

THE
PARLIAMENTARY DEBATES

ACC. NO. 1215

Date 25.11.2014

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

1979

1980

HOUSE OF THE PEOPLE

Friday 13th March, 1955

The House met at Two of the Clock.

[MR. DEPUTY-SPEAKER in the Chair]

QUESTIONS AND ANSWERS

(See Part I)

3 P.M.

MOTION FOR ADJOURNMENT.

DETENTION OF THREE M.P.S

Mr. Deputy-Speaker: I have received notice of an Adjournment Motion from three or four hon. Members to discuss a matter of urgent public importance, viz., the situation arising out of illegal detention of three Members of Parliament in violation of the mandatory provisions of the Constitution of India as held by the Supreme Court of India on the 12th March 1953.

When was the judgment of the Supreme Court given?

Shri Ramachandra Reddi (Nellore): On the 12th.

Mr. Deputy-Speaker: Are the hon. Members still under detention?

Shri Ramachandra Reddi: No. You are aware of the fact that they were here yesterday.

Mr. Deputy-Speaker: The presumption is that they continue to be free.

Shri Ramachandra Reddi: It is not a question of the freedom of the M.Ps. from yesterday. It is a question of illegal detention of three hon. Members of this House who were detained by a Magistrate, and the protection given under Article 22 of the Constitution has not been extended to them. Today, the life and liberty of the 547 P.S.D.

Members of Parliament and most of the public men who do not belong to the Congress Party seem to be in jeopardy. They are being deprived of their liberty and the Police Raj is ruling the country. We want the Government to make clear what their policy is with regard to.....

Mr. Deputy-Speaker: All that would be relevant after the motion is accepted. Has the hon. Member got a copy of the judgment of the Supreme Court?

Shri Ramachandra Reddi: No, Sir. Newspaper reports of the judgment...

Mr. Deputy-Speaker: On what grounds was the detention held to be illegal? Is it the original detention or subsequently any irregularity in the procedure?

Shri Ramachandra Reddi: Irregularities have also been pointed out and the entire thing has been declared illegal.

Mr. Deputy-Speaker: True, at a particular stage. I would like to know if from the outset there is a case. The other day, it was represented by the hon. Minister that a case has been launched under Section 188 of the Penal Code for disobeying an order under Section 144 of the Criminal Procedure Code, and also that a petition for a writ of *habeus corpus* was filed before the Supreme Court. The Supreme Court has since given a decision. Does it say that the original detention itself was wrong, so much so that the proceedings under Section 188 were quashed, or subsequently, for want of a remand order, the detention was held to be illegal on the date when the motion was made?

Sardar Hukam Singh (Kapurthala-Bhatinda): You are right so far as the original arrest was concerned. That was not held illegal. That has been let off. It is the subsequent detention—and the Adjournment Motion also relates to that detention—which is held to be unlawful. The Motion

[Sardar Hukam Singh]

says "the situation arising out of the unlawful detention". It is not the previous arrest that is being questioned. Three Members of Parliament were detained.....

Mr. Deputy-Speaker: The detention is illegal or unlawful because a remand order was not passed later on. Is that the point?

Shri Vallatharas (Pudukkottai): There was no remand order at all for three days together, and further, they had produced remand orders subsequently very late in the day. They are questionable now; because they are either fraudulent or made up subsequently, they were not produced.

Mr. Deputy-Speaker: We will assume there was no remand order. The point, therefore, is there is no questioning the original arrest. It is not a question of detention. The case is pending before the Court under Section 188 of the Indian Penal Code. Later on, unless there is a remand order, the accused are entitled to be at large. It is that portion that seems to have been declared by the Supreme Court as illegal—the further detention on account of want of a remand order. Am I correct?

The Minister of Home Affairs and States (Dr. Katju): I may venture to say that you have put the matter absolutely accurately, and I respectfully submit that this matter is entirely a judicial matter where a Magistrate acted rightly or wrongly, and this House should not interfere with the course of justice. If a mistake was committed, that was committed by a Magistrate exercising his judicial functions.

The accused in this case were arrested on the 6th of March, and that was a Friday. On Monday, the 9th of March, they were produced before a Magistrate on a charge under Section 188 of the Indian Penal Code. An adjournment was asked for by the accused themselves. The Magistrate acceded to this petition. Now, what he did was this: he merely wrote on the file before him that the case was being adjourned at the request of the accused. He forgot—I do not know whether he forgot or whether he was following the procedure which was being followed in the Delhi Courts for many, many years—but he forgot Section 344. That Section, as Mr. Deputy-Speaker, you are aware, provides that when a trial is adjourned, then:

"and may by a warrant remand the accused if in custody."

