

SHRI GEORGE FERNANDES\*\*

MR. CHAIRMAN : That rule deals with expunging.

SHRI GEORGE FERNANDES\*\*

MR. CHAIRMAN : Rule 379 is a presumption in favour of the Secretary. Let him kindly sit down.

SHRI S. M. BANERJEE : Nothing that he says is being recorded. But your observations are going on record. This is not fair.

MR. CHAIRMAN : Shri Fernandes is powerful enough to make out his case. He does not need the hon. Member's help.

SHRI S. KUNDU (Balasore) : What is this going on. What we say is not being recorded. But what you say is being recorded.

SHRI SHEO NARAIN (Basti) : He must obey the Chair.

MR. CHAIRMAN : I am drawing the attention of the House to rule 389 which states :

"All matters not specifically provided for in these rules and all questions relating to the detailed working of these rules shall be regulated in such manner as the Speaker may, from time to time, direct."

At the same time, the Speaker has power to rule any point of order which is raised on a subject which is not before the House out of order.

SHRI S. M. BANERJEE : After hearing.

STATUTORY RESOLUTION RE.  
ESSENTIAL SERVICES  
ORDINANCE—Contd.

SHRI S. S. KOTHARI (Mandsaur) : Rarely in the annals of parliamentary working have we come across the strange spectacle of the Treasury Benches fighting hard to save an opposition member's resolution. I thank the Government, and I hope that they would continue to support me till the end.

Time and again we on this side of the House, have deprecated the tendency of this Government to rule by ordinances. Ordinances constitute a negation of democracy, and legislation by the backdoor. Still Government persists in it.

On 30th August, 1968 the Lok Sabha adjourned. Barely two weeks elapsed, and this Government promulgated an ordinance suppressing the rights of workers to strike, their legitimate rights. May I submit that in the statement explaining the reasons for promulgating the ordinance the Government has said that for some months past they had been aware that employees, organisations were preparing to strike? If they were aware a few months before, why did they not come before the last session of Parliament with the Bill which they have now brought? It means that they deliberately wanted to legislate by ordinance, by the backdoor and to avoid coming before the House with this Bill, which is a draconian measure.

Secondly, the statement states that there was an emergency. What kind of synthetic emergency was there? It was a token strike for one day. Would that one-day strike have resulted in shaking the foundations of this Government? And then you find that the Bill is to be operative for five years. Is the emergency to last for five years? What does it mean? It is all a camouflage. All that it means is that

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there was no emergency, no necessity whatsoever for this ordinance. They should have brought a Bill in the regular course in the last session of Parliament before the House. They failed to do that.

Under the shelter of the ordinance, the Government has put loose repression on the employees. Even today you find about 7,000 workers are facing suspension and notices of dismissal, and 4,000 temporary workers have actually been dismissed. The Government should not stand on prestige and must relinquish the idea of trying to teach the employees a lesson because that would only aggravate matters. Actually the ordinance exacerbated matters because it constituted a challenge to the employees which they took up.

AN HON. MEMBER: Mr. Sheo Narain, don't go.

SHRI SHEO NARAIN : Please ask him to behave.

MR. CHAIRMAN : Do not take any notice of him.

SHRI SHEO NARAIN : Who is he ? I bow to the Chair and I go. I am not the Law Minister.

SHRI S. S. KOTHARI : The ordinance makes excessive delegation of authority and is unconstitutional. From various legal pronouncements it is seen that the primary duty of law-making has to be discharged by this hon. House itself. When legislative powers are delegated, they must be enunciated with sufficient accuracy and clarity, and the delegation must also indicate intelligible limits of authority. That has been the ruling of the courts. What is remarkable about this Bill is that Clause 2 (1) (a) (ix) confers upon the Central Government the power to declare any service as essential if it is of the opinion that it would result in infliction of grave hardship on the community.

