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LOK SABHA DEBATES

(Part II—Proceedings other than Questions and Answers)

LOK SABHA

Thursday, 1st September, 1955

The Lok Sabha met at Eleven of the Clock.

[MR. SPEAKER *in the Chair.*]

QUESTIONS AND ANSWERS

(*See* Part I)

12 NOON

PAPERS LAID ON THE TABLE

REPORT OF TARIFF COMMISSION ON CONTINUANCE OF PROTECTION TO MACHINE SCREW INDUSTRY ETC.

The Minister of Commerce (Shri Karmarkar): I beg to lay on the Table a copy of each of the following papers, under sub-section (2) of section 16 of the Tariff Commission Act, 1951, namely:

(1) Report (1955) of the Tariff Commission on the continuance of protection to the Machine Screw Industry;

(2) Ministry of Commerce and Industry Resolution No. 18(1)-T.B./55, dated the 23rd August, 1955;

(3) Ministry of Commerce and Industry Notification No. 18(1)-T.B./55, dated the 23rd August, 1955; and

(4) Statement under proviso to section 16(2) of the Tariff Commission Act, 1951, explaining the reasons why the documents referred to at (1) to (3) above could not be laid within the prescribed period. [*Placed in Library. See* No. S-290/55.]

MESSAGE FROM RAJYA SABHA

Secretary: Sir, I have to report the following message received from the Secretary of Rajya Sabha:

"In accordance with the provisions of rule 125 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to inform the Lok Sabha that the Rajya Sabha, at its sitting held on the 30th August 1955, agreed without any amendment to the Industrial Disputes (Appellate Tribunal) Amendment Bill, 1955, which was passed by the Lok Sabha at its sitting held on the 9th August 1955."

COMPANIES BILL—*contd.*

Clauses 208 to 250

Mr. Speaker: The House will now resume further consideration of clauses 208 to 250 of the Companies Bill. As the House is aware, 9 hours were allocated for the entire group comprising clauses 145 to 250. Already 41 minutes have been taken in excess on this group. If the House agrees, clauses 208 to 250 will be put to vote when the discussion on this is closed.

Pandit Thakur Das Bhargava (Gurgaon): Yesterday, I was submitting that the powers of the inspectors provided in this Bill were very large. At the same time, I submitted that some of the rules of the Evidence Act and principles of the Criminal Procedure Code had been practically abrogated, so far as the powers of these inspectors were concerned.

[Pandit Thakur Das Bhargava]

Under clauses 234 and 236, inspectors can be appointed. But we do not know what will be the qualifications of these inspectors. The words used are "competent persons as inspectors". What will be the nature of this competence, whether they will be just like ordinary inspectors of police or they will have special qualifications, is not known; the Bill is silent on that point. Moreover, I do not know what will be the check over these inspectors. Ordinarily, when inspectors or sub-inspectors are appointed, we have got certain checks provided by the Criminal Procedure Code. Their *zimnis* and their reports are sent to higher officers and they are scrutinised; objections are taken if they are not sent regularly, and all statements etc. are provided to be taken down by the sub-inspector or inspector in ordinary course of routine. After, they have done so, they are checked. Now, in the present provisions, I do not find any sort of check being provided so far as inspectors are concerned, which means that the inspectors will be law unto themselves and there will be no check and they will be exercising arbitrary powers. This is a very important point; the Government have taken too large powers to themselves and I am very doubtful if they will be able to see that these powers are exercised rightly. Now, the inspectors are provided with such large powers that they can make or mar any company. In the first instance, on the basis of their reports, persons will be prosecuted. On the basis of their reports winding up proceedings can be started; on the basis of their reports, even recoveries by way of damages etc. can be made. So far as the *modus operandi* is concerned, it appears that they have been armed with the power of examining any persons whom they are pleased to examine, and then they can examine on oath, whereas according to the ordinary course of criminal law obtaining in this country, such inspectors or investigators are not allowed to examine persons on oath. Then there is no exception so far as those persons are concerned, against whom all this investigation is directed. We know that article 20(3) of the Constitution provides that no person accused of any offence shall be compelled to be a witness against himself. This provision of the Constitution is liable to be violated because there is no restriction so far as the powers of these inspectors are concerned. The inspector can examine a person, against whom an inquiry is directed, on oath, and the latter cannot refuse to answer any question. Now, according to the principles of the Indian Evidence Act, we have got sections 129, 130, 132 and other sections in terms of which a person can say that he cannot be forced to answer any question, and if he is forced, under pressure to make certain statements and those statements cannot be proved against him. But we have got a provision in this group of clauses which goes contrary to the spirit of this section. With your permission, I will just read out what are the safeguards today provided to ordinary persons in this regard. In the first place, section 129 says:

