

[Shri L. N. Mishra]

copy of the Annual Report of the Rescue Stations Committee, Dhanbad, for the year 1959-60. [Placed in Library, See No. LT-2409/60.]

12-14 hrs.

**PRESIDENT'S ASSENT TO BILLS**

**Secretary:** Sir, I lay on the Table following eight Bills passed by the Houses of Parliament during the last session and assented to by the President since a report was last made to the House on the 5th September, 1960:

- (1) The Taxation Laws (Amendment) Bill, 1960.
- (2) The Appropriation (Railways) No. 4 Bill, 1960.
- (3) The Appropriation (No. 3) Bill, 1960.
- (4) The Drugs (Amendment) Bill, 1960.
- (5) The Appropriation (No. 4) Bill, 1960.
- (6) The Central Excises (Conversion to Metric Units) Bill, 1960.
- (7) The Delhi Primary Education Bill, 1960.
- (8) The Customs Duties and Cesses (Conversion to Metric Units) Bill, 1960.

2. Sir, I also lay on the Table copies, duly authenticated by the Secretary of Rajya Sabha, of the following ten Bills passed by the Houses of Parliament during the last session and assented to by the President since a report was last made to the House on the 5th September, 1960:

- (1) The Banking Companies (Amendment) Bill, 1960.
- (2) The Delhi Land Holdings (Ceiling) Bill, 1960.
- (3) The Tripura Municipal Law (Repeal) Bill, 1960.
- (4) The International Development Association (Status,

Immunities and Privileges) Bill, 1960.

- (5) The Manipur Land Revenue and Land Reforms Bill, 1960.
- (6) The Plantations Labour (Amendment) Bill, 1960.
- (7) The Banking Companies (Second Amendment) Bill, 1960.
- (8) The Standards of Weights and Measures (Amendment) Bill, 1960.
- (9) The Indian Trade Unions (Amendment) Bill, 1960.
- (10) The Tripura Land Revenue and Land Reforms Bill, 1960.

12-15 hrs.

**STATEMENT RE. INDUS WATERS TREATY**

**The Minister of Irrigation and Power (Hafiz Mohammad Ibrahim):** Sir, in my statement of 2nd August, 1960, I had assured the House that I would make a further statement as soon as the Indus Waters discussions then going on in Washington were over. The negotiations concluded early in September and the draft Treaty prepared was approved by the two Governments soon thereafter.

**Mr. Speaker:** If it is a very long statement, the hon. Minister may lay it on the Table of the House.

**Hafiz Mohammad Ibrahim:** Sir, I lay it on the Table. [See Appendix I, annexure No. 15].

**Shri Asoka Mehta (Muzaffarpur):** Sir, on a point of information. I would like to know what is the present status of the treaty. Is it in force? Has it been ratified? Is it going to be brought before the House for adjudication? I would like to know from the Minister what is the present status of the treaty.

**Mr. Speaker:** He wants to know whether the treaty has come into force

or it is to be brought into force from any particular date. He also wants to know whether it is proposed to bring it up here for ratification.

**Shri Asoka Mehta:** In the treaty itself it is mentioned that within a month it will be ratified. We do not know whether it has been ratified or not or whether it is in force already.

**The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru):** It has been ratified, Sir, by the Government.

**Shri Asoka Mehta:** Then, Sir, I want to raise a point of order. This treaty involves certain financial implications. Under Article 5 of the treaty India will have to pay in ten equal instalments Pounds Sterling 62,060,000.

Sir, apart from the question whether a treaty of this kind can be finalised and implemented by the Government of India and the Government claims that the Government has co-extensive and co-identical powers with the Parliament in the matters of treaty making and treaty implementation, apart from the question whether now that the Supreme Court has ruled that as far as any alienation of territory is concerned it is necessary for the Parliament to come into the picture whether a similar situation arises for alienation of waters which are also major resources of the country, I would invite your attention to this question. Here are financial implications involved. If the treaty has already been ratified, what does this House do? Is this House merely to endorse whatever the Government has done? Then, Sir, even the financial powers of this House are seriously encroached upon and eroded. As far as the English practice is concerned it is very clear. There all treaty making power is in the Crown but wherever any financial implications are there the ratifying authority is the Parliament. We would like to know, Sir, through you, where is the locus of

authority as far as ratification of treaties is concerned. I suggest, Sir, that the locus resides in this Parliament and the Government cannot by itself ratify the treaty.