The connotation of the term 'infliction of grave hardship to the community' is

indistinct and undefined. Therefore, the Government has been given wide powers; it is excessive delegation of authority. Besides the distinction between an essential service and a non-essential service is blurred. If this is blurred, it means no intelligible limits of delegated authority have been prescribed. Therefore, I submit that this clause is unconstitutional and it would vitiate the Bill. May I submit that when this Bill was introduced in the House, there were objections regarding its constitutionality....

MR. CHAIRMAN : The ordinance is before the House.

SHRI S. S. KOTHARI : The Bill is identical with the ordinance. However, I will try not to refer to it. The ordinance is unconstitutional because it violates a number of articles of the Constitution. I would go into that at a later stage. May I submit : are we in this House concerned merely with the legalistic view of the legislation that we enact, are we to forget the entire gamut of democratic traditions that we have inherited, are we to forget that this House is here to uphold human dignity, human rights and the fundamental rights... (Interruptions) There is always a danger that the government of the day would seek to reduce these human and fundamental rights, to circumscribe them and to whittle them down. It is precisely for this purpose that Parliament must always be alert. It should ensure that human rights, and the fundamental rights are not whittled down by the government of the day, by legislation or otherwise. The eminent British political philosopher, Laski, states that rights are not merely, or even greatly, a matter after written record. Musty parchments will doubtless give them greater sanctity; they will not ensure their realisation." That is an important point. The 15th amendment of the American constitution gave equal rights to the coloured people of the south but even to-day those rights have hardly been enforced either by the executive or by the judiciary. That itself indicates that the maintenance of a right is more a question of habit and tradition rather than the written word. Therefore, I would submit that basically fundamental rights can only be maintained, firstly, if Parlia-

ment resists the erosion of those rights by legislation or otherwise. Secondly, the people should stand up against the encroachment of those rights. Are we to be idle spectators when the Government is seeking to curb the right of more than 26 million workers to go on strike if their emoluments are insufficient, they are suffering from interminable poverty and are unable to make both ends meet. The right to strike was won after considerable hard struggle and if in the latter half of the 20th century this Government comes before the House and says that these rights should be curbed, are we going to allow this to happen? Whatever be the legal position, whatever be the penalties imposed, if the employees feel with considerable intensity that justice is not being done to them, that their emoluments are insufficient and their cause is just and righteous, they are bound to go on strike. Therefore I submit that there are two conditions which have to be ensured if the strikes are to be averted. Firstly it is necessary that the conditions of work and pay must be improved. Not only they must be improved but the workers should have the satisfaction that there is reasonable scope and possibility of such improvement.

Secondly, it is necessary that the Government must confer a large degree of self-government on the services, which means, in other words, bodies in the nature of Whitley Councils have to be actively worked and the workers representatives should be given proper opportunity at all stages and at various levels. There should be negotiations, and in case of difference of opinion, there should be adjudication and arbitration. That is necessary if you want to avert strikes in the future. Otherwise, what would happen is that periodically you will have to face this problem, as in the past.

I have always held that socio-economic factors lie at the root of all these movements. Even with regard to this movement, it is basically poverty that is responsible for it, but the Government could have averted the strike had it handled it with sympathy and imagination, but that was lacking. Actually, the joint consultative machinery failed precisely because the Government was not prepared to submit to

arbitration the demand for a minimum need-based wage, and that was something to which the Government was already committed.

The principal demands of the employees related, firstly, to arbitration on the issue of a need-based minimum wage, then, merger of DA with pay, and thirdly, full neutralisation of the rise in cost of living and lastly, retirement. It is indeed regrettable that over all these years, the Government has not been able to evolve a satisfactory machinery for resolving such disputes. The Government must be a model employer. It should set an example to the industrialists and various other sectors in society by providing a need-based minimum wage to its workers; but, instead of being a model employer, this Government is a retrograde employer.

SOME HON. MEMBERS : Shame, shame.

SHRI S. S. KOTHARI : Article 43 of the Constitution casts upon the Government the sacred duty to "endeavour to secure, by suitable legislation . . . or in any other way, to all workers, . . . work, a living wage, conditions of work ensuring a decent standard of life" and so on. Article 39 provides "that the citizens, men and women equally, have the right to an adequate means of livelihood." But far from making efforts to secure a living wage or even a need-based minimum wage for the employees, this Government is unable to progress itself in this direction, and if the Government asserts that the economy has not yet reached the stage where the Government could afford a need-based minimum wage, it means that its economic and other policies have failed completely. During these two decades that the Government has been in power, actually the economy has deteriorated rather than improved.

