

ernment to take immediate steps to provide relief measures and to prevent further sea erosion which, it is feared, will further take place during the coming new moon and full moon days.

12.17 hrs.

SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS (FORFEITURE OF PROPERTY) AMENDMENT BILL—Contd.

MR. SPEAKER: The House will now take up further consideration of the Smugglers and Foreign Exchange Amendment Bill. Shri Mool Chand Daga was on his legs on the last occasion. He may continue his speech.

श्री मूलचंद दागा (पाली) : श्रीमन् स्मगलर्स एंड फोरन एक्सचेंज मैन्युफेस्टर्स एक्ट के बारे में सन् 1978-79 की रिपोर्ट देखी है। उसके पेज 193 में मुझे किंगर्स केवल मिले हैं—

“Collectors of Customs and Central Excise have also forwarded the particulars of 10584 persons to the Competent Authorities for initiating action under the provisions of Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act. As on 30th June, 1978 Competent Authorities have issued 1448 show-cause notices involving property worth Rs. 33.28 crores. Already properties worth Rs. 6.02 crores approximately in 173 cases have been ordered to be forfeited by the Competent Authorities under SAFEMFOPA”.

इस एक्ट के लागू हो जाने के बाद आज तक हमारे मंत्री नहोदय ने यह बताने का कष्ट नहीं किया कि एम्बेन्सल्ली कितनी प्रापर्टी इनके पोजेशन में आयी, कितने मुकदमात में इन्होंने नोटिसिज दिये हैं, कितने केसिज में अपील पेंडिंग है? 1976 में इस एक्ट के लागू हो जाने के बाद से इन चार सालों के अन्दर कितनी प्रापर्टीज के नोटिसिज इस एक्ट के अन्तर्गत आज भी पेंडिंग हैं? सेक्शन 6 के अन्तर्गत नोटिस दिये जाते हैं।

441 LS-7

Manipulators etc. Amendment, Bill.

12.19 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

Section 7(1) of the original Act says as follows:

“The competent authority may after considering the explanation if any, to the show-cause notice issued under Section 6, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties.”

सेक्शन 7 में शोकाज नोटिस देते हैं। वह देने के बाद उसको सुनने का मौका दिया जाता है। उसके बाद फाइन इम्पोज किया जाता है। फाइन सेक्शन 9 के अन्धर इम्पोज करते हैं।

सेक्शन 8 में बर्चम आफ प्रूफ उस व्यक्ति पर है जो एफेंडिड है। सेक्शन 12 का जो भाग 6 है, उसको एमेंड करने की क्यों जरूरत पैदा हुई? सेक्शन 12 में यह लिखा हुआ है :

“Powers and functions of the appellate court may be exercised or discharged by a bench consisting of three members”.

मैंने कल भी बताया था कि तीन की जगह आज दो मॅम्बर रखना चाहते हैं। लेकिन इसका क्या परसज है यह मेरी समझ में नहीं आया है। मंत्री नहोदय ने बताया कि अर्ली डिसपोजल के लिए हम ने यह स्टेप लिया है। मैं नहीं समझता कि उससे मामलो का अर्ली डिसपोजल हो सकेगा। इसका कारण यह है कि आप ने इस के अन्धर एक प्राक्सो लगा रखा है जो इस प्रकार है :

“Provided that if the members of a Bench so constituted differ on any point or points, they shall state the point or points in which they differ and refer the same to the third member (to be specified by the Chairman) for hearing on such point or points and such point or points shall be decided according to the opinion of that member.”

