

10.53 hrs.

**REPRESENTATION OF THE PEOPLE  
(SECOND AMENDMENT) BILL**

**The Deputy Minister in the Ministry of Law (Shri Jaganatha Rao):**  
Sir, I beg to move:

"That the Bill further to amend the Representation of the People Act, 1951, be taken into consideration."

If a question arises as to whether a Member of Parliament or of a State Legislature, including the Legislature of a Union Territory, has become subject to any disqualifications mentioned in article 102 or article 191 or section 14(1) of Government of Union Territories Act, 1963, the President or the Governor, as the case may be, shall have to take a decision. But before he takes a decision, it is incumbent on him to obtain the opinion of the Election Commissioner on the basis of which he shall give a decision. Under the law as it stands today, the Election Commission has not got the power to record evidence, to examine witnesses or to call for documents. It is very difficult for the Election Commission to decide the question where some allegations are made that a Member of Parliament or of a State Legislature is disqualified. Questions of fact and law are involved in this.

In a recent case which was referred to the Election Commission—the case relating to the Chief Minister of Orissa—the Election Commission observed in the penultimate paragraph of its opinion as follows:

"More often than not, questions of disqualification referred to the Commission for opinion by the President or the Governor of a State under article 103 or article 192 of the Constitution are mixed questions of fact and law."

"Where, as in the present case, the relevant facts are in dispute and

can only be ascertained after proper enquiry, the Commission finds itself in the unsatisfactory position of having to give a decisive opinion on the basis of such affidavits and documents as may be produced before it by interested parties. It is desirable that the Election Commission should be vested with the powers of a commission under the Commissions of Inquiry Act, 1952, such as the power to summon witnesses and examine them on oath, the power to compel the production of documents, the power to issue commissions for the examination of witnesses, etc."

A similar recommendation was also made by the Election Commission in their report in 1957 on the Second General Elections. This Bill now seeks to vest the Election Commission with these powers, the powers being the same as mentioned in the Commission of Inquiry Act, 1952. It is now proposed to include sections 146, 146A, 146B and 146C in Chapter VIII of the Representation of the People Act, 1951.

This is a formal amending Bill and I commend this Bill for the acceptance of the House.

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

"That the Bill further to amend the Representation of the People Act, 1951 be taken into consideration."

**Shri Kapur Singh (Ludhiana):** Sir, it is my pleasant duty to rise to support this Bill but not without some observations on the tardiness and on the remissness of duty which this Government has shown in presenting this Bill. The hon. Minister has just now read the recommendations on the basis of which they have acted, namely, the recommendations made by the Commission in their report on the General Elections in India in 1962. He has cursorily referred to the previous recommendations which were made by the Commission in their

[Shri Kapur Singh]

report on the Second General Elections in India of 1957. On page 200, Chapter XXIV of this report the Election Commission clearly says:

"The Election Commission has to perform an important function under article 103 and article 192 of the Constitution. If any question arises as to whether a member of a Legislature has become subject to any of the disqualifications mentioned in articles 102(1) or 191(1), the question is referred to the President or the Governor, as the case may be, who obtains the opinion of the Election Commission on the question and decides it in accordance with such opinion.

Before it can give a considered opinion in such a reference, the Commission naturally requires further relevant materials besides the bare averments made by the person who raised the question. Neither the Constitution nor the Representation of the People Act, prescribes the procedure to be followed by the Commission in this regard."

This was a clear and categorical recommendation but it was completely ignored by the Government till this recommendation had to be repeated in 1962, and it had to be repeated under circumstances in which the Chief Minister of Orissa was involved. The Chief Minister of Orissa would not have escaped the consequences of the allegations that were made against him if the recommendations of the Commission had been given due heed by the Government in time. The Chief Minister of Orissa also might not have brought so much confusion in and so much disgrace on the ruling party if action had been taken even when the recommendations were repeated a second time. But that was not done. Now, this Bill is being brought, which though much belated, yet is one that deserves to be supported and commended.

Sir, this Bill has only one basic provision and four consequential pro-

visions. The basic provision, as the hon. Minister has just now pointed out, relates to the tendering of opinion required by the President. When such opinion is to be tendered to the President and the Election Commission consider it necessary or proper to make an enquiry, at that time the Commission shall have the powers of a civil court. These powers are here described. These further powers which are given are only of a consequential nature. The main power is that in such a case the Commission shall be deemed to be a civil court and when any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code, is committed, then the Commission shall have the same powers as a civil court has. Another power relates to proceedings before the Commission; that is, that proceedings before the Commission shall be deemed to be judicial proceedings within the meaning of section 193 of the Indian Penal Code. Fourthly, no statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding, except a prosecution for giving false evidence by such statement.

**Mr. Deputy-Speaker:** He might continue his speech tomorrow.

**Shri Kapur Singh:** Sir, I will take only half a minute.

These consequential provisions are necessary to put into effect the main provision of this Act. Sir, I support the Bill.

**Mr. Deputy-Speaker:** We will continue this discussion tomorrow. Now, we will take up the Calling Attention Notice.