

4. Shri. S.K.T. Ramachandran Report of the Business Advisory committee presented to the House on the 11th September, 1991."
5. Shri. Khyomo Lotha
6. Shri. Rajubhai A. Parmar MR. SPEAKER: The question is:
7. Kumari Sushila Tiria "That this House do agree with the Fifth Report of the Business Advisory committee presented to the House on the 11th September, 1991."
8. Shri. Anantray Devshanker Dave

9. Shri. Sunil Basu Ray

10. Shri. Anand Prakash Gautam'

The motion was adopted.

13.45 hrs.

CANCELLATION OF GENERAL ELECTIONS IN PUNJAB BILL

13.43 hrs.

PETITION RE: NEED FOR AN INQUIRY IN TO THE FUNCTIONING OF V.P. CHEST INSTITUTE, DELHI.

[English]

MR. SPEAKER: Now, we go to legislative business.

[English]

SHRI. VIJAYA BHASKARA REDDY.

SHRI. K.P. UNNIKRISHNAN (Badagara): Sir, I beg to present a petition signed by Dr. P.S. Sahni, Orthopedic Surgeon and Medico Social Worker and six others regarding need for an inquiry into the functioning of V.P. Chest Institute, Delhi.

SHRI. LAL K. ADVANI(Gandhi Nagar): Mr. Speaker, Sir, I am on a point of order.

MR. SPEAKER: What is your point of Order?

13.44 hrs.

BUSINESS ADVISORY COMMITTEE

Fifth Report

[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): Sir, I beg to move:

SHRI. LAL K. ADVANI: My point of order relates to the procedure and it is a point that had been raised earlier also by my colleague Jaswant Singhji in respect of another Bill. I would like to emphasize that there is a logic behind the directions of the speaker which is being totally disregarded by the Government in these matters. There was a time when there was no obligation on the Government to give formal notice of a Bill to be introduced and it was only in 1957 that certain difficulties arose on this account.

Sir, in Practice and Procedure of Parliament by Kaul and Shakhder at page 493, it is stated that:

"That this House do agree with the Fifth

"Prior to the issue of this direction, namely direction 19 (b) in 1957, the practice was to circulate copies of Bills to Members after their introduction in the House, although a few copies were kept in the lobby at the time of introduction for the information of Members. Since provision existed under rule 72 for any Member to oppose a motion for leave to introduce a Bill, the demand was made now and then that Bills for introduction should be circulated in advance so that Members might be aware of the contents of a Bill at the time of voting on the motion for introduction in compliance with the wishes of the House."

This direction was issued by the Speaker on 13.9.1957.

Now, direction 19 (B) says:

"No Bill shall be included for introduction in the list of business for a day until after copies thereof have been made available for the use of Members for at least two days before the day on which the Bill is proposed to be introduced."

Sir, the logic is very clear from the passage that I have read out from Practice and Procedure of Parliament by Kaul and Shakhder and in this particular case, I must admit that I would have liked to be more equipped on the constitutional validity of this particular rule. I am going to oppose it on the grounds of legislative competence of the House also, when the permission is sought from the House to introduce the Bill. I have just now seen the Bill and therefore I have raised this point of order to seek from you a direction to the Government that in this particular case, the Members of the House should be given more time because it is ordinarily supposed that you also would be given a notice of seven days and the members will be given a notice of two days at

least. In this particular case, the Bill is dated the 6th of September, 1991 which means that you too have not been given a notice of seven days and we, certainly, have not been given notice. This is a matter relating to Punjab elections about which even before this Session commenced, we kept on reading in the newspapers that the Government proposes to cancel the elections. Therefore, no situation has arisen which has obligated the Government to come to the House as in the case of emergency that we had no appropriate notice earlier and therefore, we could not inform you.

I wish that this Bill had not been included in the List of Business today. But you have included it. Therefore, all that I can say is, I plead with you not to waive this regulation, if you have waived it already and to reconsider the matter and request the Government to come forth with this Bill tomorrow or day after. This is my request.

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): I disagree with what the hon. Leader of the Opposition says with regard to giving sufficient notice in respect of both circulation as well as notice to the Speaker. Fortunately, in this particular case, I think, we have not been caught on the wrong foot.

On the 10th of this month, two days ago, in the morning circulation was done of the Bill, there by meeting the requirement of the rules. Sufficient notice as required under rule 19 (a) was given of intention to move. When we give notice of intention to move, Mr. Speaker, Sir, we do not usually give a copy of the Bill. As soon as the Bill is ready within our Department, in the Legislative Department, it is sent for printing. Normally the date, which is affixed, i.e. 6th of Septem-

[Sh. Rangarajan Kumaramangalam]

ber in this case, is the date on which printing is done. We have given sufficient notice, as well as we had given copies of the Bill in time. It was circulated on 10th of this month. Therefore, the question of waiver does not arise.

SHRI. GEORGE FERNANDES (Muzaffarpur): I may say that I did receive this Bill in the envelope on the 10th.

MR. SPEAKER: I think, they have satisfied the requirements.

SHRI. JASWANT SINGH (Chittorgarh): Advaniji asked me. Since I had not seen the Bill, I said so. The error is mine.

MR. SPEAKER: The Minister may ask for leave to introduce the Bill.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI. K. VIJAYA BHASKARA REDDY): I beg to move for leave to introduce a Bill to cancel certain notifications calling for general elections in relation to the State of Punjab.

MR. SPEAKER: Motion moved:

"That leave be granted to introduce a Bill to cancel certain notifications calling for general elections in relation to the State of Punjab.

