

[Secretary]

Motion

"That this Council concurs in the recommendation of the House of the People that the Council do join in the Joint Committee of the Houses on the Bill further to amend the Preventive Detention Act, 1950, and resolves that the following members of the Council of States be nominated to serve on the said Joint Committee: Diwan Chaman Lal, Pandit Sitacharan Dube, Shri R. C. Gupta, Shri Bhalchandra Maheshwar Gupte, Shri K. S. Hegde, Shri Jaisukh Lal Hathi, Pandit Hirday Nath Kunzru, Shri P. S. Rajagopal Naidu, Shri K. P. Madhavan Nair, Acharya Narendra Deva, Shri Osman Sobhani and Shri P. Sundarayya."

Mr. Deputy-Speaker: I understand that the first sitting of the Joint Select Committee on the Bill further to amend the Preventive Detention Act will be held at 2-30 P.M. tomorrow and therefore, the sitting of the House in the afternoon tomorrow will stand cancelled.

ESSENTIAL GOODS (DECLARATION AND REGULATION OF TAX ON SALE OR PURCHASE) BILL

The Minister of State for Finance (Shri Tyagi): I beg to move:

"That the Bill to declare, in pursuance of clause (3) of article 286 of the Constitution, certain goods to be essential for the life of the community, as reported by the Select Committee, be taken into consideration."

I am grateful to the Members of the Select Committee who after exhausting themselves in the House took an active interest in the deliberations of the Select Committee, and applied their minds, and gave many suggestions. These as well as those which came from various quarters were considered and after a long deliberation, we have just given a report which I hope the Members of this House may have gone through. There was not much to be discussed in the Select Committee except the number of commodities which were to be included in or excluded out of the Schedule to the Bill.

There was one more point that was discussed here by my colleague when he moved the motion for the

consideration of this Bill. It was whether the laws which were also made by the State Governments before the passing of this Bill by us, or before the Constitution came into force, were to be amended by means of the measure which was before this House. In this connection my colleague had already explained and the fact is that what is implicit in the Constitution was tried to be made explicit by adding the words 'made after the commencement of the Act' in the Bill. These are the words which upset some of my friends. They thought that with these words this measure would dominate over or overrule the State enactments which has been completed in the past. There was some such suspicion lurking in the minds of some of my learned friends and they thought that it would be better to delete the words 'made after the commencement of this Act' from the Bill. In the meantime, we consulted the Law Ministry. My hon. friend, Pandit Thakur Das Bhargava has been discrediting my opinions about law, he being an old lawyer, I am sure he would care more for the opinion of the Law Ministry in this matter. We have been of the view and that is the view of the Law Ministry also, that as the Constitution stands, we shall not be able to make any changes by means of this measure in the laws which the State Governments had already enacted, both before the coming into force of the Constitution and also those laws which they enacted before this measure has been passed by this Parliament and about that. I think, instead of arguing in my own layman's language, I would rather prefer to read the opinion of the Law Ministry. That is practically all that has to be said about this Bill. There is no other argument: the Bill is very small and I do not want to take more time of the House. I understand that by one o'clock we could finish the Bill if that objection were not there. I am reading it just to avoid further arguments in this connection:

"The question may be divided under two heads:

(1) whether article 286(3) applies to laws made before the commencement of the Constitution, that is, before the 26th January, 1950; (2) whether the article applies to laws made during the period between the commencement of the Constitution and the enactment of a law of Parliament under that article.

Bill

So far as the first question is concerned, it hardly admits of any doubt. The words used are 'made by the legislature of a State' and this can aptly refer only to legislation made after the commencement of the Constitution. The Constitution has in various places, referred to the law existing at the date of its commencement as 'the law in force in the territory of India immediately before the commencement of the Constitution'. The same or similar phraseology would have been used if the intention of clause (3) of article 286 was to refer to laws enacted before the 26th January, 1950, by the Provincial Legislatures.—The legislatures were then 'provincial' and not 'State'—"The article refers to 'reservation of the law for the consideration of the President'. Since there was no President before the commencement of the Constitution, it is obvious that the article could not have been intended to apply to laws made before such commencement. Most of the States Sales Acts were passed before the commencement of the Constitution. The table below gives the necessary information on this subject.

Table

Name of the State	Year of enactment of Sales Tax Act-
Assam	1947
Bengal	1941
Bihar	1947
Bombay	1946
Madhya Pradesh	1947
Punjab	1948
Madrass	1939
Orissa	1947
Uttar Pradesh	1948
Mysore	1948
Travancore-Cochin	1950

Fifth January was the date on which they passed it: that is before the commencement of the Constitution, again.

