

MR. CHAIRMAN: Subject to correction, the result of the division is: Ayes—42; Noes—8.

The motion was adopted.

17.26 hrs.

RESOLUTION RE: PROCEDURE FOLLOWED REGARDING PROMOTION OF A JUDGE.

MR. CHAIRMAN: We now take up the next Resolution. Shri Stephen.

SHRI C. M. STEPHEN (Idukki): Mr. Chairman, Sir, I rise to move the resolution which stands in the name of Mr. Veerabhadrapa and under his authorisation, as permitted by the Speaker, I move:—

“Having considered the statement made by Shri Shanti Bhushan, Minister of Law, Justice and Company Affairs on the floor of the House on 6th March, 1979 on the circumstances under which the promotion of Shri O. N. Vohra took place after the pronouncement of judgment in ‘Kissa Kursi Ka’ case.

This House records its displeasure over the procedure adopted in connection with the said matter.”

This resolution arises out of a statement made by the Law Minister in this House spelling out the circumstances under which Shri O. N. Vohra, the sessions judge, was promoted as a High Court Judge, the timely promotion at the conclusion of the trial of the ‘Kissa Kursi Ka’ case.....

SHRI KANWAR LAL GUPTA (Delhi Sadar): Sir, I rise on a point of order.

It is unconstitutional. (Interruptions).

SHRI M. N. GOVINDAN NAIR: Any resolution can be passed here.

SHRI KANWAR LAL GUPTA: To my mind, it is unconstitutional and it cannot be discussed

SHRI K. S. RAJAN: As if the earlier resolution was constitutional.

SHRI KANWAR LAL GUPTA: Let me first read out the resolution which has been moved by Shri Stephen, the Leader of the Opposition.

It reads:

“Having considered the statement made by Shri Shanti Bhushan, Minister of Law Justice and Company Affairs on the floor of the House on 6th March, 1979 on the circumstances under which the promotion of Shri O. N. Vohra took place after the pronouncement of judgment in ‘Kissa Kursi Ka’ case. This House records its displeasure over the procedure adopted in connection with the said matter.”

Let me read article 241. It says: says:

“(1) ‘Parliament may by law constitute a High Court for a Union territory or declare any court in such territory to be a High Court for all or any of the purposes of this Constitution.

(2) The provision of Chapter V of Part VI shall apply in relation to every High Court referred to in clause (1) as they apply in relation to a High Court referred to in article 214 subject to such modifica-

*The following Members also recorded their Votes:

AYES Sarvashri R.L.F. Verma, Dharm Singh Bhai Patel, Motibhai R. Chudhary Atal Bihari Vajpayee, Narendra Singh, Madan Lal Shukla, B. P. Mandal, Rejendra Kumar Sharma, Shri Gev. M. Avari, Shri Krishna Singh and Ram Prasad Deshmukh.

NOES: Sarvashri Ram Awadhesh Singh, C. K. Chandrapan, K. A. Rajan Jadunath Kisku, Begun Sambur K. P. Unni Krishnan, Shrimati Rashida Haque Chaudhary, Shri A. C. George.

cations or exceptions as Parliament may by law provide."

Now, article 217 says:

"(1) Every judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty-two years."

"Provided that

a Judge may, by writing under his hand addressed to the President resign his office...." and so on and so forth.

There is a procedure laid down in the Constitution in article 217. This procedure—as laid down in articles 217 and 241—has been fully followed and has been explained by Mr. Shanti Bhushan.

Now, if you see the Rules of Procedure, Rule 352 says:

"A member while speaking shall not—

(i) refer to any matter of fact on which a judicial decision is pending;

(ii) make a personal charge against a member;

(iii) use offensive expressions about the conduct or proceedings of Parliament or any State Legislature;

(iv) reflect on any determination of the House except on a motion for rescinding it.."

The next one is very important.

"(v) reflect upon the conduct of persons in high authority unless

the discussion is based on a substantive motion drawn in proper terms;"

'persons in high authority' include High Court Judge.

If you see the statement which was made by Shri Shanti Bhushan on 6th March, 1979.....

MR. CHAIRMAN: Mr. Kanwar Lal Gupta, the Speaker has already considered this matter.

