

12.31 hrs.

**TRAVANCORE-COCHIN VEHICLES
TAXATION (AMENDMENT AND
VALIDATION) BILL**

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

"That the Bill further to amend the Travancore-Cochin Vehicles Taxation Act, 1950, and to provide for certain other connected matters, be taken into consideration"

Sir, may I point out at the outset that the need for sponsoring this Bill is due to a decision of the Kerala High Court, where they have held that certain provisions in the Travancore-Cochin Act were *ultra vires*? I shall give a few facts in this connection. In 1950, the then Travancore Cochun legislature passed an Act known as the Travancore-Cochin Vehicles Taxation Act. In this Act, there were two provisions which have to be considered very carefully. This was a taxation measure. Section 3 of the Act was to the following effect

"Imposition of tax on vehicles
(1) Government may by notification in the Gazette from time to time direct that a tax shall be levied on every vehicle using any public road in the State,

(2) Notification issued under sub-section (1) shall specify the rates at which, and the year, half-year or the quarter for which the tax shall be levied"

The important portion in this respect is the proviso. The proviso was

"Provided that the rate shall not exceed the maxima specified in Schedule I in the case of motor vehicles and the maxima specified in Schedule III in the case of vehicles other than motor vehicles"

So it may be found that according to this proviso only the maximum rates had to be specified, and once they

had been specified, naturally, the taxes had to be below those maximum rates. But it will be found that in the same Act of 1950 there was another section, section 18 which read thus.

"Power of Government to amend Schedule I, II, or III-(1). Government may by notification in the Gazette amend, alter, add to, or cancel in part or the whole of Schedule I, II or III appended to this Act"

The House will kindly note this expression, the very wide expression that was used. They said that it was open to Government to alter, add to or cancel partly or wholly any of the Schedules I, II and III.

While the last Government was in power it felt the need to deal with these Schedules. Therefore, on 24th September, 1957 the last Ministry issued a notification enhancing the maximum rates in respect of certain types of motor vehicles mentioned in Schedule I under the belief that section 18 allowed them to power to enhance the rates even beyond the maximum rates that had been fixed in the Schedule. These new rates came into vogue on 1st October, 1957.

You will note kindly that as a result of this enhancement a lot of tax was collected. The rough figure that we have got in this respect is that about Rs 32 lakhs were collected by the then Government of Kerala in the light of this notification.

This matter was naturally taken up by certain aggrieved persons to the Kerala High Court. The Kerala High Court dealt with this specific question that was before them, *viz*, as to whether when section 3 laid down that in the notifications the maximum rates had to be mentioned it was open to the then legislature to add such wide or sweeping expressions like the ones that I have already pointed out. They, therefore, went through the various rulings and came to the conclusion that this particular notification by which the taxes had been enhanced was *ultra vires* and therefore was not

[Shri Datar]

of any operative effect. The Kerala High Court in their order stated as follows:

"As a result of the foregoing discussion, we quash the notification impugned as *ultra vires* the powers of Government, we also declare, that the delegation of power under Section 18(1) of the Act, to the extent that it authorises Government to fix rates in excess of the maxima prescribed in Schedules I and III of the Act as passed by the legislature, is bad in law, and is void and ineffectual."

This was, as I pointed out, in June 1959. Therefore a very anomalous situation arose before the former Ministry of Kerala.

Now, as I have already stated, about Rs 32 lakhs had been recovered under this particular notification. So far as the object of the then Kerala Ministry was concerned, their object was that the rates should be more or less uniform in all the three parts of the present Kerala State. This particular Act dealt with the Travancore part and the Cochin part because both these had been integrated into a Part B State, and when this Act was passed naturally it applied to the territories of the former Travancore-Cochin area. Subsequently, as you are aware, by the State Reorganisation Act the Malabar District was also added on and the new Kerala State was formed. In the Malabar area the rates were different, and therefore it was considered advisable to have more or less a uniform set of taxes so far as such instruments were concerned. The tax was levied on the basis of provision for seating accommodation and standing accommodation for passengers and goods vehicles. What they did was, they brought it to the level of the Malabar tax to a certain extent and to some extent the Malabar tax also was brought down. As I said, the object of the then Kerala Government was to

have more or less a uniform system of taxation so far as such motor vehicles were concerned. But, when under section 18 they acted by issuing a notification the matter went up to the Kerala High Court.

12.39 hrs.

[SHRIMATI RENU CHAKRAVARTY in the
Chair]

In the High Court it was found that when section 3 laid down a provision that maximum rates had to be mentioned it was not open to the legislature to have enacted section 18, much less for the State Government to have issued a notification in accordance with section 18. That was the difficulty felt by the former Kerala Government. Naturally, at the time when this particular judgment of the Kerala High Court was pronounced, it was not possible to have a meeting of the legislature because the legislature had been prorogued and therefore the Governor of Kerala issued an ordinance on 1st July, 1959 for two purposes. Firstly, to give it retrospective effect. In other words, the provisions of the proclamation that had been issued in 1957 were confirmed by the provisions of the ordinance so that to that extent they had a retrospective application also, and inasmuch as it was found that the system of taxation proposed in the proclamation was fairly satisfactory this ordinance also dealt with that aspect.

As you are aware, the Ministry there went out of office with effect from 1st August, 1959, and the legislative assembly has been dissolved. Under these circumstances, some further acts had to be taken, in view of the President's rule, by the Government of India. Therefore, what was done was that that particular ordinance was placed on the Table of this House and a Bill was also introduced on the principle or on the basis of the notification issued in 1957. That Bill was introduced a few days ago and today I am just placing before this House these points because, what was

done was necessary, and though section 18 was found to be *ultra vires* or unconstitutional, all the same, the object for which this particular notification had been brought was to have more or less a uniform scale of taxation not only in Travancore-Cochin but in the Malabar area of the Kerala State. For this purpose, the State had acted in the way in which it had done and it was absolutely essential, after the judgment of the Kerala High Court, to take immediate steps. I might point out that these steps were also taken by the former ministry in the Kerala State. Therefore, the Governor issued an ordinance on their advice. That ordinance naturally was placed before this House because further action could be taken in respect of legislation only by Parliament. That is the reason why I have brought forward this Bill. I am confident that it will meet with the approval of hon. Members of this House.

