

[Shri N. Dandeker]

1965. And, indeed, the Minister admitted in his reply that while that Bill was under consideration, they did not want to deal with patents. And that, Sir, was the *real* objective; and I do suggest that, if that was the objective, as indeed it was, and the reason why these applications were, in fact, held up was because the Government hoped that the then Patents Bill would be passed by the last Parliament, it was a deliberate,—not merely gross misuse,—but deliberately gross misuse of the powers under the Defence of India Act and the Rules.

Thirdly, the Minister went on to say, —which I thought was an even more extraordinary proposition—that the delaying action was not in the interest of defence or anything at all, but that the delaying action was necessary even now, (although there is a patent law in this country) merely because he has got in hand now the new Patent Bill. Until this new Patent Bill becomes law, he wants to continue the delaying action, *i.e.*, holding up something like 5,800 or 6,000 applications for patents. He wants to hold them up notwithstanding the assurance of late Shri Lal Bahadur Shastri, which only resulted in this that some of these patent applications have been examined and they are ready to be advertised,—those of them that are to be granted. They are ready to be sealed but, Sir, the Minister insists that this action shall not be proceeded with merely because there was an old Bill that was on the anvil and that Bill lapsed and now there is a new Bill on the anvil. Heaven knows how long this will take. I appreciate the Minister's anxiety that this new Bill should be passed in the next session; but I doubt it because the issues involved are very serious. Hence, as a matter of fact, I see no reason whatever, not a single justification in the Minister's statement, either for the way Rule 47 was operated or for the Ordinance or for the Amendment Bill. I, therefore, press my motion that the Ordinance be disapproved.

MR. DEPUTY-SPEAKER: I shall now put Mr. Dandeker's motion to the vote of the House.

The question is :

"This House disapproves of the Indian Patents and Designs (Amendment) Ordinance, 1968 (Ordinance No. 8 of 1968) promulgated by the President on the 6th July, 1968."

The motion was negatived.

14.25 HRS.

INDIAN PATENTS AND DESIGNS
(AMENDMENT) BILL—*Contd.*

MR. DEPUTY-SPEAKER: There is an amendment given by Shri Shiv Chandra Jha for circulation of the Bill for the purpose of eliciting opinion thereon. I now put that amendment to the vote of the House. The question is :

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 1st November, 1968." (10)

The motion was negatived.

MR. DEPUTY-SPEAKER: Mr. Beni Shanker Sharma is not present.

Now the question is :

"That the Bill further to amend the Indian Patents and Designs Act, 1911, be taken into consideration."

The motion was adopted.

MR. DEPUTY-SPEAKER: Now we take up clause-by-clause consideration.
Clause 2—(Insertion of new sections 78B, 78C, 78D and 78E.)

There are amendments given by Mr. Srinibas Misra, Mr. Lobo Prabhu and Mr. Dandeker.

SHRI SRINIBAS MISRA (Cuttack) : I beg to move :

Page 2, line 9,—

for "by order, prohibit or restrict," substitute "issue directions prohibiting or restricting"(1)

Page 2, lines 27 and 28,—

omit "and thereafter at intervals not exceeding twelve months," (2)

Page 2, line 34,—

for "every" substitute "the" (3)

Page 3, lines 26 and 27,—

omit "and thereafter at intervals not exceeding twelve months," (4)

Page 3, line 31,—

for "every" substitute "the". (5)
Page 4,—

after line 25 insert—

"Provided further that when the Central Government on reconsideration under sub-section (3) of section 78B or sub-section (2) of section 78C is of opinion that the directions issued under sections 78B or 78C should be continued beyond a period of one year they shall proceed to act under sections 21 and 21A." (6)

SHRI LOBO PRABHU (Udipi) : I beg to move :

Page 2, line 7,—

omit "or delay the doing of" (7)

Page 2, line 19,—

for "on such consideration" substitute—

"after consideration of such representation as the applicant may make". (8)

Page 3, line 5,—

after "Central Government" insert "after considering any representation by the applicant" (9)

SHRI N. DANDEKER : I beg to move :

Page 3 and 4,—

omit lines 5 to 39 and 1 to 22 respectively. (12)

Page 4, line 24,—

omit "or section 78C" (13)

Page 4, lines 37 and 38,—

omit "or section 78C" (14)

MR. DEPUTY-SPEAKER : As we have exceeded the time-limit already, so far as amendments are concerned, I will not permit more than five minutes each.

