in the case have had plenty of time and opportunity to cover the tracks and build up their alibis. This is a situation which we have inherited.

18. Our first step has been to expeditiously review, the relevant records and to re-assess the existing position with a view to revitalising the investigative effort necessary in this case. We have also issued orders to debar Bofors from future contracts, as I said earlier, thereby putting the Company on notice that we mean business.

19. In conclusion, I would like to reiterate the resolve of this Government to enforce the law, recover the amounts paid and ascertain the identity of the recipients. There is no compromise on this. For if no action is taken on default of such a contract condition, parties to future contracts would not be deterred from violating such conditions in the future. We have instructed the investigative agencies to pursue their inquiries and investigations as per law. (At the Government level, the review of the whole case is underway and very soon the matter is going to be taken up with the foreign Governments through diplomatic channels and with the Swiss authorities in terms of the Memorandum of Understanding between India and Switzerland.) I would like to assure the House that this matter will be pursued to its logical conclusion keeping the Parliament and the people informed of progress.