

ARMED FORCES (PUNJAB AND CHANDIGARH) SPECIAL POWERS BILL*

THE MINISTER OF HOME AFFAIRS (SHRI P.C. SETHI) : I beg to move for leave to introduce a Bill to enable certain special powers to be conferred upon members of the armed forces in the disturbed areas in the State of Punjab and the Union Territory of Chandigarh.

MR. DEPUTY-SPEAKER : Motion moved :

That leave be granted to introduce a Bill to enable certain special powers to be conferred upon members of the armed forces in the disturbed areas in the State of Punjab and the Union Territory of Chandigarh.

I think all have spoken. Shri Satyasadhan Chakraborty.

SHRI GEORGE FERNANDES (Muzaffarpur). I have given notice to speak on this.

MR. DEPUTY-SPEAKER : You want to speak. All right. Shri Fernandes.

SHRI GEORGE FERNANDES : Thank you, Sir.

Sir, I am opposing this again. I do not read Art. 13 (2). But, Sir, I entirely agree with my honourable colleague, Shri Indrajit Gupta, that these three Bills are part of one bunch. There are certain aspects to the Bill. The Armed Forces (Punjab and Chandigarh) Special Powers Bill is not only different but this Bill also violates one other fundamental right of Article 22 of our Constitution. If you look at this Bill, Section 4, you will find that the whole idea of using the force is to kill a person without giving him a chance to explain why he should not be killed. This power is given to the Commissioned Officer and to one other officer—non-commissioned officer. This amounts to giving the power to any person in the Armed Forces. You see Sec. 4 (c) of this Bill which says :

“arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest ;”

So, a non-commissioned officer, if anyone walks in the street of Ludhiana, comes to the conclusion that he walks in the street to commit a non-cognisable offence and so he has reasonable grounds to feel so. Here is a violation of the fundamental right. I want you to read section 6 of this Bill. Article 22 (1) of the Constitution says :

“No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice”.

Article 22 (2) says :

“Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey etc. etc. ...”

Now, what does this Bill seek to do under Section 6 (c) is :

“Any person arrested and taken into custody under this Act and every property, arm, ammunition or explosive substance or any vehicle or vessel seized under this Act, etc. . . shall be made over to the Officer-in-Charge of the nearest police station with the least possible delay. . . .”

In other words, if one person is suspected that he is likely to commit a non-cognisable offence, such a person is physically to be produced before the Magistrate. The Constitution of our country requires this. The authority only requires him to come and

deposit any other material with him like arms and ammunition to the nearest police station within a reasonable period. Here you are enabling an army jawan to pick up a person who is suspected to commit a non-cognizable offence and to deposit him to the nearest police station along with a lot of other things.

Now I would submit that a lot of people commit crimes in this country. There are certain laws enacted by Parliament. Under the laws, he is brought before the highest court of the country. There is something called 'benefit of doubt' in our legal terminology under which unless the case is proved to the hilt, if there is a little doubt about the prosecution, in that case, the benefit of doubt necessarily goes to the person who is an accused in this case.

Here, Sir, the whole law is expected to operate in the reverse. In other words if a military jawan has the least doubt or he even suspects then either he can shoot or arrest and deposit you in the nearest police station within a reasonable period of time that he decides. Sir, this is gross violation of Articles 21 and 22 of the Constitution.

Sir, then look at 4 (e). Again it is permissible for a jawan to—

“(e) stop, search and seize any vehicle or vessel reasonably suspected to be carrying any person or against whom a reasonable suspicion exists that he has committed or is about to commit”

Now, suppose a delegation of Members of Parliament goes to Ludhiana or Chandigarh and somewhere along the line a jawan thinks or suspects then he can take hold of your vehicle, detain you and can also shoot you down.

So, Sir, I submit that there is gross violation of these two Articles of the Constitution. Now, Sir, I would like you to read Section 5 and I quote

“Every person making a search under the Act shall have the power to break

open the lock of any door, almirah, safe, box, cupboard, drawer, package or other thing, if the key thereof is withheld.”