[श्री मूलचन्द डागा]

इसका मतलब यह है कि तीसरे आदमी को चुनवाई के लिए, उसको ओपिनियन के लिए भेजा जाएगा। अब उसमें किनका मसल लगेगा इसकी भी आप देखें। पहली बात तो यह है कि दोनों जो मੈम्बर हैं वे जिन प्वाइंट पर डिफर करते हैं, उन पर वे अपनी-अपनी रिपोर्ट देंगे। देने के बाद जो एपलीकेट हैं जिनने पेटिशन कर रखा है, उसके सुनने के लिए बुबारा फिर बही प्रोसीजर उसको एडाप्ट करना होगा। आज भी देखा गया है कि कई कम्पलिकेटेड केसिस हाई कोर्ट्स और सुप्रीम कोर्ट में मिंगल बैच में सुने जाते हैं। क्या वहाँ भी ऐसा नहीं हो सकता? इस बाबते मैंने एग्जैम्पल दिया है कि बजाय 2 मੈम्बरों के एक क्यों नहीं रखा जाता है? आप के ट्रिब्यूनलज मद्रास, बम्बई, कलकत्ता बगैरह जगह-जगह चुनवाई करते हैं। अब दो मੈम्बरों में से एक बीमार हो जाएगा तब क्या होगा? केवल मात्र आपने यही कहा है कि आप चूँकि घली डिस्पोजल केसिस का चाहते हैं, इस बाबते इस एग्जैम्पल को माए हैं। मैं चाहता हूँ कि आप बताए कि चार साल के बाद कितनी प्रायर्टी पर आपका फिजिकल ऑब्जर्वेशन हो चुका है। जहाँ तक मैं बेच पाया हूँ, 8 करोड़ पर भी नहीं हुआ है। आज भी बहुत से केसिस पेंडिंग पड़े हुए हैं। मेरे ज्वाल में एक ही जज काफी होना चाहिये। वही से काम हो सकता है। मैं यह भी समझता हूँ कि जिस परपज के लिए आप यह एग्जैम्पल माए हैं उसी परपज को यह एग्जैम्पल बफस्टेट करता है, उसी प्रायर्टी को बफस्टेट करता है। मैं समझता हूँ कि आप गहराई से कोर्सेकोधीर बरि ऑप इस नतीजे पर पहुँचे कि जो है वह सच है वह सही है तो जज इस एग्जैम्पल को मापित ले ले। कहीं डिजनेवल की जगह पर कहीं कलकत्ता ज्वाली न हो जाए और और भी ज्यादा समय डिस्पोजल में न लन जाए। एग्जैम्पल डिस्पोजल के पास जो केसिस हैं वही कोर्सी भी सवेस लगता है।

Whenever there are two members they will differ on certain points and again that point will be referred to the third member appointed by the chairman. That will be decided by the chairman. That will take a long time. It is a long procedure.

क्या प्रोसीजर वहाँ होता है वहाँ नुकसने कादी कर नहीं होते हैं। इस बाबते यह एग्जैम्पल माए है और मैं चाहता हूँ कि इस पर आप पुनर्विचार कर में।

MR. DEPUTY-SPEAKER: You could have given your name in the morning, itself.

श्री राम विनायक जसवान (हाजीपुर) :
महोदय, अभी जो तस्कर और विदेशी मुद्राछल साधक (सम्पत्ति समहरण) अधिनियम, 1976 के संशोधन करने वाले विधेयक पर चर्चा चल रही है, हासार्कि यह संशोधन बहुत छोटा-

सा है, लेकिन मैं सर्वप्रथम बरोट माहब व अपने वित्त मंत्री जी से आग्रह करूंगा कि जब किसी संशोधन विधेयक को मदन में पेश किया जाना है तो उसके पीछे मंशा यह रहनी है, नी पूत यह रहती है कि उस पर आप कार्यवाही भी करें और इफेक्टिवली कार्यवाही कर सके, लेकिन 1976 के बाद जब से आपने विधेयक को पेश किया है, आपका प्रेम का जो कर्टिंग है उसको भी देखने से कही ऐसा नहीं लगता है कि इस देश के स्मगलर्स की गतिविधियों पर कोई करारी चोट पहुँचायी गई हो। मैं मंत्री महोदय से चाहूंगा कि जब वह जवाब दें तो इस बात को बतलाने की कृपा करे कि अब तक आपने इस एक्ट के तहत कितने स्मगलर्स के विरुद्ध मुकदमे दायर किये, कितनी की सम्पत्ति जब्त की और कितने लोगों के विरुद्ध मुकदमे पेंडिंग है। बह तीन चीजें सरकार की नीयत को स्पष्ट करेंगी।

