

PROF. MADHU DANDAVATE: The hon. Minister, in his earlier reply, has referred to the fertiliser project at Thal Vaishet in the Kolaba District of Maharashtra. After the decision was taken to have the project at Thal Vaishet, the necessary infrastructure facility in the form of railway network was also provided. The construction work is going on expeditiously. But some sections have again started a controversy bringing in environmental and all other factors. As a result of that, a certain amount of uncertainty prevails in that region whether the Thal Vaishet Project will be continued or whether it is likely to be discontinued even after spending so much of amount. Will the hon. Minister give a categorical assurance that all these controversies about Thal Vaishet will be ended and there will be no change in the original decision to go ahead with the Thal Vaishet Project in Kolaba District?

SHRI VEERENDRA PATIL: I do not know if anybody has raised this controversy. So far as Government is concerned, there is no controversy.

PROF. MADHU DANDAVATE: In this very House, questions were raised. You can go through the proceedings.

SHRI VEERENDRA PATIL: That is why I say that I am not concerned with the controversy raised by anybody else. So far as Government is concerned, we have no controversy. We have taken the decision to establish at Thal Vaishet. Not only that, for the information of the hon. Member, I will say that an expenditure of about Rs. 30 crores has already been incurred and commitments of the order of about Rs. 120 crores have been made. Therefore, there is no question of going back now.

SHRI ARJUN SETHI: In the question, it is mentioned, "...for the construction of fertilizer plant in India". In this context, may I know from the hon. Minister whether the World

Bank has undertaken to finance only this particular fertiliser plant? Or, are there any other plants also which are going to be set up in other parts of the country with the assistance of World Bank? In his reply to the previous question, the hon. Minister has said that the Satish Chandra Committee has recommended, 'beyond U.P.'. I want to know whether 'beyond U.P.' includes Orissa also, because, in Paradeep, there was a proposal to set up a fertiliser plant.

SHRI VEERENDRA PATIL: The hon. Member wanted to know whether we are negotiating with the World Bank or any other fertiliser plant. I would like to inform the hon. Member that we are negotiating with the World Bank for a similar plant the 2 units of the Hajra plant also.

The hon. Member wanted to know whether 'beyond Uttar Pradesh' means Orissa. It is not Orissa. We are not thinking of any fertiliser plant based on the Bombay High gas in Orissa.

SHRIMATI GEETA MUKHERJEE: Will the Minister be pleased to state whether there are any terms and conditions attached to this World Bank loan and if so, what are they?

SHRI VEERENDRA PATIL: I require notice.

Review of Supreme Court Judgement in Keshavanand Bharati's Case

*952. **SHRI MADHAVRAO SCINDIA:** Will the Minister of LAW, JUSTICE AND COMPANY AFFAIRS be pleased to state:

(a) whether Government have since examined the question of seeking a review of the judgement given by the Supreme Court of India in the famous Keshvanand Bharati's case with regard to the competence of Parliament to amend the Constitution in all its aspects; and

(b) if so, whether Government have decided to seek review of the judgement?

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI P. SHIV SHANKAR): (a) The Supreme Court pronounced its judgement in Keshvanand Bharti's case on the 24th April, 1973. The time limit of 30 days for filing a review application under Order XL Rule 2 of the Supreme Court Rules expired long ago. The question of seeking a review of that judgement in terms of the above rule at this stage does not arise.

(b) Does not arise.

SHRI MADHAVRAO SCINDIA: I am a layman as far as legal matters are concerned. Maybe I have over-looked some legal intricacy. But I feel the hon. Minister is worthy of congratulations for his consistency in making contradictory statements in Parliament. On the 9th of June, answering question (1) he has answered in part (a)—the question deals with the same case:

"This time limit has expired long ago and hence the question of moving the Supreme Court to review its judgment in this case does not arise."

He goes on to say in part (b):

"However, government would consider the feasibility of requesting the Supreme Court to reconsider this decision."

