

[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.

show another Gazette of India "New Delhi, Friday, September 15, 1961. Here again Dr. Radhakrishnan signs as "Vice-President discharging the functions of the President of India."

I will now refer to some Acts of the Government of India in this volume which I will place before you—Recommendation under articles 117 and 274 of the Constitution of India (Copy of letter No. NF. 102/63 dated 21st February, 1964 from Shri T. T. Krishnamachari, Minister of Finance to the Secretary, Lok Sabha) where it is stated :

"The Vice-President, discharging the functions of the President, having been informed of the subject-matter of the proposed Industrial Development Bank..."

Sir, in the past they were very careful in drawing a very vital distinction between the "Vice-President discharging the functions of the President of India" and "President discharging the functions". At no time was the Vice-President designated as the President of India. At a later stage, I am going to submit that there is a distinction between "discharging the functions of the President of India" and "acting as the President of India". But, before I dispose of this particular point of the constitutional impropriety of referring to the person incumbent to the office, who is really the Vice-President, as "President of India", I would like to cite one more example, and that is the Appropriation Bill, signed on 26th March 1965, by Dr. Zakir Hussain, "Vice-President discharging the functions of President of India".

In their comments, Shri M. N. Kaul and Shri Shakhder point out that the appropriate manner to refer to the Vice-President acting or discharging the functions of the President shall be "Vice-President discharging the functions of the President".

Sir, I have given you ample and clear evidence and authority in order to substantiate the point regarding the total impropriety of referring to the Vice-President, who is discharging the functions of the President, as the President, as is done here,

Shri Kamath in a very scholarly note published in most of the dailies which appear in the capital has drawn pertinent attention to this fact and as one of the founding fathers of the Constitution he is highly competent to do this.

Now I will refer to this very vital distinction. The Constitution of India thinks of only one President, and he is the person who has got to be elected under the provisions of articles 54 and 55. No other person under the Constitution of India can be even temporarily designated as the President of India. The Constitution is very categorical on this issue. This is article 65 (1). It says :

"In the event of the occurrence of any vacancy in the office of the President by reason of his death...the Vice-President shall act..."

This is very categorical. He shall act. He is not the President of India. The Vice-President of India continues to be the Vice-President of India and he needs to be designated, called and addressed having the title of the Vice-President acting as the President. Otherwise, a gross constitutional impropriety follows.

Article 63 is a mandatory one. It states :

"There shall be a Vice-President of India".

If he is the President, we do not have a Vice-President of India. I would like to read to you, Sir, and to the Home Minister article 64. It states :

"Provided that during any period when the Vice-President under article 65 he shall not perform the duties of the office of Chairman of the Council of States..."

This is the final proof that the Constitution contemplates that the Vice President discharging the functions of the President or acting which is a totally different conception—this is my point—shall not be designated as the President unless we want to indulge in a constitutional impropriety. I am afraid we are being led into a constitutional

[Shri Nath Pal]

impropriety in the light of this massive evidence of the Appropriation Bill and the Gazette of India which I have cited and also the relevant constitutional authority.

Now, regarding the substantive part of the Bill, I crave your indulgence and a little patience. This Bill, I would submit, is totally wrongly conceived and it is an unconstitutional thing. I want to draw your attention to article 65. Article 65 has in all, three provisions. If the Government shows the wisdom of accepting my constitution amendment, it will have four provisions. Article 65(1) reads as follows :—

“In the event of the occurrence of any vacancy...

—I want you and the House to mark the words—

“in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President...”.

I want to emphasize this. If there is a vacancy in the office of the President, then the Vice-President shall be entitled to act. But article 65(2) says something equally important :

“When the President is unable to discharge his functions owing to absence, illness or any other causes the Vice-President shall discharge his functions...”

There is a clear distinction which is overlooked in the Bill moved by the Home Minister, between acting and discharging the functions.

Before I proceed to elaborate the point further, I would like to refer you to certain authorities—this is by Wade and Philip—as to how the British Constitution also on which a part of our Constitution is based, draws the distinction. At p. 170, regarding the Accession Act and the Regency Act, this is what the author says :

“The Sovereign comes of age at eighteen ; untill he reaches that age, the royal functions are to be exercised by a Regent who will also act in the event of total incapacity of an adult Sovereign.”

