

वे एक पेशे के लोग थे। उनके ऊपर जो चोट की गई इस सदन में, उन्हें वह बुरी लगी और इसलिये उन्होंने जो इस विधेयक का विरोध किया है वह कोई तर्कसंगत विरोध नहीं था। उन्होंने दूसरी बातों में बहके बहके किया। पर ऐसा अवसर आया, अध्यक्ष महोदय जो उस समय बैठे थे उन्होंने प्रश्न किया और सब बातों को उन्होंने स्वीकार भी किया, और जो विरोध में बोलने वाले थे उन्होंने कहा कि "आई कंसोड"। जहां तक श्री डी० सी० शर्मा का सवाल है वह तो कहते हैं :

"There should be all avenues open to him so that he could get himself acquitted."

उनका निशान यह है कि वह ऐक्विट हो सके। चाहे उसका जुर्म कितना ही बड़ा हो लेकिन सब साधन दिये जायें जिससे वह ऐक्विट हो सके। मैं चाहता हूँ कि ऐसे सब साधन जुटाये जायें जिससे कि अपराधी को दण्ड मिल सके और वे चाहते हैं कि सब साधन जुटाये जायें कि अपराधी छूट जायें। तो अपराध की वृत्ति बढ़ाने की बात जो मन में है वह कहां तक तर्कसंगत है और आप इस विरोध को कहां तक सहो मानते हैं? मैं नहीं समझता कि इसमें कोई विशेष विरोध था। जो विरोध था वह वास्तविकता पर आधारित नहीं था, वह केवल कल्पना पर आधारित था। मैं समझता हूँ कि श्री शर्मा को इस देश के विधि विधान का, जूरिज्प्रैडेन्स का ज्ञान नहीं है, वरना वह जरूर समझते कि जिस देश में न्याय की व्यवस्था स्थापित करनी है वहां की न्याय विधि ऐसी बननी चाहिये कि वह अपराधी को दण्ड दिलाने में समर्थ हो न कि झूठ बोल कर बच निकलने में।

इन शब्दों के साथ में विधेयक को पुनः आपके सामने रखता हूँ। अब तो इसे पास किया जाय, लेकिन यदि मन्त्री महोदय इस को विधि आयोग के पास भेजना चाहें तो मैं इसको वापस लेने के लिये तैयार हूँ।

**Mr. Deputy-Speaker:** Does the hon. Member have the leave of the House to withdraw his Bill?

**Some Hon. Members:** Yes... ..

The Bill was, by leave, withdrawn.

15:58 hrs.

PUBLIC EMPLOYMENT (REQUIREMENT AS TO RESIDENCE) AMENDMENT BILL

(Amendment of section 5) by Shri J. B. S. Bist

**The Minister of State in the Ministry of Home Affairs (Shri Datar):** So far as Shri J. B. S. Bist's Bill is concerned, it proceeds from one misunderstanding. The original Act was passed in 1957. He has been of the view that the five years' period mentioned therein is likely to expire this year. That is not correct. In the Act itself, it has been made clear that the period of five years is from the date of the notification. The notification was issued in 1959. So, it will continue in force till 1964 and there is sufficient time for us to consider this special savings so far as Himachal Pradesh and other places are concerned. What has been done by this Act is that the requirement about domicile ought to be maintained in certain cases. There is sufficient time. This aspect may be considered before the hon. Mover moves his Bill for consideration.

**Shri J. B. S. Bist (Almora):** It is true I have said in my Bill that this Act is going to expire in 1962. When I checked up the rules, I found that the notification was issued in 1959.

**Mr. Deputy-Speaker:** Does he want to move the Bill?

**Shri J. B. S. Bist:** Yes, I will not take much time.

[Shri J. B. S. Bist]

I beg to move:

"That the Bill to amend the Public Employment (Requirement as to Residence) Act, 1957, be taken into consideration."

The Public Employment (Requirement as to Residence) Act was passed in the year 1957. This had the effect of providing equality of opportunity in employment in the country to all the citizens without any discrimination whatsoever including requirement of residence. We know that there were many States in which a rule existed that unless a person resided in that particular State for a certain number of years, he would not be eligible for service in the State. This Act, when it was passed, abolished all those rules, and brought into existence one rule which was applicable to all States. Previously, the period of residence qualification ran from three to fifteen years. This Act made it uniform in all States.

16 hrs.

