

[Shri Satya Narayan Sinha]

day. This will not be sufficient for a debate on the general food situation. The Minister has said that he must have one full day, five hours at least, for this.

Mr. Speaker: Hon. Members seem to have misunderstood the hon. Minister's statement. They are under the impression that in addition to these two motions being disposed of by the House, there will be two hours for Food in which case they want to utilise that time also. It now transpires that these two motions have been proposed to be taken up for the purpose of avoiding any collapse of business. Therefore, if two hours are saved and these two motions are not taken up, that time will be left for the debate on the West Bengal food situation.

Shri Satya Narayan Sinha: In any case, we cannot have more than two hours.

POINT OF PROCEDURE RE RESOLUTION SEEKING DISAPPROVAL OF ESSENTIAL SERVICES MAINTENANCE ORDINANCE

Shri Naushir Bharucha (East Khandesh): On 7th August, 1957, the Essential Services Maintenance Ordinance was promulgated, and I gave notice of a resolution under article 123 of the Constitution inviting the House to disapprove of the Essential Services Maintenance Ordinance. You, Mr. Speaker, were pleased to admit that resolution, but later on, as the Ordinance was subsequently revoked, you were pleased to state that you disallowed the resolution. I requested you that I might be permitted to mention this matter on the floor of the House so that at least we have the benefit of a considered judgment from you which might constitute a precedent on a question of such importance.

The question, simply stated, is this: does the right of a Member given under article 123(2)(a) to invite the

House to pronounce disapproval of a particular Ordinance survive if the Ordinance is subsequently revoked? My submission is that the right survives because of the following 10 reasons which I am advancing:

First, this is a right granted under the Constitution which even Parliament is not competent to take away either by law or under any rule. Nothing short of an amendment of the Constitution would be necessary to destroy this right;

Secondly, the Chair has no power, I submit, to disallow such a resolution in pith and substance, because to invest the Chair with such powers would be tantamount to granting the Chair powers to override the provisions of the Constitution and destroy that right;

Thirdly, if neither legislation, short of amending the Constitution, nor any rule, nor the Chair can destroy the right, much less can the unilateral action of the Executive in revoking the Ordinance destroy such right;

Fourthly, to hold that the right does not survive on revocation of the Ordinance would be tantamount to holding that executive's unilateral action of revocation has retrospective effect in that it invalidates a resolution which was ab initio good in law;

Fifthly, it will be tantamount to importing in article 123 words to the effect that the right only subsists so long as the Ordinance subsists, for importing such words there is no warrant;

Sixthly, the Chair is bound to admit such resolution and once duly admitted and circulated, the House has become seized of the subject-matter and the House alone can dispose of it;

Seventhly, that the Government once having achieved its purpose by promulgation of an Ordinance cannot be allowed to escape criticism of the House;

Eighthly, that the right to move a resolution under article 123 accrues to a Member the moment the Ordinance is promulgated. There is nothing in the Constitution to show that under certain contingencies that right is taken away;

Ninthly, the right is given to the House in the Constitution to prevent usurpation of the legislature's functions by a dictator who could rule the country by Ordinances promulgated between sessions of the legislature, if the right to disapprove of them is made dependent only on the Ordinances subsisting during sessions of the legislature; and

Tenthly, there is no difference between an Ordinance and an Act enacted by Parliament in so far as the legal consequences flowing therefrom are concerned. The effect of revoking an Ordinance is much the same as repealing an Act. But under the General Clauses Act, with the repeal of an Act, obligations or liabilities acquired or incurred are not extinguished, and investigations, legal proceedings or any rights, privileges, liabilities, penalties, forfeiture or punishment under a repealed Act continue to survive. The revocation of an Ordinance does not mean that all its mischief dies with it. Therefore, because the legal consequences flowing from a revoked Ordinance continue to survive, the right of the House to disapprove of even a revoked Ordinance continues to survive. The fact that in the present case, no legal proceedings were taken or no people were convicted for strikes under the Ordinance is not germane to the present issue.

For these ten reasons, I submit that the notice of resolution which I gave inviting the House to disapprove of that Ordinance survives and it should be admitted.

The Minister of Home Affairs (Pandit G. B. Pant): I had listened to Shri Bharucha with great attention and with still greater interest. I have not been able to appreciate his

arguments. He has admitted that his notice was given under article 123 of the Constitution. In fact, he bases his arguments mainly on the ground that the Resolution having been notified under article 123, the hon. Speaker has no jurisdiction to treat it as having lapsed or not to allow any discussion on it later on even though the Ordinance may have been revoked.

He has referred to many things which do not seem to me to be at all germane or relevant. If you please see article 123, it says in (2)—

“An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance—

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.”

