

SHRI MOHAMMAD TAHIR I lay on the Table a copy of the evidence before the Joint Committee on the Bill further to amend the Advocates Act, 1961

Act, 1962, the Gold Control Act, 1968, and the Central Excises and Salt Act, 1944"

The Motion was adopted.

SHRI K R GANESH I introduce† the Bill

12.47 hrs.

NATIONAL LIBRARY BILL*

THE DEPUTY MINISTER IN THE MINISTRY OF EDUCATION AND SOCIAL WELFARE AND IN THE DEPARTMENT OF CULTURE (SHRI D P YADAV) On behalf of Prof S Nurul Hasan, I move for leave to introduce a Bill to provide for the administration of the National Library and certain other connected matters

MR SPEAKER The question is

'That leave be granted to introduce a Bill to provide for the administration of the National Library and certain other connected matters'

The Motion was adopted.

SHRI D P YADAV I introduce the Bill

LACCADIVE, MINICOY AND AMINDIVI ISLANDS (ALTERATION OF NAME) BILL*

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI K C PANT) I move for leave to introduce a Bill to alter the name of the Union territory of the Laccadive Minicoy and Amindivi Islands

MR SPEAKER The question is

"That leave be granted to introduce a Bill to alter the name of the Union territory of the Laccadive Minicoy and Amindivi Islands".

The motion was adopted

SHRI K C PANT I introduce† the Bill

CUSTOMS, GOLD (CONTROL) AND CENTRAL EXCISES AND SALT (AMENDMENT) BILL*

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI K R GANESH) I move for leave to introduce a Bill further to amend the Customs Act, 1962, the Gold Control Act, 1968 and the Central Excises and Salt Act, 1944

MR SPEAKER The question is

'That leave be granted to introduce a Bill further to amend the Customs

12 48 hrs.

MULKI RULES BILL'

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND IN THE DEPARTMENT OF PERSONNEL (SHRI RAM NIWAS MIRDHA) I move for leave to introduce a Bill to provide for certain amendments to the Mulki Rules so as to limit their operation, for the validation of certain appointments and for the repeal in a phased manner, of the said Rules and for matters connected therewith

*Published in the Gazette of India Extraordinary, Part II, section 2, dated 18th December, 1972.

†Introduced with the recommendation for the President.

MR. SPEAKER: Motion moved:

"That leave be granted to introduce a Bill to provide for certain amendments to the Mulki Rules so as to limit their operation, for the validation of certain appointments and for the repeal in a phased manner, of the said rules and for matters connected therewith".

SHRI M. SATYANARAYAN RAO (Karimnagar): On a point of order,

MR. SPEAKER: Some members have given me advance notice of their intention to oppose introduction—Shri Samar Mukherjee, Shri Viswanathan, Shri Somnath Chatterjee and Shri Piloo Mody.

SHRI M. SATYANARAYAN RAO: I have also written to you. It is on the competence of the House.

SHRI S. M. BANERJEE (Kanpur): I have also written to you. Before we consider introduction, there is an extraordinary situation in Andhra Pradesh. In view of that, how do they intend to proceed with the Bill? They have declared non-co-operation and there is a parallel authority emerging there....

MR. SPEAKER: That is a separate matter.

PROF. MADHU DANDAVATE (Rajapur): On a point of order re: procedure. The subject-matter of this Bill falls under art. 16(3) of the Constitution which refers not to a part of a State but to a State as a whole. In the Supreme Court judgment in the case of A. V. S. Narasimha Rao vs. State of Andhra delivered on 28th March 1969, it was categorically stated that art. 16(3) refers to a State as a whole and not to a part thereof. The point is, changes in article 16(3) of the Constitution refer to the State as a whole and not a part. The Supreme Court's judgment, delivered on 20th March, 1969, clarifies the position. Again,

if any changes are to be made, no changes are permissible under article 35(a) of the Constitution. Any change in article 16(3) can be introduced only through article 35(a). In the text of the Bill, no reference has been made to this extent, and therefore, I challenge the very legislative competence of this Parliament to introduce this Bill.

SHRI M. SATYANARAYAN RAO: Sir, I support Prof. Madhu Dandavate. He has already mentioned the articles of the Constitution. The hon. Minister should have known what is meant by article 35(a). Unfortunately, he has not mentioned anything. Unless that is done, this is likely to be struck down by the courts. That is the difficulty.

MR. SPEAKER: He has raised the same point of order which has already been raised. Why are you repeating it?

SHRI M. SATYANARAYAN RAO: Already, the Employment Act has been passed by this House in 1967, and that was struck down by the Supreme Court. Again, the hon. Minister has come with a doubtful legislation. We will suffer; Telengana has already suffered and we are going to suffer by this, and the attitude of the Government is only to delay the matters: they are not interested in the solution of the problem. That is my submission. If the House allows the Minister to introduce this Bill, everything will be frustrated. That is my submission.

SHRI S. B. GIRI (Warangal): Sir, you might have seen from the newspapers that eight Ministers from the Andhra Pradesh region have resigned. (*Interruptions*). I am raising a point of order. Eight Ministers belonging to the Andhra region have resigned, asking for a separate Andhra State. The Deputy Chief Minister of Andhra Pradesh, Mr. V. V. Subba Reddy, has demanded a separate State and he has resigned from the ministry. Under the

[Shri S Giri]

present circumstances, and the present situation, may I know whether this Bill is going to help the people of Andhra Pradesh or Telengana.

MR SPEAKER: That is not a point of order.

DR G S MELKOTE (Hyderabad) Under rule 72 of the Rules of Procedure, I raise the point of order, whether this House has the legislative competence to introduce this Bill. The point is, under what article of the Constitution are they going to introduce this Bill here, what is the amendment that they are bringing in, and under what enactment.

