

caused by the resignation of Shri Nawab Singh Chauhan from the Rajya Sabha, and do proceed to elect, in such manner as the Chairman may direct, one member from among the members of the House to serve on the said Committee."

I am further to inform the Lok Sabha that at the sitting of the Rajya Sabha held on Wednesday, the 28th August, 1963, the Chairman, declared Pandit S. S. N. Tankha, Member of the Rajya Sabha, to be duly elected to the said Committee.'

12.34 hrs.

## BUSINESS ADVISORY COMMITTEE

### EIGHTEENTH REPORT

**The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha):** Sir, I beg to move:—

"That this House agrees with the Eighteenth Report of the Business Advisory Committee presented to the House on the 28th August, 1963."

**Shri Hari Vishnu Kamath** (Hoshangabad): Mr Speaker, I am glad to note that this time the Committee has made substantial modifications of the proposals placed before the Committee by the Government. I am glad to note that.

**Mr. Speaker:** The question is:

"That this House agrees with the Eighteenth Report of the Business Advisory Committee presented to the House on the 28th August, 1963."

*The motion was adopted.*

12.35 hrs.

## INDIAN SALE OF GOODS (AMENDMENT) BILL

**Mr. Speaker:** Shri A. K. Sen.

**The Minister of Law (Shri A. K. Sen):** May the hon. Deputy Minister move the motion, Sir?

**Mr. Speaker:** Yes.

**The Deputy Minister in the Ministry of Law (Shri Bibudhendra Misra):** Sir, I beg to move:—

"That the Bill further to amend the Indian Sale of Goods Act, 1930, as passed by Rajya Sabha, be taken into consideration."

The Law Commission while examining the different provisions of the Indian Sale of Goods Act took into consideration not only the development of commercial transactions in the country since the year 1930 but also the allied law obtaining in the other countries. It also took into consideration the representations made by various commercial bodies and came to the conclusion that on the whole excepting a few changes in the law here and there no major change of the law is necessary and this amending Bill seeks to incorporate the different recommendations of the Law Commission excepting only one recommendation. That recommendation is inclusion in the definition of 'goods' water, electricity and gas. The Law Commission had recommended that electricity, water and gas be included in the definition of 'goods'. That recommendation has not been accepted by the Government. Excepting that one recommendation all other recommendations of the Law Commission have been incorporated in this Bill.

I would first of all deal with as to why it was not thought necessary to accept the recommendation of the Law Commission regarding the inclusion of water, electricity and gas in the definition of 'goods'. After the recommendation was made by the Law Commission, various representations were received from electrical undertakings of the State and also a point was raised by the Ministry of Irrigation and Power that the inclusion of

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water, electricity and gas in the definition of 'goods' might have the effect of imposing sales tax on these things. The whole point was examined and it was found that this contention is without any basis at all because it is the power of the State Government under Entry 52 and 53 or 53 and 54—I am not very sure—of the Constitution to levy sales tax or octroi duty on electricity and therefore whether it is included in the Sale of Goods Act or not, it will not fetter the power of the State Government to levy sales tax. Whether sales tax is levied on electricity or not would depend on the definition given to goods in the Sales Tax Acts of the States and it will not at all matter whether electricity, water and gas are included in the definition of 'goods' in the Sale of Goods Act or not.

If the whole scheme of the Act is examined, it will be seen that the Sale of Goods Act revolves round tangible goods only and most of its provisions, like, sale by sample ascertainment of goods, appropriation of goods, specific goods are not applicable to electricity at all. Probably excepting some conditions as to warranty, no other provision in the Act is applicable to electricity. It shows that the entire scheme of the Sale of Goods Act revolves round tangible goods.

Then again there is no country in the world where in the Sale of Goods Act in the definition of 'goods' electricity, water and gas are included. So, for all these considerations it was thought that it would not be desirable to include in the definition of 'goods' water, electricity and gas because they are dealt with by separate Acts. For electricity we have the Electricity Supply Act, 1948 and the Electricity Act, 1910. Then we have the Damodar Valley Corporation Act; the Municipal Act deals with the supply of water. There are different specific Acts for water, electricity and gas. Therefore it was not thought desirable that this should be included in the definition of 'goods'.

Then, coming to the recommendations that have been incorporated in this Bill, I will first of all refer to section 13 where the Law Commission has recommended the deletion of certain words from sub-section (2).

Sub-section (2) of section 13 reads as follows:

"Where a contract of sale in not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty. . . ."

The rest of it is not necessary for my purpose. The Law Commission has recommended that the words "or where the contract is for specific goods the property in which has passed to the buyer" be deleted.

First of all, if you analyse the provisions of the Act, it is a contradiction in terms. What is after all a condition and what is after all a warranty? If you look to section 12, it defines what is condition is and what a warranty is. This is what you will find:

- "(1) A stipulation is a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.
- (2) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.
- (3) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages. . . ."

Therefore, the violation of a condition gives the right for repudiation of the contract, whereas, violation of a warranty only gives the right for

getting damages. Therefore, to say that where specific goods have passed to the buyer, a condition is to be treated as a warranty is contradiction in terms, because, after all, if it is a condition, the property cannot pass until the condition is fulfilled and if it has passed, despite the condition, it no longer remains a condition; it becomes a warranty. So, you will find that this is a contradiction in terms.

Again, section 15 of the Indian Sale of Goods Act deals with sale by description and section 17 deals with sale by sample. Under these sections there are certain implied conditions as to quality or fitness. Therefore, they thought that sub-section 2 of section 13 is also contradictory to the provisions of section 15 and section 17 of the Indian Sale of Goods Act. Therefore, their recommendation that these words be deleted from the body of sub-section 2 of section 13 has been accepted.

Then, I come to section 25 which gives the right to the seller not to part with his property and not to part with his goods until the price is paid. In these days of commercial transactions, most of the contract is by correspondence and the parties live at a distant place from each other and goods are sent either by ship or by rail. The seller while despatching the goods has a right and the right is that the property does not pass to the buyer despite it being in transit so long as he has not paid for it. This provision in the Indian Sale of Goods Act is now confined only to the bills of lading. In view of the large commercial transactions that have been going on since 1930 by the railways, the Law Commission recommended that the transit of goods by rail should also come within the purview of section 25 so as to give the same right to the seller which is given when the transit is by sea.