First he discharges the functions and, if something else happens, then he acts. Acting and discharging are different.

In our Constitution, there are as many as nine articles at least on which I have been able to lay my hands during the time that has been at my disposal which draw a clear distinction between acting and discharging. In order to save the time of the House, I will read only one article. In articles 60, 64, 91(1), 95(1), 160, 184, 223 and 316 (1A) the Constitution draws a distinction between ‘acting’ and ‘discharging the functions of the President of India’. Here, to start with, I would refer again to article 64 :

“Provided that during any period when the Vice President acts as President or discharges the functions of the President under article 65...”

That means that article 65, as I was submitting, provides for two kinds of contingencies. One contingency arises by vacancy in the office of the President. If there is a vacancy, then the Vice President ‘acts’. But if there is an inability on the part of the President, then he discharges the functions ; that is article 63(2). I would now draw your attention to this fact that this Bill confuses these two things. In Clause 3 it is said :

“In the event of the occurrence of vacancies...”

They are very strange about the use of the words ‘casual vacancy’. A vacancy in the office of the President is not casual ; it is by death or resignation or removal. There is no such thing as casual vacancy. I want to point out to you that in Clause 3(1) of this Bill, there is a lot of confusion.

At some stage they show that they are aware of the distinction between ‘acting as the President’ and ‘discharging the functions’. But they try to achieve by this Bill what they can achieve only by a Constitutional amendment. They have taken the authority given to Parliament under article 70 of the Constitution. May I read here article 70 for your easy reference ? It is very simple ; it is a single-sentence article. It says :

"Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter."—for discharge of functions.

'Discharging of the functions' is contemplated under article 65 (2), but not the contingency arising by death, resignation or removal where there is a vacancy. They say, 'if there is a vacancy...' I want to submit that, if there is a vacancy in the office of the President, then the question comes of acting and not of discharging. In the event of a vacancy, the Vice-President will have to act because that is what the Constitution under article 65 stipulates. If there is no distinction between 'acting' and 'discharging' then the Constitution on so many occasions would not have drawn the distinction so clearly—not only in article 65 (1) and (2) but throughout the Constitution. But the pertinent distinction is in article 160 which deals with what happens in the case of a Governor. Under that article, the President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in that Chapter. 'The Chief Justice' has been provided under rules made by the President when the Governor is not there. He does not act but discharges the functions. There the word 'act' has been deliberately omitted because the Constitution, as I have said, in these articles clearly sees the difference. When does the question of acting come? I go to the other points. The question of acting comes only when there is a vacancy in the office. This Bill begins by talking of a vacancy. If there is a vacancy, then the Vice-President and those who are to follow him will have to act. If there is a temporary inability, then the Bill is alright. In clause 3 they have referred to a vacancy :

"In the event of the occurrence of vacancies in the offices of both the President and the Vice-President, by reason in each case of death, resignation or removal....."

When there is a vacancy, there is no question of discharging the functions. Then there is the question of acting, and if some-

body is to act, then article 65 demands that this can be achieved only by a Constitutional amendment. The enabling provision for discharging the functions can be achieved by a simple Act. This Bill is showing a great confusion. Here in the 'Statement of Objects and Reasons' it is said :

"The Constitution does not provide for cases where a vacancy occurs in the office of the Vice President or where the Vice President is unable to discharge his functions..."

That shows an awareness on their part that 'vacancy' and 'inability' are not the same thing. 'Vacancy' is not the same thing as 'inability'. If there is a vacancy, the man who takes the office acts in that office and 'acting' can be provided for only by a Constitutional amendment.

