

SHRI NATH PAI (Rajapur) : I am glad you have admitted Mr. Limaye's privilege motion. What has happened to mine? When is the enquiry expected to be over?

MR. SPEAKER : I do not think that you should ask about it; I shall myself tell you when the enquiry is over.

SHRI NATH PAI : It is part of our duty; are you reminding the Defence Minister to complete it... (*Interruptions*)

MR. SPEAKER : Kindly do not repeat it every day. Unless you give some notice, it is not possible for me to decide. I gave my ruling yesterday; they are pending.

SHRI NATH PAI : You have withheld your ruling; you are still considering it. You are a distinguished lawyer; it is not a ruling... (*Interruptions*)

MR. SPEAKER : Whether it is an observation or ruling, you take it like that. Unless I hear from the hon. Minister that I shall not decide about it; it will be kept pending.

SHRI NATH PAI : Please keep reminding him to complete the enquiry.

SHRI UMANATH (Pudukkottai) : I do not wait till the enquiry is over. My privilege motion is on the reply of the hon. Minister that he will not place Henderson Brookes report on the Table of the House. That does not require an enquiry that is pending in the Defence Ministry. You can decide on it.

MR. SPEAKER : It is pending with me; I have not decided on it. You should ask me in the Chamber and not get up like this in the House. I am readily available in the Chamber and you can ask me about it. I can ask the Minister. Please do not raise it every day in the House... (*Interruptions*) Mr. Limaye's motion is in order. I think he should ask the leave of the House. Shall I read it? Or he can read it.

12.35 hrs.

QUESTION OF PRIVILEGE

Re. Illegal Custody of Shri Madhu Limaye

श्री मधु लिमये (मुंगेर) : क्या मैं नोटिस पढ़ूँ, लेकिन उसमें मैंने सारी बातें नहीं रखी हैं?

अध्यक्ष महोदय : जैसा दिल चाहे कीजिए।

श्री मधु लिमये : आप पहले मुझे पीलि-मिनरी स्टेटमेंट करने दीजिए, वह अच्छा रहेगा।

अध्यक्ष महोदय, इस मामले के तथ्य इस प्रकार हैं कि 9 अगस्त को मैं कलकत्ता से हवाई जहाज द्वारा बनारस आया। बनारस से मैं आजमगढ़ जाने वाला था, उसके बाद देवरिया, इलाहाबाद का मेरा कार्यक्रम था। बनारस में मेरे मित्र के यहाँ एक पत्रकार सम्मेलन होने वाला था, इसके अलावा बनारस में मेरा कोई कार्यक्रम नहीं था। लेकिन जब मैं हवाई जहाज से उतरा और गाड़ी में बैठ कर शहर की ओर चला तो रास्ते में पुलिस अफसर ने मुझ को रोका और कहा कि वह मुझ को गिरफ्तार कर रहे हैं। मैंने पूछा कि क्या आप वारंट लाए हैं? उन्होंने कहा कि वारंट कोई नहीं है, लेकिन आप को दिखाया जाएगा, आप पुलिस स्टेशन चलिए। वहाँ जाने के बाद मेरे ऊपर कोई वारंट जारी नहीं किया गया, न मुझे कोई कारण बताया गया कि मुझे क्यों गिरफ्तार किया जा रहा है। उस दिन इतवार था। फिर मुझे सिटी मैजिस्ट्रेट की अदालत में ले गए और मेरे ऊपर उन्होंने क्रिमिनल प्रोसीजर कोड की धारा 112 के तहत नोटिस जारी करना चाहा। मैंने उनसे पूछा कि क्या इस नोटिस में जो तथ्य दिये गये हैं, उनकी सत्यता जानने के बारे में आप ने कोई प्रयास किया है, यदि नहीं किया है तो