Now, this is a resolution of a specified character with a definite purpose to which it should be directed. The resolution has only one object. It is not meant for any other purpose. It is not a general resolution dealing with the policy of Government with regard to any major or minor matter. But, if the Ordinance is disapproved by both Houses, then, the Ordinance ceases to be valid. If the purpose for which the resolution is intended no longer exists, then, obviously, there is no ground left for discussing that resolution.

Shri Nanshir Bharucha: May I just correct the hon. Home Minister? The purpose of the resolution is not to seek the extinction of the Ordinance;

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the purpose is to censure the Government for wrongly promulgating the Ordinance.

Pandit G. B. Pant: I do not know whether the purpose of the resolution was to support the Ordinance and to ask for its continuance. Anyway it disapproved the Ordinance and in the resolution itself there was a distinct reference to this article 123(2). The language used in the resolution itself was: "This House disapproves of the Essential Services Ordinance, Ordinance No. 5 of 1957, promulgated by the President on the 7th August, 1957." So, this was definitely, intended to be a resolution under clause (2)(a) of article 123. In fact, that was specifically mentioned.

Shri Naushir Bharucha: It is so.

Pandit G. B. Pant: Well, if it is so, then, it was only directed towards the nullifying of the Ordinance, because, from the language of the Constitution if the Ordinance is disapproved, if a resolution disapproving the Ordinance is passed in this House as well as in the other, then, the Ordinance will cease to have any force. The very language of this clause is used here. (*Interruption*). Well, if you cannot repress yourself, I have no objection.

The point is clear enough. The resolution was intended to seek the support of this House for the virtual repeal of the Ordinance which had been issued by Government. Now, Government itself withdrew the Ordinance under clause (b). So, the purpose for which the resolution had been notified ceases to exist and, after that, no resolution of this type could be moved.

The House is intended to deal with matters which will result in some action or in some sort of acceptance or disapproval of the policy of Government or to seek redress or some change in the policy of Government. It is not a place only for academic discussions. It has a cer-

tain purpose to serve. Every resolution, every Bill, every motion that is brought before this House must have some definite objective before it. It is not meant only to be an academic House where the Members of this House desire—even that has been carried out—that we must have some sort of a post-mortem type of discussion here for the thing which does not exist at all. That would be wasting the time of the House and I do not see that there was any ground left for moving this resolution after the Ordinance had been withdrawn.

If you refer to rule 338, you will see that it says that during the same session of Parliament a matter which has already been discussed and which is substantially analogous to the matter which is sought to be raised cannot be discussed again. We had a full-dress debate in this House on the Essential Services Maintenance Bill. Every clause of the Bill was accepted by the House and the whole Bill was accepted. So, what was already discussed in this House and what had been already approved by this House could not be the subject of discussion again in this House, whether in the form of a resolution or otherwise.

What would the House have done? Having passed the Bill, would the House have gone back upon the decision taken by it and should the House be allowed to argue a matter which has already been discussed in the House threadbare and of which the pros and cons have been fully studied, examined, scrutinised and accepted? Otherwise, there is no point in having a rule of this character. Sir, the thing seems to me to be so obvious that I think the Speaker has not only done the right thing but anything else would have been obviously and decidedly wrong.

Shri Naushir Bharucha: Sir, may I be permitted to clarify one or two points? The hon. Minister says that there is no purpose in having that resolution, which, I admit, was under article 123, except to seek the revocation or cancellation of the Ordinance.

My submission is that the words in article 123 are wide enough to disapprove of the matter and manner of the Ordinance, apart from the substance of it.

The second point that he made was that once the Ordinance had been revoked, what is the use? The point is obvious. Supposing under the Ordinance 2,000 workers had been convicted. Because the Ordinance has been revoked, the workers who had been sentenced to, say, one year's imprisonment, that sentence does not automatically get revoked. That consequence continues to be there. If we accept the hon. Home Minister's premises, it amounts to this. Once the Government can promulgate an Ordinance and imprison about 10,000 workers and then revoke the Ordinance and the House can say nothing about it.

The third point is about rule 338 that we cannot discuss the same subject-matter within a session in this House. It is not the same subject-matter. What we discussed was the Essential Services Maintenance Bill; not the Ordinance at all. Supposing I want to retain the Ordinance but still want to protest against the matter and manner in this House, cannot I discuss it in this House?

I submit that there is nothing in the reply of the hon. Minister.

Shri Narayanankutty Meason (Mukandapuram): May I speak on this?

Mr. Speaker: I am not going to have a general discussion

Pandit G. B. Pant: Supposing a Bill is introduced in this House and a number of amendments are proposed, if the Bill is withdrawn, the Member who has given notice of those amendments cannot press for their discussion. After all the main Bill has been withdrawn. This is only a corollary to the clause which empowers the Government to issue ordinances and gives the power to Parliament to nullify that.