> "No one shall be compelled to disclose to the court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he has given, but no others".

In this case, supposing an inspector is appointed to investigate the conduct of any managing agent, and he himself is put all these questions, he cannot refuse to reply, though, to a certain extent, the lawyers are saved under a particular provision, clause 250. But so far as the client is concerned—the accused person is con-

cerned—he cannot take shelter under it. He will be forced to disclose all the communications that he made to his legal adviser, which is against public interest, and at the same time, against the principles of the Evidence Act. Similarly, section 130 says:

"No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee......"

Even this protection is taken away from him. What is worse is, this. Section 132 says:

"A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer".

Now, it appears that this protection given to him is being taken away in the case of persons who are examined by the inspector or by the court, at his instance. In clause 239 of the Bill we find the following:

"The person examined shall answer all such questions as the court may put or allow to be put to him but may at his own cost, employ a legal practitioner, who shall be at liberty to put to such person such questions as the court may deem just for the purpose of enabling him to explain or quality any answers given by him."

* * * *

"Notes of any examination under sub-section (2) or (4) shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him".

So even the answers given by a person, against whom this inquiry should be made, shall be used against that person. You will be pleased to see that even so far as the powers are concerned, when an inspector is appointed, not only can he inquire into the affairs of a particular company of which the accused person is managing agent, but he can also inquire into the affairs of other companies belonging to other persons, as indicated in clause 238; the only thing is that the approval of the Central Government will be necessary in such a case. My humble submission is this. We know how these approvals are given, how these sanctions are given. We have got a similar provision in the Income-Tax Act, about sanction by Commissioners.

[SHRI BARMAN *in the Chair.*]

In the Income-tax Act we find that so far as this question of sanction is concerned, it is given as a matter of routine when any inquiry is undertaken. Here, I have not the least doubt that the approval of the Central Government will be given in almost all cases, because it will all practically be an *ex parte* affair; as soon as an inspector reports that for the purpose of inquiring into the affairs of a particular company, he wants to see the state of affairs of other connected companies, there would be nobody to say 'no'. The Central Government will readily give its approval. When that happens the Inspector will

[Pandit Thakur Das Bhargava]

be able to go into the affairs of the other companies also, with the result that we shall have a scene like the one which we had when the powers were exercised by the Inspectors in relation to investigation under the Income-tax Investigation Commission Act. We know that the provisions which were given there and which were similar to those which are given here were declared *ultra vires* by the Supreme Court.

It appears that the Inspector is given some special powers also. For instance, he can ask any person to produce books etc. and then answer any question which may be put to him by the Inspector. Supposing a person refuses to answer a question. It is not that that person will be proceeded against by the ordinary law of the land, the Penal Code. On the contrary, a new provision has been made. This Inspector will report to the court and before the court that man who refused to answer the question shall appear and there the court will examine the Inspector or other witnesses and the person against whom the case is there and then and there in an almost summary manner I should say—the court shall be able to punish him as if he had been guilty of contempt of court. My submission is that according to the provisions in the Criminal Procedure Code, sections 480, 481 and 482, unless the contempt of court is committed in the presence of the court itself the person cannot be held guilty. Here the crime or the offence will be committed before the Inspector and the Inspector will be the best witness. We have to visualise to ourselves the Inspector going before the court and saying that this man refused to answer questions and that man saying, 'No, I did not refuse to aswer the questions'. The Inspector shall be believed and that person will be in the hollow of the hand of the Inspector and ultimately he shall be condemned almost unheard. At the time when the questions are put to him there would be not many persons in attendance and it will be difficult for him to produce defence witnesses. This procedure is in direct conflict with the ordinary law of the land and it will prove very harsh so far as the person concerned against whose conduct the enquiry is made. As I submitted yesterday the report of the Sub-Inspector is given much more weight than is ordinarily given to the report of any Inspector. Even the opinion expressed by him will be regarded as relevant under clause 245 of this Bill which is contrary to the principles of the Evidence Act according to which opinion is irrelevant.