Lastly, I come to section 64 which says that after a contract is concluded, if there is any imposition, increase or reduction in excise or customs duty, the same has to be taken into consideration in adjustment of the contract

price. Now, since there is sales tax and purchase tax, it is proposed that not only in the case of excise or customs duty but also any imposition or increase or reduction of any sales tax or purchase tax be also taken into consideration in adjustment of the contract price.

These, in short, are the recommendations of the Law Commission which have been accepted by the Government and have been incorporated in the provisions of the amending Bill.

**Mr. Speaker:** Motion moved:

"That the Bill further to amend the Indian Sale of Goods Act, 1930, as passed by Rajya Sabha, be taken into consideration."

**Shri Daji (Indore):** Mr. Speaker, Sir, as I rise to support this Bill, I cannot but remark that this Bill in more ways than one is a standing evidence of the utter incompetency and inefficiency of our Law Department. It is pertinent to recall that the Bill for the first time was passed in the Rajya Sabha as early as 1960—29th February, 1960—and the last Lok Sabha continued at least till 1962 and the reason, the explanation, given is that that Bill could not be processed through Lok Sabha before the end of its time. I would like to know why was it that the Bill which was passed by the Rajya Sabha, the Law Ministry did not think fit to bring it up in the Lok Sabha for two years and more. Is this the attitude of the Law Ministry to such measures? We have the Law Commission and the Law Commission works and gives report. It is very necessary and essential that the Law Department in keeping with the recommendations of the Law Commission speeds up the revision of our laws because we have inherited the whole system of laws from a foreign rule. Some of them are no longer in fitness of the changed conditions—they are obsolete or they require certain modifications and changes as this Bill itself shows. These modifications were long over due. Why was it then that the Bill

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which was passed by the Rajya Sabha on 29th February, 1960 took more than three years to travel across the Central Hall and come to this Lok Sabha? Is the distance so great? In these days of fast travel, why should it take three years to come through the Central Hall..... (Interruption) Coffee buffet stopped it?

**Mr. Speaker:** Those means of transportation could not be pressed into the service here.

**Shri Daji:** That is why I say that the Law Ministry seems to be thoroughly incompetent.

Secondly, what is much more pertinent is this. The very able, young and smart Deputy Minister was arguing very eloquently just now why gas, electricity and water had been omitted. Though the original Bill of the Rajya Sabha included all that, then they introduced another amending Bill in the Rajya Sabha omitting it and he was waxing eloquent about the omission. I have no quarrel with the omission. The point that I want to submit is, how long did the Law Ministry take to realise that gas, electricity and water should not be included in that place. It was not as if that the judgment of the Bombay High Court came like a bolt from the blue. Even when the original Bill was debated in the Rajya Sabha, certain hon. Members pointed out the possible difficulties of including electricity and gas in the definition of goods and at that time the Ministry argued equally well for the necessity of continuing to keep in the definition. After that, the statement of objects and reasons shows that they examined the matter further. Then, they referred to the Bombay High Court ruling which is not a new ruling. There are other High Courts also. There is absolutely no point. On what conceivable grounds did they think that gas and electricity will be termed as moveable property. I do

not understand it. How was this intelligence, new-found intelligence shown today? When was this dawned upon the Law Ministry? Even before the Bill could be brought to the Lok Sabha, the Ministry had again to run to the Rajya Sabha to amend the Bill, which was passed, and it has been presented here, the amending Bill. This raises two important questions to which I would like to draw the attention of the House. The first thing is, we are oftentimes rushing through the legislation and, of course, the House, as it works, or the Houses as they work have little time to give deep consideration. But we expect at least the Law Ministry with a battalion of officers, Under Secretaries, Deputy Secretaries and Additional Secretaries and what not.....

**Shri Nath Pai (Rajapur):** The whole army.

**Shri Daji:** Yes, the whole army. At least, we expect the Law Ministry to be a little more careful because the Law Ministry is not just an ordinary Ministry. The other Ministers may commit mistakes. Just like the other Ministries, the Law Ministry also may commit some mistakes. But apart from mistakes, if there are obvious legal errors on the face of it, we expect that there will be a closer examination by the Law Ministry, which is unfortunately not there. We enacted the Defence of India Act here, and the Opposition shouted. Today, the entire respectful opinion of all the jurists is that the Defence of India Rules are *ultra vires* the Constitution. Even the Attorney-General conceded the position in the course of his arguments before the Supreme Court, and said that the Defence of India Rules and the Act passed as it is being put into practice in the country are *ultra vires* the Constitution. He only took shelter behind the point that the court could not give redress. I should say that it is a very dishonourable shelter for a Government to take or for the Attor-

ney-General to say that we have enacted something which is *ultra vires* or we have enacted a law which is against the Constitution, but the court cannot give redress because of certain technical reasons. The Attorney-General has been reduced to this situation, because the Law Ministry seems to be almost a sleeping Ministry; it is also a Rip-Van-Winkle Ministry which wakes up only when some jolt is received from some court or the other. Therefore, I say that this Bill itself is a standing witness to both the incompetency and the inefficiency of the Law Ministry.

Then, coming to the Bill itself, my submission is that it does not go far enough. We are enacting something here in a stop-gap manner. We are considering the Act of 1930 and we are considering also the Report of the Law Commission on the subject. We should also take into consideration the new changed social conditions as a result of the efflux of time. This Bill is for the ordinary revision of a statute which has long been on the statute-book. Therefore, I say that this Bill does not go far enough. I would like to make two propositions in this regard.

