

(श्री नन्द लाल शर्मा)

कि पहली अप्रैल उन्होंने सब जगह खुना है। इतवार या सोमवार से कोई सम्बन्ध नहीं रखा गया है।

दूसरी बात यह है कि जो व्यक्ति २ अप्रैल या तीन अप्रैल को २१ वर्ष का होने वाला हो उस को निर्वाचन में अपने मताधिकार से वंचित रखा जाये। तो यह उस के साथ अन्याय होगा। इसलिये आवश्यक है कि आप कोई ऐसा मार्ग निकालें कि उस के साथ यह अन्याय न हो अथवा जैसा कि संशोधन है कि सरकार को चाहिये कि जो तिथि उचित समझे उसे निश्चित करें, इसी प्रकार की भावना को रखें तो मैं समझता हूँ कि इस प्रकार के व्यक्तियों का मत लिया जा सकेगा।

इस के साथ साथ मैं यह कहना चाहता हूँ कि दूसरे विधेयक में जो भावनायें आयेंगी और जब उन से उस को पूर्णरूप प्राप्त होगा तब मैं अपने विचार प्रकट करूँगा।

इन शब्दों के साथ मैं इस विधेयक की भावना का तो समादर करता हूँ परन्तु इस की शब्दावली के साथ अपनी सहमति नहीं दे सकता।

Mr. Deputy-Speaker: One more hon. Member has sent me a chit; I shall call him during the clause by clause consideration. Now, the Minister.

Shri Pataskar: But private Members' business is to start now.

Mr. Deputy-Speaker: The hon. Minister may start his reply.

Shri Pataskar: I shall first try to deal with the objections which have been raised by my hon. friend Shri Kamath. I think I shall continue on the next occasion.

Mr. Deputy-Speaker: The Lok Sabha will take up further consideration of this Bill on the next occasion.

RESOLUTION RE : INDUSTRIAL SERVICE COMMISSION

Mr. Deputy-Speaker: The Lok Sabha will now proceed with further discussion of the following Resolution

moved by Shri M. L. Dwivedi on the 25th November 1955 :

"This House is of opinion that an Industrial Service Commission on the lines of the Union Public Service Commission be established for the purpose of recruiting qualified and suitable persons for Government works, industries and other institutions".

as also of the amendments moved by Sarvashri Shree Narayan Das, B. K. Das and K. K. Basu.

The time allotted for this Resolution is 2 hours 30 minutes and the time taken, 51 minutes, leaving a balance of 1 hour and 39 minutes. The other day a point was raised as to how far this Resolution was in order, and the hon. Minister was to make a statement.

Shri Kamath (Hoshangabad): Motion on the Report of the Committee has to be moved.

The Minister of Legal Affairs (Shri Pataskar): A point of order was raised by Shri Shree Narayan Das in regard to the Resolution which Shri M. L. Dwivedi has put before the House. The Resolution reads thus:

"This House is of opinion that an Industrial Service Commission on the lines of the Union Public Service Commission be established for the purpose of recruiting qualified and suitable persons for Government works, industries and other institutions."

In the first place, as has been evidenced by the speeches made on the last occasion, this refers to government works, may be by the Centre or by the States, and similarly industries and other institutions, may be those industries or other institutions which are in the form of, say, companies registered or corporations which have been established; the latter may not exactly be worked on the basis of government departments, but they may have their own rules. But apart from that, the main objection which probably Shri Shree Narayan Das has raised is as to whether the establishment of an Industrial Service Commission would be consistent with the provision for the establishment of a Public Service Commission under article 315 of the Constitution. Article 315 reads:

"Subject to the provisions of this article, there shall be a Public

Service Commission for the Union and a Public Service Commission for each State."

So what is contemplated by article 315 is clearly the establishment of a Public Service Commission, meaning only one—it cannot be two. A public Service Commission for the Union and a Public Service Commission for each State. Now, the functions of Public Service Commissions are defined in article 320, to which I would like to draw your attention. It says :

"It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

"It shall also be the duty of the Union Public Service Commission if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

"The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted"

Therefore, it appears *prima facie* that what is contemplated by the Constitution is that there shall be one Public Service Commission which shall deal with all appointments so far as government services are concerned—you may call them all-India services. Their functions are given in article 320. At the same time, there is a proviso to this article which is important :

"Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor or Rajpramukh, as the case may be, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted."