Having concluded this point, may I now draw your attention to this that the Bill, as provided, is violative of the elective principle of the Constitution? Throughout the Constitution emphasis has been made on the elective principle. I would like to point out to you the qualification for the President. Who shall be the President? No person shall be eligible for election as President unless he is qualified for election as a Member of the House of the People. This elective principle also leads to this. Art. 79 says that there shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the Lok Sabha. A close association of the President throughout envisaged in the Constitution is very important. In order to provide even for temporary contingencies the elective principle regarding the office of the President cannot be ignored as this Bill moved by the Home Minister is seeking to violate. This is a very important point. Now what they are going to do is to bring the Chief Justice in the line of succession. This Sir, amounts to tempering with the impartiality of the judiciary. I would quote Art. 71 of the Constitution. As per this Article, all doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court. I would like to point out the contingency. Suppose there is an election for the Presidentship of India. We heard a

[Shri Nath Pai]

case just now. There is a doubt raised about it. The matter goes to the Supreme Court which is the deciding authority. Being the election of President, the Chief Justice of India will be the presiding deity. Points of objections are raised. The Supreme Court Chief Justice will strike down the election and next he will go and sit as President of India as in the provision given to us by the Home Minister. I can see the disastrous consequences that are likely to follow from such kind of provision.

There is another thing. It is very conceivable that we adopt a piece of legislation, for example, the constitutional amendment which will come before us tomorrow. We know that certain Judges hold different views about the Bill. They have said it publicly. They have a right. I respect that. He is acting as President even temporarily. What he denounced as the Chief Justice he will be called upon to sign as the President of India because Parliament has passed it and he is now acting as the President. He will be compelled to eat his humble pie.

MR. SPEAKER : Don't go into the merits.

SHRI NATH PAI : It violates the impartiality of the judiciary, if we carry out this. It is very conceivable that the Chief Justice rejects an appeal. It will point out how the judiciary is brought out by the line of succession in the Bill brought by the Home Minister. I would point out that a death sentence is imposed and the accused appeals against the death sentence and the Supreme Court rejects it. Supposing, immediately there is a contingency that the Supreme Court Chief Justice as the Governor did in the Nanavati case, recommends reprieve, then what he denies to do as Chief Justice, he will be required to do because of political pressure as President. Finally, even because of the changing times we are facing, political decisions have got to be taken by the Government. The President of India will be associated because everything is done in his name. The office of the Chief Justice will be brought into ridicule if the Bill is accepted. I, therefore, want to submit that on four very important grounds this Bill is unconstitutional, is likely to violate the elective principle, is

likely to violate the guarantee of the impartiality of the judiciary which is likely to be brought into disrepute. On these grounds I submit to you to disallow this Bill.

MR. SPEAKER : Yesterday Mr. Nath Pai, Mr. Madhu Limaye and Mr. Banerjee wrote to me that they were going to oppose the Bill. Opposition normally at the introduction stage is only on some constitutional points. I would request the hon. Members not to go into the merits of the Bill. We shall discuss that later on when the Bill is before the House.

SHRI BAKAR ALI MIRZA (Secundrabad) : Time has been allotted to two Bills. My request for a discussion of the Prime Minister's statement on Telangana...

MR. SPEAKER : No, no. I thought you are talking on the introduction of the Bill.

SHRI BAKAR ALI MIRZA : Sir, I should have priority. A lacuna exists there...

SHRI S. K. TAPURIAH (Pali) : Sir, I have a point of order. It is this. Rule 72 says :

"If a motion for leave to introduce a Bill is opposed, the Speaker, after permitting, if he thinks fit, a brief explanatory statement from the member who moves and from the member who opposes the motion, may, without further debate, put the question :"

One Member has spoken. It does not provide for more than one Member. Only one Member should speak.

MR. SPEAKER : There is the Proviso. He himself may read the Proviso.

SHRI S. K. TAPURIAH : The Proviso says that the Speaker may permit a discussion. Are you permitting full discussion ?

MR. SPEAKER : Permit means one or two other people. If you are satisfied,

I am happy. That is why I was pointing out, don't bring in the merits of the case.

श्री मधु लिमये (मुंगेर) : अध्यक्ष महोदय, इस बिल को लेकर कुछ महत्वपूर्ण संवैधानिक सवाल उठे हैं। 6 मई को एक दूसरे संदर्भ में मैंने इसी प्रश्न को उठाया था। उस वक्त आप बिराजमान नहीं थे। हमारे मित्र, माननीय वासुदेवन् नायर साहब, सभापति थे। उस वक्त मैंने यह कहा था कि राष्ट्रपति के निधन के बाद क्या इस सरकार को राष्ट्रपति का प्लेजूर, उन की मर्जी प्राप्त है, क्या दोबारा शपथ लेने की जरूरत नहीं है। उस समय श्री मोरारजी देसाई ने ये तीन वाक्य जवाब में कहे थे :

The hon. Member has great ingenuity I grant; but it does not help in the interpretation of the Constitution. He forgets that the President is never dead; it is Dr. Zakir Husain who was dead. The President is a continuing authority. Unless the President dismisses his Ministry there is no question of having another oath-taking.

