

कह रहा हूँ कि मंत्री महोदय स्टेटमेंट न रखें। मेरा कहना यह है कि स्टेटमेंट को अध्यादेश के माध्यम ही रखा जाये।

MR. DEPUTY-SPEAKER: That can be looked into.

SHRI MADHU LIMAYE: It is not a point of order.

श्री अटल बिहारी वाजपेयी: उपाध्यक्ष महोदय, अध्यादेश तो पहले निकल गया। उस दिन सदन में यह मामला उठाया गया। आज सदन पर चर्चा होने वाली है और अब यह स्टेटमेंट आ रहा है। आप भविष्य के लिए निर्देश दे सकते हैं कि प्राइमिंस के माध्यम ही स्टेटमेंट आना चाहिए।

MR. DEPUTY-SPEAKER: I am afraid, I cannot off hand just issue a direction like that, because the rules are silent about it. The Chair must do things with a certain amount of responsibility and it must give certain thought to it. It is not as if we are dealing with Ordinances only now. This has been there for so many years. Why this has not been incorporated in the rules, why a directive by the Speaker has not been made so far, for that there may be some good reasons. I see the force of your arguments. I have also generally said that the House must be seized of it at the earliest whenever a thing like this comes. But do not pressurize me to give a ruling.

SHRI MADHU LIMAYE: I want your ruling on the other point of order.

MR. DEPUTY-SPEAKER: Shri Vajpayee was saying about the Ordinance before Parliament. We have discussed this before, and when the Bill is taken up for discussion we can discuss it again. I think we can go to the next Bill.

14.54 hrs.

ADDITIONAL EMOLUMENTS
(COMPULSORY DEPOSIT) BILL

THE MINISTER OF FINANCE (SHRI YESHWANTRAO CHAVAN): I beg to move for leave to introduce a Bill to provide, in the interests of national economic development, for the compulsory deposit of additional emoluments and for the framing of a scheme in relation thereto, and for matters connected therewith or incidental thereto.

MR. DEPUTY-SPEAKER: Motion moved:

"That leave be granted to introduce a Bill to provide, in the interests of national economic development, for the compulsory deposit of additional emoluments and for the framing of a scheme in relation thereto, and for matters connected therewith or incidental thereto".

SHRI SEZHIYAN (Kumbakonam): Sir, I rise on a point of order. Here also the Ordinance has been issued on the 8th July. The Bill has been signed on the 9th August. The corrigenda has come on the 14th August 1974. Here as many as 13 items come. If you refer to it leisurely, probably the corrigenda may contain more number of items than the Bill itself. As many as 13 items have been given...

MR. DEPUTY-SPEAKER: Are there corrigenda to this also?

SHRI SAZHIYAN: Yes, Sir, it has become the order of the day. They issue an Ordinance; they issue an amending Ordinance; they issue a Bill and they issue corrigenda. There are as many as 13 items. They are not simple corrections.

If you take item No. 1, it says:

"Page 3, line 9, after "over" insert
"Page 3, 9 after "over" insert

MR. DEPUTY SPEAKER: Are you opposing or raising a point of order?

SHRI SEZHIYAN: I want it to go on record that this habit of putting in corrigenda taking the place of amendments is not proper.

Again, if you take item No. 9, it says:

Page 11, line 21,—

after "committed" insert—

"by a company and it is proved that the offence has been committed"

All these they want to take as corrections.

There is also the Financial Memorandum. In this respect, I want to ask the Finance Minister.

MR. DEPUTY SPEAKER: What is your point of order?

SHRI SEZHIYAN: It is the same which we raised earlier.

MR. DEPUTY SPEAKER: We disposed it of.

SHRI SEZHIYAN: You consider it afresh in view of additional material brought out here. If this is allowed to go on, I am afraid, the items in the corrigenda may out-number the items given in the Bill.

SHRI YESHWANTRAO CHAVAN: Sometimes, a mistake is made in the printing press. Do you want to completely rule out the corrigenda?

SHRI SEZHIYAN: In this one, I am not doubting the *bona fides* of the Minister. In this case, it is all right. But if this is taken as a precedent, the corrigenda replaces amendments, by some other Minister, then there will be no end to it. I want you to pull up the Ministry or the Department not to allow this type of corrigenda.

