

12.30 hrs.

**RULING ON THE QUESTION OF
PRIVILEGE REGARDING CERTAIN
OBSERVATIONS BY A COUNSEL
AND A JUDGE OF THE CALCUTTA
HIGH COURT**

MR. SPEAKER: Now we will come to the notice of question of Privilege raised by Shri Jvotirmoy regarding certain observations by a Bosu, Member of Parliament re-counsel and a Judge of the Calcutta High Court on the recommendation of the Public Accounts Committee contained in their 176th Report (Fifth Lok Sabha) in paragraphs 9.1 to 9.16.

Shri Bosu has given notice of a privilege motion under Rule 222/223 of the Rules of Procedure and Conduct of Business in Lok Sabha against Mr. Justice Tarun Kumar Basu, a Judge of the Calcutta High Court in respect of a judgment delivered by him on March 8, 1978, in *Grindlays Bank Ltd. vs. ITO*. Therein, the petitioner Grindlays Bank Ltd. had challenged the validity of notices issued on them by the Income-tax Officer under Section 148 of the Income-tax Act, 1961 in respect of the assessment years 1958-59, 1966/67 to 1970-71. This case was tried along with another case which is not-relevant for the present purpose. Therein the Judge was considering the scope of the expression "information" found in Section 147(b) of the Income-tax Act. Various contentions were raised in that case. Most of them are not relevant in these proceedings.

It appears to have been contended on behalf of the Income-tax Officer that the report of the Public Accounts Committee constituted an "information" within the meaning of Section 147(b). That contention appears to have been rebutted by the Counsel for the petitioners. Relevant observations are found at pp. 727-728 of the *Income-tax Report (1979) 116 I.T.R.* They read as follows:—

"Lastly, Dr. Pal submitted that the report of the Public Accounts Committee could not be an "information" because the Committee did not form any opinion as to the allegations of under-assessment but had merely indicated the allegations made by one R.P. Gupta, who is the ex-employee of the petitioner-bank: and was dismissed by the bank on 13th Nov 1971. It was pointed out that unlike in the case of *R. K. Malhotra vs. Kasturbhai Lalbhai (1977) 199 ITR 537 (S.C.)* on which Mr. B. L. Pal relied, there was no formation of opinion on view of the Public Accounts Committee".

"All that was stated was that there were allegations by Mr. Gupta and investigations were in progress. It was submitted that the notice under S. 147(a) or S. 147(b) could not be issued merely for investigation. (See the Supreme Court decision in the case of *Chhugamal Rajpal vs. S. P. Chaliha (1971) 79 ITR 603* and the case of *Sheo Nath Singh vs. AAC (1971) 82 ITR 147*)."

"Lastly, Dr. Pal pointed out that, in the recorded reasons, there is no mention of the Public Accounts Committee Report and, consequently, it did not lie in the mouth either of Mr. H. P. Roy who had filed the affidavit or of Mr. B. L. Pal who argued the case before me that this report of the Public Accounts Committee constituted "information" justifying the reopening. As I have already indicated, according to Dr. Pal, the Public Accounts Committee did not form any opinion.

Even assuming that the PAC had formed any opinion which could be an "information" within the meaning of s. 147(b) of the Act, it was submitted the opinion must be of a person, body, authority or authorities competent and authorised to form the opinion of pronouncing the law as was held in the case of *R. K. Malhotra vs. Kasturbhai Lal-*

bhai (1977) 109 ITR 537 (S.C.). It was submitted that the Public Accounts Committee was not competent to form such an opinion.

In my view, the contention of Mr. Pal must be accepted. On the materials and on the submission made, I find that even for the assessment years 1969-70 and 1970-71, there is no "information" within the meaning of s. 147(b) of the Act which could justify the reopening."

As the contempt alleged is said to be against the PAC, I thought it desirable to get the opinion of the PAC before deciding upon the next step. I accordingly referred the matter to the PAC.

The PAC opined that as the learned judge had accepted the first two of the three contentions advanced before him, it was not necessary for him "to make a reference to the competency of the Public Accounts Committee to form an opinion constituting 'information' within the meaning of section 147(b) of the Income-tax Act." The Committee proceeded to observe:

"The Judge was not called upon to pronounce the judgement on this aspect and by accepting Dr. Pal's contention in this regard, he expressed an opinion which, in view of the impecations involving the working of a Committee of Parliament could have been avoided."