श्री मोरारजी देसाई यही कहना चाहते थे कि इस वक्त राष्ट्रपति है। अमरीका में भी यही सवाल उठा था। जैक कॅनेडी के राष्ट्रपति होने के जमाने में उनके भाई, बाबी कॅनेडी, एटार्नी जेनेरल थे। उन्होंने इस बारे में अपनी यह राय दी है कि अमरीका में यह जो प्रणाली चल रही है कि राष्ट्रपति के निधन के बाद जो उपराष्ट्रपति, राष्ट्रपति के नाते काम करता है, "एक्टिंग एज प्रेजिडेंट", उस को राष्ट्रपति कहा जाता है, वह गलत है।

MR. SPEAKER : They have got different constitution.

श्री मधु लिमये : नहीं माफ कीजिये, वही शब्द है, "एक्टिंग एज प्रेजिडेंट"। कोई फ़र्क नहीं है। उस में यह कहा गया है :

"In case of the removal of the President from office or of his death, re-

signation or inability to discharge the powers and duties of the said office the same shall devolve on the Vice-President...The Congress may by law provide in the case of removal, death, resignation or inability both of the President and Vice-President declaring what officer shall then act as President and such officer shall act accordingly until the disability be removed or a President shall be elected."

अध्यक्ष महोदय, वही शब्द है। इसलिए अमेरिका में मान लीजिए यह बहुत पहले, सौ साल पहले एक गलत परम्परा चल पड़ी थी, वह बदल नहीं रहे हैं, लेकिन पहली बार हमारे यहां यह हो रहा है, इसलिये ठीक प्रणाली को कायम करना मैं समझता हूँ कि निहायत आवश्यक है। इसलिये नाथ पं जी का जो कहना है कि इस वक्त कोई राष्ट्रपति नहीं है, राष्ट्रपति की जगह खाली है और उपराष्ट्रपति केवल राष्ट्रपति के नाते काम कर रहे हैं, ठीक है। दूसरा जो है डिस्चाजिंग दी फंक्शन, उस का हम अनुवाद कर सकते हैं कि राष्ट्रपति के कर्त्तव्यों का कार्यान्वयन करना, उसका तो इस वक्त सवाल नहीं आता है, उपराष्ट्रपति। राष्ट्रपति के नाते काम कर रहे हैं, राष्ट्रपति कोई नहीं है इस वक्त, यह जो उनका कहना है उसकी मैं तारीफ़ करता हूँ और मैं यह निवेदन करना चाहता हूँ कि अमेरिका में भी यही प्रथा होनी चाहिए थी। लेकिन शुरू से किसी ने यह सवाल उठाया नहीं, इसीलए परम्परा पड़ गई। वह शपथ लेने लग गए प्रेसीडेंट का। यहां तक बाबी कॅनेडी का कहना था प्रेसीडेंट जानसन जब प्रेसीडेंट बने तो असल में वह प्रेसीडेंट नहीं थे, वाइस-प्रेसीडेंट थे और वह प्रेसीडेंट के नाते काम कर रहे थे। इसलिये प्रेसीडेंट की शपथ उनको नहीं दिलानी चाहिये थी। यह बाबी कॅनेडी का कहना था जो एटार्नी जनरल थे।

तो यहां इसके ऊपर फैसले करने की क्या बात है। यह पहली बार हमारे देश में हो रहा

[श्री मधु लिमये]

