

MR. CHAIRMAN: The question is:

"That leave be granted to introduce a Bill to provide for the acquisition and transfer of the undertakings of Messrs. National Company Limited with a view to securing the proper management of such undertakings so as to subserve the interests of the general public by ensuring the continued manufacture, production and distribution of articles made of jute, which are essential to the needs of the economy of the country and for matters connected therewith or incidental thereto."

The motion was adopted.

SHRI PRANAB MUKHERJEE: I introduce† of the Bill.

STATEMENT RE. NATIONAL COMPANY LIMITED (ACQUISITION AND TRANSFER OF UNDERTAKINGS ORDINANCE

MR. CHAIRMAN: Item No. 17-Shri Pranab Mukherjee:

THE MINISTER OF COMMERCE AND STEEL AND MINES (SHRI PRANAB MUKHERJEE):

I beg to lay on the Table an explanatory statement (Hindi and English versions) giving reasons for immediate legislation by the National Company Limited (Acquisition and Transfer of Undertakings) Ordinance, 1980.

14.24 hrs.

ASSAM STATE LEGISLATURE (DELEGATION OF POWERS) BILL*

MR. CHAIRMAN: Item No. 18—Shri Yogendra Makwana.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI YOGENDRA MAKWANA): I beg to move for leave to introduce a Bill to confer on the President the power of the legislature of the State of Assam to make laws.

MR. CHAIRMAN: Motion moved:

"That leave be granted to introduce a Bill to confer on the President the power of the Legislature of the State of Assam to make laws"

SHRI CHANDRAJIT YADAV (Azamgarh): Sir, I want to oppose the introduction of this Bill. I fail to understand why this most unusual step has been taken by the Government. For so many months the Assembly in Assam has been kept in a suspended animation. And I can understand that there is a special situation prevailing in Assam. So, the elections have not taken place, and the Assembly is perhaps not in a position to meet. But the Parliament is there. This Parliament has already passed 2 Votes on Account for Assam. This step by the Government to give this power to the President to Legislate on behalf of the Legislature of Assam is most unusual. This is against the spirit of the Constitution. I don't think this has happened at any time. The President is there, and he has been issuing ordinances in extraordinary situations.

I have been trying to look into the Constitution to see what can be the provision under which President is being given power by this House. The only Article which I could identify—may be the Law Minister will be able to explain to me—is Article 70 of the Constitution, which says:

"Parliament may make such provision as it thinks fit for the discharge of the functions of the

†Introduced with the recommendation of the President.

[Shri Chandrajit Yadav]

President in any contingency of provided for in this Chapter."

The Chapter which gives power to the President to function deals with his normal duties. This chapter does not give that power. There is no other chapter except this one, which makes a special provision for special contingency.

The present move is most undemocratic. This Article is in respect of a special situation, i.e. if there is any extraordinary situation e.g. perhaps when the House is also not sitting, and the Assembly is suspended. In that case also, the President can—as always—issue ordinances. I fail to understand why this Article is being invoked in this particular situation. This is against the principles of parliamentary democracy. Now the Legislature is there. In a special situation, it has been suspended. But by this Bill the President is given blanket powers. The President will legislate; he will make any law, and that law will not come to the House once this House passes this Bill and gives this power to the President, i.e. the Power of the Legislature of the State of Assam. This is a Bill "to confer on the President the power of the Legislature of the State of Assam to make laws." It means giving blanket powers to the President. The president can make any law which will not come even before this House, which is the highest democratic forum in a parliamentary democracy.

So, I think this Government is not only misusing Article 70 but it is working against the very spirit of the functioning of parliamentary institutions in this country. The House should not agree and leave should not be given to give a blanket power to the President.

I do not know what kind of law the President will issue tomorrow. If

the ordinance is there, at least there is a guarantee that it will have to be placed before the House. The House will have an opportunity to express its opinion on that ordinance. But once we give this power, the President can come out with any kind of law. With these words, I submit that this leave should not be given by this House.