Secondly, since the question has been raised by Prof Dandavate and also Mr M Satyanarayan Rao, whose arguments I support may I request you to call the Attorney General to come here and give his views as to what is the competence of this Government to introduce this Bill. Then the Parliament will know whether it can be introduced or not. I want the Attorney General to come here and give his opinion on this matter.

SHRI MALLIKARJUN (Medak) Sir is it advisable for the Government to introduce this Bill? Mr Speaker—

MR SPEAKER I have not called you. Please sit down. Not a word will go on record when I have not called you. You must know it. I have not called you. You must know the procedure. You are making a speech after coming forward, moving forward. Will you please sit down?

SHRI B N. REDDY (Niryalguda) I request you not to allow the Minister to introduce this Bill, because, at this critical stage, this Bill strikes at the very foundation and the integrity of the State of Andhra Pradesh, especially when there are regional claims and passions. Already, the draft Bill puts the entire State into regional fights and claims. So, I request you not to allow him to introduce this Bill.

MR SPEAKER: You make a request to him not to move it.

SHRI MALLIKARJUN. My humble submission in this august House is to introduce a Bill to effect the creation of a separate Telengana State, when there is bilateral demand for bifurcation of Andhra Pradesh State. Unilaterally, we have in Telengana demanded for bifurcation of State and lost 350 lives. Why do you want to take 700 lives in Andhra Region? Yesterday in the Vijayawada meeting, a resolution was adopted for division. The Andhra MPs sent a telegram that they are going to abide by the decision in Vijayawada, they passed a resolution demanding a separate Andhra State. With all that I invoke our esteemed Prime Minister whose dynamic leadership is known not only nationally but also internationally. I pray to her in this august House to introduce a Bill effecting the creation of a separate Telengana State.

SHRI SAMAR MUKHERJEE (Howrah) This is the most unwise act on the part of the Government to introduce this Bill at this stage in this form. This Bill incorporates the award given by the Prime Minister and that award does not help the integration but it helps regionalism grow further, the results are already quite evident (*Interruptions*). Those who are not interested in the integrity of the State should not be given a handle by this Bill to take the issue to such a stage where the entire State is going to be divided and partitioned. Already the slogan is that there should be a separate Andhra State and a separate Telengana State. It was on the basis of the linguistic States that Andhra State was constituted. It is the basic fundamental democratic principle that the States of the other languages have grown and developed. It was on that principle that Andhra also came into existence. The proposals made in this Bill, the five point award does not help the integration of services at all levels. It retains regionalism at a certain level and helps further intensification of the outlook of regionalism. That is why everybody is discontented. Those who are for a separate Telengana are discontented and those who want integration of Andhra are also discontented. The main reasons is that the Government of India reason is that to provide jobs

for all. The main factor behind this regionalism, one of the key factors, is economic. Unemployment is growing more and more and backward areas are not being sufficiently developed. If efforts are to be made to develop backward areas and provide jobs for all, it requires basic change in the entire policy of the Government. Otherwise patchwork will not solve the problems or help integration of Andhra. That is why I request the Government to withdraw this Bill and try to create some atmosphere where sober thinking will appear and introduce at least at this stage two to one proportion basis at all levels so that the integration process is started, commencing from below to the top, and Andhra may remain united. That is why I oppose the introduction of this Bill.

13 hrs.

SHRI G. VISWANATHAN (Wandiwash): Sir, I rise to oppose the introduction of this Bill on constitutional and other grounds. In 1969 in the case of *Narasimha Rao vs State of Andhra Pradesh*, the Supreme Court struck down the Public Employment (Requirement as to Residence) Act of 1957 and declared it unconstitutional on the ground that it cannot discriminate between citizens and citizens within the same State. In 1972, in the case *State of Andhra Pradesh vs. Venkata Reddy*, the Supreme Court has laid down that by virtue of article 35 (b), the Mulki Rules were not unconstitutional because it is only applicable in the erstwhile State of Hyderabad and there is no discrimination between citizens within the State.

If we are going to pass this Mulki Rules Bill, it will become a central Act and it will attract fundamental rights, particularly article 16(2), which says:

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence of any of them, be ineligible for, or discriminated against in respect of any employment or office under the State."

So, this Act also be struck down by the Supreme Court under this article like the 1957 Act about public employment. I would like to quote the resolution of the

Telengana Regional Committee in this regard:

"The Regional Committee is of the considered view that fresh parliamentary legislation is not necessary for the implementation of the aforesaid proposals. Mulki Rules can be implemented through executive orders. Experience of the past has shown that any legislation on the question of residential qualification for employment bristles with unpredictable legal difficulties in the context of constitutional provisions and it may actually defeat the purpose for which they are intended and continued. The Regional Committee is also conscious of the possibility of the eventual abrogation of Mulki Rules by courts as a result of defective and doubtful legislation. If the Government of India feels that fresh legislation is absolutely necessary for the implementation of the Mulki Rules, article 16(3) of the Constitution may be amended first enabling Parliament to pass legislation providing residential qualification for employment for a part of a State."

According to the judgment of the Supreme Court in 1972, if the Mulki Rules are applicable to the erstwhile State of Hyderabad, it has its own repercussions. The same rules will be applied to the Marathwada region of Maharashtra and Karnataka region of Mysore, because they formed part of Hyderabad State before Andhra Pradesh was formed. Some may argue that the gentlemen's agreement between Andhra and Telengana in 1956 was only for a period of five years—I am saying it subject to correction.

This five-point formula announced by the Prime Minister is not acceptable to both Andhra and Telengana. Especially we find there is so much opposition from the people of Andhra region. Yesterday nine Ministers, including the Deputy Chief Minister, have resigned. Ministers, parliamentarians and legislators on both sides have asked for clarifications, certain assurances and amendments. In Andhra no office is working except that of the Ministers who have not resigned and that of the Secretaries. The situation there is very

[Shri G. Viswanathan]

serious. Yesterday, the President of the NGO's Association has been dismissed from service. I think it is going to have its repercussion in the Andhra region.