Madhya Bharat: They passed it on 29th April, 1950, after the commencement of the Constitution.

It would appear from the above table that only one Sales Tax Act, namely, that of Madhya Bharat has been passed after the commencement of the Constitution. From the practical point of view, therefore, the answer to the first point disposes of the whole question. The second point

may, however, be briefly examined. The language of article 286 (3) of the Constitution leaves no doubt about this point also. The words 'such goods as have been declared by Parliament by law' suggest that Parliament must first make a law declaring certain goods to be essential for the life of the community before the article can apply to any law made by the Legislature of a State imposing or authorising the imposition of a tax on the purchase or sale of any such goods. The words 'reserved for the consideration of the President' are also significant. A Bill passed by a State Legislature is reserved for the consideration of the President under article 200. That article enacts that when a Bill has been passed by the Legislative Assembly of a State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds his assent therefrom or that he reserves the Bill for the consideration of the President. It would appear that it is only a Bill which can be reserved for the consideration of the President. Once a Bill is passed by the Legislature of a State and is assented to by the Governor, it cannot be reserved for the consideration of the President. It follows that Sales Tax Acts, which have already been passed and assented to by the Governor cannot now be reserved for the consideration of the President. In respect of such Acts it is not practicable to comply with the provisions of article 286 (3). It is therefore clear that the article cannot apply to such Acts."

That is the opinion of the Law Ministry.

Shri B. Das (Jaipur-Keonjhar): So Parliament has been fooled, as it appears now.

Shri Tyagi: Parliament has delayed action.

Then, another misunderstanding lurks in the minds of some Members. They think that these articles which are enumerated in the Schedule here would be absolutely excluded from the sales tax altogether. That is not so. In fact, the position is that by this enactment, Parliament will be just discouraging any further load of tax on these articles which are enumerated and declared essential for the community. That is all what is meant.

Then, there are certain States which have not yet passed any Sales Tax Acts. As soon as their Customs Duties are, according to the Agree-

[Shri Tyagi]

ments, taken away, they will forego that income. They have to substitute this by some other item. There are certain States in the country which have not yet come forward with Sales Tax Acts in their Legislatures. They would be altogether deprived of the revenue from these goods which are declared essential according to this Bill. Therefore, I want to clarify that position. That is not so. Even those States can levy taxes on these commodities which are in the Schedule. But, it will be for the President to keep the Bill under his consideration and give his assent after scrutinising it. Therefore, Government will see to it that the rate of taxes that they propose does not go higher than what usually prevails in other States. Therefore, there is no absolute ban on the levying of taxes on these essential goods. States which have not yet been able to pass such enactments will be free to pass their enactments to tap the avenue of taxation given to them; but their rates will be controlled in the case of the commodities enumerated in the Schedule.

I do not want to take much of the time of the House. I hope there will not be many amendments and that the Bill will go through. I commend the Bill.

Pandit Thakur Das Bhargava (Gurgaon): With your permission, Sir, may I put one question to the hon. Minister? I understand that this law is based on the principle of uniformity and in future, it will be within the hollow of the hand of the President to allow such taxation or not. I want to know what the policy of the Government is in this matter: whether those States which have already levied taxes on such commodities as are enumerated in this Bill, will be influenced by the Central Government to forego these taxes, to see that the condition in those States is brought into uniformity with States where there is no such tax. After all, the policy of the law is very clear so far as article 286 of our Constitution is concerned. I would like to ask the hon. Minister if that is the policy of the Government.

Shri Tyagi: My hon. friend and I were there when this article was passed. We know that the spirit of the article was to have a uniform type of sales tax in the whole country. But, as things stand today, there are difficulties both legal and constitutional and it is not possible for the Central Government to force

the hands of the State Government, against their will.

Pandit Thakur Das Bhargava: I said influence.

Shri Tyagi: If my hon. friend wants to know what the Government really desires, I might at once say that we shall really be very glad if some type of uniformity is established all over the country and if we could be helpful in bringing about a uniformity, we shall be too pleased. But, that can be done only when the States are in a position to settle their revenues. Some States have recently been formed. Our Taxation Enquiry Committee is soon going to be appointed. Already the Finance Commission is there. Both these bodies are to investigate and report. We shall always welcome States coming together, not only for sales tax, but for many other matters on which uniformity is needed. That, I say, is most welcome to the Government.

