

12.27 hrs.

**EMPLOYEES' PROVIDENT FUNDS
AND FAMILY PENSION FUND
(AMENDMENT) BILL—Contd.**

SHRI S. R. DAMANI (Sholapur): Mr. Speaker, Sir, I was telling the House, mere amendment to this Act will not suffice. This Act also should make the administration of the Office of the Provident Fund Commissioner to be more efficient. At present, there is a rule that provident fund deductions should be deposited with the Employees' Provident Fund Commissioner within a certain period every month after they are deducted from the wages of the workers. The arrears are due to their slackness and I want that the work of this organisation should be activated. This organisation, I believe, has no responsibility to collect the provident fund deductions every month. The defaulters are not more than 3 per cent and it should not be difficult for this organisation to have the deductions collected on spot from such employers. I find that the Commissioner of Provident Fund serves the notice on the defaulters only after a month or two months after the detection of the default. If they put in their representative specifically for this job, the arrears of provident fund from the workers could have been reduced.

If the organisation is made more efficient and is activated, the amount of arrear which is accumulating could be reduced very much. Therefore, I request the hon. Minister that he should take some action to see that the recovery is made regularly from the employers who deduct provident fund from the wages of the workers. I want to say something about the working of an industrial unit or a business house. Sometimes they have to face critical financial situations. They incur losses but they keep on going in the hope of better times to come; they are not able to pay for the raw materials, they cannot pay even salaries of their staff. But instead of closing down and throwing their workers out of employment, they seek cooperation of the workers, the suppliers of raw material

etc. and they get it. In such cases they may not be able to pay the provident fund amounts immediately, and if these rules are applied rigidly, the result would be that they would rather like to close down because they are not in a position to make any payments. In such cases with the consent of the workers and trade unionists who represent the workers this may be kept in abeyance and no action need be taken so that the workers do not get unemployed and production is not lost. When better days come this could be re-enforced.

It is the policy of the Government that workers should participate in management that there should be more co-operation between management and workers, so that the workers may have incentive to produce more; they should feel that it is their concern. The workers, if they like, should be allowed to invest from their provident fund accounts in the shares of the concern so that they become shareholders and partners and thus participate in management and take genuine interest in fulfilling production programmes. Instead of investing in Government securities at least a part of the fund should be allowed to be so invested.

I have seen that many workers did not get their provident fund amount on their retirement without harassment. They have to visit the office several times and pay some sort of a commission to get their money back. If you check up when the application is made and when the actual amounts are paid, you will see that it takes many months to get their money back. This should be looked into in the office of the Provident Fund Commissioner.

At present all the provident fund money is invested in government securities and earns an interest of 5 per cent. Nationalised banks are giving 7.5 per cent interest on fixed deposits. There is thus no incentive for the worker to save in the provident fund. I suggest that the workers' money should be invested in long term fixed deposit and made to

earn interest at the rate of 7.5 per cent, or it can be invested in unit trusts which will also yield 7.5 per cent interest, the workers will have then more incentive to save and they will get some advantage of their investment when they retire.

It was said that in the cases of certain workers, provident fund deduction is not made. In view of the present rise in prices, they cannot afford the provident fund deduction. For example, for a worker getting Rs 250, the deduction comes to Rs 20 which is a big sum, for him. With that, he can buy cloth or milk for his children, his immediate needs. So, when prices are rising, naturally there are some cases where workers do not want provident fund deduction. Therefore, they change the name and work in such a way that they can avoid this. These things should be looked into and steps taken so that workers have the incentive to work and the capacity to contribute to the provident fund. Side by side the office of the Provident Fund Commissioner should be divided and made more efficient so that the outstanding amount can be reduced considerably.

With these words I support the Bill

श्री आर० बी० बड (खरगोन) :

गलतीय अथवा घटोदय या निग यत् उभययि नी नान हं वि जब मेरे शोचन पर मय्य य या तो पाच मिनट था टाउम दिया जा रहा है मगि बाकी योगीने 15-25 मिनट निग है।

अध्यक्ष महोदय : इसके लिए टाउम नी दो घण्टे एलाटेड था फिर 25 मिनट कमिने ने निग ?

श्री आर० बी० बडे : मैं एम्प्लॉईज पाब्लिक फंडम गेड फमिनी पेन्शन फंड (ग्रमेन्डमेन्ट) बिल को अपना समर्थन देता हूँ। समर्थन इसलिए देता हूँ कि शासन ने कहा था कि बहुत से मिल्स एम्प्लॉईज के कंट्रिब्यूशन्स का पैसा देते नहीं हैं इसलिए कुछ

स्ट्रिक्ट कानून बनाने वाले हैं। एन्टिमेन्ट्स कमेटी ने अरना रिपोर्ट में काफी स्ट्रिक्टनेस दिए और उसके बाद यह बिल सामने आ रहा है। आज बारातव न रियति यह है कि जावर शुगर मिल्स, महीन्द्रपुर शुगर मिल्स, त्रिनोद मिल्स, उज्जैन और सज्जत मिल्स रतलाम में इतना कंट्रिब्यूशन पडा हुआ है और स्टेट्स के पास इसका इरादा नहीं है। इन में उन्होंने कुछ नहीं किया है उन्होंने इन मिल्स के खिलाफ काइ एक्शन नहीं लिया है। यह संकशन जा है। इसमें शामिल शर्तें हैं कि एक हथकड़ी है और हमने पाते हैं कि एक ता यत् की ता शर्तें हैं। एक हथकड़ी है और हमने पाते हैं कि एक और हमने पाते हैं कि एक हथकड़ी है।