यह सारी कार्यवाही श्रवैष है और यह आप को नहीं करना चाहिये। फिर भी उन्होंने नोटिस जारी किया। मैंने कहा कि मैं हस्ताक्षर नहीं करूंगा, क्योंकि सारा काम गलत हो रहा है। उसके बाद उन्होंने मुझ से कहा कि आप बौंड दीजिये, वरना आपको जेल जाना होगा। मैंने कहा बौंड किस लिये मांग रहे हैं, बौंड मांगने का आपका कोई अधिकार नहीं है। फिर भी उन्होंने कहा कि मैं आप को जेल भेज रहा हूँ। उसके बाद तीन दफा उन्होंने कार्यवाही को मुलतवी रखा और हमेशा कहा कि मैं ला-एण्ड-आर्डर के साथ बहुत व्यस्त हूँ, इस लिए आप जेल में पड़े रहिए उनके यह तीन आर्डर हैं। उसके बाद जेल से मैंने दूसरे दिन सुप्रीम कोर्ट में अपनी याचिका पेश की और उसके ऊपर "रूल-निसी" जारी हुआ और मुझ को बुलाया गया।

21 अगस्त से लेकर 21 सितम्बर तक यह केस वहां चला, क्योंकि इसके अलावा दूसरे दो मामले भी थे जो बिहार के सम्बन्ध में थे, जिनके बारे में सुप्रीम कोर्ट ने 1968 में मुझे छोड़ा था, फिर भी उन्होंने उस मामले को जारी रखा और एक वारंट निकाला था। फिर सुप्रीम कोर्ट के सामने मैंने स्टे की याचिका दी। इस लिए उस केस को और इस केस को साथ सुना गया। चूंकि मैंने क्रिमिनल प्रोसीजर कोड की कुछ धाराओं की वैधानिकता पर आपत्ति की थी, इस लिए 7 जजों की एक स्पेशल बेंच कायम की गई, जिसका फंसला अब हो गया है, लेकिन आज मैं उसके बारे में कुछ नहीं कहना चाहता हूँ। उसके बाद 5 जजेज की बेंच के सामने मेरा यह उत्तर प्रदेश का मामला चला और अदालत ने जो फंसला दिया है, जिसकी नकल मैंने आप के पास भेजी है, उसमें से मैं कुछ जुमले आपकी सेवा में प्रस्तुत करना चाहता हूँ। इससे आप को पता चलेगा कि 9 अगस्त को मैजिस्ट्रेट ने जो कार्यवाही की, उसको सुप्रीम कोर्ट ने पूर्णतया

श्रवैष करार दिया है। इसमें सुप्रीम कोर्ट ने यह कहा है कि—

"It will be noticed that before the Magistrate took action to call for an interim bond, he did not make any efforts to enquire into the truth of the information as is required by section 117(3) the Code. He only saw the police report and was satisfied from it without even questioning the Sub-Inspector.....It is also to be noticed that the case was fixed on the following day for statements of Madhu Limaye and Ram Adhar Giri and there is no mention that any witnesses were to be present. In fact even on the next day the Magistrate was not going to try the case but only take statements from the petitioners....."

It appears therefore that the Magistrate used the powers under section 117(3) without commencing to enquire into the truth of the information. No sworn statement of any kind was obtained by him and he adjourned the cases for the examination of the petitioners without summoning the witnesses in support of the information."

"He, however, asked the petitioners to furnish an interim bond or go to jail."

It appears to us that the powers of the Magistrate to ask for an interim bond were not properly exercised in this case and consequently the order to the petitioners to furnish interim bond could not be made ...

आगे यह कहते हैं :—

"Therefore, the proceedings for asking for an interim bond were completely illegal." कम्प्लीटली इल्लैगल कहा है।

"Learned counsel for the State attempted to put the matter under various sections of the Code of Criminal Procedure. He relied on section 344 or in the alternative on section 91 or in the alternative again on section 167."

He was groping for some support from another part of the Code. These sections have been dealt with by the Special Bench and held inapplicable to

[श्री मधु लिमये]

the facts of a trial under Chapter VIII which contains its own elaborate procedure for trial of a suspected person."

अग्ने का और अधिक पढ़ कर मैं हाउस का और ज्यादा समय नहीं लेना चाहता केवल आखिरी जुमला मैं पढ़ना चाहता हूँ।

"Without making any enquiry, neither could the Magistrate order the petitioners to be detained in custody nor require them to execute a bond with or without surety.

It is quite clear that the Magistrate was too much in hurry. He did not read the law to inform himself what he was to do. Having the petitioners before him and having read to them the order under section 112, it was his duty either to release them unconditionally or to ask them to give an interim bond for good conduct but only after he had started inquiring into the truth of the information. It was for this reason that we held that the Magistrate did not act according to the law and his action after August, 1970, in detaining the petitioners in custody was illegal."

