

[Shri Raghunath Singh]

has not said anything. They can oppose at the time of discussion. This is not the stage to say that the Bill cannot come here.

The Deputy Minister in the Ministry of Home Affairs (Shri Vidya Charan Shukla): This is the stage.

Shri Raghunath Singh: This is not the stage. Show me the rule.

Mr. Chairman: I think we have a convention not to oppose the introduction of a Bill. Whatever be the legal point, the question of its being *ultra vires* the Constitution etc., may be taken up at the discussion.

The question is:

"That leave be granted to introduce a Bill to provide for prohibition of slaughter of cattle."

The motion was adopted.

श्री प्रकाशवीर शास्त्री : मैं इस विधेयक को पेश करता हूँ ।

15.35 hrs.

REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL—contd.
by Shri M. Malaichami

श्री रघुनाथ सिंह (वाराणसी) : सभापति महोदय, मैं अपने मित्र को बहुत धन्यवाद देना चाहता हूँ, जिन्होंने कि इस विधेयक को यहाँ पर प्रस्तुत किया है। इस विधेयक की जहाँ तक धारा 2(ए) का सम्बन्ध है, पाठक जी ने स्वीकार किया है, और करीब करीब हर सूबे में रूल बन गया है। जिन का नाम इलैक्ट्रोरल रोलज में नहीं है, उन का नाम इलैक्ट्रोरल रोलज में आ जाय, उस के लिये एक टाइम लिमिट दिया गया है, उसमें सब लोग अपना नाम दे सकें। उस के बाद भी जैसा यू० पी० में है कि आठ आने दे कर नाम दाखिल किया जा सकता है। इस लिये जहाँ तक इस धारा का सम्बन्ध है, इस में कोई खास बात नहीं है।

लेकिन बलाज 3 के सम्बन्ध में मुझे कुछ कहना है। यह बहुत ही महत्वपूर्ण संशोधन उपस्थित किया गया है। मैं चाहता हूँ कि पाठक जी, जो बहुत ही अनुभवी व्यक्ति है, इस को स्वीकार करेंगे। पाठक जी जनते हैं सी० पी० सी० के अन्दर 35(7) सक्शन है, जिस में कि कम्पेसे री कास्ट, या जिस को स्पेशल कास्ट भी कहते हैं, वह दी जाती है। यह स्पेशल कास्ट किस स्थिति में दी जाती है? अगर कोई फुलस, फाल्ज एलीगेशन लगाता है और अदालत समझती है कि यह केवल तंग करने के वास्ते पंशान करने के वास्ते, मुकदमा दाखिल किया गया है, उस वक्त अदालत या जज, स्पेशल कास्ट एवार्ड करता है।

इसी प्रकार से मेरे मित्र ने जो विधेयक उपस्थित किया है, वह भी यही चाहते हैं, कुछ न कुछ ऐसा बन्धन लोगों के ऊपर होना चाहिये ताकि जो फ्रेबुलस एलीगेशन लगाये, अनेक प्रकार के झूठे झूठे आरोप लगाये जाते हैं, तो उन पर कुछ बन्धन लगे। जैसा इलैक्शन में होता है कि इलैक्शन के टाइम पर जो हारा हुआ इन्डिडेंट होता है, जब तक वह हारता नहीं है, वह सोचता है कि वह जीत रहा है, वोटिंग के टाइम तक, वह आफिस के खिलाफ, प्रेसाइडिंग आफिसर के खिलाफ, रिटनिंग आफिसर के खिलाफ कोई एलीगेशन नहीं लगाता। लेकिन अगर वह वोटिंग में हार जाता है, तब जितने दुनिया भर के दोष हैं, सब प्रेसाइडिंग आफिसर में, सब रिटनिंग आफिसर में, सब दूसरे आफिसर में आ कर निहित हो जाते हैं। और जब वह इलैक्शन पैटिशन दाखिल करता है, उस वक्त आफिसर के खिलाफ, पॉलिग एजेंट के खिलाफ, रिटनिंग आफिसर के खिलाफ और जिता अधिकारी है, सब के खिलाफ अनेक प्रकार के आरोप लगाता है। जहाँ तक आवेदक का सम्बन्ध है, जहाँ तक प्रतिवेदक का सम्बन्ध है, अगर एलीगेशन साबित नहीं होती है