SHRI K. MAYATHEVAR (Dindigul): I rise to support and welcome the introduction of this Bill, in the interests of the innocent and law-abiding citizens of Assam... (*Interruptions*).

AN HON. MEMBER: Are you opposing or supporting it? (*Interruptions*).

SHRI K MAYATHEVAR: I only express my opinion. (*Interruptions*).

MR. CHAIRMAN: Mr. Law Minister.

SHRI INDRAJIT GUPTA (Basirhat): I am seeking a clarification. Is this a sort of back-door method of bringing in the President's rule—or what is this? Parliament will not be concerned, and only the President will be given powers. We would like a clarification.

MR. CHAIRMAN: The Law Minister will give you the proper reply.

THE MINISTER OF LAW, JUSTICE, AND COMPANY AFFAIRS (SHRI P. SHIV SHANKAR): At this stage what has to be gone into is the competency of Parliament. My friend referred to Article 70. It occurs in Part V i.e. here the power of the Executive vis-a-vis the President has been mentioned. We are not relying on Article 70 at all, because that Article deals with Executive powers. We are relying on Article 357(1)(a), i.e., where the

President's rule is ushered in. Article 357(1) (a) says:

"Where by a Proclamation issued under clause (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 improve, the power so conferred to any other authority to be specified by him in that behalf."

What we are invoking is Art. 357 (1)(a) where the Parliament has got the power to confer on the President the power of the State Legislature so that for ordinary matters we may not come every time before Parliament and the President could proceed further. It is only to save time of this House and to proceed further. It is only to save time of this House and to proceed further—matters normally to be dealt with by the Legislature—that having regard to the circumstances it was deemed fit to bring this to the notice of the House and invoke this provision. Therefore, there is no question of incompetency of the Parliament; the Parliament is quite competent.

SHRI CHANDRAJIT YADAV: At this stage, you are saying you are concerned to save time of the House. We appreciate your concern because you would like this House should not function at all.... (Interruptions).

SHRI P. SHIV SHANKAR: I regret your understanding.
(Interruptions)

MR. CHAIRMAN: He means to say that this House has some more important work to do.... (Interruptions).

SHRI CHANDRAJIT YADAV: It is for the House to decide.

PROF. MADHU DANAVATE (Rajapur): The President has got a lot of work to do.

(Interruptions)

SHRI CHANDRAJIT YADAV: Does it mean that when we pass this Bill, the President can make even financial provisions for Assam? Two Votes on Account have been passed in this House. Does it mean that Assam Assembly should not pass its regular Budget? Now the Vote on Account has been taken for a certain period. Beyond that period, does this empower the President to make a financial provision without bringing that before the House? (Interruptions).

SHRI INDRAJIT GUPTA: Let them examine this matter in detail.

SHRI CHANDRAJIT YADAV: It cannot be hurried like that. (Interruptions).

PROF. MADHU DANAVATE: It is very clear that when this Bill is passed, it becomes an Act. (Interruptions).

MR. CHAIRMAN: You simply ask this question whether after passing this Bill, whether President will have the power to make laws; regarding financial matters.

SHRI P. SHIV SHANKAR: No, no, not at all. If it is a case of financial matters, we will have to come here.

(Interruptions)

SHRI CHANDRAJIT YADAV: It is not your sweet will only.

(Interruptions)

PROF. MADHU DANAVATE: The Law Minister probably has not examined this problem. There is no obligation. Once this Bill becomes an Act, the President, if he so desires,

[Prof. Madhu Dandavate]

even on financial matters, need not come to the Parliament at all.

(Interruptions)

SHRI SATISH AGARWAL (Jaipur): I do not know if the government is very much clear on this issue. This is a very important issue.

SHRI CHANDRAJIT YADAV: Let them go into all these facts and after taking into consideration all these things, consider this matter. Only then the House can discuss it.

SHRI P. SHIV SHANKAR: For budgetary provisions, we have already come before the House. That is what I have said that with reference to financial matters, we are not allowing the President to make the Law, because we have already made it. (Interruptions).