[*Translation*]

SHRI. LAL K. ADVANI (Gandhi Nagar): Mr. Speaker, Sir, I oppose the introduction of this Bill. I oppose it because this Bill will further deteriorate the situation in Punjab instead of improving it. I would like to discuss it at length at the consideration stage, but I oppose the Bill on this ground also that the Constitution does not empower this House to suspend the already announced elections

indefinitely. Therefore, we can say that this House does not have any legislative competence. If it was to be done, it could have been done by bringing a Constitution Amendment Bill. It should not be done through an Ordinary law.

[*English*]

SHRI. K. VIJAYA BHASKARA REDDY: On a point of order.

At the time of introduction of the Bill, he cannot go into the merits of the Bill. According to rule 72(1) of the Rules of Procedure:

"Provided that where a motion is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon".

He cannot go into the merits.

SHRI. LAL K. ADVANI: Perhaps the hon. Minister has not been listening to the translation which I am sure must have been correct. I may speak in English to communicate directly.

I would say that so far as the merits of the Bill are concerned when it is taken up for consideration it would be an occasion that I would oppose. Even then, on merits also, I may oppose.

But, at this point of time, I may point out to the Government that this House does not have the legislative competence to enact a Bill of this nature. If it has been a Constitutional Amendment Bill, it would have been a different case. But the scheme of the Constitution is that there should be elections to every State Assembly every five years. That is the scheme of the Constitution.

The only exceptions are if there is imposition of President's Rule and, there too, the

Constitution provides a limit or, if there is an Emergency in that State. These are the two exceptions.

There is Article 174 which provides that the duration, the intervening period between two Sessions of an Assembly should not, under any circumstances, exceed six months.

Now these are the constraints within which elections to an Assembly should be held.

Till now on so many occasions we have postponed elections of Punjab. The last elections to the Punjab Assembly were held in 1985, if I am correct and, that Assembly lasted for two years. Since 1987, for the last four years, there have been no Assembly elections in Punjab and there is no representation there in the State of Punjab. Every one is aware of it and we will discuss it when we discuss the merits of the case.

But today what I wish to say is that a notification was issued in the month of April for holding an election. Those elections were subsequently postponed a bit and ultimately on perhaps the 22nd of June, the elections were held as scheduled to be held. We have made certain suggestions on that in order to see that the possibility of those indulging in violence were not able to disrupt the course of elections. Certain suggestions were made by my party. Unfortunately they were not accepted by the Government because we suggested that as it has been done in the earlier case, when Punjab elections were held, left there be an Ordinance under which, if an independent candidate is killed or dies during an election, the elections would not be countermanded. The intention was to see that independent candidates who are always numerous, in large number, are under no threat of any kind. It would have given them automatic protection from the hands of these assassins whose objective was not a particular independent candidate

but whose objective was to disrupt elections somehow and then the whole exercise of providing protection would be confined to party candidates which could be a much smaller number and, therefore, it would be a feasible proposition. Somehow, this was not accepted and so it became easy for the assassins to go on bumping of one candidate after another. May be in the course of the campaign itself, the Government could have taken notice of it and decided not to hold an election. Nothing of that kind happened and the Governor went about trying to make all necessary arrangements to see that the polls were conducted properly, as fairly as possible, on 22nd June and just one day before 22nd June, the elections were postponed. But they are postponed only to be held any time before the 30th of September. For the first time, we are going to give legislative imprimatur. We are going to give parliamentary sanction not to just postponement of elections but to cancellation of elections indefinitely.

It says that in view of the aforesaid circumstances and difficulties and also to guard against further loss of lives of the candidates and other innocent persons—I am reading from the Statement of Objects and Reasons—it has become necessary to cancel the notifications calling for general elections in the State of Punjab for the present. Elections shall be held as soon as proper arrangements are made. I am sure that any one can see that in the circumstances in which Punjab is today, this kind of indefinite postponement of elections can mean permanent postponement of elections. There will be permanent postponement of elections. No elections shall be held in Punjab because this kind of a situation prevails. You just realise what is going to be the impact of this on Punjab itself. There is a political consequence of it. The situation is very serious. Therefore I hold that constitutionally this House is not in a position to cancel this election by a simple legislation of

[Sh. L.K. Advani]

this nature. It needs a constitutional amendment. On merits also, should not be done. It would convey a very wrong signal to the common citizens of Punjab. The greatest damage that could have been done for the conduct of elections was done on 21st of June. A couple of my own party candidates were killed. One or two candidates have been killed even after that. Elections are supposed to be held by 30th of September. Even after all these killings, after crores of rupees have been spent on transferring paramilitary forces from the whole country to Punjab, we are going to cancel elections and convey to the people of Punjab this message that we cannot have elections in Punjab at my time until it is absolutely quite normal there. I don't think this is a wise and prudent step, on any score. I feel that in this particular matter the Government would do well to withdraw the Bill and not to introduce the Bill. I feel the House would do well not to allow the Government to introduce the Bill.

[Translation]

SHRI. GEORGE FERNANDES (Muzafarpur): A little while ago I told my friend from the opposition benches that the Bill was circulated on 10th and that too when he raised the issue of circulation of the Bill. I remember the date because on 10th, I went to attend the meeting of the Consultative Committee attached to the Ministry of Home Affairs at 9 A.M. after having gone through the Bill in the morning. In the meeting the hon. Minister of Home Affairs stated in his speech that the situation in Punjab was improving ... (interruptions)..

[English]

MR. SPEAKER: We do not refer to the proceedings of the Consultative Committee meetings here.

