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Title: Discussion on the Companies (Second Amendment) Bill, 2001. (Bill passed)

MADAM CHAIRMAN: Now, the House shall take up Item No.19 of the Agenda.

THE MINISTER OF FINANCE AND COMPANY AFFAIRS ( SHRI JASWANT SINGH): I beg to move:

"That the Bill further to amend the Companies Act, 1956, be taken into consideration."

I would request the House to grant its approval without discussion as it has gone through the entire process in the Standing Committee...(Interruptions) I hear the voices of disapproval.

Madam, this Bill was introduced in August 2001. Thereafter, it was referred to the Standing Committee on Home Affairs because the Companies Department was with the Committee on Home Affairs. The Committee presented its report. A few changes have been suggested and they have been accepted. The official amendments of the Companies (Second Amendment) Bill will be moved at the time of enactment.

I would not take the time of the House. There is no doubt that the hon. Members know all the aspects. The proposed legislation, when passed, will provide primary producers, a kind of organisation, that is, the producer company, to produce and market the products in a modern and professional manner on par with other companies. Therefore, it will enhance their efficiency and competitiveness while operating in today's globalised market. I would request the House to approve the proposed legislation. It will contribute to the betterment of primary institutions.

MADAM CHAIRMAN: Motion moved:

"That the Bill further to amend the Companies Act, 1956, be taken into consideration. "

SHRI PRIYA RANJAN DASMUNSI: Though the Minister tried to explain, I rise to give a very cautious support to this Bill. In a very smooth and very orderly manner, the Bill is brought up for consideration. But there are a few signs which are worrying me, possibly haunting many others.

Madam, the very object of the Bill, as has been stated by the hon. Minister in the text of the Bill, is to offer a statutory and regulatory framework that creates the potential for producer-owned enterprise to compete with other enterprise on a competitive footing. We know these are very organised technical words used these days in the name of liberalisation and liberal economy.

In this Bill, there was a fear earlier among the co-operatives that this Bill will compel or otherwise step by step shall proceed in such a manner that the co-operative will become ultimately a company and it cannot function as a co-operative under the Act. Similar was the apprehension expressed by our very senior colleague from West Bengal. He is a devoted person in the co-operative movement.

#### **16.37 hrs (Dr. Laxminarayan Pandeya in the Chair)**

Shri Mahboob Zahedi will contribute when he rises to speak. But only one provision has been made by which there is a permanent guarantee that the fear will not vanish. Temporarily you can get rid of this fear. The temporary guarantee is to provide an opportunity to co-operative institutions to voluntarily transform themselves into new form of producer companies. Voluntarily means, if a co-operative unit and many other units together assemble and voluntarily decide, they can do so. But you know the co-operative scams these days.

The co-operative dream was dreamt by a lot of philanthropists including Mahatma Gandhi at one point of time. It is co-operative movement that gave strength to our rural economy for a number of years. But in recent times one after another co-operative scam, the biggest of which is the Madhavpura Co-operative Scam of Gujarat, shakened the faith in the entire system in terms of accountability, security and safety of the investors and the unit-holders in the co-operatives. One of the successful co-operative movements was led by Dr. Kurian at one point of time at Anand. It provided the new name, 'Amul' and other things. Even at that point of time, there was a lot of criticism for monopolising certain things against the interest of the small milk producers.

While I support this Bill, I will urge upon the Minister to explain us two things. The Unilever Group was, once upon a time, famous to produce Vanaspati. Is it that, under the garb of this Act, the multinational companies who want to come to India as a manufacturing unit shall also ultimately take hold of the producer units, the sick co-operatives and the co-operatives which cannot now yield results? They form the unit and take over all the infrastructure that

has been built by the co-operatives. One fine day, they will repatriate their profits and amounts back home and keep the whole trade siphoned off and empty.

That fear is there.

I talked to many friends in the co-operative movement from Maharashtra and Gujarat in our party. They feel that in this field in the name of producing units if the so-called multinationals come in and after the repatriation of the required profits that they are likely to make, if they leave the whole thing high and dry, the whole system of rural economy would again collapse. Therefore, while replying, the hon. Minister must assure us that this danger is not there.

