

The other day, the Minister was here and, when the Members rose to raise this matter, I said, we better refer the Minister and he may come out with some solution.

(Interruptions)

MR. SPEAKER: We may make a request that he should find some solution and come before this House.

किसी प्राइवेट भ्रादमी ने यह कालेज खोला । उस की बला हरियाणा गवर्नमेंट पर आ पड़ी । और अब हरियाणा वालों की बला यहां श्री खाडिलकर पर डाल दी गई है । माननीय सदस्य तो ऐसे कह रहे हैं, जैसे सब कुछ श्री खाडिलकर ने ही किया है ।

(Interruptions)

MR. SPEAKER: There is no question of nationalising any College....

(Interruptions).

अध्यक्ष महोदय : आप लोग आपस में मुकाबला न करें कि उधर से किसी ने कुछ कहा है, तो इधर से भी कुछ कहा जाना चाहिए ।

SHRI PILOO MODY: One important matter concerning the procedure which I would like to bring to your notice is that only a little while ago, the Minister got up and said something to the effect, 'Give me one week, I will find some solution.' A few minutes later, he was allowed to back out of that commitment before your own eyes, under your nose and in the full view of the whole House. I think he should not be allowed to do that. He should be made to stick to it. It is as a result of that statement, the situation changes qualitatively and because it changes, he is now in a position to go and persuade those boys to give up their fast. Now, if he retracts within a few minutes, right over here, I think you should get him to reaffirm his assurance.

SHRI R. K. KHADILKAR: As I said earlier, a move is just afoot to

find some solution and it will take sometime, say a week's time.... (Interruptions).

MR. SPEAKER: I have to tell you that when more than one Member speaks at the same time, nothing can be heard. They will not be able to record anything. (Interruptions).

13.16 hrs.

RE. ALLEGED WRONG STATEMENTS MADE BY MINISTERS—contd.

MR. SPEAKER: The Law Minister.

SHRI SHYAMNANDAN MISHRA (Begusarai): I stand on a point of order. We would like him to intervene in this matter because that will make for clarity but if you are pleased to give the ruling the scope of his intervention....

MR. SPEAKER: I told them, before I can hold it in order I will listen if they wanted to say anything and that is why he is given an opportunity.

SHRI SHYAMNANDAN MISHRA: The point is whether the Law Minister will intervene in this matter as a legal expert or as a member of the Cabinet involving himself in a collective responsibility. This question arises because his dealing with the legal aspect might also involve giving his comments on the facts and if he does so, then he will be exposing himself to responsibility for those facts as other Ministers did.

SHRI H. N. MUKERJEE (Calcutta-North-East): I rise on a point of order. You told a little while earlier you wanted to find from the Law Minister as to what he has to say. If you on your own wanted to make up your mind about a particular matter and wanted to hear argument you could do so in your Chamber or anywhere else. But if you listen to anything here in this House those statements

[Mr. H. N. Mukerjee]

become the property of the House and if you react one way or the other it must be open to the House to discuss whatever be the contents of the statement made in the House. So, whatever the Law Minister says would be open without any difference of opinion to discussion by the House and not merely by cogitation by yourself with a view to bring a decision in regard to this matter.

SHRI JYOTIRMOY BOSU (Diamond Harbour): Under what rules of procedure did you allow him to raise the issue? You allowed it under Rule 222.

MR. SPEAKER: No. Not under Rule 222.

SHRI JYOTIRMOY BOSU: Merely saying 'No' is not good enough. It was raised under Rule 222. Therefore, the House should have a debate on the same and thereafter it should go to the Privileges Committee.

You may tell us under what rules of procedure you are operating as far as this matter is concerned. For I must caution you, and kindly give me the freedom to do so, that because it involves the Prime Minister's son, we should be very careful to see that we do not do anything which is improper....

MR. SPEAKER: There is no question of anybody's son or anything like that...

श्री अटल बिहारी वाजपेयी (ग्वालियर) : मैं एक निवेदन करना चाहता हूँ। श्री मिश्रा ने रूल 222 के अन्तर्गत एक विशेषाधिकार का मामला उठाया। आप ने उन्हें किस रूल के अन्तर्गत इजाजत दी है यह अभी तक स्पष्ट नहीं है। मैं यह जानना चाहता हूँ कि विधि मंत्री को सुनने के बाद क्या आप इस के ऊपर स्वयं निर्णय लेंगे या सदन को बहस करने का मौका देंगे? हम यह भी

चाहेंगे कि मिश्रा जी ने जो कुछ कहा है, उस दिन मुक्ला जी ने जो कुछ कहा है और आज विधि मंत्री जो कुछ कह रहे हैं वह सब मेम्बर्स में बितरित कर दी जाय और फिर समय तय किया जाय चर्चा करने को। आप अपने ऊपर निर्णय का भार मत लीजिए। आप कठिनाई में फँस जाएंगे।

MR. SPEAKER: I explained it a number of times in this House.

The other day, when Shri Shyamnandan Mishra came, he said that he just wanted to refer to this matter..

SHRI SHYAMNANDAN MISHRA: I had given it in writing; I had made it clear in my communication that I wanted to raise it under rule 222.

MR. SPEAKER: I had made it clear that I was not allowing it as a privilege issue....

SHRI SHYAMNANDAN MISHRA: I had made it clear in my letter....