Out of 26.6 lakh workers, about 24 lakh workers are able to earn or are getting a wage between Rs. 135 and Rs. 200. What is the need-based minimum wage that they want? Of course, the Government delineates it as something fantastic. Actually, it is nothing much; as Dr. Aykroyd has worked out, it comes to about 14 ounces of

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cereals, three ounces of pulses, 10 ounces of vegetables and a few ounces of some nutritional products like milk, sugar and meat to give a balanced diet, and 18 yards of cloth per annum. In monetary terms, it works to about Rs. 200 or Rs. 250 a month. Is that too much? I think it is a very reasonable, modest and ordinary demand. Is there anyone in this House who can say that Rs. 200 per month—I ask the hon. Members on either side—is too much for an employee? (*Interruption*).

The value of the pre-war rupee today is about 12 paise, which means that due to the unbridled inflation that has been generated in this economy, due to the mistakes and faulty planning policies of the Government, the wage of Rs. 135 in terms of the pre-war rupee, works out to about Rs. 17 per month.

Can you imagine what it means? Inflation is the most insidious form of taxation. It adversely affects in the worst manner the fixed income groups. Prices have been rising during the last 7 or 8 years by about 11 to 12 per cent every year. The consumer price index (Base 1949 equal to 100) rose from 126 in 1961 to 218 in 1968. With every spurt in prices, the pitiful amount of goods that the employees can secure with their pay is still further depleted. Ultimately what matters is the amount of goods they can get. If because of inflation these goods are reduced, how can they sustain themselves and their family?

Why does not this Government at least subsidise the foodgrain prices for Central Government employees? I submit it is a basic tenet of justice, an inherent part of an unwritten contract, that the Central Government compensates its employees for every rise in the cost of living, *i. e.* the rise in the cost of living shall be fully neutralised. But the Central Government fails to discharge this legitimate duty. It not only violates the canons of social justice but also the unwritten contract. Other countries have gone far ahead with social security measures. But this Government is trying to baulk the Central Government employees, with obscure arguments, repression and this type of Bill, of the legitimate amount due to them on account of full

neutralisation and their legitimate wages as also the right to strike for their well-being and improvement in conditions of life.

It is a very curious argument that need-based minimum wage cannot be given to all sections of society and therefore, it should not be given to Central Government employees also. Is it ever possible in any society that every body will simultaneously be given this need-based minimum wage? Naturally it has to come gradually to various sections, as society advances. On Bombay side, we find most industries are actually paying the need-based minimum wage. If those industries can pay and still flourish, I do not see why it should not be given to other sections of society. The Government can, of course, begin with their own employees. As productivity increases, it will be given to larger and larger sections of society.

Article 16 of the JCM scheme provides that compulsory arbitration shall be limited to pay and allowances, weekly hours of work and leave of a class or grade of employees. The obvious interpretation of this clause is that the employees are entitled to a need-based minimum wage and if that is not given, the Central Government must agree to arbitration. But the Central Government says that it does not mean that they are committed to this wage. Then, why not take the issue to the Supreme Court for clarification? It is not prepared to do so because the Government knows that its case is weak. They give the excuse that the issue is before the National Commission on Labour. But the fact is that the terms of reference of the commission do not include this issue. May be it is there in some form as a side issue and they may or may not deal with it. A colleague of ours in this House said—he was on the commission and he ought to know that it is definitely not there in the terms of reference and the commission is not bound to report on that.

Keeping that in view, the stand taken by the Central Government is most unreasonable. The Joint Consultative Machinery provided that if the arbitration went against the Government, it could come to Parliament and clarify its difficulties in accepting and implementing the

arbitration. Parliament could ultimately decide how it should be implemented, in what stages it should be implemented, whether progressively or in some other manner. If Parliament felt that the economic conditions in the country did not warrant its implementation, it could decide to keep it in abeyance for some time. The employees then would have had the reasonable satisfaction that there is a possibility and there is scope for realisation at some time or other. Then, the things would not have come to this crisis.