The earlier Minister of Finance once assured us in this House that there would not be any entry of foreign investment and foreign companies into retail trade in India. Now, for the last three weeks, the fear is mounting and retail traders are meeting almost all the Opposition MPs that again a plan is being made to pave the road for them to invest or come into retail trade. This means, the retail trade is also left to their mercy. ...(*Interruptions*)

SHRIMATI MARGARET ALVA (CANARA): Sir, may I add just one small point here?

They had said, 'No', here in this House but the Tenth Plan document has the clause for FDI entry into retail trade. They are bringing it through the backdoor. The Tenth Plan document speaks about FDI entry into retail trade.

SHRI PRIYA RANJAN DASMUNSI : In the Statement of Objects and Reasons, it has been stated:

"Liberalization of the economy is in the process of changing the terms of trade between rural and urban, labour and industry, finance and commerce."

Please do not provide us this technical jugglery but explain in reality what it means.

In the name of producing units, across acres of land in India, they are now successfully bringing in oilseed units not through co-operatives, which was one of the major targets of our country but through multinationals. If in the name of producing units, two or three co-operatives try to venture and somehow become sick, some multinational would come in, enter the field of oilseed economy, repatriate the profits they derive from the oil wealth and eventually say that they are not interested any more just like the British once came and finished off our paddy fields and took over the indigo plantations and after getting their profits said enough is enough. So, this kind of a thing might come through the introduction of this Bill. We would like to know how the Government would take Parliament into confidence to dispel this apprehension and say that there are adequate protections. I support this Bill but with the caution that the hon. Minister would have to explain this matter so that it comes on record in this House, so that, if something like that happens in future, we can seek the protection from the Government.

SHRI VIJAYENDRA PAL SINGH BADNORE (BHILWARA): Sir, I stand to support this Companies (Second Amendment) Bill, 2001.

The hon. Member Shri Priya Ranjan Dasmunsi very rightly said that the co-operative movement was a dream of our founding fathers and leaders but the co-operative movement has had a chequered history. Some States have done very well in the co-operative movement. He also quoted something about the Madhepura Co-operative Bank but we should leave the banking sector of the co-operatives aside and start with why the co-operative movement was really introduced in this country. Why was that a dream? Basically, it was started with the view that the producer, the farmer or the agriculturist should avoid the middleman and should be able to market his produce on his own. That was how it was started.

In the times that have changed in a decade and a half, when the economic paradigm has really shifted, here he is talking about the MNCs and has talked about the globalisation. The economy has really opened up. The phase that he is talking about is the very reason that this Bill is being introduced. What I am trying to say is that the scepticism shown by some people that the MNCs will come and take over everything is not true. Actually this is the cooperative movement and it did need more of a breathing space so that they can become a company and really fight against the MNCs' take-over and the onslaught of the MNCs would not really take place if these cooperatives can become producer companies. This is not the only reason; but they have made all safeguards which have also been kept in this very novel a Bill which will really uplift the rural sector, the farming community, the agriculturists as a whole.

Let me also come to the point that even in the foreign land, all countries have had some sort of such legislation which has been there for some time. I would like to bring to the notice of the hon. Members of this august House that the user enterprises are registered and operate under the same laws as governed companies and their unique ownership features are recognised. In Denmark, cooperatives operate under Corporation Law with no specific

modifications. In Switzerland, cooperatives are legally considered one form of business organisation along with corporations, proprietorship, limited partnership etc. Zimbabwe has a Cooperative Companies Act as part of its Company Law. In the United States too cooperatives are chartered under the Companies Law of their respective States with special provisions that reflect their cooperative principles.

Basically, regarding this producer company, one can really make a producer company or a cooperative which wants to voluntarily become a producer company can also do so. But there is no mandatory provision in this Bill that all cooperatives, as the hon. Member was mentioning, will become or will have to become a producer company. That is also there.

This Bill also is very novel in the sense that it does not have the problems that a company can have. A Company can be taken over. In this Bill they have said that only a producer can be a member and not everybody can, with the power of their money, take over a producer company. That safeguard has also been kept into place.

