

[Shri A. K. Sen]

with all the criticisms which have been levelled against it, in its entirety or in regard to particular provisions, has not been such a bad harmonization as has been made out by some.

As I said, the necessary adjunct to this Bill, namely, a permanent Standing Committee, to keep under its review the functioning of the various statutory and non-statutory bodies, would be a healthy device by which the defects which might become apparent in the working of the Act itself might be remedied from time to time. With these words, I request that the Bill, as amended, be passed.

Mr. Chairman: The question is:

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

The motion was adopted.

Shri Narayanankutty Menon: A very dangerous measure is passed.

13.20 hrs.

HIMACHAL PRADESH LEGISLATIVE ASSEMBLY (CONSTITUTION AND PROCEEDINGS) VALIDATION BILL

The Minister of State in the Ministry of Home Affairs (Shri Datar): I beg to move:

"That the Bill to validate the constitution and proceedings of the Legislative Assembly of the New State of Himachal Pradesh formed under the Himachal Pradesh and Bilaspur (New State) Act, 1954, be taken into consideration."

Shri V. P. Nayar (Quilon): May I make a submission?

Mr. Chairman: The hon. Minister has not yet moved the motion and explained the provisions of the Bill.

Shri V. P. Nayar: There is an obvious difficulty. That is why I said I am making a submission. It is neither

a point of order nor anything else. This Bill has been before the House for some days, but the Bill itself has resulted from a judgment of the Supreme Court, which is a very very important judgment. Unfortunately, we could not get copies of that judgment till yesterday. As you know very well, it involves many complicated matters and a variety of Acts have to be referred to viz., the General Clauses Act, the Constitution, the old Acts of Himachal Pradesh and so on, and it is very difficult for us to be prepared to make our contribution to the debate today.

Day before yesterday when the Business Advisory Committee was meeting, I represented to the Speaker this difficulty and I was informed by him and also the Chief Whip that this would be postponed for two days. Only yesterday we could get copies of the Supreme Court judgment. The whole of yesterday we were in the House witnessing the debate on a very important Bill. So, my submission is that after the hon. Minister has finished his speech, further discussion may be put off for one or two days to enable Members to take part in the debate and to make some useful contribution. I am also unable to find out the particular provision in the Constitution under which we are bringing forward this legislation.

Shri Braj Raj Singh (Ferozabad): I would like to support Mr. Nayar in his request that further discussion on this Bill may be postponed for the obvious reason that we could not get copies of the judgment till yesterday.

Mr. Chairman: I would like to know the reaction of the hon. Minister to the request by Mr. Nayar and another Member. A request has been made for the postponement of the Bill for two days. Has the hon. Minister got any objection to that?

Shri Datar: Copies of the judgment have been given already.

Mr. Chairman: It was given to Members yesterday morning. Copies were available at the counter and many Members got their copies. Perhaps a majority of the Members must have taken care to go through the judgment. The judgment is not very long.

Shri V. P. Nayar: It is not long, but it raises several controversial issues.

Mr. Chairman: At the same time, it is quite clear that we will not be able to finish this Bill today. At 3 o'clock there is the other business coming up. So, Members will get ample time to read it; discussion is not going to finish today.

Shri V. P. Nayar: It is true, but when we start speaking, we have to put forward our whole case. I do not think many Members will speak at this stage. Secondly, nothing would be lost by postponing it for two days, because it is not necessary that this Bill should be rushed through. The ordinance is valid for six weeks from the date of commencement of the Rajya Sabha session.

Mr. Chairman: It is not the desire of the Chair or the hon. Minister to rush through this Bill at all. This Bill has been in the hands of Members for some time. Only the judgment was missing, but copies of it were given to Members yesterday morning. After all, it will not take more than 45 minutes or 1 hour to go through it. Also, we are so situated that we will not be able to finish this today. We will have more time for preparation of amendments, because amendments are not likely to come today. So, Members will get ample time to give notice of amendments.

I do not see how we are rushing through this Bill. There is ample time for preparation of amendments and there was ample time previously also. The Bill was already in the hands of Members. I do not feel we are rushing through this Bill.

Shri V. P. Nayar: As you know, the Supreme Court judgment raises certain fundamental issues. This House has to consider whether a Supreme Court judgment has to be nullified by an Act of Parliament. It raises several other questions also along with it. You know me for seven years and I have never chosen an occasion for a Bill to be put off even by one minute.

Mr. Chairman: There is no doubt about the importance of the Bill, and all its aspects have to be considered by this House. At the same time, this is not the first time when a judgment of the Supreme Court is being superseded by a Bill of this nature. But I do not deny that it is an important Bill. To say that the judgment is superseded in this way, etc. is all relevant and it must be gone through. But I do not think we will not be able to do justice to this measure by proceeding with it today.

Shri V. P. Nayar: I went to the Speaker personally and I saw Mr. Satya Narayan Sinha also. I was informed that it will be postponed at least for two days after the Home Minister had spoken. We never knew that this was coming up today. Only after seeing the order paper, we knew it. It is only a question of adjustment. I only request that further discussion may be postponed after the speech of the hon. Minister. It is not difficult to make a speech for 15 or 30 minutes, but we would not have made the contribution which the hon. Minister and the House would like us to do.

Shri Easwara Iyer (Trivandrum): Our anxiety is, let it not be again declared *ultra vires*. There are certain constitutional difficulties also in respect of this Bill and we have to examine it thoroughly.

Shri Thirumala Rao (Kakinada): There is some other business coming up at 3 o'clock today and I understand this discussion will go on the

[Shri Thirumala Rao]

whole of tomorrow. So, if the hon. Minister makes his speech and we go on with this till 3 o'clock, the necessity for postponement will not arise. They will get two days time.

Mr. Chairman: Yes. In about 1½ hours, the other discussion will start. Such of the hon. Members as cannot speak today may speak tomorrow. Not tomorrow; I do not think it will come up tomorrow. Whenever it comes up, they shall get ample time. We are not finishing the discussion today. Those Members who are not ready to speak today, may get time to speak later. The hon. Minister.

Shri Datar: This Bill and also the ordinance which preceded it have been necessitated by a recent judgment of the Supreme Court in a case known as Vinod Kumar and others *versus* the State of Himachal Pradesh. The judgment was pronounced on 10th October, 1956 and according to the orders passed, a particular Act which had been passed by the Himachal Pradesh Legislative Assembly was declared to be *ultra vires* on the ground that the H.P. Legislative Assembly which passed this particular Act had not been properly and validly constituted.

As a result of the passing of the orders in this case, certain very great difficulties have arisen. The effect of the order that has been passed is that whatever was done by the H. P. Legislative Assembly between 1-7-54 and 1-11-1956 has all been rendered invalid. In order to appreciate the position that has been newly created, I might state a few introductory facts. As you are aware, under the Constitution that was passed in 1950, we had a categorisation of States. We had certain States known as "Part C States". Then in 1951 an Act was passed, known as the Part C States Act, according to which it was open to have a Legislative Assembly and a consequent Ministry in certain parts of these Part C States. Now, as

per this Act of 1951, a Legislative Assembly was formed for the Part C State of Himachal Pradesh. There was also another Part C State, but it was not brought under the purview of the Part C States Act, and that was the small Part C State of Bilaspur, which joined Himachal Pradesh.

Now, as I have said, in the general elections in 1952 members were elected to this Himachal Pradesh Assembly and it functioned till 1954. While this Legislative Assembly of the Himachal Pradesh was functioning, a Bill was then brought forward, known as the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1954. That was done in 1953, and that Bill was pending for consideration before the Legislative Assembly. In the meanwhile, in 1954 an Act was passed by Parliament, known as "Himachal Pradesh and Bilaspur (New State) Act (Act 32 of 1954)". What was done by this Act of Parliament was that the territories under both these Part C States, namely, the former Himachal Pradesh and the Bilaspur territory were unified under one administration, known as the Himachal Pradesh. The name was continued. That Act was passed by Parliament and it came into effect from 1-7-54.

Now there were two interpretations so far as the position created by the passing of the Act of 1954 was concerned—one was as to whether the original Legislative Assembly for the former Himachal Pradesh was or was not continued; the other interpretation was that inasmuch as the Act of Parliament of 1954 purported to point out that was a new State, therefore, it was held by the other school, as a result of the passing of this Act of 1954, the old Legislature as also the old Part C territory ceased to exist and a new State was formed, known as Himachal Pradesh territory. The name was continued, but inasmuch as it was called a new State, therefore,

an interpretation was placed on the position then existing, and that is the interpretation which has been accepted by the Supreme Court.

