

14.07 hrs.

**CALLING ATTENTION TO MATTER
OF URGENT PUBLIC IMPORTANCE****INQUIRY INTO THE ALLEGATION BY A GOV-
ERNMENT SERVANT AGAINST A MINISTER
OF PONDICHERRY AND THREE OTHERS**

SHRI VAYALAR RAVI (Chirayinkil): I call the attention of the Minister of Home Affairs to the following matter of urgent public importance and request that he may make a statement thereon:—

"The reported decision of the Governor of Tamil Nadu to order an inquiry into the allegation made by a Government servant against a Minister of Pondicherry and three others without seeking the opinion of the Cabinet of Pondicherry."

**THE MINISTER OF STATE IN
THE MINISTRY OF HOME AF-
FAIRS (SHRI DHANIK LAL MAN-
DAL):** Sir,

Shri Prabhu Das Patwari, the Governor of Tamil Nadu had been appointed as Administrator Pondicherry under Article 239(2) of the Constitution during the absence on leave of Shri B. T. Kuikarni, Lt. Governor of Pondicherry. According to information received from the Government of Pondicherry, one Miss Radhabai, an Assistant Director in the Local Administration Department, Pondicherry, had addressed a representation to the Administrator Pondicherry, levelling charges of molestation by certain persons named in the representation including a Minister. On 22nd July, 1978, the Administrator passed an order on the said representation that a Judicial Officer of the rank District Judge be appointed to hold an inquiry into the allegations of attempt to molest her.

According to the information furnished by the Government of Pondicherry no notification appointing any Judicial Officer to hold the inquiry

has been issued so far. A further report is awaited from the Government of Pondicherry.

SHRI VAYALAR RAVI: Mr. Deputy-Speaker, Sir, at the outset I want to make it very clear that I do not want to go into the merits of the case but only into the Constitutional problems of impropriety and other Constitutional problems that arise in the matter. I also want to make it clear that I am not in a position to pay any compliment to the Government of Pondicherry for its performance. By this reported Order of the acting Administrator of Pondicherry, a new situation has been created. Actually, Mr. Patwari, the Governor of Tamilnadu was acting as Lt. Governor according to Act 239 [Here the Government have quoted Art. 239(2) in the letter]. This order that has been issued was an order for an enquiry against a Minister by a Magistrate, and that created very long-range political repercussions because of the present political conditions of India. Also, it is a real threat to our federalism and the flexibility of the Indian Constitution.

Now, what is the status of a Lt. Governor? It is almost the same as that of a Governor of a State—with the exception of the Governor of Assam and some border Union Territories. This august House had the privilege of discussing this matter of the constitutional problem of the status of a Governor, early in 1967 when an eminent Parliamentarian Shri Nath Pai raised the issue on the Floor of the House in November 1977. Shri Nath Pai had raised three very important and pertinent points, namely, what is the constitutional status of the Governor, the power of discretion of the Governor and the mode of appointment of the Governor. This has been debated in the House and, on that occasion, the people who supported Mr. Nath Pai were sitting on this side. Today they are sitting on the other side. But what are they doing? They are doing the same thing.

When it was raised in 1957, Mr. Nath Pai relevantly pointed out the status of the Governor which is only to be the Head of the State, he has no other status. In this connection I wish to draw your attention to the whole evolutionary process because it is very important. Let us go back to the discussion in the Constituent Assembly. With your permission, Mr Deputy-Speaker, may I quote what happened those days? When the discussion was going on in the Constituent Assembly, one of the hon. Members of this House, Shri Hari Vishnu Kamath, relevantly raised a question. Shri Kamath had asked this question:

"If in any particular case, the President does not act upon the advice of his Ministers, will that be tantamount to a violation of the Constitution and will he be liable to impeachment?"

Dr. Ambedkar gave the reply:

"There is not the slightest doubt about it."

This is the status of the President

Further, Mr. Kamath said:

"There will be two conflicting authorities within the State: one is the Premier, whom under this Constitution which we are considering today, we have invested with executive authority so far as the State is concerned; and the other is the Governor who, though the Constitution does not confer on him very substantial powers and functions, will arrogate much to himself, because he will say that I have been elected by the people of the whole province and as such, I am persona grata with people and not the Chief Minister...."