Therefore, under article 320 an exception has been provided by which the President, in the case of all-India services, and the Rajpramukh or Governor in respect of the State service, can

exempt certain categories of services from the operation of the Public Service Commission. I think in certain cases it has been so done. The idea underlying this Resolution appears to be the establishment of an Industrial Service Commission on the same lines as the Union Public Service Commission. I will talk only of the Union ; as regards the States, I do not know what is in the mind of the hon. Member ; I hope he himself will make it clear. But there is a clear distinction so far as the Constitution is concerned between State services and Union services. Whether he would like to confine the Resolution only to the Union services or whether he would like it to cover State services, these are all matters which the hon. Member who has moved the Resolution might choose to decide for himself. But the point is that under article 315, there can be only one Public Service Commission for the Union. Under the proviso to article 320, there might be certain other Commissions or Boards—whatever they may be called—which may be excepted from the operation of the Public Service Commission appointed under article 315. I am, therefore, inclined to think that if the President were to be asked, and he chooses to decide that this Industrial Service Commission or Board is to be excepted from the jurisdiction of the Public Service Commission, it could be done under the proviso to article 320. As regards the point whether it should apply to companies or other corporations etc., it is for the Mover to decide. I do not know whether, as a matter of fact, article 315 would apply there because in many of these cases, I think there are Acts which themselves prescribe the method of recruitment etc. in respect of these corporations and companies in which Government have an interest, to whatever extent it may be. Probably, they will be governed by the provisions of the Companies Act. If the reference is only to such undertakings which are run by Government, and even in the case of those undertakings, if the idea is that there should be a separate Board for making appointments as regards industrial services, that can be done, if the President were to make a regulation under this proviso to article 320 saying that they shall be kept out of the purview of the Union Public Service Commission. Therefore, the question that really arises before us, and the point, if I can correctly understand it, of my hon. friend, is whether it is or it is not competent for the Lok

[Shri Pataskar]

Sabha to consider this Resolution. To my mind, that is the only point. Whether, if the Lok Sabha approves, it could be done by a sort of exception being made under the proviso to article 320, or, if necessary, by effecting a change in the constitution in respect of article 315, is a different matter. But so far as the question as to whether Parliament can or cannot discuss this question is concerned, I am of opinion that there ought not to be much difficulty. Suppose somebody were to say tomorrow that there is a provision in the Constitution which should be changed, and somebody were to bring forward a Resolution before the Lok Sabha saying that there should be some change in the article of the Constitution itself, either directly or indirectly, could it be argued that such a Resolution could not be considered by the Lok Sabha? That, to my mind, is the main point which the objection raises. Suppose tomorrow a Resolution is brought forward saying that instead of provision 'X' in the Constitution, it should be provision 'Y', can it be argued that it cannot be discussed? Whether it is ultimately adopted by Parliament and accepted by Government is a different matter. So I for one am inclined to think that this is not such a matter as we can say that Parliament has no authority even to discuss the question, as to whether directly or indirectly there should be a change in the provision in the Constitution. Therefore, it is for you to decide. But I am inclined to think that to say that the Resolution says something for which some other steps will have to be taken is not the same thing as saying that the Resolution itself cannot be discussed in the Lok Sabha. That is the view I take so far as the constitutional or legal position is concerned. As regards the merits, it is for my hon. friends to decide.

Shri M. L. Dwivedi (Hamirpur Distt.): The hon. Minister of Legal Affairs has given an interpretation which makes it clear that the resolution can be discussed here.

Besides, on the merits, as pointed out by the hon. Minister of Legal Affairs, I can say that my resolution definitely says that it shall be an Industrial Service Commission which is not a competitor to the Union Public Service Commission. That is point number one. Number two is.....

Mr. Deputy-Speaker: What is number one?

Shri M. L. Dwivedi: It is, my resolution mentions that there shall be established an Industrial Service Commission. The Union Constitution has not provided for the recruitment to certain services which are beyond the purview of the Union Public Service Commission. There are several undertakings at present run by the Central Government and the State Governments for which no recruitment is done by the Union Public Service Commission. Therefore, to say that the Lok Sabha is not competent to provide for a Commission or for a Board or any such institution for the purpose of recruitment for which there is no machinery at present is absolutely wrong. This House is fully competent to discuss that matter.