Now, coming back to the narration of further events, may I point out that the Bill that was introduced in 1953 before the first session of the Himachal Pradesh Legislative Assembly, that was taken up for consideration some time after the passing of this new Himachal Pradesh Act. Then certain things have been done, which have been called in question and which have been held to be invalid. After the new Act came into force—as I pointed out just now, it came into force on 1-7-54—the Lt Governor of Himachal Pradesh, by his direction dated 7-5-54, called what purported according to him and according to the notification “the second session” of the Legislative Assembly. That was called on 16-7-54. During this session of the Legislative Assembly the Bill of 1953 regarding the abolition of zamindaries and also the introduction of certain reforms was taken in hand and was passed by this Assembly, and consent was given on 23-11-54 by the President of India. Then this Act was brought into force on 26-1-55, and certain actions were taken. Then, inasmuch as the Land Reforms Act had been passed, certain landlords, believing that their rights had been curtailed, filed applications before the Supreme Court of India. There were as many as 28 applications, and two questions were placed before the Supreme Court—one related to the matter now being dealt with here and the other was regarding the merits of the particular Bill or Act. The contention was that it contravened certain fundamental rights guaranteed to private parties. So far as that question is concerned, it did not become necessary for the Supreme Court to go into the other question for the simple reason that on the first question, the constitutional question that was raised by the landlords, they came to the conclusion that the Legislative Assembly

that considered and passed the Bill of 1953 was not competent to do so, because it had not been validly constituted. And the Supreme Court have given their reasons. They stated that in the old Legislative Assembly of Himachal Pradesh, as constituted by the Act of 1951, there were 36 members. Now, under the Act of Parliament of 1954 it was stated that these 36 members would continue to be the members of the new Legislative Assembly and, in addition to this, so far as the added area of Bilaspur was concerned, five more persons were to be elected by the new Legislative Assembly.

Now what was done was the Lt. Governor called the Assembly after the new Act had come into force and, as a matter of fact, before elections were held for the five seats that had been newly created, so far as Bilaspur was concerned. The Lt. Governor in his notification, which has been referred to in the judgment of the Supreme Court, called or convened the Legislative Assembly, not under the Act of 1954, but he purported to state that it was the second session of the Legislative Assembly for Himachal Pradesh territory. That is what he has stated, and it has been quoted in the judgment of the Supreme Court. It said:

“The Lt. Governor, in exercise of the powers conferred by section 9 of the Government of Part C States Act, 1951, has been pleased to direct that the second session, 1954 . . .”

This is where he stated that it was the second session. Now whether it was the second session or not, that is the very question which the Supreme Court had to consider. It said:

“..has been pleased to direct that the second session, 1954, of the Himachal Pradesh Legislative Assembly will commence from Monday, the 18th August.

[Shri Datar]

1954 at 9-30 a.m. in the Council Chamber, Simla."

That is what he did. As a result of what he did, as a result of the convening of this session of the Legislative Assembly, the Act, to which I have referred to, regarding the abolition of zamindari and giving certain rights, was passed by the Legislature.

Now the Supreme Court has held that as a result of the passage of the Act of 1954, the old Legislative Assembly created by the Part C States Act of 1951 ceased to function; and that a new State was formed though it was called the Himachal Pradesh territory and that under this Act, in view of what I have already pointed out to the House regarding the expression 'new State', the Supreme Court came to the conclusion that inasmuch as the old State along with the old Legislature had ceased to exist or to function. Therefore a new State and in particular a new Legislature had to be duly constituted.

For the constitution of such a Legislative Assembly it is necessary to issue a notification under section 74 of the Representation of the People Act. Now, in this case it was true that two things were not done. One was that no elections were held so far as these five seats for the Bilaspur portion of the new Himachal Pradesh territory was concerned.

An Hon. Member: Why?

Shri Datar: That is point number one. The second point is that no notification was issued as required under section 74 of the Representation of the People Act.

Shri V. F. Nayar: Could you tell us at least now why it was so?

Shri Datar: In fact, if the hon. Member had followed me, as I just pointed out there were two interpretations. That is exactly what I was pointing out. Actually what was done was that to the Himachal Pradesh territory that was already there the

territory or the region in the former Bilaspur, Part C State was added. Therefore it was *bona fide* believed that what was done was the merger or the union of the Bilaspur region in the Himachal Pradesh territory. That is exactly the reason and that is why the Lieut-Governor purported to call it the Second Session. That is why it so happened and, naturally, no objection was taken at all. But the Supreme Court have stated that inasmuch as in this particular case there was no notification issued under section 74 of the Representation of the People Act, there were no elections held so far as the five seats for Bilaspur area were concerned and they also made a passing reference to the fact that where a new legislature is formed then even though some members would be deemed to be members of the new legislative assembly, still the process of the members taking the oath was not gone through at all. That was held as an additional ground. Therefore the Supreme Court came to the conclusion that there was no validly constituted legislative assembly. Naturally on this Constitutional issue the landlords succeeded and therefore orders were issued that that Act was passed by an invalid Legislative Assembly or by an Assembly which had not been formally and Constitutionally brought into being. This is the position.

Other questions also arise. It is not merely a question of one Bill, but you will find that during the period that I have stated, i.e., from the 1st July, 1954 to the 1st November, 1956, many Bills were passed. Now, this other date also is an interesting date. Under the States' Re-organisation Act, as you are aware, Part C States Act was abolished and therefore automatically the Assembly, wherever it was in respect of the Part C States Act including this Assembly which purported to act as an Assembly, was also naturally abolished. Under the States' Reorganisation Act, as the

House is aware, some of the Part C States were merged in the adjoining States and some remained only as territories under the direct superintendence of the Government of India.

Now what happened is that apart from this Act which was naturally a very valuable Act as this Act gave very great powers to the tenants or the occupants, it abolished the zamindari and made provisions for the acquisition of certain lands from private landlords and so this Act by itself, may I point out, is one of the very important Acts to which naturally the Government of India attach the greatest importance because we are pledged to certain land reforms.....

Shri Braj Raj Singh: That is not denied, but why were they careless not to see whether it was extended or not?

Shri Datar: It is a question of *bona fide* belief. There is no question of carelessness at all. That is the reason why I was explaining that it was possible to have two interpretations. One interpretation was the one that I pointed out first and I repeated it just now and the other was the one which was ultimately accepted by the Supreme Court.

I was dealing with the case so far as this particular Land Reforms Act was concerned. That was important enough. But on account of the Constitutional difficulties which the Supreme Court felt, they declared that the Act had not been validly passed by a competent legislature. The greater difficulty that we had before us was the fact that a number of other Acts had been passed by this Legislature, as I stated, between the two dates, i.e., the 1st July, 1954 and the 1st November, 1956. I have got a very long list and I might point out that in 1954 three Acts had been passed, in 1955 fifteen Acts had been passed and in 1956 nineteen Acts had been passed. As a result of the view that the Supreme Court has taken

all these Acts are likely to be held invalid.

Now this has created naturally a very difficult and an anomalous position. That is the reason why the President had to issue an Ordinance. As I stated, on the 10th October, 1958, this judgment was given and on the 25th October, 1958, as the House was not sitting, the President had to issue an immediate Ordinance in terms similar to those which we have in this Bill. After the commencement of this Session of Parliament, the present Bill was introduced and now we desire to have the whole thing regularised. That is the reason why this Bill has been called the Constitution and Proceedings Validation Bill.

Now the Constitution itself has been called in question and reasons have been given by the Supreme Court. They have stated that this Assembly was not validly constituted and if the Assembly is not validly constituted then all the proceedings held by or before that Assembly are bound to be invalid according to the view taken by the Supreme Court. It is for these reasons that the present Bill has been brought forward.

An hon. friend suggested or rather asked as to under what articles of the Constitution this particular Bill was brought forward. May I point out to the hon. Member that this is the supreme legislative body for the whole of India in general and so far as these territories are concerned, we have now no legislative assembly for them. There is no Legislative Assembly for Himachal Pradesh at all. Himachal Pradesh consisting of the former Bilaspur region is a territory and for all legislative enactments we have to approach the Parliament.

In view of the great anomaly that has been created I submit that it is perfectly open to the Parliament to pass a validating Act. Unless a validating Act is passed great anomalies would arise. Certain difficulties would

[Shri Datar]

arise because a number of very important Acts have been passed. Therefore it has become necessary to sponsor this Bill. I am quite confident that the provisions of this Bill will appeal to hon. Members of this House.

Shri Sadhan Gupta (Calcutta-East): Sir, before you place the motion before the House, I want to raise a point of order.