Similarly, in answer to my question, he also says that the time limit for review has expired long ago and, therefore, it does not arise. Yesterday in the Rajya Sabha—I quote the *Times of India*—he has said that although the government bow down to the Supreme Court judgment in *Keshvanand Bharati case*, it would also like its review in due course. I would like the hon. Minister to clarify and resolve kindly for my enlightenment and the enlightenment of this House, this contradiction between his written and verbal utterances in Parliament;

and (b) Is it not true that 7 years ago, after that judgment was delivered, a petition was moved by the government before the Supreme Court seeking a review of its judgment—which was disallowed.

and (c) Subsequently, the Supreme Court judgment on the validity of the 42nd Amendment has once again given the government a chance to seek a review of the judgment which deals basically with the same matter.

Would the government be seeking a review? He said yesterday in the Rajya Sabha that Government will be seeking a review. If so, when will this decision be finally taken?

SHRI P. SHIV SHANKER: My friend felt that I was consistent in my contradiction. May I say this? Perhaps he is projecting this idea because of his ignorance of law.

The position is this. So far as the question is concerned, it asked for a review and Mr. Speaker, Sir, you are very well aware that there is a review provision in the Civil Procedure Code as also in the Supreme Court Rules. What I have said in my reply is that in terms of this rule, it is barred by limitation. But when I have said outside the Parliament and inside the Parliament, I said that nothing deters the government in an appropriate case, to persuade the Supreme Court to form a larger Bench for a review of the judgment and my stand has been throughout consistent in that regard. This is the first part of it.

The second part of it is that on the basis of the latest judgment where certain portions of the 42nd Amendment have been struck down, and then the question is—would we be able to ask for a review so far as that judgment is concerned? In the *Minerva Mills case*, it has got both the approaches. We can ask for a review under order 40, rule (2) because still the timelimit is there. The judgment has been rendered on 31st July, 1980 and the time that has got to be spent in obtaining the certified copies will also be available.

Therefore, under Order 40, Rule (2), we can seek a review of that judgment and also, if we pass through that period, still, if again it is possible for us to persuade the Supreme Court to refer the matter to a larger Bench, that can also be done again on the review. So far as *Minerva Mills'* case is concerned, it follows the judgment in *Keshavanand Bharati's* case. There are two distinct approaches that have to be taken. Therefore, in the later judgment, both the courses are open, but, in the former judgment only one course is open to us, that is, we can persuade the Supreme Court to have a larger Bench.

SHRI MADHAVRAO SCINDIA: I have also asked whether a petition had been moved seven years ago immediately after the judgment seeking review of the judgment which was struck down or disallowed by the Supreme Court?

SHRI P. SHIV SHANKAR: I am not aware of any such petition that was filed. But, I am quite aware that in 1976, the matter was raised with reference to the review of *Keshavanand Bharati's* case. The full Court sat for two days and then they adjourned. And then the matter remained there.

SHRI MADHAVRAO SCINDIA: I have a second supplementary to ask.

MR. SPEAKER: Was it first Supplementary?

SHRI MADHAVRAO SCINDIA: Yes, Sir. My second supplementary is: when government ask for a review of the Forty-Second Amendment, my suggestion to the hon. Minister, and I am sure that Government will lay stress on that, is that the main object of the Government seeking such a review should be so as to establish the supremacy of Directive Principles over the Fundamental Rights so as to make the progressive measures of this Government more effective and make the issue nonjusticiable. I would again lay my emphasis on government's seeking a review in this par-

ticular case on this aspect of the matter.

SHRI P. SHIV SHANKAR: My friend may be aware that the crux of the matter in *Keshavanand Bharati's* case is the basic features of the Constitution. I have said yesterday in the other House—I am repeating that here that this Government does not believe in the theory of basic features. It is an extraneous matter which, according to the Government, is brought in, with reference to the contents of Article 358 of the Constitution. . . (*Interruptions*)

PROF. MADHU DANDAVATE: What about the basic feature?

SHRI P. SHIV SHANKAR: I have already said in the other matter that the enumeration of basic features is a matter just like the foot of the Chancellor. And on the question of the supremacy of Directive Principles, I have been repeating time and again in this House, and in the other House and outside that we believe that the social rights must have primacy over the individual rights which are contained in our Constitution.

