

Mr. Speaker: Part (d) has already been covered. I will put rest of the amendment to the vote of the House.

The question is:

Page 3—

after line 19, add:

“(e) holders of privilege ticket orders (P.T.O.);

(f) season ticket holders; and

(g) coupon ticket holders.”

The motion was negatived.

Mr. Speaker: I take it that other hon. Members are not moving their amendments. I will put the clause, as amended, to the vote of the House.

The question is:

“That clause 9, as amended, stand part of the Bill.”

The motion was adopted.

Clause 9, as amended, was added to the Bill.

Mr. Speaker: Now we come to the Schedule. Does any hon. Member want to move his amendment?

Shri Ramachandra Reddi: In view of the assurance given by the hon. Minister, I am not moving my amendment.

Mr. Speaker: The question is:

“That the Schedule stand part of the Bill.”

The motion was adopted.

The Schedule was added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

Shri Alagesan: Sir, I beg to move:

“That the Bill, as amended, be passed.”

Mr. Speaker: The question is:

“That the Bill, as amended, be passed.”

The motion was adopted.

STATES REORGANISATION (AMENDMENT) BILL

The Minister of Legal Affairs (Shri Pataskar): Sir, I beg to move:

“That the Bill to amend the States Reorganisation Act, 1956, be taken into consideration.”

Sir, this is a very simple measure. It has been necessitated on account of a decision of the High Court of Madras challenging the validity of a certain provision in section 35 of the States Reorganisation Act.

Now, as you will find, Sir, clause 35 of the States Reorganisation Bill refers to the Constitution of the Madras Legislative Council and it runs as follows:

“(1) In the Legislative Council of Madras, as from the appointed day, there shall be 48 seats of which—

(a) the numbers to be filled by persons elected by the electorates referred to in sub-clauses (a), (b) and (c) of clause (3) of article 171 shall be 16, 4 and 4 respectively;

(b) the number to be filled by persons elected by the members of the Legislative Assembly in accordance with the provisions of sub-clause (d) of the said clause shall be 16; and

(c) the number to be filled by persons nominated by the Governor in accordance with the provisions of sub-clause (e) of that clause shall be 8.”

That is how section 35 of the States Reorganisation Act proposes to re-constitute the Council of Madras.

Then, sub-section (2) of section 35 reads as follows:

"As from the appointed day, the Delimitation of Council Constituencies (Madras) Order, 1951, shall have effect subject to the modifications directed by the Second Schedule,"

Of course, we are not much concerned with this part of the Act.

14 hrs.

Now, because the number of members of the Legislative Council of Madras was reduced, sub-section (3) of section 35 has to be amended to make the necessary adjustments. Sub-section (3) of section 35 reads as follows:

"The two sitting members of the said Council representing the West Coast (Local Authorities) Constituency and such two of the six sitting members representing the Madras (Graduates) Constituency, and such two of the eighteen sitting members elected by the members of the Legislative Assembly, as the Chairman of the said Council shall by order specify shall, on the appointed day, cease to be members of the said Council".

In order to reduce the number of members of the Legislative Council of Madras and to bring the number down to that number which has been already provided under Section 35 (1), this provision was inserted.

Section 35 (1), as I have pointed out, refers to the members to be elected by persons referred to in sub-sections (a) to (c). We are here concerned with article 171 (3) (b) of the Constitution which runs as follows:

"(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that

of a graduate of any such university;"

So, there was the Madras (Graduates) Constituency which used to send six members of the former Madras Legislative Council. By the States Reorganisation Act, we reduced that number to four, as provided in section 35 (1) (a) of that Act. The number of six has been reduced to four, and therefore, in section 35 (3), we laid down that "such two of the six sitting members representing the Madras (Graduates) Constituency, and such two of the eighteen sitting members elected by the members of the Legislative Assembly, as the Chairman of the said Council shall by order specify shall," etc. So, power was given to the Chairman of the Council to decide as to who those two persons will be from the Madras (Graduates) Constituency who should retire so that the number may be brought down from six to four.

Now, there was a writ petition presented to the High Court of Madras by one Mr. John, challenging the validity of this provision on the ground that the Chairman of the Madras Legislative Council, who was given the power to decide which two members should retire, was himself a member of the Legislative Council elected from the Madras (Graduates) Constituency. On that ground he contended that this provision was inconsistent which the provisions contained in article 14 of the Constitution, and the Madras High Court, on the 5th November, 1956, upheld that contention raised by Mr. John and held that, to that extent, this provision was contrary to the provisions of the Constitution. Therefore, something has to be done in order that the Legislative Council of Madras is formed consistently with the provisions which are contained in section 35 of the States Reorganisation Act.