Therefore I submit that the Government has gone back on its commitment of need-based minimum wage. It has gone back on its assurance given in the J. C. M. I now submit a very important point. The employees did not ask for need-based minimum wage. What they actually asked for is that this issue should be referred to arbitration. Why should the Government shove the issue by not accepting the legitimate demands of its employees ?

By not accepting this legitimate demand, the Government forced the workers to go on strike. Therefore, I submit that the responsibility for the strike rests squarely upon this Government.

The Government repeatedly asserts and says—my hon. friend, Shri Lobo Prabhu also quite often does that—that the financial resources of the Government do not warrant need-based minimum wage. Sir, the Government, which is prone to waste resources, is bound to find itself in financial stringency and would be unable to meet the legitimate demands of its employees ; it would have to resort to such an Ordinance and such a type of legislation. This Government can afford to lose Rs 60 crores in Hindustan Steel in two years ; it can afford to lose Rs. 6 crores a year in Heavy Electricals, Bhopal. It can afford to permit the High Commissioner in London to have a retinue of staff which even rulers would envy ; it can also permit the Iron and Steel and Coal Controllers to have huge staff without sufficient work for all of them and to whom Parkinson's law is eminently applicable. Besides, few are the unfortunate Ministers who cannot manoeuvre to have a foreign trip every year

in the right season. This reminds me of an item which appeared in the New Delhi Diary of *The Statesman*. It reads : "No fewer than 18 Ministers, Ministers of State and Deputy Ministers went overseas in the space of 12 weeks between August and November last year". At the end of the item, it reads, "The Deputies" trips abroad, if not those of others, perhaps lend weight to the slogan 'join the Cabinet and see the World'.

Sir, if properly managed, the public undertakings with an investment of Rs. 3000 crores at 12% returns could yield about Rs. 360 crores a year. Financial discipline has become with this Government an exercise in convenience. It is an instrument for depriving the workers, for hauling them of their reasonable demands. How long, I ask, would this Government continue to take shelter behind its so-called limitations ?

The incidents in Indraprastha Bhavan must rouse the conscience of this Government. There was a reign of terror let loose by the guardians of law in violation of law. People in Indraprastha Bhavan were surrounded on all sides like trapped animals and were mercilessly beaten. Even the Press Photographers, the Press reporters and even women were not spared. The Police entered bathrooms, in fact broke into bath rooms where the terror-stricken people had taken refuge and beat them. Who were these workers ? They were innocent and loyal workers, who were performing their normal duties.

**SHRI ATAL BIHARI VAJPAYEE** (Balrampur) : That is why they were beaten. They should have joined the strike.

**SHRI S. S. KOTHRI** : It is surprising that in a civilised society such things can be prepared by the Police.

to crown it all, a Central Government employee was also killed.

The police atrocities at Indraprastha Bhawan do not constitute an isolated instance ; it is only a link in the long chain of police misbehaviour from time to time in various parts of the country. It

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appreciates that the very admittance to the ranks of the police has a brutalising, dehumanising effect upon persons. Thanks to the ugly traditions inherited from the days of British raj, the police force tends to isolate itself from the public at large ; actually, it revels in committing atrocities upon the people. On the slightest pretence, they go on arampage and indiscriminately beat the people. The Home Ministry has failed to divest the police force of these undemocratic imperialist traditions. The Government must reform the police force and inculcate in it a sense of public service.

The least that the Government can do in the present instance is to institute a judicial enquiry into Indraprastha Bhawan incidents and bring to book the guilty. Shri Chavan stated the other day that no enquiry was necessary as all the facts were known. The non-official committee in its report has stated that all the facts are not known. How was Arjan Singh killed ? Who were the senior police officers responsible for ordering this terrorism and inhuman beating ? These facts are not known.

