

[Mr. Speaker]

House, and the House will be happy to learn that in anticipation of sanction, I have already spared four men and sent them to the war effort, so that they might be utilised there. I hope that I will be able to spare more and place them at the disposal of that machinery which is tackling the war effort, so that that work might be done. I hope that the other Ministries—of course I am in no position to advise them and they know it best—would also think in those terms and also spare some men so that we have not to recruit fresh people for this war effort and we can do that with the staff that we have already got. Therefore, there was nothing novel in what I had suggested: only a modification of the procedure and the hon. Members of the Opposition had also agreed. I hope hon. Members of the Congress would also be able to agree with that procedure.

Let us work out the thing. We are not taking away any right of hon. Members and I can assure them that it is only during this period that we can just tackle it. Therefore, there ought not to be any difficulty. I hope hon. Members would agree to my appeal in this respect so that we might work on it just for sometime.

**Shri Karni Singhji (Bikaner):** I want to make one point clear. When most of these questions were tabled by us, there was no emergency in the country. Today, our country is forced with quite an emergency, and I am quite sure that if you could appeal to all hon. Members here, most of us would be very happy to withdraw 80 to 90 per cent of the questions which we have tabled. As a result of the meeting that you had with the leaders of the groups, I had made that submission, and as soon as I went home I ran through my questions. I have already written to you to withdraw 80 to 90 per cent of all the questions that I have tabled. I think voluntarily our country responds much better.

**Mr. Speaker:** I would be very happy to agree with this suggestion. If

I do not receive more than five questions from each Member, I shall have no necessity to exercise my discretion at all.

**Shri Jaipal Singh (Ranchi West):** Yesterday you put it in the form of an appeal. So far as notice of amendments is concerned, groups may agree to it, but what about unattached, detached and isolated Members? They will be having an advantage against us, groups. I do not think that would be fair. There is the other aspect also. I do not think—emergency or no emergency—this particular right of tabling amendments should ever be curbed.

**Mr. Speaker:** I am not curbing any right of the hon. Members. They may rest assured that they shall have that freedom.

12.42 hrs.

RE: ELECTION OF SHRI G. BASU

**Mr. Speaker:** We shall now take up the matter about Shri Basu's membership.

**Shri Prabhat Kar (Hooghly):** May I seek one or two clarifications about this question of Shri Basu's election? I do not know why this has been referred to Parliament, because on previous occasions, so many elections have been set aside and no references have been made here. I want to have a clarification about that.

I know this election has been set aside by the High Court. A stay order was granted. On the question of appeal to Supreme Court, what is the position? That has not been referred to. We want these clarifications, before it is taken up.

**Mr. Speaker:** There is no question of Supreme Court yet. The advocate for Mr. Basu had applied to the High Court that he wanted permission to appeal to the Supreme Court and the High Court was not open yet. Pro-

bably it was closed till 20th So, the court cannot give any permission till the court opens. This was what necessitated Mr. Basu to apply there that at least up to 20th he might be allowed to remain a Member and then he would have the opportunity of moving the Supreme Court. Whether the intermediary order that was passed for the stay of the execution of that previous tribunal's order revives automatically with this order is not clear to me. Therefore, it was I who wanted a clarification whether really that revives the order or not. I requested the hon. Law Minister to give me that assistance.

**Shri S. M. Banerjee (Kanpur):** On previous occasions, no such reference to the House has been made.

**Mr. Speaker:** Because such a case has never happened.

**The Minister of Law (Shri A. K. Sen):** As I explained yesterday, on a perusal of the two orders—the original order of stay as also the last order of stay granted after the dismissal of the appeal—the conclusion is quite clear that the court wanted the original stay order to continue until the 20th September. The original stay order was to subsist until the disposal of the appeal. The appeal was dismissed on the 27th September, but while dismissing the appeal, on the application of Mr. Basu's counsel, the court stayed the operation of the order of dismissal. The effect of it, therefore, is that until the 20th November, the appeal is to be treated as not being disposed of, because the operation of the order of dismissal has been stayed.

The purpose is quite clear, because it often happens. This is to enable Mr. Basu to apply for certificate for appealing to the Supreme Court. The High Court will reopen on the 19th November. That is why the operation of the order was stayed until 20th November, so that his application for

leave may be heard by that date and if the application is granted, a further stay will be granted.

**Mr. Speaker:** My doubt was this. One is the appeal and the second is his application for the stay of order of the tribunal. When the appeal was dismissed by the High Court, my doubt was that the stay order also terminated.

**Shri A. K. Sen:** That is quite true.

**Mr. Speaker:** We are agreed on that. But my doubt is whether this order is confined only to the case so that the Election Commission might not declare the seat vacant and proceed with the election or whether it automatically revives that stay order also, so that he continues to be a Member and could have all the rights.

**Shri A. K. Sen:** It is not a revival of that order; it is a continuation of that order, an order which would have come to an end had this stay order not been obtained. The original stay order would have continued until the disposal of the appeal. If the order dismissing the appeal was not stayed, the original stay order would have terminated.

**Mr. Speaker:** So far as the appeal is concerned, it is disposed of.

**Shri A. K. Sen:** It is disposed of, but the operation of that order is stayed.

**Mr. Speaker:** He should just give his attention to this point. So far as the disposal of the appeal is concerned, it has been completely disposed of. There can be no other order so far as the High Court is concerned.

**Shri A. K. Sen:** But that order is stayed. That is the usual procedure, because you will see that the order is stayed until 20th November. The order says:

"We feel also that, in the circumstances of this case, the prayer is reasonable and we would, accordingly, stay the

[Shri A. K. Sen]

operation of our order dismissing the above appeal, until November 20 next....."