है तो क्या इसका फैसला करना जरूरी नहीं है ? एक बात तो यह हो गई ।

दूसरा मेरा कहना यह है कि राष्ट्रपति का जो पद है नियुक्ति का नहीं है । राष्ट्रपति का चुनाव होता है जब किसी कारण गवर्नर की जगह खाली होती है या अपने काम को पूरा नहीं कर पाता है तो उसके लिए साधारण तौर पर मैंने देखा है कि हाई कोर्ट के मुख्य न्यायाधीश को कहते हैं कि वह उस के कार्य को पूरा करे । लेकिन गवर्नर भी चुना हुआ अधिकारी नहीं है, वह नियुक्त किया हुआ अधिकारी है, अप्पाइन्टिव पोस्ट है । इसी तरह मुख्य न्यायाधीश की पोस्ट भी अप्पाइन्टिव है । लेकिन राष्ट्रपति का पद अप्पाइन्टिव नहीं है । वह चुना जाता है । आप फ्रांस में देखिए, अभी देगाल की जगह खाली हो गई तो सेंनेट का अध्यक्ष राष्ट्रपति के नाते काम करने लगा । या अमेरिका में भी उप-राष्ट्रपति के बाद जो हाउस आफ रेप्रेजेंटेटिव है उसका चुना हुआ स्पीकर राष्ट्रपति के नाते काम करता है... (व्यवधान)...

मैं सिद्धान्त की बात कर रहा हूँ, और मेरिट्स में नहीं जा रहा हूँ । मैं केवल इतनी ही बात कहना चाहता हूँ कि चूंकि गवर्नर का पद नियुक्त किया हुआ पद है, किसी भी नियुक्त व्यक्ति को अगर आप गवर्नर के नाते काम करने के लिए कहते हैं तो बात समझ में आती है । लेकिन चूंकि राष्ट्रपति का पद हमारे संविधान में चुना हुआ पद है, इसलिए किसी ऐसे व्यक्ति को हमें उस का उत्तराधिकारी बनाना चाहिए जैसे स्पीकर साहब हैं या डिप्टी चेयरमैन हैं राज्यसभा के या डिप्टी स्पीकर साहब हैं । यह तीन उत्तराधिकारियों का सिलसिला कानून में कायम किया जाये । तो औचित्य इसी में है कि आप राष्ट्रपति के बाद सबसे पहले स्पीकर को रखिये, फिर डिप्टी चेयरमैन को रखिए और फिर डिप्टी स्पीकर को रखिए । यही अच्छा है ।... (व्यवधान) ... इनके बिल को ठुकरा दिया

जाय । नाथ पै वाले बिल को लिया जाय तो अच्छा है ।

इसलिये अध्यक्ष महोदय, सिद्धान्ततः मैं इस का विरोध करना चाहता हूँ और यह कहना चाहता हूँ कि राष्ट्रपति का पद चूंकि चुना हुआ पद है इसलिये उनका काम करने के लिए जो सक्सेशन आप बनाएंगे, उत्तराधिकारी बनाएंगे उस में स्पीकर, राज्य सभा के डिप्टी-चेयरमैन और डिप्टी-स्पीकर हों ।

SHRI S. M. BANERJEE (Kanpur) : At the very outset, Sir, I must protest against the manner in which this Bill has been brought forward. When we were discussing in the Business Advisory Committee—you were presiding over it—you had the draft Bill submitted by Shri Nath Pai. If a Member of this House in his wisdom and because of his imagination—correct imagination—has anticipated a certain situation or how an eventuality can be met and on that basis if he has submitted a foolproof Bill, the Bill could have been discussed by the Cabinet and there was no harm if the non-official Bill presented by Shri Nath Pai on 7th May, 1969 was adopted by the Government as an official Bill. Nothing could have been lost. There are instances in this House where non-official Bills brought forward by private Members have been adopted by Government ; for instance, there is a Bill by Shri Madhu Limaye which we are considering and which will come up in a day or two ; then there is another by Shri Madhu Limaye ; there is also a Bill by Shri D. C. Sharma. These Bills have been adopted by Government as official Bills and then discussed, and even Select Committees have been appointed and so on.