MR. SPEAKER: I do not agree with him. After I heard him, in the last sitting where this matter was raised, he again said that he did not want it to be raised under rule 377 or Direction 115 but he wanted it to be treated as a privilege motion. In that case, I said that I would have to consider whether it was in order or not. I made it very clear, that if he wanted to have it raised as a matter of privilege, then I would listen to the other side and see whether I could hold it in order or not. But if he wanted to raise it just as he raised it on the first day, and if I were not to treat it as a privilege motion. I said that if it was not a privilege motion, then on any other motion, as Members were pleased to take it, I would ask a few Members to participate in it. This was the position, and it was very clear.

SHRI SHYAMNANDAN MISHRA: The point on which I am asking for your ruling is whether the Law

Minister is coming in only as a legal expert without having responsibility for the facts involved. Then, we shall have to take a different view in this matter. You have to make the position clear....

SHRI PILOO MODY (Godhra): This is under rule 222.

MR. SPEAKER: If it is under rule 222, it must first be held in order by me before it is discussed here....

SHRI PILOO MODY: It is your look-out, and you can do whatever you like.

MR. SPEAKER: Otherwise, I have no objection; if they want to discuss it not under rule 222 but otherwise, I have no objection. But if he wants to raise it as a privilege motion, then I shall have to see....

SHRI ATAL BIHARI VAJPAYEE: If it is not a privilege motion, then what type of motion is this? What are we discussing?

MR. SPEAKER: I do not mind if these points are taken as a certain proposition on which there could be a discussion, but if it is a privilege motion, then I shall have to see whether privilege is involved or not....

SHRI PILOO MODY: He has raised it. It can be either under rule 222, or under X, Y or Z. There cannot be a third thing.

MR. SPEAKER: It can be discussed as any other motion, but if it is a privilege motion; then I must follow the rules and abide by them.

SHRI PILOO MODY: You have merely to act under rule 222.

SHRI JYOTIRMOY BOSU: Under what rules of procedure are you operating here?

MR. SPEAKER: He suddenly said that he wanted to treat it as a privilege motion. I said....

SHRI SHYAMNANDAN MISHRA: Not suddenly, I had mentioned it in my letter.

MR. SPEAKER: I said every time when I allowed him that I was allowing him under rule 377 or under Direction 115 to raise it as any other matter was raised. After raising it, he says that it is under rule 222. I said that I was not bound by what he wrote in his letter on his own proposition....

SHRI H. N. MUKERJEE: The records will show that.

MR. SPEAKER: I am not prepared to argue on this point.

SHRI SHYAMNANDAN MISHRA: My communication to you on the very first day did contain this question of privilege....

MR. SPEAKER: How can the privilege motion come unless I hold it in order? How can it come up here?

(Interruptions.)

SHRI JYOTIRMOY BOSU: Under what rule of procedure is the Law Minister making a statement?

SHRI SHYAMNANDAN MISHRA: My whole case is based on the position that the two Ministers have misled the House deliberately.

MR. SPEAKER: If you do not want to hear him, I have no objection. If you do not want to give a chance to them to explain, I will judge on my own.

SHRI JYOTIRMOY BOSU: Under what rule you are allowing him to make a statement?

MR. SPEAKER: I have already explained.

SHRI H. N. MUKERJEE: I have seen it in the record, and I have heard it also, that the matter was raised under rule 222....

MR. SPEAKER: No.

SHRI H. N. MUKERJEE: You had objected, but you had allowed yourself to be overruled by the atmosphere in the House into making....

MR. SPEAKER: No, no. Not at all. He came to me. Saw me in my chamber....

SHRI H. N. MUKERJEE: This is most peculiar. Everytime you refer to people seeing you in your Chamber, I am not interested in what happens there. I am here in this House and am interested in what happens in this House....

MR. SPEAKER: If he does not want the Law Minister to reply, I have no objection.

SHRI H. N. MUKERJEE: Who the hell is he to reply?

MR. SPEAKER: If you do not want him to reply, it is all right. But I have my own view.

SHRI ATAL BIHARI VAJPAYEE: We would like to discuss the matter.

MR. SPEAKER: Not until I hold it in order if you are treating it as a privilege motion. If it is like any other matter, you can be seized of it. But if you are going to treat it as a privilege motion, I must hold it in order.

SHRI SHYAMNANDAN MISHRA: There is no other go for the Chair if the Chair follows the rules and precedents in this matter but to admit a discussion on this....

MR. SPEAKER: Do not talk like this. (*Interruptions*).

If after making his speech, the member says 'No, it is not an ordinary reference', and he wants to bring it as a privilege motion, then I will treat it as a privilege motion and then give my ruling whether it is in order

or not. If after saying everything, he does not now want them to reply, it is all right.

SHRI SHYAMNANDAN MISHRA: We want him to reply.

SHRI PILOO MODY: We want this under rule 222.

MR. SPEAKER: Before I hold it in order?

SHRI PILOO MODY: You accept this under rule 222. Having done that, you can do whatever you like.

MR. SPEAKER: I will give my ruling on that. (*Interruptions*).

If he had insisted at the very first meeting with me in my chamber that he would only refer to it as a privilege motion, my reaction would have been different. He said he wanted to make a statement. I said 'all right'. After making the statement, he insists now that it is a privilege motion. If he had originally come under rule 222, I would not have allowed him to speak before giving my consent. Having given me the other impression, he made a statement. Then I thought he should get the opportunity of listening to the reply from the other side. I thought he should also allow the other side, to reply. But if he does not want to listen to the other side, I have no objection.

