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Participants : Bhardwaj Shri H.R., Badnore Shri Vijayendra Pal Singh, Kumar Shri Shailendra, Yadav Shri Ram Kripal, Chandrappan Shri C.K., Rawat Shri Bachi Singh, Gadhavi Shri Pushpdan Shambhudan, Swain Shri M.A. Kharabela, Bhardwaj Shri H.R., Radhakrishnan Shri Varkala, Mahtab Shri Bhartruhari, Ramadass Prof. M., Rao Shri K. Chandra Shekhar, Prabhu Shri Suresh, Kharventhan Shri Salarapatty Kuppusamy, Thomas Shri P.C.

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Title : Discussion on the motion for consideration of National Tax Tribunal Bill, 2004 (motion adopted).

THE MINISTER OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ): Mr. Deputy-Speaker, Sir, I beg to move:

“That the Bill to provide for the adjudication by the National Tax Tribunal of disputes with respect to levy, assessment, collection and enforcement of direct taxes and also to provide for the adjudication by that Tribunal of disputes with respect to the determination of the rates of duties of customs and central exercise on goods and the valuation of goods for the purposes of assessment of such duties as well as in matters relating to levy of tax on service, in pursuance of article 323B of the Constitution and for matters connected therewith or incidental thereto, be taken into consideration.”

The National Tax Tribunal Bill, 2004 aims at establishing the National Tax Tribunal which will have jurisdiction to deal with disputes concerning both direct and indirect tax laws as is indicated in the long title of the Bill.

Sir, the main objective behind the setting up of this Tribunal is to speed up disposal of cases relating to direct and indirect tax matters. Apart from achieving the purpose of speedy disposal of tax matters, the setting up of the National Tax Tribunal will introduce an all India perspective in the matter of interpretation of tax laws since it will have a nation-wide jurisdiction. It may be noted that there are at present 21 High Courts. Many a times, decisions of the High Courts vary from each other which create uncertainty, delays and problems in the administration of tax matters. Conflicts of decisions

amongst various High Courts on the same point of law have the effect of distorting uniformity and give rise to unnecessary appeals to the Supreme Court. A special body dealing with tax litigation round the year will acquire both speed and consistency in their views.

The National Tax Tribunal will hear appeals from orders passed by Income Tax Appellate Tribunal and Customs, Excise and Service Tax Appellate Tribunal on a substantial question of law[[lh35](#)].

Presently, an appeal lies to the High Court on a substantial question of law from the decision of the Income Tax Appellate Tribunal or Customs, Excise and Service Tax Appellate Tribunal, as the case may be. After enactment of National Tax Tribunal Act, all cases pertaining to direct and indirect tax pending before the High Courts shall stand transferred to the National Tax Tribunal from such date as may be notified by the Central Government.

Sir, the Tribunal shall consist of a Chairperson and such number of Members as the Central Government may deem fit. As mentioned in the Financial Memorandum, to begin with, it is considered necessary to have at least 15 benches for direct tax matters and 10 benches for indirect tax matters so that cases, which shall stand transferred from the High Courts, may be disposed of quickly. The jurisdiction of the Tribunal will be exercised by the benches and each bench shall have two Members.

The Chairperson of the Tribunal shall be a person who has been a judge of the Supreme Court or the Chief Justice of a High Court. A person to be appointed as Member should be one who is or has been eligible to be a judge of a High Court or a person who is or has been a Member of the Income Tax Appellate Tribunal or of the Central Excise, Customs and Service Tax Appellate Tribunal for at least seven years. Thus, the Tribunal will have Chairperson and Members having judicial and quasi-judicial experience and as such it will be a specialist body exclusively devoted to the tax matters unlike the High Courts where due to frequent changes in benches, non-availability of benches round the year to deal with revenue matters, etc., the disposal of tax matters becomes very slow.

The Chairperson and Members shall be appointed by the Central Government on the recommendations of a Selection Committee consisting of Chief Justice of India or a judge of the

Supreme Court nominated by him, Secretary in the Ministry of Law and Justice (Department of Legal Affairs) and Secretary in the Ministry of Finance (Department of Revenue).

