

श्री कंवर लाल गुप्ता : इसका मतलब यह है कि जो आदमी शान्ति से बैठा रहता है, झगड़ा नहीं करता और रूल के मुताबिक चलना चाहता है उसको आप मजबूर करते हैं कि वह भी शोर मचाये।

Shri K. Lakkappa: On a point of order. The Santhanam Committee on Prevention of Corruption has made it very clear.....

Mr. Deputy-Speaker: Shri M. R. Masani is now on his legs. Nothing else will be recorded except Shri M. R. Masani's speech.

Shri K. Lakkappa: **

Mr. Deputy-Speaker: This will not be recorded.

श्री मधु लिमये : फिर उनको भी नहीं सुना जायेगा। उपाध्यक्ष महोदय, आपने पहले कहा है कि इजाजत देंगे क्लैरिफिकेशन्स की।

Mr. Deputy-Speaker: It is within my discretion.

श्री ए० एम० जोशी : हमें सुन तो लीजिये। आप ने कहा था।

Mr. Deputy-Speaker: He can raise that point tomorrow, not now.

Shri Tenneti Viswanatham (Visakhapatnam): On a point of clarification....

Mr. Deputy-Speaker: I shall listen to him later and not now. If there is any point of order regarding the Passports Bill, then I am prepared to hear.

श्री एस० एम० जोशी : वह बाद में आयेगा। आप ने कहा है कि हम लोग इस पर क्लैरिफिकेशन्स पूछ सकते हैं।

Mr. Deputy-Speaker: I have said that it is within the discretion of the Chair.

श्री शशि भूषण बाजपेयी (खारगोन) उपाध्यक्ष महोदय, आप मार्शल का इस्तेमाल कीजिये। वह कब काम आयेगा ?

Shri Tenneti Viswanatham: On a point of order. The Prime Minister is going away from the House.

श्री मधु लिमये : उपाध्यक्ष महोदय, यह सदन की अवहेलना है। प्रधान मंत्री चली गई।

Mr. Deputy-Speaker: I have taken up the next item and we are now discussing the Passports Bill. So, she is perfectly within her right to leave the House. (Interruptions).

Order, order. None of these interruptions will go on record.

(Interruptions). * *

श्री मधु लिमये : उपाध्यक्ष महोदय, आप ने जो आश्वासन दिया था उसकी पूर्ति आपने नहीं की, इस लिये हम सदन का त्याग करते हैं।

Mr. Deputy-Speaker: It is on record. I have followed the procedure.

(Shri S. M. Joshi, Shri Madhu Limaye and some other Members left the House)

15.09 hrs.

PASSPORTS BILL—contd.

Clause II —contd.

Shri M. R. Masani (Rajkot): When I started moving my amendments yesterday, the House adjourned. We were then on clause 11 of the Passports Bill. Clause 11 has some very objectionable features. Clause 11

[Shri M. R. Masani]

makes appeals against the refusal of a passport inadmissible (*Interruptions*).

Mr. Deputy-Speaker: Let us hear him. It is a very important measure and he is making a good contribution.

श्री रामसेवक यादव (बाराबंकी) : बिड़ला के मामले में तो बहुत अच्छा कांटी-व्यूशन किया है। किसी को बोलने नहीं दिया। जब आप वहाँ बैठते हैं तो इसी तरह के झंझट करते हैं।

Shri M. R. Masani: There are two aspects to clause 11 which are highly objectionable. It is a very bad feature that appeals to courts of law are ruled out.

श्री राम सेवक यादव : प्रधान मंत्री जी वाक आउट कर गई हैं ?

आपने अपने आश्वासन की पूर्ति नहीं की है, इसलिये मैं सदन का त्याग करता हूँ।

(*Shri Ram Sewak Yadav then left House*)

Shri M. R. Masani: If you read clause 11, there are two passages to which I take exception. At one point, clause 11 says:

"Provided that no appeal shall lie against any order made by the Central Government".

On page 8 there is another sub-clause which says:

"Every order of the appellate authority confirming, modifying or reversing the order appealed against shall be final".

It is very clear from this that this Bill seeks to undo the judgment of the Supreme Court. The Supreme Court had held that it was the fun-

damental right of the citizen or part of his personal liberty to be able to travel abroad and return to the country whenever he likes and that this fundamental right should not be made subject to the arbitrary discretion of the executive. That was why they gave a passport to a man who had been denied it.

The Government come and say, 'In order to bow to the decision of the Supreme Court, we have come forward with a Bill because the Supreme Court said, let there be a law on the subject'. But what kind of law is this? This, as I have said, is a lawless law. Having brought it in, they now say; 'We may again at our discretion deny a passport and you shall not go to a court of law'. Without perhaps mesaning it, the Supreme Court has by its judgment made the Government do something which has actually lessened the liberty of the subject. Upto now, at least, if a man was refused a passport, he could go to a court of law, and as we know, he was given a passport in Bombay, and other places. Now if this Bill were passed the courts are barred from interfering. In other words, the very purpose of the Supreme Court judgment is sought to be defeated by this Bill. This is not a behaviour that any government worth its name should indulge in.

The Minister of Law (Shri Govinda Menon): The High Courts and the Supreme Court can still interfere.

Shri M. R. Masani: Then why do they want to put in these two sub-clauses?

Shri Govinda Menon: Other courts cannot interfere. If there are constitutional rights violated, it is open to the High Court under art. 226 and the Supreme Court under art. 136 can step in.

Shri M. R. Masani: No.

Shri S. Kandappan (Mettur): Then why not make it explicit in the Bill itself.

Shri M. R. Masani: Then with your permission I will move an amendment to the effect that there shall be no appeal except to the High Courts and the Supreme Court so that my hon. friend will accept it. Will he?

Shri Govinda Menon: That is not necessary because the Constitution is there.

Shri M. R. Masani: Let them be honest with the House. I say he is misleading the House.

Shri Govinda Menon: Under art. 136, there can be an appeal from the ruling of any tribunal. Here it is a tribunal.

Shri M. R. Masani: The language of the clause is very clear:

"Provided that no appeal shall lie against any order made by the Central Government" and

Every order of the appellate authority confirming, modifying or reversing the order appealed against shall be final".

If the hon. Minister intends to be honest with the House, he should accept the amendment I am proposing to the effect that appeals are barred except to the High Court and the Supreme Court. If he does not, I say that he is trying to mislead and fool the House. It is a not very honest plea he is making to the House.

I say this Bill is a violation of not only the judgment of the Supreme Court but also of articles 14 and 21. The Supreme Court had said in another judgment that this Parliament is not competent to take away or truncate the fundamental rights of the citizen. It is very historic and wonderful judgment of which we are proud, that we have an independent judiciary which can control both the legislature and the executive. We have no sovereign Parliament in this country; we have no sovereign ex-

clusive. Only the Constitution is supreme and this Parliament has to subject itself to the Constitution and the Supreme Court. But here is a Government that comes with a law which, while pretending that the appeal will remain, is trying to stop the courts from interfering. I do hope that if Bill is passed against our votes—we shall certainly vote against it—the Supreme Court will strike down this clause of the Bill as *ultra vires* of the Constitution. This is a shameful act indulged in by them. Therefore, I press my two amendments, Nos. 34 and 36. The first amendment seeks to delete lines 34 and 35 and my second amendment seeks to omit lines 13 and 14. If these amendments are accepted, the effect is that an appeal will be open to the courts of law. If these amendments are defeated, the Supreme Court's judgment would be defeated. Therefore, I press my amendments. If the Minister meant what he said, let him accept my amendment that 'no appeal shall lie except to the Supreme Court and the High Court' I shall be happy and satisfied.

Shri Govinda Menon: The objection to accept the amendment is this. Under article 136 an appeal will lie to the Supreme Court but only with the leave of the Supreme Court.

Shri M. R. Masani: Why not say so?

Shri Govinda Menon: When it is in the Constitution, why should it be reported.

Shri M. R. Masani: I am sure the Supreme Court would not mind your saying so in this clause.

Shri Govinda Menon: It is usual; you will find it in many statutes. Because of the constitutional right under article 136 it is open to a party to go the Supreme Court with the leave of the Supreme Court.

Shri Bal Raj Madhok (South Delhi): Why not give a specific right here?