SHRI CHANDRAJIT YADAV: No, no, this is not the answer.

SHRI P. SHIV SHANKAR: This power is something different.

SHRI CHANDRAJIT YADAV: Suppose the suspension continues beyond this financial year, then what will happen?

SHRI P. SHIV SHANKAR: Then the President having the power . . .

SHRI CHANDRAJIT YADAV: Now you say the President having the power . . .

SHRI P. SHIV SHANKAR: I think power is something different from exercising the power. As I said, so far as Assam's Budget is concerned, it has already been passed by this House. Therefore, the President is not going to pass laws with reference to the budgetary matters. But after that period, if it becomes necessary the President could pass them. I am not denying that fact.

SHRI CHANDRAJIT YADAV: Now the Minister is contradicting himself. You look into the record. He earlier said that it does not mean that he will have the financial powers. Now, he says: I am not denying the fact; if it happens the President will have that power too. That means he has expressed two opinions which are contrary.

SHRI P. SHIV SHANKAR: The budget having been passed, the President will not exercise that power.

MR. SPEAKER: Why should we waste more time on this? It is a legal argument; he can say one way and you can say another way.

SHRI CHANDRAJIT YADAV: It is not waste of time. If you go into the matter, the position is this. The Minister says that this Bill does not empower the President to exercise financial powers. Now after second thoughts, perhaps after consulting the Finance Minister, he says: I am not denying that after the Bill becomes an Act, the President will have that power too. He argues that because financial provisions had been made and passed for certain period of time, it is not necessary for the President to exercise that power. Now, I am saying: suppose the suspension of the assembly goes beyond that financial year or period, in that case, according to his second opinion the President will exercise financial powers too. Therefore, I am saying that it is going to be a serious matter. The President is being authorised by this House to do this. It has never happened—bypassing legislature, bypassing parliament. They want to vest the President with that power also. It is a serious matter. The House should not take it lightly. It will be beginning of the most undemocratic functioning.

PROF. MADHU DANDAVATE (Rajapur): As far as this Bill is

concerned, there will be certain aspects which will be enabling aspects and certain aspects will be obligatory. Just now, the hon. Law Minister said: we had come before the House and in future also for such financial matters we would come before the House. What exactly are the powers? He himself admits, after our query, that if the President feels that he should exercise the powers, the matter need not be referred to Parliament, it need not come up to Parliament, budgetary provisions need not come before Parliament. It is only a gentleman's word that the Minister for Law had given us, that we have to rely upon. Here I may quote a precedent. When in this very House MISA was enacted, the Home Minister and the Prime Minister had assured us in the pre-Emergency days: we give an assurance, a solemn assurance to the opposition that though we are going to enact MISA it will not be utilised against political workers. As irony would have it, all of us who raised objection were victims of MISA. That is what will happen to an oral assurance given on the floor of the House. Let us go by the legal provisions. As far as legal obligations are concerned, once it becomes a law the President has theoretically full powers to see that even financial matters are not referred to Parliament at all.

THE MINISTER OF FINANCE
(SHRI R. VENKATARAMAN: I would draw your attention to article 357(1)(a) of the Constitution which says "for the President to authorise when the House of the People is not in session expenditure . . ." That is the difference. When the hon. Law Minister said that the President has power, he meant the power which is conferred under article 357(1)(c) when Parliament was not in session; President can authorise expenditure. All this discussion is unnecessary. If Parliament is in session we will have to come to Parliament; if it is not

in session the President can authorise the expenditure.