At the same time, this Act also made certain exceptions. As a result of that, in the Union Territories of Himachal Pradesh, Tripura and Manipur, as well as Telengana area of Andhra Pradesh appointments to non-gazetted posts and tehsildars are made from amongst the local men as a sort of legal protection. But the Act, as the hon. Minister pointed out, gives protection only for a period of five years. The purpose of my amending Bill is to extend the period of operation of the Act from five years to ten years.

Here I would like to submit that these exceptions in the Act were not made in a hurry; they were the result of mature consideration. The States were consulted; the Report of the States Reorganisation Commission dealing with this matter was considered and a memorandum was issued on the subject by the Ministry of

Home Affairs was laid on the Table of House on 4th September 1956. I submit that the period of protection of only five years for appointments to subordinate services, including tehsildars, is very insufficient. Here I would like to remind the hon. Minister of his speech in the Rajya Sabha on 21st November 1957 during the consideration of the Bill when he said:

"Now, so far as the question of 5 years is concerned, oftentimes objections have been raised on two grounds. On one side it is contended that the period of five years is not sufficient, is highly inadequate."

Here I am not raising any new point. It was felt even then that five years would not be sufficient at all. We then thought that possibly the five year period was mentioned so that Government could watch the progress, as years passed on, and then frame the necessary rules. Anyhow, this Act was passed and put into force only in 1959. At that time (1957), the hon. Minister also stated:

"But there are other States like Himachal Pradesh, Manipur or Tripura which are comparatively backward. If something like this preference, for example, is kept up before them, then perhaps it would serve as an inducement to them to improve their educational or academic qualifications".

It is really difficult for me to consider or imagine how much education, according to his own statement, they will get within a period of five years. What improvement could these people make, as contemplated, in this inadequate period of five years? And if at all they make some progress, could they reap the benefit of such improvement in such a short time? Therefore, the argument of the hon. Minister that it is too early now to assess the progress so far made and pass a

*Amendment Bill*

measure to extend the life of the Act is not very convincing.

I would say here that it is the duty of the Government to consider the circumstances which necessitated the passing of this Act at that time. At that time, it was felt that the people of those areas will not get the full benefit of the legislation unless there is some protection for them for a period of time. Even at that time five years seemed to be a very short time for people to come up to the level of other advanced areas. How many people have taken advantage of this Act? How many people were recruited to those posts in those areas after the coming into force of this Act. Though I tried my best, I was not able to get any figures, either about the number of such appointments, or the percentage. So, I would like him to tell me how many appointments were made to the subordinate services and to the post of tehsildar during these five years. The question that has to be considered by the hon. Minister is: have these people, who have been enjoying this protection come to a stage where they can stand on their own legs without the help of any prop. I think this was the only reason which prompted this House to incorporate section 3 in the main Act.

It is not a very lengthy Bill, nor are there any debatable points involved in it. I hope I have been able to make myself clear and I am sure the hon. Minister, who has been sympathetic enough in this matter before, will give the matter his full consideration and accept the amendment suggested by me.

I would like to know whether he has figures relating to this in his possession. I have not been able to trace them, though I tried my best. I want to know the percentage of local population appointed to the various posts, especially to the subordinate posts and as tehsildars. It may not be out of place to mention

here that in the case of Scheduled and backward classes we extended the time. So, I would again submit in the end that he should consider these points and accept the amendment to the Act which I have moved.

**Mr. Deputy-Speaker:** Motion moved:

"That the Bill to amend the Public Employment (Requirement as to Residence) Act, 1957 be taken into consideration."

**Shri D. C. Sharma (Gurdaspur):** Mr. Deputy-Speaker, I have a great deal of admiration and respect for Shri B. N. Datar, our Minister of State in the Ministry of Home Affairs, but today he has given a very good exhibition of the bureaucratic mentality against which we have been fighting all these years. One of the characteristics of that mentality is that they do not anticipate events and they do not try to forestall events but they try to wait upon them. What I mean to say is that they let sleeping dogs lie. Their motto is "sufficient unto the day is the evil thereof". They say: "if this Act is good enough in 1964, why bother about it today; let us wait till 1964 and then we shall see what happens. Perhaps, there may be something different in India, something different in Manipur and Tripura or in some other place". This is not the way in which a Bill like this should be treated.

I believe that Shri J. B. S. Bist should have been congratulated by the Home Minister. He should have got his blessing for bringing forward a Bill which our Home Minister, for whom I have a lot of affection, would have brought in in 1963 or 1964. So, he should have welcomed this opportunity and he should have blessed this Bill. But, no, he will not do this; he thinks that 1964 is far off.