SHRI SHYAMNANDAN MISHRA: We want to hear him.

SHRI P. G. MAVALANKAR (Ahmedabad): If you say that this is not under rule 222, may I know under what rule this discussion is going on? (*Interruptions*). I am on a point of order....(*Interruptions*).

MR. SPEAKER: Please sit down. If Shri Mishra had insisted originally that he wanted to bring it under rule 222, I would have treated it as such. On that very day I said, 'You have raised certain points'.

Perhaps in the very beginning, if I had been expressly told that he did not want to raise it as another matter but only under rule 222, perhaps I would have reacted differently. Now, after having made a speech, he takes up that position. Then I expressly asked him at the end of it whether he was taking it up under rule 222, and he said, "Yes." (*Interruptions*). If you insist on the rules, then under rule 222, I will come out with my own ruling.

SHRI P. G. MAVALANKAR: Sir, I wish to enquire, if it is not rule 222, under what rules that particular discussion is taking place now. The House should know it. (*Interruptions*).

MR. SPEAKER: Please sit down. After Mr. Mishra's insisting that he wanted it to be treated under rule 222, I have to judge it on merits.

SHRI P. G. MAVALANKAR: I do not deny the Chair's right to judge it, but my point of order is—

MR. SPEAKER: He raised this discussion saying that he wanted to discuss certain points. I allowed him. But when it is raised as a privilege motion, I must give an opinion whether it is in order or not.

SHRI P. G. MAVALANKAR: May I continue my point of order? What I say is

MR. SPEAKER: Mr. Mavalankar, I am only following your great father's precedents.

SHRI P. G. MAVALANKAR: Sir, while I am thankful to you, I request you not to embarrass me. I have every right to raise a particular matter. I only wanted to make a submission. I do not want to enter into arguments whether it is under rule 222 or not. (*Interruptions*).

MR. SPEAKER: If you do not want to listen, I shall proceed to the next business.

SHRI P. G. MAVALANKAR: I want to raise one point.

MR. SPEAKER: If you do not want to listen, I will give my own view of it whether I admit it or not.

SHRI S. M. BANERJEE: Sir, every hon. Member has a right to raise a point of order.

MR. SPEAKER: He is a most respected Member.

SHRI P. G. MAVALANKAR: We do not know what the Law Minister is going to say about this matter. We cannot anticipate what he is going to say. Now, the point is—

MR. SPEAKER: Mr. Mavalankar, I just told you that when Mr. Mishra raised this point, I thought that because he had done it the others should reply to it. If you do not want it, you leave it to me.

SHRI P. G. MAVALANKAR: I do not dispute that aspect of the matter. I am raising a different issue. Let me complete my point of order. Unless I complete my point of order,— (*Interruptions*).

MR. SPEAKER: I fail to understand your point.

SHRI P. G. MAVALANKAR: Kindly allow me to complete my point. What I am saying is that neither you nor we can anticipate what the Law Minister is going to say. But what I am saying is, supposing you give a ruling later on after hearing the Law Minister on this matter, that this matter is not valid and is not good enough to go the Committee of Privileges have we not got a right, have we lost all our rights as Members of this House? I want your ruling on this issue.

MR. SPEAKER: After all, if you do not want my ruling, then do not treat it as a privilege motion. I do not come in there. If you want to treat it as a privilege motion, I will have to give my ruling.

SHRI P. G. MAVALANKAR: If you want the Law Minister to give his legal opinion, why not call in the Attorney-General?

MR. SPEAKER: Kindly sit down.

SHRI P. G. MAVALANKAR: My point of order is that, if you want a legal opinion on this point, why should the Law Minister be asked to give it, because the Law Minister is a member of the Government.

MR. SPEAKER: It is not a question of legal opinion. I am asking whether they want to reply to certain points raised by the hon. Member, or not. I made it clear. If you do not want it, I will not call him.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): Since you have been pleased to ask me to intervene in this debate, I should like to point out that I am going to deal with the points of law which have been raised in the course of the earlier discussion. The crux of the matter is whether there have been any violations of the law and, incidentally, therefore, the question also is whether the statement that there had been no violations is accurate or inaccurate. The law which governs the facts of this case is the Act of 1903, the Indian Works of Defence Act. No opinion on a point of law can be given without bearing in mind certain facts which are necessary for arriving at a conclusion on the point of law. The factual position has been given by the hon. Minister in this House and such facts which are necessary for me to reach my conclusion on the question of law have been taken from the Minister's statement as authoritative facts. I assure you that these facts are very few which are necessary for this legal question.

Under the Act of 1903, in the interest of protecting certain defence works certain restrictions can be imposed. The method and manner

of imposing restrictions have been prescribed.

13.42 hrs.

(**SHRI K. N. TIWARY** in the Chair)

In accordance with that, in 1962 the first notification was issued containing a declaration. The first question is whether there was any violation of the 1962 declaration in the notification which was published under section 3 of the Act. The next question is whether in the subsequent notification of 1969 there have been any violations.

