

STATEMENT RE. COLLISION BETWEEN
BAREILLY-AGRA PASSENGER AND
BUS—*contd.*

श्री राम चरण (खुर्जा) : अध्यक्ष महोदय, मेरा प्वाइंट आफ आर्डर है। प्वाइंट आफ आर्डर यह है कि यह जो रेल दुर्घटना हुई है। वह मेरे क्षेत्र में हुई है। उसमें मेरे क्षेत्र के गरीब लोग मारे गए हैं। तो मंत्री जी ने यह नहीं फरमाया कि जितने लोग इस दुर्घटना में इन्वाल्ड हुए हैं, उनको कितना कंपेंसेशन दिया जाएगा। यह भी बतायें कि क्या जुडिशल इन्वायरी होगी कि किस तरह से यह ऐक्सीडेंट हुआ ?

MR. SPEAKER : The Minister obviously has not got the information with him. He may supply it to Shri Ram Charan because this occurred in his constituency and it is a serious accident.

MR. SPEAKER : Shri Madhu Limaye

SEVERAL HON. MEMBERS *rose*—

MR. SPEAKER : Order, order.

SHRI S. KUNDU (Balasore) : Sir, the Minister is rising to answer it.

13 hrs.

MR. SPEAKER : He will give it to Mr. Ram Charan.

SHRI NATH PAI (Rajapur) : Sir, if he gives any assurance to Shri Ram Charan elsewhere, it is not binding on him, and knowing their propensity to disregard the assurances they give even in your presence, I suggest that he must make a commitment here. (*Interruption*) For him, to rise is an effort.

AN HON. MEMBER : Just one minute.

MR. SPEAKER : It is not a question of one minute or even one hour. The statement has been made. There is no use pursuing it like this.

SHRI S. KUNDU : Four *Harijans* have died.

MR. SPEAKER : If a poor *Brahmin* or a poor *Harijan* dies, both are the same ; it is an accident. When people die, whether it is the rich or the poor, it is all the same. There is no use of going on like this.

SHRI S. M. BANERJEE (Kanpur) : The price of sugarcane has now been announced ; I just wanted to know whether it has been done in consultation with the State Governments or not. That is my question.

MR. SPEAKER : No question now. It will not be answered.

Now, Mr. Madhu Limaye wanted to raise something about the elections.

13.1 hrs.

MATTER UNDER RULE 377

WITHHOLDING OF RESULT OF BANAS-
KANTHA BY-ELECTION

श्री मधु लिमये (मुंगेर) : अध्यक्ष, महोदय, आज सबेरे सभी लोगों ने अखबारों में पढ़ा होगा कि पालनपुर के चुनाव का नतीजा जो घोषित होने वाला था उस को इलैक्शन कमिशन द्वारा स्थगित कर दिया गया है। उन्होंने अपने एक सहायक को डिप्टी चुनाव कमिश्नर जैकब साहब को वहां जांच करने के लिए भेजा है। इस के पहले एलैक्शन कमिशन के बारे में कश्मीर को लेकर एक दफा बात उठी थी कि उन्होंने अपने अधिकारों के बाहर जाकर कुछ संगठनों को लिखा कि क्या आप भारत की अखंडता के बारे में प्रतिज्ञा लेने के लिए तैयार हैं ? जबकि हमारे संविधान में यह लिखा हुआ है और जो इस तरह की शपथ नहीं लेगा उसका आवेदन पत्र रद्द कर दिया जायगा। फिर इस तरह लिखने की क्या जरूरत थी ? अब हमारी समझ में नहीं आता है कि हमारे संविधान में, मैं मानता हूँ कि एलैक्शन कमिशन स्वतन्त्र अधिकारी है और वह दबाव में आकर काम न करे, लेकिन मैं संविधान में देख रहा हूँ कि अगर वह गलत काम भी करे तो उस को हटने की कोई

व्यवस्था हमारे संविधान में नहीं है। मैं आप से इतना ही निवेदन करना चाहता हूँ कि हमारे रिप्रेजेंटेशन आफ पीपुल्स ऐक्ट 1951 में जो मूल धारा थी उस को आप देख लीजिये। यह सैक्सन 66 है :

"Declaration of Results : When the counting of the votes has been completed, the Returning Officer shall forthwith declare the result of the election in the manner provided by this Act or the rules made thereunder."

उसके बाद क्या हुआ ? उसमें एक संशोधन हो गया और जो संशोधित हिस्सा है उस में यह वाक्य बीच में जोड़ दिया गया :

".....shall in the absence of any direction by the Election Commission to the contrary forthwith declare..."

बीच में एलैक्शन कमिशन को यह अधिकार 1966 में जो संशोधन विधेयक हमने पास किया उसके अन्तर्गत दिया गया है लेकिन उसका जो स्पष्टीकरण उस वक्त किया गया, उसको देखा जाये। बिल के हर एक क्लॉज का सरकारी स्पष्टीकरण होता है तो इसका स्पष्टीकरण भी देख लीजिये। उसके ऊपर आप सोचिये और हमें चर्चा करने का मौका दीजिये।

क्लॉज 35 के स्पष्टीकरण के बारे में कहा गया है :

"This clause seeks to amend section 66 so as to empower the Election Commission to issue directions to withhold declaration of the results if something goes wrong in the counting of votes and the same is brought to the notice of the Election Commission in time. The absence of such powers renders the Election Commission powerless to act even when such instances are brought to the notice of the Commission."