Let me come to some of the provisions of this Bill. Firstly, the primary producers can come together and register as a producer company as in Section 581[c]. Secondly, such producer companies will be treated equally with both private and public companies in India with the safeguard, that to be members of the producer company, a person has necessarily to be a primary producer, as I have already mentioned. Thirdly, the members of mutual assistance are retained, the membership is voluntary, decision-making is democratic with each member having only one vote.

Now, you may be getting a lot of money; but one person will have just one vote unlike in the company where a take-over can take place. That is also there.

Fourthly, this law is an enabling law rather than prescriptive. In other words, the law does not compel any co-operative to become a company, but the co-operatives can convert themselves into companies.

Sir, this Bill is also a very important piece of legislation. Specially, let me mention about my own area. We have a *mahila* dairy in my area and that *mahila* dairy has been so educative that the women from my area are managing the whole dairy themselves. They have educated themselves because they are managing the whole affairs, but that dairy is facing a problem. I will just give you this example. I told them why they did not have something milk-plus, something that would be able to sell better than milk. Instead of collecting the milk and selling it as milk, why did they not have a unit of ice cream? There are problems in the co-operatives because they cannot get money from outside and they have a lot of restrictions. If it becomes a producer company, it will be able to get some sort of financiers and banking, and they will be able to attract some sort of foreign collaborations. Otherwise, co-operatives will become dying co-operatives and that is why, I feel that this Bill is a very important piece of legislation. I thank hon. Minister that he has been able to bring this Bill in record time.

SHRI MOINUL HASSAN (MURSHIDABAD): Mr. Chairman, Sir, I rise to oppose the Bill. I would like to mention here very briefly three or four points due to which I am opposing this Bill.

Statement of Objects and Reasons of the Bill has already been quoted. I would also like to quote from the Statement of Objects and Reasons. Last two lines of first paragraph of the Statement reads :

"In the present competitive scenario, if co-operative enterprises are to continue to serve rural producers, they require an alternative to the institutional form presently available under law. "

I am repeating this word 'alternative'. I would like to say that without strengthening the present co-operative system of our country, they are going to convert the co-operative system into company system.

First, what is the claim of the situation so far as the co-operative movement of our country is concerned? It is to provide more funds, more capital to the co-operative system, to provide an up-to-date legislation, to provide confidence to the rural poor on behalf of the Government and to provide funds to cleanse their balances as was done in the case of commercial banks. Without doing this, we are going to convert the co-operatives into companies. I doubt that the intention behind it is not good.

Now, I come to my second point. I would like to read out again from the Statement of Objects and Reasons. Para 3(iii) reads:

"to provide an opportunity to co-operative institutions to voluntarily transform themselves into the new form of producer companies."

I say again that they are using the word 'voluntarily'. I suppose that in time to come, it will be forced on them. Then, the word used in this line is 'opportunity'. What opportunity are they giving? It is to transform a co-operative into a producer company. It is nothing.

Its intention is to convert the cooperatives into a company and then to hand it over to multinationals and others. A situation will arise when everybody will try their best to convert the cooperatives into a company. For this reason, I am raising objection to this Bill, which is placed here by the Minister of Finance and Company Affairs.

The second point that I wish to mention here is that the cooperative movement in our country has a specific objective, which is to provide service to the people. It is not a profit-making institution, but is a service-oriented institution. People's participation in the cooperative movement is one of the major objectives. Our leaders, the Father of our Nation, and the First Prime Minister, Pandit Jawaharlal Nehru, have expressed similar views like this. I firmly believe that this legislation will dismantle the cooperative sector of our country.

Another point is that people do a lot of talking, so far as the cooperative system is concerned. No doubt, there are some lacunae in the cooperative system and in the cooperative movement of our country. We have discussed it in the House during the debate on the Multi-State Cooperative Societies Bill. However, I would like to say that the performance of the cooperatives throughout the country is not a negligible one. The cooperatives have an important share in our national income. There are lakhs of cooperative institutions at the primary, *taluk*, district and State levels, and specifically in the rural areas. Who provides credit to the farmers? It is not the commercial banks, but it is the cooperative institutions which provide credit to the farmers. The nationalised commercial banks utterly failed to serve the nation in this regard.