It was said that the five point formula was endorsed by the Andhra Cabinet the same evening. But we see different statements by different people, including Ministers, the very next day. It means that both the sides have not accepted this formula. Government had enough time but they missed the opportunity when they should have taken a quick decision.

I deplore the indecent haste with which the Bill is sought to be hustled through this House. The Centre has to carry both the regions with them. Otherwise, this Bill will cause conflagration in Andhra State. Some people seem to be of the opinion that this agitation is created by some landlords and frustrated politicians. If you think like that, you are living in a fool's paradise. Here I want to make it clear that I am not in favour of the division of Andhra Pradesh. It was with the sacrifice of Potti Sriramulu that Andhra was formed and Pandit Nehru inaugurated Visala Andhra. I do not want it to fall upon his daughter to divide the State. Hence, I want the government to take some time to consider this and that is why I oppose the introduction of this Bill.

SHRI SOMNATH CHATTERJEE (Burdwan): Until the Supreme Court invalidated the 1957 Act, the Mulki rules had not been in operation or in force since the formation of the Andhra State. The present situation has arisen because of the judgment of the Supreme Court. Under Article 35(a) of the Constitution the Mulki rules are in force and are continuing. I would like that Shri Mirzha to take note of this. In fact, it is a part of the fundamental rights chapter, namely, Part III of the Constitution. Therefore, this is a fundamental right under article 35 of the Constitution, and the beneficiaries of the Mulki rules want to enjoy them as a fundamental right. Now, as a result of the Supreme Court judgment and the

invalidation of the 1957 Act, it has become so to say a part of the fundamental rights of certain sections of the people until Parliament makes a proper law.

Now I wish to draw your kind attention to the provisions of the Bill. Apart from legislative competence, what is sought to be introduced by this Bill comes within the mischief of article 16 of the Constitution read with article 35. We do not want to be a party to a legislation which cannot stand the test of judicial scrutiny. I am not here at the moment on the political aspect of the Bill. I am purely on the legal aspect. Clause 3(3) of the Bill provides for validation of certain appointments which had been made contrary to the Mulki Rules. Clause 4 also deals with validation of certain appointments which are contrary to Mulki rules, with retrospective effect. That is important, Clause 3(3) and clause 4 seek to validate with retrospective effect those appointments which have been made contrary to Mulki Rules. Now, according to the Supreme Court judgment, the Mulki Rules are operative till today and will continue to do so until they are properly repealed.

During the period when Mulki Rules have remained in force and which are deemed to be a fundamental right under article 35 read with article 16(3), how can those Rules be ignored with retrospective effect under clause 3(3)? That is a very important point I would request the hon. Minister to consider. Although the Mulki Rules are in force and have got the sanction of article 16(3) and article 35, even then Parliament is being asked to ignore them with retrospective effect. This will not stand the test of scrutiny.

Then, kindly see clause 3(1). One could have understood that the Mulki Rules are being repealed with retrospective effect. That is not being done. Clause 5 says that the Mulki Rules will be repealed in a phased manner. Clauses 5, 6 and 7 make it very clear that they are not being repealed with retrospective effect. Therefore, during the period when the Mulki Rules would be deemed to be in force, how can you

ignore them for the purpose of giving retrospective effect? The Parliament can make a retrospective legislation if there are constitutional impediments or legal impediments. They must get rid of those impediments, by a proper law. Then, you can made them with retrospective effect. Without getting rid of the impediments, that is, the Mulki Rules and keeping them alive, the Parliament is seeking to pass a legislation which will amount to ignoring the Mulki Rules and will go against provisions of article 16(3) and article 35 of the Constitution and this will be declared as bad.

The power has been given to Parliament under article 16(3) to make a law prescribing any requirement as to the residence, etc. Therefore, if you want to make a law under article 16(3), that law has only to provide for certain requirement in regard to residence. Article 16(2) will not be applicable if the Parliament makes a law prescribing certain residential requirement. This Bill does not seek to prescribe any residential requirement at all. It does not come with article 16(3) at all. It does not come within article 16(3) at all. It does not at all come under article 16(3) to lay down any requirement in regard to residence.

This Bill seeks to invalidate something which the Supreme Court has said valid or validate something which the Supreme Court has said invalid, without avoiding the causes which have caused invalidation. Therefore, apart from these defects, the Parliament, as the Constitution stands today, has not got the power to do anything under article 16(3) except to prescribe the residential requirement which this Bill does not seek to do.

With these words, I submit, let the Bill be withdrawn and let them give their thought to it. It is not a constitutional amendment. This will not stand the test of scrutiny and, therefore, I am opposing the introduction of the Bill.

SHRI R. V. SWAMINATHAN (Madurai): Sir, I would request you to adjourn the House now for lunch and this will give time to the Government to consider the matter.

श्रील बिहारी वाजपेयी (मालियर):
अध्यक्ष जी, इस पर चर्चा लम्बी चलेगी क्योंकि सींगल कांफिटेन्स को श्रुती दी गई है। नियमों के अनुसार आप चाहे तो पूरी चर्चा का मौका दे सकते हैं। यदि आप पूरी चर्चा का मौका देंगे तो बहुत से सदस्य बोलना चाहेंगे, यह जल्दी खत्म होने वाला मामला नहीं है।

SHRI PILOO MODY (Godhra): Sir, I would like to have my say on the matter... (Interruptions).

SHRI R. V. SWAMINATHAN: My submission is that we may adjourn for lunch and on reassembling after lunch, we may take it up. This would give time for the Government to think over the matter, whether to move it or not.