Therefore, it was proposed to amend the Act as provided in the Bill under discussion. There were two objections. One was that the man, who was to decide the case, was himself a person elected from the constituency

[Shri Pataskar]

concerned. The second was that it was left to the arbitrary decision of the Chairman of the Legislative Council, and that there was no indication to the contrary. We have, therefore, through this Bill, empowered the Governor of Madras to determine by drawing lots who are the two members that should be deemed to have gone out of the Legislative Council. That, in short, is the proposal which is contained in this Bill. Instead of leaving it to the decision of the individual, namely, the Chairman of the Council, we mentioned "by the Governor" since the Governor has nothing to do with the elective bodies. So the question will now be decided by drawing lots, by the Governor of Madras. It is for this simple purpose that this Bill has been brought forward, namely, to bring down the number from six to four consistently with the maximum number of members for the Legislative Council of Madras which has been fixed at 48.

I hope that this simple measure, which has been necessitated by a decision of the High Court of Madras, will be accepted by the House. Unless this is done and the Madras Legislative Council is properly constituted, legislative work in that State may be held up. It is for this purpose that this short Bill has been brought forward. I hope it will be assented to without much objection.

Mr. Speaker: Motion moved:

"That the Bill to amend the States Reorganisation Act, 1956, be taken into consideration".

Shri S. S. More (Sholapur): I want to take this opportunity of bringing to the notice of the House, if I can, the great injustice which has been done to many of the States particularly by the States Reorganisation Act.

Mr. Speaker: How is that relevant here?

Shri S. S. More: I will point out; I will straight way come to it. Now, take for instance, Madras. The total membership of the Legislative Council is 48, and the total number of members of the Legislative Assembly is 206. Now, under article 171 of the Constitution, as amended by the States Reorganisation Act, we have increased the percentage of seats which a Council can have in relation to the total membership of the Assmby. It is now one-third instead of one-fourth. The article, as amended, says:

"The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State".

Formerly, it was one-fourth. If the original formula prevailed, then, 25 per cent. of 206 would be the proportion of membership or the maximum membership of the Legislative Council. But now, with 206 as the total membership of the Assembly, and the formula having been increased from one-fourth to one-third, the maximum number of members which the Madras Legislative Council could have is 69.

My submission is that we must follow some definite principle regarding all States. I invoke article 14 of the Constitution which says that there should be equality between persons. Extending that principle and making it applicable to the States, I should say that there should be some uniform ratio or basis according to which the membership of the different Councils is to be regulated. By way of illustration, I might point out certain anomalies. I will not go into all the details.

Mr. Speaker: Are we not going into the general principle now? I thought this is only to avoid a particular inconvenience.

Shri S. S. More: My submission is that Government have brought in this Bill without any purpose. It was quite up to the Government to amend the schedule of the Representation of the People Act on a certain basis, because there is a schedule there which gives a certain number of seats to the different State Legislative Councils. They could have very well amended that particular schedule and said that Madras was entitled to have 69 as the maximum number of members for its Legislative Council. Why should we go to the extent of depriving two persons from their membership? That is my point.

With your permission, I want to point out that Madras is not the only sufferer.

Mr. Speaker: What is the good of referring to other States?

Shri S. S. More: With your indulgence, I want to point out that Government, by bringing a simple amending measure for the Representation of the People Act, could not only remove the head-ache of the Madras State but also of some other States. There have been complaints of a similar nature from the other States. Different persons belonging to different States have written to the Home Ministry and to the Law Ministry, or to the States Ministry as it was then, saying that according to article 171 of the Constitution, as amended, the number of members of the State Councils concerned should be increased in accordance with that proportion. I do not know what is coming in the way of the Government.

Mr. Speaker: So far as Madras is concerned, the hon. Member's suggestion may amount to this. Instead of reducing the number from six to four, the strength of the Council itself may be increased from 48 to 50. While the inconvenience arose of getting rid of two members, the court held that the authority to hold the ballot was given to one of those per-

sons who was himself a member and therefore, it was irregular. The Bill seeks to validate it and vest the authority in the hands of the Governor. I can understand the hon. Member's suggestion that instead of going so far the original number may be restored. For that purpose, I can understand the modification of the People's Representation Act also by a suitable amendment. But, to go beyond that and bring in Bombay and other places, is beyond the scope of the Bill. For those places, an independent Bill has to be brought.