Shri Govinda Menon: Hon. Members are aware that certain decrees and orders are said to be final; still there is the right of interference by the High Court because these are constitutional rights under article 226 and 227 . . . (Interruptions) An appeal can go before the Supreme Court under article 136. Articles 226 and 227 will come in only if there are certain mistakes regarding jurisdiction. For the information of the House I will read article 136 which says: Notwithstanding anything contained in this chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. The tribunal contemplated by clause 10 is a tribunal which will come under article 136. There is no tribunal in India whose decree or order will be final on account of this constitutional provision. So, 'final' means that it is final according to the statute but subject to the supreme law of the land, namely, the Constitution. There are many statutes like this where decrees and orders are said to be final. You say that the order of the High Court is final in certain matters, you say that the order of a judge is final; you say the order of a tribunal is final. But in spite of this finality, there is this right given under article 136 to the Supreme Court to interfere in its discretion and what the party will have to do is to apply to the Supreme Court for special leave under this article. Thousands of appeals are being heard by the Supreme Court under article 136. I said so much because Mr. Masani's objection appeared to be that no appeal is provided and he told me that if Government would agree to an appeal, he would withdraw his objection. The objection to agree to that amendment is that the words which he wants to introduce are not usually used. I am prepared to sit and discuss this matter with Mr. Masani and I can show him half a dozen Acts where finality is given to certain

orders made under certain Acts which are still appealable by virtue of the provisions of the constitution. It is stated herein that the decision of a tribunal will be final but still, where there has been an aberration of justice, failure of justice or breach of the statute, the Supreme Court will interfere under article 136 and where there is infraction from the rules of jurisdiction, the high court also can interfere under articles 226 and 227.

Listen, for example, to the wording of article 227.

An hon. Member: We know that.

Shri Govinda Menon: You know, but all do not know, and some who know pretend not to know. Article 227 says:

"Every High Court shall have Superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction."

Therefore, this tribunal sought to be constituted under clause 11 of the Bill before the House is a tribunal which will come under the all-pervasive jurisdiction of the high court under articles 226 and 227, and of the Supreme Court under article 136.

Shri S. Kandappan: Sir, the whole contention of the hon. Minister seems to be that what we are trying to press on them is already provided in the Constitution. The Government in its wisdom thinks that this is justifiable and the provisions governing these are there in the Constitution. But unfortunately we in our innocence think that if this clause is retained in the Bill as it is, there is scope for mischief by the executive. I say this because the hon. Minister, Mr. Chagla, who piloted the Bill in the Rajya Sabha, when this matter was specifically taken up, gave quite a different answer, different from the

explanation given by our hon. Law Minister here. He is very eminent; I do agree, but Mr. Chagla is an equally eminent lawyer I suppose. He pleaded that by making it justiciable and referring it to court, there will be undue delay and in order to avoid that he has provided an appellate tribunal. That is what he pleaded. He never even remotely, hinted at the possibility of this being covered by the existing Constitutional provisions. You can then very well imagine the mischief that is likely to arise.

I would like to pose one question to the hon. Minister. Does it in any way contravene the articles of the Constitution granting that the articles cover these things? Does it in anyway contravene are articles or the spirit of the Constitution if it is made explicit in the Bill?

Shri Govinda Menon: It will be redundant.

Shri S. Kandappan: It is not going to be so. Since we do have our suspicion in spite of the explanation given, I would like to submit this. I will be very brief. In the judgment given by the court, I would like particularly to refer to one important sentence. I quote:

“While in the case of an enacted law, one knows where he stands, in the case of the unchannelled arbitrary discretion, discrimination is writ large on the face of it.”

In this Bill, do we know where we stand? Is there not enough discrimination and enough vague terms clubbed there and all kinds of words like integrity, security, public interest and all these terms are coupled together and they have been made sufficient grounds or refusing a passport? All kinds of ill-defined grounds are there. Naturally, there is genuine fear that unless it is made justiciable, there is no room for justice and anybody can be refused passport on

political grounds, and we will be in an utter disadvantage, and certainly we will be at the mercy of the executive.

There is another point, I quote Mr. Chagla, from his reply to the debate in the Rajya Sabha. He said:

“I say that in the administration of this Act as far as I am concerned, as far as my Ministry is concerned, to the extent that I am responsible, I will not permit any discrimination between party and party, between individual and individual.”

What is the explanation? I cannot understand this. Are we going to put this Act under the mercy of these people? I do not deny the genuineness or the bona fides of Mr. Chagla or any other Minister for that matter. But are they going to remain there forever? Perhaps even the DMK may come to power one day. It is not impossible in these Days of political upheaval.

Mr. Deputy-Speaker: The Constitution will remain after the DMK also comes there.

Shri S. Kandappan: That is why I am saying, make it perfect. Do not give room for the discretion of the individual concerned. That would be a very dangerous precedent to follow. This kind of argument would lead us nowhere.

I would, therefore, request the hon. Minister to accept this quite reasonable, moderate and constructive amendment moved by my hon. friend, Shri Masani.

Mr. Deputy-Speaker: I would like to know how many hon. Members would like to take part in this discussion so that I may ration the time accordingly.

Some hon. Members rose—

Mr. Deputy-Speaker: We have to conclude this early. Hon. Members may take five minutes each—Shri Nayar—

Shri K. K. Nayar (Bahraich): Sir yesterday I was called. I would have got ten minutes then but I gave the chance to another hon. Member. So I may be given ten minutes

Mr. Deputy-Speaker: Let us see. We have got a quiet House now. I would like to make one observation a sort of an *obiter dicta*. The leaders of the Opposition are sitting here. Shri Ramamurti is well versed in Mahabharata. There you will find that because Bheeshma at a crucial moment kept mum and did not say the right word tragedy followed. In this House, I find that senior leaders of parties keep mum and something else follows. So I hope they would draw inspiration, men like Shri Ramamurti and Shri Masani, from Mahabharata at least.

Shri P. Ramamurti (Madurai): He draws his inspiration from Zend Avasta and not Mahabharata.

Shri K. K. Nayar. Sir, I want to make some observations of a basic character regarding this Bill. I do not want to go into the various clauses of this Bill, I am attacking the very basis of this enactment.

15.28 hrs.

[**SHRI C. K. BHATTACHARYYA** in the Chair]

This enactment was devised and it is being piloted with the definite object of circumventing the legal consequences which follow from the judgment of the Supreme Court. Yesterday, one of the hon. Members of this House, who was himself a distinguished judge of a High Court, Shri A. N. Mulla, supported this Bill. He is the retired judge of a High Court. In the course of his speech he made certain observations which, I believe in my humble opinion, require correction. First of all, he said that that judgment did not appeal to a great majority of the people in this country. That point, in my humble opinion, is utterly irrelevant. A pronouncement of the Supreme Court is

sacrosanct in the legal sense. Whether the citizens of this country approve of it or not it is inviolable and it is the last pronouncement on the subject. There is an attempt to interpret that judgment as creating law. It is not so. It is merely an interpretation of the law as laid down in the Constitution. That judgment has not created a charter of rights. It has merely interpreted the charter in the Constitution.

How does the present Bill propose to alter the consequences of that judgment? The consequences of that judgment cannot be altered as long as the relevant provisions exist in the Constitution because the judgment is merely an interpretation, the construction, of what the Constitution has laid down.

In this enactment an attempt is being made to pass a law without any corresponding attempt or parallel effort to change the Constitutional provisions. How would it affect eventually the fate of this Bill? This is the simple topic on which I want to make any observations.

In article 19 and other articles of the Constitution certain fundamental rights have been granted. In article 19(d) the right granted is that all citizens shall have the right to move freely throughout the territory of India. Article 21 says

"No person shall be deprived of his life or personal liberty except according to procedure established by law"

It is in the context of these provisions that the Supreme Court held that any attempt to interfere at the executive level with the right of a person either to move about in this country or to take a passport for leaving the country would be against the spirit of the Constitution. Today you are bringing a law to secure the same power to the Government in a certain manner. I would not go into the various provi-

sions. But, what would be the consequences? Article 19(5) says:

"Nothing in sub-clauses (d)".

—that is, the right to move freely throughout the territory of India—

"(e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing reasonable restrictions"

—I emphasize the term "reasonable restrictions...."