The trial was being held in jail. The accused had been produced before him from jail. They had asked for postponement of the trial, and I imagine the Magistrate thought that they would go back where they had come from. Anyway, he just noted back, and he did not pass any order in terms of the Section. The learned Judges of the Supreme Court thereupon said this:

"Various questions of law and fact have been argued before us by Mr. Sethi on behalf of the Petitioner, but we consider it unnecessary to enter upon a discussion of those questions, as it is now conceded that the first order of remand dated the 6th March even assuming it was a valid one expired, on the 9th March and is no longer in force. As regards the order of remand alleged to have been made by the trying Magistrate on the 9th March, the position is as follows:—The trying Magistrate was obviously proceeding at that stage under section 344 of the Criminal Procedure Code, which requires him, if he chooses to adjourn the case pending before him, to remand by warrant the accused, if in custody and it goes on to provide: 'Every order made under this section...'"

They also, after examination of the records, came to the conclusion that the learned Magistrate had omitted to pass a formal order of remand as required by Section 344. It had nothing to do with the Government. It is entirely a matter in the jurisdiction of the Magistrate, and he made a mistake. Magistrates and Judges make mistakes every day. Otherwise, the Supreme Court and the High Courts would not exist. They exist for the rectification of those mistakes, and correction of those mistakes. It was a purely procedural mistake, and I respectfully submit, therefore, that this Motion for Adjournment is not in order.

Several Hon. Members rose—

Mr. Deputy-Speaker: I have heard sufficiently. This is practically a point of law

Sardar Hukam Singh rose—

Mr. Deputy-Speaker: I have heard hon. Member Sardar Hukam Singh. If he has got anything more to say, I will hear him. The procedure I follow in these matters is this: I hear first the persons who table an Adjournment Motion; then any other

persons who want to enlighten me on those matters with respect to which I might have put some questions. They may also enlighten me, and I hear them. Then I ask the Government. Then I give a decision. How long can I be going on changing from side to side, asking one side and then the other? I have heard sufficiently over this matter.

Shri V. G. Deshpande (Guna): I am one of those who have given notice of the Adjournment Motion.

Mr. Deputy-Speaker: Then, why did not the hon. Member ask to make a submission as soon as I began?

Shri V. G. Deshpande: I could not rise again and again.

Mr. Deputy-Speaker: The hon. Member knows how well to catch my ear or my eye. Is he going to say anything more than what has been said by Mr. Reddi?

Shri V. G. Deshpande: Yes, something more than that. The point is this, that a very serious irregularity has been committed by the police, and a very serious statement was made by the police and the magistrate, that they wrote an order, where they said that the accused were produced before the magistrate.

Mr. Deputy-Speaker: We are concerned with 6th March now.

Shri V. G. Deshpande: That is what happened. It has appeared in the case that it was not so.

Mr. Deputy-Speaker: The hon. Member will kindly enlighten me on particular points. At this stage, I am to give consent to or refuse the adjournment motion. First of all, it is clear, that those three hon. Members of the House are not in detention or under arrest or in jail since yesterday. This is with respect to the orders when they were in jail, i.e. till the 12th. That order is illegal. They have been detained without a particular order of remand. According to the Supreme Court order, there was no separate order of remand by the Magistrate, who was trying the case on the 9th. The further question whether on the 6th itself, there was a warrant or not was not considered by the Supreme Court. The hon. Member will kindly refer to that portion. I have got it with me, I just read it.

Shri V. G. Deshpande: There were false reports, and the magistrate.....

Mr. Deputy-Speaker: I have got the order here.

Shri V. G. Deshpande: Those who have attended the whole proceedings, in the light of the arguments and the records before the Court, have been convinced that the police and the magistracy of Delhi.....

Mr. Deputy-Speaker: I am not going to allow all this. I am concerned now only with this question: Was there an order by the Supreme Court that even the original detention or arrest on the 6th was illegal? If that is so, then the proceedings under Section 188 are automatically quashed. Is that the position? I understood from Sardar Hukam Singh, who is an able lawyer and has been a judge also, that this does not relate to the original arrest. Their Lordships in the Supreme Court proceeded only with respect to what happened from the 9th; on the date on which the petition was filed, and in any case, when they were asked to be produced, there was no legal order against those hon. Members, and therefore the Court granted their application and released them. That is the situation. Is there anything more to be said on this by any other hon. Member?