Besides, it is learnt that the Additional District Magistrate, who has been transferred, has been paid additional emoluments to the tune of Rs. 200 per month, probably for the services rendered ! I do not know, it is for the Home Minister to explain how the A D M is getting an extra amount when there is an inquiry against him and when this hon. House has been informed that he has been transferred because of what he had done.

Coming now to the police action in Pathankot and other places, it is customary that firing should be aimed at the legs so that casualties do not occur as far as possible. Even that elementary precaution was not taken and brutal firing was resorted to. According to Government figures—I do not know whether they are accurate—in Pathankot five persons were killed and 19 injured, in Bikaner one died and 23 were injured and we are told that in Shadol and Gauhati nobody died ; I do not know how many were wounded by bullet injuries in these places. These figures are also not available. I submit

that a judicial inquiry is necessary in all these cases of firing and exemplary punishment must be given to those officials who are found guilty.

Sir, imagine the interplay of the torment of the misery of poverty and the government's exercise of the tyranny of power. Not only the government fails to take cognisance of this misery, but it also is unable to control its instruments of authority. The physical suffering it has imposed on the workers in Indraprastha Bhawan I have tried to show. But the psychological havoc that the Indraprastha, Pathankot and Bikaner incidents have caused on the minds of the employees needs to be registered with the hon. Members here. Sir, it has wrought iron in the souls, not only of workers who were subjected to inhuman beatings and bullets but also thousands who have been suspended or dismissed or against whom action has been taken. Their hearts are lacerated and where hopes are defeated, frustration and desperation fill the void. This misery, this iron in the soul, this frustration, this desperation would provide the volatile substance which, if ignited, may explode. That tide, when it rises, the government would not be able to control even with its machinery of repression. By brute majority in this House, the government may escape its just deserts now, but it would have one day to answer to the people, who are the ultimate masters.

SHRI NAMBIAR (Tiruchirappalli) : That day is not far off.

SHRI S. S. KOTHARI : Shri Nambiar says that day is not far off.

What is the record of the Home Ministry during the last year and a half, not to delve further into the past ? The illegal adjournment of the Rajasthan Assembly, the unconstitutional dismissal of the West Bengal Government, the police misdemeanour and brutality in the States of Uttar Pradesh and Bihar, the maltreatment of harijans and failure to act in Gauhati and safeguard human rights and property are only some of the

instances. To crown it all, comes this Ordinance and the handling of the Central Government strikers and suspension and dismissal of employees in disregard of the rights of the workers and the material well being of their families which are the other instances of the performance of the Home Ministry. I say only this to the Home Minister. Are these the footprints he is going to leave on the sands of time? What would be the verdict of history? Let him ponder.

With regard to the unconstitutional aspect of this Ordinance, I do not have time; I hope, my hon. friends would expand that point, I would only say that this is unconstitutional in that it violates certain constitutional provisions.

I would make some positive suggestions and conclude. Firstly, the Bill should be operative only for six months instead of five years as provided. Secondly—this is a very important point—the Government should not unilaterally take away the right to strike without providing alternative provisions or machinery in the Bill itself for consideration of the legitimate problems and grievances of its employees and for arbitration of legitimate demands in case of differences. Then, the Government must agree to progressive implementation of need-based minimum wage within a specified period of time: if it does not agree to this, it must accept arbitration of the issue. Clause 2 (1) (a) (ix) must be deleted.

Parliament must uphold human rights and not allow the Government to circumscribe or erode them through legislation or otherwise. Strikes and liberty are inseparable. Countries where there are no strikes are countries where there is no liberty.

The hon. Prime Minister in the tradition of that great humanitarian Jawaharlal Nehru—I appeal in the name of Nehru—is reputed to have liberal views and a degree of sympathy with the workers and the downtrodden.

Let her not be guided in this matter by the hard hearted officials in the Home Ministry. Let her exercise her own judgement. An integration of softness and firmness alone can lead to good administration and correct decisions. I appeal to her in the name of the 24 million Central Government employees and their families, who, in this inflationary era, are unable to make their two ends meet and exist in interminable poverty. On humanitarian grounds I appeal to the Prime Minister to end all victimisation. Those who have been dismissed and suspended must be taken back. Let the Government not stand on false prestige. Compassion and humanism at the right moment bless both him that gives and him that takes, as that great lady in Shakespear truly said.