Section 3 of the Indian Works of Defence Act is the main section for the present purpose and it says: "Whenever it appears to the Central Government that it is necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any work or defence or any site intended to be used or to be acquired for any such work in order that such land may be kept free from buildings and other obstructions a declaration shall be made to that effect under the signature of Secretary to such Government or of some officer duly authorised to certify its orders." This is the standing provision of the law which enables the Government to make a declaration.

13.43 hrs.

(**MR. SPEAKER** in the Chair)

SHRI JYOTIRMOY BOSU: Central Government.

SHRI H. R. GOKHALE: I do not refer to undisputed points; I never said that it was not the Central Government. Let us not digress; let us go to the main point.

Once a valid declaration has been issued, then the other things follow. Even this declaration is required to be issued in the mode and manner that is laid down in the very same

section i.e. Sub-Sec. (ii). It says that such a declaration shall be published in the official gazette and shall state the district or other territorial division in which the land is situated and the place where a sketch plan of the land which shall be prepared, on a scale not smaller than six inches to the mile and shall distinguish the boundaries referred to in section 7, may be inspected and the Collector shall cause public notice to be given of such declaration at convenient places in the locality.

I have read the 1962 declaration very carefully. I have got a copy here. I must say that at the time when the declaration was issued, on the facts which I have ascertained it appears to me that the declaration has complied with the requirements of section 3(i) and (ii) of this Act.

But the question of noncompliance arises in a different way. Was this declaration continued in force for all time after it was once issued or did anything happen subsequently as a result of which either by express provision or by implied provision..

SHRI SHYAMNANDAN MISHRA:
What implied? (*Interruptions*).

SHRI H. R. GOKHALE: I have not even dealt with the question yet and I am interrupted. I do not certainly expect every one of the members in the opposition to agree with me. This is a point of view which I am putting for the consideration of the House and you, Sir. I am certainly entitled to put my point of view before the House because you have been kind enough to permit me to do so. At the time the notification was issued, it was issued clearly in terms of the requirements of sections 3(1) and (2). So far as the 1962 notification is concerned, it does appear to me that it was in compliance with the conditions that were required to be followed and it was valid. But is it open to ignore certain facts which have come up subsequently? I am not merely on

facts; I will come to the legal points later. In the statement made by any colleague, it has been said that this notification, when it was issued, was issued for purposes of an ammunition depot. The notification itself says so. Then, I would only read the other relevant part of the notification:

“Within a distance of 1000 yards from the crest of the outer parapet of the ammunition depot”.

This is clearly in terms of the section, because the section in terms says that you must indicate the boundary within which the notification will operate, in other words, boundaries within which the restrictions contemplated by section 7(b) would operate. So long as the corpus, the object, of the notification itself is in existence, there can be no doubt that the notification by itself was a valid notification. But it has been stated on the floor of the House that after the notification was issued, at a certain point of time this ammunition depot for which the notification was issued was lifted from that site.

SHRI SHYAMNANDAN MISHRA:
Can you say that the ammunition depot was removed from there? Are you committed to this statement? My information is that it was not removed. The Air Force ammunition depot still continues and it was under the joint sharing of both the Air Force and Army earlier. (*Interruptions*).

SHRI H. R. GOKHALE: I do not know what is his information, but as I said, so far as the factual part of it is concerned, I have taken it from the authoritative statement made by a colleague in this House. I am entitled to accept that statement as a correct statement of facts.

SHRI SHYAMNANDAN MISHRA:
Do you stand committed to that statement?

SHRI H. R. GOKHALE: Nothing compels me to commit myself to anything. I am only committed to this that an authoritative statement on facts has been made by a Minister and it becomes the property of the House.

SHRI ATAL BIHARI VAJPAYEE: Those facts have been challenged in the House.

SHRI SHYAMNANDAN MISHRA: Please ask a parliamentary delegation from here to go into it. I am prepared to establish it. Let the Minister take the responsibility. In any court of law I am prepared to establish that there is an ammunition depot. In the letter of the Commanding Officer, copy of which I have sent you, it has been said that there is a depot there.

SHRI JYOTIRMOY BASU: Do not mislead the House.

SHRI H. R. GOKHALE: Anything that you do not like is misleading the House. It is a very curious position. So far as facts are concerned, I am entitled to take the authoritative facts given by the Ministry, and not Shri Mishra's private information... (*Interruptions*).

SHRI SHYAMNANDAN MISHRA: In addition to the privilege motion I have given notice of, I will move another privilege motion for further misleading the House.

SHRI H. R. GOKHALE: I cannot be browbeaten like this.... (*Interruptions*).

SHRI JYOTIRMOY BOSU: Sir, on a point of order. Sir, the hon. Minister is asking us to sit in judgment on a matter which is a privilege and which is within the domain of the Privileges Committee. He is depriving the Privileges Committee of its legitimate function.

MR. SPEAKER: It is for the House to decide.

SHRI PILOO MODY: When facts are being challenged, a more senior Minister with some legal background is brought and all that he does is to mislead the House.... (*Interruptions*)

SHRI H. R. GOKHALE: The section requires that it should be in respect of a work of defence. This particular notification related to a depot called Ammunition Depot. The other requirement of the section is that the map which is referred to in section 3(2) should also demarcate the boundaries, as referred to in section 7. What is referred to in section 7(b) is a requirement of law and it must be done. It says:

"within the second boundary which may extend to a distance of one thousand yards from the crest of the outer parapet of the works the restrictions enumerated in clause (a) shall apply with the following additional limitations"

So, it talks of a distance of 1,000 yards from the crest of the outer parapet of the work.