अब मेरा कहना इतना ही है कि काउंटिंग

आफ वोट्स के बारे में अगर कोई गड़बड़ी हो गई है तब तो एलैक्शन कमिशन के द्वारा हस्तक्षेप करना उचित है। वैसे सभी लोग जानते हैं कि पाटिल साहब के हम राजनैतिक बिरोधी हैं और उनके साथ लड़ाई जम कर चलेगी जैसे कि पहले चलती थी। उसके बारे में दो राय नहीं हो सकतीं लेकिन इस वक्त मुझे ऐतराज है कि क्या एलैक्शन कमिशन के अधिकारों का इस तरीके से इस्तेमाल किया जाय जिससे कि उस की स्वतन्त्रता के बारे में हमारे मन में सन्देह उत्पन्न हो ? अगर उन्होंने कोई करप्ट प्रैक्टिस की है तो उसके लिए कानून में सारा सिलसिला है तो क्या कानून मंत्री इस बात की जानकारी सदन को देंगे कि क्या काउंटिंग आफ वोट्स में गड़बड़ी होने के कारण यह हस्तक्षेप किया गया है या उसके पीछे कोई राजनैतिक बात है ? अखबारों में भ्रामा है कि पाटिल साहब यहां आ रहे हैं और आने के बाद बुल इन चाइना शीप की तरह से वह बहुत बड़ा परिवर्तन लाने वाले हैं, कांग्रेस पार्टी के चुनाव में वह दखल देने वाले हैं। खुद पाटिल साहब ने कहा है कि मैं यहां आने के बाद यह करने वाला हूँ और वह करने वाला हूँ। आई बिल टनं मेनी ए टेबुल। मेरी समझ में नहीं आ रहा है कि क्या उस में कांग्रेस पार्टी की आन्तरिक राबनीति है और क्या इसे लेकर चीफ एलैक्शन कमिशन का जो एक सन्तर्जर्जा है उसको खतरे में डालने का, खटाई में डालने का काम हो रहा है ? क्या इस के बारे में कानून मंत्री सफाई देंगे कि काउंटिंग आफ वोट्स में जो गड़बड़ी हुई है उस को लेकर यह दखल है या पूरी करप्ट प्रैक्टिस की जांच करने के लिए है। इसका एक दफ़े फैसला होना चाहिए वरना किसी का भी एलैक्शन इस तरह स्थगित करने का अधिकार एलैक्शन कमिशन को मिल जायगा और हो सकता है कि हमारे ऊपर भी यह नौबत आये।

SHRI SURENDRANATH DWIVEDY
(Kendrapara) : Sir, there is no doubt that

In recent months, the Chief Election Commissioner is going much beyond his power. This particular instance is clear proof of how he can interfere. The whole purpose of the election Commission would be defeated if there is such interference by the Chief Election Commissioner himself. Therefore, I would urge upon the Law Minister; let us have a discussion about the real functions and authority of the Election Commission in this House. Otherwise, I am afraid in the coming months, we may come across much more difficult situations than today. If he has not interfered, the member who was elected would have taken his oath today. He has been deprived of it by the unnecessary interference of the Chief Election Commissioner.

SHRI S. KUNDU (Balasore) : On a point of order, Sir. The point raised by Mr. Limaye is very important. But some hon. members have tabled calling attention notices on this matter. The right to table calling attention notices is a very important right of members. I want to know whether you are allowing the calling attention or you would ask individual members to make mention of it here. In that case, we will not have the initiative to take the trouble of tabling calling attention notices. This is a matter of procedure and I want your ruling on this.

MR. SPEAKER : Till last night, in the radio and everywhere it was being said that he was leading by 90,000 or 1 lakh votes. Only this morning, after the morning coffee, we have learnt that the Chief Election Commissioner has withheld it. How can I admit a calling attention notice? Of course, now I am allowing other hon. members from other parties also to make their submissions.

SHRI NATH PAI (Rajapur) : In the light of the important matters before the House, I move that the lunch hour may be suspended and the House may continue to sit.

MR. SPEAKER : No, no. We will adjourn and we will come back fresh after lunch to take up the important subjects.

SHRI VASUDEVAN NAIR (Peermade) : Actually this was not on the agenda and it has come up as a surprise for me,

SHRI MADHU LIMAYE : I have raised it under rule 377.

MR. SPEAKER : He says, for him it was a surprise.

SHRI VASUDEVAN NAIR : Yes. It is perhaps much more surprising to me that it has been raised by a person like Mr. Madhu Limaya, but that is another matter. I can understand the hon. lady Member getting excited; that is a different matter; I am not going into it. Some hon. Members are prepared to accuse the Election Commission. If we want to discuss the matter, let us have full facts before us. Without full facts, what is the use of accusing a body like the Election Commission. Some reports have appeared in the newspapers and Mr. Madhu Limaye is prepared to go by them. At least some of us are not prepared to do that.

SHRI BALRAJ MADHOK (South Delhi) : The Election Commission is supposed to be an independent body. The whole country must have faith in it. I am sorry to say that the behaviour of the Election Commission for sometime past is such as to create doubts in the minds of some of us whether it was an agency of the ruling party, not the ruling party but the ruling clique. Worse things have been done. Ballot boxes had been tampered with. When the returning officer said that only 400 voters were there, there were 800 votes. That is what we read in newspapers. In this case there has been tampering of the ballot boxes; that is what they say; if that is so the law provides for election petition. Withholding of the announcement of the result means depriving an hon. Member for having his seat in this House; it is not only an insult to Mr. S. K. Patil but to this House also which should have the honour of having Mr. Patil in it. Therefore, the Law Minister must make a clear statement about it.

SHRI HEM BARUA (Mangaldal) : I hope you will excuse me, Mr. Speaker, if I say that you were wrong in rejecting the call attention notice given this morning. We are happy that you allowed Mr. Limaye to raise this matter. I have also written to you.....

MR. SPEAKER : I wanted to call you also. Meanwhile your leader got up and I,

[Mr. Speaker]

could not say 'No' to him; Mr. Kundu got up and so many others got up. I have your paper before me.