MR. SPEAKER: Among those names which I have received to oppose the introduction, only yourself and Mr. Piloo Mody are left. There is no other name..

SHRI ATAL BIHARI VAJPAYEE: You can allow a full discussion on this as the legal competence of the House has been challenged.

SHRI SEZHIYAN (Kumbakonam): Under rule 72, a full discussion can be allowed if the introduction of the Bill is opposed on Constitutional grounds. There is the procedure for that.

SHRI PILOO MODY: All that procedure can be contemplated after we have had the chance of saying what we wanted to say.

SHRI R. V. SWAMINATHAN: After Lunch, you can speak.

MR. SPEAKER: Mr. Swaminathan. I am sorry, your name is not here....

SHRI R. V. SWAMINATHAN: I do not want to speak, Sir, I was only suggesting that we might adjourn for lunch....

MR SPEAKER I have heard it You need not repeat it.

SHRI R D BHANDARE (Bombay Central) You can comply with our request, Sir After lunch, he can speak for sufficient time We can break for Lunch and after Lunch, he can have the floor of the whole House

MR SPEAKER I will listen to Mr Piloo Mody for three or four minutes I think he will take ..

SHRI PILOO MODY I will take two minutes

You have heard several points of order You have heard Constitutional arguments against the introduction of this Bill You have heard legal arguments I plead with you, Sir, to hear a couple of moral arguments also

Nobody in Andhra or in Telengana wants this Bill I do not know why the Central Government is so anxious to introduce it I have received a sheaf of telegrams which I am going to read to you

MR SPEAKER Everybody has received

SHRI PILOO MODY I will take two minutes

MR SPEAKER If it is a matter of detail

SHRI PILOO MODY As I said, Sir, I will take only two minutes

MR SPEAKER All right

SHRI PILOO MODY "Andhra Government indiscriminately enforcing internal security Act against peaceful Andhra State agitation leaders Please raise the issue in Parliament."

This telegram has been sent by no less a person than Mr Gouthu Latchanna and Mr Subbaraju, President and Secretary Andhra Kendra Karyacharana Samithi, who are considered to be reactionaries because they upheld this cause, and now we find that eight of their own Ministers ..

AN HON. MEMBER Nine.

SHRI PILOO MODY Now we find that nine of their own Ministers are also on the same side

This is another telegram

"Citizen lawyers and all intelligentsia of Andhra pray oppose introduction of Prime Minister's Bill on Mulki Rules. Andhras are denied fundamental rights in their own Capital People want separate Andhra State or integrated State without Mulki Rules Please take up our cause and save us from the autocracy of the Chief Minister of Andhra Pradesh "

This has been sent by Andhra Pradesh Bar Association Visakhapatnam

In view of intense agitation in Andhra Prime Minister should not introduce Speaker of Lok Sabha should not admit Leaders of Opposition should oppose Mulki Rules Bill—president Bar Association Eluru

Telugu Bar Association rejects Prime Minister's five point formula Demands separate Andhra State—Secretary

MR SPEAKER Two minutes are over now

SHRI PILOO MODY I have not yet finished I will just finish

In view of the very large volume of public opinion that has been built up as a result of the tremendous strife that is going on in this area, I plead with you not to permit this Bill to be introduced not only on the grounds that it is not Constitutional, that it is against the law of the land, but also on the humanitarian grounds, because if this Bill is introduced and if it is passed, I assure you that there will be a blood-bath not only in Andhra but also in Telangana Therefore, I appeal to you, for the benefit of the country and of all of us, not to allow this Bill to be introduced and to declare it *ultra vires*. I for one, will have to make my position quite clear that if you allow this Bill to be introduced, I will have to walk out of this House.

SHRI FRANK ANTHONY (Nominated-Anglo-Indians): I want to very briefly oppose the basic principle of this Bill.

I think basically it is a pernicious Bill in principle. I have always opposed the 'sons of the soil' movements because they are evil movements. What you are now in fact doing is sanctifying the 'sons of the soil' movement for a part of the State, not even for the whole State.

Now, the Government is entirely to blame for the present position that it is in. It has sown the wind of disintegration and now the country is reaping the whirlwind. Very few of the Members here now were there in the House when I alone in this House opposed the Bill and opposed the formation of Andhra Pradesh. I said, you were opening a Pandora's box and you will have a multiplicity of the linguistic States. Even, I made prophetic statement that Andhra Pradesh in time will itself divide; and that is happening to-day. What are you doing now? You have got to stop it. This is an exercise not only in futility, it is an exercise in hypocrisy. Before there is further blood-bath, my submission to the Government is: *reversed in order of States except 1st 2nd 3rd*. Otherwise, what you will get is that there will be similar movements. They are already ready-made—Vidharbha and Saurashtra. My respectful submission is: you have sown the wind, but, before the country reaps the whirlwind and more blood-bath, let these two States part in peace.

श्री अटल बिहारी वाजपेयी : मेरा निवेदन है कि नियम के अनुसार अगर आप चाहें तो इस समय इस सवाल पर पूरी बहस का मौका दे सकते हैं। केवल जिन लोगों ने अपने नाम भेजे हैं जिनको चर्चा में भाग लेने दिया जाये यह काफी नहीं होगा।

अध्यक्ष महोदय : इस पर पन्द्रह, बीस यादमी तो बोल चुके हैं।

श्री अटल बिहारी वाजपेयी : आप रुक 72 देख लें :

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

इसके पहले कि आप मंत्री महोदय को बुलायें, जिन सदस्यों ने अपने नाम नहीं भेजे हैं उनको भी चर्चा में भाग लेने का मौका दें।

SHRI SHYAMANADAN MISHRA (Bengal): I would like to make a very brief submission in this regard. Now, the question is: if the House thinks in its wisdom that it might lead to a blow-up and further conflagration, should not the House advise the Government whether they should come up with a measure of this kind? The atmosphere is completely surcharged in that State and there are indications that probably the situation might become even worse. In that situation, it is our advice that the Government...