Mr. Chairman: Motion moved:

"That the Bill further to amend the Travancore-Cochin Vehicles Taxation Act, 1950, and to provide for certain other connected matters, be taken into consideration".

There is an amendment that the Bill be circulated for the purpose of eliciting public opinion. Is Shri Naldurgkar moving his amendment?

Shri Naldurgkar (Osmanabad): Yes, Sir. I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 30th October, 1959".

Shri Datar: We shall take up the amendments after the consideration stage is over.

Mr. Chairman: Shri Naldurgkar's amendment is for circulation of the Bill for eliciting opinion. Therefore, that question will have to be considered.

Shri Naldurgkar: This Bill, though it is a small Bill, involves some legal and constitutional questions. According to section 3 of the main Act,

"Government may by notification in the official Gazette from time to time direct that a tax shall be levied on every vehicle using any public road in the State".

So, the tax to be levied is on every vehicle, and every vehicle even from outside using a public road in Kerala State has been taxed.

No differentiation has been made between commercial vehicles and other ordinary vehicles. That point is very essential, when we consider the constitutional point, Article 301 of the Constitution says that "trade, commerce and intercourse throughout the territory of India shall be free". For this purpose we will have to construe the words "shall be free". What does "shall be free" mean? The Chief Courts of Australia and America have held that the words "shall be free" means free from taxation.

Shri Datar: Which is the article of the Constitution that the hon. Member is referring to?

Shri Naldurgkar: Article 301. So, I have said, "shall be free" would mean free from taxation. Their Lordships of the Bombay High Court, (as reported at pages 14-17 of AIR 1956 Bombay-Justice Chagla and Justice Dixit) have also expressed the same opinion that:

"It seems to us that implicit in the conception of free trade is freedom from taxation".

Therefore, if it is the intention of the Act to impose taxation on commercial vehicles, I am afraid this Act will be *ultra vires* of the Constitution.

[Shri Naldurgkar]

I shall now refer to article 304(b) which says.

The Legislature of a State may by law—

(b) "impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest "

The proviso to this article reads as follows

"Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President"

Perhaps it will be argued on behalf of Government that a tax on a vehicle is not a tax on commerce, trade or intercourse. But I want to point out that while examining the pith and substance of any enactment we shall have to go to the root and see what all things will be affected thereby. If a tax is imposed on a commercial vehicle, no doubt commerce and trade and intercourse will be affected. While, therefore, considering this enactment, we will have to examine the pith and substance of the measure. That is to say, we will have to go to the root of the matter which is mainly affected by the amendment.

The same questions of Taxation arose before the Chief Court of Australia. Before I come to that, I want to point out again that article 301 of our Constitution is terminologically analogous to section 92 of the Australian Constitution.

Shri Narayanankutty Menon (Mukandapuram): Is the hon Member referring to the Supreme Court of Australia when he says the Chief Court of Australia? There is no Chief Court there.

Shri Naldurgkar: Yes. I am citing that case here.

Mr. Chairman: May I just understand the position? Under article 304(b), we are empowered, notwithstanding anything in article 301 or article 303, to "impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State", etc.

Shri Naldurgkar. I am referring to sub-clause (b)

Mr. Chairman: His point is whether it has received the assent of the President or not?

Shri Naldurgkar: Yes. The question that came up before the Chief Court of Australia, was as to whether the tax on commercial vehicles was tantamount to tax imposed on trade, commerce and intercourse?

Mr. Chairman. The hon Member will confine his remarks to 10 minutes because there are so many other hon Members who want to speak.

Shri Naldurgkar. I am quoting from page 130 of the *Australian Law Journal*, volume 29, May 1955 to April 1956. There is a mention of the relevant Acts which were considered.

"The Motor Vehicles Taxation Management Act 1949-51 and the Motor Vehicles (Taxation) Act, 1951 are to be read and construed together (Tax Act section 1 (2))"

These are the relevant portions of the Act which were challenged.

"The Tax Act imposes a motor vehicle tax upon motor vehicles (other than those exempted) at the rates set out in or the sums ascertained in accordance with the schedule to the Act. It provides that the tax shall be paid in respect of every motor vehicle, the registration or the renewal of registration of which takes effect after the commencement of the

Act. Under the schedule, the tax is calculated on the unladen weight of the vehicle (plus certain accessories). Additional tax is exacted where the motor vehicle has non-pneumatic tyres on all or any of its wheels. Motor vehicles with compression ignition engines pay tax at double rates (this is because they use oil fuel on which, unlike petrol, no tax is payable). It is necessary for any motor vehicle moving along a public street in New South Wales in order to cross the border in or out of New South Wales to be registered and pay the tax.

Held that Section 3(3) and the Third Schedule were invalid as contravening section 92 of the Constitution and that the Motor Vehicles Taxation Management Act, 1949-1951 and the Motor Vehicles Taxation Act could not validly apply in respect of vehicles used exclusively in and for the purposes of inter-State trade, commerce, or intercourse,"

I have already stated that section 92 of the Australian Constitution is terminologically quite analogous to article 301 of our Constitution. There also the same question arose. Therefore, I am afraid that for an enactment under article 304(b) read with the proviso provided thereto if there is assent on behalf of the President for the introduction of such an enactment, all taxation that will be imposed on commercial vehicles shall be *ultra vires*.

Mr. Chairman: Has the hon. Member looked into the Bill? In the Bill itself, the President has given his assent.

Shri Naldurgkar: That is under article 117 and not under article 304. The subject matters of assent under the two articles are quite different. I can read out that article. Even though the President has given his assent under article 117, it cannot

validate the provisions of another article if assent is required thereunder. If assent under article 117 for Money Bill was sufficient, there was no necessity to repeat it for the purpose of article 304(b). The Proviso to article 304 says:

"Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

As the sanction of the President has not been taken under this article, I am afraid that the tax that will be imposed on commercial vehicles will be *ultra vires* of the Constitution and hence invalid. So, the present Bill, read with the principal Act, must clarify whether these taxes are to be imposed on commercial vehicles or not.