Then there is another provision, the like of which I have never seen in any other law, clause 249. It says:

"Where in connection with an investigation under section 246, 247 or 248, it appears to the Central Government that there is difficulty in finding out the relevant facts about any shares (whether issued or to be issued), and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned or any of them to assist the investigation as required by this Act, the Central Government may, by order, direct that the shares shall, until further order, be subject to the restrictions imposed by this section."

Then, what are the restrictions?

"(a) any transfer of those shares shall be void;

(b) where those shares are tc be issued, they shall not be issued; and any issue thereof or any transfer of the right to be issued therewith, shall be void;

(c) no voting rights shall be exercisable in respect of those shares;

(d) no further share shall be issued in right of those shares or in pursuance of any offer made to the holder thereof;......"

Further, there is some other restriction. My submission is that this kind of restriction to bring pressure upon a person who is reluctant to assist the inspector is unheard of. I think, this is contrary to the fundamental rights also—section 19(f). I am an owner of certain shares. The Government says that I cannot sell these shares or shall not exercise any right in respect of those shares unless and until I become willing and offer to give some evidence or assistance to the inspector. It is a check which is unheard of. When such a person comes to the court he may be relieved of some of these restrictions. I think this kind of pressure should not have been allowed to be exercised by any court whatsoever. To me it appears that these powers are analogous to the powers given in the Income-tax Investigation Commission Act and has been held *ultra vires*. When I find that there is no sort of check provided over the Inspector and his report is given this weight, I feel that every managing agent will be in the hollow of the hands of the Inspector over whom there is no check. The Central Government would not be able to exercise any check which would be exercised by a Superintendent of Police or the higher officers of Police and these reports will be almost arbitrary, one-sided and *ex parte*. As a matter of fact no check or supervision is provided over this Inspector and I do not know how the Finance Ministry will be able to supervise the acts of this Inspector and get a report. Moreover, I do not find any provision in the Bill that the Inspector will be obliged to take down statements in the presence of the person against whom the enquiry is made or that the person against whom the enquiry is directed shall be able to produce witnesses before him. Even in a murder case there is a provision that the accused has right to produce defence witnesses in the course of the investigation. But, it appears that here, so far as the Inspector is concerned, he is given absolutely arbitrary powers to examine whomsoever he likes. There is no obligation placed upon him to hear them in the presence of the person against whom the enquiry is made nor is there any provision for the person against whom the enquiry is made to produce defence witnesses. This a star Chamber method, unheard of in any other enactment. If these powers are not used—as the Finance Minister said that he is using these powers as a scarecrow and he mentioned the story of the Kandian King and his two Ministers with the power of hanging one person each every year—it is all right. If the Inspectors are not appointed and even if appointed they will not be given these powers, then it may work to a certain extent. Otherwise, I am afraid that the remedy provided is worse than the disease and it shall so happen that there will be a state of dissatisfaction in the country and then these provisions will have to be taken off.

Mr. Chairman: I want to inform the House that already 41 minutes have been taken; that is, by yesterday, we had taken 41 minutes in excess of the time allotted. So, we have already exceeded by one hour. Hon. Members will economise the time.

Pandit Thakur Das Bhargava: May I respectfully bring to your notice that last evening when we were on this question, at the instance of Shri C. C. Shah, the Deputy-Speaker agreed that he will give more time to this.

Mr. Chairman: Already one hour has been taken.

Pandit Thakur Das Bhargava: After that, we submitted at that time that out of the 22 hours given to deal with winding up it etc. so much time will not be taken. Moreover, this is one of the most important questions for the purposes of the Bill.

Mr. Chairman: There are three more Members who are eager to speak. Please try to adjust amongst yourselves.