As to the argument of Shri Bharucha that, if the ordinance is issued and after that thousands of people are sent to prison, I expect that such a contingency will never arise and that his hope will never be fulfilled. But, assuming that such a step has to be taken, the mere expression of disapproval of the ordinance by this House or by both the Houses, which may even result in the repeal of the ordinance, would not in any way result in the release of the persons who had already been punished.

Shri Naushir Bharucha: It may lead to the resignation of the Government.

Pandit G. B. Pant: You can please yourself by the use of that expression. Anyway, so far as that point goes, I do not think there is much room for argument. The position seems to be obvious. Apart from that, I feel that the hon. Speaker has inherent jurisdiction to see that the proceedings of the House are conducted in a purposeful way and that the time of the House is not wasted unnecessarily.

Mr. Speaker: Does the hon. Law Minister wish to say something?

The Minister of Law (Shri A. K. Sen): I have really nothing to add after the masterly, if I may say so, arguments of the hon. Home Minister. I have nothing to add and I should imagine that the matter is beyond the pale of controversy.

Mr. Speaker: No doubt, it is an important matter that has been raised by Shri Bharucha. It is good to clarify this issue. Though an order was passed that I will not allow this resolution to be moved in view of the subsequent developments, I allowed him to bring it before the House so that we may know once and for all what the procedure ought to be. Even after hearing him, I am not convinced that the order that I passed is not according to the Rules or the Constitution.

I am afraid Shri Naushir Bharucha has misunderstood the position. The

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core of the resolution tabled by him had become infructuous after the ordinance was withdrawn. If it is an ordinary resolution, it should have been balloted. But, under article 123, the hon. Members of this House have got an inherent right without having recourse to the other ordinary rules regulating the resolutions and waiting to have it balloted, to move this House to abrogate an ordinance.

He thinks that the object of disapproval is for censuring the Government; it is not so. The object of the disapproval under article 123 is to make the ordinance cease to have any effect from the moment the House disapproves of it. Otherwise, it will lapse at the expiration of six weeks if the House does not approve it and make it into a Bill.

An ordinance is passed by the Government of the day under article 123. Power is also given to the other Members who do not belong to the Government Party or any other party to ask this House to disapprove it. If the Government wants that it should continue, it can introduce a Bill and get it passed. But, if the individual hon. Member wants to move, it is by a resolution to revoke the ordinance. The object is to have cessation of the working of the ordinance and not censuring the Government. They may refer to article 123(2):

"An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, . . ."

I would refer to that at a later stage. This House can pass an Act. The President also can pass an Act. If the House passes the Act, there cannot be a resolution condemning the passing of this Act or censuring this House or the Government for having brought up a particular Bill. Likewise the President, when the House does not meet, has got a right as much as this House; he is also one of the parts of the legislature of this country. He has got a right to pass a law and

therefore, he cannot be censured. There cannot be any censure of the President by this House for having passed an Act under the Constitution. Therefore, it is advisedly that under article 123, no power is given to this House to condemn the President for having passed an Act. All that it can do will have the effect of disapproval and stop the further effect of this Act. The article reads:

"An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance—

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and"

So, disapproval is not condemning the Government or the President; it is only for the limited purpose of making the operation of the Act come to a close. Otherwise, it can ordinarily run for a period of six weeks. The purpose of article 123(2)(a) is very limited in scope and it cannot be invoked for the general purpose of censuring the Government. I do not know if any resolution can be moved but it is unnecessary for me to come out with opinion regarding that. If independently a non-official resolution is tabled for the purpose of censuring the Government, I will reserve my opinion whether such a motion can be allowed at all. But, in view of the fact that the President is allowed to exercise certain rights under the Constitution and pass ordinances, the limited purpose of this article is to give power to any hon. Member to ask this House to disapprove and thus terminate the ordinance. From the day the House disapproves the ordinance, it ceases to have any effect.

There is one other point also to be noted. The ordinance ceases to be in operation from the moment it is disapproved by the House; but it will not have retrospective effect. The hon. Member felt that they may resign but those people who are in jail, ten thousand and so on, will have to resign themselves to their fates. (Interruptions.) Now, therefore, nothing can be done about those things which have happened already. So, both of them had to resign themselves one way or the other. The effect of this motion is not to nullify the effect of the ordinance antecedently. It is only for the purpose of terminating the effect of the ordinance before six weeks.