Sir, if you read this along with Section 4 (d) you will find it again authorises an Army jawan to enter and search without warrant any premises to make any such arrest as aforesaid or to any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property. Now, Sir, what exactly does this amount to ? It amounts to straight attack on the fundamental rights of the people. Supposing a jawan suspects that a certain person is hiding or there is some sort of arms and ammunition hidden in somebody's house then all he has to do is to break open the door and conduct any search that he wants to and there is no relief made available to the citizen who is involved in this kind of attack on his fundamental rights.

Sir, once again this whole question of indemnity occurs here in Section 7 and I quote :

“No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.”

In other words martial law situation is now sought to be created without straight making it obvious that you are declaring martial law in Punjab.

Sir, against the background of these arguments I would urge you to uphold my point of order and prevent the Minister from introducing this Bill. I want your ruling. If you are not in a position to give it today then you may consult the Speaker and reply tomorrow. It is an important matter. Are we today having martial law in Punjab because you can introduce this Section provided you have martial law ? You have to give your ruling on Article 24.

प्रो० अजित कुमार मेहता (समस्तीपुर) :
 उपाध्यक्ष महोदय, मैं गृह मंत्री को सावधान करना चाहता हूँ कि वह बाघ के मुंह में आदमी के खून का स्वाद न लगने दें। अगर वह हमेशा आर्मी को सिविल एडमिनिस्ट्रेशन के लिए बुलाते रहेंगे, तो एक दिन ऐसा हो सकता है कि एडमिनिस्ट्रेशन पर आर्मी ही कब्जा कर ले। इसलिए मैं उन्हें आगाह करता हूँ कि वह ऐसा कोई काम न करें, जिससे बाघ के मुंह में आदमी के खून का स्वाद लग जाए।

एक माननीय सदस्य : तब वह इन्हें ही खा जाएगा।

प्रो० अजित कुमार मेहता : स्वाभाविक है।

मुझे आशा है कि वह इतना ही सोच कर इस विधेयक को इंट्रोड्यूस करने पर पुनर्विचार करेंगे।

SHRI SATYASADHAN CHAKRABORTY (Calcutta South) : Sir, I vehemently oppose the introduction of this Bill I don't know who has advised the hon. Home Minister to introduce it—to destroy whatever democratic fabric we still have in this country,—because, it goes against the very spirit of the constitution.

MR. DEPUTY-SPEAKER : Constitution of India has advised them.

SHRI SATYASADHAN CHAKRABORTY : No, Sir. He has been ill-advised. There are many people who cannot advise him properly. He should take our advice because this measure goes against the very constitution of our country. The constitution rests on certain basic principles. Every citizen of India will have the protection of law. He has the right to life. That is his fundamental right. Here we are giving sweeping powers to a person to shoot and you will see this, Sir. You kindly see the language. 'Use force even to causing of death'. This is shooting to kill. This can be used only against enemy country during war and also order has to be given to shoot to kill. Normally there is a direction that even if you are compelled to shoot, do not shoot to kill,

but shoot only to injure, because, human life is precious ; it is valuable. So, this measure goes against the fundamental right which is there in our constitution. I would request him not to introduce this Bill because this is going to wreck the very pillars of our constitution, the pillars on which the constitution rests.

My second point is this. I am saying why he should not introduce this Bill. I ask him : There was an ordinance and many days have passed now. Has the situation in Punjab improved ? No. You have yourself admitted...

AN HON. MEMBER : He is repeating the points.

SHRI SATYASADHAN CHAKRABORTY : Does not matter—all good things need repetition.

MR. DEPUTY-SPEAKER : You must not forget that he is a professor.