SHRI CHANDRAJIT YADAV: Sir. I would like to ask the hon. Minister a question. This is a question of not only legal importance but a question of social justice as also the objectives which the Constitutionmakers had put before them. The judgment is very basic. But the Minister is evasive. He is evading the real reply. He says that there are two options left with the Government. Firstly, in the latest case, they have still time to go for a review. This is a very important judgment. Really speaking, this has nullified the earlier constitutional amendment of Directive Principles having supremacy over the Fundamental Rights. Therefore, I say it is a very basic question. Secondly, you say that you would like to persuade the Supreme Court to go in for a larger Bench to review the position. So, I would like to know whether Government will take steps

in this regard under the present situation of our country when we want to make socio-economic changes in our country. It is necessary that the Directive Principles should not only have the necessary guidelines but they should also have constitutional support. Keeping that in mind the amendment was brought in. Keeping that in mind, I would like to you to make up your mind definite that it will go in for a review within the timelimit—not that you allow this timelimit to lapse and then, afterwards, you will approach the Supreme Court for a larger Bench and the Supreme Court may agree or may not agree.

In my opinion, the only option left for the Government on such basic issues will be—because Fundamental Rights have their own importance and the Directive Principles have their own importance—to go in for a kind of referendum because there is no constitutional provision really speaking, to give this verdict on the basic feature of the Constitution. Keeping this in mind, therefore, I am asking whether Government will make up its mind definite. What is the answer of the Government?

SHRI P. SHIV SHANKAR: Mr. Speaker, Sir, there are two aspects of it. Firstly, my friend was referring to the primacy of the directive principles. I have made the position of the government very clear and I need not repeat that it is an Article of faith with us that the directive principles have the primacy.

Then the question is how to seek the review. Within 30 days past the difficulty will be according to the law it goes before the same judges who have already decided that judgement. Therefore, whether we should approach—after all it is a matter for a party to decide whether he would like to go before the same judges for the purpose of review—or whether we should wait till the time-limit is over and at an appropriate case take up before the Supreme Court for the

constitution of a larger bench. This is a matter of strategy on which every party has got the right and I leave myself open for the option. I have not come to any conclusion either way.

On the question of constitutional referendum whether we should go in for the review I do not think there is any necessity of this nature that even for the purpose of seeking review we should go for constitutional referendum and ask for the peoples' verdict.

SHRI CHANDRAJIT YADAV: I am not saying that for seeking the review, you should go in for a referendum. What I am saying is this. You yourself are saying that a review within this period may not be possible because it will go to the same Bench. I am saying that if your request for a larger Bench is not accepted, then you have the only option that to keep the supremacy of Directive Principles over Fundamental Rights, and also not to create a suspicion that Fundamental Rights are being taken away and basic structure is being destroyed, a comprehensive amendment will be needed on which you will have to seek the verdict of the people, and you will have to go to the people for that.

SHRI P. SHIV SHANKAR: I personally feel it is absolutely not necessary for me only to follow the course suggested by my friend. All courses that are open under the Constitution and the laws will be followed and then an approach will be taken which will be just and proper according to the Constitution. I will certainly keep in my mind what my friend has said but it does not necessarily mean I will follow what he has said.

SHRI NIREN GHOSH: Sir, the Government is obviously nettled by the judgement of the Supreme Court and it speaks of primacy of the directive principles. Now, in order to

prove the sincerity of the government that it does really stand by the primacy of the directive principles would it bring a constitution amendment before the House to make directive principles obligatory and justiciable by the court? If not, the suspicion is there in the minds of the people that in the name of so-called progressiveism you will pass laws restricting the rights of the people and political parties in order to crush the political Opposition. That has been the experience in this country.

Then there is the question of larger bench. What do you mean by larger bench? Is it full bench of the Supreme Court? Why do you keep it vague?—Whether the entire judges of the Supreme Court will constitute it or full bench of the Supreme Court constitute it? Please define it. You are keeping it admirably vague.