[Translation]

SHRI. GEORGE FERNANDES: I am not referring to proceedings of the Consultative Committee, I am quoting just all that has appeared in newspapers. All this was repeated again and again by the Minister of Home Affairs in the meeting. Lately the hon. Minister has reiterated time and again, both in the House as well as outside the House that the situation in Punjab has been improving. The hon. Ministers statement of 10th can be seen in the newspapers of 11th. I went through the Bill in the morning before going to the meeting. The statement of the objectives and reasons of the Bill say:—

[English]

"The terrorist activities in the State are on the increase and after the announcement of elections, large-scale killings and massacre of innocent people have taken place..."

[Translation]

One organ of the Government says that the situation in Punjab is fast returning to normalcy and the other organ i.e. the hon. Minister of Law says that the situation has gone from bad to worse and hence the present legislation. raising of constitutional points by Shri. Advani is a different matter, but when the Government is saying two different things, how can the House trust the intentions and sincerity of the Government in bringing the legislation. How can any organ of the Government be trusted and reposed faith, when two organs make different statements as was seen today in the matter of Bofors. An hon. Minister stated that there is no prima facie case but the hon. Minister of Law says that the orders of the Supreme Court are going to be pursued. In such a situation we will give more credence to what the hon. Minister of Law says because his knowledge of these things is far more than

the hon. Minister of Health, who does not fully know the details. He has not full knowledge of anything except the one, which is never discussed in the House.

[English]

SHRI RANGARAJAN KUMARAMAN-GALAM: It is not fair to make that comment. The hon. Minister is not present now.

SHRI. GEORGE FERNANDES: I do not know whether one can make a light-hearted comment or not.

SHRI. RANGARAJAN KUMARAMAN-GALAM: It must be genuinely light-hearted. (Interruptions).

[Translation]

SHRI. GEORGE FERNANDES: We gave more credence to the hon. Minister of Law because of his adroitness in such matters. Similarly the hon. Minister of Home Affairs knows about the conditions prevailing in Punjab better and not the hon. Minister of Law. The hon. Minister of Home Affairs fully knows his duties and responsibilities and only out of a sense of duty he told us that the situation in Punjab was improving.

I would like to raise another issue. The Bill today has been moved, but the House must be remembering clearly the circumstances in which the elections in Punjab were postponed. Elections in Punjab were not postponed because of the worsening of conditions. It was done only when it became apparent that a new Government was going to assume office in Delhi. Election Commission took the stand of holding the elections in Punjab, even in difficult circumstances that were prevailing in the state at that time. So everyone jumped into the election fray. At that time all the preparations were made and many persons even lost their lives but now it is being said that elections cannot be

conducted because of non availability of Para military forces. In the elections in various part of the country, para military forces and police rendered every assistance. Elections were conducted in three days all over the country and now the elections in Punjab are being deferred for non-availability of para military forces. There can be no better way of misleading the House than this.

Sir, my submission is that this Bill should be opposed on two grounds. I know that you are very impartial but set the present Government right so that it does not indulge in misleading the House in this fashion.

Sir, two issues are clearly misleading. One the situation in Punjab and the other non-availability of Para military forces. The hon. Members are not school going kids. It is quite astonishing that para military forces are not available with the Government to hold elections in 12-13 Lok Sabha constituencies and Vidhan Sabha constituencies in Punjab. How is it possible that adequate forces are not available for holding elections in Punjab, when elections could be conducted in 530 Lok Sabha constituencies and 4000 Vidhan Sabha constituencies? Why does the government take the House lightly? Do not try to mislead the House. I won't agree with what you say. I will stop my speech, but I won't yield. The Bill needs to be rejected with ample courage.

[English]

MR. SPEAKER : That word will not go on record.

[Translation]

SHRI. GEORGE FERNANDES: I withdraw the word. It is now for the Government to react and withdraw the Bill.

SHRI. GUMAN MAL LODHA (Pali): Mr. Speaker, Sir, with your permission I raise a

[Sh. Guman Mal Lodha]

[Translation]

constitutional matter. I would not like to repeat what Shri. Advani and the hon. Member has stated in the House just now. Article 329 of the constitution clearly states that issues connected with elections cannot be rised anywhere. While interpreting Article 329, the Supreme Court and the High Court have stated that all the election stages i.e. nomination, filing, withdrawl and uncontested declaration start with the notification for elections. Under section 58 of R.P. Act, presiding officers and returning officers have the powers to postpone elections if an extraordinary situation arises.

The enactment of present legislation will create a constitutional crises in the country and any political party will misuse it according to its convenience. In the case of defeat staring in the face, any political party will get the elections suspended or postponed four days before the date of polling, through the road roller majority at its command. Then the matter can neither be petitioned nor can the writ be filed in any High Court.

18-19 by elections are due in Uttar Pradesh. The legislation will go down as a black law in the annals of history. The very basis of elections i.e honesty and impartiality will suffer. Therefore, I submit that the issue does not pertain to Punjab alone. The issue before us is whether after the process of filing of nominations for elections and withdrawl is over, the election of an unopposed candidate will stand nullified with the enactment of present law? This is a serious matter and I would like the hon. Minister of law to clarify it.