"On the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe."

This freedom of movement, which includes movement within India and, in the present context, include also the right to depart from India for certain reasons, is something that can be taken away, abrogated or modified in accordance with the provisions of article 19(5), only by a law. But what kind of law would it be? A law which would impose reasonable restrictions on two grounds—either in the interests of the general public or for the protection of the interests of any Scheduled Tribe. Obviously, this is not a case in which the enactment is being put through for the interests of any Scheduled Tribe. That is obvious. The only alternative purpose is the interest of the general public. If you go through the Bill, you will find that the words "interests of the general public" are not mentioned anywhere in the Bill; it speaks only of the security of the country, sovereignty of the State and so on. But for what of the prime purposes for which the Constitution permits reasonable restrictions, namely, the interests of the general public? These words are not there in the Bill. The question will arise in a future context whether the words used in the enactment duly represent the protection of the general interests of the public.

Secondly, the restrictions have to be reasonable. In the present case, restrictions have been imposed in a manner which you cannot accept as reasonable, according to the principles of natural justice. What is reasonable is that which gives a person who is likely to suffer, or the person who is likely to be amerced or mulcted of his right to travel, an opportunity to be heard. In the present case, the passport authority carries out an inquiry. The person who applies is not associated with the inquiry. He does not know what the evidence is on the basis of which the order is going to be passed against him. He is given no right or opportunity to question the prospective decision, which is likely to be adverse to him.

In this context, I apprehend that the provisions here, under which the inquiry is carried out, are not likely to be considered reasonable. We are merely putting off the evil day. The judgment of the Supreme Court has irked the Government. They were so far, for years, exercising an executive power in their unfettered discretion until the Supreme Court held that this was a denial of a fundamental right granted to a citizen. They are bringing now an enactment which is not in consonance with the provisions of the Constitution. And the criterion on which the Supreme Court delivered the judgment remains unaltered, and unaffected; but there is no attempt here to change the Constitution. Unfortunately, in the present constitution of the House and in the present context and temper any attempt to change the Constitution is unlikely to be successful. That is why,....

Mr. Chairman: Unless the opposition consents.

Shri K. K. Nayar: Exactly. The opposition stands not only to oppose but also to secure to the citizen elementary rights granted by the Constitution, in the making of which the opposition also had a part. With the Constitution unaltered, with the provisions unabrogated and with this clause 19(5) unmodified, the question

[Shri K K Nayar]

will again be raised before the Supreme Court whether these restrictions are reasonable and I apprehend that there may be only one answer, this will have to be struck down, because, again, the essence of reasonability, namely, an opportunity to the person likely to be affected adversely by the decision is totally denied. He is not associated with the inquiry and he has no chance of knowing the reasons for which the passport is rejected. In certain cases, the reasons are given and in others they are not given.

So, I apprehend that the ultimate fate of this will be a decision by the Supreme Court saying that the restrictions imposed are no reasonable and that this enactment cannot be conceded, or accepted, or recognised as an enactment within the meaning of the Constitution. Therefore, I would request the Minister of Law, who is certainly a brilliant exponent of his point of view, to reconsider this matter and to look at it from this point of view, whether he has really neutralised, whether he has rendered the judgment of the Supreme Court nugatory through the enactment or he has merely put off the evil day until another unfortunate person has to take it up again to the Supreme Court to secure recognition of his right guaranteed by the Constitution.

Shri P. Ramamurti Sir, yesterday they made much of the fact that they have provided for an appeal and that there would not be any arbitrary decision and today Shri Govinda Menon was giving us a homily on the Constitutional provision of articles 226 and 136. We know that. We also know the writ jurisdiction of the Supreme Court. After all, we go in a writ appeal only when we feel that there is constitutional infringement of certain fundamental rights. Only on that narrow question we can go to the Supreme Court or to the High Court on a writ petition, that is, either under article 136 or under article 226. We are aware of all that.

But here what is the position? This provision in clause 11 is supposed to provide for an appeal against the decision of a passport authority, whoever he might be, in order to guard against the arbitrary use of that power. I am not now going into the question of the fraudulent nature of the appeal, I talked about it yesterday, but even that limited appeal you are trying to take away today.

What does this clause 11 say? It says

'Any person aggrieved by an order of the passport authority under clause (b) or clause (c) may prefer an appeal against that order to such authority and within such period as may be prescribed

So ostensibly you want to say that there is a provision for an appeal not on the constitutional issue but on the question of facts on the question whether the authority has exercised his jurisdiction properly within the provisions of this Act. You want to proclaim to the whole world that you are not acting arbitrarily but that you are providing for an appeal on facts on the merits of the case against the decision of the passport authority. But then under the definition clause what have you provided for? It is this

"'passport authority' means an officer or authority empowered under rules made under this Act to issue passports or travel documents and includes the Central Government."

Therefore the Central Government is an authority of original jurisdiction. Here the Central Government is not an appellate authority, it is a passport authority acting in its original jurisdiction to refuse a passport. When a passport is refused to me by the Central Government, have I got a right to make an appeal to anybody on the facts of the case, on the question whether the Central Government has actually exercised that authority in an

arbitrary way on account of the political bias against particular person? Where is that provision? Are we to understand that the Central Government is such a wonderful government that it has no prejudice? We know how the Central Government has acted. I have been a victim of this Government. For example, under the Preventive Detention Act I was detained. When the grounds of detention were given, I went to the High Court and those grounds were overthrown; they were not accepted. So, we know how they acted.

Therefore with the proviso to clause 11 that is now made, namely,—

“Provided that no appeal shall lie against any order made by the Central Government.”,

the crux of the problem is whether I have a right to appeal to anybody against the arbitrary exercise of power by the Central Government, to test it before some other appellate authority and point out that the Central Government has exercised its authority in an arbitrary way. No, until I can show that in some distant way my fundamental right has been infringed by this. Then under article 226 or 136 I can go. If it is that there is the Supreme Court's jurisdiction under article 136 and the High Court's jurisdiction under article 226, then why this provision at all under clause 11? Even if you do not provide for it, there is an appeal under the Constitution. Are we here concerned with a constitutional right? Certainly not; we are not concerned with a constitutional right.

Therefore, if the Central Government is really anxious to exercise this right not in an arbitrary manner, they must accept that their action also can be questioned before a tribunal. If you do not want to do that, it means that the Central Government is suspect. Under the guise of the Passport Act all they want to have is absolute arbitrary powers in their hands to refuse passports to certain individuals and they

need not give any reason for that. They may say, “The Central Government can refuse passport and you have no right of appeal.” What is the use of giving reason or no reason. That question does not arise at all. If the Central Government is really anxious not to abuse the powers, then they must accept Mr. Masani's amendment. In that case, even against the Central Government which comes under this definition, there will be the right of appeal. Otherwise, I say, you come out and say openly, “We do not want to have our actions questioned.” You say, “Our decision is the *obiter dicta*; as far as passport is concerned, we are the Supreme Court, much above the Supreme Court.” I can understand that position. Under the guise of providing all this, I am absolutely certain that in all those cases where they want to deny passport—the passport authorities will not deny that—they will refer the matter to the Central Government and the Central Government will pass an order saying, “Your passport is denied” and there is, no right to appeal. That is what is going to happen.

Even today, I have got cases—I do not want to mention names in the House—where passport has been denied. After all, even before this Bill is passed, the Ordinance is in vogue today and this Bill only embodies the provisions of the Ordinance which is already in vogue. I know two cases where the passport authority sitting here referred the matter to the Central Government, to the Ministry of External Affairs and to the Ministry of Home Affairs. I have got these cases. In order to avoid this trouble of having arbitrary exercise of powers being exposed, they would, hereafter, see that all these refusals are done by the Central Government and there is no right of appeal. Therefore, I say, don't try to fool people, let the Central Government come out openly to say, “We want to have absolute and unfettered right to refuse passport to anybody who is *persona non grata* with us.” That is the only thing they

[Shri P. Ramamurti]

want. Say it openly, don't have a camouflage, don't talk humbug. Let us be plain and honest to ourselves. Be honest to yourselves, be honest to the country and be honest to the people.

I Say, "We want to have the power, we are not bothered about anything." Say that openly. Don't try to give this reason or that reason.