The second point is as to whether articles 301 and 304 apply to trade, commerce and intercourse within the State, because article 301 is wide enough. The words "throughout the territory of India"; also include all vehicles operating within the State. They are also covered by article 304 (b). I am quoting from page 360 of AIR, Patna, 1952: Justice Das (para 28) has said:

"The expression 'within that State' occurring in article 304(b) is wide enough to include freedom of trade within the State".

So, when any tax is imposed on any commercial vehicle operating within the limits of the State, still it is in contravention of articles 301 and 304 (b).

There is no specification of this matter as far as this Bill is concerned. I come to clause 3, which says:

"Notification II, No. TB2-14667/57/P.W. dated the 24th September, 1957, issued under sub-section (1) of section 3 of the principal Act enhancing the rates of tax on certain vehicles, shall be deemed to

[Shri Naldurgkar]

have been issued under the principal Act, as amended by this Act, and to have come into force on the 1st day of October, 1957"

Notification II says

"In exercise of the powers conferred by sub-section (1) of Section 3 of the Travancore-Cochin Vehicles Taxation Act, 1950, the Government of Kerala hereby make the following amendments to Notification dated 20th July, 1950, published in the Gazette dated 25th July, 1950, specifying the rates of taxes, namely "

After that, there is the specification of the taxes

I am afraid the present clause 3 is in contravention of the provisions of section 3 of the principal Act. Now there will be two contradictory provisions. Section 3 of the principal Act says

"(1) Government may by notification in the Gazette from time to time direct that a tax shall be levied on every vehicle using any public road in the State

(2) The notification issued under sub-section (1) shall specify the rates at which, and the year, half-year, or the quarter for which the tax shall be levied"

13 hrs.

I admit that as far as the notification is concerned, all the rates have been specified, but the other matters which are important ones have been omitted. So, the intention under section 3 of the Act is that the notification that is issued under this section must specify the rates at which tax shall be levied

It shall also specify the year, half year or quarter for which it shall be levied and shall be in force. Therefore, any notification that is issued under section 3 of the Act without complying with the provisions shall be, I think, illegal. In clause 3 there is no specification as to the year for which that notification is to be held valid. Therefore, I am afraid, that if clause 3 is allowed to be passed, it will be in contravention of the provisions of section 3. So, we have to take into account all these factors. It is very important to remember that once the provisions of this section were considered by the Kerala High Court and some of the provisions were held *ultra vires*. Therefore, there should not be repetition again of the same mistake. As the Bill is silent on the point whether it imposes taxation on commercial vehicles, that point should be clarified by the Minister. If again, according to clause 3, the notification is held valid, it will not be in compliance with the provisions of section 3. So, I am of the view that it is essential that the Bill should be published and opinions received on it so that opinions of the bar and the judges will be available to the House in order to enable the House to take a proper decision in this matter.

Shri Datar: May I point out that both the objections raised by the hon. Member are without any substance? So far as the question of publishing this Bill for eliciting public opinion is concerned, may I point out that when an Ordinance has been promulgated within a short period a Bill has to follow? That is the reason why this Bill has been placed before this hon. House, and if this Bill is not passed, if the matter is delayed, certain constitutional and financial difficulties also will arise and, therefore, the first part of the hon. Member's objection is entirely wrong and cannot be accepted.

So far as the second objection is concerned, may I point out that all the study that the hon. Member has made of the question is, in my opinion, rather wasted? Here we are governed by the Constitution. Articles 301 and 304(b) have to be read together. It is not merely article 301, because it is stated therein: "Subject to the other provisions of this Part", and in the same Part we have got article 304 which says: "impose such reasonable restrictions on the freedom of trade....." in respect of taxation. Here may I invite the hon. Member's attention to List No. II, item No. 57, where it is stated:

"Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III."

Secondly, he also stated something about the provisions of the Travancore-Cochin Vehicles Taxation Act. May I point out to him that when certain objections were taken before the Kera'a High Court they were confined only to section 18 and not to any others? The hon. Member has placed before us certain rulings and certain provisions of an Australian Act and also certain rulings of what he has called the Chief Court of Australia. They are entirely irrelevant, so far as the present position is concerned. What was done by the former Travancore-Cochin Government was to have a taxation measure. Now, section 3 was perfectly all right, because it was essential that the maximum rate should be mentioned. But when certain powers, wider in aspect, and perhaps incompatible with the provisions of section 3, were introduced, naturally certain difficulties arose and, therefore, parties took the question to the Kerala High Court. This was the only question raised before the Kerala High Court and they came to the conclusion that the particular provision going beyond the maximum tax was entirely wrong. Therefore, I would

submit that what was done was perfectly right and, secondly, in view of the dissolution of the Kerala Legislative Assembly naturally all legislative matters have to be placed before the Parliament and, as you rightly pointed out, Madam, the President has given his consent to the sponsoring of this Bill. Therefore, I submit that this is a perfectly valid and constitutional measure.

Shri Narayanankutty Menon: Even if I am in perfect agreement with the hon. Minister that there is nothing illegal, both in regard to the Ordinance and also the Bill, I am a bit surprised with the way in which he put the defence to the condition raised by my hon. friend, Shri Naldurgkar. His own attitude and his contentions betray that he has not gone into the problem at all and that he has been dealing with this matter in a haphazard manner without knowing the subsequent happenings after the Ordinance has been issued. There is a reflection that after the Presidential proclamation was issued certain administrative arrangements that ought to be made have not been made so far and, therefore, the whole matter had to be brought before this House without going into the very details of it, which shows that the hon. Minister lacks advice as much as it could be possible under the circumstances. I am not in agreement at all with any of the contentions raised by my friend, both constitutional and legal, but they may be left open to show that arguments may be raised on both sides. As far as the constitutional validity of the Ordinance and Bill is concerned, they may be left to the courts of law to decide, as this House has never undertaken the responsibility of deciding intricate questions of law.