So, my first point is that Shri Nath Pai should have been given an opportunity to move his Bill and Government could have accepted that Bill because they were found napping. Shri Nath Pai has indicated in his Bill how the whole thing can be managed, and I feel that it is a better Bill than the one which has been brought forward by Government. We never expect this eventuality to come, and we do not want such a situation to arise in our country. I am one of those who do not want the country to

remain topless; someone should remain there at the top. Today what is the position? According to Shri Nath Pai, we have no President. *Rashtrapati Bhavan* is vacant or with a to-let board on it; even that red light which denotes that the *Rashtrapati* is there in Delhi is not there on it. Shri Nath Pai wants that the Speaker...

MR. SPEAKER : Now, he is going into the merits of the Bill.

SHRI S. M. BANERJEE : Shri Nath Pai wants that the elective principle should be upheld. I am not referring to you, Sir, in this connection; you may be there as Speaker today and you may be something else tomorrow, but I am referring to the person holding the office of Speaker. Shri Nath Pai has provided that the order of Succession should be the Speaker of the Lok Sabha, the Deputy-Speaker of the Lok Sabha, and the Deputy Chairman of the Rajya Sabha. But in this Bill the Chief Justice of the Supreme Court or the highest judiciary in the country has been brought in. Many points have been argued about, and I am sure people may be arguing in different ways.

I submit that Government must unconditionally apologise to this House for not having consulted the Opposition, for not having realised the gravity of the situation and for not owing Shri Nath Pai's Bill. That is my first objection.

My second objection is this. Before coming to any decision, they should have met the Opposition Members and discussed the matter. But they did not think it proper even to discuss this matter. They have treated the Opposition in a very shabby manner. These are my basic objections.

THE MINISTER OF LAW AND SOCIAL WELFARE (SHRI GOVINDA MENON) : This is a stage when you have allowed constitutional questions to be raised under which we are functioning. I could not find any questions affecting the Constitution raised in the speeches of any of my hon. friends including that of my hon. friend Shri Nath Pai who had been referred to the Constitution very often. The only thing which he referred to was that in the recommendation paragraph which is not part of

the Bill the word 'President' has been used, and according to him the words to be used should have been 'Vice-President acting as the President'.

MR. SPEAKER : Is that not substantive? The other things can be considered at a later stage.

SHRI GOVINDA MENON : It is not very substantive. My submission would be that when somebody is acting as President there is nothing wrong in describing him as President. After all, it is not part of the Bill.

SHRI HEM BARUA : (Mangaldai) : It is legally wrong also; it is also wrong from the language point of view. (*Interruptions*).

MR. SPEAKER : I do not want anybody else to say anything now. The Law Minister has the floor and I am trying to understand what he is saying.

SHRI GOVINDA MENON : Under article 65, there are three situations envisaged; there can be the President, the Vice-President acting as the President and then the person discharging the functions of the President. These three distinctions are there. But still it is the functions of the President that are being discharged. Here, it is not part of the Bill but it is only a recommendation that is referred to. What we are going to pass is the Bill. Even if it is considered there is a small slip in the wording of the recommendation because he is acting as President, I submit that he is President, and I see no reason why at the time of leave to introduce the Bill there should be any opposition.

SHRI NATH PAI : On a point of order.....

SHRI TENNETI VISWANATHAM (Viskhapatnam) : I had also sent a slip to you.

MR. SPEAKER : I have received many slips or chits.

SHRI NATH PAI : I am astounded.....

SHRI TENNETI VISWANATHAM : Allow me to say just one point.

MR. SPEAKER : A number of slips have come to me today. But I could take into consideration only the slips which were given to me in advance.

SHRI NATH PAI : The Law Minister has dealt with one point. It is up to you to allow it or not.

MR. SPEAKER : What is his point of order in reply to what he said? Both of you have done your job; it is my job now to give the ruling.

SHRI NATH PAI : No, Sir. I will never be disrespectful to you. Allow me only one minute.

I do not want to come in the way of your ruling. But I would draw your attention to art.117(3) and the casual manner in which the House is treated. He says reference to the President is not part of the Bill. This is an extraordinary statement from anybody, but extraordinarily extraordinary from the Law Minister.

Article 117(3) says :

"A Bill which, if enacted and brought into operation would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill"

In the recommendation the word 'President' is mentioned. This is not something superficial. The constitutional requirement is 'President has recommended.' It is a mandatory provision. He must be properly designated.