Mr. Chairman: Order, order. Motion moved:

"That the Bill to validate the constitution and proceedings of the Legislative Assembly of the new State of Himachal Pradesh formed under the Himachal Pradesh and Bilaspur (New State) Act, 1954, be taken into consideration."

Shri Sadhan Gupta: Sir, I want to raise a point of order on this motion. My point of order, briefly, is that this House is not competent to enact a measure of this kind. Shri V. P. Nayyar had raised a point as to under what provision of the Constitution this Bill was sought to be enacted. The hon. Minister answered it by saying simply that we are the supreme legislative body in this country and we have power to make laws for the territories which now comprise the Union Territories of Himachal Pradesh and Bilaspur, which were formerly Part C States of Himachal Pradesh and Bilaspur.

My objection is this. We are not making an ordinary law by this Bill. For example, if we were validating all the laws made by a Legislative Assembly, we could have done so, because in that case, we could have exercised the law making power which the Constitution grants to us for legislating in respect of the Union Territories. You know, we have practically plenary powers to legislate on all subject matters in respect of the Union Territories. Therefore, if we had been validating numerous Acts, which are, I believe, about 25 or 30, which have

been passed by the erstwhile so-called Himachal Pradesh legislature, we would have been perfectly within our rights. What we are seeking here is to validate the constitution and proceedings of a body which was not the Legislative Assembly of Himachal Pradesh and Bilaspur, which we seek to set up as the Legislative Assembly of Himachal Pradesh and Bilaspur after it has ceased to exist. In this case, we could have done so if we had the power to constitute that Legislative Assembly for these Territories today. A power to enact retrospective legislation necessarily presupposes, first, that we can make a similar provision today and then also that our powers are so plenary that we can make it not only for today, but for any past time. Under article 240 of the Constitution as it stood prior to the amendment, this House had an express power to constitute Legislative Assemblies for Part C States. That article 240 is no longer there in that form. It has changed and the power to constitute Legislative Assemblies for the Union Territories or, for the matter of that, for any territories in India, has been taken away. Therefore, that power no longer exists. It existed at some time; but that power has been taken away today. Because of that, it is impossible to say today that this House has power to constitute a legislature and still more to say that this House could enact retrospective legislation validating the constitution of the Legislative Assembly. The fact that we have supreme law making power does not make any difference. Constitution of the legislature stands on a different footing. It is analogous to what may be called fundamental laws or organic laws in some States and it stands on a completely different footing. We are the supreme law making power in regard to the other States of India. But, we cannot say on that ground that we shall constitute a Legislative Assembly for the city of Lucknow, for instance, or for the city of Bombay or Calcutta. If we cannot do it, we cannot constitute a Legislative Assembly.

for a Union Territory. If we cannot constitute a Legislative Assembly for a Union Territory, we can still less enact a legislation which will retrospectively validate the constitution of a Legislative Assembly, because that power under the Constitution no longer is given to us.

On this ground, I would submit that it would be more advisable to bring forward a law validating each individual Act passed by the so-called Legislature and include it in some kind of a Schedule. Of course, I must make it clear that I have every sympathy with some of the Acts passed. They are very important and they are absolutely essential for the progress of our country. This is not the way to validate those laws. The only way to validate those laws, which is open to us under the Constitution, is to bring forward a legislation individually validating each individual Act that has been passed.

The Deputy Minister of Law (Shri Hajarnavis): May I reply now or shall I reply to all the objections together?

Shri Keshava (Bangalore City): May I say a word on this point, Sir? My colleague on the other side was just now suggesting that we have no powers at all to enact this kind of legislation. I think the very last argument that he put forward that the Government can bring forward each legislative enactment itself which have now been invalidated before this House and we can validate all such enactments from the date they came into force, leads us to the inevitable conclusion that we have got powers to validate the entire set of laws, and regularise the irregularity that has led to the invalidating of the several Acts. If we can validate one Act, it also goes without saying that we can validate all the 133 Acts. He was pleased to concede that supreme legislative powers are vested in Parliament. There are no two opinions about that. Whatever we can do, the President can do in our absence. As article 240 stands today, it is only the President

that can administer the Union Territories. On all these grounds, I respectfully submit that the present procedure that has been adopted by the Government is absolutely valid and we are there as the supreme legislative body to regularise irregularities that have been brought about by some unfortunate circumstance or other. We are not going into the merits of the Acts. In fact, I was to move for postponing consideration of this matter on the ground that a copy of the Supreme Court judgment had not been placed before us. That has been placed for the benefit of the Members of the House. I have absolutely no objection to withdraw that motion which I have put in for postponement of consideration. We have absolutely no ground to suggest that we cannot go ahead with this legislative enactment.

Shri Mohammed Imam (Chitaldrug): Sir, so far as the legal aspect is concerned, we want time to study the judgment and then take part in the debate. This is a very important point because the legislative body had no right to exist. It had no right to frame laws. A body which had no right to exist, in fact, which did not exist, had appropriated powers to which they were not entitled. Can we enact a law? If we enact the law, what will be its standing? It requires detailed consideration. Better we are given time to study.

Shri Naushir Bharucha (East Khadesh): I think that the point of order raised by my hon. friend is quite correct. The distinction to be borne in mind is this. There are certain functions which can only be performed under the Constitution by certain authorities named in the Constitution. It is true that we have got power to enact legislation for Union Territories, but here it is not a question of enacting legislation for Union Territories. Here is a question of an Assembly, or rather, a body of men who purported to call themselves an Assembly, who sat there without taking oath and without electing the Speaker and passed some legislation

[Shri Naushir Bharucha]

which had already lapsed. The Bill had lapsed when the first Himachal Pradesh Assembly was dissolved by the Act and a new State came into being. Therefore, the question is whether we can legislate in order to validate a piece of legislation which was not in existence and which was purported to have been placed before a certain group of persons who were not Members of the Assembly, but a body which was called by an order which was not a correct order, the members of which sat without taking oath and passed the particular legislation without complying with certain provisions of the Constitution itself.

14 hrs.

Now, take for instance the question of taking oath. It is not so simple as it seems. Until an oath is taken, under article 188 of the Constitution itself, a Member is not a Member of the Assembly, and the functioning of the Assembly does not commence. Neither the President by an ordinance nor this House can by any law say: never mind what article 188 says about taking the oath; whether they have taken the oath or not, let them be called a properly constituted Assembly. The issue that arises therefore is: has this House the power to override certain provisions of the Constitution, viz., articles 188, 186, 183, 196 and 198? All these will be involved as I shall show later on in the course of my speech in greater detail. In other words, this House is completely incompetent to override the specific requirements of these articles, and therefore, we have got no power whatsoever to pass a legislation like this.

Therefore, what the hon. Member raising the point of order said is quite correct. We must re-enact every piece of legislation that was purported to have been enacted by the so-called Himachal Pradesh Assembly.

Shri V. P. Nayar: I am afraid that the point put forward by Shri Sadhan

Gupta was not properly understood by Shri Keshava. His point is that we must take this Bill into consideration in this way that today we do not have any specific power under the Constitution to legislate on such a matter. It is not merely a question of validating certain Acts. As the hon. Minister will agree, by reading these provisions we find that it is not a question of re-validating certain laws. Here, by this Bill, we seek to confer a status upon a body of persons which the Supreme Court does not recognise as the Assembly; here we say this is the way in which this Assembly has to be considered. It is very strange also that the Assembly which was not in existence for the last two years has to be considered as a new Assembly by this Bill.

So, the point which we have to consider is whether this House, after the deletion of article 240 as it stood then and after certain other provisions have been made in the Constitution, has the power to set up a body and call it the Legislative Assembly of a Part C State. Only if we have such a power to set up a body under the Constitution at present, can we with retrospective effect validate the existence of, or confer a status upon, an Assembly which has ceased to exist. Therefore, this distinction must be understood. I support with all the vehemence at my disposal the point of order raised by Shri Sadhan Gupta and also very ably supported by Shri Naushir Bharucha.

Shri Braj Raj Singh: I rise to support the point of order raised by Shri Sadhan Gupta.

It will be appreciated that section 15 of the Himachal Pradesh and Bilaspur (New State) Act, 1954 stated:

"Every sitting Member of the Legislative Assembly of the existing State of Himachal Pradesh representing a constituency of the said State shall on and from the

commencement of this Act (the new Act) represent the constituency of the same name in the new State and shall be deemed to have been elected to the Legislative Assembly of the new State by that constituency."

All that this new Act provided was that fresh elections shall not be required for the composition of the new Assembly of the new territory which was to come into existence.