Finally, in the name of democracy and human rights, I appeal to Chavan Sahib, who has the reputation of a great democrat, not to go ahead with this Bill which would be written in bold black letters in the annals of parliamentary working and in the history of country. He should not proceed with this Bill; he should not present the Bill before the House, because it may be struck down by courts of law as being against the Constitution.

I appeal to this hon. House to throw out this Ordinance and not to let the Government proceed with the Bill.

श्री मधु लिमये मं. गेर: सभापति महोदय,  
इस पर मेरा व्यवस्था का प्रश्न है।

MR. CHAIRMAN: On what?

श्री मधु लिमये: इस वक्त जो बिजनेस हाउस के सामने चल रहा है यानी कोठारी साहब का प्रस्ताव तथा श्री यशवन्त राव चव्हाण का वह विधेयक।.....

सभापति महोदय: अभी वह पेश नहीं किया गया है।

श्री मधु लिमये : उनके पेश करने के समय में अपनी व्यवस्था उठाऊंगा ।

SHRI SRINIBAS MISRA : On a point of order, Sir.

14.55 hrs.

ESSENTIAL SERVICES MAINTENANCE BILL

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI VIDYA CHARAN SHUKLA) : Sir, on behalf of Shri Y. B. Chavan, I beg to move :

“That the Bill to provide for the maintenance of certain essential services and the normal life of the community, be taken into consideration.”

श्री जार्ज फरनेन्डोज (बम्बई दक्षिण) : मेरी व्यवस्था सम्बन्धी आपत्ति है । वह पेश नहीं हो सकता है ।

MR. CHAIRMAN : Let him move it. (*Interruptions*)

SHRI VIDYA CHARAN SHUKLA : May I complete my submission ? I have uttered only the first sentence.

श्री मधु लिमये (मुंगेर) : जी नहीं, भाषण के पहले प्वाइंट आफ आर्डर है ।

SHRI VIDYA CHARAN SHUKLA : May I complete my submission ?

SHRI SRINIBAS MISRA (Cuttack) : It cannot be discussed.

MR. CHAIRMAN : Let it be before the House.

SHRI MADHU LIMAYE : It is before the House now.

SHRI VIDYA CHARAN SHUKLA : I have only uttered the first sentence. I have to complete my speech.

SHRI MADHU LIMAYE : No, no. (*Interruptions*)

The question is that the Bill involving expenditure shall be accompanied by a Financial Memorandum. It is to be seen whether this Bill involves expenditure or not. It is not that who will decide it. It is not the sweet-will of the Minister to say whether it will involve expenditure or not. The provisions of the Bill involve expenditure. Kindly look at the rules. Rule 69 (2) says about expenditure from the Consolidated Fund of India. Rule 69 (2) does not apply. Rule 69 (1) says about the expenditure. I do not know whether the Home Minister in collusion or in consultation with the Food Minister and the Health Minister has devised a mean by which people in jail will go without food or they will take their nutrition from air. We do not know that. But there are the provisions in the Bill which require that the people will be put in Jail. It will involve expenditure. It is more serious that it will not involve expenditure from the Central Fund but it will involve expenditure from the Consolidated Fund of States which we cannot do.

MR. CHAIRMAN : Where is the provision that the expenditure involved will be from the Consolidated Fund of States?

SHRI SRINIBAS MISRA : There are clauses 4 and 5. Clause 4 of the Bill says :

“Any person who commences a strike which is illegal under this Act or goes or remains on, or otherwise takes part in, any such strike shall be punishable with imprisonment for a term which may extend to six months...”

So, these people will go to jail. They must be fed there. Somebody must take them to jail. There must be some conveyance. They must be given some food. It must involve expenditure. Of course, I am conscious of the fact that they cannot say how many people they intend to put in jail. They might put all the persons....