SHRI Y. B. CHAVAN : I would certainly make one point. The entire case of the hon. member is based on the presumption that there is no President today. It is true there is no elected President today, but the offices of President is functioning.

SHRI NATH PAI : No...

SHRI Y. B. CHAVAN : He may not agree. If we presume that there is no President, we reach a stage of absolute absurdity in this country.

SHRI NATH PAI : No, we did not say that.

SHRI Y. B. CHAVAN : Article 79 says.

"There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People."

Once you accept there is no President, there is no Parliament either and we are functioning without any authority here! We reach a position of complete absurdity.

I quite agree the elected President is not there. But the office of President is functioning, and when we say recommendation of the President is there, it is the recommendation of the office of President.

MR. SPEAKER : I have heard both sides. After all, it is not possible for any country under this type of Government to be without a President. It is the Vice-President who is acting as President. It is agreed that there is a President acting. There is no 'President' as such, but there is a President acting. That word could have been added. That is all, nothing more. It is not that anything substantial is there. The correct position is 'the Vice-President acting as 'President.' What is the difficulty now? Could it not be done tomorrow morning? That will solve the problem.

SHRI NATH PAI : We agree that the office is there.

MR. SPEAKER : This House itself has done it on previous occasions; the terminology 'the Vice-President discharging the functions of the President' has been used. Government have used it.

Therefore, I suggest that the Bill may be held over till tomorrow when it will

be brought in the correct form. Meanwhile, we will take up the next item on the agenda.

SHRI MADHU LIMAYE : He must withdraw the Bill.

15.53 hrs.

WEST BENGAL LEGISLATIVE COUNCIL (ABOLITION) BILL*

THE MINISTER OF LAW AND SOCIAL WELFARE (SHRI GOVINDA MENON) : I beg to move for leave to introduce a Bill to provide for the abolition of the Legislative Council of the State of West Bengal and for matters supplemental, incidental and consequential thereto.

MR. SPEAKER : Motion moved :

"That leave be granted to introduce a Bill to provide for the abolition of the Legislative Council of the State of West Bengal and for matters supplemental, incidental and consequential thereto."

SHRI M. R. MASANI (Rajkot) : On a point of order, I have to point out that the introduction of the Bill is not consistent with the rules.

SHRI SHRINIBAS MISRA (Cuttack) : Is he a senior member ?

MR. SPEAKER : He wrote to me earlier about it and I have called him. The hon. Member is getting up just now.

SHRI SRINIBAS MISRA : He wants to oppose it, but I want...

MR. SPEAKER : I have allowed him. It is my privilege. He cannot question it.

SHRI M. R. MASANI : The procedure lays down the sequence of events. The second proviso to rule 74 clearly provides that unless a Bill has been made

available to members at least two days before it is sought to be introduced, introduction cannot be allowed, if any member objects. It says that introduction cannot be allowed if any Member opposes it. The words are :

"...any member may object to any such motion being made unless copies of the Bill have been so made available for two days before the day on which the motion is made, and such objection shall prevail, unless the Speaker allows the motion to be made."

The position is very clear that unless you, Mr. Speaker, in your discretion over rule my objection, the objection of a single Member is mandatory and shall prevail. I should appeal to you to allow the rules to prevail because the Memorandum submitted by the Law Ministry makes out no case whatsoever for urgency in this matter. What it says is that there was only one week left before the adjournment of both the Houses and arrangements had of necessity to be made for the introduction of the Bill on an urgent basis. "May I ask the Law Minister," Why? What is urgent about abolishing the Second Chamber in West Bengal? What will happen if it is not abolished now, but the abolishing Bill is passed by Parliament in the Monsoon session?" This Memorandum gives no reply whatsoever. All it says is : "Because it is urgent, please do not raise this point". I am sorry I cannot co-operate with the Law Minister.

This is a highly controversial Bill and it seeks to do away with the Second Chamber in a State. The Constitution says very clearly that this Parliament may do so or may not do so. We are not bound to follow the wishes of any State Assembly just because it passes a resolution. Finally we in our discretion have to decide whether we should do so or not. Quite frankly, some of us here would like a little more time to consider this Bill and to determine our attitude to it. After all this may form a precedent for other States and it may ultimately form a precedent for an amend-