इस तरह का यह निर्णय आया है। अब मैं आपकी सेवा में इतना ही निवेदन करना चाहता हूँ कि हर सदस्य को इस सदन की खिदमत करने का और उसकी कार्यवाही में हिस्सा लेने का और यहां पर वोट देने का अधिकार है। अगर मैंने कोई अपराध किया है, जुर्म किया है तो मैं नहीं कहता हूँ कि पार्लियामेंट का सदस्य क्रिमिनल ला के परे है और उसके लिए जो सजा अथवा दण्ड उसे मिलना चाहिये वह उसे न मिले। इस बारे में साधारण नागरिक में और पार्लियामेंट के सदस्यों में कोई फर्क नहीं होगा। लेकिन मैं आप से यह निवेदन करना चाहता हूँ कि हमारे क्रिमिनल प्रोसीज्योर ऐक्ट की दफा 59 के अनुसार साधारण नागरिक को भी किसी अन्य नागरिक को गिरफ्तार करने का अधिकार दिया गया है। यदि वह कोई नोन वेल्फेल

कीमजबुल ऑफिस करे, उसकी राय में, तो यह साधारण नागरिक भी किसी अन्य नागरिक को गिरफ्तार कर सकता है और पुलिस के हवाले कर सकता है। इतना अधिकार क्रिमिनल प्रोसीज्योर कोड में है। एक साधारण नागरिक को भी अधिकार है, पुलिस अफसरों को है और मजिस्ट्रेट को भी है लेकिन कानून के दायरे के अन्दर यह सब काम करना चाहिए। अगर कानून के दायरे के अन्दर यह काम नहीं होता है तो उसको तो मानना चाहिये कि यह औन्सट्रक्शन है, मोलैस्टेशन है। यह सारा गैर कानूनी काम है। अब मेज की पार्लियामेंटरी प्रोसीज्योर की जो किताब है उसमें कहा है कि पार्लियामेंट के सदस्यों को मोलैस्ट करना या औन्सट्रक्ट करना यह सदन का अपमान है, मानहानि है ऐसा मानना चाहिये।

उदाहरण के लिये मैं आप को बतलाऊँ कि सदन में कोई एक बिल है, मान लीजिये प्रीवेटिव डिस्टेंशन ऐक्ट है, हमारा दल उसको पसन्द नहीं करता है। मान लीजिये कि दो तीन वोट का फर्क है तो मैं दो, तीन सदस्यों को पकड़ कर यह कहूँ कि उन्होंने कोई खून किया है, कत्ल किया है और इस तरह से वोट डाउन हो जायेगा तो क्या वह सदन को मानहानि नहीं होगी? प्रिवीपसॅज का बिल था, एक, एक वोट से हार जीत का फैसला होना था। अब अगर कोई राजा कहता कि फलां फलां सदस्य ने इन आई ब्यु मेरी राय में, कोई जुर्म किया है इसलिये मैं उसे पकड़ कर अपने प्रासाद में रखता हूँ तो यहां तो सारा मामला गड़बड़ हो जायेगा...

श्री अटल बिहारी वाजपेयी (बलरामपुर) : इस तरह से राजाओं को भी पकड़ा जा सकता है।

श्री मधु लिमये : मैंने अपने से शुरू किया

है बाकी ऐसा किसी के भी साथ हो सकता है। जैसा मैंने कहा प्रीवेटिव डिटेन्शन कानून मुझे पसन्द नहीं है इसलिये मैं रणधीर सिंह को गिरफ्तार करा सकता हूँ कि उसने मरडर किया है तो मैं कोई दलों में फर्क नहीं कर रहा हूँ लेकिन इस तरह के कामों के बारे में सदन को बहुत गम्भीरतापूर्वक सोचना चाहिये। मैं यह नहीं चाहता हूँ मूक में यह दुष्टता नहीं है कि उन्होंने मुझे जेल में रक्खा इसलिये अब मजिस्ट्रेट को भी रखिये। मैं यह जरूर चाहता हूँ कि उसको सदन की बार पर बुलाया जाय और कम से कम उनसे माफी मंगवाई जाय क्योंकि यह तीसरी बार हुआ है। सुप्रीम कोर्ट जोकि देश की सर्वोच्च अदालत है उसके सामने तीन बार यह हो चुका है। एक दफे पंजाब हाईकोर्ट ने मुक को छोड़ा है तो जस्टिस मित्र ने हताश हो कर यह कहा था :