This was the debate. The question came up whether the Governor should be elected or not. Then the whole Constituent Assembly was opposed to election of the Governor, and it was decided that he should be appointed by the President.

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Mr. Kamath said further:

"...Therefore, there will be in the administration of the province at every turn—if not at every turn, then very often—points of conflict or friction between the elected Governor and the elected Chief Minister. Therefore, I think we have done very wisely in deleting or in doing away with the system of election for the provincial Governor."

Therefore, it is very clear that their opinion was that the Governor should not be elected, he should only be appointed as Head of the State. This has been supported by Dr Alladi Krishnaswami Iyer, if I can quote him

MR DEPUTY-SPEAKER. You quote only the relevant portion

SHRI VAYALAR RAVI: I am quoting only the relevant portion. Lt. Governor is on par with Governor. It is an important Constitutional matter. The Prime Minister is here. So, I want to have this matter cleared. I will take only a few minutes.

DR. Alladi Krishnaswamy Iyer observed:

"...If the Governor is properly functioning as the Constitutional head, the expenses involved in going through the process of election are out of all proportion to the powers vested in the Governor under the Constitution. There is also the danger of the Governor who has been elected by the people at large getting into a clash with the Premier (Chief Minister) and the Cabinet responsible to the Legislature which itself has been elected on the basis of universal suffrage."

"On the whole, in the interest of harmony in the interest of good working, in the interest of sounder relations between the provincial Cabinet and the Governor, it will be much better if we adopt the Canadian model and have the Governors

[Shri Vayalar Ravi]

appointed by the President with the convention growing up that the Cabinet at the Centre would also be guided by the advice of the provincial Cabinet."

It is very clear that the makers of the Constitution, very great and eminent jurists, assembled here in this august hall, decided that the Governor will only be a head of the State, he should not act on his own and that he should act only on the advice of the Chief Minister and the Council of Ministers.

This question was raised here also on the floor of the House and the then Home Minister, Shri Y. B. Chavan, made clear the stand of the Congress Party which was then in power in those days. I quote what Mr. Chavan said.

This is what Mr. Chavan said:

"I can tell very clearly that neither the Law Ministry nor the Home Ministry believes that the Governor has a right to summon the legislature, we have never said that. There he cannot use his discretion. Naturally, he has to accept the advice of the Chief Minister."

This is the position taken by the Congress those days that the Governor should not act on his own, he should be only guided by the advice of the Cabinet. This has also been made amply clear by Dr. Ambedkar while replying to certain points....

SHRI C. SUBRAMANIAM (Palani): It is an accepted fact.

MR. DEPUTY-SPEAKER: Why go into all those facts?

SHRI VAYALAR RAVI: Only just to strengthen my point.

I think the position is very clear. Now what comes? The point that comes here is about the status of the

Lt. Governor. It is governed by Sec. 44 of the Government of Union Territories Act, 1963. He cannot go beyond that at all. He completely comes within the purview of Sec. 44, Part IV of the said Act. I quote with your permission.

"44(1) There shall be a Council of Ministers in each Union territory with the Chief Minister at the head to aid and advise the Administrator in the exercise of his functions in relation to matters with respect to which the Legislative Assembly of the Union Territory has power to make laws except in so far as he is required by or under this Act to act in his discretion or by or under any law to exercise any judicial or quasi-judicial functions:

Provided that in case of difference of opinion between the Administrator and his Ministers on any matter, the Administrator shall refer it to the President....

This is very important.

...shall refer it to the President for decision and act according to the decision given thereon by the President, and pending such decision it shall be competent for the Administrator in any case where the matter is in his opinion so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as he deems necessary."

There may be some amendments. Only 2 or 3 amendments. That came later. We ourselves passed them. That was regarding the border States.

The hon. Minister in his statement says that he has acted under Art. 239(2). Art. 239(2) never comes. Art 239(1) says:

"Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify."

(2) Notwithstanding anything contained in Part IV, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers."

Here the reference to the Council of Ministers is to the Council of Ministers of Tamil Nadu. I agree. But when he is functioning as an administrator, he comes within the purview of Sec. 44 of the Government of Union Territories Act. He is bound by the advice of the Council of Ministers of Pondicherry. So Art. 239(2) is not applicable and the stand taken by the hon. Minister is absolutely baseless and cannot be sustained.