Shri Jhunjhunwala (Bhagalpur Central): I have moved an amendment. I want to speak.

Mr. Chairman: Then there are more than three Members.

Pandit Thakur Das Bhargava: I shall be brief. I will give up this question of Inspectors. I have not spoken sufficiently on this subject but I think I have spoken enough. But I wish to bring to the notice of Government that it leads to some kind of conflict with the ordinary law of the land and that is what I cannot think of with equanimity.

With your permission, I will touch upon one point more and that is clause 225. Shri Ramaswamy spoke about it and I want to support what he said. In regard to the Chartered Accountants Act, you will perhaps remember that in 1949 when that legislation was enacted some of the Members of this House made it a point to get all those persons included who, according to their view, were qualified to act as Chartered Accountants. Now, I understand that there are 29,000 companies in all and by the time the Second Five Year Plan is complete, we will have about 20,000 more, with a capital of about Rs. 600 crores. There are about 2,700 auditors and their hands are full. We know that the auditors at the same time charge very high fees and it is beyond the competence of ordinary companies to pay that amount of fees. It is absolutely necessary in the interests of the country as a whole that we should have more chartered accountants, and this can only be done if, as my friend Shri Ramaswamy suggested, the members of the Society of Incorporated Auditors and Accountants are allowed to act as Chartered Accountants. He proposes that after the word "outside" the words "and inside" might be added, and that an additional sub-clause (c) might be put in. This Society has got, I am informed, a large number of people who are absolutely qualified, and many of them are double graduates and lawyers. They can certainly do well for our purpose. I do not want that any unqualified persons should be taken, because on the honesty and ability of these auditors depend the future of the companies and the confidence that people have in the working of the companies. I am, therefore, desirous that so far as these persons are concerned, an examination may be held. In fact, Government has been charged with the duty of examining accountants of Part B States and laying standards for their qualifications, etc., under these clauses. In fact, a similar qualification may be prescribed and Government may be pleased to see that there are enough auditors available in the country. At present, it is almost a monopoly. Even at an earlier stage we fought for the inclusion of the 'B' class chartered accountants and then we got this innovation made. So far as these people are concerned, I am desirous that Government may make arrangements for allowing them to practise as chartered accountants and for that purpose Government may institute examinations. At present the examinations that are held produce very poor results. I am given to understand that 90 per cent. of these persons are failed by the examiners, which means that those people want to keep the monopoly to themselves. Therefore, I appeal that Government should consider this question in a fair manner so that very many people who are educated and qualified may be taken in and allowed to practise as Chartered Accountants.

Shri J. R. Mehta (Jodhpur): There are five amendments standing in my name, namely, Nos. 706, 716, 725, 727 and 731. I shall not unnecessarily take the time of the House by reading them out.

The Parliamentary Secretary to the Minister of Finance (Shri B. R. Bhagat): What are the amendment numbers?

Shri K. K. Basu (Diamond Harbour): Those can be found out from the names on the list. Already the time at our disposal is too short.

Shri J. R. Mehta: The numbers are 706, 716, 725, 727 and 731. In this Companies Bill which we are considering, we have introduced several provisions which are designed to enable the shareholders to play a more effective role than is possible under the present legislation and to intervene in certain circumstances if they feel that something is going wrong. For instance, clause 168 provides for the holding of an extraordinary meeting of a company on a requisition by a prescribed number of members. Clause 187 provides for the circulation of members' resolutions on a requisition by a given number of members. Then, there is clause 234 which vests in the members a more important power, namely, to move the Central Government to undertake an investigation into the affairs of the company, provided a certain number of them join in a requisition to that effect. Finally, we have clause 407, which empowers the shareholders to move the Central Government for the appointment of additional directors if such appointment is shown to be called for in the interests of the company or the shareholders. I submit that the picture is not complete until and unless we can place the shareholders in a position in which it might be possible for them to secure the appointment of an additional auditor by making a requisition to the Central Government in that behalf. I trust hon. Members will agree that for a correct appreciation of the affairs of a company, we depend—the Government as well as the shareholders depend—on the auditors, more than anybody else. At the same time, it will be agreed that, human nature being what it is, it is possible that the auditors might sometimes identify themselves too much with the management, with the result that they are unable to discharge their functions without prejudice or bias, and with due regard to the responsibilities which they owe to the shareholders. Wherever there is reason to believe that this is the case, it should be open, I submit, to the shareholders to approach the Central Government for the appointment of an additional auditor, and the Central Government should have the power to appoint such an auditor provided it is a joint approach or requisition by a prescribed number of shareholders. I dare say that the very possibility of such an appointment of an additional auditor will make a vital difference in the attitude of the company auditors in general and cast a healthy influence all round.