They will continue to arrest you no matter what we decide

यह वाक्य जैग मैंने कहा जस्टिस मित्र ने हताश हो कर खुली अदालत में कहा है। आप कितनी बार मेरी गिरफ्तारी अवैध घोषित होने के बाद मेरे साथ न्याय करेगे यह मैं आप के सामने बहुत ही विनम्रतापूर्वक रखना चाहता हूँ। इसलिये मेरी जो मानहानि का सवाल है वह मेरा व्यक्तिगत नहीं है अपितु यह पूरे सदन की मानहानि और नागरिक स्वतंत्रता का सवाल है। इसलिये इस पर आप गम्भीरतापूर्वक विचार करिये।

श्री रवि राय (पुरी) : मजिस्ट्रेट साहब को सदन के सामने बुलाया जाय।

श्री अटल बिहारी वाजपेयी : नियम के मुताबिक अगर कोई इस पर आपत्ति नहीं करता है तो इस पर बोट हो जाना चाहिये।

श्री स० मो० बनर्जी (कानपुर) : मुझे यह रूल मालूम है लेकिन उस रूल के होते हुए भी अध्यक्ष महोदय ने सदस्यों को जो

समर्थन करना चाहते हैं या अपनी बात कहना चाहते हैं उन्हें उसे कहने का मौका दिया है।

MR. SPEAKER : That is after the leave is granted, not now. There are two stages. If any body has any objection to leave being granted, it is all right. If nobody objects, I will put it to vote.

SHRI K. NARAYANA RAO (Bobbili) : I have an objection.

MR. SPEAKER : This is quite an important matter of privilege. I ask the Law Minister, do you have any objection to it ?

THE MINISTER OF LAW AND SOCIAL WELFARE (SHRI K. HANUMANTHAIYA) : Yes ; I have got objections. It is not that I am happy that a Member of Parliament is arrested ; (*Interruption*). My hon. friend interferes with my privilege of speaking uninterruptedly. Sir, you have rightly said that any question of privilege that comes before the House must be of such importance that it has to be considered by the House by earmarking some time for that work. Secondly, we must make a distinction between a private citizen and a Member of Parliament. We are all hon. Members of Parliament. But that does not mean that we continue to be members all the time in our daily life. Therefore, to take the view that anything done to a Member of Parliament is a breach of privilege is an impossible position. Mr. Limaye, who is a very good champion of the common man ought to see the point that he has to make a distinction between a Member of Parliament acting as such and the very same Member of Parliament acting in his individual capacity. There is no question of privilege because if the magistrate does something, it is in the usual course of judicial proceedings. They can go in appeal and seek a remedy. He has got the remedy. Having exhausted the remedy and secured his right, now to come before Parliament on that question would be asking something which is unusual.

Thirdly, there is what is called the Judicial Officers Protection Act. If a wrong order is passed by a Judge, it is set aside by the higher courts. Unless some *ma'ia fide* intention is proved we cannot ordinarily take notice of judgments of courts for scrutiny and judgment here in this House. I have

[Shri K. Hanumanthaiya]

listened very carefully to the presentation of facts by Shri Madhu Limaye. He also does not make an allegation of *mala fide*. Therefore, I only say that if such a motion is discussed people are likely to misunderstand that Members of Parliament are taking the view that their privilege is something more than a right. So, I would beg of my hon. friend not to press his case.

SHRI NATH PAI (Rajapur) : May I know under what rule you allowed him to speak? If you are going strictly according to the rules, the objection was first raised by an hon. Member and not by the Law Minister. How did the Law Minister take precedence over that hon. Member?

MR. SPEAKER : Both of them got up. He should follow the rule.

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SHRI NATH PAI : We also have been applying this rule in this House. May I read to you the rule?

MR. SPEAKER : No.

SHRI NATH PAI : How can you say "No"? I am rising on a point of order. The right to raise a point of order is the inalienable right of a member. An objection to the privilege motion was raised by an hon. Member. Once an objection was raised, you ought to have put it to the vote. But you allowed the Law Minister to have his say. The rule never says that the Law Minister has a better right over another hon. Member who raised the objection which was heard by the whole House.

