

12.38 hrs.

ELECTION TO COMMITTEE

COMMITTEE ON THE WELFARE OF SCHEDULED CASTES AND SCHEDULED TRIBES

SHRI SAKTI KUMAR SARKAR
(Joynagar): I beg to move:

"That the members of this House do proceed to elect in the manner required by sub-rule (3) of Rule 254 of the Rules of Procedure and Conduct of Business in Lok Sabha, one member from among themselves to serve as a Member of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes for the unexpired portion of the term of the Committee *vice* Shri Partap Singh died".

MR. SPEAKER: The question is:

"That the members of this House do proceed to elect in the manner required by sub-rule (3) of Rule 254 of the Rules of Procedure and Conduct of Business in Lok Sabha, one member from among themselves to serve as a member of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes for the unexpired portion of the term of the Committee *vice* Shri Partap Singh died".

The motion was adopted.

12.39 hrs.

MATTER UNDER RULE 377

WRIT PETITION RE. PRESIDENTIAL ORDER
FOR WITHDRAWAL OF CERTAIN AMOUNTS
FROM THE CONSOLIDATED FUND OF
UNION TERRITORY OF PONDICHERRY

SHRI SEZHIAN (Kumbakonam): Under Rule 377 of the Rules of Procedure of the House I may be permitted to bring to the attention of the House the outcome of the writ petition filed by me and Shri Sivaprakasam, Member of the Rajya Sabha, in the High Court in respect of the withdrawal of certain amounts from the Consolidated Fund of Pondicherry.

As the House is aware, after the dissolution of the Legislative Assembly of Pondicherry, a Presidential Order was issued on 29th March, 1974, seeking to withdraw about Rs. 5 crores from the Consolidated Fund of the Union Territory of Pondicherry. When the Order was sought to be placed on the Table of the House on 2nd April, this was objected to by the Members of the Opposition. On that day it was not possible for the Government to place it on the Table of the House. Next day it was again argued and the Speaker in his wisdom made this observation:

"After listening to the points raised yesterday and after listening to the replies given by the Law Minister, my view is that the financial procedures on money grants are purely within the jurisdiction of Parliament."

Again, it could not be placed on the Table of the House.

It has been the practice of the House and the Speaker not to pronounce on the question of legality or constitutionality of an Order or of a Bill because that does not come within the purview of the House. Therefore, I was left with no other option but to approach the court with a writ petition challenging the validity of the Presidential Order seeking to withdraw the amounts from the consolidated fund of Pondicherry because I felt that if left unverified, this may develop in the future to a large-scale erosion of the power and authority of the legislatures and embolden the executive to bypass and curtail the basic control over the public purse by Parliament and State legislatures. Accordingly, Mr. Sivaprakasam, a Member of Rajya Sabha coming from Pondicherry and I approach the Madras

High Court on 9th April with a writ petition challenging the validity and constitutionality of the Presidential Order,

On the 11th April, an Appropriation Bill was introduced in the House seeking to validate all the actions taken under the Presidential Order with retrospective effect from 1st April. On that day you allowed the order to be placed on the Table of the House. But even after it was laid, you made a pertinent observation, namely,

"Laying it on the Table does not affect the legality or otherwise of the order."

The Law Minister, Mr. Gokhale, said on the floor of the House:

"I want to reiterate that the Government position is that the Order is legal and Government will establish it before the Court when the time comes."

Therefore, in spite of your observation and the walk-out by the opposition parties, Government continued to maintain that the Presidential Order was valid. Even when we met you, Sir, our plea was that the Government should accept that this order was invalid and then we would cooperate in remedying the situation. But Government persisted in saying that the order was valid and only for removal of some doubts they were bringing the Bill. As I said, the Law Minister even challenged that when the time came, Government will establish the legality before the court.

After the Appropriation Bill became an Act, I filed another petition to amend my earlier prayer challenging the validity of the Appropriation Act also in so far as it authorised and validated withdrawal of money from the Consolidated Fund of Pondicherry under the impugned Presidential Order from 1st April to 27th April 1974. The writ petition came up for hearing on three days from 4th to 6th December 1974 before the First

Bench of the High Court of Madras under the Hon. Chief Justice Mr. K. Veeraswamy and Hon. Mr. Justice Natarajan. I have a copy of the full text of the judgment which I will place on the Table of the House. But I will invite attention to the pertinent portion of the judgment relating to the Presidential Order. The judgment was delivered on 29th January 1975. Regarding the Presidential Order, their Lordships have held as follows:

"We are, therefore, of the opinion that the impugned Order, being undoubtedly inconsistent with the provisions of the Act relating to the procedure and the manner in which moneys could be withdrawn and appropriated from the Consolidated Fund of the Union Territory of Pondicherry, was invalid whatever compulsory circumstances might have existed to make it."

However, their Lordships have held that the Appropriation Act passed by the Parliament is valid in exercise of the overriding powers of legislation available to Parliament as per the provisions of the Constitution and the Act.