(4) इस प्रकार है

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term or of fine only in lieu of imprisonment"

पब्लिक मिल्स के लिए वाराह or fine" ता यह न हो और and fine" हाना चाटिये बा बर्नामि or fine शब्द रहने से जजे टार प्रो टा जाता है। आर फाइन समित मातिलक डरने नह है एन्टिमेन्ट्स कमेटी ने कहा है

"Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence relating to default in payment of contribution by the employer punishable under this Act shall be cognizable"

It shall be cognizable means that police can take action

लेकिन शायं लिखा है कि

"No Court shall take cognizance of any offence punishable under this Act,

[श्री आ० वी बडो]

the Scheme or the Family Pension Scheme except on a report in writing of the facts constituting such offence made with the previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government.

स्वयं सेटल गवर्नमेंट ने अपने हाथ में रखा है। इधर तो कागनीजेविल कहा है, लेकिन बाद में कहा है

The police should not take any action against any mill owner if there is no recommendation from the Central Government or sanction from the Central Provident Fund Commissioner.

इसलिये कागनीजेविल लगाने में क्या फायदा है? यह तो पत्र में था। इधर मिल मजदूरों से कहा है कि कागनीजेविल — सिरा है और उधर मिल मालिकों का पत्र कि तुम्हारे लिए ही रखा है जब मिलदारों की कृति दंगे तभी बालान होगा नहीं ना नहीं।

फिर तीसरा मेकेशन में आगे लिखा है।

"Where an employer is convicted of an offence of making default in the payment of any contribution to the Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17, the court may, in addition to awarding any punishment, by order in writing require him within a period specified in the order (which the court may, if it thinks fit and on application in that behalf, from time to time, extend), to pay the amount of contribution..."

तो पेमेंट करने के बाम्ने सेटल गवर्नमेंट से होना है :

"...the employer shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any, allowed by the court..."

इसलिये बेरा कहना है कि इधर तो धारणा कहा है कि स्ट्रिक्ट प्रोवोजन बनाया है और उधर यह प्रोवोजन रख दिया है "ने ऐकसटेंड वी टाइम"

The extension of time should not be considered as default.

वही आफेंस रखा है जो आज तक चला आ रहा है। और इमप्लीमेंटेशन होता नहीं इमलिये मजदूर लोग नाराज है। इस तरह का प्रोवोजन रहेगा तो एक के बाद एक ऐकसटेंशन मिलता जायगा। इसलिये मेरी राय में यह प्रोवोजन खराब है।

इस के बाद श्री लिख है

"A person, being an employer, who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount..."

It shall be deemed entrustment if the amount is kept with him

लेकिन मेकेशन 405 कागनीजेविल है।

उम में लिखा है कि :

If anybody keeps the contribution with him that will be deemed to be entrustment. Entrustment is already there.

मजदूरों में काट लिया जाता है उम कटीक्यूशन को अगर अपने पास रखता है तो उम ४०० के बारे में 405 का केस चलता है फिर ऐकेशन क्यों नहीं लिया गया। वैसे हम इस बिल का समर्थन करते हैं, लेकिन इस में जो हर जगह मेविग बनाजेव रखे गये हैं वे खराब हैं।

इधर मिल मजदूरों को नुश करने की कोशिश की है और उधर जो मिल मजदूरों को दिया है वही वापस लेने की कोशिश की है।

Allowing the court and the Commissioner to extend the time or to impose only fine is against the spirit of the Provident Funds Act.

इसमें जो विधीयमान है, उसे उमका विरोध करणा हू। अगर याप इमका मधना से इमप्लामेंट करगे तो आप प्रजावाद के नात्र होंगे।

इतना कह कर मैं समर्थन करता हू। यदि इस प्रार का एन-अनायगे ना उमका इमप्लामेंटेशन आप के हाथ में है उमका आप सिट्टीबटली फालो करे तम ठीक होगा।

SHRI VAYALAR RAVI (Chirayinkil):
Mr. Speaker, Sir, I congratulate the hon. Minister for bringing forward this amending Bill before the House.

A lot of criticism has been levelled against the piling up of provident dues from the employers. Even in the Statement of Objects and Reasons, the hon. Minister himself has admitted that the dues are so huge for which we have no explanation. The explanation is the lack of responsibility on the part of the Employees' Provident Fund Organisation. That is true. If we go through the figures of arrears, in 1959-60, it is 3.65 crores; in 1966-67, it is Rs. 5.96 crores; in 1969-70, it is 14.6 crores and in 1971-72, it is Rs. 20.65 crores. There is a rapid increase in the piling up of provident dues. Naturally, we have to take strong measures to recover them. But I am afraid, the lack of law alone is not the only reason. Even by bringing forward this legislation, I am afraid, the Employees Provident Fund Organisation will not be able to implement it. The question is merely of the implementation of the law and not just making stringent provisions of the law.

There is a provision in the law which defeats the entire purpose of the law.

They want to add one sentence. There is a proviso—clause 6(c):

“Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.”

The very purpose of this addition of one sentence is to defeat the entire purpose of the Bill. It says, the employer shall be given “a reasonable opportunity” and “a reasonable opportunity” means that he will drag the whole thing to a court. It will lead to a lot correspondence here and there. This will not serve the purpose. If you try to prosecute him, he will go to the High Court and say, “I have not been given a reasonable opportunity.” Who will define “reasonable opportunity”? Is it the Commissioner of the Provident Fund Organisation or the Chairman or the Minister? I do not know who is to define it. My request to the hon. Minister is that he must delete this sentence from here. If he is going to have it, as it is here, it is going to defeat the entire purpose of the Bill.