I want to stress another point. There is the Financial Memorandum. It says:

"The additional cost of strengthening the existing administrative machinery of the Central Government for this purpose is estimated at Rs. 100 lakhs per annum recurring and Rs. 25 lakhs non-recurring... The cost of strengthening the Employees' Provident Fund Organisation is estimated at Rs. 125 lakhs recurring and Rs. 25 lakhs non-recurring...."

It will come to about Rs 275 lakhs or so per annum.

Just now, he said that he has not moved for any additional appointment or for incurring any additional expenditure. That is not the point. That means this scheme is being financed and implemented with the existing personnel with the existing grant. That is basically wrong. If you want, I can sit with you and show you the various P.A.C Reports wherein it has been mentioned that new schemes cannot be implemented with the existing grants. That is the basic point. This is the basic issue I want to raise.

श्री मधु लिवडे (बांका): उपाध्यक्ष महोदय, पेज 15 पर स्टेटमेंट आक्रा प्राव-
जेन्ट्स एंड रीज़न्स में कहा गया है

"The Bill seeks to replace the said Ordinance with certain modifications which are mainly of a clarificatory or procedural nature"

इस की कोई तफ़सील नहीं दी गई है कि सरकार कौन से माडिफिकेशन करने जा रही हैं। जब तक मंत्री महोदय तफ़सील नहीं देंगे, तब तक यह कैसे पता चलेगा कि ये माडिफिकेशन स्पष्टीकरण के तौर पर हैं या बुनियादी हैं ?

18.00 hrs.

दूसरा मेरा आक्षेप यह है। क्लॉज 17 देखिये आप।

"Where the Central Government, is of the opinion that it is necessary or expedient so to do either in the public interest or having regard to the peculiar circumstances of any case, it may, by notification, and subject to such conditions, if any, as it may specify in the notification,—

(a) exempt any establishment or category of employees working in any establishment from the operation of all or any of the provisions of this Act;

(b) exempt, in the case of extreme hardship to any employee, from crediting any amount in relation to such employee to the Additional Wages Deposit Account;

(c) empower deductions from additional wages in relation to an employee or class of employees, at a rate lesser than the rate specified in this Act."

मेरे दो आक्षेप हैं। एक तो यह इन में एक्सेप्शनल डेलीगेशन आफ पावर है। आप नियम देख लीजिए, नियम 70 :

"A Bill involving proposals for the delegation of legislative power shall further be accompanied by a memorandum explaining such proposals and drawing attention to their scope and stating also whether they are of normal or exceptional character."

यह इतना एक्सेप्शनल है फिर भी उम्भ का जल्दबाजी तक नहीं किया गया है। इसमें आप इतनी पावर ले रहे हैं कि किसी भी कैटेगरी को एग्जम्प्ट कर सकते हैं

और किसी एम्पलाई को एग्जम्प्ट कर सकते हैं, रेट चेज कर सकते हैं। इस के लिए जो मुद्दा मैंने उस समय भी उठाया था, हैदराबाद यूनिवर्सिटी बिल के समय वही इसमें भी उठा रहा हूँ।

Can a Legislature or Parliament divest itself of its essential function of laying down the broad principles of policy?

क्या कोई मार्ग दर्शक मित्रता भी नहीं होने चाहिए कि किम के आधारा पर यह कार्य करेंगे ? क्या आप इस आधारा पर करेंगे कि जो कांग्रेस पार्टी के सदस्य हैं उन के लिए माफ करेंगे उन के लिए रेट कम किया जाएगा।

श्री एम० रामगोपाल रेड्डी (निजामाबाद) : कोई एम्पलाई किसी पार्टी का सदस्य नहीं है।

श्री मधु लिंगये : रेड्डी सहज, यह गवर्नमेंट सर्वेंट्स के लिए ही नहीं है, यह आर्थ के कारखाने के लिए भी लागू होता है।

तो इस संबंध में मेरे दो आक्षेप हैं। एक यह कि एक्सेप्शनल पावर सरकार ने ली है, उस का उल्लेख तक नहीं किया है डेलीगेटेड लेजिस्लेशन सबधी मेमोरेंडम में और दूसरा—क्लॉज 17 में कोई निर्देशक सिद्धांत नहीं है कि इस सत्ता का कैसे उपयोग करेंगे। कोई डीवा, कोई मिदान्त, ब्राड फ्रेम वर्क होना चाहिए। लेकिन वह नहीं है तो मनमानी ये करेंगे। उपाध्यक्ष महोदय, मैं आशा करता हूँ कि आप ये प्वाइंट्स मेरे नोट कर रहे हैं.....