SHRI N. DANDEKER : For each amendment ?

MR. DEPUTY-SPEAKER : No. Total time for each member.

SHRI LOBO PRABHU : The Minister himself has admitted that there has been no discussion of any kind on the amending Bill; all the discussion was on the new Bill. So, your rule that you will not permit more than five minutes each is not fair to the amending Bill.

MR. DEPUTY-SPEAKER : We have already exceeded the time-limit.

SHRI LOBO PRABHU : It is not our fault; it is not the fault of the amending Bill. If you find any member repeating the same points, you will be fully justified in checking him.

MR. DEPUTY-SPEAKER : If I have understood him correctly, the new Bill has also been placed before the House.... (Interruption). Now so far as this amending Bill is concerned, I will not permit more than five minutes each.

Mr. Srinibas Misra.

SHRI SRINIBAS MISRA : Here in clause 78B, as proposed, the sub-clause (1) reads :

"...and also, by order, prohibit or restrict..."

In sub-clause (2) it is said :

"Where the Controller issues any such directions...". There is no word such as direction in sub-clause (1). I think, this is a drafting mistake which should be corrected. I want to substitute—

"issue directions prohibiting or restricting" for

"by order, prohibit or restrict".

This is because there has been no word 'direction' put in there. There is no power to issue direction in sub-cl. (1). This is a matter regarding which there can be no dispute. It is simply a drafting error and so the amendment should be accepted.

Coming to amendment No. 6, under this amending Bill they want to ring in a provision whereby the Controller can hold up publication of an application for six months, then refer to Government, then after six months it can be repeated like that *ad infinitum*, six months, six months, for 20 years. This is what will

[Shri Srinibas Misra]

happen if this Bill as it stands is enacted. How can that be? If some investigator or researcher has invented something and asked for a licence, it may be useful to Government, it may not be useful but may be detrimental to government's interest or the defence of the country. If Government want to hold it up, they may acquire it after six months. If they do not allow that invention to be patented, this is that they should do: either acquire it themselves or allow him to have it patented. They cannot hold it up without any limitation, indefinitely.

What I have suggested is that if after six months, Government still think that it should be held up, they should take recourse to two other sections in the Act itself—sections 21 and 21A which provide for such contingencies. That is, they should acquire the licence or purchase it. On principle, Government or the Controller should not have vested in them arbitrary powers. So they should proceed under sections 21 and 21A of the original Act itself. That being there, no power should be taken either by the Controller or by Government to hold it up indefinitely.

Amendments 2-5 are consequential to amendment No. 6.

SHRI F. A. AHMED: So far as amendment No. 1 is concerned, the hon. Member wants to substitute for 'by order, prohibit or restrict', the words 'issue directions prohibiting or restricting'. This is more or less a verbal change and I have no objection in accepting it. As for the other amendments, I oppose them.

SHRI SRINIBAS MISRA: Give reasons.

SHRI LOBO PRABHU: I would like to pose four tests not only for the amending Bill but for the main Bill itself. The first is: is this legislation going to encourage inventions? It is necessary to realise that inventions are a very precious possession. They are property, not only individual property but social property. If this legislation is going to expose an invention to appropriation by Government, to delay as has occurred since 1962, has the Minister considered

what he has done to encourage inventions? What is the value of an invention if for seven years it should lie exposed to the mercy of an official who can postpone it as he likes for consideration or without consideration? What is the value of an invention if it has been advertised and another person could copy it? And who is involved in it? The inventor is not a rich man; he is not a merchant prince. Why have Government been so unfair to him? Why should they not proceed scientifically in this matter? Why should they discourage inventions, and in a manner which exposes them to pilferage and corruption?