[Shri D. C. Sharma]

1964 may be far off but human nature has one quality of foresight and we must exercise foresight not only in our own personal affairs but also in national affairs. Here is an instance of foresight to which exception has been taken by the hon. Minister. I am very sorry for that. I feel very unhappy. I had no mind to speak on this Bill but when I listened to the remarks made by the hon. Minister I felt distressed that he should have adopted this kind of an ostrich-in-the-sand attitude, that is, since there is no problem now, therefore the problem will not come up; since there is no problem today it will not be there tomorrow. No; that is not the way in which we should run our national affairs. Therefore, I think, Shri J. B. S. Bist, the hon. Member, has done the right thing in catching time by the forelock and in bringing forward this Bill.

Another thing to which I want to refer is that this Bill was passed in 1957 and the rules under this Bill were laid on the Table of the House and became effective in 1959. This is the other instance of the bureaucratic mentality. The time-lag between the passing of the Bill and the promulgation of the rules is two years. Was the Home Ministry sleeping for those two years? I have heard of Kumbhkaran who used to sleep for six months every year. But I think I never heard of any mythical god or goddess or of any mythical giant who could sleep for two years. But here is the Home Ministry going to sleep so far as the rule-making power is concerned. The Bill is passed in 1957 and the rules are framed in 1959; therefore the rules will be effective till 1964. I think there should be somebody to ask the Home Ministry why it took two years to frame the rules.

The third point that I want to make is that we have been talking on the floor of this House several times about backward areas and also

about backward classes. What are those backward areas? Everyone of us knows that.....

**Shri C. K. Bhattacharyya** (Rai-ganj): Nobody knows.

**Shri D. C. Sharma:**...through our Planning Commission does not know it. This great Planning Commission of India which has the keeping of the soul, the body and the spirit of India with it does not know yet what backward areas are. That is what the hon. Minister of Planning said the other day. Of course, they have got criteria for that. It is good that they have evolved some criteria though they have not evolved the criteria for determining backward classes. Our Government has not done that all these years, but I am glad that they have been able to give us some criteria for determining what backward areas are, namely, that there should be low income there, there should be density of population there, there should be paucity of communications there, there should be paucity of employment there—all these things were given the other day by the hon. Minister of Planning. But there are some backward areas which are patent to anyone who is an Indian. Of course, I would say that there are backward areas in my constituency; for instance, Shahpur-Kandi area and Bungal area. There are so many other areas, of course, but we are not talking in terms of those areas which you will find in every constituency of Parliament, even in the constituency of Delhi which is such a big thing. There are *jhuggies* and *jhonpri* dwellers here. There are slum areas here. All those things are here. They are all backward areas, but there are certain backward territories or backward States. There were at one time the 'C' Class States. Now, Himachal Pradesh is there. That beautiful territory, Himachal Pradesh, is a backward area. What is the per capita income of those people of Himachal, Tripura and Manipur who are struggling for

economic betterment and are making mighty efforts for that, Telangana is another area where the amenities of life have not been plentiful. To this I can add Nagaland. Why do you not extend this privilege to Nagaland? Why do you not extend this privilege to NEFA, the North-East Frontier and Tuensang area? Why do you not do all that because they are also backward areas? Therefore I would suggest very humbly to the hon. Mover and to the hon. Minister of Home Affairs to add these areas. The hon. Minister has generally an open mind but today he gave an exhibition of a closed mind which almost shocked me though I should be shockproof at this time of the year. I would request the hon. Minister to add to these areas specified by my hon. friend, the hon. Member, Shri J. B. S. Bist, Nagaland and the NEFA area—there may be some other areas also so that this Act becomes more purposeful and more effective. But I wonder if he will do that.

It is a very wholesome provision. Of course, we think that all India is one and there should be no limitation about employment of any Indian in any part of India. We should eschew provincialism and regionalism. Of course, there are certain States which have not done that. We should also eschew communalism. We should get rid of all these things, but this is being done in order to upgrade these areas to that level to which most of the other areas have attained. Therefore I believe that this kind of legal protection is needed for these most backward areas of my country.

What is the legal protection? Give them non-gazetted posts. What are these non-gazetted posts? Make them *patwaris*; make them primary school teachers; make them village level workers; make them lower division clerks; make them upper division clerks; give them Class IV employment. These are the non-gazetted posts. What is the harm in

giving them these posts? After all, a man from the Punjab cannot work very effectively as a village level worker in Manipur and a man from the West of India cannot work as a *patwari* very effectively in Telungana. You need local men for these places because those local men understand the language and the way of living of those persons. Therefore what we are asking for is something very innocuous and very harmless.