Shri S. S. More: I accept what you say and I do not wish to transgress the bounds you have set for me. But, regarding Madras, I can competently urge that instead of having 48 members—there is no sacrosanctity about that number—the Legislative Council of Madras can very well have 50 members. You can allow the two persons to remain there, without putting the Governor to the immediate job of drawing lots and deciding the fate of two persons. 69 is the maximum limit up to which Government can go; let them have 50, 54, 60 or even 69 members. What prevents them from going to that formula? When article 171 has been specifically amended, there must have been some purpose in the mind of the Government. I say that they must have visualised that after re-organisation so many difficulties would crop up and the numerical percentage would be disturbed to a very large extent. So, there should be some margin to serve as a sort of elbow-room. I say, take advantage of article 171. In the case of Madras as well as in the matter of other States, the names of which I will not mention in view of what you have said, you can change the formula and modify the Schedule. I believe it is Schedule VII of the Representation of the People Act and say that for the different States mentioned in the Schedule, the following shall be the numbers of members of the Legislative Councils. If that is done, it would

[Shri S. S. More]

be a more simple and human process than bringing down the guillotine on two sitting members, who have been elected on the assumption that they will run their term without any interruption. I may point out that bad blood is being created in certain States where the term of some unfortunate members has been reduced by two years. Some members have been lucky enough to have a windfall and their term has been increased by two years more. How far it is consistent with the provisions of the Constitution I leave to the legal experts to decide.

I think Government will be well advised if they act in a human manner. Instead of putting the number irrevocably at 48 and asking the Governor to use the knife for a particular purpose, they should increase the number at least to 50, so as to save the catastrophe overcoming these two unfortunate members.

Shri T. S. A. Chettiar (Tiruppur): The general question of increasing the membership of the Legislative Councils in the various States is certainly a matter which requires consideration and I hope Government will take steps to ascertain the wishes of the State Governments in this matter and do whatever is necessary. This Bill refers only to the Madras Legislative Council. As has been pointed out by Mr. Pataskar, there were six graduate representatives in the Madras Legislative Council and the number was reduced to four after re-organisation. In order to eliminate the two surplus members, we gave the power to the Chairman of the Council to determine who should be eliminated. But unfortunately, that Chairman happened to be a member elected by the University Graduates. The member, whose name was probably left out, filed a suit in the High Court saying that since Mr. Cherian, the Chairman of the Council, happened to be elected by the graduates, he should not be vested with that power. The High Court also

upheld that view. This is the short story of this case.

Now, the Government say that instead of the Chairman of the Council, the Governor should draw the lots and decide the names of the persons to be eliminated. The point raised by Mr. More should certainly be considered. The amendment I have given notice of seeks to implement Mr. More's suggestion so far as the Madras Legislative Council is concerned. It seeks to increase the number of graduate representatives to six, the number which existed before re-organisation, so that the necessity of drawing lots may be obviated altogether. That is the short point before the House and I hope that this is not in conflict with either the Constitution or any other law. My amendment is in substitution of the amendment sought to be made by the Government. I will move it at the proper stage.

Shri N. E. Maniswamy (Wandiwash) I shall be very brief and I shall not go into the details about the contents of the judgment of the Madras High Court and so on. I am only concerned with the small amendment I have given notice of.

The State Legislature consists of the Governor and the two Houses. In States where there is only one House, the Legislature consists of the Governor and that House. My point is that since the Governor is one of the constituents of the legislature, he shall not be given this responsibility of drawing lots. So far as the Chairman is concerned, he happened to be one of the six sitting members of the Madras (Graduate) Constituency. There would have been no difficulty if the Chairman of the Council had drawn lots to eliminate the two members. Now that he has been given the arbitrary power of deciding the names of the two persons to be eliminated, being a human being, he will certainly eliminate his name and choose the names of two per-

sons who are not very well disposed towards him. That is why Mr. John took up the matter to the High Court.

My point is this. After all, drawing lots is an executive job and anybody else can do it; why should the Governor be asked to do it? The Election Commissioner is an independent authority and he has nothing to do with any man coming to this House or that House. So, he can very well be authorised to draw the lots and exclude the names of those two persons. Any other person authorised by the Election Commissioner may also suit the purpose. By doing this, we can obviate the difficulty of asking the Governor to do this work. It is not dignified on the part of the Governor to draw lots. Therefore, I would commend the acceptance of my amendment by the House.

Shri Pataskar: As I explained at the beginning, this is a very simple Bill. The hon. Member, Shri S. S. More, referred to the question of amendment of article 171 of the Constitution and to the fact that it was desirable generally to increase the number of Members of the Councils. That is a larger issue which, I think, has been raised so far as I can see by some of the States. It is under consideration of the Government as to what we should do. Of course, every case will have to be examined on its own merits. When that larger question comes to be decided, the matter, I am sure, will come before this House and we will try to introduce as much uniformity as is humanly possible in this matter. The present Bill is of a different nature. If really there was no urgency about this matter, we would have waited till we decide the larger question. As I pointed out in the beginning, on account of a decision of the High Court, under the present provision in section 35 of the States Reorganisation Act, it has become impossible for the Legislative Council of Madras to function because that may be

challenged. It is as a measure of urgent necessity that we have brought forward this Bill. I can assure hon. Members that whatever representations have been made by the other States, they will receive due consideration from the Government.