**The Minister of Law (Shri A. K. Sen):** Sir, may I answer that point? The question of financial appropriation is quite a different matter. It is well known that all appropriations are to have the sanction of Parliament, and I have no doubt that the appropriate Ministry will come up before Parliament when the question of appropriation of that money for this specific purpose arises. But that has nothing to do with the question of ratifying the agreement.

**Shri Asoka Mehta:** It is not so. In the treaty itself there is a clause. Please refer to Article 5 of the treaty. There are financial provisions. It is said that a sum of Pounds Sterling 62,060,000 specified in paragraph (1) shall be paid in ten equal instalments on the first of November, each year. The first of such instalments shall be paid on the 1st of November, 1960, or, if the treaty had not entered into force, by that date, then, within one month of the date of its having entered into force. Now, that treaty has come into force and the country is already committed to the payment of this money. Whether such a financial commitment the Government can make under the plea that it has the power not only to enter into treaties but even to implement them without bringing the matter to Parliament is a matter of profound importance to this House.

**Shri Nath Pai (Rajapur):** May I bring to your notice article 253 of the Constitution which may help us in this matter? It is relevant here. The article is fairly clear, and though it does not say "shall", it refers to the powers of this House, and says:

"Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or

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any part of the territory of India for implementing any treaty, agreement or convention with any other other country or countries or any decision made at any international conference, association or other body."

This bears directly upon the implications of what Shri Asoka Mehta has just now brought to your notice. We therefore, think that this House has got a right in this matter.

**Mr. Speaker:** So far as this matter is concerned, the provision for entering into treaties is contained in entry 14 of List I. It says:

"Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries".

Article 253 is an enabling provision. Wherever the Government enters into a treaty—Parliament may or may not agree—that primary right under the Constitution is with the Government to enter into a treaty. A number of treaties have been entered into so far, and they have not been brought up for ratification here. It does not prevent the Government from bringing any particular treaty for ratification before signing it, but it is not obligatory upon them to do so. Under article 253, if any hon. Member—in this case, it is Shri Asoka Mehta—wanted to have this matter clarified here, as to whether the House will accept it or not, there are two courses open to him. He may bring it up and ask as to whether the treaty ought or ought not to be accepted. But it is not obligatory on the Government to bring up this matter for ratification before this House.

The other opportunity that the hon. Member has will be, at a time when so many pounds sterling have to be voted, in the House it is open to him to say, "I am not going to grant this

amount". If he carries the House with him, the treaty will disappear.

**Shri Asoka Mehta:** How will the treaty disappear, Sir?

**Mr. Speaker:** Order, order. I do not think any Government which enters into a treaty and has agreed to pay so much money and is not able to carry the House with it and refuses to pay will continue to be in the saddle. (*Interruption*).

**Shri Asoka Mehta:** Once the treaty is ratified, the Government may disappear but the treaty remains.

**Mr. Speaker:** It is so. We cannot now take away powers which have been vested with the Government under the Constitution. This follows the English practice also where no treaties are placed for ratification normally, unless the Government itself wants to do so. Here, it is open to the Government to bring it or not. There will be an occasion for hon. Members to say anything they like at the time when this House will be called upon to vote. Not a single pie out of the Consolidated Fund can be paid to anybody without the sanction of this House. Therefore, by a supplementary grant or otherwise, when it will come before this House, at that time, hon. Members will have the opportunity. So, there is no point of order so far as I am able to see.

**Shri Naushir Bharucha (East Khandesh):** After payment and ratification, how can the supplementary grant come in? (*Interruption*).

