

1951 Companies KARTIKA 17, 1888 (SAKA) Motion under 1952  
(Second Amendment) Bill Rule 388

(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

[Shri C. R. Pattabhi Raman]

passed by the Houses and assented to by the President."

The Bill that is coming up before us is to amend the Representation of the People Act, 1950 and the Representation of the People Act, 1951, as reported by the Joint Committee. We have to suspend the proviso to take up the Constitution (Twenty-first Amendment) Bill, which is the next item, along with that. That is why I am moving this motion.

**Mr. Chairman:** Motion moved:

"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 consideration and passing of the Constitution (Twenty-first Amendment) Bill, 1966, be suspended."

**Shri Narendra Singh Mahida (Anand):** Sir, I also support this motion.

**Shri Shree Narayan Das:** Sir, I want to seek a clarification from the hon. Minister. The motion seeks to suspend 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 consideration and passing of the Constitution (Twenty-first Amendment) Bill, 1966. My point is, the next item on the Agenda is the motion relating to the Representation of People (Amendment) Bill. This Bill is dependent upon the Constitution (Amendment) Bill. It is not that the Constitution (Amendment) Bill is dependent on the Representation of People (Amendment) Bill.

**Shri C. R. Pattabhi Raman:** They are two independent Bills.

**Shri Shree Narayan Das:** In the Representation of People (Amendment) Bill we are going to make a provision that the tribunals which used to be constituted by the Election

Commission will not now be constituted. That power of constituting tribunals is going to be taken away from the Election Commission. Now all cases of hearing of petitions against elections will be heard by the High Court. Therefore, the Representation of People (Amendment) Bill is dependent on the Constitution (Amendment) Bill. Unless the power of the Election Commission, provided for in the Constitution is taken away, you cannot take up the other Bill. Therefore the motion for suspension of the Rule should be in its application to the motion for taking into consideration and passing of the Representation of People (Amendment) Bill, and not in its application to the motion for taking into consideration and passing of the Constitution (Twenty-first Amendment) Bill, 1966. We have to consider the Representation of the People (Amendment) Bill first and the Constitution (Amendment) Bill comes next on the Agenda and that will be considered later on.

**Mr. Chairman:** Both will be taken up simultaneously.

**Shri Shree Narayan Das:** The Constitution (Amendment) Bill requires a certain fixed number of votes. Therefore, that cannot be taken up first. In the agenda it is the Representation of People (Amendment) Bill that comes first, and then comes the Constitution (Amendment) Bill. Therefore, my point is, we have to suspend the proviso to Rule 66 in its application to the motion relating to the Representation of People (Amendment) Bill because it cannot be taken up unless the Constitution (Amendment) Bill is passed. Therefore, the motion which has been moved by the hon. Minister should be worded in such a way that it is sought to be suspended in its application to the motion for taking into consideration and passing of the Representation of the People (Amendment) Bill.

**Shri Radhelal Vyas** (Ujjain): Sir, suppose we take up the motion that is before the House and adopt it, what will be the position? It will allow us to consider and pass the Representation of People (Amendment) Bill. The point is, so long as the Constitutional provision is there, this law cannot be passed by the Lok Sabha. That is the point that was raised by my hon. friend Shri Shree Narayan Das. What is the use of passing this without passing the Constitution (Amendment) Bill? Suppose we pass this, immediately a writ can be filed in the High Court that this is *ultra vires* of the Constitution. Suspension of the proviso to the rule does not validate it. By passing this Bill we will be doing something contrary to the provisions of the Constitution and which cannot be given effect to unless the Constitution is amended. What is the hurry in passing this Bill if it cannot be given effect to, if it cannot be enforced? I would, therefore, submit, let the hon. Minister kindly reconsider it. He must first have the Constitution (Amendment) Bill passed and immediately after that have this Bill also passed. I do not think there is any need to suspend the operation of this proviso.