After the Ordinance was issued new grounds were raised by certain parties and writ applications—not one but a series of them, hundreds in all—were filed in the Kerala High Court and the

[Shri Narayanankutty Menon]

High Court has issued stay orders in almost all the cases, staying the operation of the Ordinance, and till now the Government is prevented from collecting taxes from many motor vehicles owners. I am pointing this out because this has got a long, protracted and chequered history and when the original notification under section 3 was issued in 1957, stay orders were issued in more than hundred cases and when the case was finally decided after a delay of one and a half years by the High Court, after making the stay orders absolute, Government had to pay costs to all these petitioners, along with the additional burden in pursuance of the Ordinance of collecting huge arrears from these motor vehicle owners. The same owners who successfully conducted their petitions before the High Court have again gone before the High Court and filed writ applications and obtained stay orders. And I presume from the way the hon. Home Minister answered my hon. friend that he is unaware of the constitutional and legal grounds raised by the petitioners before the Kerala High Court on the basis of which the High Court found there was a *prima facie* case and issued stay orders on the writ applications. I may point out to the hon. Minister that when just about the 8th of June, 1959 the High Court passed an order, holding as *ultra vires* the power of the Government to issue a notification under section 3, copies of the order were applied for by the Government and, I presume, that it was Government's intention to take the matter before the Supreme Court for obtaining an authoritative decision. Some other trouble will arise out of this because the whole question of the legislature's power and also the power of the Government of delegated authority has been questioned before the High Court. The High Court went into the question of delegated powers of the Government and also the power of the legislature and said in those judgments that the legislature had exceeded the powers of delegation

under section 3 of the Act. That lacuna which has been found out by the High Court has not been made all right. What clause 3 here proposes to say is only about retrospective validation of the notification once issued.

I should like to know from the hon. Minister as to what the position will be if the present Government wants to enhance the rate of taxation still further because that does not end there and the original Act concedes the proposition that the whole position can be reviewed from time to time. The Government is given the power to amend or cancel the Schedule in the original Act. By this Act, validation is given to the particular notification issued by the Kerala Government. But if the Government wants to review the whole position either to amend or cancel the notification already issued when circumstances change the question arises: is any new provision added whereby the lacuna pointed out by the High Court on the writ applications made already removed? By this Bill, is the delegation of authority proposed made *intra vires*? That is, the powers of the legislature—the Parliament now—and also of the Government are they now made *intra vires*? An answer is called for on that particular point.

The second proposal, which I want to place before the hon. Minister, is regarding the question of collection of taxes from motor vehicles and also the policy that has to be pursued. As far as the private sector regarding motor vehicles is concerned, the Kerala Government had enunciated a policy. That policy was based upon the fact that they were not in agreement with the Central Government to form a transport corporation on the model that had been advised by the Central Government. The Kerala Government had its own reasons for not forming a transport corporation.

The State transport in the State is functioning quite properly, large revenues are coming in and the Govern-

ment is able to collect bigger revenues from the State transport itself and also certain limitations will be imposed by the formation of a motor transport corporation on going ahead with the policy of progressive nationalisation for the public sector. Now I find from the papers that talks are going on in Kerala in order to review the policy so far pursued by the Government of Kerala of not forming the transport corporation and maintaining the present integrated structure of State transport and also the private sector. I wish that the hon. Minister clears that rumour as also a serious apprehension in the minds of the people that the policy will be reviewed and shifted back to that of the formation of a public transport corporation in Kerala.

Thirdly, certain administrative measures had been introduced by the Kerala Government by forming a transport board in order to review policy. Certain other provisions have also been made. Now certain proposals have come before the Kerala Government that the Kerala Government is going to dissolve that transport board and also substitute direct administrative measures. That also is a point for which I require clarification from the hon. Minister.

In conclusion I want to point out to the hon. Minister that by bringing this Bill alone all the dangers inherent in the original Act, as has been disclosed by interested parties before the Kerala High Court, both in the series of writ petitions on which judgment has been delivered previously and the series of writ applications which are pending and on which stay orders have been issued, have not been removed. A comprehensive study of the constitutional implications of clause 3 of this Act and also of the delegated authority within the limits of the constitutional power will have to be reviewed by the Central Government now and a comprehensive Bill filling up all the lacunae in the original Act as disclosed by the High Court will have to be brought forward in this

House so that the very act of passing this legislation will not be frustrated by these interested parties by again approaching the High Court. I also require from the hon. Minister information as to whether he is aware that the High Court has admitted writ applications questioning the validity of the Ordinance and that stay orders have been issued. The presumption is that *prima facie* the High Court was satisfied about the illegality and the *ultra vires* nature of the Ordinance. How is the hon. Home Minister, after getting this Bill passed by this House, going to implement the provisions of this Bill because indirectly the whole power does not come into operation till the case has been decided? Therefore the matter whether the original judgment delivered by the Kerala High Court regarding the validity of sections 3 and 18 will have to be reviewed by the Government and whether it is advisable at this stage to take the whole matter to the Supreme Court for an authoritative ruling will also have to be looked into. If that is not done the whole purpose of enacting this legislation will be frustrated. Series of writ applications after writ applications will be pending before the Kerala High Court. As our past experience shows, on writ applications filed, I think, between the 20th and 25th January after the Ordinance and stay orders issued, the judgments will be delivered either in the year 1961 or in 1962. That is the delay involved that we have shown regarding the original writ applications. Till that time not a pie of revenue will be available from this because stay orders have been issued. Therefore we should not be content by getting this Bill passed by this House because it will be completely infructuous in the present state of affairs. Further research will have to be made and legal opinion sought as to whether it is advisable to take the original judgment of the Supreme Court and also bring about a comprehensive piece of legislation covering sections 3 and 18 so that it will be within the competence of the Parliament in its power

[Shri Narayanankutty Menon]
to delegate and that both the Government and the legislature will have got the authority to delegate this power of either cancelling or amending or substituting the notification I hope that the hon. Home Minister will spend some time on going into this matter so that the very purpose for which legislation is sought to be enacted in this Parliament will be fulfilled and the whole purpose will not be frustrated as also the State will not be deprived of the revenue as it has been deprived so far during the last two years of this particular revenue that has been sought here

Shri B. G. Patil (Mira)
Madam Chairman, so far as this Bill is concerned, I have certain objections to raise. Just now one objection was raised, namely, that there are certain inherent defects as yet remaining there. It was indicated that under section 18 of the original Act of 1950 Government was given a delegated power by the legislature. The Kerala High Court came to the conclusion that under section 18 the delegation is *ultra vires* and therefore it set aside the notification that was issued by the Government in 1957.

