

1943 *Delhi Municipal Corporation (Etc. Etc.) Bill*, 1888 (SAKA) *Companies (Second Amendment) Bill* 1944

of the Constitution, and this recommendation of the President was communicated to the Lok Sabha Secretariat. This will show that it really validates the collection of taxes right from that date.

As I said earlier, this Bill seeks to rectify some of the technical mistakes that happened in the resolution of the Corporation and the sanction that was accorded to the resolution by the Government. The reason why Government did not go in appeal against the judgement of the Punjab High Court was that the opinion given by the Attorney-General, after considering the entire matter, was that it would be best to remove any doubts about the whole thing by a suitable amendment of the Act and that is why the Government decided to bring forward this amendment rather than appeal to the Supreme Court which would have again taken a good deal of time.

Shri Shree Narayan Das raised some point which I mentioned briefly, but I would again mention it so that he would know why we had to alter the rates that were prescribed by the Delhi Municipal Corporation. The Municipal Corporation, while recommending the rates, did not distinguish between the small scale industries and the bigger industries, and since the Government was anxious to give encouragement to the small scale industries, the rates applicable to the small scale industries were reduced and the rates applicable to the other industries were very slightly enhanced just to counterbalance the entire thing; this did not affect the finances of the Municipal Corporation to any extent, and it was to the general good.

I am thankful to Members for their support to this measure.

**Mr. Chairman:** Mr. Bhattacharyya has made the point that rather than bringing in a fractional piece of legislation, the Corporation Act may be amended to bring it up to date. Have you got anything to say on that?

**Shri Vidya Charan Shukla:** This particular Bill was need to validate the collection of these taxes. It is a financial measure more or less. So, this had to be brought separately.

**Mr. Chairman:** The question is:

"That the Bill to validate the imposition and collection of certain taxes on the consumption or sale of electricity by the Delhi Municipal Corporation, be taken into consideration."

*The motion was adopted.*

**Mr. Chairman:** The question is:

"That Clauses 1 and 2, the Enacting Formula and the Title stand part of the Bill."

*The motion was adopted.*

*Clauses 1 and 2, the Enacting Formula and the Title were added to the Bill.*

**Shri Vidya Charan Shukla:** I beg to move:

"That the Bill be passed"

**Mr. Chairman:** The question is:

"That the Bill be passed."

*The motion was adopted.*

15.48, hrs.

COMPANIES (SECOND AMENDMENT) BILL

**The Minister of State in the Ministry of Law (Shri C. R. Pattabhi Raman):** I beg to move:

"That the Bill further to amend the Companies Act, 1956, be taken into consideration."

This has been awaiting consideration by the House for some time. Very briefly, there are three amendments. The first two of them are purely of a verbal nature and are necessitated by the lapse of time since the introduction of the Amendment Bill in this House on 22nd November of last year. Therefore, I do not wish to commend elaborately on them.

The other amendment is also, if I may say, of a minor nature. It deals with section 240, and it seeks to provide that before authorising any per-

[Shri C. R. Pattabhi Raman]

son to receive from anybody corporate information, books and papers necessary for the purpose of investigation, the Inspector must obtain the approval of the Central Government.

The other amendment seeks to rectify an omission which was noticed earlier but which, if not so rectified, is likely to give rise to practical difficulties in the working of the statutory provisions. As members are aware, section 370 of the Companies Act, the amendment of which is now before the House, deals with both the making of a loan and the giving of a guarantee of the providing of security in connection with a loan made, by one company to another. The section stipulates that no company shall make a loan or give guarantee etc., without obtaining the prior approval of its general meeting by a special resolution. Under the "Explanation" to subsection (1) of the section, inserted by the Amendment Act of 1965, it is possible, however, for the general meeting of a company to authorise its Board of Directors to grant loans up to the limit of 30 per cent or, as the case may be, 20 per cent of the aggregate of its subscribed capital and free reserves. It will not, therefore, be necessary for the company to hold a general meeting every time a loan is required to be made. This relaxation was provided for with a view to avoiding the practical difficulty involved in convening general meetings, particularly of large companies. The aforesaid explanation does not, however, cover guarantees or the provision of securities which are also regulated by section 370 of the Companies Act. In the absence of a similar clarificatory provision specifically in respect of guarantee and securities, it may, therefore, be held that a special resolution of the company in general meeting would be necessary every time a guarantee is given or a security is required to be provided by a company. The proposed amendment accordingly seeks to clarify that if a special resolution has been passed by

the lending company authorising its Board of Directors to give any guarantee or provide any security up to a limit specified in the resolution, then no further special resolution would be necessary for giving any guarantee or providing any security within such limit.