15 42 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

Mr. Deputy-Speaker. Shri D C Sharma

श्री रामादत्तार शर्मा (पटना)

उपाध्यक्ष महोदय, नदत में काम नहीं है।
इसकी व्यवस्था कीजिये।

Mr. Deputy-Speaker. The bell is being rung—Now there is quorum.

Shri D. C. Sharma (Gurdaspur) Mr. Deputy-Speaker Sir, we see democracy all over the world and the struggle, the fight, that democracy makes on several fronts, on several occasions, to serve its cause. No one can deny that democracy has always been very jealous of the arbitrary powers of the executive. Democracy has always seen to it that the executive power, in every country, works within limits and does not overflow its banks or over-trespass its limits. I believe that Mr. Masani is absolutely right when he wants that the executive should not be saddled with too much of power. I think it is in the interest of the Executive that they should not have such unlimited powers, if they have, they will get into trouble today, or tomorrow or the day after. After all, the Supreme Court gave the judgment so that the rules of passport should be liberalised, so that getting a passport should become almost the birth right of every citizen of India. I think, it should be the happy privilege of every citizen of India to get a passport for travel anywhere with reasonable res-

trictions. Regarding the provision which Mr. Masani has referred to. I think, you are taking away with one hand what you are giving with the other hand. Therefore, I think, this is a very painful provision of the Bill.

It has been said that an applicant for passport can appeal to the Central Government. I could not find any difference between what Mr. Masani said and what the Law Minister said. If I have understood him correctly, Mr. Masani wanted to make explicit what was implicit in the

Shri S. Kandappan: It is the contention of the Minister that it is implicit, but we do not agree.

Shri D. C. Sharma. Please hear me. Mr. Masani wanted to make explicit what was thought to be implicit by the Law Minister. What is the harm in making that explicit, so that everybody can feel happy about it. As you know very well the Supreme Court and the High Courts have stood as a bulwark against the despotic power of the executive. I have seen sub-inspectors of police going to High Courts when their promotions had not been done according to rules. I have seen tehsildars going to High Courts or Supreme Court when their rights have been curtailed one way or the other. If you give such rights to the persons even when it is a question of a departmental promotion, I do not see any reason why we should take away the rights of any citizen of India to appeal when he has been deprived of his right by the executive to get the passport.

I, therefore, wholeheartedly support the amendment of Mr. Masani.

Shri Dattatraya Kunte (Kolaba) I formally move the amendment:

Page 7, lines 32 and 33,—

for "and within such period as may be prescribed", substitute "within thirty days from the receipt of the order." (5)

I am really surprised that, while framing this clause, Government had thought it fit to say, "and within such period as may be prescribed." I do not know why the period should not be laid down in the clause itself.

Coming to the other part of the clause, the hon. Law Minister was pleased to advise us in detail, as regards the authority which a citizen of India has under Art. 136 and he further said that Art. 227 conferred jurisdiction to the High Court over such a tribunal. I am afraid, the Minister of Law has not applied his mind to the matter. First of all, when he was saying that an aggrieved individual has a right to appeal to the Supreme Court, though he read it, he did not understand it because Art. 136 says that a person has to obtain the special leave of the Supreme Court. Therefore, it is not an automatic appeal that he could file. First of all, he should make a request to the Supreme Court for special leave saying that he wants to appeal against such and such a decision and whether he would be allowed to appeal. Therefore, he does not have an automatic right to appeal.

The second point is this. When he referred to Art. 227, he said that all those courts and tribunals would be amenable to the jurisdiction of the High Court. To what extent? The High Court can supervise the procedure. In this particular matter, it has been clearly laid down that the procedure to be followed by the appellate authority will be such as may be prescribed. This takes away the authority given to the High Court under Art. 227. I am really glad that he did not say that there is article 226 under which a writ petition can be filed before the High Court and there is also another article under which you can file a writ petition before the Supreme Court, and, therefore, the right to appeal is there.

I would submit here that we have to read the clause as a whole to understand the meaning of the term 'such

authority'. The term 'such authority' denotes the authority first referred to. Which is that authority?

Clause 11 (1) reads thus:

"Any person aggrieved by an order of the passport authority under clause (b) or clause (c) of sub-section (2) of section 5 or clause (b) of the proviso to section 7 or sub-section (1) or sub-section (3) of section 10 or by an order under sub-section (6) of section 10 of the authority to whom the passport authority is subordinate, may prefer an appeal against that order to such authority..".

Which is that 'such authority'? That 'such authority' is the authority referred to under clause 10 (6). That is the meaning of the term. Clause 10 (6) reads thus:

"The authority to whom the passport authority is subordinate may by order in writing impound or cause to be impounded or revoke a passport...and the foregoing provisions of this section shall, as far as may be, apply in relation to the impounding or revocation of a passport or travel document by such authority."

Therefore, the authority to whom the passport authority is subordinate is the authority which will under clause 10 (6) impound my passport and that will also be the appellate authority to whom an appeal must lie. I really do not know whether an appeal could lie to the same authority, because the term 'such authority' refers to the authority which is referred to in the previous sentence, and the authority referred to in the previous sentence is the authority laid down in clause 10(6). If that is the authority, then it is not a tribunal. Article 227 comes in only if it is a tribunal. The framers of this draft legislation have been careful to use the term 'appellate authority' and they have not called it a

[Shri Dattatraya Kunte]

tribunal. They want to hedge all these things. The appellate authority is 'such authority' which is there, and that 'such authority' is called as the appellate authority by the use of the words 'hereinafter referred to as the appellate authority'; that 'such authority' is the authority to whom the passport authority is subordinate

As pointed out by Shri P Ramamurti, even the Central Government can be a passport authority

Shri Govinda Menon: Then, it will be a tribunal

Shri Dattatraya Kunte: The hon Minister will have his turn later on. When the Central Government themselves become the passport authority, to whom shall an appeal lie, according to the hon Law Minister?

Shri P Ramamurti: Then, there is no appeal

Shri Govinda Menon: Then, there is no appeal under the statute

Shri Dattatraya Kunte: Therefore, he wants to take away the right of the people, so, when he was trying to assure Shri M R Masani that the Constitution provided for the right of appeal under articles 136 and 227 and that all these tribunals were subordinate to the jurisdiction of the High Court, it was just an eye-wash and it had no bearing on the articles of the Constitution at all

Therefore, I would say that if Government were—if I could use that phrase—honest enough to allow a judicial authority to look into cases of appeal, then they should have readily agreed to allow such appeal to judicial tribunals or to the High Court or the Supreme Court

This Bill has been drafted so as to satisfy the letter of the Supreme Court decision but not the spirit of it, because the Supreme Court wants that a law should be framed so that it

shall be judiciously administered and whether it is being administered judiciously or not will be judicially examined. That is exactly what has been proposed in Shri M R Masani's amendment. So, that amendment ought to be accepted, and similarly my amendment which seeks to prescribe the time-limit for appeal should also be accepted.

The Deputy Minister in the Ministry of External Affairs (Shri Surendra Pal Singh): Shri Masani and other hon Members who have spoken after him in support of his amendments have expressed a fear

Shri R. D. Bhandare (Bombay Central) Is the Minister replying? I thought I would be called before that. The legal position must be made clear before he replies

Mr. Deputy-Speaker: I have now called him. The Law Minister is also here

Shri Surendra Pal Singh: I was saying that Shri Masani and other hon Members who have spoken after him have expressed one fear that if their amendments are not accepted, Government are likely to act in a very arbitrary manner in regard to the issuance of passports and since no appeal is provided for against their order, their action will always be arbitrary and discriminatory. In this connection, may I say that even before the judgment of the Court, Government were issuing passports on their own executive authority and even then, as is evident from the figures, I quoted yesterday, the rejections were very few. Therefore, nobody can say that Government would act arbitrarily

Shri Umanath (Pudukkottai): Discrimination might have been in that small number

Shri Surendra Pal Singh: This power given to the Central Government will be exercised at a very high

level, of an officer of not less than the status of joint secretary.

Shri Dattatraya Kunte: Where is it laid down?

An hon. Member: Political level.

Shri Dattatraya Kunte: It is not laid down.