Now it is raised here that that power which originally was granted under section 18 must be made absolute by the legislature. That is put forth here. I am not in agreement with this proposal that has been made by my learned friend here, because so far as the matter before us is concerned it is the increase of taxation that was done by a notification by a previous Government and thereafter which was confirmed by an Ordinance issued in 1959. That is the short matter before us. The further thing is that an Act is going to be passed by Parliament where Kerala is represented by nine hon. Members only. A large section of the people which is always represented by M.L.A.'s, is not present here. Therefore my submission to the Ministry will be that all shades of opinion and interests are not represented here and therefore it

is better for us if we stick to this matter only and not go ahead and say that section 18 shall be made absolute. That is my first submission.

Then I have objection, so far as this Bill is concerned, to section 3. Section 3 lays down that the notification that was issued in September, 1957 and the Ordinance—Ordinance No 4 of 1959—that was promulgated by the Government of Kerala on the 9th July, 1959, is to be retrospective. We will go back again to the history of this Bill. The Bill was passed in 1950. It was in operation till 1957. In 1957 the Kerala Government on a certain date issued a notification by which it increased the rates. It was not according to the law. The High Court of Kerala has decided like that. Therefore it is now perfectly decided that the Government's action in issuing the notification was *ultra vires* and without legal effect. Whose mistake is it? Is it the mistake of the people who are affected by it or is it the mistake of the Government that it has been decided by the High Court—the highest tribunal of that State—that it was a mistake of the Government to issue a notification. Now, the people chose to go to the High Court, incurred expenditure and engaged pleaders. It seems something like 150 applications for writs have been made. Furthermore, the High Court has decided and given them even the expenses for that litigation.

Now, the Bill has been brought before us saying that this will apply retrospectively. It means that it is nullifying the whole efforts of the people, the aggrieved parties. Can we do like that? Suppose the Government makes a mistake and we go and move the High Court, which is our tribunal, and we succeed. Government comes and says: if you go to the High Court and if you are the successful party there, we will nullify the effect given by the High Court. That raises the question whether we should at all go to the High Courts for redressal of a grievance on account of certain mistake of the Government. That is the question before the people.

Therefore I submit here for the consideration of the hon. Minister that this is not fair. That means that we must not hereafter have any faith in our tribunals, in the High Courts. Whatever effect is given by the High Court will be nullified by this amendment. At the most I am prepared to say that from the date this Bill is introduced or from the date this Bill is passed into an Act these increased rates may come into force. But if you are going to make it retrospective, it will have a bad effect and we will lose faith in justice.

And the further thing is this. What is the justification for making it retrospective? They are going to lose some revenue. But the Government made a mistake. It was sought to be remedied by an ordinance of the Governor. And because the ordinance was retrospective, therefore we should also make it retrospective—that is rather a strange argument to put forth here. My submission is that it should not be made retrospective.

And sub-clause (2) of clause 3 is very strange. It says:

"Notwithstanding anything contained in any judgment, decree or order of any court, all taxes levied or collected . . . shall be deemed to be, and to have always been, validly levied or collected".

That means to say that in certain matters the jurisdiction of the High Court is taken away. It is better for the Government to say that. Why is the jurisdiction given and why are people allowed to go to the High Court and incur expenditure of money? That is the simple proposition that I put forward for the consideration of the hon. Minister.

I therefore say that so far as clause 2 of the Bill is concerned I have no objection. If they want to raise certain taxes, they may, in the interests of the State. But so far as clause 3 is concerned it should be deleted from the Bill, and the Bill may be passed into an Act with section 2 only. That is all that I have to say.

Shri Maniyangadan (Kottayam):
 We know the particular circumstances in which this Bill had to be introduced. Of course, I support the Bill. The argument of my hon. friend that the Bill is intended to invalidate, or rather overstep, the High Court judgment cannot be said to be wholly correct. The main finding of the High Court was only that the notification was invalid on the ground that it exceeded the permissible limit of delegation of legislative authority. That is the only thing found by the High Court. And as such, it cannot be said that this Bill in any way goes against the spirit of the High Court judgment.

Of course, as regards the taxation measure adopted by the Government they thought, because of section 3, that they could by a notification increase the taxation to any extent. That was found by the High Court to be wrong. So the taxes collected, and also the arrears of taxes, have somehow or other to be kept in the government exchequer. And so there is this Bill now before us.

When speaking about this Bill I have to mention one fact. My hon. friend Shri Narayanankutty Menon was saying that some other provisions also should be amended and that the tax should rather be increased. My submission is that as far as the motor vehicles taxation in Kerala is concerned it is perhaps the highest in the whole of India. I may refer to the report of the Road Transport Reorganisation Committee which says (page 23):

"While the subject of taxation on motor transport was not specifically examined by the Committee, the weight of the evidence before it was that the cumulative burden of such taxes was unduly high and should be reduced to a level not exceeding 75 per cent. of the present incidence in the State of Madras as repeatedly recommended by the Government of India in the recent years."

In spite of this repeated recommendation by the Government of India the

[Shri Maniyangadan]

tax has been increased repeatedly in Travancore-Cochin and now in Malabar

If you take the incidence of taxation, not only this vehicles tax but all the incidence of taxation taken together, this is what we find from Appendix V attached to that report. In Kerala the amount of yearly tax levied on a goods vehicle of RLW of 9 tons is Rs 1,708 in the Malabar area and Rs 2,018 in the T C area. And the amount of yearly tax levied on a 40 seater stage carriage is Rs 4,800 in the Malabar area and Rs 6,000 in the T C area. This figure of Rs 4,800 prevalent in Malabar area we find in Madras, and the Government of India was giving directions to the State Governments that the tax should be reduced to 75 per cent of that. But in the T C area even at present it is Rs 6,000. In no other part of India do we find such heavy taxation both with respect to stage carriers and goods vehicles.

