

THE
PARLIAMENTARY DEBATES
(Part II—Proceedings other than Questions and Answers)
OFFICIAL REPORT

1381

HOUSE OF THE PEOPLE

Saturday, 6th March, 1954

The House met at Two of the Clock

[MR. SPEAKER in the Chair]

QUESTIONS AND ANSWERS

(See Part I)

2-55 P.M.

MOTION FOR ADJOURNMENT

NOMINATION OF AN ANGLO-INDIAN TO
THE TRAVANCORE-COCHIN LEGISLATIVE
ASSEMBLY.

Mr. Speaker: I have received a notice of an adjournment motion. It seems to me to be very curiously conceived. The motion reads:

"That the proceedings of this House be adjourned to discuss a matter of urgent public importance, namely, the action of the Rajpramukh of Travancore-Cochin State in having nominated under Article 333 of the Constitution, a member to represent the Anglo-Indian community, to the Legislative Assembly of the State in a manner that flouts the spirit of the Constitution."

I am not concerned with the merits of the question, but I should like to know from the hon. Member who has tabled this motion as to what powers this House has, under the Constitution, to interfere with the discretion of the Rajpramukh under article 333. Article 333 says:

"Notwithstanding anything in article 170, the Governor or Rajpramukh of a State may, if he is

772 PSD.

1382

of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, nominate such number of members of the community to the Assembly as he considers appropriate."

I should like to know what jurisdiction this House has to go into and interfere with the discretion of the Rajpramukh. I want to know the legal authority; I do not want to go into the merits of the case.

Shri S. S. More (Sholapur): Sir, I am one of the signatories to the adjournment motion and, therefore, I think it is my duty to reply to the question that you have posed to me, and to my friends who have joined with me. You have already read article 333. Along with that, I would also request you to read article 163. Article 163 says:

"There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

I would request you to underline the words, 'in his discretion'. Article 163 specifically lays down that regarding matters which lie within his discretion, the Governor has exclusive jurisdiction to act independently of the aid or advice of the Ministers. But, in other matters

[Shri S. S. More]

which do not come within his discretion, he is in duty bound, under this Constitution, to accept the advice of the Ministers and he can act only on that.

I would again refer you to article 333. As far as article 333 is concerned, there are no words to the effect, 'in his discretion'. With your permission, Sir, I will again read this article.

"Notwithstanding anything in article 170, the Governor or Rajpramukh of a State may, if he is of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, nominate such number of members of the community to the Assembly as he considers appropriate."

I may refer here that article 163 has to be adapted so as to be applicable to Rajpramukhs, under article 238. So, this article which regulates the functions of the Governor is also the article which would regulate the exercise of the functions by the Rajpramukh. So, "notwithstanding anything in article 170, the Governor or Rajpramukh of a State may, if he is of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State", and so on. So, my submission to you will be that the words, 'in his discretion' and 'if he is of opinion' have some distinct meaning. The two phrases have different connotations. I need not tell you—as you have been an eminent lawyer—that when two sets of words have been used by the Legislature in one and the same piece of legislation, then they have to be interpreted in different manners. They cannot be said to be identical. My submission is that article 163 does not cover the exercise of the functions of the Rajpramukh under article 333. Even if it does, I am going to argue that whenever particular matters are within the discretion of a particular authority, that discretion

has to be exercised judicially and not capriciously, whimsically or *mala fide*. If it is *mala fide* it ceases to be discretion. My submission is that even his opinion that a particular community has not been represented in the legislature has to be borne on the advice of the ministers concerned. In this particular case, I would like to go a step further and say that as this Constitution has been planned and modelled after the British Constitution, we will have to take the precedents for interpretation as they have evolved under the British Constitution. For that purpose, I would refer, with your permission, to one portion from Mackenzie King's speech when a constitutional crisis occurred in Canada.