In the present matter, there are two other alternatives. One of them is suggested by Shri T. S. A. Chettiar. I think that would be considered when we come to the stage of considering amendments. As regards the suggestion made by the hon. Member Shri N. R. Muni-swamy, I think there is nothing really wrong in authorising the Governor of a State to draw lots and decide the matter. After all, under the Constitution, the Governor is a person who has been appointed by the President, an independent person. He is not a Member of any legislative body. I do not think there is anything wrong or inappropriate in saying that such a matter should be decided by the Governor. However, this is a matter in which it is open to anyone to say that it should be A, B, C, D, E. Beyond that, I think the hon. Member need not stress that argument. We put in the Governor because we thought that after all, he was the best person so far as the State is concerned. I hope that the suggestions made by Shri T. S. A. Chettiar will be duly considered at the time when the amendment is moved. I will speak about it at that stage. In the mean time, I hope this motion will be accepted.

Shri Mohiuddin (Hyderabad City): A new Governor has been appointed in Madras and by the time, this Bill becomes an Act, perhaps he will take charge. If the newly appointed Governor is a Member of the graduates electoral constituency there may again be an objection.

Shri T. S. A. Chettiar: He is from Travancore-Cochin.

Shri Mohiuddin: He may be a member of the graduates.

An Hon. Member: May have been elected in Madras.

Shri Mohiuddin: A Member of the Council can also be the Governor of the same place or a Member of the Council in Travancore-Cochin may be a Governor.

Shri Pataskar: My short reply is this. Under article 158,

"The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State....."

There is provision in the Constitution itself that he will cease to be a Member of any House anywhere in India.

Mr. Speaker: The question is:

"That the Bill to amend the States Reorganisation Act, 1956, be taken into consideration."

The motion was adopted.

Clause 2.—(Amendment of section 35)

Shri T. S. A. Chettiar: My amendment consists of two parts. One is with reference to section 35 for raising the number to 50. In amendment (b) I say that the words and brackets "and such two of the six sitting members representing the Madras (Graduates) Constituency" shall be omitted. This is consequential. Once we raise the number from 4 to 6, there is no need to omit two people out of the six as has been directed in sub-clause (3) of section 35 of the Act. Therefore, I beg to move:

Page 1—

for clause 2, substitute:

2. Amendment of section 35.—In section 35 of the States Reorganisation Act, 1956 (hereinafter referred to as the principal Act)—

(a) in sub-section (1)—

(i) for the figures "48" the figures "50" shall be substituted; and

(ii) in clause (a), for the figures "16, 4 and 4" the figures "16, 6 and 4" shall be substituted; and

(b) in sub-section (3), the words and brackets "and such two of the six sitting members representing the Madras (Graduates) Constituency" shall be omitted.'

Mr. Speaker: The hon. Member wants to restore the original number so far as the University is concerned.

Shri T. S. A. Chettiar: That is right.

Mr. Speaker: The reduction from six to four has brought the complication as to how to get rid of the two, whether the Chairman should draw the lots or the Governor. The hon. Member is suggesting an alternative remedy by retaining the two. The question of ballot will not arise. Shri N. R. Muniswamy's amendment goes out of order if this is accepted by the House.

Shri N. R. Muniswamy: He need not accept this amendment.

Mr. Speaker: It is for the House. Is the hon. Minister agreeable to this amendment?

Shri Pataskar: Yes, Sir. Because, though I would have preferred to have the Act amended in the form in which I had asked for it, in view of the fact, as I pointed out, that the question of number of members has been raised by the different States, I think it would avoid many complications if we can do it in this Bill by increasing the number from 48 to 50. The question of drawing of lots and who should do it will not be there. I will have no objection, subject to what you say.

Mr. Speaker: The question is:

Page 1—

for clause 2, substitute:

2. Amendment of section 35.—
In section 35 of the States Reorganisation Act, 1956 (hereinafter referred to as the principal Act)—

(a) in sub-section (1)—

(i) for the figure "48" the figure "50" shall be substituted; and

(ii) in clause (a), for the figures "16, 4 and 4" the figures "16, 6 and 4" shall be substituted; and

(b) in sub-section (3), the words and brackets "and such two of the six sitting members representing the Madras (Graduates) Constituency" shall be omitted.'