SHRI KANWAR LAL GUPTA: The Speaker might have considered. But it is for you to rule out my point of order or accept it. You are the Speaker at the moment. The Speaker might have admitted a certain Resolution in his Chamber. Later on, as has happened many times, it has not been accepted by the Speaker or by the Chair. So, you have the authority. You are the Speaker now and you have to decide here. You have got all the powers that the Speaker has. My submission before you is this. Please see the statement of Shri Shanti Bhushan. He has given the procedure and what happened. or instance, he has said:

"Shri Vohra is the senior-most officer of the Delhi Higher Judicial Service. The proposal for his appointment as Additional Judge of the Delhi High Court was, in accordance with the procedure laid down, initiated by the Chief Justice of the Delhi High Court. At that time there were 20 Judges in position in the High Court and five appointments remained to be made. Although there is no legal requirement to this effect...."

AN HON. MEMBER: He is going into the details.

SHRI KANWAR LAL GUPTA: "Although there is no legal requirement to this effect, an effort is made to the proportion of service Judges at one-third of the total strength of the High Court...."

SHRI VASANT SATHE: This is a speech under the guise of a point of order. (Interruptions)

MR. CHAIRMAN: Mr. Kanwar Lal Gupta, I want to make it very clear. It has already been admitted by the hon. Speaker. I cannot reopen it. I have no power at all.

SHRI KANWAR LAL GUPTA: Here I do not agree with you.

MR. CHAIRMAN: There is no question of your agreement here.

SHRI KANWAR LAL GUPTA: There are precedents, not one but many, where a Resolution had been accepted by the Speaker, but later on some objection had been raised here and the Resolution was disallowed. You are the Speaker at the moment. Here my learned friend, the Leader of the Opposition, wants to discuss the statement of Shri Shanti Bhushan regarding the appointment of Shri Vohra as a judge. He is challenging his appointment....

SHRI VASANT SATHE: The Manner of appointment.

SHRI KANWAR LAL GUPTA: What do you mean by 'manner'?

SHRI VASANT SATHE: Don't you see the difference?

SHRI KANWAR LAL GUPTA: I understand what you mean. I understand your political motive behind it.

SHRI VASANT SATHE: We are saying it openly. There is nothing hidden. We are making an open allegation, an open charge of *mala fide*. What is hidden in that?

SHRI KANWAR LAL GUPTA: That is highly objectionable. Because Mr. Vohra committed Mr. Sanjay Gandhi, you got offended.

SHRI VASANT SATHE: I am not saying that Mr. Vohra is not competent to be a High Court Judge.

We are saying that the manner in which he has appointed is *mala fide*. (Interruptions)

SHRI KANWAR LAL GUPTA: Only if they keep quiet and control themselves, I will not take much time. Don't lose your temper.

When the recommendation of the Chief Justice of Delhi High Court and the Chief Justice of India has been received, the proceedings in the *Kissa Kursi Ka* case were at an advanced stage and the recording of the prosecution evidence was almost complete.

He has explained everything. Now as Mr. Sathe says, they want to criticise the *bona fides* of the Judge. They want to attack his character. My question is: if you want to discuss the appointment of any Judge here, is there any limit? If you want to impeach—I can understand that—you can bring forward a resolution for impeachment. There is a certain procedure for that. But, so far as appointment is concerned, it cannot be discussed here and this House is not competent to discuss the procedure of appointment of a High Court Judge. You can impeach by a majority of two-thirds. There is provision in the Constitution and, to find out a way to accuse and abuse a Judge for something which he has done, I think, is bad.]

SHRI SHYAMNANDAN MISHRA (Begusarai): One feels inclined to sympathise with you in your predicament because the resolution has been admitted by the hon. Speaker. But for the Chair, at any particular point of time, to take a view that since the hon. Speaker has admitted it, so the Chair would not go into the points of order raised by an hon. Member does not seem to be a correct view to take, because, it may well be that these points were not placed before the hon. Speaker and the points raised by the hon. Member have to be met and they have to be put on record that these things which have been raised by him do not arise pro-

perly in the particular context and so the resolution would be gone through. That point of view one can take. But the points must not remain unmet. Because the points have been made, they have to be met. Otherwise if the Chair takes the view that the hon. Speaker has already ruled that it is in order, that is not a proper thing to do in this matter. This is my humble submission. You may take your own time about this and we can proceed with it. But this is not the procedure which the House should be asked to accept in the matter of rulings.