Another important thing is about the structure of the whole Organisation. The piling up of arrears of provident fund dues amounting to Rs. 20.65 crores is all due to, I have no hesitation to say, the irresponsibility of the erstwhile Commissioner and the entire organisation. He has now gone away. For all these dues, he is not answerable to anybody. He has got a better post and gone away. The Organisation is, more or less, a deputationist organisation. This Organisation must be re-structured completely in a way that you define the structure of the Organisation and also see that the people get more opportunities to go, step by step, to the top of the Organisation.

There is one Chairman. I have nothing against the present Chairman. But in the Act itself, it never says that the Chairman should be the Secretary of the Labour Ministry. I am very much sympathetic to the Chairman because he has to play a dual role. He has to attend a Board meeting, take a certain

[Shri Vayalar Ravi]

decision and come back to the Secretary's room and he just reverse the decision. It is a mental torture for him. If he takes a decision in favour of the workers, he just comes here, and he feels, as a Government servant, as the Secretary of the Ministry, that he is not able to accept the decision of the Board. Naturally, he has to reverse it. It is a very difficult job. I would request the Minister to relieve him of the Chairman's post. He should appoint a non-official as the full-time Chairman.

Look at the structure of the Organisation. There are 21 persons from the Government side itself and 12 persons from the non-official side. Naturally, it is more dominated, rather completely dominated by the Government side itself. There are 5 persons from the Central Government and 15 persons from the State Governments. There are 6 persons from the workers side and 6 workers from the employers side. Then, the Regional Commissioner or the Deputy Commissioner or the Commissioner is on a deputation for three years. Being the President of the Employees' Provident Fund Organisation, I have found that they come on a deputation for three years. For one year, they will study the whole subject; for one year they will tour the places and for one year, they will prepare themselves to go away.

You cannot pinpoint the responsibility. They say that they are studying the matter. The erstwhile Commissioner went away without doing anything. He said, 'What can I do? I am here only for six months; and I am going'. There must be a permanent structure in a way that even the lowest man gets the opportunity to come to the top. Always the deputationists have been coming and going back. My request to the Minister is that the organisation must be structured in such a way that every employee must have the opportunity to come to the highest level.

I want to know what is the status of the Provident Fund Organisation. Is it

a Government organisation or is it considered as part of the public sector? In Malayalam, it is said, 'Napumsaka'—neither man nor woman. I have myself asked the Minister as to what is its status and he was unable to define it. He must consider it on par with banks and LIC and see that the workers are protected. Suppose we ask certain questions they will say that they are governed by government rules, and sometimes they will say that they are not governed by government rules but by some other rules. Nobody has defined its status so far. Its status has to be defined properly.

Our friends have pointed out about recognition of the Union. Here I have to make one request. The Board has decided, I believe, that no outsider which means no political worker should be associated with the Union of the Organisation. The Board is represented by majority of government servants and they have taken this decision. I would like to know from the Labour Minister whether it is the policy of the Government that in such an organisation as Provident Fund or Bank or whatever it may be, no political worker, MP or MLA, should be associated with the Union. Is that the policy of the Labour Ministry? Do they have such an anti-labour attitude? My request to the Minister is that the Union must be recognised. You can have a referendum for the majority of the Union. Also you cannot say that nobody from outside should be associated with it. Is that the Government's policy? What is the reason behind this?

I have to inform the Minister—I am subject to correction—that I have been told by somebody that at the recent meeting of the Board in Bangalore, one top officer has said, "The Minister says many things; but we are not bound to do it". If the officer is so arrogant and impertinent, what action are you going to take against him?

The workers' matters are very delicate. They are going on an agitation from 31st onwards; they have given notice. If, in

your own Ministry, this kind of irresponsible attitude towards the workers is there, then it will lead to strike and all sorts of troubles. Therefore, my request to the Minister is that he should give them increased bonus and the salary revision. The Minister was trying to settle the loco-men's strike. Why does he not settle his own problems? He should first clean his house before trying to clean others' houses. He should consider sympathetically the demands submitted by the workers and settle them as early as possible.

Now I come to the problem in my own constituency. They have already agreed to construct the office and quarters for the workers in Trivandrum. I request the Minister to see that the office building and also quarters for the workers of the Trivandrum office are constructed.

I once again request the Minister to consider sympathetically the demands made by the workers.

*SHRI J MATHA GOWDER (Nilgiris) Mr Speaker Sir, I like to say a few words on behalf of the DMK on the Employees Provident Funds and Family Pension Fund (Amendment) Bill 1973.

This legislative measure is a shining example of the total inactivity of the Central Government in matters concerning the welfare of millions of workers in our country. I say this because the Government by their inept handling have allowed the arrears of the contributions from the employers to the employees provident fund to soar up to huge sums. It is not as if as a member of Opposition I am trying to point out this. If you look at the statement of objects and reasons appended to this Bill you will find that the Minister himself has stated this glaring example of inactivity on the part of the Central Government. According to the statement of objects and reasons, in 1959-60 the arrears

from the employers amounted to Rs. 3.65 crores. The arrears have since been steadily increasing every year and as on 31st March, 1972 they stand at the colossal figure of Rs 20.65 crores. The figures itself speaks volumes about the inefficiency with which the Government have been going about the task of ensuring prompt payment of contribution by the employers to the Provident Fund.