SHRI P. SHIV SHANKAR: The first question that has been asked has a little political overtone, that is, whether it is merely a political gimmick. (Interruptions) Sir, I would like only to bring to the notice of the hon. Member and of the House that this struggle started—if they recall,—right from the very first amendment which the Provisional Parliament had to go into when Article 46 was sought to be relied upon in *Champakam Dorairajan Case*. If my friend has got any recollection, he would remember, it is not a mere political approach. But, right from 1950, there had been struggle on the part of the Government to establish the primacy of the Directive Principles. And the first amendment to the Constitution by the Provisional Parliament by itself was an indication where the Parliament wanted to amend the primacy of the Directive Principles; continuously after that we had the 4th Amendment and the 17th Amendment of the Constitution and then the 24th and 25th also. As and when they were challenged in the Courts of Law, when the Court gave a judgment subverting the Directive Principles, this

Parliament had been amending the Constitution from time to time. If at all the amendment of the Constitution became necessary it was because of the judgement of the Supreme Court which created road-blocks. So, Sir, having regard to this my friend's assumption about the political advantage and so on is not only without any basis and it is not correct also on facts. On the question of the constitution of Large Bench I must say that normally the Constitution Bench in the Supreme Court, according to rules, must consist of 5 judges. Surprisingly enough in the *Minerva Mills* case the judges who constituted the Bench were 5. On the same day, 9th May 1980, when conclusion in this case were rendered, the conclusion in another case, *Vaman Rao case*, were rendered by a Bench which consisted of 5 judges again, which were diametrically different. So having regard to this, when they are asked or persuaded, the Supreme Court has to see that the larger Bench consists necessarily of more than 5 judges. Likewise if he would like to ask for a review of the judgment in the *Keshavanand Bharati's case*, this will have to consist necessarily of judges who will be more than 13.

SIIRI NIREN GHOSH: If you want the primacy of the directive principles why don't you make it obligatory by law; why don't you bring a Constitutional amendment for this purpose?

PROF. MADHU DANDAVATE: The Member has made a categorical statement that the Government reject the theory of basic structure of the Constitution. You have made a categorical statement. In emergency, you assumed sweeping powers. The sweeping power that you can assume under Article 368 will be such that you can even use that Article to change the present *modus operandi*, for changing constitutional provision from 2/3 to simple majority. You can also decide by majority that the secular character of the State can be changed. You can also decide that

Adult Franchise can be taken away. You can also decide that Parliamentary democracy can be destroyed. Emergency has proved that they are capable of misusing the Constitution and destroying the Constitution. We know this on the basis of our experience during the Emergency.

(Interruptions)

MR. SPEAKER: Let the Minister reply.

SHRI P. SHIV SHANKAR: It would be presumptuous on my part to claim any credentials to answer with reference to hallucination and hypothetical questions that have been asked. But I can say this much. While this Government feels that the content of Article 363 on the language that has been framed by the framers of the Constitution is quite wide, the theory of basic structure that has been injected by the Supreme Court to limit the content of the power without any basis and based on extraneous considerations, not based on the Constitutional philosophy itself, because I strongly believe. (Interruptions) and it is the faith of this Government that no generation has any right whatsoever to bind the posterity with it on fixed notions. It is in this context that the content of Article 368 has got to be looked into and on the question of secularism, adult franchise, I can assure Professor Saheb that we are a little more ahead than what they are.

(Interruptions)

PROF. MADHU DANDAVATE: I have quoted an example that during the emergency you have already made the provisions that the Prime Minister will be made immune from criminal prosecution.

(Interruptions)

MR. SPEAKER: Next question. 953. He is not there. Next question 954.

कोयला धोवनशालाओं की स्थापना का प्रस्ताव

*954. श्री राम लाल राहू: क्या ऊर्जा और कोयला मन्त्री यह बताने की कृपा करेंगे कि:

(क) क्या कोयले में 18 प्रतिशत धूल-कणों को धोकर अलग कर देने के लिए खानों में कोयला-धोवनशाला की स्थापना करने का कोई विचार है;

(ख) यदि हाँ, तो उन की अनुमानित लागत क्या होगी; और

(ग) इस प्रकार लगाए जाने वाली प्रस्तावित धोवनशालाओं की दैनिक क्षमता कितनी होगी?

THE MINISTER OF STATE IN THE MINISTRY OF ENERGY (SHRI VIKRAMA MAHAJAN): (a) to (c). A statement is laid on the Table of the House.

Statement

There are proposals to set up more washeries in both Prime and Medium Coking Coal Sector to supply washed clean coal of about 18 per cent ash content to the steel plants. In addition to the existing and proposed washeries to wash coking coal (Prime and Medium), the Government is examining proposals for setting up of coal beneficiation plants to supply coal with about 35 per cent ash to the thermal power stations.

The estimated cost and daily capacity of the washeries under construc-