I am sure the hon. Members will agree that an amendment of the kind proposed is quite necessary and is in line with the clarification already provided in the law in respect of the making of loans by a company.

On the last occasion, it was a slip and that is what we are now seeking to rectify.

**Mr. Chairman:** Motion moved:

"That the Bill further to amend the Companies Act, 1956, be taken into consideration."

**Shri Narendra Singh Mahida** (Anand): Mr. Chairman, Sir, The Companies (Second Amendment) Bill was first brought in 1964; it was introduced in Parliament on September, 21, 1964 and was passed by both Houses of Parliament as the Companies (Amendment) Bill, 1965. The Bill received the President's assent on September 25, 1965 and was notified as the Companies (Amendment) Act, 1965 (Act 31 of 1965). I am reading this from the Tenth Annual Report on the working and administration of the Companies Act, 1956. It makes sorry reading. Again, the Companies (Second Amendment) Bill, 1965 was introduced in Parliament on November 22, 1965. This Bill seeks *inter alia* to remove hindrances in the normal functioning of financial institutions, insurance companies and private companies *simpliciter* in respect of guarantees given and securities provided by them.

In the Ordinance, it has been stated that based on the recommendations of the Vivian Bose Commission of Inquiry, section 13 of the Companies

(Amendment) Act, 1965 was enacted. This section amended section 108 of the Companies Act, 1956, by inserting therein sub-sections (IA) to (ID). The provisions of section 13 of the said Amendment Act were brought into force with effect from 1st April, 1966, whereas the other sections except section 46 were brought into force with effect from 15th October, 1965.

Soon after the amended provisions were brought into force on 1st April, 1966, their working disclosed a number of practical difficulties and doubts were also expressed as to the intention underlying these provisions. Representations were made by various stock exchanges and other bodies which were intimately concerned with the working of these sub-sections. An ordinance was passed to remove these difficulties and clarify the doubts. This Bill, as I understand, is brought to replace the Ordinance.

Now, there are various sections which I would not like to go into. But it is rather very strange reading. Immediately on the commencement of these provisions, objections were raised by the stock exchanges and others that the enforcement of these provisions would result in complete prohibition of blank transfers when the intention was to regulate and control the currency of blank transfers. It is a very well-known fact in stock exchanges that whenever shares are transferred, they always do it with blank transfers. This difficulty could have been foreseen. It was also pointed out that there would be serious practical difficulties if the register of the members of the company were closed within a short time—

**Shri C. R. Pattabhi Raman:** Blank transfer is dealt with in another Bill. That is about section 108. That is a Bill to validate the Ordinance. Here, it is only about section 370. There are two amending Bills. We are now on the second amendment Bill. It deals with sections 240 and 372. The hon. Member is referring to section 108. That is for another Bill.

**Shri Narendra Singh Mahida:** Then I withdraw those remarks on Ordinance. In short, I wish to say that I support the present Bill.

**Shri V. B. Gandhi (Bombay Central South):** Mr. Chairman, Sir, there should be no difficulty in supporting this Bill. There has been a slip, a kind of oversight which has led them to bring this Bill before the House. The Vivian Bose Commission of Inquiry recommended that inter-company loans should be treated as on par with inter-company investments. Previous to that, the inter-company loans could be granted for advance to corporations without any limit only on satisfying the requirement that there should be a resolution of the general body by the directors.

15.56 hrs.

[SHRI P. VENKATASUBBIAH in the Chair]

Now, according to the recommendation of the Vivian Bose Inquiry Commission, it is said that the same restrictions that are applicable or as have been applicable to inter-company investments should also be made applicable to inter-company loans.

**Shri Narendra Singh Mahida:** There is an amendment by Shri C. R. Pattabhi Raman. I want to know whether it has been moved or not.

**Mr. Chairman:** We are now in the general discussion. When the clauses are taken up, the amendments will be moved.

**Shri C. R. Pattabhi Raman:** The dates are being changed in the third amendment.

**Shri V. B. Gandhi:** Inter-company loans should be placed on the same basis as inter-company investments. That is, the restriction under section 372 should be made applicable also to section 370. That is not a very good position, but having already accepted that by an Act amending section 370 by section 46 by the Company Law (Amendment) Act of 1965, we have no go but to accept this further restriction on the inter-company loans.