MR. SPEAKER: I am asking them if they want time to think it over.

SHRI JYOTIRMOY BOSU (Diamond Harbour): Where is the hon. Prime Minister when such an important matter is being discussed?

SHRI SHYAMANANDAN MISHRA: I am of the opinion that the Government will be well-advised to do a little more of political and humane engineering before it comes up with any measure on this subject. That is my humble submission.

SHRI JYOTIRMOY BOSU: We do it after lunch.

SHRI MURASOLI MARAN (Madras South): Many Members of Andhra Pradesh are here and we would like to hear their views also.

SHRI R. S. PANDEY (Rajnandgaon): On a point of order, Sir. (*Interruptions*)

MR SPEAKER Now we adjourn for lunch to meet at 2-30.

13.25 hrs.

The Lok Sabha adjourned for Lunch still thirty minutes past Fourteen of the Clock.

The Lok Sabha re assembled after Lunch at thirty three minutes past Fourteen of the Clock.

[MR SPEAKER in the Chair]

MULKI RULES BILL—contd

SHRI IYOTIRMOY BOSU “

MR SPEAKER Not a word will go on record You should not get up every time without my permission Shri Vajpayee

श्री अटल बिहारी वाजपेयी मुझे असन्तुष्ट है कि आपने इस विषय पर इसी स्तर पर चर्चा करने का मौका दे दिया है।

अ-यक्ष महोदय अभी नहीं दिया है।

श्री अटल बिहारी वाजपेयी आप मुझे लें और शायद उसके बाद आप दे दें।

MR SPEAKER I wanted to listen to the Minister first

श्री अटल बिहारी वाजपेयी मेरा निबंदन यह है कि इस बात की चुनौती दी गई है कि यह सदन इस तरह का विधेयक पास कर सकता है या नहीं? अनेक सदस्यों ने यह आश्चर्य प्रकट की है कि इस विधेयक को अगर अदालत में चुनौती दी गई तो इसे अर्बुद घोषित कर दिया जाएगा। नियमों के अनुसार जब इस प्रकार का मुद्दा आपके सामने पेश हो तो आप सदन को पूरी चर्चा का मौका दे सकते हैं।

अभ्यक्ष महोदय, मुझे यह कहने के लिए विवश होना पड़ रहा है कि इन विधेयक को लाने में बड़ी जल्दबाजी से काम लिया गया है। पहले आज की कार्य सूची में इस विधेयक को पेश किए जाने का समावेश नहीं था। एक दूसरी कार्य सूची निकाली गई जिसमें 12ए के अन्तर्गत विधेयक को पेश किया जा रहा है। पहले यह विधेयक श्री राज बहादुर पेश करने वाले थे लेकिन इन्होंने श्री मिर्धा ने पेश किया है —

संसदीय कार्य तथा नौबत और परिषद नम्रती (श्री राजबहादुर) : उनको अनुपरिस्थिति में देने दस्तखत कर दिए थे।

श्री अटल बिहारी वाजपेयी . आप भी जल्दी में दस्तखत कर देते हैं और पीछे मुश्किल हा जाता है।

मेरा यह निबंदन है कि उच्चतम न्यायालय ने ए० बी० एम० नरसिंह राव और अन्य बनाम आंध्र प्रदेश राज्य और अन्य से 28 मार्च 1969 को अपने निर्णय में यह अभिनिर्धारित किया कि लोक नियोजन (निवास के बारे में अपेक्षा) अधिनियम, 1957, को धारा 3 जहां तक वह तेलंगाना क्षेत्र से सम्बन्धित है, असंवैधानिक है किन्तु न्यायालय ने अधिनियम के अन्य उपबन्धों की विधिमान्यता के बारे में, जिनमें सूची नियमों के निरसन से सम्बन्धित धारा 2 भी सम्मिलित है, कोई मत प्रकट नहीं किया। स्वयं पंजी महोदय ने अपने वक्तव्य में आपसे आना है कि 2 को धारा 3 से पृथक

नहीं किया जा सकता। द्वारा 3 उनके द्वारा पहले ही शक्ति बाह्य घोषित की गई थी।

मेरा निवेदन है कि इस मामले पर अभी सुप्रीम कोर्ट ने टुकड़ों में विचार किया है पूरी तरह से विचार नहीं किया और परस्पर विरोधी निर्णय हुए हैं। मैं चाहता हूँ कि सरकार को इस विधेयक को पेश करने में पहले एटर्नी जनरल की इस बारे में राय ले लेनी चाहिए थी। मैं जानना चाहता हूँ कि क्या उनकी राय ली गई है और क्या जका मत यह है कि इस विधेयक को अगर अदालत में चुनौती दी गई तो अदालत का फैसला इसे भवैधानिक घोषित करेगा? अगर एटर्नी जनरल की राय नहीं ली गई है तो मरा निवेदन है कि उनको इस विधेयक पर अपनी राय देने के लिए सदन में बुलाया जा सकता है। अगर उनकी राय ले ली गई है तो मंत्री महोदय बताए कि वह राय क्या है। आज तक जो बिल के उच्च न्यायालय और सर्वोच्च न्यायालय ने निर्णय दिए हैं उनको देखते ही इस बात की पूरी सम्भावना है कि यह विधेयक भेदभाव के आधार पर, मूलभूत अधिकारों के प्रतिकूल जाने के आधार पर अदालत द्वारा अवैध घोषित किया जा सकता है। हम नहीं चाहते हैं कि यह सदन कोई ऐसी कार्यवाई करे, ऐसा विधेयक स्वीकार करे जिस की वैधता के सम्बन्ध में सन्देह हो। इस बास्ते हम सदस्य यह चाहते हैं कि एटर्नी जनरल को अपनी राय देने के लिए सदन में बुलाया जाए।