Now, an objection may be taken to the word 'Tehsildar'. Why should a Tehsildar come in? Tehsildars generally are gazetted officers and why should you have these Tehsildars lumped together with these non-gazetted officers? I do not know. Of course, personally speaking I would not like to limit the appointment of Tehsildars to a particular area, but taking into account the economic and social conditions of these areas, I would say that they should have Tehsildars from their own areas because these Tehsildars are revenue officials. They are mostly revenue officials. Revenue officials have to deal with the tillers of the soil, with the farmers, with men who plough the land and who do all this kind of things. Therefore, they must understand their language, they must understand their customs and habits. In view of the fact that these areas have not been touched by what we call the progressive spirit of the times, in view of the fact that the wind of change has blown there, but blown there very sluggishly, very gently, I would say that the whole House should bless the Bill of Mr. Bist. I know the hon. Minister in the Home Ministry will ask him to withdraw it and being a loyal member of the Congress Party he will withdraw it. If he had asked me also I would have done the same thing. He will withdraw it. But I think that justice requires, fair play requires, that the hon. Minister in the Home Ministry should stand up and say to Rs. Bist: you are doing in 1962 what I wanted to do in 1964;

[Shri D. C. Sharma]

you have taken time by the forelock. I congratulate you upon it and I accept your Bill. But I wonder if Mr. Datar will rise to that occasion. He won't, I know, because he is a very cautious reformer. He is very conservative. Therefore, I bless this Bill and I wish that this Bill should go through and I am sure that Mr. Datar after the appeal that I have made to him will relent and will temper his justice with mercy so that this Bill does not die a natural death.

**Shri Datar:** Mr. Deputy-Speaker Sir, I am not accustomed to making personal references though unfortunately my hon. friend brings them in time and mostly out of time. I do not want his affection to me; I want his devoted study to the subject under consideration in all its aspects. That is the reason why he has to be pointed certain circumstances when the original Act was passed.

We have it in article 16 of our Constitution laid down that there shall be equality of opportunity for all citizens in matters relating to employment and appointment to any office in the whole of India. That was the reason why a very important principle based on what we can call national integration was laid down in the Constitution.

Then, Sir, certain circumstances were taken into account, namely, that at the time when the Constitution was inaugurated, there were certain Acts and rules in various parts of India where we had what we can call restrictions relating to domicile. Residential qualifications had made necessary in a number of States. Therefore, the Constitution while dealing with this question made it very clear in article 16(3): "Nothing in this article shall prevent Parliament from making any law prescribing," etc. In article 35 it was laid down: that it would be open to the Parliament either to accept domiciliary restrictions or entirely to do

away with them and in article 35, clause (a) it was laid down that Parliament shall have and the legislature of a State shall not have power to make any laws with regard to article 16(3). That was the reason why after the Constitution came into force, while we accepted that there ought to be equality of opportunity for all the citizens of India in all the States of India, still we allowed some time to go and after consulting all the State Governments we brought forward a Bill in Parliament and that became law, namely the Public Employment (Requirement as to Residence) Act 1957, Act 44 of 1957. It received the President's assent on 7th December 1957.

According to this Act it was laid down that all the laws in all the States in so far as they deal with domiciliary restrictions have to go, were abrogated by this Act, in the interests of national integration which my hon. friend on other occasions would fully support. But unfortunately, I should like to say with due deference to my hon. friend, that the professor is sometimes in a world of unreality; sometimes he lives in a vague world not understanding the purpose of the Act that was passed by the hon. Parliament in 1957 for the purpose of allowing opportunities to all the citizens of India in all the States of India. That was the reason why Parliament, in its wisdom,—let the hon. Professor know effected real national integration, so far as opportunities of services were concerned. Therefore, so far as this Act is concerned, my hon. friend would agree that it was a progressive Act and Parliament passed it in 1957.

The next question that arises is this. There were certain small pockets in many parts. One was the Telengana portion in Andhra State; the other was Himachal Pradesh; then there was Tripura and Manipur.

were parts of former States and the people there believed that in their interests, so far as subordinate services were concerned, these domiciliary qualifications or restrictions ought to be maintained for a certain time. That should be understood very clearly. Therefore, by way of a concession to the aspirations of these people so far as such sub-ordinate services were concerned, Parliament made an exception to the general rule and allowed a period of five years during which these restrictions might continue in respect of subordinate services only in three or four portions of India, not all the backward tracts as my hon. friend suggested.

**Shri Bakar Ali Mirza (Warrangal):** Why should there be these restrictions for backward classes if there was equal opportunity for everybody who is a citizen of India?