SHRI HEM BARUA : My submission is that the Election Commission is interfering too much in the election affairs and that will damage the political democracy that we are trying to build up in this country. When the Plebiscite Front in Jammu and Kashmir wanted to participate in the elections, the Election Commissioner wanted to know from them whether they were loyal to India or not ; that is none of his business. Any body who participates in the elections must be a loyal citizen of India ; he must be an Indian citizen. He has to take the oath. I do not deny that under the Congress regime anything may happen and the tempering of the ballot boxes might have been a fact ; there is no wonder about it or there is nothing astonishing about it. But at the same time the way the Election Commissioner is interfering in these matters is a challenge to the political democracy in this country, which we all want to preserve.....(*Interruptions.*)

SHRI P. VENKATASUBBAIAH (Nandyal) : It is unfortunate that these things are done by the Election Commission which is considered to be an independent body. Certain doubts were very well expressed by hon. Members here. Polling was to take place on the 4th ; it was extended to the 11th and no reasons were given. It was a unilateral decision of the election Commission. Even now the Election Commissioner has no authority under the People's Representation Act to withhold the announcement of the result. It has cast serious doubts in the impartiality and the independent functioning of the Election Commission. I am inclined to ask whether he is **passing in such judgment.....

MR. SPEAKER : No please ; I am expunging it. It is not proper. (*Interruptions*) You need not take objection ; I am myself taking objection. No personalities should be brought in. We are only discussing the question of law, not individuals.

SHRI P. VENKATASUBBAIAH : That is why I join with my friends that there must be a full-dress debate on this issue and

we must have a fresh look at the functioning of the Election Commission.

SHRI S. M. BANERJEE (Kanpur) : I would only say that whenever we criticise the Election Commissioner, we are accused of imputing political motives and all that. In this case, all the remarks have been made against the Chief Election Commissioner in this House. In this particular case, it has been clearly stated in the newspapers—I quote :

“Mr. Sen Verma took this dramatic decision late on Monday night following “strong complaints” by the Swatantra Party of large-scale tempering with ballot boxes, and bundles of “bogus votes” being found in several boxes.”

You remember, when there was election for Gonda Parliamentary Lok Sabha seat, Mr. N. Dandekar vs. Mr. Ram Rattan Gupta, there, actually, one of the senior officers was involved in it and ultimately, it was found out that he was tempering with ballot boxes and action was taken. Even in these mid-term elections, there have been re-elections in many constituencies at the instance of the Election Commissioner. Here in this particular case, how can we possibly condemn the Election Commissioner ? If Mr. Patil is delayed by a day or two, the heavens are not going to fall. We have started accusing the Chief Election Commissioner. **That is not proper.

MR. SPEAKER : When I have expunged that, what is use of repeating it again ? I have expunged it.

SHRI S. M. BANERJEE : My submission is only this. Whatever decision has been taken by the Chief Election Commissioner in this case should not be criticised unless all facts are laid on the Table of the House.

SHRI RANGA (Srikakulam) : Sir for all these years, it became the unpleasant duty of the Opposition to venture to offer remarks over the way in which the Election Commission has been functioning. I am advisedly using the word “remark”, not criticism or condemnation or anything like

**Expunged as ordered by the Chair,

that. It was sought to be attempted to be done by some of the friends and all the time all the friends of the ruling party were expressing horror at the very temerity on the part of any Opposition party to say a word at all about the Election Commission and its functioning. But today a change has come over, and the House is able to witness it, and they are so very keen in making not only these remarks but also these observations and criticisms one of which you were good enough to expunge.

I do not know whether it is a welcome change. But certainly it is a change and a very important change. I did not see the Chief Election Commissioner as it was said in some of the papers. But I did write to him on the basis of the information that I received. My hon. friend Mr. Madhu Limaye has quoted a rule according to which the Election Commission is to intervene in the manner in which it has done when something happens in regard to the counting of votes. When does the counting of votes begin? Here is the Law Minister and we are not able to agree with him and they have called the Attorney General also. Therefore, I leave it to their interpretation. I will look at it as a lay-man would do. I thought it was when the boxes are brought in before the Returning Officer, when he notices the tempering with the seals and our people have also noticed it. From that stage onwards, this counting will have to be taken into consideration. That was the reason why I thought I would be doing my duty to my party and to democracy—for the decent way in which these elections are to be conducted—if I raised this matter with the Election Commission.

MR. SPEAKER : According to your information, how many boxes have been tempered with?

SHRI RANGA : I was told, a large number of them; I did not know how many. (*Interruptions*)

AN HON. MEMBER : Hundreds of them.

SHRI NAMBIAR (Tirucherappalli) : Duplicate ballot papers were found.

SHRI RANGA : I need not take much time. I was prepared this way or that way

for a small margin, 5000 or at the worst 25,000. When I was told that it was running upto 90,000 and more, and this information came, I said to myself that there must be something behind it...

SHRI MANUBHAI PATEL (Dabhoi) : It is a false propaganda.

SHRI RANGA : I am explaining to you, I am raising my voice about it...

SHRI PILOO MODY (Godhra) : He is a cheap propagandist of the Congress party.

SHRI RANGA : Therefore, I ventured to approach the Election Commission. I also mentioned in my representation, oral representation, through my friend, Shri Piloo Mody, that the Collector, the Returning Officer, was changed just before the election date. The Chief Election Officer was questioned as to why it was done and he pleaded helplessness. I was told that this Collector, the present Collector, was interested in this way or that way, whatever it was... (*Interruptions*)

SHRI MANUBHAI PATEL : It is a false propaganda. The people of Gujarat have lost confidence in the Swatantra Party.

SHRI RANGA : My hon. friend represents the Gujarat Provincial Congress Committee. He is welcome to have his own views, I am not questioning him. I am placing before you and the House the information that I have. Let them deny that the earlier Collector had not been transferred, that the new Collector had come in during the course of the election period or just in advance of it. In the light of these things, I pleaded with the Election Commission through my letter, and Mr. Piloo Mody was able to make his representation also in addition to this, and the Election Commission had received telephonic communications from our candidate and several others also. It was in the light of all these things that the Election Commission, according to me, had intervened in the manner which it is reported in the papers, because I have not received any communi-

[Shri Ranga]

cation from them, in order to inquire into this matter. According to me, he has done the right thing under the present circumstances, and has acted in an impartial manner.