First of all, we are including transit by rail or carriage by rail also within the scope of this Bill. That is in the fitness of things, and I have no quarrel with it. But in this fast-moving world, there are other means of carriage of goods also, which are now becoming equally important and which will become more important tomorrow. So, when we put such a legislation on the statute-book, legislation not for just a temporary period, not for a year or two but a legislation which is likely to remain on the statute-book for a long time, it is our bounden duty that we should look further ahead and also provide for other means of transit, such as carriage or transit by air, for instance. If some facilities are given in the case of rail transit, I do not know why the same

facilities should not be given to transit by air. I am asking for just the same facilities, and not for something new. So, should we not have incorporated transit by air also in this Bill? Are we to wait for another ten years when air travel would become more important, before we bring forward an amendment to include carriage by air also? Should we not do that just now? Of course, I am not talking of rocket travel, because I do not see any possibility of that in the foreseeable future. But carriage by air is becoming more and more important, and it is bound to become more and more important in the days to come, and, therefore, we have to provide for it in this Bill itself.

Another important point, in fact, a much more important point, which I want to raise is this. Because of the economic conditions and the economic difficulties today, the practice of what is known as the hire-purchase sales is increasing. If this practice could be given a little statutory protection, I think that it will be a great boon to the middle classes, the upper middle class and also the lower middle class. In the European countries, as we are all aware, a large variety of goods are sold on the basis of hire-purchase, such as refrigerators, washing machines, sewing machines, cars and so on, so that with the facility of hire-purchase, a man with modest means who cannot afford to make purchases with a lump-sum is in a position to afford those things. So, there should be some provision in the statute for hire-purchase also.

As matters stand today, the purchaser under the hire-purchase system is at the entire mercy of the seller. We know the growing scandal about the hire-purchase of trucks, and we know what extortionate agreements are extorted from the truck-drivers by the big financiers who sell them on the basis of the so-called hire-purchase system, so to say, and they make the driver write down any sort of agreement, and even after the part money is paid, if there are just one or two

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instalments missing, they forfeit the whole thing. In these circumstances, we should have made some provision for hire-purchases also in this Bill, and we should have considered whether hire-purchases cannot be encouraged by means of legislation. Here was an opportunity when we could have done it, but we have not done so.

I may also point out to the House that as far as I am aware, the Law Commission has already submitted a report on this point, and that report is before Government, and if I am further right, the report has been before Government for more than a year for the purpose of enacting a legislation on hire-purchase. In England, because of this growing system of hire-purchases, they have enacted a separate legislation for it, called the Hire-Purchase Act, in order to give protection to the small middle-class buyers who buy goods on hire-purchase, so that just because they could not pay a lumpsum or they could not pay one or two instalments, on account of their poverty, they would not lose their proprietary right to the goods which they have purchased on the hire-purchase system. The Law Commission has considered this matter and submitted a report to Government. If I am not wrong, the report was submitted in early 1962, or possibly towards the end of 1961. It is more than a year now that the report has been before Government. It has been sent to the different Ministries, and it has taken more than a year, and it is surprising that even when this Bill was brought forward, Government could not make up their mind as to what they proposed to do about the system of hire-purchases which in these days of economic distress would be of great help to persons with modest means. These two points, which have struck me on a first reading of the Bill, at least could have been incorporated in this Bill.

Before I conclude, I have got one more suggestion to make, or one more

idea to throw out. It often happens that some of our Bills go to the Select Committee. In the Select Committee we can discuss things in greater detail and in a calmer atmosphere, and we are able to shape and fashion our legislation in a good form. Of course, there are some Bills which do not go to the Select Committee; that may be so because they are small or because they are considered to be non-controversial or because they involve some policy.

So far as the present Bill is concerned, I support the provisions of this Bill. But my submission is this that if such Bills which from the point of view of policy ordinarily do not go to the Select Committee, could be processed through some other committee, it would be better. At least in the Madhya Pradesh Assembly, we had such a Committee. So, I suggest, Sir, that perhaps you may consider the appointment of a committee, more or less a continuous committee for the whole life of the House, or perhaps a committee whose composition may be changed just as in the case of the Committee on Subordinate Legislation from year to year, so that such Bills as do not go normally to the Select Committee can be brought forward before this House after having been processed through such a committee. In such a committee, many additions or alterations or suggestions may be made by Members in an informal way, and it would be easier for Government to incorporate them also in the Bill; it would be easier for us also to discuss, debate and even to get some more information from Government than when it is brought before the House directly. In this particular case, I might point out that the learned Members of the Rajya Sabha argued about the omission of gas and electricity from the purview of the Bill, and they were on very strong grounds, but they were just brushed aside. In the juggernaut legislation process, their considered opinion, which has now been considered to be

right by Government, has been brushed aside. They would not have been brushed aside, if a committee would have been able to persuade the Minister to see their point of view, and in this way, we could have avoided the tremendous waste of public time and public money which goes on at present, because we can process such ill-digested legislation through such a committee.

With these words, I support the measure as it has been brought forward. I earnestly request the Government through you and the House that earnest consideration should be given for immediately bringing forward a legislation either separately or by way of further amendment to this Act, so that protection could be given in the case of hire-purchase transactions also.

13 hrs.

**Dr. Sarojini Mahishi** (Dharwar North): The Indian Sale of Goods Act, which is part of the Indian Contract Act, was mostly modelled on the provisions of the English Contract Act or the English Sales of Goods Act. But after the Act was passed in 1930, I wonder why no amendments have been made or have not been thought of during this period of 32 years, during the course of this whole lengthy period in spite of all the decisions, given by different High Courts, the Federal Court and the Supreme Court.

The Indian Railways Act was there during 1930. But section 25 deals mainly with transit of goods by ship and bill of lading. I wonder why this was not thought of. We are happy that at least after 30 years, our Law Ministry is thinking of some amendments in this direction. As pointed out by my hon. friend opposite, it is quite in the fitness of things that other modes of transit should also be included in this so that we may not have to come again with some other amendments in connection with those modes of transport also.

