

LOK SABHA

Wednesday, 7th March, 1956

The Lok Sabha met at Half Past Ten of the Clock.

[MR. DEPUTY-SPEAKER in the Chair]

QUESTIONS AND ANSWERS

(See Part I)

11-25 A.M.

Shri Lokenath Mishra (Puri): May I crave your indulgence on a matter of which I have already informed you? . . .

Mr. Deputy-Speaker: I know, I have not yet come to that topic.

Shri Gidwani (Thana): On a point of order. In reply to a supplementary question of mine on 5th March, 1956 in regard to the suspension of a top official of the Durgapur Steel Works, the Minister of Industries stated that the person was under full judicial detention. In reply to another supplementary, he stated:

“He has been produced before the court and they have remanded him to custody.”

You will be surprised to know that the man came and saw me yesterday evening on this point . . .

Mr. Deputy-Speaker: I have heard the hon. Member's point. I may just state what I am thinking about it. Points of order ought to be raised as and when a particular point comes up. If any mistake has been made either on this side or on that side, he may write to the Speaker saying that such and such a mistake had been committed, and also draw the attention of the Minister to it; he must also be apprised of it, so that he would come ready with the answer, and if there is anything wrong, he will correct it; and if the question is wrong he will also correct that. So, the hon. Member may take that course.

1—18 Lok Sabha

QUESTION OF PRIVILEGE

WARRANT FOR ARREST OF A MEMBER DURING SESSION

Shri H. N. Mukerjee (Calcutta North-East): Some of us, the day before yesterday, sent to you a notice seeking to raise a question of privilege over the issue of a bailable warrant of arrest against a Member of this House for alleged non-attendance as a witness. May I know what has happened to that ?

Mr. Deputy-Speaker: So far as that notice is concerned, it also states that Shri V. P. Nayar has asked for certified copies of certain correspondence to elucidate this very position as to the circumstances under which it had been done and so on. Therefore, I asked for elucidation of facts; and I send this notice also to the Minister. I thought I shall hear him first; and if these papers are necessary, I shall call for them as early as possible and as soon as the papers are obtained . . .

The Minister of Legal Affairs (Shri Pataskar): I would briefly state the facts for the information of the House as well as you, according to your instructions.

Shri V. P. Nayar, M.P., was personally served . . .

Mr. Deputy-Speaker: I would like to know from the Minister whether he will get through this, that is to say, argue out this matter and say whether he is for or against the motion, or he is stating the facts now.

Shri Pataskar: I am only stating the facts. If hon. Members who have given notice of it are satisfied, they may not proceed with the motion at all.

Dr. Lanka Sundaram (Visakhapatnam): Let the case be stated on this side first, before the Minister gives the facts. Otherwise, it does not lead us anywhere. Or you hold your own counsel, and bring the matter up later.

Mr. Deputy-Speaker: I wanted them for my own purpose. Earlier also, before Shri V. P. Nayar came here, a communication was sent by the district judge

[Mr. Deputy-Speaker]

or so, which I read out in the House. That is referred to in the notice, along with the question of privilege that has been raised by Shri H. N. Mukerjee and other hon. Members; that also refers to the copies of some other correspondence which has taken place.

I only wanted to know from the Minister whether the copies of those few letters—three or four—are necessary or not; if they are necessary, we shall try to expedite, and have it on Monday. If they are not necessary, we can deal with the matter straightaway, and I am prepared to hear hon. Members.

Shri K. K. Basu (Diamond Harbour): May I make a submission? Our short point is this, and it is fully corroborated also by the practice followed in England, as you will find in May's *Parliamentary Practice*. When Parliament is in session, and a Member of Parliament has to be arrested, and a warrant has to be issued against him for his arrest, then it is necessary that the permission of the Chair should be obtained.

Shri Kamath (Hoshangabad): Of the House.

Shri K. K. Basu: Or the permission of the House should be obtained. That was the short point in this case. We are not disputing on the point whether the warrant was issued or whatever has happened. We can go into the merits of it later. But our short point is this, namely, that the district judge or the magistrate, or whoever he may be, has violated the privileges of this House by issuing a warrant without the permission of the House. That was the short point that we wanted to make. In order that there may be no confusion about it, we wanted the matter to go before the Privileges Committee and be decided upon by them. We are not disputing facts now; whatever they may be, they may be gone into during the course of discussion in the Privileges Committee. All that we want is that the matter should be referred to the Committee.