**Shri Datar:** All this was perfectly relevant had these been raised when the original Bill was before Parliament. The original Bill laid down only three or four portions of India where such restrictions ought to continue for a short period. Here we are dealing with an amending Bill in so far as those three areas are concerned. It is not open now to go on amplifying or adding to these areas in an amending Bill which is of a limited nature. Therefore, I would not like to answer my hon. friends other point that all other backward tracts or areas as he calls them should also be included. It cannot be done and if there is such an amendment it would be out of order. Here all that we are dealing with is the question as to whether the period of five years fixed for the three or four specified areas should be increased to 10. That is all the question that we have.

Now my hon. friend made a complaint about the rules having been promulgated in 1959. The hon. Member will understand that we have to consult the State Governments. Here we have to consult three or four

State Governments and after the rules were made they were placed on the Table of the House and they came into force. They were promulgated in March 1959. Therefore, the period of five years has to be counted from 1959, and not from 1957 when the Act was passed. All that I pointed out was certainly not bureaucratic. But my hon. friend is given to using expressions without fully comprehending them. What I stated was that the period of five years has to go. This is an exception that we have made, and we must find out the effect of this exception. Therefore all that can be done is only on the eve of the impending expiry of this Act in 1964. What I wanted to tell my hon. friend was this that this is an exception to the general rule of national integration, of equality of opportunity. But inasmuch as the honourable Parliament has allowed it in its wisdom, we have to see to what extent it has been of use to the people concerned. And the proper time will be some time in 1963, to find out what the result has been during the last four years. Now it is premature, when only a few years have passed, to find out to the effect of this. There is still sufficient time.

I have not stated anything so far as the continuation or otherwise of this particular Act is concerned. In all probability the hon. the Mover must have brought forward this Bill on the supposition that it has expired or that it will expire immediately. It does not expire. There is sufficient time, and that time will be availed of for finding out what the exact advantage of this restriction or exception has been so far as the people of these areas are concerned. Government will consider the whole subject, and if Government finds that any further extension of time is necessary, after taking all the circumstances into account, Government will certainly consider this matter in all its aspects from the viewpoint of the benefits to the people concerned.

[Shri Datar]

All that I pointed out, with a view to shorten the discussion, was that we should not proceed on a misunderstanding and the discussion should not be premature and when any action has to be taken it should be on the basis of a full assessment of the situation. Now, at present it is not possible, when we are in the midst of that period, to understand to what extent it has been beneficial to them, or whether the time has come when the whole of India should be treated together as one for the purpose of equality of opportunities, to which, rightly, a reference has been made in article 16 of the Constitution.

I again say that there is no question of a closed mind at all. It is a question of studying the point, assessing the situation at the proper time and not prematurely. I would therefore request the hon. Member not to press it today. Government will certainly consider the whole question as sympathetically as possible.

**Shri J. B. S. Bist:** I only want to bring it to the notice of the hon. Minister that he might have figures as to the action taken in those areas—that is, the percentage recruited each year in the number of services and so on. Though it is a subordinate service, Tehsildars somewhere are gazetted and in some places they are not gazetted. If we had a list it would help Government and also give us information as to how things are proceeding.

I thank the hon. Minister for saying that Government will look into the matter, and I am sure that when the time comes the hon. Minister will find that the circumstances are such that this may have to be extended. I was in fact thinking of getting it extending by ten years more. But I have no desire to tie the hands of Government. Because of the statement that if needed, it would be extended, I beg leave of the House to withdraw my Bill.

*The Bill was, by leave, withdrawn*

**16.35 hrs.**

LEGISLATIVE COUNCILS (COMPOSITION) BILL

b Shri Shree Narayan Das

**Shri Shree Narayan Das** (Darbhanga): Sir, before I make my motion, I would like to have your permission to make a small change in the date that has been given in the motion. 30th September, I would like to make 31st December. More time should be given.

**Mr. Deputy-Speaker:** Yes.

**Shri Shree Narayan Das:** Sir, I move:

“That the Bill to provide for the composition of the Legislative Councils of States and for matters connected therewith be circulated for the purpose of eliciting opinion thereon by the 31st December, 1962.”

As at present, there are some States where there is provision for Legislative Councils. A number of small States have not been provided with Legislative Councils so far. Most of the major States have a Legislative Council. Some of the States which have no Legislative Council at present, I am told, would like to have one. The object of my Bill is to give representation in the Legislative Councils of the States to more interests than have been provided in the Constitution. The Constitution-makers, while making provision for this in article 171-(2) said:

“Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided as in clause (3).”

This clearly indicates that the Constitution-makers had it in mind that