[English]

Can we set them aside? Can we undo that? This can always happen. (Interruptions)

(Interruptions)

Issue of expenditure is separate. A fundamental bedrock of democracy is at stake. But here, campaign was undertaken and expenditure was incurred. Elections are being sought to be stalled through this legislative measure. Despite all the expenses and rolling of election process, which was initiated during the tenure of Shri Chandra Shekhar and boycotted by the Congress (I), now in power at the Centre, the elections have been sought to be stalled. Tomorrow there may be some other party in power, but it is not good to stall the election process whatever may be the opinion of the Government about bloodshed and law and order in Punjab. We do not doubt the sincerity of the Government, but still it is not good to suspend election process. Even if constitutional amendment is carried through in article 368.

[English]

Because it goes against the basic structure of the Constitution. It means violating the fundamental stature of the Constitution.

[Translation]

In that case, the Supreme Court will strike it down. therefore, I would like to cite two judgements. If need be I will read them out in full. The first judgements pertains to 1970 elections, Rampatkar-versus-Jatti, the Ex-Vice-President of India, SCC page 147 and the other relates to Ramaswami-Versus Krishna, 1963 AIR Supreme Court Page 458-461. Both the judgements lay down that election process set rolling once cannot be stalled through either a legislative measure or by courts as a cardinal principle. Therefore, we must deeply ponder over the issue as it will guide the future of history of our country, the democracy and will also become a parliamentary convention. While

opposing the Bill, I would like to state that if there was a need for legislation, how could the Election Commission defer the elections in Punjab. If the election process is interfered with either by the election Commission or through enactment of legislation, it will be like murdering a still born child or murder and rape of our democratic set up.

Therefore, I request and submit that since I have got constitutional objections, the leave to introduce the Bill should not be granted.

[English]

SHRI CHANDRA JEET YADAV (Azamgarh): Sir, I am opposing the introduction of this Bill on the basis of the legislative competency of this House. Besides, the other aspect of the cancellation of the entire process of the election, will give a very wrong signal to the whole country; it will also give a very wrong signal to the functioning of the parliamentary democracy in our country.

How the elections should be held and how it should be conducted is provided in our Constitution from Articles 324 to 329A. These are the only provisions in our Constitution and Article 324(1) of the Constitution very clearly says that:

"That superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, shall be vested in a Commission (referred to in this Constitution as the Election Commission)"

These are the only Articles which relate to the holding, conducting of the elections in our country. Under these Articles, now, we had passed the Representation of the People

Act, 1951. Therefore, the Constitution gave this competence to this House how the elections will be conducted, how they will be held. We have already enacted that in certain cases elections may be postponed, may be countermanded. But nowhere we have said that the whole process will be cancelled. If you see, in the Representation of people Act, there are provisions in Chapter III, articles 52, 57, 58 and 58-A. These are the only provisions under which elections can be postponed. It can be countermanded if before the process of the polling starts, a candidate is killed or is dead. Then the right goes to the Returning Officer. If he is satisfied that the candidate has died, has been killed, he can postpone and communicate it to the Election Commissioner. In certain cases under those articles of Representation of people Act, the Election Commission has also got the right in cases where booth-capturing has taken place, where the election counting process has been disrupted, where ballot-boxes were destroyed. In those cases only, the Election Commission has got the right either to countermand or to postpone the election. Election Commission has got the right in those special cases also only to extend the dates, which in the case of Punjab, they did. But how was it done? The most objectionable thing is which has never happened in free India, that the election processes for the whole State are going to be cancelled and a Bill is being brought before this House that entire process should be cancelled because it suits the ruling Party. Even the Representation of people Act does not give them right. That is the only Act which the Parliament has enacted. The election in Punjab was to be held on 22nd of June. On 21st June at 4 a.m. in the morning, a journalist got in touch with the Governor of Punjab and asked him, "Is the election going to be postponed?" The governor replied, "Is it so? I have no knowledge." Now the whole country knows that the Governor resigned only on this issue because the whole elections were postponed with serious political implications.

MR SPEAKER: If you want to find out whether this legislature has the competence or not, we go to the Union List, Concurrent List and the State List. If it is mentioned in the State List, the jurisdiction is barred. If it is not mentioned in the State List, then under residuary powers also, this legislature... (*Interruptions*)

SHRI CHANDRA JEET YADAV: Will you just listen? I am not saying that this House has no right to pass an Act.

MR. SPEAKER: That is exactly the point we have to discuss at this point of time.

SHRI CHANDRA JEET YADAV: You must differentiate between the two. There are two positions. (*Interruptions*) Passing of an Act is one thing and acting according to that Act is a different thing. We passed an Act. We should act according to that Act. The Act does not give power to anybody to cancel the entire process of the election. The election can be postponed.

The right thing for the Government would have been to bring an amendment in the Representation of people Act either to make it retrospective that it will also apply to Punjab or to bring an amendment in the Constitution only for the purposes of Punjab, for no other purposes. In this House we have passed earlier. We have amended the Constitution only for the purpose of Punjab for no other purpose. We made a very specific amendment in the Constitution that it will apply in a specific situation only for Punjab for a certain period, not beyond that. Therefore, I am saying that the Government is doing an act which will damage the very basis of our democracy. Really speaking, you are trying to undermine and destroy a body which has been constituted under the Constitution, the Election Commission. The Election Commission has already announced that on the 30th of September, that is, this month, elections should start there. That is the only right

which they have. The Chief Election Commissioner or the Election Commission has no right to go beyond that. Neither they or the Government can cancel the entire process because the Representation of People Act and the Constitution does not give that right to them. Sir, I would say that this will set up not only a wrong practice but this will go against the constitutional provisions of our country. This will damage the democratic processes in our country. Democracy will be destroyed if, by the sweet will of any Government, the elections are postponed just three four hours before the polling was to start like that of Punjab. It was to start at 7 AM and at 4 AM, the Governor, who was responsible to conduct the elections, did not have any knowledge and only on that issue, he resigned saying that he cannot do anything which will go against the Constitution and anything which will go against the Constitution and anything which will hurt the feelings of the people of Punjab. The excuse that is mentioned in the Statement of Objects and Reasons of the Bill why the process is being cancelled is not correct. Election was held in Assam in the same condition (*Interruptions*)

MR. SPEAKER: You go into the merits of the Bill at this point of time.