In the opinion of the PAC it is competent to form an opinion which would constitute 'information' both in fact and in law—under section 147(b) of the Income-tax Act. It felt that the decision of the judge on this point will detract from the Committee's effectiveness in general and in matters pertaining to the vital area of taxation by the Union Government in particular. Consequently, it felt that appropriate measures should be taken in order to meet the legal position arising out of the said pronouncement. The Committee refrained from expressing any opinion as to whether there was any breach of privilege of

the PAC. It opined that that question should be decided in accordance with the procedure laid down in the Rules of Procedure and Conduct of Business in Lok Sabha.

Let me assume (without deciding) that the view of the learned Judge on the question of law formulated above is incorrect. What follows then? An incorrect decision by itself either on a question of law or on a question of fact does not amount to a breach of privilege of the House or its Members. No malice is attributed to the Judge.

SHRI JYOTIRMOY BOSU (Diamond Harbour): Sir, I rise on a point of order.

MR. SPEAKER: Not now. After I have given my ruling, then you may raise it. A wrong decision has to be corrected by adopting procedures recognised by law and not by taking punitive action against the concerned Judge. The theme of committed Judges is alien to our jurisprudence. The rule of law runs through the veins of our Constitution. Any idea of subordinating the judiciary to the other organs of the State is repugnant to our Constitution. Each organ of the State functions within the limits laid down by the Constitution. Harmony and mutual respect and not confrontation between the various organs is the very prerequisite of our polity. Difference of opinion should not be viewed as a contempt. Courts of law have struck down many laws enacted by this Parliament as being beyond its competence. That does not amount to disrespect for this House. It is well recognised that Parliament is the most important and most powerful organ of the State. But under our Constitution, Parliament is not omnipotent. Power without restraint is self-destructive. Restraint is inbuilt in our Constitution. As a facet of this restraint, Courts have been given the power to decide about the validity of laws enacted by the legislature, or a rule made by a rule-making authority or decision taken by an official.

[Mr. Speaker]

The protection of the privileges of this House and its Members is very important. The power conferred on this House to punish for any breach of its privilege is very large. Therefore, the same has to be used sparingly and only in appropriate cases. There is no question of any breach of privilege in this case.

In this view, it is not necessary for me to go into the question whether the present proceedings are barred by Article 121 of the Constitution, which prescribes that no discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President, praying for the removal of the Judge as hereinafter provided.

For the reasons mentioned above, I am unable to accord my consent to the motion before me.

SHRI JYOTIRMOY BOSU: Sir, on a point of order. The Lawyer for Grindlays Bank had evaded huge amount of tax and he had made illegal remittance, abroad. It was submitted that the Public Accounts Committee was not competent to form such an opinion. Sir, the Public Accounts Committee is a duly-constituted authority.

MR. SPEAKER: I am assuming that.

SHRI JYOTIRMOY BOSU: The Public Accounts Committee is a duly-constituted authority under the Rules of Procedure and Conduct of Business of the Lok Sabha, which derives its authority from the Constitution of India. The Public Accounts Committee is competent to form an opinion.

MR. SPEAKER: Mr. Bosu, I am proceeding on that basis. I accept that.

SHRI JYOTIRMOY BOSU: May I move, Sir.

"That the House conveys its deep concern and displeasure in this regard to the Chief Justice of the Calcutta High Court."

MR. SPEAKER: Public Accounts Committee has an authority. I accept that.

SHRI JYOTIRMOY BOSU: Let the House convey its displeasure, Sir.

MR. SPEAKER: No, Mr. Bosu, it is not done at all; you cannot express displeasure.

Now, Papers to be laid on the Table, Shri Barnala.

SHRI JYOTIRMOY BOSU: People cannot get away by saying this.

MR. SPEAKER: Now, can you get away from the Constitution? Order please. Now, Papers to be laid on the Table. Shri Barnala.

12.30 hrs.

PAPERS LAID ON THE TABLE

ANNUAL REPORT ETC. OF NATIONAL SEEDS CORPORATION LTD., FOR 1977-78, A STATEMENTS AND NOTIFICATION UNDER COPRA CESS ACT.

THE MINISTER OF AGRICULTURE AND IRRIGATION (SHRI SURJIT SINGH BARNALA): I beg to lay on the Table:—

(1) A copy each of the following papers (Hindi and English versions) under sub-section (1) of section 619A of the Companies Act, 1956:—

(i) Review by the Government on the working of the National Seeds Corporation Limited, New Delhi, for the year 1977-78.

(ii) Annual Report of the National Seeds Corporation Limited, New Delhi for the year