It is for you to allow or not to allow a further discussion.

MR. SPEAKER : Let us see whether there is time for discussion and all that. In view of all these things; we shall have to consider. I cannot off hand say that there would be a discussion.

Now we adjourn for lunch and meet again at 2.30 P.M.

13.25 hrs.

That Lok Sabha adjourned for Lunch till thirty minutes past Fourteen of the Clock.

The Lok Sabha reassembled after lunch at thirty three minutes past Fourteen of the Clock.

[MR. DEPUTY-SPEAKER in the chair]

MATTER UNDER RULE 377—*contd.*

WITH HOLDING OF RESULT OF BANASKANTHA BYE-ELECTION—*contd.*

MR. DEPUTY-SPEAKER : Shri Piloo Mody.

SHRI JYOTIRMOY BASU (Diamond Harbour) : This is with regard to the...

SHRI SAMAR GUHA : *rose* —

MR. DEPUTY-SPEAKER : Mr. Guha please resume your seat.

SHRI SAMAR GUHA (Coutai) : On a pending point of order, Sir.

MR. DEPUTY-SPEAKER : In the midst of a discussion we adjourned. Very important issues are raised here. Shri Piloo Mody, as Prof. Ranga has said, approached with some letter and with some facts on the basis of which he has acted. I will give him first opportunity to say something.

SHRI PILOO MODY (Godhra) : Mr. Deputy-Speaker, Sir, I would like to preface whatever I am going to say by saying that my main interest in this matter is the democratic process in this country and the manner in which democratic institutions are strengthened. I think that everybody knows that I have spent something like 3 weeks in Banaskantha constituency.

AN HON. MEMBER : How much money ?

SHRI PILOO MODY ; I would request my hon. friend to restrain his humour. There are many occasions when he can give vent to it. Unfortunately his greatest strength is not a sound judgment.

As I said, my main interest was purely that of seeing that democracy does not perish in this fashion. Naturally when an election is fought, somebody has to win and somebody has to lose.

श्री का० ना० तिवारी (बितिया) : मेरा प्वाइंट ऑफ आर्डर है। यह मैटर बालरेखी डिस्कस हो चुका है

MR. DEPUTY-SPEAKER : No, No. This discussion was not concluded and, therefore, I am giving him an opportunity.

SHRI PILOO MODY : I was saying that somebody has to win and somebody has to lose. But unfortunately when I saw with my own eyes the scale at which the election was fought, the manner in which it was fought and the manner in which the result was declared and margin with which it was decided.....

AN HON. MEMBER : The result has not been declared yet.

SHRI PILOO MODY : The votes were counted and from the manner in which the votes were divided, I find that it is a highly incredible result that has emerged from the ballot-box. We had, in the past, suspected that there would be a certain amount of tampering going on with the entire election process from beginning to end. We had made several representations to the Collector who also happens to be the Returning Officer and to the Police. Copies were sent to the

Election Commission and the Chief Minister of Gujarat warning them against our own apprehensions.

When the result was declared I happened to be in Delhi; I got the news from time to time about the lead that Mr. Patil was gaining. I have nothing against Mr. Patil winning. I think the whole world knows that temperamentally and ideologically we have nothing against Mr. Patil and we make no bones about it. However, we have a certain system of ideas that we believe in and unfortunately Mr. Patil is in a party whose principles and whose performance we do not subscribe to at all. And, we were very anxious therefore to establish our strength in this area which we considered to be our own constituency and therefore, with every ounce of energy that we could muster, we fought this election. We fought it in the best way possible; but, unfortunately, the result, as I said, was such that it put certain doubts in our minds. I started receiving telephone calls from Palanpur to say that the seals on the ballot-boxes had been tampered with. I received also information to say that on certain ballot-boxes there were no seals at all. I armed myself with this information in addition to all the other information that I had, and the only recourse that I felt I had at that moment was the Chief Election Commissioner who is supposed to preside over all elections in India. Prof. Ranga with whom I discussed this matter, wrote a letter; and I took that letter and delivered it to the Chief Election Commissioner and I told him that this is my information. At that point he told me that Palanpur was also in touch with him and I said 'Well, this is what I can supply to you. Now you know what best to do.' I have nothing more to add.

MR. DEPUTY-SPEAKER : Shri P. Ramamurti.

SHRI SAMAR GUHA : Sir, my point of order is pending. It is a question of propriety. My point of order is still pending and that must receive priority. I am not participating in the discussion. My point of order is this. It is a question of propriety...

MR. DEPUTY-SPEAKER : Don't take the time of the House. On the point of

propriety I will listen to you. Please be brief.

SHRI SAMAR GUHA : My Point of Order is about the propriety of raising this discussion in the House and the way that has been done. Some Congressmen many feel terribly upset while some others may feel over-joyed due to the withholding of the result of the election at Palanpur. That is not our concern. Our concern is that so many Hon. Members have given notice of Calling Attention Notices...(Interruption)...

श्री मधु लिनये : हम लोगों ने भी नोटिस दिया है, आप ने अकेले ही नहीं दिया है...

SHRI S. M. KRISHNA (Mandya) : He is making his submission to the Chair...(Interruptions)...

श्री रवि राय (पुरी) : हम सब लोग काल-एटेंशन के नोटिस दिया हैं.....

MR. DEPUTY SPEAKER : If you are questioning the propriety of raising this issue or bringing this matter on the Floor of the House, then I would say that the matter is very serious and therefore it is permitted. As to who should be given priority to raise it is the discretion of the Speaker and he has allowed it. On the question of propriety...

SHRI SAMAR GUHA : That is not the point. You have not allowed me to complete my submission. You have intervened.....

MR. DEPUTY-SPEAKER : If it is about the question of propriety... (Interruptions)... Please resume your seat. If you are questioning the propriety of this House discussing the issue, which is the other forum.....(Interruptions).

SHRI SAMAR GUHA : I had not finished... (Interruptions).