दूसरे पहलू पर प्रकाश डाला जा चुका है। इस तरह का विधेयक लाने से पहले सभी सम्बन्धित पक्षों से सहमति प्राप्त कर लेना आवश्यक था। हम समझते थे कि इस तरह की सहमति प्राप्त कर ली गई है। लेकिन अब सत्ताकण्ड बल के अपने ही घर में जो विवाद पैदा हो गया है उसके प्रकाश में इस अवसर पर इसकी शायी बढ़ाने की आवश्यकता नहीं

है। मंत्री महोदय इसे वापिस लें, घर में बैठकर चर्चा करें, सर्वसम्मति के आधार पर निर्णय लें और उसके बाद सदन के सामने विधेयक ले कर आएँ जिसे अदालत में भी चुनौती न दी जा सके।

MR SPEAKER Now, the hon. Minister

SHRI INDRAJIT GUPTA (Ahpore) May I have a word, Sir?

MR SPEAKER. The hon. Member had already spoken on this.

SHRI INDRAJIT GUPTA. I had spoken on this on the 21st of last month. Much water has flowed down the river since then. So please allow me

SHRI RAM NIWAS MIRDHA You want me to reply?

MR SPEAKER Did he have time to consult the Attorney-General? Have the Government consulted the Attorney-General or not?

SHRI RAM NIWAS MIRDHA We consulted the Law Ministry and they were involved at every stage in the drafting of this Bill, and all points raised by the hon. Members were duly considered.

SHRI ATAI BIHARI VAJPAYEE What about the Attorney-General?

SHRI RAM NIWAS MIRDHA I cannot say anything about the Attorney-General, but the Law Ministry which advises us on all these matters has been fully involved at every stage.

SHRI PHO O MODY. Scrap the Law Ministry

SHRI G. VISWANATHAN: I am told that the Attorney-General had advised Government against this Bill. We want to know the position from the hon. Minister.

SHRI INDRAJIT GUPTA: On the 21st of last month, when this matter came up in the form of a calling-attention-notice

[Shri Indrajit Gupta]

I had made it quite clear that in our opinion any formula which was devised for maintaining the integrity of the Andhra Pradesh State which was acceptable to the various interests concerned would be something which we would all like, but I had made it clear that in order to do that, first of all, article 16 of the Constitution would have to be amended. Article 16(3) says

‘Nothing in this article shall prevent Parliament from making any law prescribing in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority, within a State or Union territory, any requirement as to residence within that State or Union territory, prior to such employment or appointment.’

I had made it clear that day that this clause dealt with prescribing requirements of residence within a state, not within a part of a State. Therefore, if this Bill of the type they are seeking to introduce is not to run the risk of being invalid—other members have laboured this point sufficiently—this must be preceded by a Bill amending art 16(3) so that Parliament is permitted to make a law prescribing requirements of residence within a state or part thereof. Otherwise, there is every chance of this being stuck down. Therefore, it is implicit from every point of view to seek to introduce such a Bill which runs this risk.

I may just say this, though I do not think the Ministers will admit it. After all, these things are done in a routine way. A formula was devised and announced by Government. To give it statutory form, the Law Ministry was asked to start drafting a Bill. On that basis, it had gone on drafting it. In the meantime, something else has happened there, which was not there at the time we discussed it last time here. At that time, the demand for a separate Andhra State distinct from Telengana had not been raised, only the demand of the people of Telengana or some parties in Telengana was there.

SHRI S B GIRI It was the demand of the entire people

SHRI INDRAJIT GUPTA All right, the entire people. Subsequent to that formula, what has happened is something which is also helpful to him—the other people also wanting a separate State.

SHRI M SATYANARAYAN RAO: Helpful to the people, not to us.

SHRI INDRAJIT GUPTA In the meantime, the Bill had gone on being drafted according to the formula announced at that time.

Therefore, I would request Government to look into this matter very carefully not only on the ground that it may be held *ultra vires* art 16(3) but also on the ground that after all, the Bill seeks to incorporate a formula whose purpose was to keep the State intact prevent it from being bifurcated. In the meantime, these developments have taken place which show that such a Bill will not be acceptable to anybody there—neither the Andhra portion nor the Telengana portion. So, Government should seriously consider it before bringing it here.

Finally, may I take this opportunity to offer a word of personal explanation? I have no hesitation in saying that I regret very much, that day when I spoke here inadvertently I used a certain word I am not talking about land reforms, of course, Shri Mody will not accept the existence of landlords. I had said ‘Khamma landlords’. Many friends took offence, I understood later on, because of this, because this is the name of a certain caste. I can assure you that I had no intention whatsoever to cast any reflection on any particular caste. Landlords are landlords, Khamma or non-Khamma.

SHRI P VENKATASUBBAIAH (Nandyal) His was the most provocative statement. That was one of the contributory causes for the situation that arose.

SHRI INDRAJIT GUPTA: I did not know I was such a powerful person.

SHRI PILLOO MODY: Not powerful, destructive

SHRI INDRAJI GUPTA: This was inadvertently used. I had no intention of distinguishing landlords in this manner. So I express my regret for it.

Shri Mody has read out a telegram from Latchanna. Now, I suppose he will say nobody can call him a reactionary.

I would like to conclude on this note. We will stand by the demand to keep the State integrated. I know if a separate Andhra State is formed—perhaps it will be—there will be another quarrel started, in which Shri Latchanna is one of the chief protagonists, as to which is going to be the capital, Kurnool or Guntur.