So my submission is that if these things have to be reviewed, then the incidence of taxation as far as these motor vehicles are concerned must be taken as a whole and then only what should be the vehicles tax should be fixed. In the Road Transport Reorganisation Committee's report they refer to that also, and I may just quote it here. They say

"Incidentally the Committee was repeatedly told by witnesses that some of the State Governments who justify an increase in their taxes on the ground that their rates are below 75 per cent of the Madras rates conveniently forget that it is the cumulative burden and not the vehicle tax one that should be within 75 per cent of the incidence in Madras. Thus, it appears that even in States where etc."

That is not relevant here.

Therefore, when we pass this Bill, the heavy incidence of taxation must

be borne in mind. Of course, as far as the present is concerned I admit it is not for the Parliament to go into these matters. The State Government have done something and that is only being validated now.

I do not know what is the relevancy of the reference to the Transport Board and other things on a discussion of this Bill. It is true that the Planning Commission and the Central Government were asking the State Governments to form Transport Corporations in the different States and the Kerala Government refused to do that. They have got their own reasons. The reason which has come to my knowledge, as stated by the representatives of the Government there, was that if a Transport Corporation is formed, we will have to pay taxes to the Central Government as income-tax and so the revenues of the State will be reduced. That is the reason which has come to my knowledge. But there are ever so many benefits to be derived by forming a corporation. I am not now supporting the view whether it should be formed. There are ever so many benefits to be derived by the public if a corporation is formed. This Transport being run by the Government as a departmental affair, I submit, has led to so many inconveniences to the public, so many instances of corruption and all that. If an autonomous body like a corporation is formed, it will have its own benefits. My view is that that matter has to be gone into thoroughly and if found necessary we must have both the advantages and disadvantages and a corporation should be formed so that we may come in line with the other States in India. This is a matter of taxation also. The taxes in other States have to be looked into and there should be some similarity in that matter.

My hon. friend referred to some rumour that the Transport Board is going to be abolished and all that. I do not know what he means by that.

Under the Motor Vehicles Act, Transport boards, District boards and Central Boards are to be constituted and they are functioning in Kerala. They are functioning for a long time. I do not know how they are going to be abolished. These things are done, not under the Motor Vehicles Taxation Act, but under the Motor Vehicles Act. I do not think there can be any change made unless the Motor Vehicles Act is amended in this Parliament. It is a Central Act. As far as this Bill is concerned, I generally support it in the present circumstances. But, I again submit that the taxation is very heavy compared with other States and that it has to be reduced so as to bring it in conformity with the taxes prevailing in other parts of India.

Shri V. P. Nayar (Quilon) Madam Chairman, I do not want to go into the circumstances which have compelled the Governor to issue the Ordinance. It is well known that private bus operators have been in all ways avoiding the incidence of taxation and it is a feature common to all the private operators all over our country by a set of arrangements. It is easy also with another set of corrupt police officials to avoid the real incidence of taxation. Now that we are at the end of the debate, I do not want to go into the details. I should like to examine the judgment of the High Court which has made the Ordinance necessary.

Mr Chairman The hon Member may finish in ten minutes.

Shri V. P. Nayar I shall try I have read the judgment and on reading the judgment I am convinced that there was a case for moving the Supreme Court in appeal. I do not find the exact date on which the judgment was delivered. It is only printed as June, 1959. I do not know whether the Government of India had taken proper steps after taking over the administration in Kerala for finding but whether an appeal could be filed before the Supreme Court. If that was not possible, this is the only

remedy, because, I understand, it involved several lakhs of rupees as arrears.

On reading through the judgment, I must confess I was taken by surprise when their Lordships of the Kerala High Court have twisted, according to me, by an interpretation of certain provisions in a manner in which the financial interests of the State would be affected, while those of the private operators would be saved.

Shri Datar: Let not the hon Member say 'twisted'. He may put it in a mild way.

Mr. Chairman: I wish the hon. Member could change the word.

Shri Datar: He may use a milder word.

Shri V. P. Nayar: Unfortunately, I am bound to use words the meanings of which I know.

Shri Datar: He may use some milder word.

Shri V. P. Nayar: I shall convince you, because I have read the judgment on which their Lordships have placed reliance also, the judgments of the Supreme Court and certain judgments of the Calcutta High Court as also the Bombay High Court.

I could not escape feeling that it is not a fair judgment and I am entitled to make a fair comment on the judgment in this House also.

You will find that certain propositions have been formulated as calling for decision in this case. Their Lordships say

"The chief contention of the petitioners was, that the delegation of power to Government under section 18(1) of the Act 'to alter, add to, cancel in part or the whole of Schedule I, II or III' exceeded the permissible limits, and is invalid, and that the impugned notification is therefore *ultra vires*."

[Shri V. P. Nayar]

This is the main point which came before their Lordships for consideration.

Probably it was lost sight of that the original Act in which this provision existed was an enactment of the then Travancore-Cochin State which became an Act in 1950 before the commencement of the Constitution. I do not take that point at all. Is this the only instance where the legislature, whether it is the State legislature or the Central legislature, has delegated powers to an authority subordinate to that? Certainly not. We know, in this House, about the Sea Customs Act. What does the Sea Customs Act say? The Sea Customs Act has definitely given a similar power. Nobody questioned that. If I may be permitted to read the particular section of the Sea Customs Act, section 22, it reads thus:

"The Central Government may from time to time, by notification in the Official Gazette, fix for the purpose of levying duties, tariff values of any goods exported or imported by sea on which the customs duties are by law imposed and alter any such values fixed by any Tariff Act for the time being in force."