SHRI SOMNATH CHATTERJEE
(Jadavpur): May I ask a clarification from the legal Finance Minister? Article 357(1)(b) is concerned with powers to impose duties, etc. Kindly see, every power has been conferred here under 357(1) (b). Any taxation proposal can be covered without coming under 357 1(c)—when the Parliament is not in session by executive fiat any proposal can be made for making expenditure out of the State Consolidated Fund. The basic question is that there is not even a Committee of Members of Parliament with regard to Assam. There is no participation of peoples representative in framing any laws that may be passed if this law is enacted and Bill is passed. Therefore, the position is this. The parliamentary process is being completely subverted. The Assembly has been kept in suspended animation. That has not been dissolved. Members of Parliament are not taken into confidence as to what law will be passed. The House will have no occasion even to discuss that law. It will not come before the House. It is not like an ordinance. Even financial power is conferred on executive authority. It is a law which may be passed in the normal course. Our opposition is on principle that with out any participation of peoples representatives you are giving completest power to the executive to pass any law including financial laws and taxation proposals. That is why we are opposing. This is not a matter which has to be sought to be coordinated between our Finance Minister and the Law Minister as to what is to be done in future.

Some qualification has been given by the hon. Law Minister and by the Legal Finance Minister. That is a point of very great importance on principle. That should not be taken lightly on party basis. That is why we are opposing the introduction.

SHRI YOGENDRA MAKWANA: I only want to add that there will be a Committee of 30 Members belonging to the Lok Sabha to be nominated by the Speaker and 15 Members from the Rajya Sabha to be nominated by the Chairman, Rajya Sabha. The President wherever practicable, will consult the Committee before enacting the law.

MR. CHAIRMAN: The question is:

"That leave be granted to introduce a Bill to confer on the President the power of the Legislature of the State of Assam to make laws."

The motion was adopted.

SHRI YOGENDRA MAKWANA: I introduce the Bill.

14.43 hrs.

MATTERS UNDER RULE 377

(1) REPORTED IMPOSITION OF TRANSPORT TAX BY TAMIL NADU GOVERNMENT ON TOURIST BUSES PLYING ON INTER-STATE ROUTES

SHRI P. RAJAGOPAL NAIDU (Chittoor): The Government is committed to develop tourism in our country and, therefore, it is giving all encouragement to it and developing the tourist centres.

Having this in view the Government is taxing the tourist buses only in one State, though they are entering into other States. This is making the task of the tourist easier as the charge they have to pay is not prohibitive at present.

Recently the State Governments in Southern part of India met and came to an agreement to tax these tourist buses belonging to other States in every State. Accordingly Tamil Nadu Government issued a notification on taxing the tourist buses which are coming from other States. This has become a great

burden among the tourist bus operators. If all the Southern States follow T. N. Government and tax tourist buses coming from the other States, then the tourist has to bear the charges twice or thrice the present charges. If all the States in India adopt the same method, then the charges of the tourist will be increased five or six times. Then tourism will become prohibitive and beyond the limits of middle class persons. Then it would be a great setback to tourism and ordinary people will not be able to tour other States. Government should consider this aspect of the question and see that tax will not be levied on the tourist buses, except in one State.

(ii) OVER PRODUCTION OF ONIONS IN BIHAR RESULTING IN DISTRESS SALE

श्री रामावतार शास्त्री (पटना) : सभापति जी, मैं नियम 377 के अधीन यह सूचना सदन में देना चाहता हूँ:

“बिहार के प्याज उत्पादक किसानों पर संकट

बिहार की गणना उन राज्यों में की जाती है जहाँ प्याज की खेती अधिक होती है। इस वर्ष वहाँ अत्यधिक प्याज की उपज हुई है। लोगों का कहना है कि इतनी अच्छी उपज पिछले कई वर्षों में नहीं हुई थी। परन्तु प्याज की अधिक उपज का नतीजा यह हुआ कि किसानों को उसे मिट्टी के माल बेचने को मजबूर होना पड़ रहा है। किसानों को लागत से बहुत कम कीमत मिल रही है।”

सभापति महोदय: मध्य प्रदेश सारी प्याज भिजवा दीजिए, सब बिक जाएगी।

श्री रामावतार शास्त्री: मैं यही बता रहा हूँ कि मध्य प्रदेश कैसे जाएगी। अगर स्थिति ऐसी ही रही तो किसान उजड़ जायेंगे और अगले वर्ष प्याज की खेती पर बुरा असर पड़ेगा। फलतः किसानों में घोर असन्तोष और निराशा है।