**Dr. M. S. Aney** (Nagpur): There is a note here given in the Order Paper that items 21 and 22 are to be discussed together. There is also another note that item 22 is to be discussed along with item 21 in case the motion at item No. 20 is adopted. Their idea is to get this suspension motion passed and then to consider both these motions relating to the Representation of People (Amendment) Bill and the Constitution (Amendment) Bill together. Instead of allowing this House to discuss those two Bills separately they want the House to discuss both the Bills together. If they want to do that, there should be a motion for that. The note given here is neither a motion nor anything else at all. I do not understand it. The hon. Minister should move a motion that under certain circum-

stances it is necessary to discuss both these motions at items 21 and 22 together. They must get the permission of the House to do that. Then only can they proceed. There is no latitude given to them, except the consent of the House to proceed with the business. They have to follow the procedure mentioned in the Rules of Procedure. That is my humble submission.

**Shri C. K. Bhattacharayya** (Rai-ganj): Shri Sree Narain Das says that the motion that has been moved is not in proper form. According to him, the motion should be:

"That the proviso to Rule 66 of the Rules of Procedure and Conduct of Business in Lok Sabha in its application to the motion for taking into consideration and passing of the Representation of the People Act, 1950 and the Representation of the People Act, 1951, as reported by the Joint Committee, be suspended."

According to him, the rule is not to be suspended in its application to the proposals for amendment of the Constitution. It is a fundamental issue that he has raised. He says that the proviso is required to be suspended, not because of the proposal to amend the Constitution but because of the proposal to amend the Representation of the People Act, and, therefore, the motion should be put in the proper form before it is placed before the House for discussion and acceptance. I hope the Law Minister will take into consideration the point raised by Shri Shree Narayan Das and elucidate whether that is the position with which we are faced.

**Shri Narendra Singh Mahida**: We have to take up the business which is listed in the List of Business. We have before us a motion under rule 388. That rule says:

"Any member may, with the consent of the Speaker, move that any rule may be suspended

[Shri Narendra Singh Mahida]

in its application to a particular motion before the House and if the motion is carried the rule in question shall be suspended for the time being."

Now the question is the suspension of the proviso to rule 66; then we can by-pass item. LI. Because, in the List of Business we have stated "Contingent Notice" about the Constitution (Twenty-first Amendment) Bill "To be taken up in case the Motion at item No. 20 is adopted". So, we must first adopt or reject item No. 20. If we adopt it, then we have to take up item No. 22. If we reject it, we can take up item No. 21; not otherwise.

**The Minister of Law (Shri G. S. Pathak):** The position is this. The Constitution provides that the power to appoint tribunals vests in the Election Commission. Now the provision in the amendment of the Representation of the People Act is that instead of the tribunal, the Jurisdiction to decide election disputes will be conferred on the High Court. Now, each is dependent on the other. It is not a case where one is dependent on another. If the Constitution is amended and the power of the Election Tribunal is taken away from the Election Commission then and then alone the power can be conferred on the High Court by amendment of the Representation of the People Act. For example, if the amendment of the Representation of the People Act fails, then, in that case, the position will be that there will be neither a power to appoint a tribunal, nor the High Court having jurisdiction to decide an election dispute; that will be the result. Therefore, each is dependent upon the other. If the amendment of the Representation of the People Act is passed the High Court gets the jurisdiction, and the High Court gets the jurisdiction when the power to appoint the election tribunal is taken away from the Election Commission under the Constitution. That is the position. There-

fore, his is not a case where one is dependent upon another. It is a case where each is dependent on the other, because if one of them fails, the other cannot remain. I may explain it a little further.

**Shri Shree Narayan Das:** One is a Bill and the other is the Constitution.

**Shri G. S. Pathak:** If the Constitution is amended, then, in that case, no power is left in the Election Commission to appoint a tribunal.

**Shri Tyagi (Dehra Dun):** If the Constitution is amended and in that amendment it is mentioned that the power will vest in the Election Commission, both the purposes will be served.

**Shri G. S. Pathak:** No, the power cannot vest....

**Shri Tyagi:** As we have named the High Court in the Constitution, similarly we could name the Election Commission also in the Constitution.