Then, number two. Article 320, proviso, also clarifies that the President can take certain powers from the Union Public Service Commission and can appoint certain other bodies for recruiting certain kind of personnel—as has been done by the appointment of special recruitment boards in the case of IAS and PAS and others. In the same way there is another article in the Constitution, article 312.....

Shri Pataskar: That is not applicable. I say you can discuss the resolution.

Shri M. L. Dwivedi: All right. Now, it is clear that the resolution can be discussed and I am glad that this interpretation has been given.

Mr. Deputy-Speaker: A point of order has been raised by Shri Shree Narayan Das that in view of a specific provision having been made in the Constitution only for one Union Public Service Commission, this resolution is out of order. The hon. Minister of Legal Affairs said that the words are ambiguous as to whether this Industrial Service Commission is sought to be appointed—whether it is for the Centre or also for the States; it is not clearly expressed. We know that this House has no jurisdiction unless by way of an amendment of the Constitution—whether the State Assembly has jurisdiction or not is another matter—to regulate or to add one more Service Commission to the States. The Constitution has to be amended. I believe the Mover of the Resolution has only in view that for the Union there should be another Industrial Service Commission. It appears so from the language: on the lines of the Union Public Service Commission—and not on the lines of the Union Public Service Commission

and the States Public Service Commissions; and I am sure he will confine it only to the Union services.

Then with regard to the question whether an Industrial Service Commission can be appointed in view of a single Service Commission being contemplated in the Constitution, it may be viewed from two aspects as the hon. Minister of Legal Affairs has placed before the House. One is that the proviso under article 320 gives ample power to the President—even under the existing Constitution—to appoint *ad hoc* or other Commissions as and when he deems it necessary and take away certain things from the purview of the Union Public Service Commission. The President acts not in his own discretion but on the advice of his Ministers. Therefore, in effect, the Government of the day is asked today by the Parliament—if this resolution is passed—to do a certain thing which is within its purview; or whatever power the executive can exercise can always be controlled by the Parliament. Therefore, from that point of view, this is quite in order.

Regarding the other position that was placed before us by the hon. Minister of Legal Affairs that there can be a direction by the House to the Government to get a suitable modification of the Constitution, I do not want to state any opinion at this stage. My difficulty is that so long as the Constitution stands, if instead of directly amending the Constitution and bringing in a Bill, a resolution is passed here stating that an Industrial Service Commission ought to be appointed, whether we would be committed later on when a Bill comes before us because we have already adopted or passed a resolution that there shall be an Industrial Service Commission. When such a Bill comes up later, at the consideration stage can it be said that it is barred on account of the rules and so on? Under these circumstances, when this resolution is in order in the way that the executive government can make the President establish an Industrial Service Commission without any change in the law, it is unnecessary for us to go into the further matter and enlarge its jurisdiction on a side issue. Therefore, I do not feel I am called upon to express my opinion so far as this matter is concerned. The discussion on the resolution will go on.

BUSINESS OF THE HOUSE

Mr. Deputy-Speaker: I may inform the House at this stage that tomorrow we will sit as we used to do whenever work in a week was disturbed. Yesterday the work was held up. Therefore, the House will sit tomorrow and transact such business as is on the agenda that will be circulated.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

FORTY-THIRD REPORT

Shri Altekar (North Satara): Sir, I beg to move:

"That this House agrees with the Forty-third Report of the Committee on Private Members' Bills and Resolutions."

For the resolution of Shri M. L. Dwivedi 1 hour and 39 minutes are left and for another unfinished resolution of Shri Raghbir Sahai one hour and 14 minutes are left. Shri Raghbir Sahai made a request in the committee that as his resolution regarding the Community Projects was an important one and several hon. Members wanted to speak thereon the time may be extended by an hour or so. Of course, the time previously allotted was 2 hours and 50 minutes and it was agreed to by the House. It is now for the House to extend it. In respect of other resolutions, the time is as stated in the Report and I commend this Report for the acceptance of the House.

Shri M. L. Dwivedi (Hamirpur Distt): My resolution, as pointed out by the Report of the Committee, has only one hour and thirty nine minutes left for it. As is clear to you, some time has been taken up by the objection raised by Shri Shree Narayan Das and some time has been wasted... in the sense that we could not discuss the subject-matter of the resolution—and when the committee has recommended a certain time for the discussion of the subject-matter, I request that the time limit may be extended by 21 minutes.

Sir, I beg to move:

That at the end of the motion the following be added, namely:

"subject to the modification that the balance of time available for discussion of the resolution re-