Then coming to the point of discretion, can he use his discretion?....

MR. DEPUTY-SPEAKER: Now, you will have to end.

SHRI VAYALAR RAVI: Can he use the discretion? What are the discretionary powers? His discretionary powers are limited and they are completely limited. I can quote any number of authority on the subject, either Basu or Seervai or even Supreme Court Judgments. I can quote. Mr. Shanti Bhushan knows. The discretion is limited. It is not unlimited. Even Dr. Ambedkar has said it in the Constituent Assembly that the discretion is limited. I can quote other authorities also but for want of time, I will not do that. I hope the Law Minister will agree with me that even according to the judgment of the Supreme Court this discretion is limited. They only said that the Governor of Assam may have some discretionary powers because there are border Union Territories. This discretion in regard to Goa and Pondicherry is not unlimited. It is limited for a specific purpose. You will agree with me.

Now, here is a statement by the Chief Minister of Pondicherry. I quote

from the *Hindu*, a very very responsible and leading newspaper of the south. It say:

"Mr. Ramasamy said he felt that the order reported to have been issued by Mr. Patwari had come out without consulting him (Chief Minister)...."

So, what is the urgency? What is the discretion here? It is not against the Minister that Governor issued an order. It is only allegation. What is that allegation? That was sent by Miss Radha Bai. Copies sent to whom? Copies were sent to the President of India, the Prime Minister, Defence Minister, Minister for Parliamentary Affairs, Shri Ravindra Varma, the Minister for Tourism, Shri C. M. Stephen and everybody including Shri E. M. S. Namboodiripad. I do not want to go into the merits of the complaint. Here what the Minister says is: there are allegations where the Prime Minister has taken a stand, rightly or wrongly, about the merit of it, that the allegation cannot be looked into where there is not a specific charge. What is the allegation and to whom it is made? Mr. Deputy-Speaker, Sir, it will be interesting to read from the complaint sent by Miss Radha Bai. The complaint says 'Illegal acts of the Lieutenant Governor'. The complaint is not only against the Minister but it is against the Lieutenant Governor also in protest against the illegal actions of the Lieutenant Governor, Home Minister and the Chief Secretary and against the failure of the Central Government to pull up the Lieutenant Governor. Therefore, the complaint is against the Lieutenant Governor also and the Central Government's failure. The Hon. Lieutenant Governor of Pondicherry, the Home Minister of Pondicherry and the Chief Secretary, all these people, are responsible if she dies. Shri Mandal made a statement saying that the complaint has been sent by Radha Bai, Assistant Director in the Local Administration Department, Pondicherry. She addressed

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a representation dated 18th July to the Administration, Pondicherry levelling charges of molestation. This is the complaint.

MR. DEPUTY-SPEAKER: You will have to conclude, Mr. Ravi.

SHRI VAYALAR RAVI: I am concluding. It was on 31st May that a complaint was made. It was gone through by Shri Patwari. Or there was a complaint earlier. The complaint was against the Lt. Governor and copies were sent to the President of India and the Prime Minister. When complaints are made levelling charges, here, the Acting Administrator appointed under Art. 239 of the Constitution issued the order against the minister. Charges are levelled against him by a Government servant. Suppose a good looking government servant is making a complaint against the Law Minister, Mr. Shanti Shanti Bhushan, that he tried to molest. Is he not answerable? Should this not be enquired into? Sometimes, action taken by Shri Patwari has political repercussions. I do not want to go into the *modus operandi* of the Governor. The Lieutenant Governor is acting in a vacancy of the person on leave has made a decision which is against the Constitution, which is against the oath he has taken that he will uphold the Constitution.

SHRI A. BALA PAJANOR: He has not taken an oath so far as this is concerned.

SHRI VAYALAR RAVI: He has taken the oath—the Governor of Tamilnadu has taken the oath—that he will uphold the Constitution. That has been violated. The Governor is only a link between the Centre and the State. If he acts like this, what happens. There are State Governments—in West Bengal, that is run by the Marxist Communist Party; in Kerala there is a Government run by other party and in one or two States

the Governments are run by India Congress. There is another Government run by the Akalis with the Akali Chief Minister.