My second test is this. How are you going to encourage industrialisation if you deny property rights to what is imported in this country? I had occasion—my friend is absent now—to enquire from the CSIR officers if there was a single industry which could have been established in this country during the last twenty years with only Indian invention. They could not give me a reply. If you apply the law to foreign invention saying that these are the restrictions: we shall allow you ten years; we shall cancel your invention if you do not take up your patent within this period; we shall give you only this amount of royalty. What is going to happen? Inventions will not come to this country and you will not have industrialisation. Is this the intention of the Ministry? Is he aware of the number of people which industrialisation has employed and the amount of trade that has followed and the relief that has come to this country from industrialisation. Please remember that without inventions being treated with sufficient hospitality, you cannot expect this country to take one step further forward towards industrialisation. There was a caption in your own paper, the *National Herald* that the law was against the common man. You yourself were pleased to refer to the consumer. Is it in the interest of the common man that these inventions be discouraged, that industrialisation should be discouraged. There was a lot of talk about profiteering.

MR. DEPUTY SPEAKER: Will you refer to your amendment?

SHRI LOBO PRABHU : I shall refer to my amendment. But I must give the background.

MR. DEPUTY-SPEAKER : You had already taken more than five minutes.

SHRI LOBO PRABHU : There is no rule by which you can give me only five minutes.

MR. DEPUTY-SPEAKER : If you refer to the rules, they empower me to guillotine it now and put it to the vote.

SHRI LOBO PRABHU : You are at perfect liberty to do it. But I have a right to be heard... (*Interruption*). If there is any kind of profiteering and there are very high prices, it is because of the Government's licensing system. For instance, if enough quantity of vitamin B12 was not produced, it is because there has not been enough competition. If Americans were producing that item, why do you not allow your friends the Russians also to do...

MR. DEPUTY-SPEAKER : Now, you must conclude... (*Interruptions*.)

SHRI LOBO PRABHU : Since I have been guillotined...

AN HON. MEMBER : Have you been guillotined?

SHRI LOBO PRABHU : It comes practically to that. I am coming to my amendment. The particular provision which I object to is this. Any official may omit or delay doing a certain thing. Have I to tell you that your officials do not need to be encouraged to omit doing a thing or delay doing it. That is the whole business of the Government—to delay, to omit to do things. Do you want to give legal sanction for it? If you want any particular invention regarding defence to be examined, there is section 67 which permits the officer to refer the matter to the Government. You need not give him this power to delay or omit to do something.

MR. DEPUTY-SPEAKER : You must conclude now; your time is over.

SHRI LOBO PRABHU : You have disturbed my trend. Why are you doing it?

MR. DEPUTY-SPEAKER : Your party spokesman had enough time. Because you moved an amendment, I allowed you to speak. You said you had been guillotined. If you had been guillotined, resume your seat.

SHRI LOBO PRABHU : I refuse to be guillotined. I shall proceed with my amendment. When it comes up before the Government, there is no opportunity to an applicant to state his reasons. This is not fair, when a Government passes an order without giving a chance to the defendant. As regards the other amendment, regarding food, I submit that the provision made here is against the rule of law. Everyone is entitled to state his case. You may say anything in favour of your Bill and your amendment, but you are neither acting according to the law nor in the interests of the inventor. You are not acting in the interests of the industry, and you are not acting in the interests of the consumer. You are not even representing your own party which is almost unanimously opposed to your Bill.

SHRI N. DANDEKER : Sir, I have only a few things to say in support of my amendment No. 12, the amendments Nos. 13 and 14 being consequential. This amending Bill in clause 2 seeks to introduce into the existing Act certain new provisions such as section 78B and 78C. Sections 78D and 78E are consequential, and so I will not bother with them. The really important provisions are 78B and 78C; and I would draw your attention? Sir, to the very clear distinction between them which these very provisions make. New section 78B is concerned with special provisions relating to applications relevant for defence purposes; I have no quarrel with that one. But new section 78C relates to special provisions in respect of applications for patents in the field of food, drugs or medicines. One would have thought that the special provisions would be to get on with the job and grant these pending patents or refuse them as quickly as possible. On the contrary clause 1 of new section 78C empowers the Central Government, as if the power was necessary, to direct the officers concerned with these applications for patents to