Mr. Deputy-Speaker: I want Shri Mukerjee to state his point.

Shri H. N. Mukerjee: At this stage we are not going into the details of the case or the merits of the case. The facts are very clear in regard to the issue of this warrant and you read out a statement in this House which was published all over the country. Now, the issue of such a warrant for non-appearance in court as a witness appears to us to infringe the

privileges of a Member of the House and to constitute a contempt of the House itself. As you have stated yourself, the Member concerned has applied for certain documents in connection with this matter. But, even apart from what Shri Nayar may or may not be able to establish, the issue of a warrant for non-appearance is clearly a case of breach of privilege. I find on page 122 of May's *Parliamentary Practice*, Fifteenth Edition:

"Any attempt to punish a member who refused to attend as a witness might be treated as a breach of privilege unless permission had previously been granted by the House for his attendance."

On this occasion, the only information the House had was the issue of a warrant of arrest. I do not know if any attempt was made for the execution of the warrant; but the issue of a warrant was a clear attempt to punish a Member of this House and to cast a slur on his reputation. I do not know if any comparable case occurred in this House before but there are articles provisions of our Constitution—article 105 (3)—where it is stated that where we do not have any specification of the privileges of the Members of Parliament, the practice of the House of Commons will prevail. I feel, therefore, that in view of the clear statement of the position in May's *Parliamentary Practice*, there has been a clear case of breach of privilege of the House. But, as I said

Mr. Deputy-Speaker: A Member has to discharge his duties as a Member of Parliament. If he is compelled to go and attend as a witness, the previous permission of the House is necessary. What the ruling says is that an attempt to punish a Member for not appearing in court will be a breach of privilege of the House unless previous permission had been taken. This is what appears from May's *Parliamentary Practice*.

There are two things; whether this is a coercive process of law or whether it is a substantive punishment or attempt to punish for not having attended the court. This is a point that may be elucidated.

Shri H. N. Mukherjee: The issue of a warrant of arrest is certainly an attempt to punish and it is tantamount to saying that the Member concerned has committed something of a crime.

Mr. Deputy-Speaker: It is a question of law and by merely hissing it won't disappear. The main point is this. There can be a process to be served for which the permission of the House is not necessary. If he does not come, the other process is also there; a bailable warrant can be issued. What we want to know is whether it is to enforce this presence or is it by way of punishment for non-attendance as a witness.

Shri H. N. Mukerjee: A warrant is issued only after the issuing authority has satisfied himself of a certain position, namely, that a citizen has rendered himself liable to punishment and if the service of the warrant happens to be resisted by the person concerned, naturally, certain consequences would have ensued. Therefore, the issue of a warrant in itself is punishment. The practice here in this House is that whenever a Member is arrested, information of the arrest is sent to the Speaker. Similarly, on this occasion the issue of the warrant of arrest is there. It was really tantamount to arrest itself because unless the Member offered bail and the bail was accepted, he would have been in custody. Therefore, this is certainly a punishment.

Also, the procedure followed in this case was rather peculiar. You were informed of this and you read it out before the House—in all conscience—and all over the country an impression was created that a particular Member had been "wanted" by the law. I say this is, for all practical purposes, punishment enough. I cannot argue this point very much more in detail because I feel there are other aspects of the matter which should be taken into consideration. May be, this is a kind of precedent which will be a great advantage to us in future. That is why I say that this should be referred to the Committee of Privileges and whatever documents Shri Nayar may or may not procure may also be put up before the Committee for its consideration and they may be taken into account by the Committee of Privileges and it may present a report which might help this House and its Members on subsequent occasions.

Shri Kamath (Hoshangabad): May I bring to your notice another aspect of the matter?

Mr. Deputy-Speaker: Is the hon. Member also a signatory to this?

Shri Kamath: No, Sir; but I thought the matter was being discussed.