After the passing of this new Act of 1954, what happened was this. Without holding elections for the other territories, i.e., Bilaspur, and without giving these people a chance of making affirmation or taking an oath, this notification.....

Mr. Chairman: This is the basis of the point of order. This is the point which has been taken up by the Supreme Court. This has been brought out in the judgment of the Supreme Court. So, this is already known to the Members

Shri Braj Raj Singh: I have to submit only one thing, that this House is not at all competent to bring into existence the Legislative Assembly for Himachal Pradesh today. By our supreme power of enacting laws, we can only enact a law for that territory today. We can give life to the law which has been declared null and void by the Supreme Court, viz., the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act 1954. We cannot today bring into existence, or put life into the Assembly which never existed, and by that method we cannot retrospectively give legal shape to the laws which the so-called Assembly passed in that period of two years. So, we cannot discuss the Bill as it stands at present. We can only discuss a Bill seeking to validate the law which has been declared null and void by the Supreme Court.

Shri Mohammed Imam: What about my request to postpone consideration?

Mr. Chairman: All the other Members are prepared. They are going on with this point of order. So, it appears that hon. Member alone is the person who thinks that he cannot go on with this point of order. All the others are making their contribution. They are considering the matter. This is not a point which requires a day for study. When a point of order is raised, it is usually decided there and then unless the Chair wants to take time for consideration. Points of order are not to be postponed for days together for the purpose of study only.

Shri Mohammed Imam: Please permit me to say something on this point of order.

Mr. Chairman: The point of order is not new. Even when the Bill was there, it was quite apparent. It was mentioned in the Statement of Objects and Reasons that there was a Legislative Assembly which passed a law, that the Supreme Court held that it was not a legally constituted Assembly, and the Bill is being brought to validate the Bills passed by that Assembly. It is not a new point of order. This could be anticipated by every Member beforehand.

Shri Mohammed Imam: I want to say something about the point of order. I want to support it

Mr. Chairman: There can be no postponement of this point of order. Shri Manabendra Shah.

Shri Manabendra Shah (Tehri Garhwal): I want to raise this issue. We are empowered to legislate for Union Territories. Himachal Pradesh became a Union Territory on 1-11-1956 and this appertains to a period prior to that, viz., from 1-7-1954 to 31-10-1956. At that time we were not empowered to legislate for Himachal Pradesh because they had their own legislature. The question is: when we were not empowered to legislate then, how are we now empowered to validate laws which we were not empowered to legislate then?

[Shri Manabendra Shah]

The second point that I would like to raise is whether the procedure adopted by the Government in introducing this Bill is correct or not.

I would like to quote the Bihar case. A similar situation arose in 1951. The Bihar Legislature passed an Act for the abolition of zamindaries in Bihar.

"The Patna High Court held that the Act was bad. Parliament had decided to validate that law; Parliament did so by an amendment of the Constitution. Articles 31A and 31B were then added to the Constitution. A new Schedule IX was also added to the Constitution, and Schedule IX contains a list of all the laws which were validated."

Now, the present Bill that has been introduced is a thing which covers all the Bills. We are not aware of what those Bills are which we are supposed to validate, because they have not been made a part as a schedule. So, I feel that this Bill as presented is also incorrect.

In this case, there is also a moral issue, and the moral issue is this. How are we morally bound or justified or correct in passing those Bills automatically by one comprehensive Bill as is suggested now, without knowing what those Bills passed by the previous Himachal Pradesh Legislative Assembly are?

Therefore, I feel that this requires a thorough study and a decision from the Chair.

Shri Shankaraiya (Mysore): I have a constitutional issue to raise, namely whether this House has got the competence to validate all those Bills passed by the previous Himachal Pradesh Legislative Assembly.

Under the Constitution, in 1950, Himachal Pradesh was a Centrally administered State. But, in 1951 when an Assembly was constituted,

Himachal Pradesh as a separate territory lost the character of being administered by the Centre. The Centre had no power to legislate over the Assembly as constituted in Himachal Pradesh. The State Assembly assumed the power of legislation, and this House ceased to have any power of legislation either for supervision or revision or for repeal. So, it ceased to be a Centrally administered State.

Up till 1954, there was this legally constituted Assembly, and when it could not legislate properly, in 1954, another legislative enactment was passed under which Bilaspur was merged with it. Still, the Central Government did not resume their power of administration over that State. The legally constituted Legislative Assembly of the State was there. Whether it was constituted by election or otherwise is a different matter. But the Centre did not get the power of administration over Himachal Pradesh till 1956, when the States' reorganisation came in, when Himachal Pradesh again came to be Centrally administered.

So, between 1951 and 1956, there was a legally constituted legislature there; whether it was really legally constituted, whether it was functioning or not, is a different thing. But during 1951 and 1956 the Centre ceased to have any power of administration, and in respect of any Act that was passed in between, whether it was legally done or not, Parliament has no power. It is only the State Legislature which has to review or correct or modify or repeal or re-enact it.

Therefore, my point is that inasmuch as the Central Government had no power of administration over Himachal Pradesh between 1951 and 1956, we cannot legislate.

Shri Naldurgker (Osmanabad): I want to point out that this legislation has been validly introduced. I think

some constitutional or legal point has been misconstrued or confused. It is an admitted fact that every legislative body is fully empowered to enact any legislation giving it retrospective effect.

In this case, there is rather a confusion as far as the constitutional points are concerned. What are we doing here? We are only validating the proceedings or the Acts passed by the body known as the Himachal Pradesh Legislative Assembly. Whether that Assembly was properly constituted or not is not an important question at the present time. While doing that thing for validating all those Acts passed by that body, we are giving them a sort of retrospective effect. Since these territories were Centrally administered at that time, Parliament has full powers to enact laws, so far as those territories are concerned. The question now is not whether at the time when these laws were passed, that Assembly was competent or not, whether it was constituted properly or not, but the question is whether at that time these territories were Centrally administered, whether Parliament could give retrospective effect to all the laws passed by that body; whether that body was illegal or legal, is a different thing altogether.

By this Bill we are seeking to validate all those Acts. It means that it is tantamount to giving retrospective effect of law to all those Acts passed by that Assembly, whether they were properly passed or not.

Therefore, I submit that Parliament is fully competent to give retrospective effect, and that power of Parliament cannot be challenged. That is an admitted fact. By this Bill we are only giving retrospective effect to all the laws passed by that State. Therefore, Parliament is fully competent to enact such laws. Therefore, the point of order is not in order, according to my opinion.

Shri Hajarnavis: I must at the outset say that I entirely agree with Shri Sadhan Gupta and Shri Naushir Bharucha that one of the ways by which the Act which has been successfully impugned and the other Acts which may similarly be assailed could be validated is by Parliament itself undertaking straightway legislation on that subject.

Shri Naushir Bharucha: That is the only way.

Shri Hajarnavis: But we examined that possibility, and we thought that it could be done by the way in which we have framed an ordinance which this Bill seeks to replace.

Shri Naushir Bharucha: He is riding for a fall that way.

Shri Hajarnavis: And we thought that this was the better method.

The question is whether that could be done. The first point that was raised was whether Parliament would have power to enact such a law, and if so, where the Constitution gives that power to Parliament.

The first article, of course, would be article 245 (1) which says:

"Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State."

Then, we go to article 246 (3) which says that certain territories are constituted into States and certain subjects are confined to the State legislatures, subject to that, the power of Parliament remains. Therefore, if we look to the interpretation of articles 245 and articles 246 (1), 246 (2) and 246 (3) alone, there would be no doubt that those territories of India which are not included in any particular State would be under Parliament, and Parliament's power would

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be unlimited, that is to say, it will have plenary powers. But if there is any scope for argument, that is completely eliminated by the express words of article 246 (4) which says:

"Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

Further on, under article 248 (1):

"Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List."

So, I believe there could be no scope for any doubt to be entertained in any quarter whatsoever that so far as the Himachal Pradesh territory is concerned, this Parliament has the power to pass any law on any subject. As the House is aware, and as the hon. Member who spoke before me has mentioned, power to legislate includes power to legislate retrospectively. It has been so held in several of the Privy Council cases.

Shri Naushir Bharucha: That is not disputed. What is disputed is this. In enacting this, you are overriding the provisions of the articles of the Constitution.

Shri Hajarnavis: I shall come to that point presently. So, the first objection is out of the way. I am pointing this out because it has been mentioned by Shri Manabendra Shah that retrospective legislation cannot be undertaken. I do not think any lawyer or anyone who is acquainted with law will seriously entertain any doubt on this point. The matter has been decided by the Privy Council as also by the Federal Court in Atiqua Begum's case, I think.