Sir, the House is well aware that this matter of huge arrears of contribution from the employers has been raised many times and every time the Government has been promising that effective steps would be taken in realising the arrears. It seems as though the Central Government have no foresight, with the result they wake up only when the situation reaches an alarming stage. It is difficult to believe that a Government could be sitting idle when the employers are cheating the workers of their due share of contribution to the Provident Fund. The Government have miserably failed to nip this problem in the bud and allowed the arrears to grow up to this alarming extent. I wonder whether looking at the trend of the arrears since 1959-60 it would be probable to expect them to stand at Rs 30 crores in 1973. I want to know from the Minister whether he is going to come next time before the House with all his usual explanations and express his helplessness in the matter of realising the arrears from the employers. At this juncture I must honestly say in fairness, to the Minister who is just sitting in front of me that at least he thought it fit to bring forward this measure to realise the arrears belated though it is.

Sir, why are we confronting this phenomenon of arrears piling up from the side of the employers? The employers instead of making their contribution to the Employees Provident Fund divert that money into their own investment or are happy to deposit it in the bank to earn interest. It is only with stringent legislative measure coupled with earnest implementation that the employers could be made to pay not

[Shri J. Matha Gowder]

only the arrears but their future contributions promptly.

Sir, I would have been happier with the Bill which ought to have come many years before if it does not contain as it does now, many defects and loopholes which would be exploited fully by the employers. Most of the members who have participated in this discussion have pointed out some of the loopholes that are visible in the Present Bill. I only refer to one provision in the Bill, as I don't have time to go into greater detail, which provides for the prior sanction of the Central Government if the erring employers are to be prosecuted in a Court of Law. To my mind this condition is wholly unnecessary and the Central Provident Fund Commissioner should have absolute freedom in such matters. I do not know with what motive this provision has been made in the past we know that the Central Government had been soft to the big industrialists and therefore one suspects whether the Central Government under the guise of this provision would offer shelter to the employers as against the workers. I would like the hon. Minister to tell us the reason and logic for making this provision.

In the end I would only say that enactment of a law of this nature is not going to bring solace to the employees of such undertakings which have been wound up with huge arrears from the employers left outstanding. However, I extend my support to this Bill to the extent it goes

13 hrs.

MR. SPEAKER: I am not going to call the Members who merely send me slips; they must get up in their seats. Shri Daga

SHRI M. C. DAGA (Pali): Under Clause 14 (b) you said, offence is a cognizable one. Who will take cognizance of this offence? At what time will it be? Taking cognizance will be when it is noticed by the commissioner or what? You said, the offence is cognizable and it will be taken notice of by the magistrate

Who should do it? It is not the employee who could file complaint directly. Suppose one complaint is cognizable. My point is whether the employee can file the complaint directly to the Magistrate or not. You say, this is under Section 405. How can you incorporate section 405 in this? In Clause 8 what you have said is this. You said that the explanation will be added to section 405 of the IPC. You want to say that for the Indian Penal Code this will be an amendment. You want to make an amendment under section 405 on the Indian Penal Code. You are referring to this clause here. In this legislation you say that this can be put there. How can it be done? Regarding entrustment, you say, this offence will be under section 406 or 409. Now, what do you mean by this? Who will take it up, because, after all, it is cognizable offence, non-bailable? What will be the mode? Will it be by a challan? Can the employee go to the court and say, here is an offence, I submit complaint against an employer? So, this cannot be done. You cannot make this amendment in the Indian Penal Code, and say, this is under sec 405. You say, this is breach of trust because the money was deposited. What will happen to the contribution made by employer? Suppose employer has contributed 2,000 or 6,000 and employees have to contribute some amount, say, 6,000 rupees or so. What will happen to that amount of Rs. 6,000. Will it be breach of trust or not? This cannot be made out. As employee I have to give out something to Provident Fund. That may be 10,000 or 20,000. Can it be a breach of trust? I have my own feeling, it cannot be a breach of trust. I think it is not the proper place to put this thing here, if you are not making amendment to the Indian Penal Code.

SHRI R. V. BADE: That will be deemed to be entrustment. That is what they have said.

SHRI M. C. DAGA: I have not understood. How can it be? Please ask the Labour Department to look into it or the Legal Department to look into it. Let them apply their mind to it. I have not understood it.

Then, you want the punishment to be stringent. But, everywhere you have stated 'provided the reasons are there'. That cannot be. On the one hand you want the recommendations of the Estimates Committee to be implemented and on the other why do you say 'provided the reasons are there'? Why don't you become lenient? When you say that you do not want to become lenient, then be strong.

With these words, I support the Bill.

SHRI TARUN GOGOI (Jorhat): Mr. Speaker, Sir, I want to congratulate the Minister for Labour for bringing forth this amending Bill. The Bill is not a comprehensive one. The provisions contained in this Bill are not adequate enough. But, still, it is a modest Bill. And undoubtedly, it is a beginning in the right direction. Many of the labour legislations have been brought forward by the Government with a view to providing security to the labourers who have been subjected to all sorts of exploitations. The employers are primarily concerned with their profit motive. What is more striking is that the employers have now become defaulters in making their contributions to the ones made by the labourers towards their provident fund. In the year 1959-60 the contribution was Rs. 3.65 crores and it rose to Rs. 20.65 crores in the year 1977.