Does the Travancore-Cochin Act go beyond that? Here, the Central Government has passed an Act which empowers an authority subordinate to the legislature and upon it the power has been delegated, not merely to alter the rates of duty which may be arrived at after a calculation of the tariff values, but even when a specified rate is in force, even when Parliament is sitting, if the Central Government wants, according to this provision, the tariff values can be altered to the convenience of the situation, by the Central Government by publishing a notification. There are many instances. Because you have warned me about the time, I do not want to go into that. There are many instances where the legislatures, not

being able to find time for legislating on various details, have given such powers to certain subordinate bodies. This has to be considered.

I am afraid, the perspective of the learned Judges of the High Court of Kerala was not correct, while they were discussing this point, because, I find, the interest of the State has never come into the picture. Not a single word has been mentioned in the judgment about the possible loss that the Government may have to incur on account of the taxes not being collected as is provided for in the rules. It appears also that this point was agitated before their Lordships and certain decisions of the Supreme Court were brought to their attention. That was a decision of the Supreme Court reported in A.I.R. 1958, *Supreme Court* at page 909. I have it here with me. That is a judgment of Justice Venkatarama Aiyar. The learned Judge contended that this point did not precisely arise in that case. If you hear certain sentences, you will be convinced that there was no fitter case to be followed although the Judges say like this:

"If these cases do lay down a principle which is of application to the present case, there is no question that they must be followed by us; but we do not think that they do so."

It is based on this assumption that their Lordships have pronounced this judgment. What does Justice Venkatarama Aiyar say? He said:— this is from page 913 in the case *Banarsi Das V. State of M. P.*—para. 7—

"Now, the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like."

Justice Venkatarama Aiyar quotes with approval a judgment of the Privy Council also. It is a long portion and I do not want to read it. It says:

"It is argued that the tax in question has been imposed by the Governor and not by the legislature who alone had power to impose it. But, the duties levied under the Order-in-Council are really levied by the authority of the Act under which the Order is issued.

The Legislature has not parted with its perfect control over the Governor, and has the power, of course, at any moment, of withdrawing or altering the power which they have entrusted to him. In these circumstances, their Lordships are of opinion that the Judgment of the Supreme Court was wrong in declaring S. 133 of the Customs Regulation Act of 1879 to be beyond the power of the Legislature."

The reason why I am submitting is that throughout the judgment their Lordships maintain the case that something *ultra vires* has been provided for, that Government were not acting properly in charging an enhanced duty, that the legislature had given a power which could not be maintained because they had exceeded the powers and given such a power to a subordinate authority.

13.41 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

All these points, I submit, are very important for further consideration, because the mischief which may be occasioned from judgments like this will have very serious consequences to the State Government, because it relates to getting some money.

I have read the judgement over and over again, and I cannot find why the Government of India should not invoke the aid of the Supreme Court in annulling this judgment. If, as the

hon. Minister feels, it is not within time, then this is the only way. Nevertheless, I must say that the judgment pronounced in this matter, especially in the background of the case which was elaborated upon by my hon. friend Shri Narayanankutty Menon, is a wrong judgment; it is not a judgment which should be left as such.

Shri Naldurgkar: That judgment has become final. No appeal has been preferred. Therefore, there should be no comment on that.

Shri V. P. Nayar: That is why the judgment has become final. I was requesting the hon. Minister to tell us whether at the proper time he had taken steps to prefer an appeal. Of course, now it is conclusive, and we have no other remedy but to pass an ordinance. But let there be no mistake; even in future the trouble will be repeated unless we are very clear about it. I feel that the matter is so serious that a reference to the Supreme Court is absolutely called for.

Shri Datar: The object of this Bill was absolutely a limited one. A judgment of the Kerala High Court held the notification issued by the former Ministry of Kerala to be unconstitutional and *ultra vires*. Now, the consequences that flow from such a decision should also be taken into account. This notification was issued in 1957, and in June, 1959, their Lordships of the Kerala High Court came to the conclusion that this particular notification was entirely *ultra vires*. The effect of such a declaration would be that all that has been collected or has to be collected or would be collected would be entirely invalid and *ultra vires*. Therefore, the consequences flowing from the decision of the Kerala High Court have to be taken into account, and they have been met by this Bill. Nothing more has been done.

Shri V. P. Nayar: May we have some idea of the amount involved?

Shri Datar: I have already stated in my opening remarks that it is Rs. 32 lakhs.

[Shri Datar]

All that we have sought to do is merely to validate what the previous Government in Kerala had done. My hon. friends opposite made certain points. But may I point out here that this is a heritage of my hon. friends' party's Government there? It is nothing more than that. We are doing absolutely nothing more than validating what they had done.

Under these circumstances, what we have done was the least that could be done in this respect. An hon. Member raised the question that there were a number of other writ petitions or other applications before the High Court, and that we ought to have taken into account all those circumstances, and all the pending applications or the applications that were going to be filed, and ought to have brought forward before this House what might be called a consolidated bill. Another hon. Member raised a larger question of policy also. One hon. Member had also contended that this Bill had the effect of nullifying what the High Court had done.

I may point out in this respect that so far as the functions of the judiciary are concerned, they have to administer the law; they have to interpret the law as it is; and if they come to a particular conclusion, then, naturally, that has to be accepted, subject to our right of appeal.

But, in this particular case, as I had stated, in June, 1959, a certain decision was given, and action had to be taken to validate what was declared to be invalid by the Kerala High Court. I am not at present aware whether an appeal is filed or is going to be filed. All the same, I may point out to my hon. friend that we need not use such expressions as 'twisting' so far as the arguments of the honourable judges of the High Court and Supreme Court are concerned. They are entitled to the view that they take. If the view is wrong.....

Shri V. P. Nayar: We are also entitled to criticise.

Shri Datar: we are entitled to go in appeal or revision or have recourse to whatever machinery is allowed to us. There is also another machinery, which we are taking recourse to here. Parliament is the supreme legislative body, and the Parliament is now also seized of the power of the State Government, because it is President's rule in the Kerala State. Therefore, whenever we find that a High Court has come to a conclusion that certain actions of the Government or certain actions of the State Legislature were wrong or were invalid, then, it is certainly open to Parliament without in any way affecting the dignity of the High Court or the judiciary, to correct the particular law and to validate a particular action that has been taken by the State Government. This is what we are doing.