The other portion of article 123(2)—sub-clause (b)—says “may be withdrawn at any time by the President.” What more has to be done? It has ceased to be in operation. The resolution wants only that it should cease to be in operation. It has already ceased to be in operation. Therefore, the resolution has nothing more to do. The hon. Member is a lawyer and he knows that in courts of law notice is taken of subsequent events also. On the date of the presentation of the petition or the plaint something may happen. Subsequently there may be a change on account of change in circumstances later on. So far as this matter is concerned, I am quite clear that the limited purpose of trying to get disapproval is only for the purpose of making the Ordinance cease to be in operation. When already the Ordinance has ceased to be in operation by withdrawal no more purpose is served by the resolution.

There is one other point. The hon. Member must know that when I admit notice of a resolution I will only admit notice of a resolution. Until it is formally moved in the House the House is not seized of the resolution. When once it is moved in the House it is the property of the House. Even if the hon. Member who has moved the resolution wants to withdraw it, he must have the permission of the House to do so. If he has

only given notice of the resolution he can write to me and say that he is not pressing the resolution. Also, if he absents himself it will disappear, he will not have an opportunity to move the resolution. Once he has moved the resolution even if he is absent I will have to put it to the vote of the House and decide one way or the other. Therefore, this difference between moving a resolution and making it a property of the House and the antecedent stage must be borne in mind. If that is borne in mind, this matter has not reached a stage when it is the property of the House, it is still in the notice stage.

At that stage, ordinarily, the Speaker circulates and allows those things to be brought on the agenda subject always to his right of disallowing the motion on the ground of inadmissibility. Now, I disallowed this motion on the ground that it does not serve any purpose. It has ceased to be in operation. The very object of the resolution has disappeared.

The hon. Home Minister drew our attention to one other matter also, that under rule 338 if the same matter is disposed of at an earlier stage in the same session that matter cannot be agitated upon. So far as this matter is concerned, disapproving is for the purpose of making it cease to be in operation; it is not for censure. The same subject matter has been approved by this House in the form of a Bill. Whatever may happen in the other House, so far as this House is concerned it has expressed its opinion. The object of this disapproval motion is to ask this House to come to a different conclusion, that ought not to have been done.

Shri Naushir Bharucha said that it is for the purpose of various other matters that can be raised. What is the other matter? The operative portion of the resolution is to make this Ordinance cease to be in operation. Mere censure or saying ‘you have done hastily’ is not good. Whether hastily or otherwise it will continue to be in operation. Mere

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expression of opinion is not good. When you come to the operative portion, whether the House can pass a resolution disapproving or not, it cannot do so under article 338.

Above all, wherever there is no specific rule, under rule 174 which relates to resolutions I can always disallow a resolution at any particular stage.

Lastly, there is the residuary rule 389. Whatever might be said in a particular rule, in a situation arising like this the residuary rule empowers the Speaker always to pass such orders as might be necessary if there are no specific provisions under these rules.

For all these reasons I have come to the conclusion that it is no longer worth pursuing. It is not a censure motion as Shri Bharucha, who wanted to have another opportunity to explain after the hon. Home Minister made his observations, wanted to say. Shri Bharucha once again reiterated that the resolution was not for the purpose of bringing about the cessation of the Ordinance, making it cease to be in operation, but for the purpose of censure. I am sorry he has chosen a wrong remedy. This is not the remedy, and I am not competent to suggest to him any remedy otherwise.

Therefore, my original order stands. This resolution cannot be moved.

PUBLIC EMPLOYMENT (REQUIREMENT AS TO RESIDENCE) BILL*

The Minister of Home Affairs (Pandit G. B. Pant): Sir, I beg to move for leave to introduce a Bill to make in pursuance of clause (3) of article 16 of the Constitution special provisions for requirement as to residence in regard to certain classes of public employment in certain areas.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill to make in pursuance of clause (3) of article 16 of the Constitution special provisions for requirement as to residence in regard to certain classes of public employment in certain areas."

The motion was adopted.

Pandit G. B. Pant: I introduce the Bill.

ESSENTIAL COMMODITIES (SECOND AMENDMENT) BILL

The Minister of Law (Shri A. K. Sen): Mr. Speaker, Sir, I beg to move:

"That the Bill further to amend the Essential Commodities Act, 1955 be taken into consideration."

Sir, it is necessary to explain to the House why this amending Bill has been introduced, and why we want this Bill to be passed. Under the Essential Commodities Act of 1955, section 3 gives various powers to the Central Government with the necessary powers of delegation given under the Act itself. One of the powers given under section 3 is contained in clause (f) of sub-clause (2) of that section which reads as follows:

"For requiring any person holding any stock of any essential commodity to sell the whole or a specified part of the stock to such person or class of persons and in such circumstances as may be specified in the order."

In other words, the Government may require any person holding a stock to sell either the whole stock or a portion of the stock to any person or class of persons specified in the order of the Government.

One should have imagined that that provision clearly enables any Government by the very terms of the powers to direct any person holding any stock of an essential commodity

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