This particular Bill, which tries to incorporate the recommendations of the Law Commission in its 8th report was introduced in the Rajya Sabha in 1960. The definition of 'goods' was tried to be widened by the inclusion of gas, electricity and water. But now because of representation made by the Electricity Board and other boards concerned with these subjects and on account of the fact that entry 53 of the State List entitles the States to levy taxes on this, and because there are other Acts also pertaining to this or other things, the inclusion was not effected and we find an omission. As pointed out by Shri Daji, I wonder why these things were included and why a sudden omission of these things has been made immediately on representation. If there was a further delay of a year or so, I wonder what other omissions would have been made or what other inclusions would have been made in the Bill. This bespeaks hasty legislation and our not taking into consideration other statutes for the time being in force with reference to the subject with which we are dealing.

Therefore, hasty legislation should, as far as possible, be avoided, unless it is extremely urgent. The very fact that we come up again with amendments to amendments betrays the haste with which we are proceeding with these things.

In Section 13(2), the words 'or where the contract is for specific goods the property in which has passed to the buyer' shall be omitted. Where the contract is not severable or where the buyer has taken possession, accepted the goods, wholly or in part or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty. Here 'where the contract is for specific goods, the property in which has passed to the buyer' is sought to be omitted. I wonder why the difficulty was not felt during all these 30 years in interpreting this and it had to be left to the Law Commission to make a

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study of these things and recommend the omission of these words. In the light of decisions given by the different High Courts and the Supreme Court in this connection, why were these particular words not omitted earlier and why this confusion and complication is found out only now? These words are recommended to be omitted and we find because they create a sort of conflict or seem to be contradictory, because when the property in specific goods has already passed on to the buyer, the breach of any condition can only be treated as a breach of warranty, because the property has already passed on to the buyer. This certainly seems contradictory. But I wonder why a period of 30 years has been taken to find that it is so.

Section 17 and section 15 relate to sale by sample and sale by description. They are not in conformity with this particular clause. Sale by sample and sale by description are not possible because if the bulk does not correspond with the sample, the contract can be repudiated as the result is a breach of condition because the condition in the sale by sample is that the bulk must correspond with the sample given. Therefore, if this condition is not fulfilled, even then if the buyer accepts the goods, in that case it is nothing but a breach of warranty. In view of the fact that under sections 15 and 17 where the sale by sample and sale by description do not coincide with or are not in keeping with this particular clause 13(2), this particular portion of the clause is to be omitted.

The Sale of Goods Act no doubt deals with tangible things. There are certain rights also that go along with sale by sample and sale by description. Therefore, because this condition did not come in this particular case, the rights that the buyer has got in case of a breach of condition cannot be enjoyed here because the condition is treated as a warranty. So this particular clause is to be omitted.

I am happy that the Law Commission has recommended and the Law Minister has come forward with this amendment to section 13(2). But I wish the Ministry ought to have taken notice of this particular thing earlier in the light of the decisions given by different courts and come forward to omit this clause, thus avoiding confusion and complication.

The next section is section 25, where we find that the seller wants to retain the right of disposal of the property. Where the goods are shipped or delivered to a railway administration, in that case it is to be delivered to the order of the seller or of his agent. In this particular case, the seller retains the right of disposal of the goods with him. Secondly, where the seller draws on the buyer for the price and transmits to the buyer the bill of exchange together with the bill of lading, or, as the case may be, the railway receipt, the buyer is bound to return the bill of lading or the railway receipt if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading or the railway receipt, the seller has got the right of stopping the goods or the right of reclaiming the goods also. In these days of industrial development, in these days when transport facilities are growing, it is desired that things should be delivered as quickly as possible and prompt service is rendered. I wonder why this particular thing was not taken into consideration during all these 30 years. This is surprising and shocking too.

Then section 64A is also being amended. It is in keeping with the changes in society, the economic changes that we are having in the society. If after entering into a contract, there is any increase or decrease in the excise duty or customs or sales tax or in any particular tax that is levied, the contract price can be increased or decreased correspondingly. This is in keeping with the times and the exigencies of the



situation. It is but natural that the price is bound to be increased or decreased in that manner.

I think the amendments that are sought to be incorporated in the Sale of Goods Act are quite in keeping with the times; rather these are sought to be incorporated at a very late stage. I wish the Law Ministry had been quite prompt in making the necessary amendments in the light of the experience gained, in the light of the decisions given by different courts in the country. I welcome the Bill.

**श्री यशपाल सिंह (कैराना) :** अध्यक्ष महोदय, मैं इस बिल के मुताबिक इतना अर्ज करना चाहता हूँ कि यह बिल ला कमीशन की रिपोर्ट के मुताबिक पेश करने का वादा किया गया था। माननीय श्री सीतलवाद की रिपोर्ट पर, जिन की काबलियत पर किसी को शक नहीं है, पूरी तरह से अमल किया जाना चाहिये और जो कुछ उन्होंने कहा है, उस को पूरी तरह से इम्प्लीमेंट किया जाना चाहिये। इस रिपोर्ट में लिखा है—

“However, in the United States of America, it has been held that a contract to supply power is a contract of sale. Thus electricity has been held to be personal property capable of sale”.

इस बिल में ऐसी कोई प्राविजन नहीं है कि जहाँ डिस्ट्रिबुटिमेंटिंग फैक्टर्ज हैं, जहाँ एक ही स्टेट अलग अलग कन्ज्यूमर्स को अलग अलग रेट्स पर पावर देती है, वहाँ पर न्याय की व्यवस्था की जा सके। इस बिल के मुताबिक उन लोगों को हाई कोर्ट या सुप्रीम कोर्ट में जाने का कोई अधिकार नहीं है, जिन से पावर के रेट्स ज्यादा लिये जा रहे हैं। इसलिये इस बारे में एक कॉम्प्रिहेंसिव बिल लाया जाये।

यू० पी० में गरीब किसान १९ नये पैसे की यूनिट बिजली का देता है। जब गरीब किसान अपने खेत में पानी देता है, तो उस को ट्यूब वेल को चलाने का चार्ज १९ नये पैसे

की यूनिट देना पड़ता है। इस के मुकाबले में बिड़ला साहब उसी बिजली का जो किराया देते हैं, वह ३ नये पैसे की यूनिट होता है। ला कमीशन की रिपोर्ट में यह कहा गया कि यह एक ऐसा मसला है, जिस पर सारे हिन्दुस्तान में एक ला होना चाहिये। मैं ला कमीशन की रिपोर्ट में से थोड़ा सा पढ़ देता हूँ :—

“In view of the fact that the contracts with regard to the supply of electrical energy and water are common, we think that the matter should be placed beyond doubt and an amendment should be made in section 2(7) so as to include power in the shape of electrical energy, water and gas within the definition of ‘goods’”.