It is a healthy sign. I would now like to refer to certain provisions made to the existing amending Bill. Take for example clause 4. Under this, the imprisonment term has been extended to six months. In case of a default in payment of the employees' contribution, the term of imprisonment has been prescribed for three months. There is also another proviso which I do not understand. By that proviso, discretionary power has been given to the court to give lesser term of imprisonment. That means, the court can, under that proviso, give any imprisonment lesser than three months. That too, only when there is adequate and valid reason. And that reason has to be recorded. I cannot understand what special reason

can there be if there is a case of default in the subsequent payment of the contribution. The experience shows that the court has always been in favour of the employers. Even before, in the original Act, the term of imprisonment was six months. Our experience is that the Court always gave the punishment which was always in terms of fine. Our apprehension is that the court will exercise this discretion in favour of the employers alone.

There is also another provision—Clause 5, that is, in respect of a subsequent commitment of the offence. When there is a subsequent commitment of an offence, deterrent punishment is provided for. What is the punishment provided for? The term of imprisonment has been extended to one year but the term of imprisonment may not be less than three months. I can understand that for a subsequent default, the term of imprisonment will not be less than three months. But, both these provisions run counter to each other in realising the object of the Bill. The discretionary power is provided to the court to give the punishment. I would like to refer you to another clause (5)—Section 14AC. That is about the cognizance of any offence punishable under this Act. Under this provision, the case can be filed only by the Inspector with the previous sanction of the Commissioner of Provident Fund. I do not understand why sanction has at all to be obtained to file a case in the court? In case of a default in payment of provident fund, delay is only the matter. Why is it that only an Inspector can file a case. I say that even the victim, that is, the employee who has deposited all the contributions out of the wages should file a suit. Why should not the victim file a suit? At the same time, the labour organisation—the recognised union—should also be allowed to file a suit. As you know, the Court will not proceed with the case unnecessarily—you must have confidence in the court also—unless it feels that there is some substance in that, namely, that the employer has committed an offence under the prescribed section.

[Shri Tarun Gogoi]

Then as regards first charge on the assets when there is a default in arrears, it is limited to a period of exceeding six months. Why six months? Any arrear should be a first charge on the assets of any establishment when it is wound up.

Then as regards liability in case of transfer of establishment, it is limited to the value of assets obtained by the transferee. My suggestion is that in such a case a provision should be made to the effect that the employer should be debarred from making any transfer or sale or lease when there is an arrear of a provident fund amount.

Then there is no provision for punishment or penalty where the employer does not contribute out of his own funds to the provident fund.

A provision should be made whereby the employer should be debarred from receiving any grant from public institutions unless he furnishes a no-arrears certificate.

I agree with Shri Vayalar Ravi that we must be careful in the selection of officers. It is not the law alone which will enable us to realise our objective; its implementation is equally important.

With this I extend my support to the Bill and hope that a more comprehensive Bill will be brought forward soon.

THE MINISTER OF LABOUR AND REHABILITATION (SHRI RAGHUNATHA REDDY): I am extremely grateful to all hon. members who have participated in the discussion and extended their support to the various provisions of the Bill while making very valuable suggestions with respect to various amendments that they have got in mind which they expect Government—in fact, want Government—to bring forward in course of time. I am also grateful to them for making a deep study of this problem with regard to the organisational side of the PF organisation.

With regard to the organisational problem, Shri Vayalar Ravi had mentioned some problems and raised some questions. I am fully conscious of these. My views on these are well known and he can trust us to do the right thing.

Shri Vayalar Ravi—if I may say so, he made a very impressive speech on the Bill—raised some legal questions. As regards cl. 6, sec. 14B, the proviso, he asked why should an employer be given a reasonable opportunity, why should the adjective 'reasonable' be there before the noun 'opportunity'? This is a substantive question he raised. I can only say this has been done having regard to the various decisions of the Supreme Court that opportunity must be given before a man is proceeded against. Whether we use the word 'reasonable' or not, the courts would always construe it in this light. Therefore, there is nothing lost in using the words 'reasonable opportunity', so that the concerned authority which will have to administer the Act does not have any ambiguity with respect to the notice to be given and the opportunity to be given. If any employer wants an unreasonable opportunity because of the use of this expression, I have no doubt the administration will refuse to comply with such an unreasonable request.

A very interesting question was raised by Shri Daga regarding the amendments of sec. 405 of IPC. It is known to legislative processes that one enactment can be amended in the process of amending some other enactment. You know it better than I do. You know better than I do. In their effort to implement the letter and spirit of this Act, there had been difficulties faced by the Government with respect to section 405 in the sense whether when the employee gives the money and when the employer had collected the money according to the provisions of the Provident Fund Act, it is entrustment under section 405 of the IPC. The Kerala High Court has held that it cannot be construed as entrustment and therefore the provisions of section 405 of the IPC

could not be invoked for the purpose of punishing employers who default with respect to the funds collected from the employees. To clear this doubt we thought that the law itself must clearly state that when money is deducted from the employee and goes into the hands of the employer, it must amount to entrustment. In other words the employer stands in a fiduciary capacity in relation to the money that has been deducted from the employees' salary. We wanted that there should be no ambiguity about interpretation and the courts must be told that this is the interpretation which Parliament has placed on it. I think I have cleared the doubt raised by Mr Daga.

SHRI M. C. DAGA: What about contribution of the employer? Will that also come under this section or not?