MR. SPEAKER : The Law Minister caught my eyes first.

SHRI NATH PAI : Shri Narayana Rao raised it first. Take a vote on that, if you want. Once you have made an exception, so far as the rules are concerned, there is no such rule that the Law Minister has a better right than any other member. An objection was first taken by an hon. Member of this House belonging to the ruling party.

MR. SPEAKER : I do not agree.

SHRI NATH PAI : Let the records be

checked. I do submit that the objection was first raised by Shri Narayana Rao.

MR. SPEAKER : There is no question of first. I am going to put it to the vote for leave. Do not discuss it.

SHRI NATH PAI : May I submit in all humility that even your ruling must not be arbitrary? The entire House is saying that Shri Narayana Rao raised the objection first.

MR. SPEAKER : I am prepared to satisfy him on this point. Let him sit down. It is not only a question of who caught my eyes. Even there I can say that out of the two persons who caught my eyes...

SHRI NATH PAI : Shri Rao was the first to raise it. You cannot arbitrarily change the rules. The rule is very clear on the subject. Which rule are you guided by? The rule simply says "if an objection is raised". It does not say that the objection must be raised by a Minister. Any member can raise an objection.

MR. SPEAKER : The Minister has priority over it.

SHRI NATH PAI : Rule 225 (2) says :

"If objection to leave being granted is taken"

The objection, according to me, was taken. Nowhere does the rule say that the objection must be by the Minister. An hon. Member has taken objection. Most of the hon. Members have heard him say "objection". I would like to know whether he did say or not.

SHRI RANDHIR SINGH (Rohtak) : He did when I said "why any objection".

SHRI NATH PAI : My submission is that after that objection was raised you were required under the rules to take a vote as to how many members were in favour of it. But you in your wisdom, which is your inherent right, allowed the Law Minister to speak. Once you deviate from the rule you cannot say that only the Law Minister shall speak and everybody else is precluded from speaking. This will be patently unfair.

MR. SPEAKER : There is unnecessary misunderstanding over it. In the case of two Members raising objection, I can call any, but I assure you that even in case of two Members, the Minister has precedence.

SHRI NATA PAI : The Law Minister did not raise the objection ; it was Shri Narayana Rao who raised it (*Interruption*).

MR. SPEAKER : When he was on his legs, I said, "What is the use ? It is a very important matter of privilege." He said, "I wanted to submit something." I said, "All right ; you do it in a minute." I think, you were talking to some other friends and did not hear all that.

SHRI RABI RAY : We heard it.

MR. SPEAKER : I pleaded your case and you are giving this compensation to me.

SHRI NATH PAI : Not to you.

MR. SPEAKER : I think, such cases do arise every now and then. We cannot compare ourselves with the House of Commons in many other things. They went through all these experiences in the past many centuries. You know that so many people were hanged. About ten Speakers were hanged on one day. That is how these privileges were evolved. But we are in this Parliament without hanging even one Speaker. We must decide once and for all how far the executive were to stand *vis-a-vis* Members. I quite agree that the judiciary has its own protection but let this question be examined as to how far they have this protection.

SHRI K. HANUMANTHAIYA : I have no objection ; I agree.

MR. SPEAKER : Let it be said once and for all and let the Committee examine it. This will help us in the future because such questions are raised every now and then.

SHRI K. HANUMANTHAIYA : I might say that all your laws will not mend matters, I assure you. Let that be examined but you will not be able to rectify matters in the way you think. Your law is so much waste of energy.

MR. SPEAKER : Times have come when no one knows when one will be on this side or on that side and we must be very careful about the future. Therefore I shall put the question that leave be granted to the vote of the House.

SOME HON. MEMBERS : There is no objection ; he has withdrawn it. Let it be referred to the Privileges Committee.

MR. SPEAKER : He is withdrawing his objection. Then, Shri Madhu Limaye may move the motion either for being discussed directly by the House or for being referred to the Privileges Committee.

SHRI NATH PAI : I second it that it be referred to the Privileges Committee.