Coming to the objection whether we are in fact reviving a legislature

which no longer exists, I would submit that if you would read the ordinance and the Bill, you will find that what is sought to be done is to give validity or life retrospectively to the legislature itself.

In doing this, we create two fictions. Firstly, we enact the law. But we enact a legal fiction saying that the legislature itself was validly constituted. Now it is a point of law with which the lawyer-Members of this House must be familiar that where a legal fiction is sought to be created, it is no argument against that fiction to say that the fact—which the fiction seeks to create—did not exist. As a matter of fact, the very reason for creating the fiction is that the fact did not exist.

Shri Naushir Bharucha: He cannot create a legal fiction against the Constitution. That is the point. He can create any fiction in respect of facts or laws, but not against specific provisions of the Constitution.

Shri Hajarnavis: I will come to that. I should be allowed to proceed step by step.

Therefore, it is conceded that legal fiction can be created. It is no argument then to say that the legal fiction did not exist. Shri Naushir Bharucha argued with considerable vehemence that the legislature was not validly constituted. Of course, it was not validly constituted; in point of law, there was no legislature. The Supreme Court has said that there was no legislature. But we are creating a legal fiction retrospectively that there was a legislature. It is no use Shri Bharucha arguing that in fact there is no legislature. So far as the present law stands, it is conceded that there is no validly constituted legislature. But we are trying to create the legislature retrospectively. Can we or can we not do it?

If Parliament has plenary powers, is it suggested that Parliament, which has unlimited power, cannot create a

legislature? Take the British Parliament. Are the powers of this Parliament any the less than those of the British Parliament?

Shri Naushir Bharucha: Very much less.

Shri Hajarnavis: Then such a limitation has not been brought to the notice of the House.

Shri Naushir Bharucha: He cannot ignore the Constitution. (*Interruptions*). As a Law Minister, he ought to know.

Mr. Chairman: This sort of running commentaries may be avoided.

Shri Hajarnavis: I can deal with any point that is raised.

I suggest there is no limitation in the Constitution by which a legislature with a limited power cannot be constituted. Then if it can be constituted today, it can be constituted retrospectively. But assume that there was any room for argument on that point, what is the operative part of the Ordinance and the Bill? It says that the laws that were made shall be valid as if Parliament had made them. Forget the preamble; forget the first part. Take into account the operative part of it. It is nobody's case that we are trying to create the Assembly and that it will enact the laws. What is sought to be done is to give validity, to give life to those Acts which today are in danger of being struck down. That is the only thing that is being done.

Shri Naushir Bharucha: They can validate Acts which are in existence though suffering from curable irregularities; not Acts and Bills not in existence at all.

Shri Hajarnavis: That is why we are trying to validate. If there was the legislature in existence, there would have been no need for this legislation.

Shri Naushir Bharucha: How can they validate an Act which is wrongly enacted?

Shri Hajarnavis: I will answer my learned friend by saying this. Suppose the Act is 'A'. Parliament can either enact 'A' or say that the law it declares as valid is the Act 'A' which was enacted by the Himachal Pradesh Assembly. The result is the same.

So far as we are concerned, we did not reach this conclusion without giving deep thought to it. Then we came to the conclusion that so far as the people of Himachal Pradesh were concerned—they are the only persons who are connected with it—it would be more convenient for them if the Acts as they had always understood them remained as they were, rather than put them in the form that these Acts are being imposed upon them later by this Parliament.

After all, what is the objection to the Bill? A technical objection. It was a regular legislative activity of a legislative body. Of course, certain things which were required to be done in terms of the Constitution—I should have said 'in terms of the law'—were not done. We are validating laws which the body purported to pass but were invalid because certain acts which the Act prescribed to be done were not done.

Shri Naushir Bharucha: 'Constitution' is the correct word.

Shri Hajarnavis: Therefore, what we are trying to do is this. Our law says that instead of saying that these are the laws which we made, we say all the laws which the Himachal Pradesh Assembly or that body which is called itself the Himachal Pradesh Legislative Assembly made are the laws made by Parliament, and we give it a legislative foundation. What is wrong with it? That is the Ordinance. That is the Bill.

Shri Naushir Bharucha: Some village or gram panchayats may pass an Act and will you validate it here!

Mr. Chairman: Order, order. The hon. Member had had his say. Now it

[Mr. Chairman]

is not fair on his part to go on interrupting the hon. Minister in this manner. If he is interrupted at every stage, he will not be able to finish his arguments. Let him finish what he has to say.

Shri Hajarnavis: Whatever points are raised, I am here to answer.

Another point raised was that there was in existence the Himachal Pradesh Legislative body at that time and it was not possible for this Parliament to make the law. It can be answered in two ways. Firstly, when the Government of Part C States Act was enacted, it was clearly stated under section 21(2) that nothing in sub-section (1) shall derogate from the power conferred on Parliament by the Constitution to make laws with respect to any matters in Part C States. Therefore, Parliament did retain that power or did bring to the notice of all those who administered the Act that Parliament did retain that power, and if it was necessary to do so, it had power of legislation. Unless it be that Parliament had abdicated its power completely of legislation with respect to 'C' class States, Parliament would still retain the over-riding power. If there was any ambiguity about it, it was completely removed by section 21(2).

Then again, Parliament is not legislating in 1954; it is legislating in 1958, that is to say, when it has the power.

Then an argument was raised that the power now given to the President is only in respect of making regulations. I say that article 240 of the Constitution is no limitation on the power of Parliament at all under Articles 245, 246(4). It is an additional power. The powers of Parliament are to be read in articles 245, 246(4) and 248.

These are plenary powers. No one can suggest that the powers—plenary powers—which have been

conferred on Parliament in those articles have in any way been curtailed by the powers given under article 240. Previously whereas under the Constitution, provision was made for a certain type of legislature, today, according to our reading of the Constitution, the powers of Parliament now are absolutely unlimited. That being so, I submit the point of order should be overruled.

Mr. Chairman: The House is already aware that whenever a question of constitutional competence so far as this House is concerned arises, the practice is that the Chair does not take upon itself the responsibility to decide whether the House is constitutionally competent or not. So ultimately if the House feels that it has got no constitutional competence, it can reject the Bill. Therefore, as a matter of fact, it is unnecessary for the Chair to give any opinion on the point of order raised by Shri Sadhan Gupta.

All the same, I would state my personal opinion on this point. In my humble opinion, today in 1958 we are legislating and we must see whether article 245 of the Constitution covers this point or not. To my mind, there is no question of article 248(1) coming in. At present, Himachal Pradesh is one of the Union Territories. Therefore, article 248 comes in only when the question of residuary powers comes. Here there is no question of residuary power at all. I should say that articles 245 and 246(4) apply. And, so far as they are concerned, this House has got sovereign powers. It has been said about the House of Commons that it can pass a law whereby it can order all blue-eyed men in the country to be killed. I do not know whether this is a limitation on the power of Parliament or not if it can turn a woman into a man. But, so far as the sovereign powers of Parliament are concerned, it is absolute. This Parliament is capable of passing any law it pleases.

And, so far as constitutional propriety is concerned, it is a different matter.

Hon. Members have raised the point that they are not conversant with the provisions of the 15 or 20 Acts which have been passed during these two years by that Legislature which have been regarded as unconstitutional. Whether all these Acts should be validated or not is a question of propriety. So far as the question of constitutional competency is concerned, I believe, it is idle to raise a question in this House that this Parliament is not competent. What other body is competent to enact a law of this nature? Anything which can be regulated by law can be ultimately regulated by this Parliament alone.

If it is a question of clash between the State Assemblies and Parliament, the question may arise whether it comes in this list or that list and that would be settled by article 248(1) because residuary powers are with this Parliament. The burden is upon these hon. Members who say that this Parliament is not competent to point to any provisions in the Constitution that competency is not there. But, nobody has pointed that out. The point that we were not competent to enact these laws in 1954, 1956 does not arise at all. We are enacting in the year 1958 and we have got all these powers.

As was pointed out by the hon. Law Minister, even then there was provision in section 21(1) of Part C States Act. That is beside the question. We are enacting today and we are validating these Acts. The hon. Members may be well advised not to support the measure by their votes if they think that the Bills that were enacted and are being validated were not proper. I can understand that. But, at the same time, to say that this Parliament has got no power to pass the measure is not right. In my humble opinion, this Parliament has got full powers to enact a Bill like this.