SHRI RAGHUNATHA REDDY: To be fair to him and to myself, I cannot immediately say whether it is so. I still feel that it can be the subject-matter of interpretation. The spirit of the provision is to protect the money deducted from the employees.

Shri Damani raised the question about the investment of this money in Government securities and asked why they could not be invested in unit trust. Provident fund money is deposited in Central Government securities (45 per cent); State and Central Government guaranteed securities (25 per cent) and post office time deposits and small savings (30 per cent). The interest on Government securities is 6 per cent; the interest on deposits in the post office comes to 7 per cent. Shri Damani felt that these moneys should be deposited in various banks and in the unit trust. This will be examined. Necessary steps will be taken if it is found to be in the interest of the provident fund itself.

Some suggestions have been made by Shri R. N. Sharma and Vermaji also. When I moved for consideration of this Bill, I said at the outset that this was a step in the right direction. The Bill

could have contained more stringent measures but we have to take into account that a number of sick mills had been taken over by the National Textile Corporation and such sick mills and some other coal mines were mainly responsible for a large part of the provident fund being not deposited with the concerned authorities.

Therefore, we have to take into account the fact that a number of institutions have been taken over by the Government. If we make the provisions more stringent, the process of taking over might become difficult. That is the only reason we kept in mind when we drafted this. I would assure hon. members that at the appropriate time, a more comprehensive legislation covering all the suggestions they have would certainly be brought forward. Perhaps that Bill may go before a Joint Committee and the hon. members will have ample opportunity to make their suggestions.

Shri Sharma and Shri Ram Singh Bhat have said that a gratuity fund on the lines of the employees' provident fund may be set up. This is a very valid suggestion. The matter has been examined by a working group. The group has recommended *inter alia* that employers should set up a gratuity fund duly approved under the Income-tax Act, 1961 for payment of gratuity to their employees. It has further suggested that small and medium-sized employers who are not in a position to set up such funds which can be privately managed should be statutorily required to enter into some arrangement with the Life Insurance Corporation. The report of the working group is under examination of the Ministry of Finance and the Controller of Insurance. The suggestion is rightly taken and necessary action will be taken after proper examination and discussion with the concerned ministries.

A number of amendments have been given. Though the suggestions made are welcome, at the present stage I request the hon. members not to press them. When we bring forward a fresh Bill, I assure them that all these amendments

[Shri Raghunatha Reddy]

will be properly examined and whatever amendment is reasonable, it will be certainly be incorporated.

MR. SPEAKER: Except your own amendments!

SHRI RAGHUNATHA REDDY There are a few amendments, moved by me on behalf of Government which are absolutely necessary and immediate I have no doubt that hon members would accept them without any discussion

SHRI VAYALAR RAVI: I asked about the status of the provident fund organisation. He has not replied to that

SHRI RAGHUNATHA REDDY The hon member raised a proposition of philosophical dualism I would assure the hon. member that the earliest opportunity, we will find a solution for this dualism.

MR. SPEAKER: The question is—

"That the Bill further to amend the Employees' Provident Funds and Family Pension Fund Act, 1952 and to incorporate an Explanatory provision connected therewith in section 405 of the Indian Penal Code, be taken into consideration."

The motion was adopted

Clause 2—(Amendment of Section 8

SHRI RAMAVATAR SHASTRI (Patna) I beg to move:

Page 1,—

for clause 2, substitute—

'2 In section 8 of the Employees' Provident Funds and Family Pension Fund Act, 1952 (hereinafter referred to as the principal Act), for the words "be recovered by the appropriate Government", the words "be recovered by

(a) the Central Provident Fund Commissioner or such other officer as may

be authorised by him by notification in the Official Gazette, in this behalf, or

(b) the concerned worker" shall be substituted' (4)

Page 1, line 12,—

after "behalf" insert—

"and besides this Employees Provident Fund Organisation shall have its own Recovery Officer as in the Income-Tax Department for early and expeditious recovery" (10)

MR SPEAKER: We have already exceeded the time allotted for this Bill I will put the amendments No 4 and 10 to the vote of the House

Amendments Nos 4 and 10 were put and negatived

MR. SPEAKER: The question is:

"That clause 2 stand part of the Bill"

The motion was adopted

Clause 2 was added to the Bill

Clause 3 (Amendment of Section 11)

SHRI RAMAVTAR SHASTRI I beg to move

Page 2, line 6,—

for "six" substitute "three" (11)

MR SPEAKER I will now put amendment No 11 to the vote of the House

Amendment No 11 was put and negatived.

MR SPEAKER: The question is:

"That clause 3 stand part of the Bill"

The motion was adopted.

Clause 3 was added to the Bill

Clause 4—(Amendment of Section 14)

SHRI RAMAVTAR SHASTRI: I beg to move:

Page 2,—

Omit lines 29 to 32. (5)

Page 2, lines 31 and 32—

for "or of the fine only in lieu of imprisonment" substitute "which shall not be less than fifteen days" (12).

MR. SPEAKER: I will now put amendment Nos. 5 and 12 to the vote of the House.

Amendments Nos. 5 and 12 were put and negatived.

MR. SPEAKER: The question is:

"That clause 4 stand part of the Bill"

The motion was adopted.

Clause 4 was added to the Bill

Clause 5—(Insertion of new Sections 14AA, 14AB and 14 AC)

SHRI RAMAVTAR SHASTRI: I beg to move:

Page 3, line 11,—

add at the end—

"or a report in writing by the concerned worker" (6)

MR. SPEAKER: I will now put amendment No. 6 to the vote of the House.