श्री मधु लिमये : मैं प्रस्ताव करूंगा कि यह प्रिविलेज कमेटी में जाय लेकिन इस में 'अलेग्ज्ड अरेस्ट' नहीं होना चाहिए क्योंकि सुप्रीम कोर्ट ने उसको इल्लिगल कह दिया है। इसमें 'इल्लिगल' जोड़ दिया जाये।

श्री रवि राय : इस में से 'अलेग्ज्ड' हटा दिया जाए।

श्री मधु लिमये : मैं प्रस्ताव करता हूँ :

"That the question of privilege regarding the illegal custody of Shri Madhu Limaye from the 9th to 26th August, 1970, by Shri Mohinder Singh, City Magistrate, Varanasi, be referred to the Committee of Privileges for investigation and report by the end of the first week of the next Session."

13.00 hrs.

MR. SPEAKER : The question is :

"That the question of privilege regarding the illegal custody of Shri Madhu Limaye from the 9th to 26th August, 1970, by Shri Mohinder Singh, City Magistrate, Varanasi, be referred to the Committee of Privileges for investigation and report by the end of the first week of the next session."

or whenever the next session is there.

AN HON. MEMBER : You agree to it ? **13.02 hrs.**
(*Interruptions*)

SHRI ATAL BIHARI VAJPAYEE :
Sir, it may be added in the motion.

SHRI NATH PAI : You just now told that the subject matter is very important and serious and it was your intervention which ultimately prevailed with the Minister of Law. You yourself conceded that this subject is important. But there is no properly constituted Privileges Committee because many of the Opposition Members have boycotted the Committee. Will you please see that the committee is properly formed ?

MR. SPEAKER : They are re-nominated. The committee is functioning ; it had been re-nominated. Everything is all right. You need not worry about it. The machinery is working.

SHRI NAMBIAR (Tiruchirappalli) :
May I seek a clarification about your statement that it may come up in the next session whenever it meets ?

MR. SPEAKER : This is in your hands. Pleased don't worry about it.

SHRI BAL RAJ MADHOK (South Delhi) : We would like to know whether you speak the mind of the Government.

MR. SPEAKER : Mr. Madhu Limaye, may I request you that the Committee will examine all these issues in detail. As Speaker I will have some directions to suggest as to how far Judiciary deserves protection. They are responsible upto a point. Beyond what point they are to be held for privileges—all these relevant questions should be examined and reported to the House.

Now the question is :

"That the question of privilege regarding the illegal custody of Shri Madhu Limaye from the 9th to 26th August, 1970, by Shri Mohinder Singh, City Magistrate, Varanasi, be referred to the Committee of Privileges for investigation and report by the end of the first week of the next session."

The motion was adopted

PAPERS LAID ON THE TABLE

Fifth Statement Showing Decisions on Recommendation of the Committee on Broadcasting and Information Media on Documentary Films and Newsreels

THE MINISTER OF STATE IN THE MINISTRY OF INFORMATION AND BROADCASTING, AND IN THE DEPARTMENT OF COMMUNICATIONS (SHRI I. K. GUJRAL) : Sir, on behalf of Shri atya Narayan Sinha I beg to lay on the Table a copy of the Fifth statement showing decisions taken on one more recommendation of the Committee on Broadcasting and Information Media on Documentary Films and Newsreels. [*Placed in Library. See No. LT—4240/70*]

Displaced Persons (Compensation and Rehabilitation) Rules

THE DEPUTY MINISTER IN THE MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION (SHRI BISHWANATH ROY) : On behalf of Shri Bhagwat Jha Azad I beg to lay on the Table a copy of the Displaced Persons (Compensation and Rehabilitation) Rules, 1970 (Hindi and English versions) published in Notification No. G.S.R. 1805 in Gazette of India dated the 24th October, 1970, under subsection (3) of section 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. [*Placed in Library. See No. LT—4241/70*]

Report of Development Council for Sugar Industry, Report of Committee for finding colour for Vanaspathi etc.

THE DEPUTY MINISTER IN THE MINISTRY OF FOOD, AGRICULTURE, COMMUNITY DEVELOPMENT AND CO-OPERATION (SHRI S. C. JAMIR) : On behalf of Shri Annasahib Shinde I beg to lay on the Table :

- (1) A copy of the Annual Report (Hindi and English versions) of the Development Council for Sugar Industry for the year 1969-70, under sub-section (4) of section 7