SHRI C. K. CHANDRAPAN: Mishraji, you were not here when a few minutes ago the House passed by a majority and adopted a resolution which was absolutely unconstitutional.

SHRI SHYAMNANDAN MISHRA: That view you can take.

SHRI C. M. STEPHEN: The matter is very simple. A statement was made on the floor of the House. The simple question is: once a statement is made on the floor of the House, whether this House has got a right to consider that statement. This is the essence of this . . .

SHRI KANWAR LAL GUPTA: Statement on what?

SHRI C. M. STEPHEN: Anything. A statement was permitted, it was shown to the Speaker and a Statement was made on the floor of the House. The question is: whether this House must leave the statement there or whether it can, if it so chooses, consider, even otherwise than by a resolution, a statement made on the floor of the House. A statement made on the floor of the House cannot be the end of the matter . . .

SHRI SHYAMNANDAN MISHRA: That, of course, you can do.

SHRI C. M. STEPHEN: Having considered that statement. The house expresses its opinion. This is all that is done. Having considered that statement, the House expresses its opinion and this resolution is perfectly in order.

(2) Rules 173 and 174 must be read together. The admissibility of resolutions is spelt out in Rule 173. Rule 174 says:

"The Speaker shall decide whether a resolution or a part thereof is or is not admissible under these rules and may disallow any resolution or a part thereof when in his opinion it is an abuse of the right of moving a resolution or calculated to obstruct or prejudicially affect the procedure of the House or is in contravention of these rules."

There are two or three stages. A resolution is allotted: the resolution has come and the Speaker has considered it and under Rule 184, he holds that the resolution is valid and admissible. He can amend the resolution. I may submit it for the information of the House that the Speaker did amend the phraseology of the Resolution. He felt that certain phrases were to be amended and so he amended a certain phraseology and he gave the order and then the Resolution is admitted under Rule 174. This was put on the order paper in the week before last. It is not coming up for the first time.

In the meanwhile, if anybody has got any objection, probably, he could have taken the objection with the Speaker. Even then I would say that the Speaker was out of bounds at that point of time. Anyway the matter has come up after all these things. This is a simple thing that the statement made by the Minister be taken into consideration. Nothing more than that. And then the House proceeds to express an opinion—or it may or may not express an opinion. But, to say that the statement made

[Shri C. M. Stephen]

in the House should not be taken into consideration by the House is going rather too far. This is all that I can say.

Having considered the statement made by Shri Shanti Bhushan, the Minister of Law, Justice and Company Affairs on such and such a date, the House records on the circumstances under which Shri O. M. Vohra's promotion took place after the pronouncement of the judgment. That was not what he explained. This House records its displeasure over the procedure adopted in connection with the said matter. (Interruptions)

SHRI SHYAMNANDAN MISHRA: That was about the manner in which he was appointed.

SHRI C. M. STEPHEN: For Mr. Mishra's information, I may say that two wordings were there originally. The word chosen by the Speaker was 'procedure'. There was some other word. He altered and the word 'procedure' was put in. It is not as if he casually admitted it; he considered it in details and he admitted it; he exercised his jurisdiction under Rule 174. It is here. It does not lie in the mouth of any Parliamentarian to say that the statement made in this House is beyond the arms of the House for consideration. (Interruptions). I say that it shall not lie in the mouth of any Parliamentarian to say that the statement shall not be considered by the House. This is a simple thing.

SHRI SHYAMNANDAN MISHRA: The hon. Leader of the Opposition would have been in a much better position to argue his case if, in place of the word 'procedure' were the words 'the manner in which the appointment has been made'. So, the procedure that has been adopted in this particular case was strictly in accordance with the Constitution.

SHRI SHAMBHUNATH CHATURVEDI: Sir, I rise on a point of order.

MR. CHAIRMAN: What is your point of order? And under which rule you are raising it?