I may perhaps be told that there is already a provision in this Bill, clause 234, whereby it is open to a certain number of members to approach the Central Government for the appointment of an inspector to investigate the affairs of the company. My submission is that clause 234 covers a wider field and is obviously meant to meet extreme cases. It contemplates a probe into the entire administration of the company, far beyond the ambit of audit, pure and simple. Indeed, I would contend that the existence of clause 234 is rather an argument in favour of the amendment that I have proposed inasmuch as while we are prepared to go to the length of ordering a general probe into the entire affairs of the company, there is no reason why we should deny the shareholders the opportunity to avail themselves of a remedy which is less drastic, and the very existence of which is likely to obviate the application of the more drastic remedy provided in clause 234.

Coming to my next amendment to clause 226—amendment No. 716—I do not think I need say much in support

[Shri J. R. Mehta]

of it. I believe the justification of it is self-evident. Clause 226 deals with the powers and duties of auditors and sub-clause (3) enumerates specifically certain matters which the auditors must, among many other things, deal in their report. They are bound to report on these items and I am suggesting that one more item be added to the list of items on which the auditors are bound to report. This item concerns the company's assets. I understand that so far as investments are concerned, it is not an uncommon practice that they are held in the name of a particular director or managing agent. The company passes a resolution that the investments, or particular investments, will be held in the name of such and such an individual, and that individual is required to pass an indemnity bond in favour of the company. After these formalities are fulfilled, it often becomes difficult to follow the fate of such investments. They can be used elsewhere by the persons concerned, at least for short periods, without anybody being the wiser for it. This illustrates the justification for sub-clause (i) of my amendment. Hon. Members can, I believe, easily conceive of similar illustrations to cover the provisions that I have suggested in sub-clauses (ii) and (iii).

Lastly, I should like to say a word about my amendments to clause 234, namely, amendments Nos. 725, 727 and 731. The purpose of the amendments is to liberalise the conditions which have to be fulfilled if a requisition on the part of the members to get the Central Government to institute an investigation into the affairs of the company is to be acceded to. As the clause stands at present, a requisition in this behalf in the case of a company having a share capital has to be signed by not less than two hundred members, or members having not less than one-tenth of the shares issued.

In the case of a company not having a share capital, the requisition has to be signed by not less than one-fifth of the members. I strongly feel that the present provision is too stringent. Where the shareholders are scattered all over the country or the share capital of the company is considerable, the difficulty involved in getting together 200 members or getting members representing not less than 1/10th of the share capital will be so great as to render this clause nugatory for all practical purposes. Hence the need for liberalising the provisions in these clauses. I do not think that even if this clause is liberalised, the task of the shareholders will be very easy, but it will be comparatively easier.

In this connection, I should like to make one observation which I consider relevant. I wish to point out that in case this amendment is acceptable to the hon. Finance Minister, it will be necessary to liberalise clauses 168, 187 and 407 which deal with the power of the shareholders to requisition an extraordinary meeting or to requisition for a circulation of members' resolutions or to require appointment of additional directors. In all these provisions we have to maintain a fair sense of proportion or balance or parity between the purpose to be achieved by the requisition and the number of shareholders who have to come together and make a joint approach to the Government if their request is to be accepted.

BUSINESS OF THE HOUSE

Shri A. K. Gopalan (Cannanore): Sir, I beg to make the following motion:

> "That the half-an-hour discussion on All India Council of Sports tabled by Shri V. P. Nayar and put as the last item of the business for today be postponed to a later date as Shri V. P. Nayar had to leave this place due to the illness of his wife."

He has tabled this motion......