As pointed out by another hon. Member the House fully knows that there was an appeal pending in the Supreme Court so far as the zamindaries were concerned, in Patna. The High Court had given their verdict in regard to those matters. At that time, a Bill was pending before this House and a similar objection was raised and the House decided that the House was competent.

As a matter of fact, it is quite true that whenever a High Court or the Supreme Court gives a judgment which says that a certain Act was unconstitutional, then, we really respect the view of the judiciary when we enact a law contrary to their decision. They have got the power to say by their verdict that such and such a law is unconstitutional. This House has got the responsibility to see that whatever they point out in their judgment as objectionable is removed, as this House has got the over-riding power and responsibility to do what it thinks proper in the interests of the entire country.

Laws are there for the purpose of giving convenience to the people and for determining their rights. And, this House is the final authority for that. It is not for the High Court or the Supreme Court to decide what is proper so far as legislation is concerned. It is the right of this House alone to enact legislation; and, if in the wisdom of this House all these laws should be validated, I do not find any constitutional incompetency in validating these laws. Therefore, I am of the opinion that the objection contained in the point of order cannot be accepted.

So far as the other question is concerned, I would rather like the hon. Law Minister just gives a list of those laws which have been enacted by that Legislature during those two years so that hon. Members may be able to see, when they are validating those laws, what the provisions of those laws are which will be validated by this House.

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An Hon. Member: They are not available in the Library.

Shri V. P. Nayar: The hon. Minister may give us the names of these enactments; but he must give us the copies of the enactments also because most of them are not in the Library.

Mr. Chairman: Perhaps, in the Library all these laws may be available because every enactment passed by State Legislatures is available in the Library. There is no reason why they should not be found in the Library unless any hon. Member comes and says he searched in the Library and could not find it. That is a different matter. The names may be supplied so that the House may know what laws will be validated.

So far as the particular law is concerned, I am rather mindful that, as a matter of fact, when we are validating this law, we are not taking away the right of those landowners who have appealed to the Supreme Court. Only one point has been decided and the other remains to be decided whether this legislation is contrary to articles 14, 19 and 31 of the Constitution. That point has to be decided by the Supreme Court. It is unfortunate that a mistake as pointed out by the Supreme Court was made on the part of those concerned. But, whatever that may be, we are not concerned with that aspect. At the same time the house must be anxious to preserve the rights of those landlords who brought their appeals before the Supreme Court. It has been held that the Legislature was invalid. The other question has not been gone into in this Bill. The other aspect will, perhaps, be gone into by the Supreme Court when they take up that part of the argument. It may be that they may have to file a fresh appeal or this appeal may be revived. I do not know what exactly will happen. But we are not taking away the rights of those landlords and deciding that the Abolition Act is in consonance with the provisions of the Constitution. It is

a matter of opinion whether the abolition of the zamindari or the restriction of the rights of landlords is good and valid or not. That will be decided by the Supreme Court—whether this legislation is in accordance with the provisions of the constitution.

We are only concerned with the competency of this Parliament; and, for that, I am clear in my mind that this Parliament has got ample powers and it is constitutionally competent to enact this legislation.

Shri Naushir Bharucha: On a point of clarification, Sir. Which of the two rulings that you gave should prevail; that the Chair does not decide or, in your opinion, the Parliament has the power? Which of the two is taken as the official ruling?

Mr. Chairman: In so far as the ruling is concerned, it is quite clear. But the hon. Member himself knows that in regard to many other Bills the Chair has always taken up the position that whatever be its decision, the House has to decide on the question of propriety or competency. It is left to the House if a particular Bill is to be voted or not. But so far as the Chair is concerned, it does not take the responsibility because after all it is much better for the House to decide the question rather than the Chair.

Shri Sadhan Gupta: On a point of clarification, Sir.

Mr. Chairman: What is the clarification? I have given my ruling. There is no question of clarification.

Shri Sadhan Gupta: You have given your ruling, Sir. . . .

Mr. Chairman: I am not to be cross-examined here. There can be no question of a clarification of a ruling in the House.

Shri Sadhan Gupta: Is it still open to us to decide whether we are competent, after your ruling?

Mr. Chairman: Every person has to decide for himself what he thinks proper because the Chair does not rule in such a way that it takes away the right of the House in the matter. So far as the Chair is concerned, it has given its ruling and there can be no discussion of the ruling of the Chair.

Now, this motion is open for discussion.

श्री चणू देव (बम्ब्या) : सभापति महोदय, श्रीमती जो विषय विचाराधीन है, वह हिमाचल से सम्बन्ध रखता है जोकि एक छोटा सा इलाका है जिस की आबादी ११ लाख के करीब है और जिन का रकबा ११,००० मुरब्बा मील है। यह प्रदेश इस वक्त मैटर का टैनेट एट विल है।

मेरी समझ में नहीं आया कि उन लोगों की भलाई के विनों को पारित करके तथा जो और कार्रवाई उम असेम्बली में हुई क्या वह नारी कायदे कानून के खिलाफ थी। इस आधार पर उसको माना नहीं गया है कि जो धार्मिक बातें कहा होनी थी वे उम असेम्बली में नहीं की गईं, जिन के कारण उसकी कार्रवाई को अर्थ धोषिन किया गया और उसके बाद अब यह पार्लियामेंट उनको वैध घोषिन कर रही है। अब मुझे नहीं मालूम कि इसके अन्दर क्या घडवनें आती हैं।

14.41 hrs.

[Mr. Deputy-Speaker in the Chair]

जब सन् १९५२ में हिमाचल में लोकप्रिय सरकार बनी तो जैसा कि स्वाभाविक था उसके सामने सब से बड़ी बात यह आई कि लोगों का सुधार कैसे हो, लोगों का उद्धार कैसे हो। ट्रांसपोर्ट नैशनलाइज्ड हुआ, पंचायत एकट बना, कोओप्रेटिव एकट बना, भाषा के सम्बन्ध में विधेयक पारित हुआ और इसी तरीके से स्कूल, नर्सरी और कई दूसरी प्रकार के अधि-

नियम, कई दूसरी प्रकार के विधेयक वहाँ पारित हुए। लेकिन सब से बड़ा और सब से महत्वपूर्ण अधिनियम जो वहाँ पारित हुआ वह सम्बन्ध रखता था बड़ी जमींदारियों से और भूमि सम्बन्धी सुधारों से। इन अधिनियम में क्या क्या बातें थी, मैं उस सम्बन्ध में कुछ आपसे निवेदन करना चाहता हूँ।

मैं से बड़ी बात तो यह थी और यह लोगों को बड़ा दुःख भी दे रही थी कि लोगों का इजैक्टमेंट हो रहा था और इसको बन्द कर दिया गया। इससे जो धारणी गरीब लोगों के साथ हो रही थी वह बन्द हो गई। लेकिन लोगों के दिलों में इसके प्रति—मेरा मतलब भूमि में सम्बन्ध रखने वाले लोगों से है—बड़ा रोष उत्पन्न हुआ। दूसरी बात यह है कि वहाँ पर काश्तकार जो लगान देते थे वह जमीन की उपज का ५० प्रतिशत था। इनना ही काश्तकारों को नहीं देना पड़ना था लेकिन और भी बहुत सी चीजें थीं जो कि काश्तकारों को देनी पड़नी थीं। लेकिन इस अधिनियम ने यह व्यवस्था कर दी कि केवल १/४ उपज का भाग मालगुजार को देना पड़ेगा। मालगुजार खुद अपनी जमीन में आ करके अपना हिस्सा लेगा, इस किन्म की कोई बात थी, जो स्वभावतः मालगुजारों को बुरी लगनी थी और लगी और उसके प्रति उन्होंने अपना रोष व्यक्त किया। इसके साथ ही साथ एक चीज यह भी रची गई कि जो मीरसी मुजायरे हैं और जो गैर-मीरसी मुजायरे हैं वे भी मलकियत ले सकते हैं मालिक जमीन से। अगर वे मीरसा हैं तो २४ गुना मालिये का और गैर-मीरसी हैं तो ४८ गुना मालिये का अदा करके वे मालिक बन सकते हैं।

इस पर भी चूँकि वहाँ पर मानिया बहुत थोड़ा है और जमीन की कीमत भी कई जगहों पर बहुत थोड़ी पड़ी, मालगुजारों को कष्ट हुआ और यह बहुत स्वाभाविक ही था। इसके साथ साथ एक बात और हुई और वह यह थी कि हिमाचल में जमीन के तोल माप के

[श्री पद्म देव]