Mr. Deputy-Speaker: I only wanted to know as a matter of information.

Shri Kamath: The President has summoned each one of us, Members of Parliament, to be present on a particular date and during this session of Parliament. That summons must have importance and high priority over any other business for which a Member may be called. Therefore, any other writ, summons or warrant from any other authority cannot be executed except with the permission of this House. The law, custom and usage in Britain so far as this privilege is concerned is categorical and quite clear. My friend, Prof. Mukerjee read out briefly the position with regard to this from page 122 of May's book. But please refer to page 121. It is said:

"Members of both Houses are, by the law and custom of Parliament, exempted from attendance as witnesses during the session of Parliament, and from service as jurors at all times by the Juries Act, 1870."

It goes on to say:

"But according to present usage, the service of a *subpoena* on a Member during the session of Parliament, unless effected within the precincts of the House, . . . would not be regarded as a breach of privilege."

Mr. Deputy-Speaker: That is a change in usage.

Shri Kamath: But the law and custom exempt from attendance as witnesses all Members of Parliament during session. There is a case reported here.

"On 30 June 1938, however, the Committee of Privileges reported that an order requiring the attendance of a Member, who was also a Territorial officer, to attend as a witness before a military court of inquiry was a breach of the privilege of the House. . . ." (*Interruption.*)

In the case of Shri Nayar a bailable warrant was issued for his arrest. I submit this is a much more serious matter and this must be taken notice of by the House and by its Committee, and the culprit brought before the bar of this House for condign punishment.

Shri Pataskar: May I state the facts before hon. Members proceed to discuss the matter?

Mr. Deputy-Speaker: The hon. Minister may reply once for all. I would like to know what Shri Basu has got to say.

Shri K. K. Basu: As we have said earlier, the main principle on which this privilege motion has been brought in is whether a Member who is first responsible for attending Parliament can be prevented by the court or any other authority from attending the session of the House, and whether the issue of a bailable warrant is a punishment. The fact is that a bailable warrant was issued and he would have been arrested and prevented from attending the House; it is clear. It is a clear case of breach of privilege and as my leader has said, it is very bad and has created a precedent in the parliamentary life of this country. Therefore we feel that this matter should be gone into in detail and thoroughly in the Privileges Committee and a decision come to on this point.

Shri Raghunath Singh (Banaras Distt.—Central): Sir, I want to say something on this point.

Mr. Deputy-Speaker: It is only a question of sending it to the Committee or not. The hon. Minister of Legal Affairs, on behalf of Government, will explain.

Shri Raghunath Singh: One point, Sir.

Mr. Deputy-Speaker: Time is not enough for the other debate.

Shri Pataskar: I would like first of all to place the facts before the hon. Members of this House so that they will be in a better position to find out whether any breach of privilege, as a matter of fact, occurred.

Shri H. N. Mukerjee: As far as this question is concerned, we do not go at this point of time into the examination of the facts because even Shri Nayar has not been able to ascertain some of the facts. We are not prepared at this point of time to listen to Government if they give any facts.

Mr. Deputy-Speaker: That is why even at the outset I said that I am not going into this matter piecemeal. Possibly I may require all that before I come to a conclusion. But they were not prepared to put it off by one day and insisted upon taking it up today, and so the background of this is being given. I never prevented hon. Members who sponsored this motion from giving all the facts. As a matter of fact, there is a handicap that is felt by them and by me, and yet

they wanted me to take this up. Therefore, I thought it will not be right for me to prevent them from doing so. Let us have the facts.

Shri H. N. Mukerjee: At this point of time if a statement of facts as known to Government through the Magistrate concerned is placed before the House, it is only fair that the counter set of facts, if any, should also be placed before the House. Therefore, my point is that the main principle in regard to the correctness or otherwise of the service of summonses in a matter of this sort should be left to the Committee of Privileges

Mr. Deputy-Speaker: I will certainly hear all that has to be said by the Minister. If on any particular facts I consider that there is a handicap to the sponsors of this motion, I will certainly give them time and they can place those facts.

Shrimati Renu Chakravartty (Basirhat): So I take it that a statement can be made from this side of the House after the Minister has made his.