Shri Surendra Pal Singh: The power to refuse will be exercised in very rare cases, as I said yesterday and only when the integrity or security of the country is involved, but not in the ordinary course

Shri Dattatraya Kunte: Even if there is one case of injustice, the whole Bill will fall

Shri P. Ramamurti: May I point out that all applications for passports from members of our party are always referred to the Central Government here. Thereby, you make a discrimination that way

Shri Surendra Pal Singh: As I said, the decision will be taken at a very high level, and in many cases the joint secretary or secretary will also consult the Minister concerned before coming to a decision. So I do not see why Members are so apprehensive as to think that the high officials will act in an arbitrary manner. There is no ground whatsoever to think that this power will be exercised arbitrarily or in a *mala fide* manner.

Shri Umanath: Then this law is not necessary.

Shri Surendra Pal Singh: In the atmosphere prevailing in the country, this power is necessary.

Shri Dattatraya Kunte: That is something different.

Shri Surendra Pal Singh: Because when the security of the country is involved, this precaution has to be taken.

Shri Umanath: Everytime you take advantage of this when the question of democratic liberty is raised.

Shri Surendra Pal Singh: On these grounds, I am not prepared to accept any of these amendments.

As regards Shri Kunte's amendment, the period of 30 days is already laid down in the rules which have already been framed. He may please refer to those rules laid on the Table.

Shri Dattatraya Kunte: As long as this Bill is not passed, there can be no rules under it. There may be rules under the Ordinance. Therefore, it is wrong to say that I should refer to the rules under the Bill

Shri Surendra Pal Singh: The rules are the same.

Shri Dattatraya Kunte: That is immaterial. Rules under the Bill must be laid before the House. Then only we can take them as rules under the Bill.

Shri Surendra Pal Singh: On these grounds, I am not prepared to accept any of the amendments.

Mr. Deputy-Speaker: I shall now put the amendments first to vote. You may choose one or two and have division on that. The rest we shall put to a voice vote.

16 hrs.

Shri Ranga (Srikakulam): We press our amendments. Whoever has moved the other amendments, if they want a division on that also, where is the objection.

Mr. Deputy Speaker: There is one amendment of Mr. Kunte. Do you want a division on it?

Shri Dattatraya Kunte: I will answer you at the stage when it is before the House. If all amendments are put together, how can a discretion be exercised properly? I should know what I am voting on.

Mr. Deputy-Speaker: On clause 11, there are four amendments. Should I put one by one?

Shri Nambiar (Tiruchirappalli): Mr. Massani's amendment may be put to the vote first.

The Minister of Defence (Shri Swaran Singh): Mr. Masani does not seem to be serious; he is not present.

Mr. Deputy-Speaker: He has moved it; he has made a speech. Now, the question is:

Page 7, line 27, after "section 5" insert—

"or section 6". (33)

The Lok Sabha divided.

Several hon. Members: The light is not working.

Mr. Deputy-Speaker: Shall we follow the old method? Shall we divide in the traditional way? Something is wrong with the machine, even the total is wrong.

Shri C. C. Desai (Sabarkantha): We are prepared to accept the decision as shown by the Board, with the corrections.

Mr. Deputy-Speaker: If you accept it with the corrections, it is all right.

Division No. 5]

Abraham, Shri K. M.
Adichan, Shri P. C.
Anirudhan, Shri K.
Ayarwal, Shri Ram
Singh
Bansh Narain Singh,
Shri
Basu, Shri Jyotirmoy
Bharat Singh, Shri
Birua, Shri Kolai
Brij Bhushan Lal, Shri
Chakrapani, Shri C. K.
Chaudhuri, Shri Tridib
Kumar
Chittybabu, Shri C.
Desai, Shri C. C.
Dipa, Shri A.
Fernandes, Shri George
Gopalan, Shri A. K.
Gopalan, Shri P.
Jha, Shri Shiva
Chandra
Joshi, Shri Jagannath
Rao
Joshi, Shri S. M.
Kachwai, Shri Hukam
Chand
Kalita, Shri Dhireswar
Kameshwar Singh, Shri

AYES

Kandappan, Shri S.
Khan, Shri H. Ajmal
Khan, Shri Ghayoor Ali
Khan, Shri Latafat Ali
Khan, Shri Zulfiqar
Ali
Kisku, Shri A. K.
Koushik, Shri K. M.
Kunte, Shri Dattatraya
Kushwah, Shri Y. S.
Lakkappa, Shri K.
Madhok, Shri Bal Raj
Maiti, Shri S. N.
Majhi, Shri M.
Mangalathumadom, Shri
Meghachandra, Shri M.
Menon, Shri Vishwa-
natha
Mohammed Imam, Shri
Mohammed Sheriff, Shri
Molahu Prasad, Shri
Mukerjee, Shri H. N.
Muthusami, Shri C.
Naik, Shri R. V.
Nair, Shri Vasudevan
Nambiar, Shri
Nayanar, Shri E. K.

[16.07 hrs.]

Nihal Singh, Shri
Paswan, Shri Kedar
Patel, Shri J. H.
Patil, Shri N. R.
Ramamoorthy, Shri P.
Ramamurti, Shri P.
Ranga, Shri
Reddy, Shri Eswara
Sait, Shri Ebrahim Sulai-
man
Samanta, Shri S. C.
Satya Narain Singh, Shri
Sen, Dr. Ranen
Sequeira, Shri
Sharma, Shri B. S.
Sharma, Shri Ram Avtar
Shastri, Shri Ramavtar
Solanki, Shri P. N.
Somasundaram, Shri
S. D.
Sondhi, Shri M. L.
Sreedharan, Shri A.
Tyagi, Shri O. P.
Umanath, Shri
Viswanatham, Shri
Tenneti
Yadav, Shri Ram Sewak

NOES

Azad, Shri Bhagwat Jha	Jadhav, Shri V. N.	Ram Dhan, Shri
Babunath Singh, Shri	Kamala Kumari,	Rama Kishan, Shri
Bajpai, Shri Shashib-	Kumari	Randhir Singh, Shri
bhushan	Kinder Lal, Shri	Rane, Shri
Bajpai, Shri Vidya	Kotoki, Shri Liladhar	Rao, Shri Muthyal
Dhar	Kripalani, Shrimati	Rao, Shri J. Ramapathi
Barua, Shri R.	Sucheta	Rao, Shri Thirumala
Bhargava, Shri B. N.	Krishna, Shri M. R.	Rohatgi, Shrimati
Bhattacharyya, Shri C.	Krishnan, Shri G. Y.	Sushila
K.	Laskar, Shri N. R.	Sadhu Ram, Shri
Bhola Nath, Shri	Mahadevappa, Shri	Sarma, Shri A. T.
Buta Singh, Shri	Rampur	Savitri Shyam,
Chanda, Shrimati	Mahishi, Dr. Sarojini	Shrimati
Jyotsna	Malimariyappa, Shri	Sen, Shri Dwaipayana
Chandrika Prasad, Shri	Mandal, Dr. P.	Sethuramae, Shri N.
Chaturvedi, Shri R. L.	Mandal, Shri Yamuna	Shankaranand, Shri B.
Choudhary, Shri	Prasad	Shashi Ranjan, Shri
Valmiki	Mirza, Shri Bakar Ali	Sheo Narain, Shri
Choudhury, Shri J. K.	Mishra, Shri G. S.	Shinkre, Shri
Dass, Shri C.	Mondal, Shri J. K.	Shiv Chandika Prasad,
Deshmukh, Shri Shiva-	Murti, Shri M. S.	Shri
jirao S.	Nageshwar, Shri	Sinha, Shrimati
Devinder Singh, Shri	Naghnor, Shri M. N.	Tarkeshwari
Dhillon, Shri G. S.	Naidu, Shri Chengal-	Solanki, Shri S. M.
Ering, Shri D.	raya	Surendra Pal Singh,
Gandhi, Shrimati	Oraon, Shri Kartik	Shri
Indira	Pahadia, Shri	Tiwary, Shri D. N.
Ganesh, Shri K. R.	Pandey, Shri K. N.	Tiwary, Shri K. N.
Ganpat Sahai, Shri	Partap Singh, Shri	Yadav, Shri Chandra
Hazarika, Shri J. N.	Raju, Shri D. B.	Jeet

Mr. Deputy-Speaker: After correction, the final figures giving the result is: of the division are:

Ayes*—73 Noes—83†

The motion was negatived.