abstain from doing or delay the doing of anything which would otherwise be required to be done in relation to such applications. It is a crazy kind of thing, that by a statute the Government is going to direct its officers not to do their duty or to delay in doing what is otherwise plainly their duty under the existing Patents and Designs Act. I have never in my life come across any provision in a law by which the Central Government can say to an officer, "Don't do your statutory duty, or go on delaying the performance of your statutory duty. Never mind the rights of the applicants for drugs or medicines or food patents. Never mind the people, the consumers, who for the last five years have been deprived of what would have been manufactured as a result of granting these applications." The Central Government is so determined that nothing shall move until the new Patents Bill is enacted, that they have taken power, as if it was needed, to tell the officers to go to sleep. After all, they are sleeping anyhow. But here, there is a power given to the Central Government to say, "Look, boys, be good; don't do anything." If the officer is zealous, the Minister will say to him, "Take it easy; please delay it." This is the power they are taking. Therefore, I am suggesting that this section 78C which is proposed to be introduced by the amending Bill should be completely scrapped. My other amendments are consequential.

MR. DEPUTY-SPEAKER : The Minister is accepting amendment No. 1.

SHRI F. A. AHMED : I would like to make it very clear that the very purpose which the hon. Member has in view will be defeated if I accept his amendment, because, as I said, there are over 5,000 applications pending and out of them nearly 4,000 will be time-barred if this—

SHRI N. DANDEKER : It is not the fault of the applicants; it is the fault of the Government who have delayed action. It is no use talking to me that it is time-barred. There would be writ applications and writs of *mandamus*.

SHRI F. A. AHMED : I said that we want to give consideration to some of

them under the new provisions and such of them as are given in the interests of the country will certainly be looked into and those patents will be considered. But here, if we accept his amendment, when all those applications become time-barred—

SHRI N. DANDEKER : This is misleading. First, today, is there a Patents and Designs Act or not? Secondly, can these not be dealt with under this Act?

SHRI F. A. AHMED : I have already said that some of the applications have already become time-barred and I have said that the policy of the Government is that we do not want to give such rights as cannot be taken under the new Act. When we have the policy where the patent law has to be amended, we want to dispose of those applications under the new provisions.

SHRI LOBO PRABHU : Will you kindly reply to my objections? Are you not able to do so?

MR. DEPUTY-SPEAKER : Order, order. The Minister has accepted amendment No. 1, it is textual. So, excluding amendment No. 1, I shall put all the other amendments—Nos. 2 to 14,—to the vote.

Amendment Nos. 2 to 9 and 12 to 14 were put and negatived.

MR. DEPUTY-SPEAKER : I will now put amendment No. 1.

The question is :

Page 2, line 9,— for "by order, prohibit or restrict" substitute "issue directions prohibiting or restricting"(1)

The motion was adopted.

MR. DEPUTY-SPEAKER : The question is :

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clause 3, clause 1, the Enacting Formula and the Title were added to the Bill.

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SHRI F. A. AHMED : I beg to move :

"That the Bill, as amended, be passed."

MR. DEPUTY-SPEAKER : Motion moved :

"That the Bill, as amended, be passed."

SHRI LOBO PRABHU : Sir, I am confining myself to two things—defence patents and food patents. The minister is aware that where there is danger of a defence patent being published, section 67 of the existing Act provides for reference to Government. I would like to know why this section has not been used during the last 5 years. This procedure of delaying it is completely wrong. It is no credit either to our law or to our administration.

Secondly, in respect of secret patents, there is the Secret Patents Act by which Government can choke it for such period as it likes. There is a similar provision in the Atomic Inventions Act. Even the existing sections of the Act beginning from section 21 onwards are sufficient. Was it necessary under these circumstances that the minister should have taken recourse to the Defence of India Act? It is his duty to maintain law. It should not be his duty to make a mockery of the law. He can argue anything, but it does not do any good. For six years, these patents have been kept pending. His argument that these applications will lapse is a bit of casuistry. If he wanted, he could have introduced a saving clause that even after the period of 31 months allowed under the Act, due to the special circumstances these things will not lapse. It is not necessary to continue this blanket prohibition.

Coming to the matter of food, it is incongruous for anyone to believe that baby food or invalids' food are necessary to equip the defence forces. This is something which is straining the meaning of the word. About medicines also, are we thinking of soldiers or the common people when it is said that medicines should be protected by law?