Mr. Deputy-Speaker: Motion moved:

"That the Bill to declare, in pursuance of clause (3) of article 286 of the Constitution, certain goods to be essential for the life of the community, as reported by the Select Committee, be taken into consideration."

I need not remind hon. Members that the scope of discussion at this stage is limited only to the report of the Select Committee. The principle of the Bill cannot be gone into at this stage. Whatever changes have been made in the Select Committee and whatever further changes are necessary alone would constitute the scope. Hon. Members will therefore be very brief if possible.

Shri B. Das: I happened to be a member of the Select Committee and I got the biggest shock of my life when I found that the provinces have revolted against the Centre. The hon. Minister has just now read the opinion of the legal advisers. That was first discussed in the Select Committee. I find that the States have revolted against the Centre. You, Sir, were an esteemed Member of the Constituent Assembly and you know how in 1948-49 we were all agitated about the uniformity of the sales tax.

Certain States included therein have doubled the Sales tax duty, their excise duty etc., because they wanted

money. They went on levying sales tax, for instance Bombay, Madras and Bihar. Even today, in Madras they are taxing food commodities at various points, not at one point. It was in 1949 we passed the law that under article 286 (1), the Centre will control the sales tax, so that there will be uniformity. Let me give my own interpretation of the article. I believe in the supremacy of the Central Government and not in the madness of the States. The Bihar Government have levied sales tax on coal which is consumed in Bombay or Madras. The iniquity we are suffering.....

Mr. Deputy-Speaker: I am afraid this relates to the principle of the Bill.

Shri B. Das: This relates not to the principle of the Bill, but to the interpretation.

Mr. Deputy-Speaker: There is no question of interpretation. I have to differ from the hon. Member. This relates to the principle of the Bill as to whether it is open under the Constitution when the Bill is framed to go behind or just rip open all the several Acts that have been passed already. Now, the Bill has already been reported upon by the Select Committee. It may be said that some of the articles may be excluded from the Schedule, some may be included etc., I do not think anything more will be allowable at this stage.

Shri B. Das: I have been a member of the Select Committee.....

Mr. Deputy-Speaker: The hon. Member has not even sent a minute of dissent.

Shri B. Das: We have been fooled, bamboozled by the States, and my friend Shri Bhargava will not be able to persuade any of the States to fall in line for purposes of having uniformity in sales tax.

Mr. Deputy-Speaker: That again is a matter of principle.

Shri Tyagi: I thought.....

Mr. Deputy-Speaker: It is not necessary for the hon. Minister to reply. So far as this is concerned, it is a matter of principle going not even to the Bill, but further up to the Constitution itself.

Shri A. C. Guha (Santipur): I do not agree with the minute of dissent because however anxious we may be to have uniformity, the legal opinion is that according to the Constitution we cannot have that uniformity. Then simply by deleting the words "made after the commencement of

the Act", we would make the Bill liable to be brought before the courts, and that will simply open the gate for litigations.....

Mr. Deputy-Speaker: The hon. Member may refer to it when the amendments come. Is it necessary to refer to the minute of dissent here?

Shri A. C. Guha: There is no amendment. That is the only amendment to the Schedule.

Everybody would like to have uniformity as regards sales tax, but I think it was brought to our notice that when this Bill was before the House, one of the States was trying to impose sales tax on some of the articles included in the Schedule. They wanted to rush through a Bill. I do not know how far they have succeeded. So, the States are really eager and anxious to impose sales tax, and it is not simply out of fun that they are eager to do so; they are short of funds. And in this connection, while we are also eager to impose uniformity, we have also to see.....

Mr. Deputy-Speaker: I am afraid it is a matter of principle. The hon. Member need not go into all that.

Shri A. C. Guha: This is a question of uniformity.

Mr. Deputy-Speaker: No question of uniformity; it relates to a matter of principle.

Shri A. C. Guha: The finances of the States are going to be affected.

Mr. Deputy-Speaker: We cannot help it.

Shri A. C. Guha: We can help it by making adequate.....

Mr. Deputy-Speaker: I will not allow such discussions.

Shri A. C. Guha: Only I was saying.....

Mr. Deputy-Speaker: The hon. Member may add vegetables to the list or any other thing which he wants.