SHRI SHAMBHUNATH CHATURVEDI: I am speaking about Rules 173 and 174. What was said in the Statement absolutely in accordance with the procedure laid down for the appointment of a judge.

Now, if the House, expresses its displeasure, it would certainly be an expression of displeasure against the Chief Justices of the High Court and Supreme Court. This is the implication of this Resolution. So, Sir, the appointment was made perfectly in accordance with the constitutional provisions. Now to say that the House expresses its displeasure, it means that either the Chief Justice of Supreme Court or the Chief Justice of High Court has erred and thereby displeasure attaches to their actions. Can it be said in this manner?

MR. CHAIRMAN: Mr. Gupta and Mr. Mishra, all these aspects have been considered by the hon. Speaker and he has come to this conclusion that it may be admitted. And since he has already admitted it, I have no authority and I have no competence in the matter. So, I am ruling out these points of orders. Mr. Stephen, you may go ahead.

SHRI SHAMBHUNATH CHATURVEDI: This is a very bad precedent. This was never done before.

SHRI KANWAR LAL GUPTA: You are as good as Speaker.

MR. CHAIRMAN: I have already ruled out all points of orders, Mr. Gupta.

SHRI KANWAR LAL GUPTA: Even the Speaker has considered it.

SHRI K. P. UNNIKRISHNAN: You should give your ruling.

MR. CHAIRMAN: I am giving my ruling that there is no point of order. The point of order does not arise at all. I am ruling it out. You go ahead Mr. Stephen. (*Interruptions*)

Once I have given my ruling, you cannot question my ruling. Do not comment on it.

SHRI KANWAR LAL GUPTA:
You give your ruling, just now.

MR. CHAIRMAN: I have given my ruling Mr. Stephen you go ahead.

SHRI SHYAMNANDAN MISHRA:
Then, Sir, let us be quite clear in our minds that it is a no-confidence motion against both the Government and also an impeachment of the Chief Justice of the Supreme Court. Let us take it in that form that this is an outright motion of no-confidence against the Government and an impeachment.

SHRI C. M. STEPHEN: When I make my submission, you will come to understand what I say. The gravamen of my charge is that the Chief Justice was placed out of the picture and the appointment was effected without the knowledge of the Chief Justice.

SHRI KANWAR LAL GUPTA:
Have you ruled out my objection?

MR. CHAIRMAN: Yes, ruled out.

SHRI KANWAR LAL GUPTA:
Without giving any reasons? Without applying your mind?

MR. CHAIRMAN: I have applied my mind. After applying my mind only I have come to this conclusion. (*Interruptions*):

THE MINISTER OF STEEL AND MINES (SHRI BIJU PATNAIK):
He says, you did not apply your mind. (*Interruptions*).

MR. CHAIRMAN: The hon. Speaker has taken all aspects into consideration. He has considered all of them.

SHRI BIJU PATNAIK: It has been said that you did not apply your mind; you cannot change it.

MR. CHAIRMAN: There is no question of my changing. Hon. Speaker has considered all these aspects in detail. I fully agree with him. Whatever he has done is correct.

SHRI BIJU PATNAIK: But it was not possible for him to go into all these aspects. So, let the matter be taken up by the Speaker once again. Let it be taken up again and it may be that the Speaker may give another ruling perhaps. It is a very serious matter of propriety.

SHRI K. P. UNNIKRISHNAN:
What is the hurry, Sir? We can take it up later.

SHRI BIJU PATNAIK: The Speaker can always review matters.

SHRI K. P. UNNIKRISHNAN:
Admitting is one thing. Now objections are taken when it is being moved. That is a different stage.

SHRI SHYAMNANDAN MISHRA:
And the Chair has to record its ruling on the points raised by us.

SHRI KANWAR LAL GUPTA:
With comma and full stop and sign it..

SHRI C. M. STEPHEN: After having moved the Resolution, may I now proceed, Sir?

SHRI BIJU PATNAIK: How can the Chair say, you go on,—to accuse the Chief Justice of India, to accuse the Chief Justice of a High Court? How can the Chair allow this thing? It cannot be allowed. Constitutionally it cannot be allowed. (*Interruptions*).

SHRI P. RAJAGOPAL NAIDU:
(Chittoor): Nobody can challenge the ruling.