**Shri G. S. Pathak:** The Constitution gives the power to Parliament to confer any jurisdiction upon the High Courts and the Supreme Court. That power already exists. It will be a duplication of provisions if you confer another power by another provision. The power to confer any jurisdiction on the High Courts and the Supreme Court vests in Parliament by other provisions of the law. Therefore, it is not possible to make another provision in the law for the conferment of such power. The observation of my hon. friend, Shri Tyagi, would mean that while the power to confer jurisdiction on the High Courts already vests in Parliament, by another amendment of the Constitution you confer the same power.

**Shri Tyagi:** The Constitution can be amended in such a way as to mention that in such and such cases the

Election Commission can do the needful. The Constitution can comprise of both these things.

**Shri G. S. Pathak:** For every possible purpose Parliament has got the power to confer jurisdiction on the High Courts under the existing provisions of the Constitution. With respect to the view taken by Shri Tyagi, it will be superfluous; it will be a wrong constitutional practice to confer the same power by the Constitution in different places and by repetition. That is not possible. The power already resides in Parliament to create jurisdiction in the High Court for any purposes, whether it is an election purpose or any other purpose. Then, if that suggestion is accepted, the result will be that although the Parliament has got the power to confer jurisdiction on the High Court in the matter of election disputes, even though that power already exists, you are conferring the same power again by another provision, which will be a mere repetition and superfluity. That will be the result. Therefore, that procedure could not be adopted.

Now, the position is this. If the Constitution is amended and the power to appoint the tribunal is taken away, Parliament has the power to confer jurisdiction on the High Court; that is true. Therefore, the Bill is dependent on the amendment of the Constitution. That is also true. But the Constitution Amendment Bill is itself dependent on the Representation of the People Amendment Bill, as it is only when jurisdiction is conferred on the High Court that the power has to be taken away from the Election Commission under the Constitution, because if jurisdiction is not to be conferred on the High Court by the amendment of the Representation of the People Act, then, in that case, the other provision, that is, the amendment of the Constitution would be immaterial. You take away both the powers, in case the Representation of the People Amendment Bill does not succeed. The result will be that

you wait. If this proviso applies, the Representation of the People Amendment Bill has got to wait until the Constitution Amendment Bill is passed. Now, we cannot anticipate that Parliament will necessarily pass the Bill, or that provision of the Bill which deals with the conferment of powers on the High Court. If the Constitution Amendment Bill is passed and the power is taken away from the Election Commission to appoint a tribunal and the Parliament does not pass the Representation of the People (Amendment) Bill and the High Court does not get the power, the result will be that nobody will have the power.

Now, the first part of rule 66 is concerned merely with the introduction of the Bill. The Bill can be introduced in anticipation. That is the first part. The proviso deals with the question of consideration of the Bill. I read the proviso:

"Provided that the second Bill shall be taken up for consideration and passing in the House only after the first Bill has been passed by the Houses and assented to by the President."

If you apply this proviso, the result will be that the Constitution Amendment Bill will be passed first and the power to appoint a tribunal will be taken away and it is only then that the Representation of People (Amendment) Bill will come up for consideration. If that comes up for consideration and the Parliament does not choose to confer jurisdiction on the High Court, we will be left in this position that neither there is any tribunal or power to appoint a tribunal nor there is power for the High Court to decide these disputes.

It is for this reason that the first motion is that the proviso be suspended so that it may not become necessary for the Parliament to pass the Constitution Amendment Bill first and for the President to give assent to the Constitution Amendment Bill. They could be taken up together, because

[Shri G. S. Pathak]

if the proviso applies, then we have got to wait for the deletion of the provision in the Constitution which gives power to the Election Commission to appoint a tribunal and then this Representation of People (Amendment) Bill will come up for consideration and we do not know whether this provision will be passed or not.

**Shri Radhelal Vyas:** May I seek a clarification?

**Mr. Chairman:** Since the Minister has said that both these Bills are inter-dependent, in the motion under rule 388, he can move about the consideration and the passing of the Representation of People (Amendment) Bill as well as the Constitution Amendment Bill. Both can be moved together and the consent of the House taken.