I am glad to inform the House that the basic objective of my approaching the court, namely, about the invalidity and the unconstitutionality of the Presidential Order have been fully upheld by the Court. The plea of the opposition and the repeated requests made by us on the floor have been fully vindicated by the judgment given by the court on the Presidential Order.

It may be pertinent here to note that we, in the opposition, tried to be very helpful. In fact, I and other colleagues on this side raised the issue on 29th March, 1974 itself. Had the Government cared to listen to our timely appeal, the unhappy and illegal action perpetrated in the name of the Presidential Order could have been avoided. We tried to be constructive and helpful, but the Minister did not

[Shri Sazhiyan]

respond to our helpful criticism. Anyhow, I felt I owe an obligation and duty to this House and I am glad to lay on the Table of the House, with your permission, an authenticated copy of the judgment of the High Court of Madras delivered on 29th January 1975 on the writ petition filed by me and Mr. Sivaprakasam, Member, Rajya Sabha. [Placed in Library. See No. Lt-9023/75]

SHRI SHYAMNANDAN MISHRA (Begusarai): We are all praise for the efforts that the hon. Member, Shri Sezhiyan, made, either before the court of law or on the floor of this House, for vindicating the rights of Parliament. But it is for your consideration whether members will be driven to seeking remedies in the courts of law for the violation of certain conventions, practices and procedures of the House. If that becomes the order of the day, parliamentary rights would be rendered nugatory and Parliament would be reduced to complete insignificance and irrelevance. So, it should be the concern of the Chair to see that in these matters the Government does not get away by violating some of the procedures which are so very sacred from the parliamentary point of view.

THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): There can be genuine differences of opinion on matters of law.

SHRI SHYAMNANDAN MISHRA: Here it is not a question of law. The main question is whether certain procedures have been flouted by the Government in this matter or not.

SHRI SOMNATH CHATTERJEE (Burdwan): This is a matter which should be looked into in depth because so many irregularities are coming to notice. You will kindly remember

that in the last session when the supplementary grant came, we raised certain objections and you were kind enough to uphold those objections. But you did not pursue it and the Government said they will look into the matter. So, I would request you to kindly direct the Government to apply their mind to this, consult the other parties and find out a formula. We do not want to obstruct the proceedings or stall financial appropriations, but they must be brought in a regular form.

श्री मधु लिनये (बांका) : अध्यक्ष महोदय, 3 अप्रैल, 1974 को गोबले साहब ने यूनियन टैरिटर्रीज एक्ट की धारा 56 का आधार लिया था और जब मैं उस का विरोध कर रहा था तो आप ने मुझे टोका था और कहा था कि सैक्शन 56 के बारे में कहिये। मेरे पास प्रोसीडिन्स हैं—आप देख सकते हैं। उस समय हम ने कहा था कि सैक्शन 56 में तो केवल दिक्कत को दूर करने का अधिकार है। उस का मतलब यह नहीं हो सकता कि जो अधिनियम हैं, उन के प्रावधानों के खिलाफ कोई काम किया जाय। उस के बाद यह मामला हाई कोर्ट में गया और उन का मैं केवल एक ही वाक्य आप के सामने रखना चाहता हूँ, क्योंकि सोलिसिटर जनरल ने भी वहाँ यही आर्गुमेंट रखा था और उस पर कोर्ट ने जो कहा है, वह पढ़ कर सुनाना चाहता हूँ—

“But we do not think that this will enable the President to invoke his powers under section 56, because under that section he cannot by an order do anything inconsistent with the provisions of this Act.”

इस तरह से हम लोगों ने जो यहाँ कहा था, वह कोर्ट में अपहेल्ड हुआ है। अब मैं केवल दो बिनती करना चाहता हूँ—

एक—आप कहते हैं कि जब सरकार के द्वारा कोई नोटिफिकेशन या आदेश रखा

जाता है, तो उस की संवैधानिकता के बारे में या वैधता के बारे में कोई निर्णय नहीं करेंगे। लेकिन वितीय मामलों में जहाँ सदन सार्वभौम है और आप हमारे अधिकारों के रक्षक हैं, वहाँ आप को अपवाद करना चाहिये।

दूसरे—विधिमंत्री ने जो रवैया अपनाया, जब कि हम लोग रचनात्मक सुझाव दे रहे थे और उस समय सरकार का जो रवैया था, उस पर आप को कोई आन्वेषण करना चाहिये—यही हमारी राय है।

अध्यक्ष महोदय: मैंने उस वक्त किया था।

Some hon. Members rose—

SHRI C. M. STEPHEN (Muvattupuzha): Every member is raising the same issue.

MR. SPEAKER: We should listen to views from all sides and weigh them impartially. This question is not in the nature of a political controversy; it is a question about financial procedures. It involves the fundamental rights of Parliament. It is for Parliament to control the budget. Each penny must be weighed and sanctioned properly through proper procedures by Parliament.