Shri A. C. Guha: As for the list, I think paper should have been included in the Schedule, because paper is as good a raw material as cotton and jute. For the production of books and newspapers, paper is the raw material, and I think the amendment for including the paper in the Schedule should be accepted by the Government, and since you cannot

[Shri A. C. Guha]

allow us to say anything about the principle of the Bill. I do not like to say anything about that, but while putting a check on the Provincial revenue, the Centre should see that the Provinces get proper allocation from the Central revenues to meet their necessities.

Shri Tyagi: The amendments have to be moved.

Mr. Deputy-Speaker: It must be taken into consideration first.

एक माननीय सदस्य : इस में मेरा एक सुझाव है ।

Mr. Deputy-Speaker: Hon. Members may reserve what they have to say when the amendments are moved.

एक माननीय सदस्य : मैं १० शब्द कहना चाहता हूँ ।

I do not want to say anything about the principle of the Bill.

Mr. Deputy-Speaker: Then we shall dive into the amendments immediately.

Shri U. M. Trivedi (Chittor): Sir, I want to say a few words.

Mr. Deputy-Speaker: Within the limits, has the hon. Member much to say?

Shri U. M. Trivedi: There is only half a minute left.

Mr. Deputy-Speaker: That will be occupied by him.

Shri U. M. Trivedi: The question is this. I understood you to say, Sir, that no question can be raised on the floor of this House in the discussion of this Bill on the dissenting minute that has been included in the Select Committee's Report.

Mr. Deputy-Speaker: Not that. So far as the question of principle is concerned, the principle has already been accepted by the House. To say that this principle be enlarged or that the Constitution is wrong or that the Constitution should be amended, or that the interpretation is this—all these things ought not to be gone into now. Only as regards the changes that have been made in the Schedule, it may be said that either a change ought to have been made or ought not to have been made, or some other changes should have been made, etc.

पंडित ए० आर० शास्त्री : (जिला आजमगढ़—पूर्व व जिला बलिया—पश्चिम): यह जो ला मिनिस्ट्री (Law Ministry) ने अपनी राय या सम्मति दी है धारा २८६, भाग(३) के सम्बन्ध में, अगर उस से कोई सदस्य भिन्न राय रखता है तो क्या उस पर कुछ कहने की आज्ञा होगी ?

Mr. Deputy-Speaker: No.

Pandit Thakur Das Bhargava: With your permission, Sir, may I respectfully submit that at this stage when the motion before us is that the Bill has to be considered, every Member is entitled to submit for your consideration that the Bill may not be considered, and he should be allowed to give the grounds as to why he is opposed to the consideration of the Bill.

Mr. Deputy-Speaker: That may be at the third reading stage.

Pandit Thakur Das Bhargava: After all the amendments have been made, then at the third reading stage, it will be no good to say that the Bill be not considered. But at this stage, when the question is whether the Bill has to be considered, every Member is entitled to say that the Bill be not considered.

Mr. Deputy-Speaker: No. Ultimately it may be said that the Bill be thrown out on the ground that the principle of the Bill is wrong.

Pandit Thakur Das Bhargava: No, it may not be, Sir.

Mr. Deputy-Speaker: It is as good as that. If it ought not to be considered, what happens? It drops out, or it becomes dead. Hon. Member is aware of the rules. Rule 98 says:

"The debate on the motion that the Bill as reported by the Select Committee be taken into consideration shall be confined to consideration of the Report of the Select Committee and the matters referred to in that report or any alternative suggestions consistent with the principle of the Bill."

Pandit Thakur Das Bhargava: There is the minute of dissent. It may be passed except for these words "before the commencement". There is the alternative suggestion and there is the minute of dissent, and every one is entitled to.....

Mr. Deputy-Speaker: Alternative suggestion consistent with the principle of the Bill. Therefore, merely because a minute of dissent is there, if it is inconsistent with the principle of the Bill, it will not do.

Pandit Thakur Das Bhargava: The principle of the Bill will even be followed if these words are taken away. The Bill remains and it will be a good Bill, even if these words go away. The principle of the Bill is this kind of taxation may not be allowed unless President allows it. There every Member has a right to differ whether it should be so for the future only or for past also.

Shri U. M. Trivedi: We shall discuss it tomorrow.

Shri A. C. Guha: Since the purpose of the Government is to bring about uniformity, Members should be allowed to speak as to how to bring about that uniformity.

Mr. Deputy-Speaker: I will consider this again. All that was permissible before it was sent to the Select Committee. Now it is no longer permissible. That is my view at present. Anyhow, we cannot complete it today. We will consider the matter again.

The House then adjourned till a Quarter Past Eight of the Clock on Friday, the 25th July, 1952.