MR. DEPUTY-SPEAKER : This House is the custodian of the Constitution and under the Constitution the office of the Election Commissioner is there. He is supposed to see that the election is carried out in a fair manner and if some senior Hon. Member like Shri Ranga lodges some complaint with the support of some facts and figures and some people want to raise the issue, I think

[Deputy Speaker]

this House is perfectly within its right to take it into consideration.

SHRI SAMAR GUHA : You have not allowed me to conclude. How can you stop me or deprive me of my right to complete what I started saying ?

MR. DEPUTY-SPEAKER : There is no question of propriety involved.

SHRI SAMAR GUHA : This is very unfair, Mr. Deputy Speaker. This is not the way of conducting the proceedings..... (Interruptions)...

SHRI RANDHIR SINGH (Rohtak) : Sir, this remark must be expunged.

MR. DEPUTY SPEAKER : What did he say ?

SHRI RANDHIR SINGH : He said that this is not the method of conducting the House. This is derogatory.

MR. DEPUTY-SPEAKER : You know the Member. He loses his balance. That is all.

SHRI HEM BARUA : He should be allowed to say what he wants to.

SHRI SAMAR GUHA : In the midst of my observations..... (Interruptions).

SHRI NATH PAI : He wants a statement from the Law Minister.

MR. DEPUTY-SPEAKER : What is the point of propriety involved ?

SHRI SAMAR GUHA : Not on that. You do not allow me to say.

MR. DEPUTY SPEAKER : What is it ?

SHRI SAMAR GUHA : You should allow me to say.....

MR. DEPUTY-SPEAKER : This is again taking the time of the House.

SHRI SAMAR GUHA : The fact of withholding the result of a by-election may seriously impinge on the working of the whole democracy in our country. Sir, the Election Commissioner is in Delhi. If the matter was so serious—I am one with

the Hon. Members that it is very serious—one thing should have been done before the matter was being allowed to be discussed in this House. *i. e.* the Law Minister should have asked a factual report regarding the Palanpur bye-Election. But in his absence and without any report, motives have been imputed and the man has been sniped at and so many things have been said. I am not concerned about Shri Sen Verma. But the person who holds the office of the Election Commissioner holds the hinge of the process of working of democracy in our country. Therefore I consider the matter serious, by and I feel that the Law Minister could have asked the Election Commissioner to send a report regarding the position within an hour.....

श्री मधु लिमये : उपाध्यक्ष महोदय, इसमें प्वाइन्ट आफ आर्डर कहाँ है ? मैंने भी तो यही कहा है कि पहले.....(व्यवधान).....

SHRI SAMAR GUHA : The Law Minister should have come prepared to make a statement on the basis of such factual report and on the basis of that only a discussion should have been allowed. Then there is no such factual statement, it is absolutely unfair to make such references to the Election Commissioner, when he is not present here.

MR. DEPUTY-SPEAKER : The Law Minister would certainly get an opportunity to have his say. If any member here tries to attack the conduct of the Election Commissioner, the Chair is here to protect him.

SHRI SRINIBAS (Cuttack) : I want to put just one question. What is the meaning of the term 'senior Member' ? You are using the words, 'senior Member'. What is the meaning of that term ? Does it mean 'senior in age' or 'senior in this House' or else what does it mean ?

SHRI S. M. KRISHNA : All hon. Members are equal in this House. So, there is no question of seniority.

MR. DEPUTY-SPEAKER : So far as Shri Ranga is concerned, he has been in this House for so many years. I am perfectly within my rights when I use that term

for Shri Ranga, or for instance, for Shri H.N. Mukherjee, because Shri H.N. Mukherjee also has been here for nearly 20 years. Shri Ranga has in fact been here for a longer time. They are senior Members of the House.

SHRI K. LAKKAPPA (Tumkur) : Do not discriminate between Member and Member.

SHRI P. RAMAMURTI (Madurai) : I am really amazed at this question has cropped up and is now being discussed. I am equally amazed at the alacrity with which the Congress Members have taken up this question. I can very well understand their position. After all, what is the point that we are discussing? A newspaper report had appeared that the Election Commissioner had asked the returning officer not to announce the results pending inquiry by an officer deputed by him into allegations...

SHRI R. D. BHANDARE (Bombay Central) : He has no business to do that.

SHRI P. RAMAMURTI :...that ballot boxes had been tampered with. The question has been raised that the law does not allow him to do that, and the law allows him to stop the declaration only when there are irregularities only when there are irregularities in the counting of votes. I want to emphasise the word 'votes'. If ballot boxes had been tampered with and new ballot papers had been put in, what is being counted is not ballot papers but something else; they are worth nothing. Therefore, the Election Commissioner is perfectly within his rights when he finds that there are no ballot papers, to do such a thing; he is asked to count ballot papers; he is not asked to count some bogus papers. Therefore, imagine what would happen in this House and what the dignity of this House would be if the following were to happen; suppose some gentleman—I do not bother who it is—by conniving with the officials who are prepared to oblige him tampers with the ballot boxes and puts in a lot of bogus votes and by virtue of that gets elected and comes and sits in this House, and suppose after three years it is found out and the court declares him to be

a person who has come here by fraud, would it add to the dignity of this Parliament? Would it add to the dignity of this House, if a fraudulent person comes and sits in this House? Therefore, I do not understand this kind of legal quibbling. On the basis of this legal quibbling, to raise a question like this even without a clear statement from the Election Commissioner is not in my opinion the correct thing to do. That is why I say that there is no substance in this kind of discussion.

It may be that Shri S. K. Patil will be elected, and there is no question about it, but none-the-less, if the Election Commissioner finds that about ten boxes have been tampered with, that will not redound to their credit; the reason might be that my Congress friends are probably afraid of being exposed. That is why they are very anxious about it. But none-the-less I am not concerned with who the man is, whether it is Shri Manubhai Amersey or somebody else. But it is a clear case where I must congratulate the Election Commissioner for having the guts and for having the boldness to have come and interfered in this particularly when it is known that Shri S. K. Patil is the candidate who is supported by the biggest guns in the ruling party. They had all gone there. Instead of congratulating the Election Commissioner, today we are seeing this matter being discussed.