**Mr. Speaker:** Order, order.

**Shri Asoka Mehta:** An estimate is brought before us; before the Government itself agrees, this House is given an opportunity to decide whether it should be sanctioned or not. Here, the expenditure has already been agreed to. The plenipotentiary of India has not only signed the treaty but the treaty has been ratified. After

ratification, all that we have to do is to accord post facto approval to something that the plenipotentiary has done.

**Mr. Speaker:** If hon. Members are not willing and the House does not support the Government in their having entered into a treaty and paying money, the House knows what to do.

**Shri Asoka Mehta:** They are two different things.

**Mr. Speaker:** I do not agree there is any point of order. In accordance with previous practice, it is not obligatory on the Government to place treaties before this House for ratification unless, as constituent parts of those treaties, the respective Governments have agreed to place them before Parliament and obtain their ratification. I do not find any such thing here. It is open to Government to accept and ratify, which they have done.

So far as money is concerned, I am not called upon to give any advice now. When the matter comes up, we will know what is to be done.

**Shri Asoka Mehta:** May I point out that in the matter of Berubari, as you may remember, this question had to be taken to the Supreme Court. The Government had claimed that they had the right to make a treaty and to implement it. The Supreme Court said that they had not the right. Here, financial payments are involved. Large sums have to be paid. They cannot even be set off against the debts that Pakistan owes to us. I am not suggesting that we should not accept the treaty or reject it. That is a different matter. But what is the procedure? Is this House a sovereign body as far as financial commitments are concerned, or, is the Government free to make this payment. In the other matter, the Supreme Court had to step in in order to restore to this

Parliament the sovereign rights that it possesses.

In this matter, as the Speaker of the House, you must decide whether even in matters involving huge financial expenditure, the Government is free to do what it likes and face us with a *fait accompli*.

**Shri Nath Pai:** May I raise another point? I refer to article 246 (1) and would read the relevant thing on which we are basing our claims? It says:

“Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule....”.

It is these powers that we are afraid are being infringed, perhaps unconsciously and unwittingly. Shri Asoka Mehta is making a very fundamental point. The union's executive's right to enter into treaties is accepted, but before implementation, are there not such things as the nation being asked or the Parliament being consulted? The reason is very clear in entry 14 of the 7th Schedule.

“Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries”.

This is the schedule under article 246. The schedule is very clear that notwithstanding anything, Parliament's power is absolute regarding the treaties with foreign countries. In what way do the Government propose to respect this right? This is the basic issue.

**Shri Naushir Bharucha:** May I invite your attention to the fact that there are two distinct points contemplated under the point of order raised by my hon. friend Shri Asoka

[Shri Naushir Bharucha]

Mehta. The first is the question of entering into a treaty and ratification of the treaty. That, as you rightly pointed out, is the province of the Government and we cannot dispute that point. The only point that I am raising is that in this particular case, a certain sum of money is proposed to be paid out of the Consolidated Fund of India. If you turn to article 266, sub-article (3) of the Constitution, you will find that it is stated as follows:

"No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution".

You were pleased to observe that the Government may come with a supplementary demand if necessary, but the expenditure cannot be incurred until the supplementary demand is granted. Otherwise, what we are doing is, we are circumventing sub-article (3) of article 266.

As I understand—I speak subject to correction—after the treaty comes into force an amount of £62 million odd has to be paid, the first instalment within a month and I am afraid that that period itself practically has elapsed. I do not know when the treaty came into force, but if it does elapse and the amount is paid, then the Government is acting in contravention of sub-article (3) of article 266. I fully agree with Shri Asoka Mehta that it raises a fundamental issue, apart from the question of entering into treaties and ratification of treaties which, I agree, is the province of the Government entirely even ratification in so far as it does not involve financial payment. But where the treaty involves financial payment, as you, Sir observed, the correct procedure is that they must be come with a supplementary demand, and on the supplementary demand

coming up, we can raise the issue I submit that any payment of money in regard to the treaty before the Government comes with a supplementary demand will be a violation of article 266(3).