Division No. 6]

Abraham, Shri K. M.
Anbazhagan, Shri
Ayarwal, Shri Ram
Singh
Bansh Narain Singh,
Shri
Basu, Shri Jyotirmoy
Bharat Singh, Shri
Birua, Shri Kolai
Chakrapani, Shri C. K.
Chittybabu, Shri C.
Deo, Shri K. P. Singh
Desai, Shri C. C.
Fernandes, Shri George
Gopalan, Shri A. K.

AYES

Gopalan, Shri P.
Jha, Shri Shiva Chandra
Joshi, Shri Jagannath
Rao
Joshi, Shri S. M.
Kachwai, Shri Hukam
Chand
Kalita, Shri Dhireswar
Kameshwar Singh, Shri
Kandappan, Shri S.
Khan, Shri H. Ajmal
Khan, Shri Ghayoor Ali
Khan, Shri Latafat Ali
Khan, Shri Zulfiquar Ali
Koushik, Shri K. M.

Mr. Deputy-Speaker: The question

Page 7,—

omit lines 34 and 35. (34)

The Lok Sabha divided.

[16.15 hrs.]

Kunte, Shri Dattatraya
Kushwah, Shri Y. S.
Maiti, Shri S. N.
Majhi, Shri M.
Mangalathumadom, Shri
Meghachandra, Shri M.
Menon, Shri Vishwa-
natha
Mohamed Imam, Shri
Mohammed Sheriff,
Shri
Molabu Prasad, Shri
Mukerjee, Shri H. N.
Muthusami, Shri C.
Naik, Shri R. V.

*Ayes: Name of one Member could not be recorded.

†Noes: Names of eleven Members could not be recorded.

Nair, Shri Vasudevan
Nambiar, Shri
Nayanar, Shri E. K.
Nihal Singh, Shri
Paswan Shri Kedar
Patel Shri J. H.
Patil Shri N. R.
Ramamoorthy, Shri P.
Ramamurti, Shri P.
Ranga, Shri

Reddy, Shri Eswara
Sait, Shri Ebrahim
Sulaiman
Samanta, Shri S. C.
Satya Narain Singh,
Shri
Sen, Dr. Ranen
Sequeira, Shri
Sharma, Shri B. S.
Sharma, Shri Ram Avter
Shastri, Shri Ramavatar

Solanki, Shri P. N.
Somasundaram, Shri
S. D.
Sondhi, Shri M. L.
Tyagi, Shri O. P.
Umanath, Shri
Vajpayee, Shri A. B.
Viswanatham, Shri
Tenneti
Yadav, Shri
Ram Sevak

NOES

Adichan, Shri P. C.
Azad, Shri Bhagwat Jha
Babunath Singh, Shri
Bajpai, Shri Shash-
bhushan
Bajpai, Shri Vidya Dhar
Barua, Shri R.
Bhandare, Shri R. D.
Bhargava, Shri B. N.
Bhattacharyya, Shri
C. K.
Bhola Nath, Shri
Bufa Singh, Shri
Chanda, Shri Anil K
Chanda, Shrimati
Jyotsna
Chandrika Prasad, Shri
Chatterji, Shri Krishna
Kumar
Chaturvedi, Shri R. L.
Choudhary, Shri
Valmiki
Choudhury, Shri J. K.
Dass, Shri C.
Devinder Singh, Shri
Dhillon, Shri G. S.
Ering, Shri D.
Gandhi, Shrimati Indira
Ganesh, Shri K. R.
Ganpat Sahai, Shri
Ghosh, Shri Parimal
Hazarika, Shri J. N.
Jadhav, Shri V. N.

Kamala Kumari,
Kumari
Kinder Lal, Shri
Kisku, Shri A. K.
Kotoki, Shri Liladhar
Kripalani, Shrimati
Sucheta
Krishna, Shri M. R.
Krishnan, Shri G. Y.
Kushok Bakula, Shri
Laskar, Shri N. R.
Mahishi, Dr. Sarojini
Malimariyappa, Shri
Mandal, Dr. P.
Mandal, Shri Yamuna
Prasad
Melkote, Dr.
Menon, Shri Govinda
Mirza, Shri Bakar Ali
Mishra, Shri G. S.
Mondal, Shri J. K.
Murti, Shri M. S.
Nageshwar, Shri
Naghnour, Shri M. N
Naidu, Shri Chengalraya
Oraon, Shri Kartik
Pahadia, Shri
Pandey, Shri K. N.
Partap Singh, Shri
Patel, Shri Manibhai J.
Pramanik, Shri J. N.
Raju, Shri D. B.
Ram Dhan, Shri

Ram Kishan, Shri,
Randhir Singh, Shri
Rane, Shri
Rao, Shri Muthyal
Rao, Shri J. Ramapathi
Rao, Shri Thirumala
Rohatgi, Shrimati
Sushila
Sadhu Ram, Shri
Sapre, Shrimati Tara
Sarma, Shri A. T.
Savitri Shyam, Shrimati
Sayyad Ali, Shri
Sen, Shri Dwaipayan
Sethuramae, Shri N.
Shambhu Nath, Shri
Shankaranand, Shri B.
Shashi Ranjan, Shri
Sheo Narain, Shri
Shinkre, Shri
Shiv Chandika Prasad,
Shri
Sinha, Shrimati
Tarkeshwari
Solanki, Shri S. M.
Surendra Pal Singh,
Swaran Singh, Shri
Tiwary, Shri D. N.
Tiwary, Shri K. N
Yadav, Shri Chandra
Jeet

Mr. Deputy-Speaker: With all the corrections, the result of the division is: Ayes 66; Noes 84*.

The motion was negatived.

Mr. Deputy-Speaker: I will now put amendment Nos. 36 and 51 to the vote of the House

Amendments Nos 36 and 51 were put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 11 stand part of the Bill".

The motion was adopted.

Clause 11 was added to the Bill.

Clauses 12 to 27 were added to the Bill.

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

Shri Surendra Pal Singh: Sir, I move:

"That the Bill be passed."

Mr. Deputy-Speaker: Motion moved:

"That the Bill be passed."

श्री सुरेन्द्र पाल सिंह: उपाध्यक्ष महोदय, यह पासपोर्ट बिल, जिसकी दूसरी रीडिंग अभी पास की गई है, हो सकता है कि यह तीसरी रीडिंग में भी बहुमत से पास हो जाय, मगर मैं एक बार फिर सरकार से अपील करना चाहूंगा कि इस बिल में जो प्रमेडमेंट हमने मूव किये हैं वह ऐसे हैं कि यदि उनको मान लिया जाय तो यह बिल कानून का रूप धारण करके पहले से बेहतर हो जायेगा। वह बिल लाने की आवश्यकता क्यों पड़ी? इसलिये कि एक पासपोर्ट देने से इनकार किया गया। सुप्रीम कोर्ट के पास मामला गया और सुप्रीम कोर्ट ने आज जो पासपोर्ट देने के नियम हैं उन में कमी देखी और उसके ऊपर अपनी क्लिग दी। चाहिये तो यह था कि सुप्रीम कोर्ट जो देश की सबसे उच्च प्रदासत है उसके फैसले को माना जाता और उसी को कानून का रूप दिया जाता मगर यहां पर सुप्रीम कोर्ट को बाई पास कर ने की कोशिश की जा रही है। मेरा निवेदन यह है कि मैं एक लोकतांत्रिक हूँ। हमारा संविधान साबरेन है और संविधान क्या कहता है? संविधान का क्या मतलब है, इस को इंटर प्रीट करने की शक्ति सुप्रीम कोर्ट की है। इस दृष्टि से कानून बनाने वालों से भी और इम्प्लीमेंट करने वालों से भी वह बड़ा है। इसलिये आज सुप्रीमकोर्ट एक बात कहता है तो उस पर प्रमत्त होना चाहिये। और मैं सरकार से अपील करूँगा कि यह जो हमारा प्रमेडमेंट है कि यदि किसी को पासपोर्ट न दें और उसको ऐसा मने कि उस को जो पासपोर्ट इन्कार