इस वक्त सब से ज्यादा जरूरी यह है कि एक कॉम्प्रिहेंसिव बिल लाया जाए और उस में यह व्यवस्था की जाए कि सारे देश के अन्दर एक ही तरह से जितने भी क्रायदे हैं, उन को लागू किया जाए। इस वक्त स्टेट गवर्नमेंट्स हर जगह किसानों के साथ और मिल मालिकों के साथ अलग-अलग व्यवहार करती हैं। गरीब किसानों के साथ आज देखा जाता है कि स्टेट-मदरली ट्रीटमेंट किया जाता है। मैं चाहता हूँ कि इस कानून को हायर परचेज का कानून बना कर सप्लीमेंट किया जाए, जैसा कि यू० के० में किया जाता है। सब से ज्यादा जरूरत इस बात की है कि जो वादा किया गया था सीतलवाद साहब की रिपोर्ट के मुताबिक—कि इस कानून को पूरी ताकत से इस्तेमाल किया जायेगा, वह वादा अभी पूरा नहीं हुआ है। जो बिल लाया गया है, उस का तो मैं स्वागत करता हूँ और उसके लिये मंत्री महोदय को बधाई भी देता हूँ और कहना चाहता हूँ कि उन्होंने जो सही रास्ता है, उस में एक कदम उठाया है, लेकिन इससे कन्ज्यूमर्स की जो दिक्कतें हैं, वे हल नहीं होती हैं। मेरी दरखास्त यह है कि जब एक रिपोर्ट को हम मान्य करते हैं, और उस रिपोर्ट को तैयार करवाने में सरकार लाखों

[श्री यशपाल सिंह]

रूपया खर्च करती है तो उस सूरत में उस रिपोर्ट के साथ, ला कमीशन की रिपोर्ट के साथ हल्के तरीके से बरताव नहीं होना चाहिये। जो ला कमीशन ने कहा है, उस को पूरे तौर पर माना जाना चाहिये। अगर ऐसा नहीं होता है तो जो काबिलतरी हस्तियां हैं, वे कभी हमारे लिये काम करने को तैयार नहीं होंगी।

मेरी दरखास्त है कि पब्लिक ओपीनियन जानने के लिये इस बिल को जनता में घुमाया जाए और यह जो प्रापर्टी है, यः स्टेट प्रापर्टी है, इसलिये इस के ऊपर सारे देश में एक ही तरह के कायदे क़ानून लागू किए जायें।

इन शब्दों के साथ मैं इस बिल का स्वागत करता हूं और इस बिल को और कम्प्रीहेंसिव बनाने की दरखास्त करता हूं।

**Shri U. M. Trivedi (Mandsaur):** Sir, this is a Bill which ought to have been placed on the statute book long ago.

**Mr. Speaker:** Is there any other hon. Member wishing to participate in this discussion?—I find two. All right.

**Shri U. M. Trivedi:** This matter has always been the subject of dispute in a court quite often. But why has Government been sleeping over the decision of the courts for so many years and why was this wholesome amendment not brought forward earlier? We know that the merchants who had to carry on the business of supplying commodities to various areas used to suffer on account of the absence of this legislation.

13.13 hrs.

[Mr. DEPUTY-SPEAKER in the Chair]

Section 25 of the Sale of Goods Act provides that where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer

together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange and if he wrongfully retains the bill of lading, the property in the goods does not pass to him. The amendment now made is to the effect that where the seller of goods draws on the buyer for the price and transmits to the buyer the bill of exchange together with the bill of lading or as the case may be the railway receipt to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading or the railway receipt if he does not honour the bill of exchange; and, if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

There is merely a change in the verbal description and this could have been done long ago. If we read the law reports we find that this matter has been a constant headache to many businessmen and it has created a lot of trouble and litigation on account of the absence of proper phraseology. Why should it need a recommendation from the Law Commission? This only indicates that they generally sleep over matters and that the Ministry requires somebody else to prop up the matter and come to a conclusion on the point whether the amendment of the law for the benefit of persons for whom that law is meant is to be made or not. This is the general atmosphere prevalent in our Government departments and Ministries. Go to the railway platform or the railway carriage or the court of law; you will find that the defects which are there and which are so apparent are perpetuated and we never see any improvement unless and until somebody makes up his mind to go and point out the mistake. Then perhaps somebody would wake up in the department concerned but the officer directly concerned with the

administration will never apply his mind of his own accord. When things are brought up right to his notice, he will only then open his eyes to the defects noticeable to anybody who has got his eyes and mind open. How long this state of affairs should continue? This teaches us a lesson that for years together knowing the defect the Government slept and it required a highly paid Law Commission and its members to come to the conclusion that this state of affairs must be amended. They said so in 1958. It took us two more years to formulate the amendment and present it to the Rajya Sabha and get it passed there. This will hardly take an hour in this House but Government did not find time to bring it before this House also and allowed this to lapse. All that time was wasted. Then again the same process had to be done once more; the Bill has gone to the Rajya Sabha and has been brought here.