ऊपर उसकी एलाटमेंट फिक्स नहीं हुई बल्कि मालिये के मुताबिक हुई। कहीं पर जमीन अच्छी थी और कहीं पर बुरी थी और इसके मुताबिक यदि जमीन की फिक्सेशन जमीन के तौल याप पर होती तो लोगों को कसान था। इसलिए मालिये के आधार पर इसको रखा गया। १२५ रुपया सालाना मालिये की जमीन तक वह अपने पास रख सकता है, इससे अधिक जमीन नहीं रख सकता। इसके साथ एक बात और हुई कि अगर किसी मालगुजार के पास जमीन नहीं है और उसकी जो जमीन है वह सारी की सारी टैनेंट्स के पास है और अब अगर वह अपने पास कुछ जमीन रखना चाहता है तो उसके लिए उसको पांच एकड़ तक की सुविधा दी गई। लेकिन इसमें शर्त यह थी कि टैनेंट से १/४ हिस्सा जमीन ही ले सकता है। इस में कोई शर्क नहीं कि इससे वहाँ पर लोगों को बड़ा कष्ट हुआ और यह स्वाभाविक भी था। सम्भव है इसके सम्बन्ध में फिर कभी इस सम्माननीय सदन में विचार हो। लेकिन इससे जो कष्ट हुआ में उसे आपकी बतलाना चाहता हूँ। मान लीजिये कि एक मालगुजार के पास चार सौ बीघे जमीन है और वह बिलरी हुई है। एक जगह पर दस बीघे हैं, दूसरी जगह पर दस बीघे हैं और इसी तरह से कई जगहों पर वह बिलरी हुई है। जहाँ पर दस बीघे हैं उनका चौथा हिस्सा यानी १ई बीघे उनका मिल गया, दूसरी जगह में भी इसी तरह से ढाई बीघे उसे मिल गया और इसी तरह से सभी जगहों में चौथा हिस्सा उसको मिल गया। इस तरह में ढाई ढाई बीघे जमीन जब उसको कई जगह पर बिलरी हुई मिली तो उसको बड़ा कष्ट हुआ और यह स्वाभाविक ही था क्योंकि अगर उसको दम जगह पर इस तरह से जमीन मिली तो उसको इन ढाई ढाई बीघों की कास्त करने के लिए दस जगहों पर जाना पड़ा। एक और भी शकल पैदा हुई और वह यह थी कि जो कीमत जमीन की रखी गई वह स्लाइडिंग स्केल में

थी। इसका नतीजा यह हुआ कि जिस के पास बहुत अधिक जमीन थी उस जमीन की आखिरी जो कीमत हुई वह ५० परसेंट ही रह गई जिसका नतीजा यह हुआ कि जो मालगुजार थे उनको बहुत कष्ट हुआ। इसमें शक नहीं कि कुछ ऐसे मालगुजार भी हैं जो दो बीघे के या चार बीघे के या दस बीघे के ही मालिक हैं। ऐसी सूरत में जिन के पास इतनी जमीन थी और वे खुद कास्त नहीं करने थे तो वह सब की सब कास्तकारों को चली गई, उसके बाद मालगुजार खुद बिना जमीन के रह गये। इस तरह से हिमाचल की उस विधान मन्ना का जहाँ तक ताल्लुक था उसने तो इस आधार को सामने रख कर कि लेंड टू दी टिल्लर, जमीन उसकी होगी जोकि कास्त करता है, कानून बना दिया। लेकिन मालगुजारों की श्रावत दूसरे ढग की थी। नौकरिया उन के पास थी, लम्बरदारी उनके पास थी, बैलदारी उनके पास थी, लीडरी उनके पास थी और जमीन भी उनके पास ही थी और उपज का कुछ हिस्सा भी उनके घर पहुँच जाता था। अब उनके सामने कठिनाइया पैदा हुई और बड़ा सकट का समय उनके सामने आया और उस सकट को लेकर के वे सुप्रीम कोर्ट में पहुँचे। सुप्रीम कोर्ट में जैना कि अभी आपने माननीय मंत्री महोदय के मुँह में सुना तकरीबन ३१ अज्ञिया गईं जिन में दो बातें उठाई गई थी। एक तो यह कि जिस प्रसेम्बली ने इस विधान को, इस विधेयक को, इस अधिनियम का पारित किया, वह इसको पारित करने के योग्य नहीं थी और दूसरा यह कि भारतीय विधान के अर्च्याय ३ और ८ के अधिनियम के वह विरुद्ध था, इसलिए इनको अवैध घोषित किया जाये। जैना कि अभी आपने सुना, सुप्रीम कोर्ट के सामने जिस वक्त यह सारी कार्रवाई की गई, तो उस ने सारी चीजों को सामने रख करके एक बात का फैसला दिया और वह इन प्रकार है :—

"In our opinion the so-called Legislative Assembly which was

convened and which purported to pass the Abolition Act was not the Legislative Assembly of the new Himachal Pradesh created by the new State Act and therefore, the impugned Act cannot be regarded as a piece of validly enacted legislation. . . .

Shri Jadhav (Malegaon): Sir, there is no quorum.

Mr. Deputy-Speaker: The Bell is being rung.

Dr. Krishnaswami: There is seldom quorum.

Mr. Deputy-Speaker: Now, there is quorum.

Shri Padam Dev: "That being the position the interference with the rights of the petitioners in and to their respective properties cannot for a moment be justified or permitted and the first question raised on behalf of the petitioners must be answered in their favour."

इसलिए जो वैधानिक आपत्ति उठाई गई थी, उस के मुताबिक जो कार्रवाई अप्रैल, १९५४ में ले कर अक्टूबर, १९५८ तक हुई वह प्रैधानिक आपत्ति की गई।

अभी यहां पर कई प्रकार के विचार प्रकट किये गये। मैं माननीय सदन के सामने यह कह देना चाहता हूँ कि वहां पर जितने भी अधिनियम पारित हुए १९५४ में १९५६ तक, वह सब नियमपूर्वक वहां की लेजिस्लेटिव असेम्बली के द्वारा पारित किये गये। कानूनी अद्वैत सिर्फ इतनी हुई कि जो पुराना हिमाचल था उस के ३६ मेम्बर थे और जब नया हिमाचल बना तो उस के ४१ मेम्बर हुए, और ४१ मेम्बरों ही ने सारा लेजिस्लेशन १९५४ से लेकर १९५६ तक पास किया। इस के अन्दर यह आपत्ति उठाई गई कि जब नया हिमाचल बना और वहां के मेम्बरों ने नये ऐक्ट को पारित किया और उस के अनुसार जब अग्रेस में हिमाचल असेम्बली का नया अधिवेशन हुआ

तो वहां के सदस्यों को नये तरह से घोष लेना चाहिये था। नये तरह से स्पीकर का और नये ही तरह से डिप्टी स्पीकर का निर्वाचन होना चाहिये था और उसी तरह की नोटिस भेजनी चाहिये थी। चूंकि इस किस्म की वैधानिक कार्रवाई नहीं हुई, इसलिये उस सब कार्रवाई को प्रबंध करार दे दिया गया। जैसा मैंने पहले निवेदन किया, जिन मेम्बरों द्वारा हिमाचल असेम्बली बनी उन्होंने, पुराने मेम्बरों की तरह ही सारा काम किया, उस के अन्दर वही स्पीकर, वही डिप्टी स्पीकर, सब के सब उन्हीं तरह से रहे। लेकिन कानूनी नुक्ता यह साया गया कि कसम इस के लिये नहीं ली गई थी, पुक्ता तौर पर दुबारा उस को घोषित नहीं किया गया कि यह नई असेम्बली का पहला सेशन है। उस के अन्दर यह कहा गया कि यह सेकेण्ड सेशन है, और इसलिये कहा गया कि वहां पर सब कार्रवाई गलत की गई।

इस समय इस माननीय सदन के सामने प्रश्न यह नहीं है कि उस के अन्दर जो अधिनियम पारित हुए, वे क्या हैं। अभी जैसी कि माग की गई है, अगर वह मारे के मारे अधिनियम यहा पर हों, तो इस माननीय सदन को पूर्ण अधिकार है कि उन में जिस प्रकार का संशोधन चाहे करे, चाहे वह भूमि मुषार के विषय में हों, कांफ़िडेंसियल के विषय में हों, पचायत के विषय में हों या नरमदी के विषय में हो। जितने भी अधिनियम वहां पर पारित हुए उन में यह संशोधन कर सकता है या उन को गलत कह सकता है। लेकिन मुख्य प्रश्न यह है कि मन् १९५४ में ले कर १९५६ तक जो भी कार्रवाई वहां हुई है, उस में केवल वही अधिनियम नहीं हैं जिन के जरिये से हिमाचल के अन्दर बड़ी उन्नति हुई, कई प्रगतिशील कार्य हुए, कई ऐसे कार्य हुए जिन के लिये कहा गया कि वे बड़े इन्स्ट्रुमेंट स्टेप थे, बाल्क इस दम्पन में मिनिस्टर थे, असेम्बली के मेम्बर थे, स्पीकर महोदय थे, उन सब के ऊपर जितना पैसा खर्च किया गया उसकी