I do not see any question of law raised in this. If the Election Commissioner has wrongly interfered in this, it is perfectly open to the aggrieved party to go to the High Court or Supreme Court for a writ against him. How could we discuss this matter here?

SHRIMATI TARKESHWARI SINHA (Barh) : The question being debated is limited in its scope. The first question is whether the Election Commissioner on receipt of such a complaint has acted correctly. We all know that in the election process, so many complaints are lodged. We have ourselves complained to the Election Commissioner about malpractices having been committed. But the question is whether on the receipt of a subjective complaint of a party or a few individuals, the Election Commissioner can act in the way he has acted, and in doing so whether he

[Shrimati Tarkeshwari Sinha]

has acted in a way which is conducive to the impartiality and fairness of the election.

Apart from this, I would like to know in how many cases in the past of complaints lodged with him the Election Commissioner has acted as he has done in this case.

The second point is that the returning officer is the authority competent to take a decision in this case.

SHRI SAMAR GUHA : The Election Commissioner is one of the pillars of our democracy. I cannot understand how the Chair can permit such a discussion of his conduct in this manner in this House.

SHRIMATI TARKESHWARI SINHA : The question is how the Election Commissioner when he was not on the spot can overrule the returning officer who is the competent authority to judge whether the complaint made by one party or the other is relevant and whether it should be taken cognisance of or not.

Objections were raised ; counting started much later than the scheduled time—it started one hour late because Shri Amersey, the other party, had made a complaint. The returning officer overruled the objections of the party and allowed the counting to proceed. The returning officer was competent enough to judge whether the counting should proceed and when the counting was complete, under no circumstances the Election Commissioner—here I commend Shri Madhu Limaye's opinion—can intervene between the conclusion of counting and declaration of the result. This is a case of indecent haste exercised by the Election Commissioner.....

MR. DEPUTY-SPEAKER : No, no. I will not permit the conduct of the Election Commission to be discussed. I will not permit the use of the expression 'indecent haste'.

SHRIMATI TARKESHWARI SINHA : All right—haste. Sitting here in Delhi, the Election Commissioner should not have

held up the announcement of the result after the conclusion of counting, as he has no powers to do so.

श्री मधु लिमये : उपाध्यक्ष महोदय, मेरा प्वाइंट आफ़ आर्डर है। और वह केवल यह है कि मैं अपनी कोई राय नहीं दे रहा था। मैं यह जानना चाहता था कि किन तथ्यों और सबूत के आधार पर इलेक्शन कमीशन ने हस्तक्षेप किया है, कानून मंत्री से जानना चाहता हूँ। अभी भी चाह रहा हूँ।

SHRI SEZHIYAN (Kumbakonam): The Election Commission is an independent body created by the Constitution and no aspersions can be cast on it. The point is whether the Election Commission has got powers to order what it has done in this case. This is an abnormal case. A complaint has been made about tampering of the ballot boxes and he said that he would go through it and satisfy himself if anything had been vitiated. Under section 58 of the Act, there is provision that if at any election any ballot box used at the polling station has been tampered with, unlawfully taken or is accidentally or intentionally destroyed or lost, he can do certain things. Sub-section (2) says that thereupon the Election Commission shall, taking all material circumstances into account declare that polling as void. So, there is this thing. Obviously we cannot now say whether the complaint is correct or not. If the allegation proves to be true, he has full powers to order a re-election. Therefore, an opportunity should be given to the Election Commission to go into the complaints. Why should they fight shy of it? The Election Commissioner has to satisfy himself and unless he is satisfied, he has got these powers. After going through these things, he can allow the declaration of the results to be made public.

SHRI H. N. MUKERJEE (Calcutta North East): I feel very disturbed by the kind of discussion that we are having, because the Election Commissioner like the Chief Justice of the Supreme Court, the Comptroller and Auditor General and the Chairman of the Union Public Service

Commission, is an officer who has got a very special status in the Constitution. We are making it impossible for any decent person to function in this office and if I were the Election Commissioner and if my conduct is questioned in Parliament without my having been told anything about it—things are being said, right or wrong—I would certainly have thought of certain steps to be taken in regard to this sort of thing. I cannot understand it. The legal processes are open to whoever wants to contest the action of the Election Commissioner. If the law's delay stand in the way, well, we have got to put up with it. The Election Commissioner has taken certain steps because leading public figures like Prof. Range, Mr. Mody and God knows who else had certain representations to him and they appeared to him *prima facie*—no doubt about it—of such serious consequence that he took the extra-ordinary precaution that he did. Whether it is technically correct or not is not for me or Mr. Madhu Limaye or whoever it might be to decide in the House. We may talk of this House being the sovereign forum and that kind of thing but that is generally a string of words which means very little. Certain proprieties are there which are important if this Parliament as a sovereign forum has to function effectively. What we are doing is to malign an office which we hold in respect. If we hold democracy in respect, we should not do so. What the Election Commissioner has done might be contested later on but we have no business whatever to talk in the way in which Mrs. Tarkeshwari Sinha has talked... (*Interruptions*.)

MR. DEPUTY-SPEAKER : Shri Basu.

SHRI R. D. BHANDARE : When you call upon an Opposition Member, you must also call a Member from the Congress... (*Interruptions*).

SHRI D. N. TIWARY (GOPALGANJ) : Congress Members have no right to speak ? Is it only the Opposition Members who have the right to speak here ?

MR. DEPUTY-SPEAKER : I am not saying so. Those who had already given notices are to be called. I called Mrs. Tarkeshwari Sinha from this side.

15 Hours

AN. HON. MEMBER : It is an allegation against the Chair.

SHRI D. N. TIWARY : We are standing times without number and you are not taking care of us. This is very curious.

SEVERAL HON. MEMBERS *rose*—

MR. DEPUTY-SPEAKER : Order, order.