Therefore, first, these cooperatives will be turned into producer companies and, tomorrow, all the cooperative institutions will be converted into companies to be handed over to those who do not have any interest in our nation. Instead of helping the cooperatives financially and administratively, through this legislation, the Government of India is trying to dismantle this cooperative sector. I would like to say that it shows the anti-people attitude of the Government. For this reason, I raise my objection to the passage of this Bill in this august House. I firmly believe that this legislation will not help our country.

SHRI BIKRAM KESHARI DEO (KALAHANDI): Mr. Chairman, Sir, I stand to support this Companies (Second Amendment) Bill, 2001 because the idea of this Bill is not to crush the cooperative movement, as mentioned by the Communist Members, but it is to save the spirit of cooperation by this piece of legislation. It is to save the spirit of cooperation that producer companies are being formed and they are being given the cooperative status, a company status, so that they can access the market. For example, today, you pick up any cooperative society in the country. Please do not take Anand as an example because Anand is an exemplary cooperative in Gujarat. The cooperative movement in Gujarat and Maharashtra has been successful, but in other parts of the country, most of the cooperatives are a failure. That is why, a task force was set up. This Government has always tried to strengthen the cooperative sector. For example, the Multi-State Cooperative Societies Act, 1984 was modified and passed in the last Session. What does that envisage? It envisages that the cooperatives may be made autonomous, professionalism should be introduced, and the other problems concerning the cooperative societies are to be done away with.

**17.00 hrs.**

Therefore, a model Co-operative Societies Act was brought in based on the recommendations of the Chowdhury Brahm Prakash Committee. The law was meant to give a genuine character to the co-operatives and to facilitate building of an integrated co-operative structure with federal organisations at various levels to make it more responsive and accountable to their members. But this could not be done. Therefore, if the status of a producer company is not given to the co-operatives, then they would not be able to act as co-operatives and would not be in a position to market their products in the changed global economic scenario, particularly after the WTO has come into force.

Sir, you take the case of any co-operative in the country. Most of the co-operatives in the country are rural based, like it may be poultry, or dairy, or agriculture or rural credit. These co-operatives are not running well. There was a dual control on the co-operatives. Though co-operative is a State Subject under the Constitution to be governed by respective State Co-operative Acts, yet the regulatory powers of the banks have not been demarcated thereby leading to problems like the Madhepura Scam in which case the regulations of the Reserve Bank of India did not come within its ambit and the guidelines were not applied resulting in that massive Ketan Parikh Scam. So, these co-operatives have really been misutilised. Therefore, the Brahm Prakash Committee wanted to give more autonomy to this sector and make it more professional in its approach and improve the quality of its human resources.



The Task Force on Human Resource Development had reported that most of the co-operative banks are lagging behind in crucial areas like recruitment, placement, training, career progression, managerial acumen etc. There have been *ad hoc* appointments and over-staffing was a prominent phenomenon. So, the co-operative sector was in complete disarray. The co-operative sector had become a place for political postings thereby leading to too much of politicisation and corruption in this sector and was virtually on the verge of extinct.

Sir, our Government is trying to revive the spirit of co-operation that was there in the co-operative sector. The spirit of co-operation has to be revived and that can only be achieved by according them the status of producer companies and by allowing them to access share markets and bringing them within the ambit of the guidelines of the Reserve of India. It is only then the co-operatives would be able to invite professionals in order to make the management efficient and only then will there be an improvement in the rural economy and also the spirit of co-operation would stand to thrive.

It is with this objective that the Companies Second (Amendment) Bill has been brought forward. I thank the hon. Minister and also the Government for having shown so much of interest in the well-being of the down-trodden people who have formed societies like Vegetable Growers' Society, Fish Farming Society etc. There are thousands and millions of such societies throughout the country. It is in order to safeguard their interest, to safeguard their economy, this Companies Second (Amendment) Bill has been brought forward and I would like to congratulate the hon. Minister for having piloted the Bill.