तो उस को कास्ट मिल जाती है, लेकिन आप जरा उस स्थिति को तोचिये कि किसी आफिसर के खिलाफ कोई चार्ज काउन्टिंग तो लगाया न जाय, उस समय तक तो उस को कोई दोष दिखाई न दे, लेकिन जब इलैक्शन में कैंडीडेट हार जाय, तो हारने के बाद वह अपने इलैक्शन रिटर्न में ऐसी बहुत सी प्राउन्ड्स जोड़ देता है, जिन में कि वह साबित करना चाहता है कि जितने आफिसरजं थे, वे भी उसको हराने में शामिल थे। अगर वह सी० री० सी० के केस हैं, सिविल सूट है, तो उस में स्पेशल कास्ट का प्राविजन है। अगर कोई फीजदारी के केस में, क्रिमिनल केस में, झूठी शहादत देता है तो झूठी शहादत के वास्ते उस के ऊपर मुकदमा हो सकता है। मजा हो सकती है। लेकिन आप के इलैक्शन ला में ऐसा कोई प्राविजन नहीं है कि किसी अधिकारी पर कोई ऐलीगेशन लगाई जाए और वह ऐलीगेशन झूठी साबित हो जाय, तो क्या हों ?

इसलिये मेरे मित्र ने जो विधेयक यहां पर पेश किया है, उन की मशा केवल यही है कि अधिकारी के खिलाफ अगर कोई ऐलीगेशन साबित नहीं होती है, तो उस को करण्ट प्रेक्टिस मानना चाहिये। अष्टाचार केवल पैसे से ही नहीं होता है, अष्टाचार मानसिक भी होता है, अष्टाचार न्ययिक भी होता है, इस लिये मैं कहता हूँ कि अगर वह करण्ट प्रेक्टिस का चार्ज लगाता है और वह ऐलीगेशन झूठी साबित होती है तो लगाने वाले के ऊपर करण्ट प्रेक्टिस का चार्ज लगाना चाहिये, जिस तरह से कि करण्ट प्रेक्टिस का चार्ज लगाने पर यदि वह हारता है तो अदालत को अधिकार होता है कि उस को 6-7 वर्ष के लिये इलैक्शन से डिबार कर सकती है। इस वक्त आप के सामने ऐसा कोई प्राविजन नहीं है कि अगर कोई अधिकारियों के ऊपर ऐलीगेशन लगाये और वह ऐलीगेशन झूठा साबित हो, तो आप उस के खिलाफ कार्यवाही कर सकें। आज जो संशोधन उपस्थित किया गया है उस का एक मात्र उद्देश्य यह है

कि अगर अधिकारियों के खिलाफ कोई इस प्रकार के करण्ट प्रेक्टिस के चार्ज लगये जायें जो कि साबित न हों तो अदालत को हक होना चाहिये कि जो आरोपक है, जो एप्लीकेन्ट है, उस के ऊपर करण्ट प्रेक्टिस का चार्ज लगा कर उस को ऐलैक्शन में खड़ा होने से डिबार कर दे पांच वर्ष के वास्ते या सात वर्ष के वास्ते।

इस लिये मैं इस विधेयक का समर्थन करता हूँ और कहना चाहता हूँ कि अगर श्री पाठक जिस तरह से यह विधेयक उपस्थित किया गया है उस प्रकार से स्वीकार न करना चाँ तो कोई न कोई ऐसा उपाय निकालें जिस से जो अधिकारियों के ऊपर मिथ्या दोषारोपण किये जाते हैं उन का किया जाना बन्द हो और जो आदमी इस कार का आरोप लगाता है वह दंड का भागी हो।

Mr. Chairman: How much time would the hon. Minister take?

The Minister of Law (Shri G. S. Pathak): I will take 15-20 minutes.

Shri M. Malachami (Periyakulam): I will need about seven minutes.

Mr. Chairman: I shall call Mr. Dixit as the last speaker; he should conclude in five minutes.