(*Interruptions*)

SHRI CHANDRA JEET YADAV: Yes, I will speak about that later on.

MR. SPEAKER: So, will you speak again?

SHRI CHANDRA JEET YADAV: I will speak on the Bill certainly when it will come and if you allow me.

So, my request is that you should also go through it carefully. My request is that it should not be made a technical thing. You read the constitutional provisions and the People's Representation Act.

MR. SPEAKER: You do not give too much of discretion to the speaker also. That is also not good.

SHRI CHANDRA JEET YADAV: Sir, ultimately you have to decide whether the Bill has legislative competence or not (*Interruptions*)

MR. SPEAKER: No. I do not decide. The House will decide.

SHRI CHANDRA JEET YADAV: In the ultimate analysis, the House will decide... (*Interruptions*)... The House will decide on the introduction of the Bill also.

MR. SPEAKER: The House decides by voting.

(*Interruptions*)

SHRI CHANDRA JEET YADAV: What I am saying is that the introduction of the Bill will be decided by the House itself. Please listen with patience. You are in so much excitement that you do not have the patience to listen. I am saying that the introduction of the Bill is decided by the House. Therefore, neither the Constitution nor the Representation of People Act gives them any power to cancel the process of elections. This will be a very undemocratic process and this will erode the faith of the people in normal elections of our country and that will become a very serious thing.

With these words, I request the Law Minister not to show us Item 77 of the Union List. It is mentioned there that the Government has the power to enact the Act but the Constitution does not give you the power to cancel the process of elections. Please do not introduce the Bill otherwise the House should reject it.

SHRI SHARAD DIGHE (Bombay-North Central): Mr. Speaker Sir, all the three hon.

Members who have opposed this Bill on the ground of legislative competence have, in fact, opposed it on merits only or showed that there is no propriety to pass this Bill. As far as the legislative competence is concerned, I may point out that Item 72 of the Union List gives this power to this House.

It says:

"Elections to Parliament, to the Legislatures of States and to the offices of President, Vice-President and the Election Commission."

This Bill clearly relates to elections to Parliament and State Legislatures. Therefore, I say that there is a clear provision in the Constitution that this House has got the legislative competence as far as this Bill is concerned.

Now the leader of the Opposition Shri Advani has also ended his speech by saying that it would be a most unwise and not prudent step to pass this Bill. So, he did not certainly oppose it on the grounds of legislative competence. He has merely said that this is for the first time that this type of a Bill has been brought. But the situation in Punjab is also unique and it is for the first time that such a situation has arisen. So, this too does not affect the legislative competence of this House. He also stated that instead of an ordinary law, a constitutional law should have been passed. But he has not supported his arguments with any of the Articles in the Constitution. This too shows that legislative competence is there. There may be a difference of opinion on what type of law should be passed. If an object can be achieved by two ways, Government may choose one way and you may think the other way would be better.

Similarly, Shri Chandra Jeet Yadav said that the Representation of People's Act should have been amended. That may also

[Sh. Sharad Dighe]

be a way of achieving this object. But if the Government has chosen this particular way of passing this Act, there is nothing wrong as far as legislative competence is concerned. Shri Chandra Jeet Yadav referred to Articles 324, 329(A) etc. These Articles merely refer to election rules, on how to conduct elections and so on. That is there in the Representation Act and there is no power for the Election Commissioner to cancel an election. He can postpone the elections to a further date. But here, the Government wants to achieve the object of cancelling the elections completely. Therefore, what I say is that there is a clear provision under Article 72.

As far as the speech of Shri George Fernandes is concerned, he has not spoken on the competence of the House at all. He made a political speech and opposed the Bill. He went to the extent of saying that the Speaker should reject it. I do not know what legislative competence the Speaker has got to reject the Bill which is sought to be introduced by the Government. It is absolutely impossible for the Speaker to do so at this stage. Under Article 72, it has complete legislative competence and all these arguments hold no water at all.

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, Sir, Shri Dighe has clearly brought out the legislative competence aspect.

SHRI GEORGE FERNANDES: Sir, I am on a point of order. Before you come to a conclusion, I may be given a chance.

MR. SPEAKER: This time, will you speak strictly on legal matters?

SHRI GEORGE FERNANDES: I will speak strictly on my point of order.

SHRI RANGARAJAN KUMARAMANGALAM: With regard to legislative competence it is very very clear that is the Parliament alone which has the authority to enact any legislation with regards to elections. Actually under RP Act, the power to call for elections on the recommendation of the Chief Election Commissioner is with the President of India. Normally, if one wanted to pull the interpretation a little further, one could have done it by saying that taking into consideration the General Clauses Act and its interpretation, when we have the power to call for elections, we have the power to cancel the elections as well. When one did not want to pull the interpretation that far, one could have gone a little further and said that the RP Act may be amended. Shri Chandra Jeet Yadav made this suggestions saying that the RP Act may be amended to empower the President to cancel the elections. The Government thought it fit not to do either way. We felt, since cancellation of an election is a very important aspect, it should not be left to the executive or to any single constitutional authority. It should be something that the House should take upon itself, in every instance whenever a situation arises, taking into consideration the various aspects that are involved, and pass a specific legislation with full seriousness if a particular election has to be cancelled for whatever reasons it may be required. I do not want to get into the reasons now though I wish to disagree with the hon. Member Shri George Fernandes that there is a controversy or difference of opinion between the Home Ministry and the Law Ministry. We think alike and we act collectively.

SHRI GEORGE FERNANDES: But you speak differently!

SHRI SOMNATH CHATTERJEE: Or hesitantly or haltingly.

SHRI RANGARAJAN KUMARAMAN-GALAM: I am neither hesitant no halting. It is due to a bit of virus in my throat.

I may clarify categorically that this Government took a decision to move a specific Bill to cancel the elections in order that we could set down a precedent that no elections would be cancelled by either an executive authority or any constitutional authority *suo motu* and it would be done only by the legislature keeping the various aspects in mind. We thought this is the most democratic and most appropriate forum and this is the most appropriate method by which we can do it. It is the Parliament which has legislative competence from the point of view of both propriety as well as legal provisions. And I request the House to grant leave for the introduction of the Bill.

SHRI GEORGE FERNANDES: I raise a point of order under Rule 65(1) which says:-

"Any Member, other than a Minister, desiring to move for leave to introduce a Bill, shall give notice of his intention, and shall together with the notice, submit a copy of the Bill and an explanatory Statement of Objects and Reasons which shall not contain arguments:

Provided that the Speaker may, if he thinks fit, revise the Statement of Objects and Reasons."

Apart from raising this point of order under Rule 65(1), I also want to go back to the rulings given by the Speakers in legislative matters that came before this House once on 16 December 1960 and once on 5 August 1968. I am also falling back on Kaul and Shakhder, 1991 edition, page 485. Sir, there is a sub-chapter in the Statement of Objects and Reasons. I will not read the first paragraph. I will go to the Second Paragraph. It says:

"The Statement of Objects and Reasons has to be framed in non-technical language. It should not be unduly long nor should it contain anything of argumentary character and it may be revised if the Speaker so desires. Moreover, it is to be signed by the Member in charge of the Bill. Statement can be amended by Member in charge of the Bill with the permission of the Speaker at the time of introducing the Bill. Any lacuna in the Statement of Objects and Reasons must be pointed out at the time of introduction of Bill. A point raised in that regard at the consideration stage of the Bill is not valid."

Now, Sir, I have pointed out a lacuna in the Objects and Reasons. I don't want the Law Minister to take amiss. I don't want anyone to take amiss. But there are certain points where the Government may think alike; act alike but if Government speaks in different languages then people come to different conclusions. The message that you are sending out everyday through one section of the Government is that things are improving. We know the situation on the ground; we know the reality on the ground. You move a Bill on the 12th of September and sign on the 6th of September a Statement saying that the situation has now completely reached a stage where we are able to hold the elections and two days' after, four days' after to be very precise, on the 10th the Home Minister makes a Statement which had gone to the people of Punjab. This, Sir, creates an impression that there is definitely a lacuna in so far as the Government's decision is concerned.

Secondly, Sir, I will take greater objection to the latter part of the Statement of Objects and Reasons where the Government says that we do not have adequate security forces to hold the elections in Punjab. Nobody in his senses is going to buy this

[Sh. George Fernandes]

argument; either here in the country or anywhere in the world nobody can accept the argument that the Government of India - which has I think the fourth largest standing army in the world, whose paramilitary forces, whose police and so on and so forth are greater in number than the army - is unable to hold elections in a small State for 13 seats in Parliament and 117 seats in the State Assembly.

How can one allow such kind of objects and reasons to become a part of the record of this House? After all, there is something called responsibility; there is something called being very precise and very objective. One does see the problem which the Government is facing but that should not be incorporated in the Objects and Reasons as they have merged here. Therefore, my appeal to you, Sir, is to ask the Government to revise the Statement of Objects and Reasons and come forward with the Bill, if you have other views about the Bill. If you agree, that our suggestions are...

MR. SPEAKER: This is coercing me.

SHRI GEORGE FERNANDES: In the event you feel that this Bill, as far as our earlier Constitutional objections etc. are concerned, does not hold water, then, Sir, my submission is that you at least ask the Minister to revise the Objects and Reasons and reintroduce the Bill.

MR. SPEAKER: I do not know what was the view of the Hon. Home Minister. The point is very intelligently made. But it is not in order. I don't uphold it.

SHRI LAL K. ADVANI: Sir, the point of order is valid to a basic thing that if a contradiction has been pointed out and the Government does want to revise it, it can do it

only at this stage. It cannot do it tomorrow or day after tomorrow when discussion is taken up. So, it depends upon the Government. To that extent the point of order is very valid.

SHRI RANGARAJAN KUMARAMANGALAM: Sir, I made it very clear that there is no contradiction. If the Hon. Member wants to see the contradiction which does not exist, I cannot help it.

SHRI MOHAN SINGH (Deoria): Sir, Article 327 of the Constitution says:

"Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitutions of such House or Houses."

[Translation]

The House is going to enact a law in exercise of the powers vested in it to constitute various legislative bodies. But it has restricted powers in this regards and the proposed legislation will not be helpful in the constitution of the House. That is why it is beyond the jurisdiction of the House. Therefore, it should be reconsidered... (*Interruptions*)

[English]

MR. SPEAKER: Again, the point has been made very intelligently but then it says "relating to the House". It does not speak about Constitution or non-constitution. I do not uphold it.

Now, the question is:

"That leave be granted to introduce a Bill to cancel certain notifications calling for general elections in relation to the State of Punjab."

Those who are in favour may say 'Aye'

SEVERAL HON. MEMBERS: 'Aye'

MR. SPEAKER: Those who are against may say 'No'

SOME HON. MEMBERS: 'No'

MR. SPEAKER: I think 'Ayes' have it 'Ayes' have it.

SHRI LAL K. ADVANI: 'Noes' have it.

MR. SPEAKER: Let the lobbies be cleared-

MR. SPEAKER: Now, the Lobbies have been cleared.

The question is:

"That leave be granted to introduce a Bill to cancel certain notifications calling for general elections in relation to the State of Punjab".

Those who are in favour may say 'Aye'.

SEVERAL HON. MEMBERS: 'Aye'

MR. SPEAKER: Those who are against may say 'No'

SOME HON. MEMBERS: 'No'.

MR. SPEAKER: Ayes have it, Ayes have it.

SOME HON. MEMBERS: Noes have it, noes have it.

MR. SPEAKER: Now, Division.

The Lok Sabha Divided

Division No. 4

14.42 hrs.

AYES

As on 20 Sept., 1991

A

Acharia, Shri Basu Deb (Bankura)

Ahamed, Shri E. (Manjeri)

Arunachalam, Shri M. (Tenkasi)

B

Barman, Shri Uddhab (Barpeta)

Basu, Shri Chitta (Barasat)

Bhonsle, Shri Prataprao B. (Satara)

Bhuria, Shri Dileep Singh (Jhabua)

C

Chacko, Shri P.C. (Trichur)

Chaliha, Shri Kirip (Guwahati)

Chandrakar, Shri Chandulal (Durg)

Chatterjee, Shri Nirmal Kanti (Dumdum)

Chaudhri, Shri Narain Singh (Hissar)

Choudhury, Shri Saifuddin (Katwa)

D

Dennis, Shri N. (Nagercoil)

Deora, Shri Murli (Bombay South)

Dev, Shri Sontosh Mohan (Tripura West)

Dighe, Shri Sharad (Bombay North Central)

Dome, Dr. Ram Chandra (Birbhum)

G

Ganguli, Shri Prathap Reddy

Ghatowar, Shri Paban Singh (Dibrugarh)

Giri, Shri Sudhir (Contai)

Giriappa, Shri C.P. Mudala (Chitradurga)

Gogoi, Shri Tarun (Kaliabor)

Gudadinni, Shri B.K. (Bijapur)

Gupta, Shri Indrajit (Midnapore)

H

Hossain, Shri Syed Masudal (Murshidabad)

I

Inderjit, Shri (Darjeeling)

J

Janarthanan, Shri M.R. Kadambur (Tirunelveli)

Jeevarathinam, Shri R. (Arakonam)

K

Kahandole, Shri Z.M. (Malegam)

Kanithi, Dr. Viswanatham (Srikakulam)

Kaul, Shrimati Sheila (Rae Bareli)

Khan, Shri Aslam Sher (Betul)

Khan, Shri Sukhendu (Vishnupur)

Kumarmangalam, Shri Rangrajan (Salem)

Kurien, Prof. P.J. (Mavelikara)

L

Lakshmarian, Prof. Savithri (Mukunnapuram)

M

Malik, Shri Purna Chandra (Durgapur)

Mallikarjun, Shri (Mahbubnagar)

Mandal, Shri Sanat Kumar (Joynagar)

Mathew, Shri Pala K.M. (Idukki)

Mathur, Shri Shiv Charan (Bhilwara)

Misra, Shri Satyagopal (Tamluk)

Mollah, Shri Hannan (Uluberia)

Mukhopadhyay, Shri Ajoy (Krishnagar)

Muralee Dharan, Shri K. (Calicut)

Muttemwar, Shri Vilas (Chimur)

N

Narayanan, Shri P.G. (Gobichettipalayam)

O

Odeyar, Shri Channaiah (Davangere)

P

Patil, Shri Prakash V. (Sangli)

Patil, Shri Uttamrao Deorao (Yavatmal)

Patil, Shri Vijay Naval (Erandol)

Patnaik, Shri Sivaji (Bhubaneswar)

Potdukhe, Shri Shantaram (Chandrapur)

Pradhani, Shri K. (Nowrangpur)

R

Rahi, Shri Ram Lal (Misrih)

Rai, Shri M. Ramanna (Kasaragod)

Ramchandran, Shri Mullappally (Cannanore)

Rao, Shri J. Chokka (Karimnagar)

Raychaudhuri, Shri Sudarsan (Serampore)

Reddy, Shri M. Baga (Medak)

Reddy, Shri Vijaya Bhaskara (Kamool)

Roy, Shir Haradhan (Asansol)

S

Sai Shri A. Pratap (Rajampet)

Sayeed, Shri P.M. (Lakshadweep)

Scindia, Shri Madhavrao (Gwalior)

Sharma, Shri Chiranji Lal (Karnal)

Shingda, Shri Damu Barku (Dahanu)

Shukla, Shri Vidhyacharan (Raipur)

Singh, Shri Ramashray Prasad (Jahanabad)

Soundaram, Dr. (Shrimati) K.S. (Tiruchengode)

Sultanpuri, Shri Krishan Dutt (Shimla)

T

Thomas, Prof. K.V. (Ernakulam)

Thomas, Shri P.C. (Muvattupuzha)

Thorat, Shri Sandipan Bhagwan (Pandharpur)