Shri K. K. Basu (Diamond Harbour): If I have heard the hon. Minister of Home Affairs, rightly, he says that this kind of irregularity of procedure is generally committed by the Delhi Judiciary. That is a very important matter, because it relates to a definite miscarriage of justice. If in a Part C State, which is.....

Mr. Deputy-Speaker: We are not now going into the conduct of those people.

Shri K. K. Basu rose—

Mr. Deputy-Speaker: Order, order. I have caught the point. I am now in possession of facts, from which I can certainly come to a conclusion. It is unfortunate that three hon. Members of this House have been under illegal detention for some time, for want of.....

Shri Vallatharas: If the Chair would permit me, may I make a submission?

Mr. Deputy-Speaker: I am not going to permit.

Shri Vallatharas: It is a legal point, Sir.

Mr. Deputy-Speaker: No, the hon. Member gets up when I am on my legs. I am not going to hear any—

[Mr. Deputy-Speaker.]

thing more. I have heard sufficiently about this matter. There must be an end to all this. (*Interruption*). There is no good interrupting me.

What I find is this. The original order of arrest has not been declared to be illegal by the Supreme Court. It is still pending under Section 188. If the Magistrate, in pursuance of Section 344 Criminal Procedure Code had written that he was still remanding the accused in custody, for another period of 15 days, then according to law, the order would have been quite legal. The Supreme Court, in that case, would not have interfered with it. Now, the court is not an executive authority, directly responsible to this Government. Even the Government is only one of the suitors to a particular case. Under these circumstances, even if there be any mistake or otherwise, the court not being under the control of the executive, this Parliament has no jurisdiction, and the executive has no jurisdiction over every court which commits mistakes. The Government is responsible only for such acts as they themselves do, or their subordinates do, over whom they have control. I am sorry, that whatever might be the unfortunate manner in which those three hon. Members have been prevented from coming to this hon. House during the period when without a remand order, they were detained, this is not the forum for ventilating that. I am, therefore, unable to give my consent to this adjournment motion.

Kumari Annie Mascarene (Trivandrum): On a point of order, Sir.

Mr. Deputy-Speaker: On my ruling?

Kumari Annie Mascarene: No, Sir.

Mr. Deputy-Speaker: There is no other thing now.

POINTS OF PRIVILEGE

DETENTION OF THREE M.P.'s

Mr. Deputy-Speaker: I have received notices in the same matter, from other hon. Members.

The first one is by **Sardar Hukam Singh**, **Shri Krishnaswami**, and **Kumari Annie Mascarene**, which reads:

"We hereby give notice of our intention to raise the question involving a breach of Privilege of

three Members of the House of the People, namely, **Dr. Syama Prasad Mookerjee**, **Shri N. C. Chatterjee** and **Shri Nand Lal Sharma**, who were prevented from discharging their duties as Members of the Parliament and from attending the Parliament on account of their being wrongfully detained in the District Jail, Delhi, from 7th March to 12th March 1953, when the Supreme Court released them holding that their detention was illegal and repugnant to the Constitution."

This notice has been given in accordance with the rules. I have to look into this matter and see whether there is any question of breach of privilege involved in this matter. I will take time to consider this matter, but I shall consider this matter.

I have received notice of another motion under rule 172, from **Shri R. N. S. Deo**, and **Sardar Hukam Singh**, which reads:

"We hereby give a notice under rule 172 of a motion to discuss a matter of general public interest, namely:

"The revelation of serious irregularities and non-compliance with mandatory provisions of the Constitution and law by the authorities as disclosed in the *habeas corpus* petition filed by **Babu Ram Narayan Singh, M.P.** in the Supreme Court of India'."

I have just received a copy of the judgment of the Supreme Court. I shall consider and find out what I can do in this matter. If I give my consent, I shall place this matter before the House later on.

The House will now take up Legislative Business.

EXPUNCTION OF A REMARK

Shri V. P. Nayyar (Chirayinkil): On a point of submission, Sir. I have just seen your orders on the question of privilege which I intended to raise today. The office has shown me the order, and I submit that it is a very delicate question which involves your ruling as also my duty and honour. And as such, I request and beg of you that you should not take exception in this case. I also hope, you will be kind enough to go by the general