SHRI P. VENKATASUBBALAH: On a point of order. Now he is introducing another controversial matter and making matters worse. He is not helping the cause of an integrated State for which he speaks.

SHRI INDRAJI GUPTA: These things have already been raised by friends there. I only get reports about them.

Anyway, I would request Government to look into this. Nobody here welcomes this Bill as it does not conform to the concrete situation outside as it has developed now. They should consider it very carefully and not do anything which may only worsen the situation.

SHRI S. B. GIRI rose—

MR. SPEAKER: You spoke already.

SHRI S. B. GIRI: I did not speak.

MR. SPEAKER: What did you do at that time?

SHRI S. B. GIRI: I gave the information to this august House about the resignation of nine Ministers. I did not speak.

MR. SPEAKER: You have already spoken. If the Bill is taken up, you can speak, but not now on the same point. Again you have got up.

SHRI S. B. GIRI: I spoke at that time supporting the point of order. I did not speak about it. I only gave information to the House.

MR. SPEAKER: I gave you a chance, and you have spoken, either supporting a point of order or otherwise.

SHRI S. B. GIRI: I have got my own opinion about the Bill. I have not spoken about it. Only two minutes, Sir.

MR. SPEAKER: The question is about the procedure; whether you can speak twice.

SHRI S. B. GIRI: I did not speak at all.

MR. SPEAKER: What was it that you said at that time?

SHRI S. B. GIRI: I informed the House the nine Andhra Ministers have resigned. That is all I said.

MR. SPEAKER: I am sorry I cannot allow you. Anybody else who would like to speak?

SHRI G. VISWANATHAN: We would like to know the views of the Andhra Members. I am told that they have written to the Prime Minister asking for President's rule. I let them clarify the position. Here is a copy of the letter sent to the Prime Minister, asking for President's rule, in reply to the statement of the Chief Minister on the Vijayawada meeting.

MR. SPEAKER: Shri P. Narasimha Reddy. The Andhra people are hearing all the time the people who do not belong to Andhra Pradesh.

SHRI P. NARASIMHA REDDY (Chittoor): I would only like to contradict one statement which my friend Shri Viswanathan made, namely, that M.Ps. from Andhra Pradesh have written a letter to the Prime Minister. Apart from that, I also

[Shri P. Narasimha Reddy]

feel that we should consider all the constitutional aspects of this Bill which have been raised on the floor of this House. I do not know whether this aspect has been sufficiently and suitably considered at all levels in the Government. Furthermore, as somebody has remarked, as the situation has materially changed, in view of the changed situation, I wonder whether this Bill serves the purpose, and that is an aspect which the Government should well examine. They may take time to examine this matter and bring forward a proper Bill. That is my submission.

AN HON MEMBER: Ask Mr Venkatasubbaiah to speak.

MR SPEAKER: He does not want to speak, and you are forcing him. The Minister.

SHRI RAM NIWAS MIRDHA: Sir, two types of objections have been raised with respect to this Bill. One is regarding the legislative competence of this House to deal with a Bill of this nature. The other aspect of the argument is that the situation has materially changed and due to various other reasons this Bill should not be brought forward in this shape, but a different Bill which meets the aspirations of the people to a greater extent should be brought in. The latter type of argument will not be very relevant at this stage. They can be gone into—

SHRI PILOO MODY: And to hell with the wishes of the people?

MR SPEAKER: Mr Mody, there should be some limit.

SHRI PILOO MODY: You should have made this remark instead of me.

MR SPEAKER: There should be a limit on every side.

SHRI RAM NIWAS MIRDHA: At this stage, only arguments of a legal nature can be brought forth. That is what I said. As regards the merits of the Bill, they can be gone into when we consider the Bill at a later stage. When the

Bill is opposed at the introduction stage only the preliminary legal and constitutional aspects can be brought forward. As regards the first aspect I should deal with it right now. As regards the other aspects, the merits of the Bill, they will be considered when it comes up for further consideration in greater detail and whatever arguments are brought forward by the hon. Members, I shall try to reply to them.

As regards Parliament's right to pass a Bill of this nature, we have very seriously considered it, particularly after the judgment of the Supreme Court was given. We have no doubt that this Parliament has the requisite powers under the Constitution to pass a law of this nature. As the House would recall, a similar law was passed before also. Because certain sections of that law were struck down by the Supreme Court, this new Bill is being brought forward before the House. The Supreme Court judgment itself when it struck down certain provisions, said that it was for Parliament to deal with the matter.

SHRI ATAL BIHARI VAJPAYEE: Not in this manner. *(Interruptions)*

SHRI RAM NIWAS MIRDHA: Manners can differ. But the Supreme Court itself has said that it was for Parliament to consider the matter and in their opinion also we are not debarred from considering a Bill of this nature and that is what my submission is. The Supreme Court has held the view that this House can consider a Bill of this nature and that is why we have brought forward the Bill.

Something was mentioned about retrospective effect—whether the retrospective effect element introduced in this Bill is also constitutionally valid or not. This point was also thoroughly considered and we think that it could be done. Parliament has the requisite legislative competence under article 35 of the Constitution in particular.

PROF. MADHU DANDAVATE: While referring to the competence, there was also reference to article 16(3) and its scope.

SHRI RAM NIWAS MIRDHA: In particular attention may be invited to the concluding words of article 35(h): 'Until altered or repealed or amended by Parliament'. An argument has been advanced that the word "until" precludes Parliament from making a retrospective amendment of the Mulki Rules. This can be met by pointing out that similar wordings found in section 292 of the Government of India Act of 1935 corresponding to article 372 of the Constitution, were interpreted by the Federal Court as not prohibiting retrospective legislation.

SHRI SOMNATH CHATTERJEE: Answer is being given on a point not raised.