MR. DEPUTY-SPEAKER: Yes; I am.

श्री मधु लिमये . इसमें आप फाइनेंसियल मैमोरेण्डम देखिए । उस में इन्होंने कहा है :

“The cost of collection of deposit amounts, accounting of deposits and repayment as provided in Clause 9 of the Bill, will be borne by the respective employers including the Central Government and State Governments. ”

क्या इस मंसद को इस तरह का कोई कानून बनाने का अधिकार है जिस से 'राज्य' सरकारों के ऊपर हम कोई खर्चा ला देंगे ?

You are imposing expenditure which the State Governments did not want.

जिस के लिए बजट में कोई प्रावधान नहीं था, राज्य सरकार ने कोई कानून नहीं बनाया, स्टेट गवर्नमेंट ने सम्मति नहीं दी है, वह खर्चा आप उन के ऊपर लादने जा रहे हैं। आप इसी तरह कानून बनाते चले जाएंगे और राज्यों पर खर्चा लादते जाएंगे ? कहा तक यह संविधान के अनुसार है, यह मेरी समझ में नहीं आता। इस का भी खुलासा होना चाहिए। राज्यों के द्वारा अपने बजट में इस खर्चे के लिए कोई प्रावधान नहीं है और इसके बारे में राज्यों और विधान सभाओं ने कोई अपनी सम्मति नहीं दी और हम लोग यहाँ कानून पास कर रहे हैं, राज्यों को आर्डर दे रहे हैं कि इतना खर्चा इन स्कीमों पर आप कीजिए। स्कीमें है आप की और खर्चा करने के लिए आप राज्यों से कह रहे हैं। तो यह बहुत ही महत्व का मुद्दा है और इसके पहलुओं को

आप देखिए। इसमें मुख्य बात यह है कि यह बात हमारे लेजिस्लेटिव काम्पिटेंस में नहीं आती है और लेजिस्लेटिव काम्पिटेंस का सवाल आता है तो विस्तृत चर्चा इस के बारे में आप परमिट की जाए। इस लिए आप सोमनाथ चटर्जी साहब को भी मौका दीजिए कुछ कानूनी बातें रखने का।

SHRI ATAL BIHARI VAJPAYEE (Gwallor): Now it is past Three O'clock. It is time for us to take up private members' business

MR. DEPUTY-SPEAKER: Whenever there is a point of order, we have to dispose it of and after that we will decide what to do with the business. Now, I am hearing the points of order. We must dispose them of.

SHRI SOMNATH CHATTERJEE (Burdwan): The point is whether we can even discuss this Bill and consider that the House should take into consideration this Bill.

If you kindly see clause 3 of the Bill—page 5, it says:

“This Act shall apply to an employee of—

(a) the Central or State Government;

(b) a local authority....”

Now, 'local authority' has been defined. Therefore, apart from the employees of different companies to which I am not coming, it very clearly says that all employees of the State Government and of the local authorities will be covered. 'Local authority' has been defined or is proposed to be defined by clause 2(1)—page 4 which says:

“'local authority' means any municipal committee, district board, body of port commissioners, panchayat or other authority legally entitled to, or entrusted by the Central

or any State Government with the control or management of any municipal or local fund;"

Therefore, even employees of such local authorities are covered.

Now, you will come to clause 6 of the Bill on page 6 which provides for making of deductions and if you kindly go to clause 6(2)(a), it says:

"On the commencement of this Act—

(a) every employer, who draws, from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly. "

Therefore, we are here purporting to legislate with regard to the Consolidated Fund of a State and regarding its services as also their conditions of service and emoluments etc.

Sub-clause (2)(b) of clause 6 refers to all other employees who are not employees of the Central or State Governments receiving their salaries from the Consolidated Fund but includes employees of the local authority. Now, under the Constitution it is exclusively within the State List. You will kindly take List II of the Seventh Schedule, item 5 under which it is the exclusive jurisdiction of the State legislature to make laws relating to local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration. Therefore, with regard to the constitution and powers of these bodies which are included...