आप महाराष्ट्र स्टेट को ले लीजिये, उसका समुद्री किनारा 900 मील का है और वह सारा तस्करों का प्रह्ला बना हुआ है। जब हाजी मस्तान व दूसरे-दूसरे तस्कर पकड़े गये थे, तो उनकी रिपोर्टिंग को देखें तो उन्होंने कहा था कि जो बड़ी-बड़ी महानगरी हैं, उनके बाजारों में 25 प्रतिशत मनी काले-मनी के रूप में है। इस तरह से कैसे नीयत साफ होंगी। हम जब चुनाव मंडल में जायेंगे तो उस मोके पर तस्करों के पीछे की जकस्त पक जाती है और जब चुनाव खरम हो जाते हैं तो सदन में बिल रखते हैं। आपने इस बिल में रखा है कि तीन मैम्बरों के बन्ने 2 होनि चाहिये। मैं समझ सकता हूँ कि इसके पीछे 3 के बन्ने 2 करने की आपकी भावना यह है कि जज कास्मोर तरीके से काम कर सकेंगे, लेकिन अब आपकी नीयत साफ रहेगी, तभी आप कारखब तरीके से काम कर सकते हैं। जब तक नीयत साफ नहीं रहेगी तब तक चाहे आप 3 के बन्ने कर दें या 5 कर दें, उससे कोई धर्य निकलने कीला नहीं है। इसलिए मैं स्पष्ट रूप से सरकार से चाहूंगा कि चूँकि हम लोगों ने पिछली बार एक बिल पेश किया था, एक कानून बनाने की कोशिश की थी कि किसी भी कंपनी से कोई भी पॉलिटिकल पार्टी पैसा नहीं लेगी। मैं नहीं समझता कि इस सम्बन्ध में इस सरकार का क्या क्या है लेकिन मैं इतना स्पष्ट रूप से कहना चाहता हूँ कि जितने भी तस्कर पसते हैं, उन सब की राजनीतिक संरक्षण प्राप्त होता है। बासकर भी पार्टी पावर में रहती है, उसकी सबसे बड़ी जबाब देही हो जाती है। जब पार्टी-इन-पावर की नीयत साफ नहीं है तब तक उस पर कहीं भी कार्यवाही नहीं होगी।

इसलिये मैं आपके माध्यम से मंत्री महोदय से आग्रह करना चाहता हूँ कि जब वह बचाव दें तो निश्चित रूप से सरकार की नीयत को स्पष्ट करने की कोशिश करें और वह भी बतलाने

की कोशिश करें कि जितने जितने तस्कर पल र हैं, उनको पालने में सरकार का कहीं प्रत्यक्ष या अप्रत्यक्ष हाथ तो नहीं है। अगर नहीं है, तो मैंने जो बताया कि कितने के विरुद्ध मुकदमें चल रहे हैं, कितनों की सम्पत्ति जप्त की गई है, मैं समझता हूँ कि मंत्री महोदय इस का जवाब देंगे।

THE DEPUTY MINISTER IN THE MINISTRY OF FINANCE (SHRI MAGANBHAI BAROT): Sir, this is a very small amendment for a limited purpose and it is with regard to the composition of the tribunal which is working as an appellate body against the decisions of the competent authority. According to the Act as it is now, the tribunal consists of a Chairman and 2 members, and all the three of them will sit together and hear an appeal. The simple change now sought to be made is that instead of requiring the presence of 3 members at a time, only 2 members will hear the appeal. So, the scope of the amendment is very limited. Of course, hon. members participating in the discussion have referred to the activities of the competent authorities and discussed the functioning of these authorities, how far we have succeeded, etc. Pertaining to this amendment, I will give some figures. A question was asked as to how many properties in fact have been taken possession of, to know whether after all this Act is functioning or not. So far as physical possession of properties is concerned, we have taken possession of properties in 32 cases and the value of the properties is Rs. 15.61 lakhs. It may be rightly asked as to why, when the number of cases registered is 1965, we have been able to take possession of properties only in 32 cases. Here I would like to inform the House that the entire Act is under challenge both in the Supreme Court and in the High Courts. The parties affected by the decisions of the competent authorities approached the High Courts. We have approached the Supreme Court requesting that the matters pending in the High Courts be withdrawn