Amendment No. 6 was put and negatived

MR. SPEAKER: The question is:

"That clause 5 stand part of the Bill"

The motion was adopted.

Clause 5 was added to the Bill.

Clause 6—(Amendment of section 14B)

Amendment made—

Page 3, lines 16 to 21,—

re-letter sub-clauses "(a), (b) and (c)" as sub-clauses "(b), (c) and (d)" respectively, and before sub-clause (b) as so re-lettered, insert—

'(a) after the words "contribution to the Fund", the words "or the Family Pension Fund", shall be inserted;' (1)

(Shri Raghunatha Reddy)

MR. SPEAKER: The question is:

"That clause 6, as amended, stand part of the Bill"

The motion was adopted

Clause 6, as amended, was added to the Bill

Clause 7—(Insertion of new section 14C)

Amendment made—

Page 3, line 28,—

after "contribution to the Fund" insert "or the Family Pension Fund". (2)

(Shri Raghunatha Reddy)

MR. SPEAKER: The question is:

"That clause 7, as amended, stand part of the Bill."

The motion was adopted.

Clause 7, as amended, was added to the Bill.

Clause 8—(Insertion of new Section 17B)

Amendment made—

Page 4, lines 7 and 8,—

for "due under section 14B from the employer up to the time of such transfer"

[Mr. Speaker]

substitute—

“due from the employer under any provision of this Act or the Scheme or the Family Pension Scheme, as the case may be, in respect of the period up to the date of such transfer” (3)

(Shri Raghunatha Reddy)

SHRI RAMAVATAR SHASTRI: I beg to move:

Page 4,—

omit lines 9 and 10 (2)

MR SPEAKER. I will now put amendment No 9 to the vote of the House.

Amendment No 9 was put and negatived.

MR. SPEAKER: The question is—

“That clause 8, as amended, stand part of the Bill”

The motion was adopted

Clause 8, as amended, was added to the Bill

MR SPEAKER. The question is—

“That clause 9, Clause 1, the Enacting Formula and the Title stand part of the Bill.”

The motion was adopted

Clause 9, Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI RAGHUNATHA REDDY: I move:

“That the Bill, as amended, be passed”

MR. SPEAKER: Motion moved:

“That the Bill, as amended, be passed.”

श्री रामवतारें शस्त्री (पटना) : अध्यक्ष

जी, हमारे दल की तरफ से यह बिल का पहलें ही स्वागत किया जा चुका है और यह भी खत-लाया जा चुका है कि इस में अभी भी कौन कौन सी कमियां रह गई हैं और उल कमियों को हम लोगों ने संशोधन के रूप में सदन के सामने पेश करने की कोशिश की। अब मैं यह निवेदन करना चाहता हूँ कि यह बात ठीक है कि आप ने कुछ सजा को वॉल में रखा है, पहले आप मालिकों को बिलकुल छोड़ें हुए थे। वे लॉग केवल अपना वी पैसा नहीं देते, पॉक मजदूरों के हिस्से का पैसा भी खा जाते हैं। लेकिन अब आप उन को भुगतान देना शुरू कर रहे हैं—6 महीने से जेम्स राम ने राम एक महीने की सजा की व्यवस्था की गई है। लेकिन सजा का भाव आप ने जेम्स राम को दिया है, जेम्स राम को सजा दे देंगे। इस में कोई कोई बहाना बना कर वे छूटने की कोशिश करेंगे। मेरा निवेदन है कि आप जो जेम्स राम सजा दक्षिण जो डिफाल्टर है जा सजा का पैसा देना कर के खा जाते हैं, उन का वॉल में रखा जाये और सजा दे देंगे। मैंने यह भी कहा है कि आप जो एक प्रॉपर दला इस सम्बन्ध में लायें।

एक बात में बीडी लडोग के सम्बन्ध में कहना चाहता हूँ यह हमारे दला में एक बहुत बड़ा उद्योग है, लाखों लोग इस में काम करते हैं...

श्री इन्दरक सक्सेनी (समरौहा) :

40 लाख मजदूर हैं।

श्री राजावतार बाम्बनी : भाल इण्डिया बीड़ी कर्मसँ फेड्रेशन के अध्यक्ष साहब वहाँ पर मौजूद हैं। इस उद्योग में बहुत काम मजदूरों को, शायद ही किसी कारखाने के मजदूरों को बोनस मिलता हो। मेरा निवेदन है कि इस पिछड़े हुए वर्ग को भी आप बोनस दिलाने की व्यवस्था करें और जो बड़े बड़े कारखानेदार बीड़ी उद्योग के हैं, उन के खिलाफ भी सख्त कार्यवाही करें।

आप जानते हैं—हमारे यहाँ बिहार के कटिहार में एक आर०बी० एम० जूट मिल है, वहाँ 42 मजदूरों का पैसा जमा है, मालिकों ने डिफाल्ट कर लिया है, लेकिन अभी तक कोई कार्यवाही नहीं की गई है। मैं चाहता हूँ कि आप इस का पता लगायें, अगर यह बात सही है तो उन के खिलाफ सख्त कार्यवाही करें।

यह भी मालूम हुआ है कि इन मालिकों के पीछे कुछ आप की कांग्रेस के नेता लोग समर्थन में खड़े हैं, इस वजह से वे और ज्यादा बदमाशी करते हैं। यह बात नहीं होनी चाहिए—उन के खिलाफ कार्यवाही होनी चाहिए।