**Shri G. S. Pathak:** I will do that.

**Shri Radhelal Vyas:** May I seek a clarification from the Law Minister? The hon. Law Minister says that the Parliament has got powers to confer powers on the High Court to have jurisdiction on certain matters. Article 324 says:

".....including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in this Constitution as the Election Commission)."

This is a mandatory provision. When the Constitution has conferred this power exclusively on the Election Commission, has the Parliament any power left to confer any power on the High Court in the presence of this provision? I would submit that so long as this provision is there, the Parliament is not competent to give any more power or jurisdiction to the High Court for any matter which has been excluded from the jurisdiction of the High Court under article 324.

**Shri G. S. Pathak:** This is precisely what I had said. I had said that so long as the power vests with the Election Commission to appoint a tribunal, this Parliament cannot make a provision in the Representation of People (Amendment) Bill for conferment of jurisdiction on the High Court and, therefore, it becomes necessary to delete from article 324 the power which belongs to the Election Commission to appoint a tribunal. That is precisely the reason why we are seeking amendment of the Constitution.

**Shri Tyagi:** Which should come first? So long as the mandatory provision of article 324 of the Constitution is not amended, can we proceed with this proposal without amending that thing first?

**Shri G. S. Pathak:** If the proviso is not suspended, the question will arise which will be taken up first for consideration and Mr. Tyagi will be right in saying that, if the proviso applies, we should wait for the passing of the Constitution Amendment Bill because then alone the power will be taken away. This is precisely the reason why we are saying that the proviso should be suspended. If the proviso remains, Mr. Tyagi is correct in saying that. But if the proviso is removed, then the two Bills can be taken up for consideration. The question of voting is immaterial because at the time of voting, you may have voting separately, one on the occasion of passing the Representation of People (Amendment) Bill and the other on the occasion of passing the Constitution Amendment Bill. But their consideration can be common and it is precisely for the reason pointed out by Mr. Tyagi that we are moving for the suspension of the proviso to rule 66.

I 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 consideration and passing of

the Representation of People (Amendment) Bill, 1966 as reported by The Joint Committee and the Constitution (Twenty-first Amendment) Bill, 1966, be suspended.

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

"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 consideration and passing of the Representation of People (Amendment) Bill, 1966 as reported by the Joint Committee, and the Constitution (Twenty-first Amendment) Bill, 1966, be suspended."

*The motion was adopted.*

16.38 hrs.

REPRESENTATION OF PEOPLE  
(AMENDMENT) BILL AND CONSTITUTION  
(TWENTY-FIRST AMENDMENT) BILL

**The Minister of Law (Shri G. S. Pathak):** I beg to move:

"That the Bill further to amend the Representation of the People Act, 1950 and the Representation of the People Act, 1951, as reported by the Joint Committee, be taken into consideration."

I also move:

"That the Bill further to amend the Constitution of India be taken into consideration."

Sir, the necessity for amending the Constitution arose because the Government decided that instead of the Election Tribunals, we should have High Courts so that there may be expedition of decisions in the matter of election disputes. Under article 324, the power is given to the Election Commission for the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections. The Constitution Amendment Bill seeks the deletion of the latter part, namely, the appointment of election tribunals

for the decision of doubts and disputes arising out of or in connection with elections. The object of this amendment is quite clear, because without this amendment it will not be possible to confer power on the High Court to decide election disputes. So far as the Representation of the People Act is concerned, the matter went to the Joint Committee of the two Houses and the Report of the Joint Committee is before this House. I shall make only a few observations at this stage. Later when the time arrives for amendments, I shall have to move some amendments.

Under clause 9, an amendment has been recommended by the Joint Committee and Government are accepting that amendment.

**Shri D. S. Patil (Yeotmal):** We are not discussing amendments now.

**Shri G. S. Pathak:** I am discussing the Report of the Joint Committee and not any amendment which is sought to be made here.

The amendment is that:

"The said electoral roll—

- (a) 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—
  - (i) before each general election to the House of the People or to the Legislative Assembly of a State; and
  - (ii) before each bye-election to fill a casual vacancy in a seat allotted to the constituency; and
- (b) shall be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by the Election Commission: