

acres of land was eroded and hundreds of villages submerged. Land of about 5-6 villages has completely eroded. There is no provision to rehabilitate them. They are surrounded by water and have been living at a raised platform in open. I would like to draw your attention and the attention of the House to it and urge upon the hon. Minister to take immediate measures for their rehabilitation. Adequate financial aid should be provided by the Central Government so that victims of the natural calamities and also of artificially created calamities may get relief. With these words, I thank you for the opportunity you gave me to speak.

[English]

MR. SPEAKER: I would like to say that this should not be treated as a precedent.

13.13 hrs

REMITTANCES OF FOREIGN
EXCHANGE AND INVESTMENT
IN FOREIGN EXCHANGE BONDS
(IMMUNITIES AND EXEMPTIONS)
BILL

[English]

THE MINISTER OF FINANCE (SHRI MANMOHAN SINGH): I beg to move for leave to introduce a Bill to provide for certain immunities to persons receiving remittances in foreign exchange and to persons owing the Foreign Exchange Bonds and for certain exemptions from direct taxes in relation to such remittances and bonds and for matters connected therewith or incidental thereto.

MR. SPEAKER: Motion moved:

"That leave be granted to introduce a Bill to provide for certain immunities to persons receiving remittances in for-

ign exchange and to persons owing the Foreign Exchange Bonds and for certain exemptions from direct taxes in relation to such remittances and bonds and for matters connected therewith or incidental thereto."

[Translation]

SHRI GEORGE FERNANDES (Muzaffarpur): Mr. Speaker, Sir, I would like to oppose the motion for leave to introduce the Bill as it is *ultra vires* of the Constitution. My opposition is based on the provisions contained in Articles 13 and 14.

MR. Speaker, Sir, I want to submit that when I raised this point last time in relation to another legislation, you had checked me saying that reasonable classification is allowed under Articles 13 and 14 both and hence the objection raised by me had no force and hon. Members had drawn an inference therefrom to oppose my argument in the House.

[English]

MR. SPEAKER: One more point which I would like to get clarified and that is *intra vires* or *ultra vires* of the Constitution. Is it decided by this House or decided by the Court?

SHRI GEORGE FERNANDES: I am at the legislative competence.

[Translation]

I am raising this point. I want you to examine the question should we pass the legislation knowing it that it is *ultra vires* of the Constitution? Please look at Article 13:

[English]

"The State shall not make any law which takes away or abridges the rights con-

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ferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

[Translation]

Now the question is whether we should enact a legislation taking the plea that it is the job of the Supreme Court and High Courts to decide whether it is *ultra vires* or *intra vires*. But the question is how can we enact a legislation knowing well that it is *ultra vires* of the Constitution. That is why I want to put both articles 13 and 14 before you.

Mr. Speaker, Sir, first of all, kindly look at the implementation part of the legislation.

[English]

"Where is the position relating to the balance of payments, etc.?"

[Translation]

Please take the next.

[English]

"Whereas with a view to attracting such inflow of foreign exchange, it is expedient to provide for certain immunities and exemptions to render it possible..."

For certain persons, certain immunities and certain exemptions are given.

[Translation]

What for these immunities, what for exemptions are given and who are the people? Mr. Speaker, Sir, I want to put forth these three things in the context of my opposition to this legislation. If you see section 3, it has been mentioned therein that no question will ever be asked about the source of

remittance. Further, it has been assured that no enquiry would be conducted regarding the means of its earning whether lawful or otherwise. Then, it has been stated in 3(c) that the fact that the recipient has received a remittance shall no be taken into account and shall be inadmissible as evidence in any present or future suit.

Mr. Speaker, Sir, at present several cases involving big people, are pending in many courts. Nobody is put behind the bars. Even after 10-20 years minor punishment is given to big people, who are involved in tax evasion. Presently, many such cases are pending in the Supreme Court, High Courts or lower courts. You mean to say that the persons against whom cases of violation of Foreign Exchange Regulation Act are pending in the courts and against whom Government have proof of taking the money out of India, should not be prosecuted on the strength these proofs in the courts.

Please go through the sub-clause (c) of clause 3 and another clause 6 of this Bill. You are going to do such a discrimination which is beyond one's imagination. What a House, what a Parliament and what a Constitution which say through this legislation that the person working abroad will be punished under the Foreign Exchanges Regulation Act in case he fails to remind back his earnings as provided under the Act, but the person, who have taken Indian Capital out of the country or who have clandestinely kept or deposited abroad their income, would be extended all facilities to bring back that money into the country. These two different type of approach emerge from this legislation. On the one hand, we instead of rewarding the honest person, have provided for punishment under FERA, Income Tax laws etc. On the other hand, we are offering all sorts of immunities and exemptions to the dishonest.

Therefore, Mr. Speaker, Sir, I want to raise the issue of reasonable classification

which is raised in courts and was raised in the House also.

[English]

MR. SPEAKER: I do not want to apply that criteria to everybody.

SHRI GEORGE FERNANDES: The principle of reasonableness as defined by the Supreme Court in innumerable judgements while deciding the whole question of reasonable classification is that it must be right, it must be just and it must be fair.

[Translation]

Mr. Speaker, Sir, I asked Judge Saheb sitting on my right as to what is meant by reasonable classification. According to my study—

[English]

It must be right; it must be just and it must be fair. Otherwise, there cannot be anything called a reasonable classification.

[Translation]

Now I want to ask you whether this legislation is meant for protecting the dishonest person and awarding punishment to the honest person. Has this legislation been brought forward in the House for this purpose? Is it right? Would it be proper to send an honest person to jail since he is weak and to provide every facility to the dishonest person? Is it right? Do we intend to work like this? Is it fair?

Mr. Speaker, Sir, these three criteria, three questions are...

[English]

You have given innumerable judgements

[Translation]

And I asked the Judge Saheb to explain it in one sentence.

[English]

He says, "we read hundreds of judgements".

[Translation]

I again requested him to explain it in one sentence, then he said—

[English]

"The classification must be related to a particular class or a group of segment for whom the law is being enacted".

Now it is a class or a segment or group for whom this law is now sought to be enacted. It is a class of smugglers; it is a class of people who have taken out this country's money that they should not have taken out.

[Translation]

You are making provision for extending facilities to the big people who have indulged in under-invoicing and over-invoicing and who have deposited money in foreign banks, Swiss Banks, Cayman Islands and at other places.

[English]

Is this the class of people for whom this kind of reasonable classification is now being sought by the Finance Minister?

[Translation]

So far as the question of violation or bypassing Article 13, is concerned, that does not apply to this legislation. Tomorrow the Supreme Court will have to sit in judgement. How far is it proper that this House should

[Sh. George Fernandes]

make law to make dishonest person honest? Supreme Court should not come into the picture. It is a challenge to the dignity, righteousness and intent of the House and it is totally against the Constitution of the country that the thieves, dacoits and plunderers are protected in the name of reasonable classification.

Mr. Speaker, Sir, the hon. Finance Minister has talked of financial constraint in the preamble of the Bill. The country is passing through a severe financial crisis. The reasons of the crisis will be discussed at the time of discussion of the Budget and the Finance Bill. I don't want to discuss it now. But I want to say that it is true that the country is facing crisis of foreign exchange. But the Government should not put the country and the constitution at stake for it. Therefore, Mr. Speaker, Sir, I request you not to grant leave to introduce the Bill.

SHRI GUMAN MAL LODHA (Pali): Mr. Speaker, Sir, question of legislative competence has been raised. Constitutionally this matter has to be examined from two angles. We have to see the Schedule for the purpose of judging the legislative competence. There are three lists 1, II, III given in the schedule. In list I matters have been enumerated in respect of which center has exclusive power to make laws; list II is in respect of State subjects and list III is the concurrent list. This matter is covered by entry 36 of list I. The matter relating to foreign exchange is simpliciter. As far as the technical aspect of the legislative competence is concerned, it is there. The hon. Member raised the point of classification. A law can be declared void under Article 14 on grounds of discrimination. Articles 226 and 32 relate to powers of the Supreme Court and the High Courts. In so far as legislative competence is concerned, it is technically covered under Article 246 and Entry 36 of

List I of the seventh Schedule pertaining to currency, 'coinage and legal tender; foreign exchange'. Article 246 provides as to who will enact the legislation:

[English]

"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 in this Constitution referred to as the "Union List".

[Translation]

Thus, there is no problem in regard to Legislative competence. So far as classification is concerned, you have examined it on many earlier occasions. The question of legislative competence is to be examined as and when it comes up. I can support the question of competence that has been raised in this case.

[English]

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI RANGARAJAN KUMARAMANGALAM): Mr. Speaker, I am grateful to the Hon. Member, the former Chief Justice Shri Guman Mal Loha for having clarified. Legislative competence is a matter which one looks into under Article 246 and the Union List and the Concurrent list, when it comes to the competence of this House to legislate a law. The issue whether a particular Act is constitutionally valid or not, or ultimately something that will have to be ruled by the courts as per the Constitution we have. Of course it has been decided and it has been pointed out here and your goodness has been kind enough to rule already that the Chair will not decide on whether the legislative competence exists or not, that it

would be taken into account by the Hon. Members while taking a decision, and mind by Members when they vote or take a decision on the introduction of the Bill.

But so far as the legislative competence is concerned, I would submit that under List I, read with Article 246 as well as Entries 36, 46, 82, 86, 97 there is clearly power with Parliament to legislate on the matter.

SHRI SOMNATH CHATTERJEE (Bolpur): Do all those entries apply?