Shri G. N. Dixit (Etawah): I will take four minutes. Mr. Chairman, we are grateful to Mr. Malachami for bringing this point before the House. I am also happy that Mr. Raghunath Singh has relied upon section 35A of the C.P.C. referred to in the Representation of the People Act. The Civil Procedure Code is applicable for the procedure but not for other proceedings of the election petition. There is another point. It lays down certain principles that frivolous and malicious suits or applications or any proceedings which bring in the court in action should be specially taxed or penalised. If a certain petition is both malicious and

[Shri G. N. Dixit]

frivolous there must be some provision for a special penalty. Clause 3 in this Bill does that. The officials are not parties to the election petition; they have no opportunity to defend themselves. Mr. Malaichami has made the provision very straight:

"Making allegations against officers in the discharge of their duties during the period of election, which are found to be false by a court of law."

There is difference between 'incorrect' and 'false'. This provision is quite innocent. Secondly, the court of law has found those charges to be false. If such is the position, there should be penalty. Therefore, I think the Law Minister will consider this clause and as Mr. Raghunath Singh pointed out, will find some way to provide for this in some form or other. There are two important factors. One is that there should be some penalty for malicious and frivolous charges. Secondly, there should be some punishment for those who make allegations against those who have no right to defend themselves. This is a good provision and I support that.

Shri G. S. Pathak: Sir, I oppose this Bill. It appears to me that the second clause is unnecessary. The Joint Committee has recommended a change in section 21. Unless there is a direction to the contrary, given by the Election Commission there will be a revision of the rolls before each general election and also before each by-election.

Mr. Chairman: Their recommendations according to me are probably that the election rolls will be revised for every general election, and by-election and on instructions from the Election Commission. These are the three conditions.

Shri G. S. Pathak: The relevant clause is 9 and if I may read it out it says: "For sub-section (2), the

following sub-section shall be substituted". That clause says that the State electoral roll shall unless otherwise directed by the Election Commission for reasons to be recorded in writing be revised in the prescribed manner by reference to the qualifying date before each general election to the House of the People or to the legislative assembly of a State and before each by-election to fill the casual—vacancy in a State allotted to the constituency and shall be revised in any area in the prescribed manner by reference to the qualifying date if such revision has been directed by the Election Commission. Therefore, the Joint Committee has recommended a very important change and the object sought to be achieved by the hon. Mover has been achieved and would be achieved if the Joint Committee report is accepted by the House when it comes up next week. Annual revision is superfluous; it does not bring in any good result. A revision has been provided for where it is necessary and where it will bring useful results. I hope therefore that the hon. Mover would not insist upon this change. If the hon. Member wants to say anything or move an amendment then the proper place will be when the comprehensive Bill comes up for consideration.

Shri D. S. Patil (Yeotmal): Will you give an assurance to that effect?

Shri G. S. Pathak: I am not giving any assurance.

Mr. Chairman: The hon. Minister is saying that he will be getting another chance to press his point.

Shri G. S. Pathak: The hon. Members will also remember that there are rules which give ample opportunities for those who want to have their names included. There is section 22 whereby the correction of an electoral roll can be made; section 23 whereby if a name has been excluded,

it can be included. The form is prescribed; the procedure is prescribed.

I submit that clause 3 also should not be accepted, because how can you draw a distinction between a false allegation made against a public servant and a false allegation made against anybody else. According to the scheme of the Representation of the People Act, in an election petition it is the conduct of the successful candidate or that of his agent, as laid down in section 100, which can form the subject-matter of an election petition. Allegations against third parties do not amount, according to the scheme of the Representation of the People Act, to corrupt practice, because it is the election of a successful candidate which has got to be set aside. It is the corrupt practice committed by him which is in question before the court or the tribunal, either committed by himself or by his election agent or somebody else with his consent. But apart from this, there is ample provision in the existing law to meet the case of false allegations made by a petitioner in an election petition. The election petition has to be accompanied by an affidavit. The election petition is to be verified by the petitioner. Therefore, in case the allegation is found to be false, then the petitioner can be criminally prosecuted. The costs can be awarded against the petitioner. If the court or the tribunal finds that the petition was vexatious and frivolous within the meaning of section 35A, I do not see why that section does not apply when the Civil Procedure Code applies. Therefore, any allegation made which is false could be dealt with in the same way as a false allegation made in a civil proceeding in a court of law or could be met with by a criminal prosecution. I would, therefore, submit that this clause is quite unnecessary, because it will entail very serious consequences. Under section 140, there will be disqualification. Section 141 would cover another disqualification. Therefore, I would submit that this clause should

not be accepted by the House, and the provisions which already exist in the law are adequate.