Is it for plunder or piracy that he wants a Bill like this? This is what it means. For six years, he has kept these patents pending. For six more years, we do not know what will be the course of this legislation. In the meanwhile anybody can plunder these things

I would request the minister, please withdraw this Bill even at this stage and redeem yourself. It is a very incongruous that when so many members of your party have opposed this Bill, they have to act against what they said and vote for this Bill. This is not democracy. This is happening too frequently. This is a mockery that almost every Bill is opposed by your party but when it comes to voting, they vote in favour of it. Are they people who are recognising the right to an opinion or do they say whatever the Minister says, wrong as he is, he is right?

SHRI F. A. AHMED : Sir, my hon. friend asked why I am coming with this provision when there is an existing law so far as production for defence purposes is concerned. If that is so, I really do not see any reason why my hon. friend is objecting to this. If as a way of abundant caution we are trying to do it I think there is complete justification and there is no justification in his objecting to it when he says that according to existing laws we can very well do what now we seek to do under the present Bill.

So far as observations made by certain hon. Members are concerned, I am sure that no one has given me an indication that they are opposing the Bill. They had given their opinion with regard to certain provisions. All the Members of the Party have also not spoken. So he is not justified in saying that each and every Member of my Party has opposed the Bill and still the Government is proceeding with the Bill. Those Members also who had made some observations made those observations with regard to one clause or another. The principle of the Bill has been accepted by all. It is only with regard to details that they have expressed their opinion, and for that matter it will go before the Select Committee and come back before this House for approval.

MR. DEPUTY-SPEAKER : The question is :

"That the Bill, as amended, be passed."

The motion was adopted.

14.50 HRS.

PATENTS BILL—Contd.

MR. DEPUTY-SPEAKER : The question is :

"That the Bill to amend and consolidate the law relating to patents, be referred to a Joint Committee of the Houses consisting of 33 Members, 22 from this House, namely :—

Shri Rajendranath Barua,
Shri C. C. Desai,
Shri B. D. Deshmukh,
Shri Kanwar Lal Gupta,
Shri Hari Krishna,
Shri Amiya Kumar Kisku,
Shri Madhu Limaye,
Shri M. R. Masani,
Shri G. S. Mishra,
Shri Srinibas Mishra,
Shri Jugal Mondal,
Shri K. Ananda Nambiar,
Dr. Sushila Nayar,
Shri Sarjoo Pandey,
Shri P. Parthasarathy,
Shri T. Ram
Shri Era Sezhiyan,
Shri Diwan Chand Sharma,
Shri Maddi Sudarsanam,
Shri Atal Bihari Vajpayee,
Shri Ramesh Chandra Vyas,
Shri Fakhruddin Ali Ahmed, and
11 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the first day of the second week of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communi-

cate to this House the names of 11 members to be appointed by Rajya Sabha to the Joint Committee."

The motion was adopted.

14.51 HRS.

FOREIGN MARRIAGE BILL

THE DEPUTY MINISTER IN THE MINISTRY OF LAW (SHRI M. YUNUS SALEEM) : Mr. Deputy-Speaker, Sir, I beg to move :

"That this House do concur in the recommendation of Rajya Sabha that the House do join in the Joint Committee of the Houses on the Bill to make provision relating to marriages of citizens of India outside India, made in the motion adopted by Rajya Sabha at its sitting held on the 13th May, 1968 and communicated to this House on the 15th May, 1968 and do resolve that the following thirty members of Lok Sabha be nominated to serve on the said joint Committee, namely...

MR. DEPUTY-SPEAKER : You need not read the names; they have been circulated.

SHRI M. YUNUS SALEEM : I have only two amendments. In serial no. 1...

MR. DEPUTY-SPEAKER : In the names ?

SHRI M. YUNUS SALEEM : Yes. In serial no. 1...

MR. DEPUTY-SPEAKER : This is rather strange. You should have given notice. Now I will admit it but in future you should give notice.

SHRI M. YUNUS SALEEM : All right. I am sorry, Sir.

MR. DEPUTY-SPEAKER : Now, please indicate what are the names substituted.

SHRI M. YUNUS SALEEM : In serial no. 1, the name of Shri C. M. Krishna may be substituted in place of Shri Jahan Uddin Ahmed; and in serial