MR. DEPUTY-SPEAKER: Which item in list II?

SHRI SOMNATH CHATTERJEE: Item 5.

Therefore, matters relating to constitution and powers of a local

authority have been expressly reserved for the State Legislature under entry 5 of List II.

Similarly, entry 41 of List II refers to State public services. In my submission, State public services include matters of conditions of service, emoluments and salaries so on and so forth. So far as local authorities are concerned, I have got a decision of the Bombay High Court, 1967 Bombay 492 to which one of the present Judges of the Supreme Court, Mr. Justice Chandrachud was a party where it has been said:

"Entry 41 in List II in the Seventh Schedule to the Constitution enable State Legislatures to enact laws regarding State Public Services. Entry 5 in the same List enables the Government to make laws regarding the constitution and powers of local authorities for the purpose of Local Self-Government or Village Administration. . . The State legislature had therefore power to enact the Zilla Parishads and Panchayat Samitis Act to provide for the establishment in rural areas of Zilla Parishads and Panchayat Samitis for the purposes mentioned in the Preamble. In that connection, the Legislature had the right, *inter alia*, to enact Chapter XIV relating to provisions as to services"

Under Entry 5 also provisions as to service under local authority can be done by the State Legislature. This is the judgement of the Division Bench of the Bombay High Court.

There is another decision AIR 1966 Bombay, page 15. This is the judgement delivered by Chief Justice Chinai. It held:

"Entry 5 in List II Sch. VII of the Constitution is very wide in its terms and Art. 246(3) of the Constitution read with this entry empowers a State Legislature to make

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laws in regard to any subject of local government including the constitution and powers of municipalities”

Sir, Chief Justice Chinani was in good company because the concurring judge was the present Law Minister when he was judge of the Bombay High Court. Then I have got a decision of the Full Bench of the Madhya Pradesh High Court which held:

“The word ‘powers’ used in Sch. VII List 2, Entry 5 of the Constitution which is unqualified includes the powers of making laws and imposing taxes. When the Constitution enabled the Legislature of a State to make laws about the Constitution and ‘powers’ of local authorities for the purpose of local self-government, it authorised the legislature to confer on the local authorities by such laws made for that purpose, limited powers of making laws and imposing taxes.”

Powers to impose taxes can be conferred on the local authority because that has been construed to be so as per the findings of the Madhya Pradesh and the Bombay High Courts to which the present Law Minister was a party. So this cannot be curtailed. So far as the present Bill is concerned it purports to impose new conditions of service with regard to employees of local bodies which only a State Legislature can do. Salary or portion of salary is one thing which relates to conditions of service or terms and conditions of service and that is not disputed. Even with regard to State Government servants also, it is under Entry 41. See the item Public Debt of the State under Entry 43. It is exclusively under the power of the State Legislature. Payment of interest in the different account which is to be opened under the Act has to be made out of the Consolidated Fund of India or the State, as the case may be. So

this matter is within the jurisdiction of the State Legislature. Parliament cannot impinge on that jurisdiction.

I know that an answer may be given that in the extraordinary condition or emergency that is prevailing in this country Parliament will have overriding power under certain provisions of the Constitution. May I draw the attention to certain provision of the Articles of the Constitution? Article 352 relates to Proclamation of Emergency. Kindly see the scheme of the Constitution. It says:

“If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened whether by war or external aggression or internal disturbance he may by Proclamation make a declaration to that effect.”

It relates to external aggression or internal disturbance or war etc. that is to say, if the nation is threatened by any of these matters which are contemplated by Article 352.

Our Constitution contemplates a second type of emergency which you will find in Article 360. It says:—

“If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect.”

Under Sub-Art. 3, regarding financial matters, directions can be given by the Centre or President. It says:—

“Notwithstanding anything in this Constitution—

(a) any such direction may include—

(i) a provision requiring the reduction of salaries and allowances of all or any

class of persons serving in connection with the affairs of a State;

- (ii) a provision requiring all Money Bills or other Bills to which the provisions of article 207 apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;

- (b) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts."