SHRI SONTOSH MOHAN DEV (SILCHAR): Mr. Chairman, Sir, I rise to support this Bill but I would like to give one or two suggestions to the hon. Minister.

In our part of the country, not like in Maharashtra or Andhra Pradesh, the cooperative movement has become very weak in the course of time, mainly because of the inept handling of the cooperative movement by the management, defalcation and other things. During the time of the previous Finance Minister, there was a Committee to look into those problems and see how some of them can get revitalised with financial help. I gave the names of two particular cooperatives to the then hon. Minister but nothing has happened. Subsequent to that, I saw some cooperatives in other States being made viable by giving financial help. They are going to change the cooperatives now into companies. I do not know what will be the fate of those companies! The Bill does not say anything about that. There should be some deadline given to the respective Governments if you go by the cooperatives. Some of them going to the company provisions is good. I think it will protect them. The shareholders will also be protected. The purpose is very good.

Something has to be thought of in regard to the sick cooperatives which need to be revitalised. In that respect I urge upon the Minister, he is not here now, to kindly look into it. I am a member of the Consultative Committee on Finance. I did raise this subject and some movement was there. When Shri Geete was the Minister of State for Finance, he called us and discussed. After that, the issue has died down. While supporting the Bill, this is the only item I would like to draw the attention of the Minister to. I hope he will take appropriate action on this.

SHRI PRABODH PANDA (MIDNAPORE): Thank you, Sir, for giving me the opportunity to participate in this discussion.

I rise to oppose this Bill, as hon. Member Shri Moinul Hassan did earlier. The object of this Bill is to convert cooperatives into companies. This is the main point of my objection.

Yesterday, in this august House, the hon. Minister of Agriculture spoke in favour of cooperatives. He stressed upon their need. He said that in the present scenario there is no alternative to strengthening the cooperative movement and the cooperatives. It is amazing to see that today we are discussing a Bill which proposes to convert the cooperative sector into corporate sector and cooperatives into companies. This is the point of my objection. I, therefore, oppose this Bill. I hope the Minister will think over it and review it.

SHRI JASWANT SINGH: Mr. Chairman, Sir, I am grateful to the hon. Members for their views.

Very broadly, the objections focussed on the question that the Bill in some sense is a device to destroy the cooperatives. In fact, it could not be farther from the intention here, both implicit and explicit.

Sir, I wish to explicitly state that it is not so. I am explaining why it is not so. Firstly, this has met with the unanimous approval of the Standing Committee. In that Standing Committee, the hon. Members from CPM are also fully represented. There has not been any dissent.

SHRI MOINUL HASSAN : We are not denying that we are represented there. But there also, we raised objections.

SHRI JASWANT SINGH: I do not wish to enter into a disputation. That is the viewpoint here.

Sir, a question was raised that the cooperatives are being converted through some device. Firstly, let us understand clearly that the entire cooperative movement has to find a great deal of sustenance and strength from the State Government, without which, the Central Government, by itself, cannot sustain the cooperative movement.

I do not wish to dwell on the deficiencies or the difficulties. Let me specifically point out that the conversion of a cooperative to a company is purely voluntary, entirely voluntary. There is no compulsion. Also, if after conversion, it wants to reconvert to being a cooperative, there is a specific provision for that. Actually, this legislation has been requested for and supported by the cooperative movement also. The best example is, of course, the NDDB which vigorously supported it in the Standing Committee.

The hon. Member, Shri Priya Ranjan Dasmunsi had raised an issue where he said that he wanted an assurance on that. He expressed the apprehension that this would open up the possibilities by multinational corporations to take over a cooperative or the assets of a cooperative. This is not possible because the shares of such a producer company cannot be publicly traded. Secondly, there can be only producer who is the primary producer. He can be a Member. Companies cannot be shareholders. Thirdly, the principle is very clear of vote, which says that one shareholder has one vote only, irrespective of how many shares he actually holds.