[Shri V. B. Gandhi]

But the point here is this. I understand that the provisions of the Companies (Amendment) Act, 1965, that is, the provisions of section 46 of this Act, have not been brought into force so far. If they have not been brought into force so far, it is good, because after all in the present financial conditions of the market and in the banking world, it is necessary that if we have not brought into force these provisions we might still continue without them for sometime longer. After all, the present tendency even in the Government policy is to promote relaxation of control towards making credit more easily available to institutions and companies.

In view of this amendment, I would appeal to the Government that they should not immediately bring into force the provisions of the Bill which we are supporting today. The question really arises out of the guarantees given by certain financial institutions and securities provided by those institutions like the financial institutions, insurance companies, banking companies, private companies, etc., which finance without limit industrial enterprises. All these institutions should have the freedom and should be exempted from the restrictions of section 46 of the Company Law Amendment Act. The loans granted by these institutions are already exempted. The exemption may also be extended to guarantees given by these institutions and securities provided by them.

With these words, I support the Bill.

16 hrs.

**Shri C. R. Pattabhi Raman:** Sir, I have nothing to add to what I said in the beginning.

The hon. member just now referred to guarantees and securities. I am moving an amendment No. 3 to clause 3 with regard to guarantees and securities. I have already stated that the substantive provisions of the section

have already been amended by the 1965 Act and it is already law. The present Bill makes some relaxations so far as guarantees and securities are concerned.

I do not think I am justified in taking more time of the House.

**Mr. Chairman:** The question is:

"That the Bill further to amend the Companies Act, 1956, be taken into consideration."

*The motion was adopted.*

**Mr. Chairman:** We shall now take up clause by clause consideration. There are no amendments to clause 2.

The question is:

"That clause 2 stand part of the Bill."

*The motion was adopted.*

*Clause 2 was added to the Bill.*

**Clause 3—(Amendment of section 370).**

*Amendment made:*

3. Page 1,—

for line 11, substitute—

'3. In section 370 of the principal Act,—

(1) in sub-section (1), the Explanation shall be renumbered as Explanation 1, and after Explanation 1 as so renumbered, the following Explanation shall be inserted, namely:—

"Explanation 2.—If a special resolution has been passed by the lending company authorising the Board of Directors to give any guarantee or provide any security upto a limit specified in the resolution, then, no further special resolution or resolutions shall be deemed to be necessary for giving any guarantee or providing any security within such limit."

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(2) in sub-section (2),—' (3)  
(Shri C. R. Pattabhi Raman)

**Mr. Chairman:** The question is:

"That clause 3, as amended,  
stand part of the Bill."

*The motion was adopted.*

Clause 3, as amended, was added to  
the Bill.

**Clause 1**—(Short title and com-  
mencement):

*Amendment made:*

Page 1, lines 3 and 4, for "the  
Companies (Second Amendment) Act,  
1965". substitute "the Companies  
(Amendment) Act, 1966." (2).

(Shri C. R. Pattabhi Raman)

**Mr. Chairman:** The question is:

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

*The motion was adopted.*

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

#### **Enacting Formula**

*Amendment made:*

Page 1, line 1,—

for "Sixteenth" substitute "Seven  
teenth" (1).

(Shri C. R. Pattabhi Raman)

**Mr. Chairman:** 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 C. R. Pattabhi Raman:** I beg  
to move:

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

**Mr. Chairman:** The question is:

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

*The motion was adopted.*

16.10 hrs.

MOTION UNDER RULE 388 IN RE-  
LATION TO PASSING OF CONSTI-  
TUTION (TWENTY-FIRST AMEND-  
MENT) BILL

**Mr. Chairman:** We shall take up  
the next item—Motion under Rule  
388.

**Shri Shree Narayan Das** (Dar-  
bhanga): There is no quorum in the  
House.

**Mr. Chairman:** The bell is being  
rung.

The Bell has sopped ringing. There  
is no quorum yet. The Bell may be  
rung again.

There is quorum now. The hon.  
Minister may move his motion under  
Rule 388.

**The Minister of State in the Ministry  
of Law (Shri C. R. Pattabhi Raman):**  
Sir, on behalf of Shri G. S. Pathak,  
I beg to move:

"That the proviso to Rule 66  
of the Rules of Procedure and  
Conduct of Business in Lok  
Sabha in its application to the  
motions for taking into consi-  
deration and passing of the  
Constitution (Twenty-first Amend-  
ment) Bill, 1966, be suspended."

Rule 66 reads like this:

"A Bill, which is dependent  
wholly or partly upon another  
Bill pending before the House,  
may be introduced in the House  
in anticipation of the passing  
of the Bill on which it is de-  
pendent:

Provided that the second Bill  
shall be taken up for considera-  
tion and passing in the House  
only after the first Bill has been