SHRI SHYAMNANDAN MISHRA: That is the identification mark.

SHRI H. R. GOKHALE: In order to comply with this requirement of section 7(b), it has been categorically stated in the 1962 notification:

"enjoyment of the land lying within a distance of one thousand yards from the crest of the outer parapet of the ammunition depot"

The boundary as demarcated by the notification and was indeed required by section 3 read with section 7(b) was 1000 yards from the crest of the outer parapet of the ammunition depot. So, in addition to the fact that the ammunition depot was shifted from there, when the Air Force installation came in later on, at that time....

SHRI SHYAMNANDAN MISHRA: You are saying that again?

SHRI H. R. GOKHALE: The area which was given to the Air Force installation was not exactly the same as was given to the ammunition depot. Some part of the area which had been with the ammunition depot had been de-requisitioned and had been taken out of the installation which was to be the air-force installation. Naturally, the result was that the topography of the installation was changed. When you are talking of a distance of 1000 yards from the crest of the outer parapet of the ammunition depot, the crest of the outer parapet itself did not remain the same because certain part of the area had been taken out by the de-requisition and was not given to the air-force installation. (*Interruptions*). Will you please bear with me? I am coming to that. I cannot deal with all the arguments at the same time.

The question is that two factors happened. One was that the ammunition depot was no longer there and the other factor was that even if the air-force installation came up, that was in a different situation topographically in as much as that certain area had been taken out of 1000 yards which is stated in the Notification. It is to be counted from the crest of the outer parapet of the ammunition depot which itself changed. The result was that in the form in which the Notification of 1962 was made, it could not operate and apply in respect of a new situation, a topographically new situation, which related to the air-force installation. In as much as the situation completely changed, the position admittedly is that this Notification by clear and necessary implication had ceased to be operative.

Another factor which is important is that subsequently a Notification was issued in 1969. That Notification, may be valid or invalid, operative or inoperative, again clearly is an indi-

cation of the fact that by necessary implications, the earlier Notification stood repealed.... (*Interruptions*).

SHRI JYOTIRMOY BOSU: Was an earlier Notification cancelled at any point of time? (*Interruptions*).

MR. SPEAKER: Order, order. Please don't interrupt him. Let him have his say.

SHRI H. R. GOKHALE: Legally, it is not unknown that by necessary implications, there have been cases where even the statutes have been treated as repealed not to talk of notifications... (*Interruptions*). The position is quite clear. In my respectful submission to The House, I may say that so far as 1962 Notification was concerned, while expressly there is a power for revocation under Section 38, that power was not exercised in the sense that... (*Interruptions*). Their exclamation do not make an argument. Therefore, I am not taking note of them.

Here is a position which is undisputable on the facts which have been brought before the House that at a point of time, when the situation changed by necessary implications, 1962 Notification must be deemed to have been repealed when the subsequent Notification was issued. (*Interruptions*).

MR. SPEAKER: Order, order. Every time, you are interrupting him. This is very bad. Let him say what he wants to say.

14.00 hrs.

SHRI H. R. GOKHALE: This is in substance the position with regard to the 1962 Notification. Then, we come to the 1969 Notification... (*Interruptions*). I have dealt with the 1962 Notification. Whether you agree with it or not is a different matter, but I am personally satisfied that this is the correct legal position and I am entitled to place it before you and before the House... (*Interruptions*).

SHRI SHYAMNANDAN MISHRA: You are being paid for that.

SHRI H. R. GOKHALE: The second question is with regard to the 1969 Notification, the position is that the 1969 Notification was not as unassailable as the 1962 Notification. As I said, when the 1962 Notification was issued, it was unassailable because it was fully in compliance with the requirements of the law. But the 1968 published in 1969 Notification was not equally unassailable as the 1962 one, for more than one reason. First of all, what has been mentioned here and what was given in the Schedule is a description of the land. If we read the section again, you have to indicate the area. The area has been indicated here. There is no doubt about it. The boundaries have not been indicated.

The third thing and the most important part which makes it mandatory to be done... (*Interruptions*).

SHRI JYOTIRMOY BOSU: 'Shall' means 'may' here.

SHRI H. R. GOKHALE: What is most mandatory is and that I want to put it for your consideration is that if you look at Sec. 3, the only place where Sec. 3 refers to the issue of a public notice is the last part of Sec. 3(2). Now it says:

"The Collector shall cause public notice of the substance of the said declaration to be given at convenient places in the locality."

What is important is that the Collector shall cause public notice of the substance of the said declaration to be given in convenient places in the locality.

I am aware that it was argued that 'shall' in some cases may mean 'may'. I do not dispute that. In some cases 'shall' may be interpreted as 'may', but not in every case. The question is: how do you judge whether 'shall' is mandatory or directory. Now,

here, you have to look at the operative provisions of the Act. What is the intention of the Section? The intention is that as soon as the declaration is issued, certain restrictions which are meant to be imposed—here the section referred to is Sec. 7(b)—they are meant to be imposed. Those restrictions should become operative. Sec. 7(b)—if you consider it carefully, it will be seen, makes it a condition precedent for the restrictions to be operative that a notice as referred to in Sec. 3(2) must have been published, must have been complied with. This law was made in 1903. This was not done for the present case. What is more important is this: Sec. 7(b) envisages—first of all, the section begins like this:

"From and after the publication of the notice mentioned in Sec. (3), sub-section (2), such of the following restrictions, as the Central Government may in its discretion declare therein, shall attach with reference to such land."