Then our Deputy Minister in the Ministry of Law was waxing very eloquent on the question of amending by this Bill the various clauses which were included in the previous Bill, namely, in regard to electricity and gas. In this very House, when the Inter-State Sales Tax Act was being discussed and when Shri C. D. Deshmukh was the Finance Minister here, I raised the point that electricity is not and cannot be included in the term 'goods'. The hon. Finance Minister, Shri C. D. Deshmukh, was immediately agreeable to the proposition and he dropped the word "electricity" from the definition of the word "goods". From this very House the lesson could have been learnt that electricity is not included in the term "goods". Why should not the departmental heads in this Ministry keep note of the fact that this point whether electricity is or is not included in the definition of goods has been debated in this House, and why could they not have brought it to the notice of the Ministry or the Ministers concerned, that this point has been made and has been decided in the House, namely, that the word "goods" does

not include electricity? Why did they have to wait for a decision of the Bombay High Court to come to the conclusion that the word "electricity" is not included in the term "goods"? This will only indicate that no proper records of the debates are kept by the Ministry which is directly concerned on this point. Secondly, even if they are kept, it is not done in such a manner that matters already decided by the House are immediately brought to the notice of the Ministers. Ministers go on changing; one Minister may not have been in the House when this matter was discussed; and another may still come in when this matter is discussed in the next Lok Sabha. But the permanent secretaries and the permanent civil servants are there. It was their duty to have a complete record of what directly affects their department and to bring it to the notice of the Ministry concerned. This, I say, not only applies to the Law Ministry; it applies to each of the Ministries. They thing

“नईगुल्ली, नयादांव”

A new

Minister comes and a new procedure has to be obtained and therefore they think that Ministers are probably boobies and they may mishandle or misguide them in any manner they like. I should say that Ministers should now make up their minds to be strong enough to keep the civil servants within those limits and impose upon them the duty of always keeping the records full and in a very competent manner so that for the future, the time may not be wasted.

Then, I should say that the provision that is made in the Bill, namely, the substitution of section 64A—is a very welcome provision. But, this also should have seen the light of day long ago. Now, the Sales-tax Act has become a source of income for a number of years, and as soon as the Sales-tax Act of the various States came into being, it was incumbent upon the Government to make this provision. It has led

[Shri U. M. Trivedi]

to any amount of litigation between commission agents and the buyers, with the net result that some people have suffered one way and others have suffered the other way, and we have been watching this as wooden souls.

One thing to which I will still draw the attention of the hon. Minister is this: that a new system and a vast growing system of carrying goods by public carriers, by motor transport, in every part of India has come into vogue. It is growing. The words "bill of lading" and "railway receipts" are the only words which are being used in this Bill. The documents and the vouchers which are being given to the transport carriers are neither bills of lading nor railway receipts. It will, therefore, be incumbent to include the receipts and vouchers which are given over to the transport carriers also for delivery at destination against payment in section 25 and section 64A, that is to say, in clauses 4 and 5 of this Bill. It is high time that we understood the implication. The implication is practically the same except that an expeditious method of realising the money is available. But there also there is a difficulty which arises. Therefore, the terminology which is used in this particular branch of trade, namely, that of transport carriers, must also be included when this amendment is being carried out.

With these words, I say that this amendment was essential, but it has not done full justice to the matter before it, and its application must be properly amplified to include the things which I referred to.

**Shri M. P. Swamy** (Tenkasi): I am glad that the Ministry of Law has brought this amending Bill to the parent Act. In the very first clause, rather in clause 2, it says that the word "Indian" shall be omitted. There are a number of Acts now wherein we find that the term "Indian" is still in vogue. It is important that

after Independence, the word "Indian" is not necessary in our statute-books. So, I request the Ministry to see that in any Bill which is hereafter introduced, the word "Indian" is dropped; wherever the word "Indian" appears in our statute-books, it may be dropped. But a doubt may be raised as to which country the statute belongs. Those foreigners, however, who are acquainted with India would know that the statute belongs to India or comes from India. So, it is in the fitness of things that the word "Indian" is omitted in the amending Bill.

Secondly, a concession is shown to the traders to sell the goods through the railways and a railway receipt is recognised as a document of title to the goods and they get the benefit that was accorded to the shippers. I welcome this measure on that ground also.

Thirdly, section 64A is being totally amended. In this new Bill we find that wherever a new tax is imposed or a customs duty is levied, that is added to the original price fixed in the contract of sale and a concession is given to the buyer also to claim the remission of any tax by way of customs duties. This is indeed a welcome feature for the trading public.

Apart from that, we find that this Bill does not include the recommendation of the Law Commission regarding an important article, and that is with regard to the definition of the word "goods". We find in this Bill that water, gas and electricity are not included as goods. The reason given is that a good deal of confusion may be caused as the sale and distribution of these items is largely governed by special enactments and, accordingly, this recommendation has not been given effect to in the present Bill.

Regarding electricity, Sir, I have to make one point. Recently, in the Madras High Court there came up a

case about theft of electricity. Two opinions were held by two judges. One judge held that electricity does not come under the definition of the term goods as per the Indian Penal Code and therefore he took the view that the offence of theft has not been established, whereas the other judge held that power can be the subject of theft. In such cases where there is such conflict of opinion the real culprit may go undetected. If he is not booked under the Indian Penal Code, a number of cases of power theft may arise. Therefore, it is the duty of the Government to examine whether electricity can be brought under the definition of "goods". Under the Electricity Act we find that only at the instance of the electrical authorities a case can be brought, whereas under the Indian Penal Code the police are empowered to take up the case. In this connection, I would request the Minister to see whether the definition of goods can be enlarged so as to include electricity also.

With these words, Sir, I support the Bill.

**Shri A. K. Sen:** Mr. Deputy-Speaker, Sir, not much was called for by way of reply unless the hon. Member random and, if I may say so with her opposite, Shri Daji, had made a call respect, absolutely careless and reckless allegations against the Law Ministry. I would have wished that he was here because one who makes an allegation ought to be prepared to hear the answers and it is rather unfortunate that each time allegations come from that side the Member who makes the allegation is not present when we answer. Last time, I remember, Professor Mukerjee, while I was moving the Extradition Bill for consideration made equally strong observations about our carelessness.

**An Hon. Member:** He has come.

**Shri A. K. Sen:** I am glad he has come. The hon. Member says that because this matter was not disposed of in the last Parliament it shows the

utter incompetence of the Law Ministry. The hon. Member is recent to Parliament and he possibly does not know how priority of Government business is arranged, and that it is not merely because we want a particular Bill to be rushed through that we get priority but it is decided by a committee of Ministers in which various considerations play their part. A Bill in order to get priority would have to be approved of by that committee as a very urgent measure.