My hon. friend dealt with the merits of the judgment of the Kerala High Court. It is perfectly possible to come to a different conclusion. But, after all, we as the administration had to take into account the effect of the judgment of the Kerala High Court, and provide for a proper remedy by which we can get out of this unconstitutional position.

Shri V. P. Nayar: If the Government of India were convinced that the judgment is correct, then what is the purpose of this Bill?

Shri Datar: I would not at this stage commit the Government of India or the administration to any particular view, because they have certain ways open, which they may or may not follow. Here, what we are anxious to do is to validate what has been stated to be invalid and to remedy the consequences of such non-validation.

Mr. Deputy-Speaker: When the judgment is by a judicial court, particularly, by the High Court or the Supreme Court, that is always correct, unless it is set aside.

Shri V P Nayar: That is always correct, unless it is modified by a higher authority. Here, they have not chosen to go in appeal, at the same time, they want to bring forward an ordinance which in effect nullifies the judgment.

Mr. Deputy-Speaker: They submit to the judgment of the High Court, but if they feel that something else is to be done, then they have a right to remove whatever illegality or unconstitutionality was there.

Shri V. P. Nayar: My only request was that Government should take courage in both hands and say that they feel that the judgment of the High Court is not correct.

Shri Datar: Government always take courage. In fact, we were charged two days ago for having taken courage in our hands and brought the Kerala Government under the President's administration.

Shri V P Nayar: That is not courage.

Shri Datar: I am submitting that what we have done is absolutely essential. So far as the larger questions are concerned, I would submit, they are beyond the purview of the limited object of this particular Bill, where we are treading on the same ground as the last Ministry had done, and we are keeping things as they are; and larger questions of policy will be decided as and when they arise.

There is just one more small point that was raised by an hon. Member. In Schedule I we have mentioned the maximum quarterly tax, and within that maximum quarterly tax, taxes are to be imposed. What we had done was in terms of the ordinance, which action was for the purpose of validating what had been done by the notification in 1957.

Therefore, I submit that what we have done is perfectly correct. It does not in any way affect the dignity of the High Court because so far as the Legislature is concerned,

this House is supreme and it is open to this House to make such changes as are necessary, specially when a particular interpretation has been placed upon it by a High Court. That is the reason why this Bill has been sponsored.

Mr. Deputy-Speaker: There is an amendment to the motion for consideration which I shall put to the vote of the House.

The question is

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 30th October, 1959."

The motion was negatived.

Mr. Deputy-Speaker: The question is

"That the Bill further to amend the Travancore-Cochin Vehicles Taxation Act, 1950, and to provide for certain other connected matters be taken into consideration."

The motion was adopted.

Mr. Deputy-Speaker: The amendments that have been tabled are all not in order. Therefore, I shall put all the clauses together to the vote of the House.

Shri Naldurgkar: I do not want to move amendments Nos 2 and 3, but I am moving amendment No 4.

Mr. Deputy-Speaker: That is not connected with the subject-matter. His amendment says for Travancore-Cochin insert 'Inter-State'. That has nothing to do with this Bill.

Therefore, that would not be in order.

The question is

"That clauses 1 to 4, the Enacting Formula and the Long Title stand part of the Bill."

The motion was adopted.

Clauses 1 to 4, the Enacting Formula and the Long Title were added to the Bill.

Shri Datar: I move:

"That the Bill be passed"

Mr. Deputy-Speaker: Motion moved:

"That the Bill be passed".

Shri Warrior (Trichur): I have only one observation to make. I think one hon. Member, Shri Maniyangadan, said that the rates were very high. In fact, the Madras rates are supposed to be higher. The Madras rates were imposed on the Malabar side formerly. When this Act was extended to Malabar, it got a reduction of Rs 5. Then how can it be said that the incidence of tax is higher?

Shri Maniyangadan: I was speaking of the total incidence of taxation on motor vehicles.

Mr. Deputy-Speaker: The incidence of taxation in some parts of the State was raised; in some other parts, it was brought down.

Shri V. P. Nayar: That is the point.

Shri Warrior: I am coming to that. He is very impatient. In the Travancore-Cochin area it has been enhanced by Rs. 5. That is true. But what is the actual position? Let us take first the buses. After the buses have reaped the full benefit, they are condemned by the authorities, when they are condemned, they are changed into trucks and lorries. The truck and lorry traffic is taking the cream of the revenue which would otherwise go to the railways. The entire passenger and cargo traffic is now almost monopolised by them. As far as the South is concerned, there are four or five concerns who have monopolised the traffic and are making huge profits. The amount of corruption prevalent among them is notorious. If we ask for Re. 1 of a bus-owner to ply a single bus on one route, he will pay as much as the value of the bus to the authorities.

There is so much profit made by the conversion of the motor spirit engines into diesel engines.

Kerala has a particular problem which is unlike in other States. There the density of population is so much and the population is so congested that it has become a notorious affair. Every bus which has to ply with 20 or 25 people usually takes 50 people. So my contention is that there must be more enhanced taxation on the buses, thereby providing as much revenue for the purpose of expanding the traffic more and more.

Mr. Deputy-Speaker: That means they will carry still more people?

Shri V. P. Nayar: Now they surreptitiously do it. Let it be legalised.

Shri Warrior: We must break the monopoly of these people who are earning huge profits, by heavier taxation.

Mr. Deputy-Speaker: It must be shared!

Shri Warrior: These people have been evading taxes not only now but before. Even now, as Shri Narayanankutty Menon said, they have applied for a writ to the High Court against this Ordinance. I do not know how far this Bill will give the necessary power to Government to impose taxation. They know so many dubious methods, legal and illegal, to dodge the taxation authorities.

So my appeal to the Government is to examine this point and seek the advice of the Law Ministry in this respect if they have not already done so. I think they must have done so; if not, they must consult the Law Ministry and bring forward proper legislation immediately to check the methods by which these people evade taxation.

Mr. Deputy-Speaker: The question is

"That the Bill be passed".

The motion was adopted.