and the Supreme Court may please decide the matter. We are expecting an early disposal of the matter where the vires of the Act is under challenge. It will be interesting to note that 766 cases are in the High Courts and 34 cases in the Supreme Court. Even where decisions have been given by the competent authorities and even appellate authorities we are not able to act because of the injunctions issued against it. We are restrained because the Supreme Court and the High Courts have issued injunction orders. That is the property will be taken. So we are restrained like that.

SHRI MOOL CHAND DAGA: Out of the cases pending in the High Courts, in how many cases has the stay order been passed?

SHRI MAGANBHAI BAROT: In the case of all the parties who have gone to the High Court or Supreme Court, the primary action which they have sought is to restrain the Government from taking possession of the properties. The courts have categorically stated that until the decisions are taken, no possession of the property will be taken. So, we are restrained like that.

An hon. member asked what is the purpose in reducing it from 3 to 2? If delay is the reason, why not reduce it to 1? The House will appreciate that we are dealing with confiscation of properties which are the direct result of the earning by smuggling activities. We are not confiscating the smuggled goods themselves. Under the authority given by the Act, we are laying our hands on properties which are the direct result of the earning of smuggling activities. It may be true that this is income out of smuggling activities, but under the law we give an opportunity to prove that it is not so. The burden is on him. The presumption is against him and it is for him to

[Shri Maganbhai Barat]

prove that it is not so. Therefore, we thought that when the appeal is heard, let there be two minds—two members—to decide it so that there is a finality of the matter.

Now, under the provisions, which we have brought what is the position? In case, in the Bench of three—now the provision is of two—there is difference of opinion, the matter can be taken to the third man so that at least the concurring findings will be of two persons and one person will be dissenting. Ultimately, it will be the decision of two persons. That will give finality to the matter. Since it deals with property of a citizen, we thought it desirable to give him an opportunity to be heard. That is why, we have made the provision of two members instead of one. I would respectfully say that this is only with a view to give a finality and a fair opportunity of being heard before an appellate authority that such an amendment is proposed.

During the course of discussion, hon. Member, Mr. Daga raised a very important legal point. He pointed out the rules and said that the amendment that we have proposed, may not prove to be inconsistent with the provisions of the rules. I would only respectfully tell him that these are not the rules framed under the Act. But these are only for the procedural action of the tribunal itself. This is only with regard to signing the order if the decision has been reached. With regard to this provision of signing the order, we would, of course, convey to the tribunal that if there is small inconsistency apparent in the rule, we would not be too technical and would not say that the Act prevails and not the rules. We will say that in view of the amendment of the Act, please amend rules suitably so that there is no inconsistency.

The other minor amendment is with regard to the cost to be charged or fees to be charged on the inspection

etc. This was an undertaking that we have given to the Subordinate Legislation Committee and to comply with that we have made this small change. I would request hon. Member, Mr. Daga, to please accept this amendment and not to insist upon his amendment.

So far as my hon. friend, Mr. Paswan, is concerned, I would say that he appears to have an intimate knowledge of the percentage of black-money. Well, if that is the knowledge of the hon. Member, I would request him to tell us where this 70 per cent is. If the hon. Member can help the Government we would request his cooperation in finding out this black money.