SHRI SATYASADHAN CHAKRABORTY : With regard to that ordinance, I am asking you : Has the situation improved ? No. It has not improved. Why ? Because you are trying to deal with a political question with your administrative machinery. Is it not a fact that similar situations arose in other parts of the country ? In Assam serious conditions continued and you did not arm yourself with these kinds of sweeping powers. But why in the case of Punjab alone you are now trying to use the army ? May I point out to you one danger ? Army is there not to control such kinds of situations. Army is there to defend the country. Who are the persons whom you will be employing in Punjab ? The Army Personnel. Are you going to employ the Sikhs ? You can't do it. Are you going to employ the non-Sikhs ? It will be dangerous. Even if this Bill is passed it will not be possible for you to use it. When it is obvious you cannot use it why are you thinking of making use of your majority in Parliament for this purpose ? What you are actually going to do is a rape on the Constitution of India.

Therefore, Sir, I request the Home Minister to withdraw the Bill, or rather, not to

introduce it at all. This may be passed by your majority but then you will only be going back to the mediaeval age and days when there was no liberty, on protection of individual right. You are only going back to that state. Long long ago at the time of *Magna Carta* in England, when there was no democracy, the king had to surrender to the will of the people and say 'No', no person can be arrested without any valid warrant; right to life cannot be taken away without due process of law. Therefore, I would request the hon. Minister, through you, Sir, not to take us back to the old days, the Medieval days, to the days when there was no law, no democracy, no liberty. So, with all my power at my command, I oppose the introduction of the Bill and I would request the Home Minister not to introduce the Bill.

MR. DEPUTY-SPEAKER : I am giving my ruling on the point raised by Shri George Fernandes. Under Article 123 (2) (a), the Ordinance promulgated by the President are required to be laid before both Houses of Parliament. Similarly, the statement explaining the reasons for the issue of Ordinance is required to be laid under Rule 71 (1) of the Rules of Procedure and Conduct of Business in Lok Sabha. These are thus statutory requirements. I therefore rule that your point of order is out of order. Now, the hon. Minister can reply.

SHRI P.C. SETHI : I can assure the august House that we have not been ill-advised. These powers have been taken not for the sake of powers but in case of necessity, they may be used. But time has shown that we have yet to use those powers. As far as the validity of the similar law is concerned, in respect of Armed Forces (Assam) Special Powers, it was upheld by the Delhi High Court and therefore I do not see any legal hitch in this and I can assure the hon. Members that this is not going to be used in a manner which may not be conducive to the freedom of the person.

MR. DEPUTY-SPEAKER : The question is :

"That leave be granted to introduce a Bill to enable certain special powers

to be conferred upon members of the armed forces in the disturbed areas in the State of Punjab and the Union Territory of Chandigarh."

The motion was adopted.

SHRI P.C. SETHI : I introduce the Bill.

12.27 hrs.

STATEMENT GIVING REASONS
FOR IMMEDIATE LEGISLATION
BY THE ARMED FORCES (PUNJAB
AND CHANDIGARH) SPECIAL
POWERS ORDINANCE, 1983

THE MINISTER OF HOME AFFAIRS (SHRI P.C. SETHI) : I beg to lay on the Table an explanatory statement (Hindi and English versions) giving reasons for immediate legislation by the Armed Forces (Punjab and Chandigarh) Special Powers Ordinance, 1983.

12.28 hrs.

MATTERS UNDER RULE 377

(i) *Land Acquisition (Amendment) Bill*

श्री दिगम्बर सिंह (मथुरा) : उपाध्यक्ष महोदय; मैं नियम 377 के अन्तर्गत निम्नलिखित वक्तव्य देता हूँ :

भारत सरकार और विशेष रूप से ग्रामीण विकास मंत्रालय के मंत्री जी को बधाई है कि अपूर्ण भूमि अर्जन संशोधन विधेयक 1982 को वापस करने और काम्प्रीहेंसिव बिल 1983 पेश करने का निर्णय किया है जैसी कि सूचना लोक सभा समाचार भाग 2 दिनांक 5 नवम्बर 83 में निकली है। सूचना में बिल का पुनर्स्थापित करना है, पास होना नहीं। पिछले 1982 के बिल में यह कमी थी कि लैंड ऐक्वीजीशन ऐक्ट की धारा 23 के अनुसार भूमि का मुआवजा धारा 4 के