SHRI RANGARAJAN KUMARAMANGALAM: Yes. There is immunity, criminal law etc. All the entries are inter-connected in this particular Act.

SHRI SOMNATH CHATTERJEE: Do not read that note.

SHRI RANGARAJAN KUMARAMANGALAM: I have not read it. I have read beyond that note.

If I may submit, whether we would like to go into the issue or not, whether or not Article 14 is valid, the Hon. Member Shri George Fernandes, while speaking himself admitted that there is clarification. The issue is whether it is reasonable or not. He has gone into the question, what is just, right and fair. Just, right and fair are not absolute terms. They are terms which have to be seen in the circumstances. We know very well what the situation of our foreign exchange position is and keeping that in mind and keeping in mind that there is no way that an honest man is going to be penalised in the existing law let us make one thing clear. A particular person who has committed an offence earlier, would not cover up his offence because if he gives money, that is also not provided for. Reading more than what is necessary in the law. I humbly submit, is not the situation. We have the legislative competence; with regard to the constitutional validity, we are reasonably

certain that it is constitutionally valid. I would request the House to keep this in mind when they give us leave to introduce the Bill.

MR. SPEAKER: Well, I do not want to quarrel with the *ratio decidenda* given by Shri George Fernandes while arguing that this House has no legislative competence to turn this Bill into a law. The question as to the vires has to be decided by the Supreme Court or the High Court.

Now as far as the competence of this House is concerned, of course the debate and the discussions on that point can take place here and after hearing the debate and the discussions on that point, the Members can vote to allow this Bill to be introduced or not to allow this Bill to be introduced. The debate would have a persuasive effect on the Members and the decision given by the Members would be binding on us. It is not for the Chair to decide in these matters. It is either for the House Members to decide or for the Supreme Court to decide. So, I am not giving any decision in favour or against it. I am just putting this question to the vote of the House.

The question is:

"That leave be granted to introduce a Bill to provide for certain immunities to persons receiving remittances in foreign exchange and to persons owning the Foreign Exchange Bonds and for certain exemptions from direct taxes in relation to such remittances and bonds and for matters connected therewith or incidental thereto."

The motion was adopted

SHRI MANMOHAN SINGH: I introduce the Bill.

13.31 hrs

**WATER (PREVENTION AND CONTROL
OF POLLUTION CESS (AMENDMENT)
BILL**

[English]

THE MINISTER OF STATE OF THE MINISTRY OF ENVIRONMENT AND FORESTS (SHRI KAMAL NATH): I beg to move for leave to introduce a Bill to amend the Water (Prevention and Control of Pollution) Cess Act, 1977.

MR. SPEAKER: The question is:

"That leave be granted to introduce a Bill to amend the Water (Prevention and Control of Pollution) Cess Act, 1977."

The motion was adopted

SHRI KAMAL NATH: I introduce the Bill.

MR. SPEAKER: Now, Matters under Rule 377.

13.32 hrs

MATTERS UNDER RULE 377

- (I) **Need to construct a road over bridge, at Thiruppappuliyur Railway Station in Cuddalore, Tamil Nadu**

[English]

SHRI P.P.KALIAPERUMAL (Cuddalore): Thiruppappuliyur is a part of Cuddalore Municipal Town and is also the headquarter of the South Arcot District. It is a selection

grade municipal town. The level-crossing near the Thiruppappuliyur Railway Station in Southern Railway is a busy level-crossing. For the facility of the public, construction of a road over bridge in place of the existing busy level-crossing is necessary. The inhabitants of the Cuddalore Municipal Town and the surrounding areas have been demanding a road over bridge for the past two decades. Their demand is genuine and justifiable. But it has not materialised so far. They are suffering in silence.

The Southern Railway has also proposed a road over bridge in replacing the level-crossing for the consideration of the Board. I urge upon the Union Government to include the provision of the above road over bridge in the works programme of 1991-92 and complete the same as early as possible.

- (II) **Need to upgrade the Gopalpur Minor Port at Arzipalli in Orissa**

SHRI GOPI NATH GAJAPATHI (Berhampur): The proposal to upgrade the Gopalpur Minor Port set up at Arzipalli in Orissa is long pending with the Central Government. This is a seasonal Port, which operates for only six months in a year. For optimum utilisation of assets already created for catering to the needs of future traffic, it is essential to upgrade the Port. With this aim, the Government of Orissa has submitted an updated Master Plan prepared by the Ocean Engineering Centre, Madras in August 1990. It has also forwarded a project report for obtaining assistance from the Asian Development Bank, if necessary.

According to the studies made by the port and Shipping Sector, the capacity of Paradeep Port will be 24 million tonnes by 2000 A.D. It will not be able to handle the increasing traffic, particularly the entire coal cargo of 35 million tonnes required by the thermal power stations. Thus, it will be desirable to have second outlet at Gopalpur for