Since the scope of this Bill is limited, I would only tell hon. Members of this House that in regard to the implementation of the provisions of this Act, we shall very much appreciate and consider the valuable suggestions made by the hon. Members and in appropriate matters we will convey to the authority concerned those suggestions.

I request this hon. House to accept this Bill.

MR. DEPUTY-SPEAKER: The question is:

“That the Bill to amend the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, be taken into consideration.”

The motion was adopted.

MR. DEPUTY-SPEAKER: Now, we shall take up clause by clause discussion.

Clause 2.— (Amendment of section 12 of Act 13 of 1976).

SHRI MOOL CHAND DAGA: I beg to move:

“(i) Page 1, line 15,—

for "two members" substitute "one member"

(ii) Page 2,—

omit lines 3 to 8." (1)

He considered the whole matter. There is a provision. You say, instead of 3, 2 judges can sit. Well and good. Why don't you appoint only one member?

But again you have a proviso which is as follows:—

"Provided that if the members of a Bench so constituted differ on any point or points, they shall state the point or points on which they differ and refer the same to a third member appointed by the Chairman)"—

The members will sit and decide the points on which they differ and those points will be referred to the third member appointed by the Chairman:—

"for hearing on such point or point, and such point or points shall be decided according to the opinion of that member".

Now, I want again a clarification on this proviso whether the third person will give a hearing to the person affected or he will simply give his own opinion on the point on which they differ. I want an answer or a clarification on this point. Here it is stated:

"...they shall state the point or points on which they differ and refer the same to a third member (to be specified by the Chairman) for hearing on such point or points and such point or points shall be decided according to the opinion of that member."

Or, whether that member will have a chance of hearing the party affected? Suppose two members differ on certain points and the matter is referred to the third member. Here, the language is not clear as to whether the person affected will again

be called and he will be heard or whether it will be decided outright that third member's opinion is final. And if that is so, then that is the end of natural justice. After all, the person who has been affected must be given a hearing. So, kindly see this proviso again. If the third person is called and if that person gives his opinion without hearing the person who has been affected and his opinion is considered final, I have never seen such a law. I have never understood this law. Mr. Barot will agree with this because he has practised in the High Court or the Supreme Court. I do not know whether he agrees with the principles that the opinion of the third member will be final. I have not understood this.

SHRI MAGANBHAI BAROT: Mr. Deputy-Speaker, Sir, I think this is the same point that I will have perhaps to deal with in a little detail. The very fact that the Act provides that in case of difference of opinion between the two members of which the Bench is constituted, the matter will be referred to a third member means that in any way the final decision will be that with which the third member will agree in between the two members' opinions. So, we will have conclusively the opinion of two members as far as the decision in the matter is concerned. Now, the hon. Member's apprehension is or it is his anxiety to know as to what the third member will do. Sir, it is not for us to lay down in the Act the detailed procedural aspect as to how the tribunal will function. But the tribunal's rules themselves provide for the hearing before the member. Now, I would respectfully submit that when there is a difference of opinion and the two opinions of his colleagues are with the third member to whom it is referred to, they will themselves lay down the provisions and I hope that keeping the provisions or the principles of natural justice in mind, the hearing part of the matter will be decided by the tribunal under its own

[Shri Maganbhai Barot]

rules and procedures. Our anxiety is only this to see that two minds must agree on a final decision in regard to the matter of property or the right of a person and therefore, when we provide that two persons should agree, even if the Bench is of two, and if there is a difference of opinion, the third. . .

THE MINISTER OF FINANCE (SHRI R. VENKATARAMAN): The third judge will give the hearing.

SHRI MAGANBHAI BAROT: Sir, I would respectfully say that the principles of natural justice would require that if a man who is concerned with his own rights says that two members have disagreed, he will have an opportunity to convince the third member. Therefore, a kind of hearing will be there. How and what procedure of the hearing would be, is a matter of detail. That is all.

MR. DEPUTY-SPEAKER: Is Shri Mool Chand Daga withdrawing his amendment?

SHRI MOOL CHAND DAGA: Yes. I seek leave of the House to withdraw my amendment.