There is no question of any controversy as to whether you are right or whether it is their issue or this is not your issue. We must be very careful about this. This is concerning your fundamental rights and privileges.

SHRI H. M. PATEL (Dhandhuka): I am glad, Sir, that you have clarified the point raised.

Shri Madhu Limaye has rightly pointed out, and you yourself have held:

"After listening to the points raised yesterday and after listening to the replies given by the Law Minister, my view is that the financial procedures of money grant are purely within the jurisdiction of the Parliament."

But how does Parliament exercise its jurisdiction? Not by saying, "Go to

the court." That is not the way in which we can maintain the supremacy of Parliament. In that respect you have to intervene and take a view whether there has been a breach of the procedures, rights, rules and regulations of the House in regard to these financial matters. We do hope that on the statement that Shri Sezhiyan has made today the Law Minister will be called upon to make a statement. It is open to him to say that he does not accept the High Court's ruling and that he is going to appeal to the Supreme Court. By all means let him say that if that is his considered view. But, I think, it is due to this House that he should make a considered statement on this entire issue and statement made by Shri Sezhiyan.

SHRI P. G. MAVALANKAR (Ahmedabad): Sir, as you rightly said, it is not a question of a debate. When this matter was raised by Shri Sezhiyan and others on this side, we repeatedly asked the Government whether they were on sure grounds in terms of legal advice and whether the Attorney-General was consulted on this point. I remember, Shri S. M. Banerjee specifically said, "What about calling the Attorney-General?" But the Minister apparently was very confident or rather over-confident, or he was not respectful to the legal points so well made out by friends on this side. So, I request you to tell the Law Minister that at least on occasions when Parliament's rights are concerned, they should not take us lightly; they should get the Attorney-General's opinion on the matter and then come to the House; they should not treat Parliament in such a light-hearted manner.

MR. SPEAKER: This did not end only with this. On the last day another thing came up and there also I found that it was there because of this lacuna. Then I left it to Shri Sezhiyan and leaders of the Opposition. I said,

[Mr. Speaker]

"I can stop it here; I am not in favour

[Mr. Speaker]

of continuing with it but it will be the people who will suffer because of some delay in the Budget, finance and all that." Shri Era Sezhiyan said, "All right, for the present we go ahead; but later on some regulations and procedures should be found out."

Now you have laid the Court judgment on the Table of the House. The Lok Sabha Secretariat will send it to the Ministry concerned. My advice to the Finance Ministry is to act like a pilot. When two pilots drive a plane, there is a third man also who says, "Such-and-such gadget is all right; the altitude meter is all right; electronic device is functioning; such-and-such meter is on the upward trend or the downward trend; the line is clear; the team is all right etc." He reads out all things and the other pilot says, "Okay, okay, okay." You must have such type of a chart as to what is the procedure, what is the Act, what is the Constitution, what are the practices. Only after it is okayed, you should advise the President on such occasions. That is my advice in the case of these matters. They should evolve certain things. So long as Shri Era Sezhiyan and other friends are sitting here, they keep on checking sometimes. That is not piracy; that is just supervision. You should be thankful that this supervision is being properly carried. Would you like to miss your lunch hour?

SOME HON. MEMBERS: No, no.

MR. SPEAKER: Mrs. Lakshmi-Kanthamma, would you like to continue till 1 O'Clock?

SOME HON. MEMBERS: After launch.

MR. SPEAKER: All right. We adjourn for lunch to re-assemble at 2 O'Clock.

12.55 hrs.

The Lok Sabha adjourned for Lunch till Fourteen of the Clock.

The Lok Sabha reassembled after lunch at Three Minutes past Fourteen of the Clock.

[MR. DEPUTY-SPEAKER in the Chair]

SHRI JYOTIRMOY BOSU (Diamond Harbour): Sir, last week I had mentioned on the floor of the House that the press of Bangladesh News Weekly at Calcutta was raided by some anti-social elements belonging to a certain political party. The hon. Minister of Parliamentary Affairs, Shri K. Raghu Ramaiah, had made copious notes and he informally informed me that he would ask the Minister concerned to make a statement. Now the hon. Home Minister is here. I saw the Home Minister also. I would like to know what they have done with regard to this matter...

MR. DEPUTY-SPEAKER: Order, please.

SHRI JYOTIRMOY BOSU: Sir, I have received a telegram about rigging of election at Barpeta. (Interruptions).

MR. DEPUTY-SPEAKER: Order, please. This is not the way.

14.05 hrs.

RE. GRANT OF U.G.C. SCALES TO TEACHERS IN GUJARAT

SHRI P. G. MAVALANKAR (Ahmedabad): I want to draw the attention of the House and the Government to a very explosive situation that has developed in my State of Gujarat. In Ahmedabad yesterday a morcha of college teachers and University professors went to the Raj Bhavan to demonstrate massively against the injustice being meted out to them. The Sen Committee has recommended certain pay scales and the University Grants Commission has granted them and the Minister of Education, Prof. Nurul Hasan has also announced them on the floor of the