Shri Bhagwat Jha Azad (Purnea *cum* Santal Parganas): We are of opinion that as the case has been put, there is no necessity for giving all these facts. It is simply a question of going into this point, namely, that we have been summoned by the President to sit here. (*Interruptions*)

Mr. Deputy-Speaker: All that I can say is that hon. Members must be patient with respect to these matters. I would appeal to all sections of the House for exercise of patience. This is a matter which is quite new and so far as this House is concerned, a similar thing has not occurred. We are referring to May's *Parliamentary Practice*. I also raised the point as to whether an attempt to coerce the service of notice or to enforce attendance is itself an attempt to punish. That is a legal point. The hon. Minister of Legal Affairs has taken up this matter and he is replying to what has been stated here. Let us consider the question calmly.

Shri Pataskar: I should first of all like to make it clear that there is no intention on my part whatsoever, by stating facts, in any way to try to allow the privilege of the House being interfered with by anyone. Let us be clear about that. But the point is that on page 122 of May's *Parliamentary Practice*, it is stated that any attempt to punish a member might be treated as a breach of privilege and,

therefore, it is necessary to go into the facts to find out whether there was an attempt really to punish him which could constitute a breach of privilege within the meaning of what is stated there.

The facts of the case, therefore, are these. Shri V. P. Nayar was personally served with a summons to appear in the court of Shri Budhi Raja as a witness in a criminal case *States versus Kusum Kumari Sharma*, under section 380/411 of the Indian Penal Code on the 30th November, 1955, but on that day he did not appear.

Mr. Deputy-Speaker: Was it served ?

Shri Pataskar: Yes, but he did not appear. But on the next day, 1st December, 1955, a letter dated the 29th November, 1955 from Shri Nayar was handed over to the judge by the counsel for the accused saying that he (Shri Nayar) was leaving Delhi on the 2nd December, 1955. Accordingly, the judge issued a summons for Shri Nayar for the 2nd December, 1955, but the same was received back with Shri Nayar's own report that he could not attend court at such short notice because of his parliamentary duties and that he required at least a week's notice for appearance in court. Another summons was issued to Shri Nayar for appearing on the 12th December, 1955, but this was received back with the report that Shri Nayar had refused to accept service.

Shri V. P. Nayar (Chirayinkil): That is wrong.

Shri Pataskar: Again one more summons was issued for his attendance on the 29th December, 1955. As it was not served on him, yet again another summons was issued for the 14th February, 1956 by Shri Jawala Das who had, in the meantime, succeeded Shri Budhi Raja as judge. As the case had already become very old, this summons was served on Shri Nayar personally through a special messenger sent all the way to Pandratam in Travancore-Cochin on the 7th February, 1956, but in spite of this Shri Nayar failed to appear in the court on the 14th February, 1956 and also did not communicate any reason for his absence to the court. It was under these circumstances that finally a warrant of arrest 'ailable in the sum of Rs. 500 was issued under intimation to the Speaker of the Lok Sabha. The warrant was also taken to the Lok Sabha Secretariat by the police officer for service.

It was returned by the Lok Sabha Secretariat on the ground that the permission of the House for the arrest of the witness was required in accordance with May's *Parliamentary Practice*.

Shri Kamath: Very good.

Shri Pataskar: On receipt of this information, the trying judge adjourned the case to the 7th March, 1956 and no fresh warrant was issued. On the 1st March, 1956, the court received a telegram from Shri Nayar intimating that he would be reaching Delhi on the 10th March and would appear in court on any day thereafter and also praying that the warrant against him should be withdrawn. Under the circumstances there was no question of withdrawing the warrant as the warrant had already lapsed and no fresh warrant had been issued.

The circumstances narrated above clearly indicate that the court has throughout acted in good faith and there has never been any question of intended disrespect to the House or to the privilege of the hon. Member or to the privilege of this House.

I would say, therefore, that on the question of privilege, so far as the facts are concerned, there was no attempt to punish the hon. Member at all. On the contrary, the court has been trying its level best to accommodate Shri Nayar as far as it could. I do not think it was ever intended to punish him by the mere issue of a process to compel his attendance in court, nor can it be said that it was an attempt to punish him.