SHRI RAM NIWAS MIRDHA: It was raised and in fact the provision of the Bill was quoted and it was argued that the provision which seeks to give retrospective effect was not legal. As regards the basic argument that retrospective effect cannot be given to certain provisions, I beg to say that we have very thoroughly considered all the points that have been raised by the hon. Members. They were before us all the time and the Law Ministry was consulted at every stage in framing this Bill. We have been fully advised that what we are doing is within the law and the limits of the Constitution and that this House is fully competent to discuss the Bill that is sought to be introduced.

श्री अटल बिहारी वाजपेयी : अध्यक्ष महोदय, मैं आप की इजाजत से यह प्रस्ताव पेश करना चाहता हूँ कि इस विधेयक के कानूनी पहलुओं पर सलाह देने के लिए सदन में एटार्नी जनरल को बुलाया जाय ।

SHRI K. NARAYANA RAO (Bobilli): The hon. Minister said that the power to approve this Bill stemmed from a stray sentence in the judgment. Of course, in the Supreme Court judgment it is said that it is for Parliament to do it. But in what context was it said? One of the arguments was that if Mulki Rules were to be upheld, that will be injurious to

the interests of the Andhra region. In that context, the Supreme Court said, if there was any injustice for Andhra region, Parliament may look into it.

SHRI M SATYANARAYAN RAO: I want to know whether it is a fact that the present Attorney General has given the opinion that you cannot bring this Bill unless article 16(3) is amended.

SHRI RAM NIWAS MIRDHA: It is not a fact. I have already said that we have consulted the Law Ministry at every stage, but the Attorney General's opinion is not with us.

श्री अटल बिहारी वाजपेयी : अध्यक्ष महोदय, अब मुझे आप यह प्रस्ताव पेश करने की इजाजत दें ।

अध्यक्ष महोदय: प्रस्ताव की क्या जरूरत है ?

श्री अटल बिहारी वाजपेयी : तो आप एटार्नी जनरल को बुलाने के लिए फैसला कर दीजिए, तो प्रस्ताव की जरूरत नहीं रहेगी । अब यह बात साफ हो गई कि एटार्नी जनरल की राय ली नहीं गई है और इस सदन में यह भी कहा जा रहा है कि एटार्नी जनरल की राय इस बिल को पेश करने के खिलाफ है । तो ऐसे ही मौके होते हैं जब एटार्नी जनरल को बुलाया जाता है और उन की राय ली जाती है । इसलिए मैं समझता हूँ कि एटार्नी जनरल को बुलाना चाहिए और उन की राय ली जानी चाहिए ।

SHRI PILOO MODY: We have a provision in our rules by which we can resist the introduction of a Bill on the ground that it is unconstitutional. Suppose the Government has come up with a Bill which is or which will be *ultra vires* of the Constitution and this is pointed out to them, who decides whether the Bill should be proceeded with

[Shri Piloo Mody]

or not? Or, is it merely a formality that we express our objection to it and then the majority rules it out and carries through with the Bill, till it is struck down in the Supreme Court some months hence? There must be some valid way of finding out at this point whether it can or cannot be proceeded with. Some legal opinion must be available other than the legal opinion of the Government as given to them by the Law Ministry.

SHRI G. VISWANATHAN: There is a precedent when the Attorney General was invited to give his views on the floor of the House. You should direct the Government to ask the Attorney General to come here and give his views.

DR. G. S. MELKOTE: Sir, I would like to read a few sentences from the Committee of Jurists' report on Telengana Safeguards, headed by Mr. Wanchoo:

"The implications of the Supreme Court judgment being clear, the question now is whether or what provisions can be made which would make it possible to provide safeguards in the matter of public employment or appointment to the people of Telengana area of Andhra Pradesh in keeping with what had been going on since 21st March, 1969. We have already indicated that in view of the interpretation placed by the Supreme Court on article 16(3), it is no longer possible to make any law or rule prescribing residential qualification in a part of a State for appointments within that part. Any law or rule so made would be bad and would be liable to be struck down as *ultra vires* the Constitution."

SHRI M. SATYANARAYAN RAO: The Attorney General was also a member of this Committee.

MR. SPEAKER: What precisely do you want, Dr. Melkote?

DR. G. S. MELKOTE: In the bill they are introducing, they have not indicated the Act under which they are introducing the Bill. Secondly, whatever they are doing is going to affect only part

of a State and hence they cannot introduce the Bill in this form.

MR. SPEAKER: I am sorry, I will have to postpone the consideration for some time and satisfy myself on all the points. So, we will postpone the consideration of this item.

15 hrs.

**SICK TEXTILE UNDERTAKINGS
(TAKING OVER OF MANAGEMENT)
BILL—Contd.**

MR. SPEAKER: We will now take up the next item, namely, the Sick Textile Undertakings (Taking Over of Management) Bill. Shri Dinan Bhattacharyya will continue his speech.

SHRI DINEN BHATTACHARYYA (Serampore): Sir, in the list of business this Bill is mentioned as "Sick Textile Undertakings (Taking Over of Management) Bill" instead of calling it "Sick" Textile Undertakings.

I would say that confusion has been sought to be created on this issue of nationalisation. While I was speaking on this Bill the other day, the Minister stated that Government had no intention of nationalising the textile industry as a whole. Yet, in the Statement of Objects of Reasons attached to the Bill it is mentioned that this legislation is pending nationalisation of such undertakings. So, I want a categorical answer on this point. Government are not certain as to what measures they should adopt in respect of this industry and, therefore, they are bringing forward this bill for the rehabilitation of the sick mills.

15.02 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

Who is responsible for the present state of affairs of these sick mills? The management of these mills frittered away their assets, cheated the shareholders and even swallowed the money due to the workers in respect of provident fund. Crores of rupees are lying unrealised from the management, not only their contribution but also the contribution of the workers.