"From and after the publication of the notice mentioned section 3, sub-section 2..."—Section 3, sub-section (2) talks of only one notice and no other notice is referred to in sub-section (2) of Section 3 and that section says that a public notice of the substance of the said declaration shall be given at convenient places in the locality. My submission is that unless the notice is published as Sec. 7 would say, no restrictions, can, by virtue of law, come into operation. This is a self-executing provision. 'From and after the publication of the notice' and since the time the notice has been published, such of the restrictions as the Central Government may wish to impose will come into operation as indicated in Sec. 7. Now, the effect is that as the public notice was not given in this case as was stated by the Minister in his statement, the question of the restrictions coming into force does not arise, not because of anything that the Government or anyone else did, but because it is a self-executing provision.

SHRI JYOTIRMOY BOSU: No, it is not.

SHRI SHYAMNANDAN MISHRA: Public notice to be given—by whom?

SHRI H. R. GOKHALE: This law was enacted by the legislature in 1903 and if the language has any meaning, the gravamen of the words 'From and after the publication of the notice' can have no other meaning but this that there must be a publication of the notice and after the publication of the notice, the restrictions mentioned therein will come into force. As this notice was not published, Sir, my submission before you and before the House is that the 1969 Notification did not become operative at all... (Interruptions).

SHRI VASANT SATHE (Akola): We are tired of this running commentary by Mr. Jyotirmoy Bosu.

SHRI H. R. GOKHALE: Not because of anything that the Government did or did not do but because the self-executing provisions of the Act itself were not complied with. It was also said that sub-section (3)...

SHRI SHYAMNANDAN MISHRA: Public notice by whom?

SHRI H. R. GOKHALE: By the collector.

SHRI SHYAMNANDAN MISHRA: If the State Government official does not act according to the Act does that make the Act nugatory?

SHRI VASANT SATHE: Of course.

SHRI SHYAMNANDAN MISHRA: No, Sir. It does not. (Interruptions).

MR. SPEAKER: Let the Law Minister say what he wants to say.

SHRI SHYAMNANDAN MISHRA: In this very notification it is mentioned that sketch plan can be inspected in Deputy Commissioner's

office at Gurgaon. How are we going to have another information over and above the Gazette notification that is there before us? We cannot get any information just by word of mouth.

SHRI H. R. GOKHALE: If the law provides certain things, it is the requirement of the law. This is not what the Government says. That section says that from and after the publication of this notice, the first part will come into operation. There can be no other meaning except that unless the notice is published, the self-executing provision cannot come into operation at all. I am not on the question whether anybody was negligent or not negligent. I am only on the question as to whether as a fact, notice was published or not published. If it was not published, I have no doubt the restrictions under Section 7 do not come into operation at all. It is a condition precedent and notice must be there. Then only restrictions come into force, not otherwise. These are the main points.

SHRI C. M. STEPHEN: (Muvat-tupuzha): I rise on a point of order.

MR. SPEAKER: Point of order on what?

SHRI C. M. STEPHEN: If you do not want to hear, I will resume my seat. I am talking about the question of the admissibility of the privilege motion. We are at that stage of discussion just now. You wanted to seek advice. This advice has been given. Now, a discussion on that cannot take place in this House unless you decide that privilege motion is admissible. It is an individual decision for you to make. It is not a decision for this House to make. Discussion in the House can take place only after such a decision has been taken by you. Now, this House is not called upon to take a decision in this matter. There-

[Shri C. M. Stephen]

fore no discussion ought to take place. You have got your advice. You have got to decide.

MR. SPEAKER: No discussion now.

SHRI H. N. MUKERJEE: I want to submit in all seriousness that the Government in trying to dig out a legal snail has revealed a serpent.

श्री अटल बिहारी वाजपेयी :
विधि मंत्री जी को आपने सुन लिया है।
उनके वक्तव्य पर आप विचार करें और
फिर अपने निर्णय से सदन को अवगत
करायें। लेकिन निर्णय सुनाने से पहले
आप सदन को सुन लीजिए।

श्री श्यामनन्दन मिश्र : सिक्कोरिटी
आफ इंडिया को ध्यान में रखते हुए आपने
कोई फैसला नहीं किया तो हाउस के लिए
बड़ी मुश्किल हो जाएगी। इसको आप
समझ लें।

(Interruptions)

MR. SPEAKER: Please sit down.

(Interruptions.)

SHRI H. N. MUKERJEE: I am not concerned with what Mr. Mishra might have had in mind. I am interested as a Member of Parliament and as a citizen of this country.

(Interruptions)

SHRI SHYAMNANDAN MISHRA: While I was making my submission I was disturbed.

MR. SPEAKER: Order, order.

THE MINISTER OF INDUSTRIAL DEVELOPMENT AND SCIENCE AND TECHNOLOGY (SHRI C. SUBRAMANIAM): Can I not say a few words?.... (Interruptions).

MR. SPEAKER: Shri Shyamnandan Mishra has already spoken. He wants to speak himself on the same point again....