SHRI D. N. TIWARY : This is discriminatory ; I must protest against it . .

AN HON. MEMBER ; Sit down.

SHRI JYOTIRMOY BASU : Sir, I want to say these things on a certain information that I have in my possession : that on receiving a trunk call from the candidate himself from Banaskantha, the Chief Electoral Officer of the Gujarat State who had confirmed the fact that in a number of polling stations, the ballot boxes had been tampered with. This Chief Election Commissioner should be congratulated because without wasting any time, at 10.30 p. m. at night, he had arranged for a flight of his Deputy Chief Election Commissioner to fly to Banaskantha to see things for himself and take proper action. It was clear that fraud had been committed and about what Shri S. K. Patil had been doing, we are not surprised at these things. (*Interruption*) And with all this, the General Secretary of the Congress party, Shri Venkatasubbaiah had the cheek to refer to the Election Commissioner in a derogatory manner. (*Interruption*) Somebody had treaded on the corns of the Congress Party.

SEVERAL HON. MEMBERS *rose*—

MR. DEPUTY-SPEAKER: Order, order I have already requested the Members to put only short questions. The Law Minister will reply.

SHRI R. D. BHANDARE : Sir, my point is this. My first point is that the Chief Election Commissioner has acted beyond the authority given to him either under the Constitution or under the Representation

[Shri R.D. Bhandare]

of the People Act. I am quoting from section 64, chapter V :

"Counting of votes and the procedure to be followed."

First, if there is any complaint, then the counting would have been stopped immediately. My friends there are saying that complaint was made and the Returning Officer should have stopped counting. When counting was over, there was no power or no authority whatsoever for the authorities to stop the declaration of results or withhold the declaration of the results. (*Interruption*). That is my first point.

My second point is this. The Chief Election Commissioner has acted on hearsay evidence. He had no evidence before him, at all. On hearing from Shri Piloo Mody, Prof. Ranga went to the Chief Election Commissioner, without any document before him, in his hand. The Election Commission can act directly only on a report from the Returning Officer. This is the provision. You should not be surprised, and I am not surprised if the law is not read properly. (*Interruptions*). Section 64 is very clear. If there is a complaint from the Returning Officer to the Election Commission (*Interruption*).

MR. DEPUTY-SPEAKER : I presume many of us have gone through the rules and the Representation of the People Act. It is a question of interpretation. Shri Ramamurti gave one and some other Members gave their interpretation. Have you got any questions to be put? The position will be ultimately clarified by the Law Minister and the Government.

SHRI R. D. BHANDARE : I beg to differ from you, because I have not finished the law may have been read by everybody and it is not a question of interpretation. On a complaint made by the Returning Officer alone, the Election Commission can interfere. So long as there is no complaint from the Returning Officer, the Chief Election Commissioner has no business. So what the hon. Members there are saying is not correct. (*Interruption*)

MR. DEPUTY-SPEAKER : I am sorry Mr. Bhandare ; you have not read the press reports even. Shri Tenneti Viswanatham.

SHRI TENNETI VISWANATHAM (Visakhapatnam) : May I ask the Law Minister to enlighten the House whether he has since received any report from the Chief Election Commissioner, whether he has got any facts other than those which are reported in the newspapers in order to help us to have a more intelligent discussion. Based upon his answer, I will ask other questions.

MR. DEPUTY-SPEAKER : All points will be taken into consideration and a comprehensive reply will be given.

SHRI DATTATRAYA KUNTE (Kolaba) : Sir, Rule 377 allows a member to request the Chair to raise a point. To that extent, Mr. Limaye was right when he raised the point. After having raised it, if he or any other member were to make any observations against the conduct of the Election Commissioner, I do not want to use the word which Shri Tarkeshwari Sinha used, but I would say, it was in haste. All this discussion has been based on a newspaper's report and it is all hearsay. Whether it is proper for the House to go into these questions in a hasty manner and landing ourselves in trouble—that is the main point which should have been taken into consideration before all the points were allowed. I suggest that at this stage, we should forget all that has happened and we should ask the Law Minister to collect all the information and give it to the House. We should not say anything either for the Chief Election Commissioner or against him, because we are undermining our own constitution by praising him or pulling him down. It is bad propriety.

THE MINISTER OF LAW AND SOCIAL WELFARE (SHRI GOVINDA MENON) : I came to know about this motion only at about 12 noon.

AN HON. MEMBER : What motion?

SHRI GOVINDA MENON : This motion by Mr. Limaye.

MR. DEPUTY-SPEAKER : He has only raised the point under rule 377.

SHRI GOVINDA MENON : Whatever it is, I came to know about this discussion only at about 12 noon when one of the officers of the Secretariat told me about it. I do not know anything about the facts of the matter, except what has been stated on the floor of the House. (*Interruptions*).

श्री मधु लिमये : मेरा प्वाइन्ट आफ आर्डर है। उपाध्यक्ष महोदय, मुझे खेद है कि जो प्रक्रिया है उसके अनुसार हम नहीं चलते। मैंने सवेरे अध्यक्ष महोदय को पत्र लिखा था जिसमें मैंने कहा था कि नियम 377 में यह मामला उसके महत्व को देखते हुए मैं उठाना चाहता हूँ। मैंने जो कुछ पांच मिनट में कहा उसके अंत में मैंने यह कहा कि क्या मंत्री महोदय इस पर रोशनी डालेंगे कि किन तथ्यों और सबूतों के आधार पर चीफ इलेक्शन कमिश्नर ने हस्तक्षेप किया। अब इनको अगर कोई जानकारी नहीं, जैसा कि इन्होंने कहा, तो वह जानकारी प्राप्त करके कल बयान दें। इस सारी बहस की आवश्यकता नहीं थी। मैंने तो पहले ही कहा था कि सरकार तथ्यों और सबूतों को हमारे सामने रखे और किन तथ्यों और सबूतों के आधार पर यह हुआ। वह सही है या गलत है इस में जाने की जरूरत नहीं। वह कोर्ट में फैसला होगा। अगर इनको जानकारी नहीं है तो इन को आप निदेश दीजिए कि कल 12 बजे सब जानकारी हासिल करके हमें इत्तिला दे दें।

15 10 hrs.