किया गया है उसको कोई वजह नहीं है। तो उसको हाईकोर्ट या सुप्रीम कोर्ट से अपील करने की इजाजत हो। यह लोकतांत्रिक अधिकारों के अनुसार होगा। और हमारे मालिक अधिकारों के अनुसार होगा। इसलिये मैं फिर से अपील करूँगा कि कि पेंटर इसके कि यह बिल पास हो, सरकार इस बात को स्वयं इस के अन्दर जाँच दे तो ज्यादा अच्छा होगा।

Shri C. C. Desai: Sir, we are opposing the third reading of the Bill. Government, in its wisdom has decided to rush through this Bill knowing fully well that it is ill-digested, ill-conceived and, if I may also say, ill-drafted. I say nothing against those people who drafted the Bill because they had to do the work overnight. As you know the history of the Bill, the Supreme Court passed the judgment on the 25th April and on the 5th May, that is within ten days, an Ordinance was promulgated and that Ordinance is now sought to be enacted into law. So, within ten days they had to frame this Bill. That is the reason why the Bill has been ill-drafted and the Government should have been well advised to agree with the demand of the Opposition to refer the Bill to the Select Committee. Their contention that there was not enough time is untenable. The Ordinance will expire sometime in July. If the Select Committee could have met and thought over all the problems, the various amendments and so on, then the Bill could have come before the House in an agreed form which the House might have supported un-animously. But they are conscious of their majority and they did not decide to do so, particularly, when some of the Congress Members speaking from the other side, supported many of the amendments proposed by the Opposition.

We want to assert one right—this is not a favour—that is, right to possess a passport is a fundamental right and it can only be denied pro-

[Shri C. C. Desai]

vided that the person concerned, the applicant concerned, comes within the mischief of any of the disqualification mentioned in clause 6 of the Bill. Otherwise, the person is entitled to a passport and should be given a passport. The hon. Minister has given an assurance that political complexion will not come in the way of issue of a passport. But these are assurances, the speeches made on the floor of the House. When it comes to be translated into action, when the secretariat functions—under their very nose, they issue different instructions and act in a different manner—they may not be implemented. We hold these two assurances particularly to be very valuable, one which the Deputy Minister gave that no passport will be denied on political complexion and the second which the Law Minister gave that there is no denial of right of appeal to the Supreme Court provided the Supreme Court's permission is obtained. These two assurances will be on record and the Committee on Assurances will go into them and then only we will be sure that they will be given effect to by the secretariat.

Mr. Deputy-Speaker: The hon. Member may try to conclude now.

Shri C. C. Desai: This is the last time that we will be able to challenge the Bill and, therefore, we claim the right to speak as long as we like. We will not get any further opportunity to improve upon the Bill or challenge the provisions of the Bill. I do not want to make much time but, at the same time, you must allow us a little more freedom to speak.

We do not see eye to eye with our friends on the other side, Mr. Ramamurti particularly, in political matters. But we see no justification for what he complained of, that is, whenever any person belonging to the Communist Party applies for a passport, he is denied the passport. If that is so, this is absolutely a disgraceful conduct. The Minister has not denied

that. It seems that it may be so. I hope this will not happen in future. We may not agree with them but they have the right, as citizens of India, to have a passport. To say that they will go outside and do something unfriendly to India is to doubt their patriotism. There is no justification for that. They are as patriotic as any other citizen of India. Then, I am told, the members of the D.M.K. party are also given the same treatment. There is no justification, in any case, for this arrogant exercise of power.

Then, the right to have a passport should be unconnected with any desire to travel. This is an important point. Generally, people think that it is only when you want to go abroad, you should have a passport. No, Sir. The possession of a passport is a fundamental right which every person is entitled to have. I may want to go abroad next year but if and when I apply for a passport and if I do not come within the mischief of any disqualification under the Act, there is no reason why Government should ask me, "where are you going? When are you going? We will give you a passport when you actually go." The issue of passport must be unconnected with any desire or intention to travel abroad. If these things are borne in mind, well, I think some of the mischiefs done by the present Bill might be undone.

Shri Dattatraya Kunte: Sir, this is a Bill which is going to be on the statute book only because of the Supreme Court judgment which made it compulsory for the executive to come before the House with this sort of a Bill and to get it passed into an Act. But I must say, as I said yesterday, this is just a mockery of the decision of the Supreme Court. When the Supreme Court has laid down that a citizen of this country has a fundamental right to go abroad, this House, the majority of this House has not even shown care to those salient amendments, which pointed out very

clearly the lacuna and the draw-backs in the legislation. For instance, if there is any summon for a court case, even for committing nuisance in the street, then a passport shall be denied. That is what the clause says. This is what is going into the Statute Book. With all deference to my hon. friend, Shri Desai—because he referred to the assurances given by the Minister on the floor of the House—I must say that the wording of the statute will be on the Statute Book and all those assurances will have no meaning in a court of law when the interpretation of the statute is made. That is precisely why I asked yesterday, and I again ask today, how those assurances are going to be converted into statutes if they are honest about it; if they are not, they need not have given the assurances because they are just *obiter dicta* without even the meaning of *obiter dicta*; they are just statements made in this House just to pacify some Members. He told us that this would be administered in a judicious way. The Minister, while replying to the debate on clause 11, said that there were a few cases. Does he want to suggest that if justice is denied even in one case, they have acted judiciously? The dictum says that there shall not be injustice done even in one case; the law shall be properly administered in all the cases. Therefore, with all humility, I must go on record in opposing this Bill because it is a mockery of the decision of the Supreme Court.

Shri Vasudevan Nair (Peermade): We deem it necessary even at this stage to record our vehement opposition to this Bill. Then hon. Minister for External Affairs—he is not here now,—while he was introducing the Bill, himself had to admit that the past experience of the Government was not very good and he advised us, when we expressed our doubt that the provision reserving the right to deny passports to certain people under certain circumstances will be misused, not to go by past experience; that im-

plies that the past experience was very bitter as far as certain sections of the people of this country are concerned. So many cases can be quoted; I can multiply instances. There was an instance of a person like Mr. E. M. S. Namboodiripad, an ex-Chief Minister, being prevented—at least an attempt was made to prevent—from going abroad in 1963. Of course, they made use of the 'P' form business for this purpose; he had a passport but making use of the 'P' form business, they tried to prevent him from going abroad. Then, late Shri Jawaharlal Nehru, had to intervene in the matter and then they told him that he could go abroad. With all that experience, we can never entrust this Government with the special power to deny passports to certain sections of the people. That power will be misused and that power will be used for narrow, political and partisan interests. We thought that the Government would at least try to accept some of the amendments moved by the Opposition, but they were not prepared to do it and they have tried to legalise the injustice that was done all the while. This is a Bill to legalise injustice, to legalise partisanship in politics, and we want at this stage also to record our strong opposition to this measure.

श्री जार्ज फ़ारनेन्डीज (वम्बई दक्षिण) :

उपाध्यक्ष महोदय, मुझे बड़ा अफ़सोस है कि सरकार यह कानून लोक सभा के सामने लाई और इस सदन के सभी दलों की ओर से, केवल सरकारी दल को छोड़ कर, विरोध होने के बावजूद भी उसको आज यहां पर मंजूर कराने के लिये सख्ती की गई है। इस कानून को यहां पर पेश करते हुए सरकार की ओर से यह कहने में आया था, सुप्रीम कोर्ट के निर्णय का जिक्र करते हुए जो एक्सप्लेनेटरी मेमो-रेण्डम हम लोगों को दिया गया था उसमें

[श्री जार्ज फरनेन्डीज]

कहा गया था कि चूकि सुप्रीम कोर्ट ने यह कहा है—

'The right to travel abroad is a part of a person's personal liberty of which he could not be deprived except according to procedure established by law in terms of article 21 of the Constitution.

भाग्य बड़ कर इसमें यह भी कहा गया है—
अदालत का सबूत देने हुए—कि—

The Court also held that Government's claim for an absolute discretion in the matter of issuance of passports would also be violative of article 14 of the Constitution.