SHRI SHYAMNANDAN MISHRA: I want a clarification from you.... (Interruptions.)

MR. SPEAKER: I have heard all the hon. Members. I have heard everybody now.

SHRI SHYAMNANDAN MISHRA: What has happened to the letter by the commanding officer which I had sent you? Why was that letter rendered infructuous. Who made that letter infructuous? I wanted clarification on that.

MR. SPEAKER: He says that some Air Force Officer had written a letter. As I saw in the statement which he gave, that was in reference to 1956.....

SHRI SHYAMANDAN MISHRA: 1962 also as....

MR. SPEAKER: In that context, I saw that letter myself and the reply also given by him....

SHRI SHYAMNANDAN MISHRA: The letter is with you....

MR. SPEAKER: That was relating to 1956.....

SHRI SHYAMNANDAN MISHRA: To both. You may kindly read that letter

SHRI JYOTIRMOY BOSU: To 1966.

SHRI SHYAMNANDAN MISHRA: The 1956 one was a circular letter. Here the 1963 Act has also been referred to. When a competent officer who is authorised to take action under the Act takes objection what happens to that objection? Who made that objection infructuous? We want to know about it.

SHRI H. R. GOKHALE: If you merely take the question of law, the question of law is simple. The question of law is whether there was or was not a notification which was in force. With regard to the factual part of the letter, my hon. colleague has already dealt with it.

SHRI SHYAMNANDAN MISHRA: But he has not met the point who made that letter infructuous.

MR. SPEAKER: I cannot help it...

SHRI ATAL BIHARI VAJPAYEE: Let there be a discussion.

MR. SPEAKER: Not on the motion of privilege.

SHRI SHYAMNANDAN MISHRA: It is not denied that it is a matter of privilege. That letter is not denied.

MR. SPEAKER: So far as the privilege motion is concerned....

श्री अटल बिहारी वाजपेयी : आज एक चर्चा का मौका दें, उसके बाद निर्णय करें। चर्चा के बाद आप फैसला करें कि प्रिविलेज मोशन को इजाजत देना है या नहीं देना है। (Interruptions)

MR. SPEAKER: May I request hon. Members to kindly sit down? So far as the privilege motion is concerned, I cannot give a *charcha*....

SHRI SHYAMNANDAN MISHRA: On an earlier occasion, when Dr. Ram Manohar Lohia had raised a similar question, Svetlana's letter was quoted. Here, the letter of the commanding officer has been quoted. You cannot but take notice of it. I submit that that letter has not been denied by the hon. Minister.... (Interruptions)

MR. SPEAKER: I have heard both sides....

SHRI JYOTIRMOY BOSU: Just now you have observed that you are willing to give us a discussion under rule 184. Would you kindly accede

to that request and allow a discussion under rule 184? Then the House can decide what to do with the privilege issue.

MR. SPEAKER: Hon. Members should be very reasonable, after all let them not interrupt me every time. After all, they want something from me also. This question is...

SHRI SHYAMNANDAN MISHRA: Very serious.

MR. SPEAKER: So far as the privilege motion is concerned....

SHRI SHYAMNANDAN MISHRA: Please do not say anything about that now. I have more moments to consider. My submission is that the letter that I have quoted has not been denied by the hon. Minister.

MR. SPEAKER: I have seen that letter....

SHRI SHYAMNANDAN MISHRA: I must say that you have not even read that letter. You must go through it carefully.

MR. SPEAKER: So far as privilege is concerned, in the past whenever any member came with a reference that the Minister or member made a wrong, incorrect or inaccurate statement, we admitted it under Direction 115. Then the Minister came out with a statement. Either he corrected it or he gave an explanation. The member saw it and ultimately the matter was resolved. But never in the past was this held as a breach of privilege.

SHRI ATAL BIHARI VAJPAYEE: That is in regard to factual inaccuracy.

MR. SPEAKER: We have been following it in the past. Now in the course of his speech, he said it is deliberate....

SHRI SHYAMNANDAN MISHRA: ...misleading of the House.

MR. SPEAKER: I heard him. He said it is deliberate. All that he has been doing is to interpret the law in

[Mr. Speaker]

his own way. The other side interpret it in their own way. They say notification of 169 was inoperative.

(Interruptions)

MR. SPEAKER: Why are you interrupting me? If you do not have patience I cannot proceed.

Both differ in their interpretation. They have been insisting on both notifications, of 1969 and 1962. He has his own and they have their own. After all, in future also we will have to follow certain procedures. I am not here concerned with the legal interpretation or legality and I do not treat it as a privilege motion.

(Interruptions).

MR. SPEAKER: But I do not debar a discussion. The Minister has replied on the material facts supplied. If there is any question about legality or interpretation, it is for the courts to decide, not for me.

SHRI SHYAMNANDAN MISHRA: They have deceived the House. You are not observing precedents in this House. Even in the matter of security, you are being browbeaten.

MR. SPEAKER: The House is at liberty to discuss it. I do not prevent discussion. But if you say it is a privilege issue, it is not in order and I do not admit it. If you want to discuss it under some other rule or any other provision where my ruling does not come in, I do not debar it.

(Interruptions)

SHRI SHYAMNANDAN MISHRA: Tomorrow again you will face a privilege motion and you will not be able to conduct the business of the House tomorrow.... (Interruptions).

MR. SPEAKER: Do not threaten me.