After this Bill was passed by Rajya Sabha and before it was taken up for consideration here, there were strong representations from the Federation of Electricity Undertakings in India stating rather strong grounds why the definition of "goods" should not include electricity, because it was feared that electricity being an inter-State supply and most of the joint undertakings have their impact on more than one State the incidence of local taxes—purchase, sales and octroi—would have adverse effect on the development of electricity. The State Electricity Boards were the strongest opponents to this. As a result, after the passage of the Bill from Rajya Sabha and after it was brought in here, transmitted from the other House, the Irrigation and Power Ministry made very strong representations for amending the Bill before it was brought before the Lok Sabha, and if necessary to amend it here and then take it back to the Rajya Sabha in order to meet the objections raised by the Federation of Electricity Undertakings and the State Electricity Boards. In fact, the Ministry of Irrigation and Power was strongly opposed to the inclusion of electricity in the definition at that stage, because originally when it was approved of by Government before being brought before Rajya Sabha I imagine the Irrigation and Power Ministry did not appreciate the objections which have been raised by the State Electricity Boards and undertakings in various parts of the country, and also the possible adverse effect of local taxes being imposed, in such an

[Shri A. K. Sen]

eventuality, on an important inter-State supply like electricity. It was, therefore, not given government priority for the purpose of being introduced here throughout the whole of the year 1961 which was taken up, hon. Members would recollect, with more urgent measures like the revision of electoral rolls, as far as the Law Ministry is concerned, and other amendments of the Penal Code, the Representation of the People Act concerning the repeal of communal and other parochial sentiments and various other measures. In fact, this measure did not get priority at all.

If it was intended by any hon. Member on the other side that this matter should be given priority and it should be brought up and disposed of before the last Parliament was over, it was open for them to say so and the committee which go into the question of priority would have gone into it. But the committee would not have given priority to this because at that time, having regard to the objections raised by the Federation of Electricity Undertakings and the State Electricity Boards the matter was being re-examined by the Law Commission itself.

It was sent back to the Law Commission before being brought in that shape to the Lok Sabha in order to find out whether the Law Commission still thought that such a change in the definition of "goods" should be incorporated in the Bill. The Law Commission took some time to examine it after the Bill was passed by the Rajya Sabha pending the matter being brought up before the Lok Sabha on the ordinary scale of priorities, and the Law Commission after a detailed examination again and seeing all the objections raised by the Irrigation and Power Ministry as also by the State Electricity Boards did not express any opinion either way. They neither said "yes" nor "no". On the contrary, our own impression was, informally by sounding them, that they did not insist on a change of the definition of

"goods" so as to include electricity, water and gas. By the time that was finalised and the matter could have been possibly raised for discussion here and passing in the ordinary course without any special priority being given to it, the last Lok Sabha was closed and the New Parliament started. I do not know where the incompetence of the Law Ministry comes in.

**Shri Daji:** It comes in because they were pointed out in the Rajya Sabha and yet you were not prepared to consider them.

**Shri A. K. Sen:** Why should he presume that we have not considered them? He was not here when I referred to that point. It is most regrettable that he makes such sweeping generalisations and wild allegations and he is not here to hear all the answers we have. I precisely said that because these points were raised, because the Federation of Electricity Undertakings raised this point and because the Irrigation and Power Ministry raised certain important points, the matter was sent back to the Law Commission, pending its consideration by the Lok Sabha, because of the insistence of the Irrigation and Power Ministry that we should change the definition in the Lok Sabha at least and take it back to the Rajya Sabha. I also explained to the House how the Law Commission went into the entire case again, went through all the objections raised and finally did not express any opinion; they did not give a categorical answer, either one way or the other, either by making a supplementary report or by varying the original report, but they informally made a report that there is no objection if the definition of "goods" was not enlarged. That is exactly what I explained. And by the time the Law Commission had examined all these objections and we found out that they were not going to insist on the original report as it was, there was hardly any time left for the Lok Sabha to consider it, because they

were busy with more urgent measures. This Bill is not considered very urgent or important is apparent from the attendance in the House. I do not think we have even a quorum now.

**Shri Kashi Ram Gupta:** This is the lunch hour.

**Shri A. K. Sen:** Even normally, this legislation would not have got priority but for dearth of legislation, as in the case of this session. But, in 1961, hon. Members would recall, we had a series of important measures to be got through, relating to elections, national integration and various other matters. Further, in these matters, once a Bill goes away from the Law Ministry the responsibility of the Law Ministry ceases. Then it takes the precedence of parliamentary procedure here as to how a Bill will pass from one House to another and also on what reactions Government have with regard to objections raised on the floor of the House, because it often happens, as with regard to constitutional amendments, that though we want to pass a Bill rather quickly, yet we agree as a result of insistence in the House itself, to send it to a Joint Committee, as a result of which the matter is delayed. Hon. Members will recall that the last Constitution Amendment Bill, touching various matters relating to High Courts, ages of judges and so on and so forth, has not yet been passed because the Joint Committee took a long time with several extensions and then it came here and now it is in the States. That is how it happens. What can the Law Ministry do once it goes away from their hands?

I do not understand how responsible members make these rather unfortunate attacks on devoted servants who work sincerely. I know personally that the particular officer who was in charge of this Bill at that time, the Secretary of the Law Commission then,—he has now gone away from the Law Commission and has been assigned with the drafting of the patents law—he has been one of our

ablest officers. And I have no hesitation to pay my tribute to this officer, Shri Rajagopaul, for the excellent work he has done in the Law Ministry and in the Law Commission itself. I strongly object to any insinuation of incompetence or inefficiency on the part of this officer. Most of the important Bills which this Parliament has passed and which have earned the admiration of all, both inside and outside—the Wealth Tax Act, the Income-tax Act, the Gift Tax Act and the Expenditure Tax Act were all drafted by Shri Rajagopaul. But he cannot direct the course of passage of Bills in this House; nor can I. Of course, if a particular Minister feels that a particular measure ought to be given priority, there is a method of getting priority. It is considered in the Legal and Parliamentary Affairs Committee and then if a particular governmental measure is given priority, it is brought in out of turn. That is the position. Therefore, I regret that these insinuations were made.