3 P.M.

Mr. Speaker: The hon. Member's discussion may be a very learned one so far as the Constitution is concerned, but my point is not answered. Will he point out to me any article in the Constitution which gives authority for this Parliament to sit in judgment upon the discretion exercised, rightly or wrongly, by a Governor or a Rajpramukh. What authority has this House to enquire into that kind of thing, much less to discuss about it? That is the question.

Shri S. S. More: I will not try to be so learned, but I would refer to the discussion about the Travancore-Cochin Ministry which was initiated in the Council of States...

Mr. Speaker: Let there be no reference to what happened in the Council of States.

Shri S. S. More: The competence of this House is on par with, and in certain respects even greater than, the competence of the Council of States. If a certain matter becomes relevant and perfectly within the competence of the Council of States, I can accept that particular argument and say that the matter

must be deemed *ipso facto* to be within the competence of this House. I am bringing this point to your notice because there have been occasions where different decisions and rulings have been given by the Chair in the two Houses and a sort of conflict has been involved.

Mr. Speaker: We are not concerned with the other House now. Let me have the authority of the Constitution which vests this House with the power to interfere with the discretion or the power exercised by the Rajpramukh.

Shri S. S. More: My submission to you is that the Constitution will have to be interpreted as a whole, and there is no particular section. (*Laughter*). I cannot understand the rhyme or reason for the laughter in the House.

Mr. Speaker: It is quite easy to understand, although the hon. Member may not like it. (*Laughter*).

Shri S. S. More: They are laughing in an unconstitutional manner.

Mr. Speaker: The hon. Member will resume his seat. I do not want to hear him any further on this question. Has the Law Minister to say anything about this?

The Minister of Law and Minority Affairs (Shri Biswas): If I may say so with respect, the hon. Member has not answered the question which you were pleased to put to him. He has gone into matters which, I submit, are irrelevant. The short point is whether this House is competent to question the exercise of discretion by a Governor or Rajpramukh in the matter of nomination, or in other matters. There is nothing, so far as I can see, either in the letter or in the spirit of the Constitution which vests this House with that authority.

Mr. Speaker: I do not want to hear more on this question. The constitutional position is very clear and I cannot consent to this kind of motion.

PAPERS LAID ON THE TABLE
STATEMENTS SHOWING ACTION TAKEN BY
GOVERNMENT ON VARIOUS ASSURANCES
ETC.

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha):

I beg to lay on the Table the following statements showing the action taken by the Government on various assurances, promises and undertakings given by Ministers during the various sessions shown against each:

- | | |
|--------------------------------------|--|
| (1) Supplementary Statement No. I | Fifth Session, 1953 of the House of the People. |
| [See Appendix V, | annexure No. 16] |
| (2) Supplementary Statement No. VI | Fourth Session, 1953, of the House of the People. |
| [See Appendix V, | annexure No. 17] |
| (3) Supplementary Statement No. XI | Third Session, 1953, of the House of the People. |
| [See Appendix V, | annexure No. 18] |
| (4) Supplementary Statement No. XII | Second Session, 1952 of the House of the People. |
| [See Appendix V, | annexure No. 19] |
| (5) Supplementary Statement No. XIII | First Session, 1951 of the House of the People. |
| [See Appendix V, | annexure No. 20] |
| (6) Supplementary Statement No. VI | Fifth Session, 1952 of the Provisional Parliament. |
| [See Appendix V, | annexure No. 21] |
| (7) Supplementary Statement No. X | Fourth Session, 1951, of the Provisional Parliament. |
| [See Appendix V, | annexure No. 22] |

DEMANDS * FOR GRANTS—RAILWAYS

Mr. Speaker: Now, the House will proceed with the second stage of the Railway Budget—Voting on Demands for Grants. Has the Opposition come to any arrangement about the cut motions?

Shri H. N. Mukerjee (Calcutta North-East): The final selection in regard to the Demands has been made, but in regard to the individual

*Moved with the previous sanction of the President.