This Bill, I submit, is a Bill which really overlaps the contents of the Bills which are before the House, although they are not identical provisions. But when both the Representation of the People (Amendment) Bills, 1950 and 1951 are pending before this House and have to be considered, I submit this piecemeal legislation should not be accepted.

Shri M. Malachami: I am thankful to the senior Members like Shri Shree Narayan Das, Shri Raghunath Singh and Shri Dixit, an eminent lawyer and esteemed Member of this House, who supported the Bill. I also listened carefully to the reply made by our Law Minister.

My Bill was moved in the year 1964, when the present Representation of the People (Amendment) Bill was not on the anvil of Parliament. So, my ambition was to see that the electoral rolls are made as up-to-date as possible. From the speech of the Law Minister and the provisions in the Bills that are pending before the House, I am now able to understand that there is provision and scope for making the electoral rolls up-to-date whenever general elections are to be held. So, I am not very particular of my first amendment.

Regarding the amendment to section 123 of the Representation of the People Act, 1951, I would submit that my amendment mainly aims at avoiding harassment and unnecessary litigation on account of the conduct of elections. Generally, I am mainly concerned with election petitions filed by defeated candidates whose main object is to cause harassment to the winning candidate. The winning candidate is to contest the election petition, is to serve his constituency and also serve as a Member of Parliament in this House. He is loaded with onerous responsibilities, and

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whenever he finds that because he won the election he is subjected to so much harassment, he seeks redress through an amendment like this. My only subject in moving the amendment is to see that the harassment is reduced to the minimum.

Our Law Minister has said that whenever allegations are found to be false, there is already a provision in the Representation of the People Act to take further action against the frivolous allegations made by the petitioner. But regarding the officials whenever allegations are made against them, and when there are possibilities for getting those allegations redressed even at the time of the elections, the petitioner keeps quiet till the elections are over. It is only after the results are announced that he fabricates things and tries to file an election petition, not only making allegations against the winning candidate but also against the officials. I can cite an example. Suppose after the election, the votes are counted; there are the returning officer and his assistants who do the counting; at that time there are agents, both for the winning candidates and the election petitioner. The latter keeps quiet at that time; he raises no objections. Then, after the counting of votes is over and the results are announced, he files an election petition after 45 days, saying that at the time of counting the returning officer had adopted partisan attitude and had sorted the votes in such a manner as to help the winning candidate to win or he had accepted the invalidated votes as valid votes in favour of the winning candidate. It is only under such circumstances that the officials are also helpless along with the candidate who is helpless. There are provisions in the Act itself, to the effect that the election petitioner could object to any malpractice found by him at the time of counting but he remains quiet till the counting is over and the results are announced. Subsequently, in order to harass the candidate and to see that for the entire term he is engaged in

some way or the other in litigation—because there are very many moneyed people who are willing to support such litigants who want to file an election petition—he files the election petition; the main intention is to harass the winning candidate.

Therefore, to protect the winning candidate and to see that such election petitioners do not go scot-free after making frivolous allegations against the officials, I want that certain provisions must be made. I would request the Law Minister to find certain ways in this direction, in the manner suggested. There are the Bills coming up, and the Law Minister may find some other method by which those frivolous allegations against the officials—they are not party to the election—are limited to the extent possible.

With these words, I resume my seat.

Mr. Chairman: I think the hon. Member will give appropriate amendments to the Bill which had emerged from the Joint Select Committee in consultation with the hon. Minister so that these things could be solved.

16 hrs.

Shri G. S. Pathak: I have already said that the proper procedure should be to propose an amendment to the Bill which is coming up before the House. At that time that matter can be considered by the House. I, therefore, appeal to the hon. mover not to press this Bill and withdraw it.

Shri M. Malaichami: I withdraw the Bill.

The Bill was, by leave, withdrawn.

16.01 hrs.

TRANSPORT CO-ORDINATION BILL

By Shri D. C. Sharma

Shri D. C. Sharma (Gurdaspur):
Sir, I beg to move:

“That the Bill to provide for co-ordination of the various