This Bill, Sir, helps primary producers to organise their business in an alternative form, the cooperative producer companies and thereby exit or rather restrictive regime of Registrar of companies. Actually, it is our conviction that it helps the cooperative movement. It does not hinder it.

Sir, I may read out that under the proposed Bill, conversion of a cooperative to producer company is purely voluntary. No existing cooperative can be forced to become a producer company, and conversion of a cooperative to a producer company is possible only if two-thirds of the Members of an eligible cooperative so resolve. Secondly, a producer company may reconvert itself into a cooperative society. Under the proposed legislation, Members equity may not be publicly traded but can only be transferred with the approval of the producer company's Board of Directors to another Member only if he fully meets the conditions for membership as specified in the Articles of Association. This was the substantive point.

There was a point raised by Shri Prabodh Panda that the Bill was agreed in the meeting of previous Finance Minister and Agriculture Minister. I am really not privy to that. But the Government is acting entirely correctly.

Hon. Shri Sontosh Mohan Dev suggested that the sick companies could be considered for conversion into cooperatives.

This is not disallowed. There is no bar to this. It is possible, unless they come under the ambit of SICA as it exist on the day or until SICA is repealed. So, though there is no bar to it, I cannot blanketly suggest that it will be possible to convert every sick company into a corporate.

I think I have covered all the points. As I have said at the time of moving for consideration of the Bill, I would again recommend strongly for the consideration of the House that the proposed legislation, when it now receives the consent of the House, will provide a new kind of organisation which will enhance efficiency and competitiveness in today's world. I do, therefore, request the House to approve the proposed legislation. I have no doubt in my mind that it will contribute to the betterment of the primary producers.

MR. CHAIRMAN : The question is:

"That the Bill further to amend the Companies Act, 1956, be taken into consideration. "

*The motion was adopted.*

MR. CHAIRMAN: The House shall now take up clause-by-clause consideration of the Bill.

Amendments made:

Page 9, line 30,-

for "All the directors"

substitute "Notwithstanding anything contained in section 581-O, all the directors." (3)

Page 10, after line 28, insert,-

"Provided that in the case of inter-State Co-operative Society incorporated as a Producer Company, such Company may have more than fifteen directors for a period of one year from the date of its incorporation as a Producer Company." (4)

Page 10, after line 34, insert,-

"Provided that in the case of an inter-State Co-operative Society which has been registered as a producer company under sub-section (4) of section 581 J in which at least five directors (including the directors continuing in office under sub-section (1) of Section 581 N) hold office as such on the date of registration of such company, the provisions of this sub-section shall have effect as if for the words "ninety days", the words "three hundred and sixty-five days" had been substituted." (5)

Page 16, line 27,-

for "general meeting"

substitute "annual general meeting". (6)

Page 19, line 8,-

for "and co-operative or scheduled bank,"

substitute "or co-operative or scheduled bank or in such other mode as may be prescribed." (7)

(Shri Jaswant Singh)

MR. CHAIRMAN: The question is:

"That clause 2, as amended, stand part of the Bill."

The motion was adopted

Clause 2, as amended, was added to the Bill.

### **Clause 1 – Short title and commencement**

Amendment made:

Page 1, line 3,-

for "Companies (Second Amendment) Act, 2001,

substitute "Companies (Amendment) Act, 2002."  
(2) (Shri Jaswant Singh)

MR. CHAIRMAN: The question is:

*"That clause 1, as amended, stand part of the Bill."*

*The motion was adopted.*

*Clause 1, as amended, was added to the Bill.*

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***Enacting Formula***

*Amendment made:*

*Page1, line 1,-*

*for "Fifty-second Year",*

*substitute "Fifty third Year." (1)*

*(Shri Jaswant Singh)*

*MR. CHAIRMAN: The question is:*

*"That the Enacting Formula, as amended, stand part of the Bill.*

*The motion was adopted.*

*The Enacting Formula, as amended, was added to the Bill.*

*The long Title was added to the Bill*

*SHRI JASDWANT SINGH: Sir, I beg to move:*

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

*MR. CHAIRMAN: The question is:*

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

*The motion was adopted.*

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