Coupled with that, another important matter was raised, though not at all connected with the Bill under discussion, and that was with regard to the emergency legislation and the Defence of India Rules. The hon. Member brought in the question of the Defence of India Rules and said that, so far as they are concerned with the question of preventive detention they were conceded by the Attorney-General to be against article 22 and article 14, and yet he insisted that the rules should prevail because under article 359 remedies on the ground of infringement of other articles were barred. And he blamed the Law Ministry for it, because the Attorney-General has conceded it. But the Attorney-General has conceded it under instructions of the Law Ministry.

I think it is a patent conclusion. The very reading of the rules will show that they are not in accordance with article 22, and it is only an insane person who would say that that article, as specifically worded, not providing

[Shri A. K. Sen]

for the setting up of the advisory bodies, would be in accordance with article 22. The whole argument of the Government has been that in times of emergency, the framers of the Constitution thought that a strict adherence to the fundamental rights was not possible in those days when hostile troops actually occupied a particular territory and various measures have to be taken, either for acquisition or requisition of property, or acquisition of goods or billeting of troops and various other things and it is, therefore, that article 359 was specifically designed to bar remedies in times of emergency. That is the argument. What is ignoble about it? This is the interpretation we have put before the Supreme Court on articles 358 and 359 and we have said that article 359 by specifically stating that the President may by order or proclamation bar remedies in certain cases proves that in times of emergency laws may be passed which would possibly be in conflict with the strict letters or even possibly the strict spirit of some of the fundamental rights, and yet they will prevail in times of emergency, even though remedy is barred, if the President so thinks. That is still our argument. It is for the Supreme Court to hold whether that argument is valid or not. If the Supreme Court so upholds, we shall certainly obey it, but we are not at all ashamed of having put forward that argument quite openly and as a point of construction of these articles in the Constitution. I do not understand why this question was brought in when we are considering this Bill.

I know hon. Members on that side are rather touchy about preventive detention and the Defence of India Rules which the Government have been very reluctantly compelled to take recourse to in certain cases, not only with regard to members of that party but also with regard to other persons, who do not belong to that party, but who have been found, on good evidence to the satisfaction of

the Government, to have been indulging in subversive activities which were likely to help the enemy. That is all. I know they are rather concerned about it. So, are we. And I do not think we would like to continue these drastic provisions a day longer than is absolutely necessary. But, then, these things are not governed by our desires or by our inclinations. There are others outside this country who force certain measures and certain course of events on us, notwithstanding our complete reluctance to submit to them. Anyway, I say, and I say emphatically, the reference to the Defence of India Rules in this connection was not only uncalled for but was completely irrelevant.

One word more about the Hire Purchase Act. Even in England the hire purchase law is not contained in the Sale of Goods Act. It is a separate law. We want to have a separate law in this country also. Therefore, we have referred this matter specifically to the Law Commission, whose report is now available. It was placed before the House and a discussion might arise on it. In the mean time, public opinion is being ascertained and the necessary law is being drafted after which we shall certainly introduce the measure in Parliament.

With these words, I request that the motion may be accepted by the House.

**Mr. Deputy-Speaker:** The question is:

"That the Bill further to amend the Indian Sale of Goods Act, 1930, as passed by Rajya Sabha, be taken into consideration."

*The motion was adopted*

**Mr. Deputy-Speaker:** We shall now take up clause-by clause consideration of the Bill. There are no amendments to clauses 2 to 5. So, I shall put them together to the vote of the House.

The question is:

"That clauses 2 to 5 stand part of the Bill."



The motion was adopted

Clauses 2 to 5 were added to the Bill.

Clause 1—(Short Title)

Amendment made:

Page 1, line 4,—

for "1962" substitute "1963"

(Shri Bibudhendra Misra)

Mr. Deputy-Speaker: The question is:

"That clause 1, as amended, stand part of the Bill."

The motion was adopted

Clauses 1, as amended, was added to the Bill.

Enacting Formula

Amendment made:

Page 1, line 1,—

"Fourteenth"

for "Thirteenth" substitute—

"Fourteenth."

(Shri Bibudhendra Misra)

Mr. Deputy-Speaker: The question is:

"That the Enacting Formula, as amended, stand part of the Bill."

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

The Title was added to the Bill.

Shri A. K. Sen: Sir, I beg to move:

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

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

13.52 hrs.

EMPLOYEES' PROVIDENT FUNDS  
(AMENDMENT) BILL

The Deputy Minister in the Ministry of Labour and Employment and for Planning (Shri C. R. Pattabhi Raman): Sir, I beg to move:

"That the Bill further to amend the Employees' Provident Funds Act, 1962, as passed by Rajya Sabha, be taken into consideration."

The Bill *inter alia* seeks to ensure that the labour engaged by contractors have no difficulty in getting the Provident Fund benefit under the Employees' Provident Funds Act and the Scheme framed thereunder.

As the House is aware, over 36 lakhs of employees working in 79 different industries and classes of establishments are now getting the benefit of Provident Fund under the Act. But in quite a few of them a number of workers are employed through contractors. It was the intention of Parliament that the parent Act would cover contractors' labour also and, in fact, employees engaged by contractors were actually enjoying the benefit upto March, 1962 even though the Act did not contain any specific provision defining the principal employer's responsibility in respect of contract labour.

But in a judgment given in March, 1962 the Supreme Court held that the principal employer could not legally recover from persons engaged by the contractors any money due by way of provident fund contributions and that the contractors were also under no obligation to pay to the principal employer amounts paid by him on this account. The amendment now proposed seeks to remove this lacuna and authorises the employers to recover such provident fund contributions from the contractors.

Now, contract labour, itself is, in many instances, an evil which we are