आखरी बात—हमारे श्री बयालार रवि साहब ने एक बात उठाई थी, लेकिन आपने उस का जवाब नहीं दिया। अगर आप जवाब दे देते तो शायद मैं इस बात को यहाँ नहीं उठाता। आल इण्डिया प्राविडेंट फंड एम्प्लाइज फेड्रेशन बहुत वर्षों से काम कर रही है—90 परसेंट कर्मचारी इस यूनियन के साथ है। इस फेड्रेशन के तमाम रिजर्व्स में संगठन बने हुए हैं, लेकिन आप उस को मान्यता नहीं दे रहे हैं। सुना है कि जिन के पीछे 10 परसेंट कर्मचारी भी नहीं है आप के बड़े बड़े अफसरान—कमिश्नर और दूसरे अफसरान—उन से बात करते हैं और एक प्रकार से मान्यता

की तरह उन के साथ व्यवहार करते हैं और सही मायनों में जो आल इण्डिया प्राविडेंट फंड एम्प्लाइज फेड्रेशन है, उन को मान्यता नहीं देते हैं। आप का एक तर्क है कि उसके अध्यक्ष बाहर के हैं, हम लिये उस को मान्यता नहीं देते। मैं कहना चाहता हूँ कि रेलवे के अन्दर, पी०एण्ड टी० के अन्दर, डिफेंस एम्प्लाइज के अन्दर यूनियनों के अध्यक्ष लोग कौन हैं—सब बाहर के लोग हैं, लेकिन उन को आप मान्यता देते हैं, तो फिर यहाँ दो तरह का व्यवहार क्यों? प्राविडेंट फंड एम्प्लाइज के साथ ऐसा व्यवहार क्यों करते हैं। मैं चाहुंगा कि इस के बारे में आप स्पष्ट बतलायें कि रिकॉग्नीशन के बारे में आप का क्या ख्याल है। मेरा अनुरोध है कि आप उन को सरकारी कर्मचारी मानें—यदि आप ऐसा करेंगे तो जाहिर बात है कि वे भी बोनस के हकदार हो जायेंगे आप में चाहता हूँ उन्हें भी बोनस मिलना चाहिए।

इन शब्दों के साथ मैं उम्मीद करता हूँ कि आप इस बिल को सख्ती के साथ लागू करेंगे, ताकि मालिकों को पता चले कि सही मायनों में अब मजदूरों की बात का असर आप पर कुछ पड़ रहा है।

THE MINISTER OF LABOUR AND REHABILITATION (SHRI RAGHUNATHA REDDY): The hon. Member has raised three questions.

As far as recognition of the Union is concerned, if my memory is right, I have never said that we will not recognise the Union, though I might not have said that we are going to recognise the Union. I do not think I have made the statement that we are not going to recognise the Union. I quite understand the feelings of

[Shri Raghunatha Reddy]

the hon. Member. We are considering this matter. I have never said that we are not going to recognise the Union.

The second point that he has raised is about beedi industry. This will have to be studied in what manner the provisions will be made applicable, in what manner they will have to be implemented because the organisation of this industry is rather amorphous.

The third point which the hon. Member has raised is about punishment. For the first time, in the provisions of the Provident Fund Act, imprisonment is being provided; not only is it being provided but it is compulsory in certain cases. The question has been raised why the proviso under that has been provided, about courts imposing a sentence for a lesser term. In your experience, Sir, you must have come across cases where the minimum punishment of imprisonment for three months is provided and where the offence is not serious—suppose, a contribution of Rs 2 or 3 has not been paid by the employer—in such cases what are the courts likely to do—when they feel that it is not a big case for such a punishment? Where the courts feel that a smaller punishment will have to be given in cases where the minimum punishment of three months' imprisonment has been provided under the Statute, the courts, instead of giving the minimum punishment of three months' imprisonment, are likely to acquit the accused because they may feel that it is unconscionable to give the minimum punishment contemplated by the Statute. In order to free the courts from such a moral dilemma, we have provided that in cases where the court comes to the conclusion that the punishment can be lesser, then it may impose such lesser punishment but adequate and special reasons have to be recorded for that, so that the higher courts may be in a position to review the reasons recorded. It is the intention of Parliament, and I have no doubt that it is the intention of the Government, that the three months' imprisonment provided is the rule and whatever exception is made, it is only an

exception for which the courts will have to record their reasons. I have no doubt in my mind that the courts would take into account the expression of opinion by the hon. members here, in construing the intention behind this, and also the opinion of the Government.

MR. SPEAKER: The question is:

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

The motion was adopted.

13.40 hrs.

STATUTORY RESOLUTION RE. CONTINUANCE OF PROCLAMATION IN RESPECT OF ANDHRA PRADESH

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI K. C. PANT) I beg to move the following Resolution:

"That this House approves the continuance in force of the Proclamation, dated the 18th January, 1973, in respect of Andhra Pradesh, issued under article 356 of the Constitution by the President, for a further period of six months with effect from the 1st September, 1973"

13.40½ hrs.

[MR. DEPUTY-SPEAKER in the Chair]

The House is fully aware of the background which necessitated the imposition of President's Rule in Andhra Pradesh. There is normalcy in the State and the Government of the State have been able during the last few months to concentrate on the more enduring tasks facing that State. There was recently an occasion for members of this House as well of the other House to discuss important legislative proposals as well as the developmental problems at some length. The impression one got was that the administration during President's Rule had not spared any effort and had seriously applied itself to the problems of the State with a sense of dynamism. But we are aware