[MR. SPEAKER in the Chair.]

श्री जगन्नाथ राव जोशी (भोपाल) : अध्यक्ष महोदय, इलेक्शन कमिश्नर ने एक निर्णय लिया और अपने सरकारी अधिकारी को सारे तथ्यों को जानने के लिए भेजा है। सदन को यह अधिकार है जानने का कि उन्होंने उन को किस आधार पर भेजा है। इतना समय बीत जाने के बाद जब कि इलेक्शन कमिश्नर का आफिस यहीं दिल्ली में है मंत्री जी जो यह कहते

हैं कि उन्हें कुछ पता नहीं है और उन्होंने पहली बार सुना यह एक आश्चर्य का ही विषय है। आखिर किस आधार पर एलेक्शन कमिश्नर ने अपने डिप्टी को वहां जांच के लिए भेजा क्योंकि बगैर उनके पास तथ्य रहे तो वह उन्हें भेज नहीं सकते थे और चुनाव परिणाम की घोषणा को स्थगित नहीं कर सकते थे? इस सदन को यह सब जानने का अधिकार है कि वह जो उन्होंने किया वह क्यों किया और किस आधार पर किया? इसलिये श्री मधु लिमये ने जो मुद्दा उठाया है वह ठीक ही उठाया है। मंत्री महोदय ने अभी जो यह कहा कि कोई जानकारी इस बारे में नहीं है तो मुझे बड़ा आश्चर्य व खेद होता है।

MR. SPEAKER : You have nothing more to add ?

SHRI GOVINDA MENON : What I was attempting to say before you came was that it was only at about 12 O'clock that I knew about it.....(*Interruptions*). Then I was here, as you know, till 1.30 p. m. I could not call for a report as to the circumstances under which the Chief Election Commissioner acted in this matter, as I have stated before the House.

All that I want to say is that the Chief Election Commissioner is an independent authority under the Constitution and he has got jurisdiction to do things. We may agree with what he has done or we may not agree. Mr. Limaya raised the question of whether he has the power to do that. It is a question of law and personally I think that if circumstances existed under section 66 he has got power to stay a declaration. I do not know the facts of the matter. I have nothing more to add.

श्री मधु लिमये : मंत्री महोदय कल यह फंक्ट्स दे दें।

MR. SPEAKER : I have heard your point of order. We have discussed it. Government have no information; there is no information other than the newspaper report. Because it had been raised by Mr. Limaye and it had been brought to the

[Mr. Speaker]

notice of the Government, they know it. I do not think it can come tomorrow. Tomorrow again we have the Constitution (Amendment) Bill and we decided it in the Business Advisory Committee. We cannot postpone that and take up other work. Day after tomorrow perhaps the other Bill is coming. Let the time be left to me and I shall see whether it will be possible or not during this session. Now Mr. Chavan may introduce the Bill.

15.14 hrs.

PRESIDENT (DISCHARGE OF
FUNCTIONS) BILL*

THE MINISTER OF HOME AFFAIRS

(SHRI Y. B. CHAVAN) : I beg to move for leave to introduce a Bill to provide for the discharge of the functions of the President in certain contingencies.

SHRI NATH PAI (Rajapur) : I rise to oppose the introduction of this Bill for cogent and compelling reasons which, with your kind indulgence and that of the House, I shall now proceed to elaborate.

Before I take up the substantive grounds for opposing it, I should like indication of your thinking on one particular matter. You, Mr. Speaker, have been pleased to dismiss, within your rights, the requirements of direction 19 (a) and (b). A Minister who wants to move for leave is required to give notice for seven days before he does so; copies of the Bill should be circulated at least two days before he introduces it in the House. I think you were right in dispensing with the rigid requirements because death could not have been anticipated. *Mutatis Mutandis*, that indulgence may be shown to me. May I take it? I gave notice of the Bill last week on Thursday and you should be pleased, therefore, to show the same indulgence and consideration to me so that at the earliest possible opportunity I may be enabled to introduce my Bill. That is my submission. Because in my Bill, which I think is the only appropriate Bill on this occasion, I have taken the posi-

tion which according to me is the only one compatible with the letter and spirit of our Constitution.

Having said that, I want to raise some valid points regarding this Bill. I am afraid that in their haste to bring something the Government have not done the necessary house work. I would draw your attention to the sloppy drafting of the Bill and I do not mean any insult to any individual. Perhaps they were acting under pressure of time and therefore it had resulted in this kind of thing. There is a grave constitutional impropriety if we refer to the "Vice Presiding who is acting as the President" as the "President" of India. I will show ample evidence, constitutional and documentary, before I substantiate this point and ask you, Sir, to guide this House.

In the Statement of Objects and Reasons, which is followed by the "President's Recommendation under article 117 of the Constitution of India", in this document which is circulated to us, the Vice-President acting as President is referred to as "President" having been informed.....etc. Mr. Speaker may I in all humility submit to you very respectfully that we do not have a President now but only a Vice-President who is acting the President? So, to try to invest this constitutional impropriety with statutory respectability is a kind of thing which you, Sir, should not tolerate or allow the Government to run away with.

Here may I point out how the Constitution draws a clear distinction between somebody "acting as the President of India" and somebody "discharging the functions of the President of India"? I refer you, Sir, to a Gazette of India. This Gazette of India, for your ready reference and that of the Home Minister I may say, is dated "New Delhi, Tuesday, September 12, 1961" Here this notification is signed by Dr. Radhakrishnan, Vice-President "discharging the functions of the President". So, he is called "Vice-President discharging the functions of the President of India"; he is not called "President of India".

Lest somebody else may say that he will show one Gazette to disprove me, I will

*Published in Gazette of India Extra-ordinary, Part II, Section 2, dated 13.5.69.