MR. DEPUTY-SPEAKER: What is the clarification you want now?

SHRI VAYALAR RAVI: If the Governor, as an instrument makes such an order, what will happen to the body politic of democracy in the country.

MR. DEPUTY-SPEAKER: Your time is up.

SHRI VAYALAR RAVI: I shall conclude, Sir. I ask clarification from the Janata Government. I want to know on what authority the Tamilnadu Governor, Mr. Patwari, issued the order? Second, what is the constitutional validity and what will be its impact on the Indian body politic. Whether it will not lead to political repercussions in the country.

In this background—as an exemplar of your Government—will you recall the Tamil Nadu Governor, Mr. Patwari to save Tamil Nadu from the clutches of this man.

THE PRIME MINISTER (SHRI MORARJI DESAI): May I say that the hon'ble Member's reference to Governor's powers is not very relevant because Governors of States are different from Lt. Governors of Union Territories. Under the Union Territories Act, there are distinct provisions which clothe the Lt. Governor with powers of discretion and this can fall under those discretionary powers. We are examining the question as to how exactly it was done. We have, therefore, called for a report. Unless I go into it very carefully and thoroughly, it is not possible for me to assume that what he has done is wrong. But *prima facie* I do not agree that the Lt. Governor has no such powers. Whether he should so exercise them or not is another question.

The Lt. Governor represents the Central Government in Union territories and, therefore, has been given powers. The Governor also represents the Central Government but Governors have no other powers under the Constitution as Lt. Governors have. If my hon'ble friend refers to the Lt. Governor's powers under the Union Territories Act then he will find that there is a difference and this is what we are examining. All the legal aspects will be looked into when the report comes here. Then we will be in a position to give our definite views.

14.28 hrs

MATTERS UNDER RULE 377

(I) REPORTED RETURN OF CHINESE TRAINED UNDERGROUND GUERRILLAS

MR. DEPUTY-SPEAKER: Now, we will take up matters under Rule 377. Mr. Venkatasubbalah

SHRI A. BALA PAJANOR (Pondicherry): Mr. Deputy Speaker, I will hardly take one minute. Please allow me. I am the only member coming from that area.

** (Interruptions)

MR. DEPUTY-SPEAKER: Nothing will go on record. I have already called Mr. Venkatasubbalah to raise a matter under Rule 377. I cannot make an exception. If I make an exception in your case then I will have to make exception in other cases. I know your interest in the matter but I cannot transgress the rules of the House. Please take your seat.

SHRI P. VENKATASUBBALAH (Nandyal): Sir, it is stated that in

1976 a group of about 26 youths had crossed over to Tibet under the leadership of one Shri Vishweshwar to take training in guerilla warfare. They were all Mesties (Non-tribal Manipuris), some of whom are believed to have returned here some time ago with the intention to create panic and disrupt the law and order situation 'to popularise their demand for an independent Manipur'. The statement of the Education Minister of Manipur is that the recent murders of Policemen and looting of a bank in Manipur are no less crimes. Their nature indicated the hand of an organised group which needed both arms and money. The killing of two policemen in Imphal with the obvious purpose of taking away arms, the looting of a bank in the town immediately thereafter, and the subsequent killing of two more riflemen near the Burma border, which was the point of crossing over to the other side by the underground elements, could well be linked up.

MR. DEPUTY-SPEAKER: Dr. Vasant Kumar Pandit—not here. Shri Nathu Singh.

(II) REPORTED LOSS OF LIFE AND PROPERTY CAUSED BY FLOODS IN SOME DISTRICTS OF RAJASTHAN

“ जी माफू लिह (दीला) : उपाध्यक्ष महोदय, मैं आज की सनकति से नियम 377 के तहत निम्नलिखित मामला सदन में उठाना चाहता हूँ।

राजस्थान भारत का वह अभावग्रस्त प्रदेश है जहाँ कभी सूखा, कभी बाढ़, कभी अकाल आदि पड़ते ही रहते हैं। पिछले कई वर्षों से वहाँ बाढ़ आ रही है। कई जिले बाढ़ से अत्यधिक प्रभावित होते हैं। लेकिन आज तक वहाँ कोई भी उस बाढ़ का स्थायी हल नहीं

**Not recorded.