**Mr. Speaker:** I do not suppose there will be any further argument in this matter. I have already said that there is no point of order so far as earlier portion is concerned. Under entry 14 of List I, the Government has got the right to enter into treaties and implement the treaties. Another hon. Member raised the point that Parliament has exclusive right. Of course it has, but so far as the matters entered in List I, entry 14, are concerned, as opposed to the State List and the Concurrent List—there are State and Concurrent Lists also which do not refer to such matters—they do not help us to decide this matter. The entry is clear. Shri Naushir Bharucha also agrees that in so far as entering into treaties and ratifying them are concerned, the Government has got the absolute right.

So far as the question of payment of money is concerned, they have not come with any supplementary demand here. It is premature for me to come to a conclusion regarding this matter. Therefore, at present there is no point of order.

**Shri Braj Raj Singh (Ferozabad):** In the Supreme Court judgment in regard to Berubari.....

**Mr. Speaker:** Berubari is irrelevant here. So far as Berubari is concerned, it is transfer of a particular territory. The matter was raised here by Shri Tyagi and the question certainly was whether transfer of territory could be done without law. That is an absolutely different matter.

**Shri Nath Pai:** Will the House have an opportunity to discuss the treaty?

**Mr. Speaker:** I do not know. Hon. Members know how to move the House.

**Shri Nath Pai:** I am not asking about your ruling; I accept it. I am asking the Leader of the House whether the House will get an opportunity to discuss this major treaty involving such a huge financial burden. It is not an ordinary thing that can be hushed up. The whole House has been agonisingly waiting for this treaty and it has come. We shall say the appropriate things when the debate comes, but now I want to know from the Leader of the House whether he will consider the request of the Opposition for a discussion.

**Mr. Speaker:** I am really surprised. Hon. Members are aware of the procedure. Government by itself has not brought up this treaty for ratification nor has asked this House to exercise its opinion upon this. If any hon. Member wants particular matter to be discussed, there are rules of procedure by which he can always ask that this House should discuss a particular matter. If I give my consent, certainly the House will have an opportunity.

**Shri Vajpayee (Balrampur):** The hon. Minister has just made a statement; the House can be given an opportunity to discuss that statement.

**Mr. Speaker:** Let the hon. Members read the statement and then they know how to move this House.

12.33 hrs.

#### COMMITTEE OF PRIVILEGES

##### EXTENSION OF TIME FOR PRESENTATION OF REPORT

**Sardar Hukam Singh (Bhatinda):** I beg to move:

"That the time for the presentation of the report of the Committee of Privileges on the question of privilege regarding alleged aspersions on the Speaker and the

House made by Shri Dharendra Bhowmick in a pamphlet, be extended upto the 23rd December, 1960".

**Mr. Speaker:** The question is:

"That the time for the presentation of the report of the Committee of Privileges on the question of privilege regarding alleged aspersions on the Speaker and the House made by Shri Dharendra Bhowmick in a pamphlet, be extended upto the 23rd December, 1960".

*The motion was adopted.*

#### MOTOR TRANSPORT WORKERS BILL

##### EXTENSION OF TIME FOR PRESENTATION OF REPORT OF JOINT COMMITTEE

**Shri Mulchand Dube (Farrukhabad):** I beg to move:

"That the time appointed for the presentation of the Report of the Joint Committee on the Bill to provide for the welfare of motor transport workers and to regulate the conditions of their work be extended upto the 5th December, 1960".

**Shri Tangamani (Madurai):** I want to know why the time should be extended, because it is a very small Bill.

**Shri Mulchand Dube:** Clause-by-clause consideration of the Bill has been finished. There is only one small thing which remains to be done, which could not be done because Rajya Sabha was not sitting and it would involve considerable expenditure to have the meetings. Therefore, the time was extended to save expense.

**Mr. Speaker:** The question is:

"That the time appointed for the presentation of the Report of the Joint Committee on the Bill to provide for the welfare of motor