Tytler, Shri Jagdish (Delhi Sadar)

U

Unnikrishnan, Shri K.P. (Badagara)

V

Vijayaraghavan, Shri V.S. (Palghat)

W

Wasnik, Shri Mukul Balkrishna (Buldana)

Z

Zainal Abedin, Shri (Jangipur)

NOES

A

Advani, Shri Lal K. (Gandhi Nagar)

Ansari, Shri Mumtaz (Kodarma)

B

Bandaru, Shri Dattatraya (Secunderabad)

Berwa, Shri Ram Narain (Tonk)

C

Chaudhary, Shri Rudrasen (Bahraich)

Chavda, Shri Harisinh (Banaskantha)

Chhatwal, Shri Sartaj Singh (Hoshangabad)

D

Das, Shri Anadi Charan (Jaipur)

Dhumal, Prof. Prem (Hamirpur)

F

Fernandes, Shri George (Muzaffarpur)

Fundkar, Shri Pandurang Pundlik (Akola)

G

Gangwar, Shri Santosh Kumar (Bareilly)

Girija Devi, Shrimati (Maharaj Ganj)

J

Jai Prakash, Shri (Hardoi)

Jaswant Singh, Shri (Chittorgarh)

Jenna, Shri Srikanta (Cuttack)

Joshi, Shri Anna (Pune)

Joshi, Shri Dau Dayal (Kota)

K

Kamal, Shri Shyam Lal (Basti)

Kanaujia, Dr. G.L. (Kheri)

Kanodia, Shri Mahesh (Patan)

Kori, Shri Gaya Prasad (Jalaun)

Kumar, Shri V. Dhananjaya (Mangalore)

L

Lodha Shri Guman Mal (Pali)

M

Manjay Lal, Shri (Samastipur)

N

Naik, Shri Ram (Bombay North)

O

Oraon, Shri Lalit (Lohardaga)

P

Paswan, Shri Chhedi (Sasaram)

Patidar, Shri Rameshwar (Khargone)

R

Rai, Shri Lall Babu (Chhapra)

Rana, Shri Kashiram (Surat)

Rawal, Dr. Lal Bahadur (Hathras)

Rawat, Prof. Rasa Singh (Ajmer)

S

Sarode, Dr. Gunvant Rambhau (Jalgaon)

Sethi, Shri Arjun Charan (Bhadrak)

Shakya, Dr. Mahadeepak Singh (Etah)

Shukla, Shri Astbhuja Prasad (Khalilabad)

Singh, Shri Mohan (Deoria)

Singh, Shri Pratap (Banka)

Singh, Shri Rajveer (Aonla)

Singh, Shri Ram (Haridwar)

Singh, Shri Uday Pratap (Mainpuri)

Syed Shahabuddin, Shri (Kishanganj)

T

Thakore, Shri Gabhaji Mangaji (Kapurwanj)

Tripathi, Shri Lakshmi Narain Mani (Kaiserganj)

Tripathi, Shri Prakash Narain (Banda)

Y

Yadav, Shri Chandra Jeet (Azamgarh)

Yadav, Shri Devendra Prasad (Jhanjharpur)

Yadav, Shri Ram Saran (Khagaria)

The following Members also recorded their votes.

14.41 hrs

MR. SPEAKER: Subject to correction, the result of the division is:

PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) BILL*

Ayes: 81

[English]

Noes: 49

The motion was adopted

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI K. VIJAYA BHASKARA REDDY): I introduce the Bill. (*Interruptions*)

THE MINISTER OF HEALTH AND FAMILY WELFARE (SHRI M.L. FATEDAR): I beg to move for leave to introduce a Bill to provide for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations of sex-linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide; and for matters connected therewith or incidental there to.

SEVERAL HON. MEMBERS: Noes.

MR. SPEAKER: If there was a small difference between the two numbers, we would have waited. But there is a big difference. That is why we have not waited. We have gone to the second Bill. Do you want a division on the second Bill also?

MR. SPEAKER: The question is: That

"That leave be granted to introduce a Bill to provide for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations of sex-linked disor-

SEVERAL HON. MEMBERS: No.

Ayes: Sarvashree Dalbir Singh, Siddappa Bhimappa Nyamagouda, Bijoy Krishna, Nandique, Nurul Islam, Rao Ram Singh, Bare Lal Jatav, Khelsai Singh, M. Krishna Swamy, Swarup Upadhyay, Banwari Lal Verma, Bapu Hari Chauri, Bhogendra Jha, Tej Narayan Singh, Subrata Mukherjee, Vishwanath Shastri, Somnath Chatterjee and Kuli Bolin.

Noes: Sarvashree GMC Balayogi, Mahendra Baitha, Satyendra Narain Brahma Chaudhary, Hari Kishore Singh, Chun Chun Prasad Yadav, Dr. S.P. Yadav, Shri N.K. Baliyan, Shrimati Saroj Dubey, Sarvashree Roshan Lal, Ram Nihore Singh, Shiv Sharan Singh, Braja Kishore Tripathy, Surendra Pal Pathak, Raj Naram Balraj Passi, Ramesh Chand Tomar, Virendra Singh, Rampal Singh, Brijbhushan Sharan Singh, Shrimati Sheila Gautam, Shri Ram Kapse, Sarvashree Chandubhi Deshmukh, Ram Tahal Chowdhary, Yoganand Saraswati, Ganga Rani Koli, Anand Ratna Maurya, Pankaj Chowdhary, Ram Lakhan Singh Yadav and Shreesh Chandra Dikshit.