The motion was adopted.

Mr. Speaker: There is an amendment to the Second Schedule.

Shri T. S. A. Chettiar: I shall move that part also. I beg to move:

3. Amendment to Second Schedule.—In the Second Schedule to the principal Act, in clause (a), for the figure "4" the figure "6" shall be substituted.

This is merely consequential.

Mr. Speaker: The question is:

3. Amendment to Second Schedule.—In the Second Schedule to the principal Act, in clause (a), for the figure "4" the figure "6" shall be substituted.

The motion was adopted.

Mr. Speaker: I believe there will be some consequential amendments so far as the Peoples Representation Act is concerned.

Shri Pataskar: I have considered that matter. That can be done by the Adaptation provisions in the Act itself.

Mr. Speaker: Shri N. R. Muni-swamy's amendment goes out of the order.

The question is:

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

Shri Pataskar: I beg to move:

"That the Bill, as amended, be passed."

Mr. Speaker: Motion moved:

"That the Bill, as amended, be passed."

Shri Mulchand Dube (Farrukhabad Distt.—North): I find from the Schedule that the percentage in all the States is not uniform. In view of the fact that the hon. Minister has accepted the amendment of Shri T. S. A. Chettiar, I think the percentage of the other States should be examined and suitable amendments made so that there may be uniformity in the percentage.

Shri Pataskar: I would only say that what I have already said has not been understood by the hon. Member. When the larger question comes up, the whole thing will be considered.

Shri K. K. Basu (Diamond Harbour): I have one question to ask. By this amendment, is the subdivision of the graduates number within limits? In the Act, the Graduates' number is fixed at a certain percentage. You raise from 4 to 6. But, there is also a further sub-division and there is a limit. I do not know whether the hon. Minister has considered that aspect also.

Shri Pataskar: Yes.

Shri K. K. Basu: Otherwise, there may be trouble later.

Shri Pataskar: The hon. Member was not probably attentive. I read out the sub-clause of article 171. I was careful to see that that number is not exceeded.

Mr. Speaker: One-twelfth is one-twelfth of fifty.

Shri Pataskar: Whatever it is, by raising it from four to six, we do not do anything which is in conflict with the provisions of the Constitution.

Mr. Speaker: Out of 50, one-twelfth is four. The article reads:

"as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed..."

Shri Pataskar: I will explain it. In article 171 itself there is clause (2):

"Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3)."

That was the arrangement prescribed in the Constitution until it was decided by Parliament, and now Parliament is going to decide what the constitution of the Legislative Council of Madras will be. When the article was enacted they referred to the existing Council, and there was a provision that until Parliament by law otherwise provides the composition will be as provided under clause (3).

Mr. Speaker: Therefore, now Parliament is making this law.

Shri K. K. Basu: What I am worried about is that we should frame the law with full clarity and there should be no judicial decision knocking off what we have done.

Mr. Speaker: So far as this matter is concerned, in some portions of the Constitution, for example in article 4, it has been provided that notwithstanding the fact that an amendment may affect the Constitution, it shall not be considered to be an amendment of the Constitution for the purposes of article 368. Changing the number of Members of the Legislative Assembly shall not be deemed to be

an amendment of the Constitution. Therefore, in the States Reorganisation Act the schedule was added to the Act instead of amending the Constitution so far as the Schedules are concerned. Similar provision is made in article 171. In the absence of clause (2) of this article, any change in the proportion as set out in clause (3) will have to be made only by amending the Constitution. To avoid that, clause (2) has been inserted there under which Parliament can alter the relative proportions. It is open to this House to say instead of four, we shall have six notwithstanding the fact that it militates against sub-clause (b) of clause (3) of article 171. It is quite in order.

The question is:

"That the Bill, as amended, be passed".

The motion was adopted.

STATE BANK OF HYDERABAD BILL

The Minister of Revenue and Defence Expenditure (Shri A. C. Guha): I beg to move:

"That the Bill to transfer the share capital of the Hyderabad State Bank to the Reserve Bank of India and to provide for its proper management and other matters connected therewith or incidental thereto be taken into consideration."

This Bill was introduced in this House on the 28th August during the last session, but in spite of our best endeavour, we could not find time to get the Bill passed by Parliament.

[MR. DEPUTY-SPEAKER in the Chair]
14.34 hrs.

In the meantime, States' reorganisation was going to take place which in effect would split up the State of Hyderabad into three different States. So, there would not be any single authority to look after this Hyderabad State Bank and none also to ensure the continuance of its functions and

*Moved with the recommendation of the President.