Shri Sinhasan Singh (Gorakhpur Distt.—South): The point at issue . . .

Mr. Deputy-Speaker: Order, order. I am not going to allow the hon. Member to speak.

Shri Sinhasan Singh: Just a minute please.

Mr. Deputy-Speaker: No, no. Whatever he might say, have I not the first preference to get the matter cleared up? I want to know from the hon. Minister what are the sections, if he is able to lay his hand, where under a witness, who is called and refuses to attend, can be punished by the court. Or is it merely on the general ground of contempt of court?

Shri Pataskar: He could be prosecuted for disobedience of the summons.

Mr. Deputy-Speaker: Is this kind of summons issued for disobedience of summons as a substantive offence . . .

Shri Pataskar: No, no.

Mr. Deputy-Speaker: Therefore, for the purpose of enforcing the attendance of the witness, you could do it by ordinary service or non-bailable warrant. Has the Minister anything more to say regarding this position as differentiated between an attempt to punish as a substantive punishment and one to enforce the issue of a warrant to enforce attendance in court. I would like the views of the Minister of Legal Affairs.

Shri Pataskar: If the court wanted it, action could have been taken against the witness for contempt of court, but they did nothing of the kind, and on the contrary the Court sent a special messenger to Travancore-Cochin for personally serving the summons, which means that the only anxiety of the court was that the evidence of the witness should be available. There is no intention, nor can it be said that there was any attempt, to punish him. There is no question of breach of privilege.

Dr. Ram Subhag Singh (Sahahbad—South): Sometimes we are cited as witnesses. For instance the court asks us to appear as a witness on somebody's behalf and we have been cited as a witness with taking our consent. What will be the position in that case?

Mr. Deputy-Speaker: This is not a general discussion regarding the subject. There is a specific issue and it is said that there has been a breach of privilege. Every hon. Member is not a Nayar himself. I am not going into this matter now. Has Shri Mukerjee anything to say?

Shri H. N. Mukerjee: I feel that the short point that we raised remains unanswered ultimately. During the pendency of the session of the House, a Member has certain immunities and one of them was sought to be infringed by the action of a court. In this matter the court had a way out which was to inform you to get the permission of the House for the release of the Member concerned for a particular day or days during the pendency of the session. If during the pendency of the session the sword of Damocles—the summons from courts regarding the giving of evidence—hangs over the heads of Members it may be rather undesirable situation. Or, it may not be.

That is the matter which is still left to be determined by the Privileges Committee.

Mr. Deputy-Speaker: I have heard both sides and I shall look into this matter and try to place the matter before the House.

Shri V. P. Nayar: I should like you to give me an opportunity later on to explain my position because a reference has been made to me in that letter.

Mr. Deputy-Speaker: The hon. Member has been hearing all that has been said. At his instance, the Leader of his group sponsored this motion. Even at the outset I referred to it; something was said that the copies had not yet been obtained. The hon. Member could have instructed him to wait but in spite of that he wanted to proceed with it. Even now, I say it. For clarification he wanted a particular document. What is the stage by stage business? One hon. Member who belongs to a group of 40 or 50 just making a motion on behalf another hon. Member and allowing that hon. Member to make another motion—it should not be so. I will just put off considering this matter for a week. Meanwhile copies may have to be obtained and handed over. I do not want to hustle.

Shri Kamath: So, it is held over?

Mr. Deputy-Speaker: Yes, it is held over.

Shri V. P. Nayar: I want to give a personal explanation to the House in view of the letter which has been read out because I dispute certain facts.

Mr. Deputy-Speaker: This matter will stand over. I am not giving my ruling. I shall wait until he is able to give me copies. How long will it take?

Shri V. P. Nayar: I have applied for them day before yesterday. The moment I came to Delhi, I have applied for all the attested copies. I hope to be able to get them in a few days' time. I have sent a personal messenger to wait on the convenience of the court and take them as early as possible.

Mr. Deputy-Speaker: Not earlier than a week?

Shri V. P. Nayar: About a week or within a week.

Mr. Deputy-Speaker: This matter will stand over.