(Interruptions)

MR. SPEAKER: I do not debar any discussion otherwise. I have to go by past precedents.

SHRI SHYAMNANDAN MISHRA: You cannot give an arbitrary ruling like that.

MR. SPEAKER: Mr. Yadav.

SHRI SHYAMNANDAN MISHRA: I am giving notice of my intention to move a second privilege motion. Tomorrow again it would come up.

MR. SPEAKER: If you come with it I will judge it purely on merits. But in future when you come with a privilege matter you must tell me it is a privilege matter. Do not say 'I am coming for just a reference'.

SHRI SHYAMNANDAN MISHRA: You are not observing precedents in this matter. We are not going to be a party to this. We will have to thrash out this issue.

SHRI PILOO MODY: Nobody will come to you in future. (Interruptions)

SHRI SHYAMNANDAN MISHRA: This is our House. This is nobody else's House. This is our House.

SHRI KRISHNA CHANDRA HALDER: This is not anybody's personal property. (Interruptions)

MR. SPEAKER: Please sit down.

SHRI SHYAMNANDAN MISHRA: You are not observing any rules in this matter. I have established beyond any shadow of doubt that there has been violation. I have established that we have been misled. (Interruptions)

MR. SPEAKER: You are at liberty and welcome to have your opinion. You are a senior Member of this House. It is in the hands of the Members. Now, Mr. Yadav. (Interruptions) I have called Mr. Yadav. I am not allowing any more discussion on this.

(Interruptions)

MR. SPEAKER: Already I have said I have not held it in order. But on the merits of this case you can discuss at any time. I would not refuse it. When this issue came I did not deny it.

(Interruptions)

MR. SPEAKER: On the question of privilege, I have given my verdict.

(Interruptions)

MR. SPEAKER: I have already given my ruling. I have called Mr. Yadav. I have passed on to item 10 of the List of Business—Discussion of the railway budget.

(Interruptions)

MR. SPEAKER: I have given my ruling that it is not a matter of privilege.

(Interruptions)

MR. SPEAKER: Otherwise, on the facts, you can have a discussion. On the facts you can have a discussion, but not on the question of privilege. I cannot give a ruling on the question of interpretation or legality. I do not think it is for me to do it. You can differ. But you can have a discussion on the facts.

(Interruptions)

SHRI SHYAMNANDAN MISHRA: As a protest, we would walk out of the House.

(Interruptions)

MR. SPEAKER: Everybody is speaking. How can it go on record?

14.30 hrs.

RAILWAY BUDGET, 1973-74—
GENERAL DISCUSSION—Contd.

श्री राजेन्द्र प्रसाद यादव (मधेपुरा) :
उपाध्यक्ष महोदय, मैं माननीय रेल मंत्री द्वारा प्रस्तुत रेलवे बजट के समर्थन में खड़ा हुआ हूँ। सब से पहले मैं नये रेल मंत्री का स्वागत करता हूँ और साथ ही धन्यवाद देता हूँ कि उन के कार्य में सहायता के 15 दिन के अन्दर ही उन्हें रेल बजट पेश

करने को कहा गया जो बहुत ही उत्तरदायित्व का काम है और जिसे मंत्री जी ने बखूबी निभाया है।

14.31 hrs.

[MR. DEPUTY-SPEAKER in the Chair.]

इसी संदर्भ में मैं कहना चाहूंगा कि इस विभाग का यह दुर्भाग्य सा रहा है कि कोई भी मंत्री पूरे टर्म भर रह नहीं पाते हैं जिससे वह अपने विचारों को इम्प्लीमेंट नहीं कर पाते हैं। मैं आशा करता हूँ और मुझे विश्वास है कि वर्तमान मंत्री महोदय को पूरे टर्म तक रहने का मौका मिलेगा जिससे वह अपने विचारों को वास्तविकता में बदल सकें।

इस से पहले कि 1973-74 के बजट पर विस्तृत रूप से विचार हो सके मेरे विचार से यह जरूरी होगा कि 1971-72 तथा 1972-73 के बजट पर विहंगम दृष्टि डाली जाये। 1971-72 के शुरू में यद्यपि घाटा दिखाया गया था लेकिन साल के अन्त तक 17.84 करोड़ मुनाफे का बजट सिद्ध हुआ। 1972-73 में 32.53 करोड़ मुनाफे का बजट पेश किया गया लेकिन देश की विपन्न परिस्थिति, विजली की कमी तथा विभिन्न प्रकार के ट्रिब्युनल पर अनुमानित खर्चों को मदे-नजर रखते हुए यह केवल 12.40 करोड़ रुपये के मुनाफे का बजट सिद्ध हो पाया।

1973-74 में विभिन्न प्रकार के खर्चों का दायित्व 19.34 करोड़ तथा उस के अलावा के दायित्व जैसे मूद बगैरह 33.66 करोड़ को मिला कर 53 करोड़ का गैप रह जाता था जिसे पाटने के लिए विभिन्न मदों जैसे यात्री भाड़ा में वृद्धि तथा माल भाड़ा में वृद्धि की गई है। फिर भी सारे दायित्वों को देखते हुए अन्त में 8.65 करोड़ का गैप रह ही जाता है जिसे साल के अन्त तक रेलवे द्वारा मेहनत तथा सिरफत से घाटने की आशा व्यक्त की गई है।