As far as we are aware, a Proclamation has been issued only under Art. 352. That is with regard to war or external aggression or internal disturbance which creates a situation concerning the security of the State. But, our Constitution, contemplates a different type of emergency, that is, a financial emergency which authorises the Government to issue directions with regard to reduction in the amount of salaries and wages of public servants in this country.

Now without a Proclamation of Emergency under Article 360, by a colourable exercise of power, they are now seeking to impinge upon the exclusive powers of the State Legislature in List 2 of Seventh Schedule which they cannot do. So far as Declaration of Emergency under 352 is concerned, that is on a different footing altogether. Declaration of Emergency under Article 360 gives them a different power. Let the Government say that a situation has been created by itself whereby an emergency has

arisen in the financial stability or the credit of India or of any part of the territory thereof. They can do so only on the basis of such a declaration, which is the result of their bankrupt policy and their object surrender to the vested interests. They have created the situation by which they are forced to take to recourse to what is contemplated by Article 360 of the Constitution.

Sir, I submit that on this basis, the Bill is totally unconstitutional and it cannot be moved in this House. This House has no authority or jurisdiction to consider this. If they have to do it, they can do under Art. 360 followed by the consequential provisions.

MR. DEPUTY-SPEAKER: I am not going to give my ruling. I am only guiding the proceedings. Now a new and very big dimension has been introduced. That is with regard to the legislative competence of this House to enact this Bill. Shri Somnath Chatterjee has referred to various Articles of the Constitution and also certain Clauses in the Bill which impose certain duties and financial burdens on the States and Local Authorities. To me it appears to be a very cogent argument and therefore, I feel that this necessitates a full discussion under Rule 72 which says:--

"Provided that where a motion is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon."

SHRI SOMNATH CHATTERJEE: There is another point of order. As you are allowing a full discussion, I may indicate the other points. That is the point with regard to Article 31(2) of the Constitution of India. When the matter of Compulsory Deposit Scheme came up before the House in 1963, the Attorney-General, Shri Daphtary was called and he gave an opinion that such a compulsory deposit scheme would be violative of

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Article 31 if the concept 'money' would be included within the concept of 'property' which is mentioned in Article 31.

Sir, Mr. Daphtary said money cannot be treated as property within the meaning of Article 31. Since then Supreme Court had occasion to deal with this question. That was the opinion of the Attorney General in 1963. In 1968 the Supreme Court by a unanimous judgement held that the right to a sum of money is a property under Article 31. In this case, therefore, this is a deprivation with regard to the exercise of the rights over money for a certain period of time. This was conceded by Mr. Daphtary on the floor of the House also and he said money was different from property—either moveable or immovable property—excluding money in specie or currency. Subsequently, the Supreme Court has dealt with this question and held therein deprivation of right over money. This is another point which goes to the root of the matter apart from the legislative competence.

MR. DEPUTY-SPEAKER: Now, I had said, the point raised necessitated a full discussion about the legislative competence of this House with regard to this Bill. We have already exceeded the time-limit for Private Members' Business. I think we can leave the matter here and then take up the discussion later. Government will also have to meet all the legal points and constitutional objections.

Now, we take up Private Members Business.

श्री शंभु सिन्घे : क्या एटार्नी जनरल को हस्त सदन में नहीं बुलाया जाएगा ? प्रायः इन में कृषि एटार्नी जनरलको लेकर प्रायः यह बहुत गम्भीर मामला है ।

15.22 hrs.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

FORTY-FOURTH REPORT

SHRI S. P. BHATTACHARYYA (Uluberia): I beg to move:

"That this House do agree with the Forty-fourth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 14th August, 1974."

MR. DEPUTY-SPEAKER: The question is:

"That this House do agree with the Forty-fourth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 14th August, 1974."

The motion was adopted.

15.23 hrs.

RESOLUTION RE. AGRICULTURAL LABOUR—contd.

MR. DEPUTY-SPEAKER: The House will now proceed with further discussion on Shri Gadadhar Saha's Resolution on agricultural labour. He will continue his speech.

*SHRI GADADHAR SAHA (Birbhum): Mr. Deputy Speaker, Sir, the unprecedented price rise has made the life of the rural population particularly the agricultural labourers, poor peasants, unbearable, 70 per cent of the population of the country live in the rural area and out of this 40 per cent constitute adivasis, scheduled castes, scheduled tribes and backward people. As a result of inflation, their life has not only become very very