**Mr. Speaker:** That is all right. If the House agrees with that view, of the Law Minister, I have no objection.

**Shri Surendranath Dwivedy** (Kendrapara): It is very difficult for us to make up our mind in a legal matter like this. How can we agree?

**Mr. Speaker:** Yesterday I put it to the House and the House wanted time till today. That I gave.

**Shri Hari Vishnu Kamath** (Hoshangabad): May I earnestly request you to request the Attorney-General to come to the House and give his opinion? The Attorney-General is entitled to come to this House and give his opinion. You can summon him.

**Shri Kapur Singh** (Ludhiana): After going through the papers, I am inclined to disagree with the Minister for Law. It seems clear to me that after the hearing of the appeal, the original stay order automatically stands terminated. The original stay order states that it will remain stayed until the hearing of the said appeal. The original stay order does not state that it will remain stayed until the disposal of the appeal or final disposal of the appeal. As far as the second order of the High Court dated the 27th September is concerned, it does not revive this order at all. It merely says:

"We would accordingly stay the operation of our order dismissing the above appeal."

**Mr. Speaker:** So, he means to say that hearing has taken place.....

**Shri Kapur Singh:** Yes. The original order itself makes it clear that the termination date is in-built in the order itself. It says

"The appeal is fixed for hearing on September 3, 1962".

That is the stay order is automatically terminated on September 3, 1962, irrespective of whether the appeal is disposed of or finally disposed of or not. It is the hearing which is important.

**Shri U. M. Trivedi** (Mandsaur): Yesterday I made a request to the Minister that we might be apprised of the various positions in law whereby such a situation can be accepted by this House. The position is very clear. The provisions of section 115A are so clear, namely, that subject to that order which is passed by the High Court, once and once alone, the order of the tribunal is always final. Finality is attached to the order of the tribunal; the appellate stage is only one step that is allowed. The finality is already attached to the order which is made by the Tribunal. In view of that, the High Court, the moment it passes this order, is entirely *functus officio* and it has absolutely no jurisdiction under any provision of law to grant any such stay.

**Mr. Speaker:** We are not sitting in judgement over the order of the High Court.

**Shri U. M. Trivedi:** We may not, but this House will have to accept the position whether or not that Member will continue to be sitting in the House. That is the position which will have to be considered by this House.

**Shri Shivaji Rao S. Deshmukh** (Parbhani): Sir, I only wish to make this submission that the position of law as has been clarified by the hon. Minister of Law is slightly erroneous. The moment the High Court takes a decision to stay an order of an Election Tribunal, whether the High Court states in the order that the order of stay shall have effect only until the hearing of the election appeal or up to the disposal of the election appeal they are meaningless because the moment the High Court

dismisses an appeal there is nothing before that High Court. That is why a High Court ordinarily does not pass any stay order. Therefore, I agree with what has been stated by my learned friend that High Court becomes *functus officio* the moment an election appeal is dismissed. Even then, on the basis of various rulings, the Supreme Court has also accepted this position that a High Court even while sitting over an appeal or while dismissing an appeal can pass stay orders on the terms that they consider fit. Therefore, this order of the High Court which they have passed after dismissal of the appeal is an independent order. It is neither a revival of the original order nor a continuation of orders of stay earlier granted. Therefore, this independent order will have to be interpreted in the words and spirit in which it has been meant. What has been granted is only the right to sit in committees and the House. Any other privilege like travelling in first-class and the privilege of salaries and allowances have not been specifically included in this order.

**Shri Priya Gupta (Katihar):** Sir, I rise to a point of order.

**Shrimati Renu Chakravarty (Barackpore):** May I submit that the hon. Law Minister may withdraw this and not put us in the predicament of coming to a decision on this issue?

**Mr. Speaker:** I think the House is not prepared to take that responsibility. I would advise Shri Basu to go to the High Court and get a clear order from there.

**Shri Priya Gupta:** Sir, my point of order is that the constitution-making body is this House.

**Mr. Speaker:** That is finished. Let us go to the next item of business.

12.53 hrs.

RESOLUTION RE: PROCLAMATION OF EMERGENCY AND AGGRESSION BY CHINA—  
*Contd.*

**Mr. Speaker:** The House will now take up further consideration of the following Resolution moved by Shri Jawaharlal Nehru on the 8th November, 1962, namely:—

“This House approves the Proclamation of Emergency issued by the President on the 26th of October, 1962, under clause (1) of article 352 of the Constitution.”

The House will also discuss the other Resolution moved by him. We will now proceed with that.

**Shri Hari Vishnu Kamath (Hoshangabad):** Mr. Speaker, yesterday, Sir, as I listened closely and carefully to the Prime Minister on this solemn occasion and watched the play of passing moods on his very expressive countenance, an uncomfortable thought was borne down upon me that here is a great man who at this period of his glorious life is a trifle tired, a little weary, who sees all around him the laborious effort of years crashing. At this time, Sir, when the ridges and hill-tops of Ladakh and NEFA are being stained crimson with the blood of the men and officers of our armed forces, when that resounding slogan “Hindi Chini bhai bhai” is now becoming a prelude to butchery by the perfidious Chinese, at a time when the blood of our martyrs, of our martyred jawans is becoming the seed of a new virile nation that is being born in our country, our Prime Minister is faced with a very difficult question, fundamentally a question of agonising re-appraisal, may be not of his entire foreign policy, not the entire defence policy, but a re-appraisal of his attitude to China, to Russia, to some non-aligned friendly countries like Indonesia and Ghana and also to the western countries. At this time, it