[Shri C. M. Stephen]

SHRI BIJU PATNAIK: Nobody can challenge the constitutional provision governing the functioning of the House. Nobody can accuse, except through impeachment, the Chief Justice of India or the Chief Justice of a High Court. You cannot do it.

The House is debarred from doing it. (Interruptions).

SHRI KANWAR LAL GUPTA: May I make a submission? If you want to overrule my point, you have got every right to do that. But have the reasons recorded and then do it.

MR. CHAIRMAN: Mr. Kanwar Lal Gupta, I have already given my ruling. I have already given reasons why I am doing that.

SHRI BIJU PATNAIK: Because the Speaker has admitted, you cannot do it. That is what you have said. The Chair said, 'The Speaker has already considered.' The Speaker may, in his Chamber, also review the thing. We are only requesting the Chair to consider whether this may be postponed.

SHRI VASANT SATHE: It has already been decided; no question of postponement. The question of validity of the resolution can't be questioned.

SHRI KANWAR LAL GUPTA: Let it be referred to the Speaker. Let the Speaker decide. (Interruptions)

SHRI BIJU PATNAIK: Sir, the House may adjourn now. I move a resolution that the House may adjourn because of the seriousness of the matter.

(Interruptions)

MR. CHAIRMAN: I have already ruled out your point of order.

SHRI BIJU PATNAIK: I move that the House may adjourn. Sir you have to admit it. I have moved a formal resolution that the House may adjourn.

MR. CHAIRMAN: Under what rule?

SHRI C. M. STEPHEN: This is something else. You have nothing to do with this. You please sit down.

SHRI BIJU PATNAIK: I move that the matter be referred back to the Speaker.

SHRI KANWAR LAL GUPTA: Sir, there is a formal resolution moved by the hon. Minister which should be considered.

MR. CHAIRMAN: Under what rule?

SHRI SHYAMNANDAN MISHRA: The resolution cannot be moved in the way the hon. Minister is moving. I am always trying to take a right stand in this. Now, a resolution can be moved only according to the particular procedure and that procedure has not yet been adopted. But this request can be made to you that the matter can be held over for the consideration of all the points that have been raised in this particular context. Now, if it is your pleasure to say that the Chair means the Speaker and no other occupant of the Chair, then of course the decision of the Speaker would be binding on the House that way. But so far as we are concerned, we find that the occupant of the Chair at any particular point of time is the Speaker and we go by that. Now...

MR. CHAIRMAN: When you accept me as Speaker, you accept my ruling that I have ruled out your point of order.

(Interruptions)

SHRI C. M. STEPHEN: I have already moved my resolution. Don't try to stall it. It has already been moved. I spoke for two or three minutes. Then the point of order came up. Therefore, the matter is

not closed. Don't waste time. I have already spoken for two or three minutes. (Interruptions)

SHRI KANWAR LAL GUPTA:
You have to apply your mind.

SHRI SHAMBU NATH CHATURVEDI: I am challenging your ruling.

SHRI BIJU PATNAIK: No Member of Parliament can challenge the ruling of the Chair.

SHRI C. M. STEPHEN: Nothing would have been lost if the hon. Minister left it at that.

SHRI KANWAR LAL GUPTA:
Sir, there was a point of order.

MR. CHAIRMAN: The point of order was ruled out.

SHRI C. M. STEPHEN: Sir, the statement made by the Minister on the floor of the House has raised many issues of fundamental character which have got to be considered by this House. It is in that spirit that this resolution has been

moved. If one goes through the statement of the Minister, it will be seen that the provisions of the Article, that is Article 217 of the Constitution, whereunder High Court Judge has to be appointed by the Government were violated . . . (Interruptions). An analysis of the statement made by the Minister will indicate that the appointment was in violation of Article 317 of the Constitution.

MR. CHAIRMAN: You may please continue next time.

17.56 hrs.

BUSINESS ADVISORY COMMITTEE THIRTY-SECOND REPORT.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND LABOUR (SHRI RAVINDRA VARMA): Sir, I beg to present the Thirty-second Report of the Business Advisory Committee.

17.57 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Monday April 16, 1979/Chaitra 26, 1961 (Saka).