Amendment No. 1 was, by leave withdrawn.

MR. DEPUTY-SPEAKER: The question is:

"That Clauses 2 and 3 stand part of the Bill."

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

MR. DEPUTY-SPEAKER: The question is:

"That Clause 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI MAGANBHAI BAROT: I beg to move:

"That the Bill be passed".

MR. DEPUTY-SPEAKER: Motion moved:

"That the Bill be passed".

SHRI SATISH AGARWAL (Jaipur): I support the Bill, we have not opposed it, but so far as the observations made by the hon. Deputy Minister with regard to the amendment of Mr. Daga are concerned, I would like to say it is not a procedural matter to be decided by the Tribunal itself. It is a cardinal rule of natural justice propounded by the Supreme Court in various judgements that no adverse judgement can be given without hearing the affected party. So, please see what can be done.

In this very connection, I would like to caution the Government, or give them a small piece of advice, that the machinery is moving very slowly. We tried our level best to see to it that the cases were disposed of as early as possible. The income-tax authorities are in charge of collecting the information, processing it and submitting it to the Tribunal to issue notices. That takes a long time. Government has to see how this process can be expedited. If there is a lapse of two, three or four years, properties are disposed of meantime, and the governmental action is frustrated.

Secondly, in respect of decisions taken by the Tribunal, notices have been issued in cases involving only Rs. 30 crores. That is not very much looking to the magnitude of the smuggling that has been there, that is there, and that will be there. I speak frankly. So, the cases have to be scrutinised very soon and noti-

ces issued. Service is not quick. It takes years to get the summons served, and the cases remain pending for years together. So, some amendments have to be made in the rules also.

Thirdly, whatever decisions have been given by the Tribunal so far, the actual physical possession of the properties by the Government does not seem to be much. You may give the figure later on, but I would request Government to take keen interest in the matter because the smugglers are very clever and they engage top class lawyers, who go to the Supreme Court and High Court and get stay orders and frustrate the efforts of the Government. So, I would like Government to be vigilant about it and strengthen their prosecuting machinery. Unfortunately Government is penny-wise and pound-foolish. I have told the Finance Minister verbally about this. I have also a little bit of experience of this. If you are going to get property worth a crore rupees, you can spend a lakh of rupees on the lawyer, instead of engaging a third class lawyer for a smaller amount and saving there. The House will not have any objection to it.

With these words, I support the Bill.

SHRI MAGHANBHAI BAROT: So far as the hon. member's query, about the property actually taken possession of, is concerned, as I mentioned already, actually in 32 cases we have taken physical possession of the properties found, under the Act, to be impounded....

SHRI SATISH AGARWAL: Worth how much?

SHRI MAGHANBHAI BAROT: Worth Rs. 15,61,000. Let the hon.

member bear with me that all the parties, who approached the courts were kept on getting the stay as regards taking of physical possession being restrained and though the proceedings are going on in several matters, the courts have been kept in passing the orders restraining the authorities from taking physical possession of the properties. I hope the hon. member would not like us to act against the injunctions, we are bound by them. So, that is our difficulty. But, as suggested by the hon. member, we are trying to expedite the matter in the Supreme Court. We have made a request to them in this regard and we expect that early hearing in the matter will clear at least our impediments in taking physical possession of the properties.

Coming to the hearing part of it, the hon. member has highlighted that hearing is a very substantial right of any party. May I draw his kind attention to the fact that in the amendment itself, we have provided that they shall state the point or points on which they differ and refer the same to the third Member? The very Act provides for this. About the details, about the procedure, how the Tribunal will function or the single member will take the proceedings, that is the part which I am not elaborating in this hon. House.

I hope that will meet with his points. As regards his very valuable suggestion that let not the cases like this where we are going to get the property be lost because of lack of vigilance on our part, we shall take care of it.

MR. DEPUTY-SPEAKER: The question is:

"That the Bill be passed."

The motion was adopted.