उपाध्यक्ष महोदय, जब इस मुल्क के सर्वोच्च न्यायालय की ओर से इस किस्म का फैसला आ जाता है कि सरकार को सविधान की 14 नम्बर की कलम और 21 नम्बर की कलम के मातहत कोई भी ऐसा अधिकार नहीं है कि व्यक्ति का किसी भी मुल्क में आने जाने का अधिकार छीन ले, तो आज सरकार ने जो बिल हमारे सामने पेश किया है मन्जूर कराने के लिये, उस से यह समझा जाता है कि सरकारने जानबूझ कर उस अधिकार को अपने हाथ में लेने की कोशिश की है।

अगर गौर से देखा जाय, तो तीन बातें इस बिल के जरिये हमारे सामने आई हैं। पहली तो यह—सरकार ने अपने हाथ में यह अधिकार रखा है कि अगर वह किसी को पासपोर्ट न देना चाहे, तो उसको पासपोर्ट न दे जो 'विना कोर्ट अज' बताया हुए उसको पासपोर्ट देने से इन्कार कर दे। दूसरी बात यह कि जिसको सरकार पासपोर्ट न देने के बारे में फैसला करेगी, उस फैसले के खिलाफ अदालत में जाकर अपील करने का जो अधिकार था, उस अधिकार को सरकार ने छीन कर रखा गया। तीसरा अधिकार सरकार ने जो

अपने हाथ में रखा है, वह यह है कि किसी भी मामले में, जैसे कुव्वे साहब ने कहा कि किसी भी छोटी अदालत में अगर किसी भी व्यक्ति के खिलाफ किसी मामूली मामले को लेकर भी सम्मन पेश होता है, तो ऐसे व्यक्ति को चाहे कितने मतभेदों के काम से इस मुल्क से विदेश जाना हो, उस के पासपोर्ट को छीन लेने का अधिकार सरकारने अपने हाथ में रखा है।

सुप्रीम कोर्ट के फैसले से हर व्यक्ति को यह अधिकार प्राप्त था कि वह कहीं भी जा सकता था, लेकिन इस बिल के मन्जूर कराने से पासपोर्ट देने का अधिकार सरकार ने अपने हाथ में रखा है, दूसरे पासपोर्ट देने से इन्कार करने का अधिकार रखा, तीसरे उस पर कोई अपील करना चाहे तो उसके अपील के अधिकार को छीन लिया, चौथे अगर आपको किसी वक्त पासपोर्ट मिला हो तो उस पासपोर्ट को आपके हाथ से छीन कर आपको जाने से रोकने का अधिकार अपने हाथ में रखा है। इसके बारे में मैं यही कहूंगा कि जिस दिमाग से प्रिबेन्टिव डिटेन्शन जैसा कानून हमारे सामने आया, डिफेंस आफ इण्डिया एक्ट हमारे सामने आये, उसी किस्म का व्यक्ति स्वातन्त्र्य को छीन लेने वाला यह कानून हमारे सामने आया है और सुप्रीम कोर्ट का फैसला आने के बाद यह अधिकार इस पासपोर्ट बिल के जरिये सरकार ने अपने हाथ में हासिल करने की कोशिश की है। मैं इस सदन का सदस्य होने के नाते भी यह बात कहना चाहता हू कि कोई न कोई इस मुल्क का नागरिक, जैसे पहले एक व्यक्ति ने उच्च न्यायालय में जाकर अपने अधिकार को प्राप्त करने का प्रयास किया, उसी ढंग से अगर निकलेंगा जो कि आपके इस कानून को, अपने बहुमत के आधार पर हाकिमशाही को कायम करने वाले इस कानून को, जल्द से जल्द अवैधानिक घोषित कराते हुए अपने मौलिक अधिकार को फिर एक बार हासिल करने के लिये आये बड़ेगा।

अपने इतने विचारों को व्यक्त करते हुए मैं इस बिल का हर तरह से विरोध करता हूँ।

The Minister of Defence (Shri Swaran Singh): At this stage I do not want to go into the provisions of the Bill because we are at the stage of third reading.

One point which has again been urged is that there was a decision of the Supreme Court and that by bringing forward this Bill we were showing disrespect to the Supreme Court. Farthest from it; in fact the main point that came to light in the Supreme Court judgment was that there was no law to regulate the issue of passports and the grounds on which a decision was taken by the administration or by the executive to refuse a passport were not known. It is really in deference to the points that were thrown up as result of the Supreme Court decision that for the first time we have brought forward a legislation so that any person who applies for the issue of a passport would know that normally he will have the right to the grant of the passport; further, the grounds on which the passport can be refused or should be refused are also enunciated in this Bill so that he knows that it is only when it comes within any of those prohibitory clauses that the passport would be refused.

Shri Banga: Then why do they keep out appeal to the courts?

Shri Swaran Singh: So this is a matter in which we have always shown the highest consideration not only to the operative parts of the Supreme Court judgment but even the obiter dicta. We will be failing in our duty if as a result of the Court's judgment we do not bring forward legislation to regulate the issue of passport and lay down the conditions for its refusal.

Another point raised is that this is likely to be used for political reasons,

that the executive is likely to utilise this authority in an arbitrary manner. I would like most respectfully to point out that the grounds upon which the passport is to be refused are clearly mentioned there. Although my hon. friend, Shri Kunte, was waxing eloquent on the point that the assurances that are given are of not any great value, the assurances are inherent in the scheme of the Act itself. The grounds for refusal of a passport are set out and there is no mention of any political consideration there. Surely no political party has got as its objective any of the grounds specified in clause 6 which will entitle the authority to refuse passport. I do not know of any political party which has as its principle any of the grounds upon which the passport will be refused. So I do not see how a passport can be refused on.

Shri Vasudevan Nair: In the past also, they never said that they discriminated on political grounds. But they did it. Did they ever say then that it was discrimination on political grounds?

Shri Swaran Singh: There was no legislation at that time.

Shri Shri Chand Goel (Chandigarh): Unless refusal is made justiciable and the citizen is enabled to approach the High Court or the Supreme Court, the citizen will be denied of his right. Here the opinion of the Government is final and refusal is made non-justiciable.

Shri Swaran Singh: The hon. Member thinks that he is raising a very novel point. But all this was thrashed out during the clause-by-clause discussion stage and replies have been given. In this particular case, the right of appeal is there to the appellate authority.

Shri Banga: Right of appeal has been kept out.

Shri Swaran Singh: It was explained by the Law Minister. The Minister

[Shri Swaran Singh]

ter of External Affairs, Shri Chagla, also said that the intention is that the appellate authority constituted to hear appeals will also have a legal background and legal knowledge. So it is not going to be arbitrarily exercised.

For all these reasons, I submit that the Bill should be passed.

Mr. Deputy-Speaker: The question is:

"That the Bill be passed".

The motion was adopted.

16.44 hrs.

*DEMANDS FOR GRANTS (RAILWAYS), 1967-68

Mr. Deputy-Speaker: We shall now take up discussion and voting on the demands for Grants in respect of the Budget (Railways) for 1967-68, for which 8 hours have been allotted. Hon. Members desirous of moving their cut motions may send their slips to the Table within 15 minutes indicating the serial numbers of the cut motions they would like to move.

DEMAND NO. 1—RAILWAY BOARD

Mr. Deputy-Speaker; Motion moved:

"That a sum not exceeding Rs. 85,98,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1968, in respect of 'Railway Board'."

DEMAND NO. 2—MISCELLANEOUS EXPENDITURE

Mr. Deputy-Speaker: Motion moved:

"That a sum not exceeding Rs. 3,06,26,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of

payment during the year ending the 31st day of March, 1968, in respect of 'Miscellaneous Expenditure'."

DEMAND NO. 3—PAYMENTS TO WORKED LINES AND OTHERS

Mr. Deputy-Speaker: Motion moved:

"That a sum not exceeding Rs. 24,96,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1968, in respect of 'Payments to Worked Lines and others'."

DEMAND NO. 4—WORKING EXPENSES—ADMINISTRATION

Mr. Deputy-Speaker: Motion moved:

"That a sum not exceeding Rs. 44, 53,67,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1968, in respect of 'Working Expenses—Administration'."

DEMAND NO. 5—WORKING EXPENSES—REPAIRS AND MAINTENANCE

Mr. Deputy-Speaker: Motion moved:

"That a sum not exceeding Rs. 1,41,51,75,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1968, in respect of 'Working Expenses—Repairs and Maintenance'."