[श्री पद्म देव]

भी नाजायज करार देने का प्रश्न है, जितनी भी उस की कार्रवाइयां थीं, उन सब को नाजायज करार देने का प्रश्न है। अगर यह माननीय सदन अपने को इस के लिये कम्पीटेंट नहीं समझता कि उस सब कार्रवाई को वैधानिक रूप दे दे, अगर यह उस के काबिल नहीं है कि जो पिछली असेम्बली थी, जो कि अब खत्म हो चुकी है तो आखिर हम को ठीक कैसे किया जा सकेगा? इतना रुपया खर्च हुआ, सारा काम हुआ है। मैं समझता हूँ कि यह सदन ही एक ऐसा सदन है जो कि इस का वैध रूप दे सकता है। इस सदन को छोड़ कर कोई भी दूसरा सदन ऐसा नहीं है, जहाँ उसको मान्यता दे सके। उम्मीद मान्यता को देने के लिए हमारे गृह मंत्रालय ने कदम उठाया है और मैं समझता हूँ कि वह इस के लिये बर्खास्त का पात्र है। अगर बोर्डे दिनों पूर्व राष्ट्रपति की ओर से प्रॉविजेंट्स जारी न हो जाते तो वहाँ लड़ाई शुरू हो जानी थी। पता नहीं वहाँ के लोग क्या-क्या करते और कितना झगडा हुआ, कितने जलसे जलस निकलते, उस वक्त जो भी कदम उठाया गया वह बहुत उचित काम था। उस के निर्माण के बाद जब यह माननीय सदन बैठा तो गृह मंत्रालय ने 'मे वॉलिटेशन ऐक्ट' के नाम से यहाँ पर रखा है। इस वक्त केवल एक ही काम हमारे सामने है कि जिन लेजिस्लेटिव असेम्बली की रचना ठीक थी, उस में स्पीकर भी थे, डिप्टी स्पीकर भी थे, सारे के सारे लोग वहाँ थे, मिर्फ इस सदन की संजरी नहीं हुई थी, जिन की वजह से उस को इन्वैलिड करार दे दिया गया, उस को वैलिडेट कर दे।

अगर जिम्मेदारों की तरफ से ऐतराज न होता जमीन के सम्बन्ध में, तो कोई बात न उठती। वहाँ कोअपरेटिव का काम चल रहा था, हर किस्म का काम चल रहा था, किसी को उस के ऊपर ऐतराज नहीं था। वह कानून जैसे बने हुए थे जैसे ही चलने लगे गये। तो मेरे कहने का मतलब यह है कि इस

वक्त प्रश्न यह नहीं है कि उन कानूनों के अन्दर क्या है, वह कानून बड़े सक्त है या नर्म है, वह मासगुजारों के हक में है या कास्तकारों के हक में है। केवल यही चीज इस के सामने है कि इस वर्मान जो भी कायदे कानून पास हुए, जो भी खर्च हुआ, उन को अपनी मजूरी दे दे। हमारे सामने आज जो दि हिमाचल प्रदेश लेजिस्लेटिव असेम्बली (कास्टिट्यूशन ऐंड प्रोसीडिन्स) वैलिडेशन बिल है, उस का इतना ही उद्देश्य है कि हिमाचल प्रदेश असेम्बली में जो भी कानून बने, उन को उसे वैध करना है। यह माना जा सकता है कि शायद कुछ कानूनों को कार्य रूप देने में गवर्नमेंट को अड़चन पड़े। मुमकिन है कि गवर्नमेंट भी यहाँ पर उन कानूनों के बारे में संशोधन पेश करे। इसी तरह से मासगुजारों के सम्बन्ध में भी कुछ हो सकता है। जैसा मैंने कहा हिमाचल प्रदेश के अन्दर लोगों को अपनी जमीनों में बहुत प्यार है, अपने बच्चों में भी उन को उतना प्यार नहीं है। हर एक आदमी चाहता है अगर कहीं पर कोई पत्थर भी हो तो उस पर मिट्टी रख कर मे उस को जमीन बना लूँ। वहाँ का आदमी समझता है कि वह जमीन पर जिंदा है। किसी आदमी का अगर बैंक बँलेंस हो तो वह उस का भी उतना नहीं समझता जितना कि वह जमीन को समझता है। हो सकता है कि हम में कुछ लोगों को तकलीफ हो और उस के बारे में भी कोई संशोधन आये और इस माननीय सदन को उस पर विचार करना पड़े। यह माननीय सदन उस के ऊपर काफी गौर व खोज कर सकता है, वाद विवाद कर सकता है। लेकिन इस सब के होते हुए भी मेरा निवेदन है कि आज इस सदन के सामने जो विषयक उपस्थित है, अर्थात् सन् १९५४ से ले कर १९५६ तक हिमाचल प्रदेश असेम्बली की जो कार्रवाई हुई है उस को वह वैधानिक रूप दे दे, इस पर इस सदन को विचार करना चाहिये। जैसा मैंने कहा कि हिमाचल तो आज डीमोक्रैटिक

बिल है, सेक्टर के मातहत है, इसलिये प्राप
वहाँ की सीब पर जितना भी विचार कर
सकते हैं, करें, क्योंकि अगर इस में देर हो
जायेगी तो और ज्यादा प्रश्न पड़ जायेंगी।
इसलिये इस सदन को चाहिये कि वह इस
विषयक को पारित करने की कृपा करें।
इस में और कोई लम्बी बात नहीं है।

Mr. Deputy-Speaker: Shri Jogendra
Sen.

Shri Jadhav: Sir, before the hon.
Member begins to speak, let us be
fortunate enough to know how many
Acts are there and what are their
names.

Mr. Deputy-Speaker: That point was
already disposed of, I am told, by the
Chairman.

Shri Jadhav: What difficulty is there
in stating the names?

Mr. Deputy-Speaker: The Chairman
has given directions that the list be
given

Shri Jadhav: After this Bill is pass-
ed?

Mr. Deputy-Speaker: Before it is
passed

Shri Jogendra Sen (Mandi): Mr.
Deputy-Speaker, Sir. At the very start
I should like to thank you for having
given me this opportunity to speak on
a very important piece of legislation.
The Bill which is before us does not
even mention any of the Acts which it
seeks to validate. It does not also
mention the resolutions and other
things which the defunct Assembly
passed from 1st July, 1954 to 31st
October, 1956. I will not, therefore,
say anything at this stage on the merits
of the legislations of which even a list
has not been supplied to us. But the
Chair has very kindly said that a list
will be supplied by the Government.
If and when that list is supplied to
us and, as my hon. friend on the
opposite benches just said—when
these Acts also are supplied to us, or

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at least made available to us some-
how—I mean those so called Acts
which are said to have been already
passed—the defunct Assembly of
Himachal Pradesh.

Mr. Deputy-Speaker: Then he might
speak after the list is supplied. We
shall now proceed to the next item—
Present Trends in the Export Trade.
Shri Lal Bahadur Shastri.

15 hrs.

PRESENT TRENDS IN THE EXPORT TRADE

**The Minister of Commerce and
Industry (Shri Lal Bahadur Shastri):**
Sir, I beg to move:

“That the present trends in the
export trade of India, and the state
of the textile industry which con-
tributes materially to that trade,
be taken into consideration.”

I am thankful to you that an oppor-
tunity has been given to us to have a
full discussion on the problems of the
textile industry as also on general ex-
ports. It is well known that the pro-
gress of rapid industrialisation in the
country is largely tied up with our
capacity to pay for the import of
machinery, industrial equipment and
industrial raw materials. We have
used up a greater part of our foreign
exchange reserves in building up the
country's industrial potential. Our
import requirements to maintain a
steady rise in industrial and agricul-
tural production continue to be heavy.
We can pay for these requirements
only if we succeed in augmenting our
export earnings. The setback which
our efforts in this direction have
recently received is, therefore, a
matter of great concern to us all.

With your permission, Sir, I will try
to place the present position in its
proper perspective. It was in the
year 1954 that the Commerce and
Industry Ministry initiated special