The Chairperson shall hold office for a term of five years or till the age of 68 years, whichever is earlier. The Members shall hold office for a term of five years or till the age of 65 years, whichever is earlier.

The litigation arising under the tax laws needs a special skill to deal with the same. Keeping that necessity in view, the present Bill has been introduced. However, it is not to suggest that the judges of the High Courts would not be able to deal with the same but, as already stated, frequent changes in benches, non-availability of benches in the High Courts round the year to deal with revenue matters do cause frequent delays. The proposed Tribunal will be a special forum fully dedicated to the cause and as such disposal of taxation matters is bound to get greater speed, which would ultimately be in the interest of the national economy.

I hope the Bill will receive the wholehearted support of this august House.

MR. DEPUTY-SPEAKER: Motion moved:

“That the Bill to provide for the adjudication by the National Tax Tribunal of disputes with respect to levy, assessment, collection and enforcement of direct taxes and also to provide for the adjudication by that Tribunal of disputes with respect to the determination of the rates of duties of customs and central excise on goods and the valuation of goods for the purposes of assessment of such duties as well as in matters relating to levy of tax on service, in pursuance of article 323B of the Constitution and for matters connected therewith or incidental thereto, be taken into consideration.”

The time allotted for this Bill is two hours. I have a very long list with me. Therefore, I request the hon. Members to be very brief in their speeches.

Now, Shri Vijayendra Pal Singh to speak.

SHRI VIJAYENDRA PAL SINGH Sir, I stand to support this Bill. I think it was necessary that we realised the importance of having a National Tax Tribunal. I congratulate the Minister for having put this on the floor.

As the Minister was saying—and very rightly—that basically this important piece of legislation has come about because of the pendency. I am told that a couple of years ago, in the High Courts there was a pendency of about Rs.70 crore to Rs.80 crore. I do not know what it is now. But if that is a fact, then the Government is losing out that money[m36].

It is not just the Government but also the persons, the individuals who are accompanying, who feel that they should not have a liability. They should not have arrears and they want a clean slate. That is what is the thinking today. I feel that that way that it is very practical that you have put this Bill on the floor of the House. Let me also point out that the business today has become very complex and specialized. Now, when it is very complex and specialized, people should know how to react. You have a case, it is represented and there are issues which you do not agree to the Income Tax Department. The Department in their own wisdom or the individual goes to the Tribunal. It used to go from the Department to the Tribunal and from the Tribunal to the High Court. There was this many years of wait before it could be really decided. That way, I feel that you have a National Tribunal now with many Benches wherever it is required.

There are a few things that I would like to put to the hon. Minister. I am told that most of the judges on this National Tribunal will be from the High Court and the Supreme Court. It is a general practice. Everybody knows that when it is a business interest and when these cases used to go to the High Court, the High Court judges had to be told about the best practices of business. What is the concept today? They took too long time to understand this. So, why is it that only the judiciary is going to be sitting on this Tribunal? Why do the experts, the people who understand the tax laws, the complex tax laws of today not sit in the benches? Then you have the multinationals cropping up in India. You have to go into the WTO which is coming and all that. The people have to really know about what is happening in the world. I feel that good IRS officers should also be taken. They should also be sitting on this Tribunal and not just the judiciary, namely, the High Court judges and the Supreme Court

judges; like you have the CAT. In the CAT also, there are judges. Then from the administrative department, they are also sitting on the CAT and they understand the problems of the administrative department. They gave a better verdict. They can make their colleagues understand better. So, I feel that somewhere you had missed out. I have not put an amendment or anything like that. But I feel that in this House we want to plead that the Minister must take into consideration that we have not just the judiciary on this Tribunal but special and good officers, senior officers of the Indian Revenue Service. May I also say that it is not just 70 or 80 crores of rupees? But everybody wants quick disposal. This wait has been harassing to the companies, the individuals. That is also a good consideration to have this National Tax Tribunal Bill, 2004[\[t37\]](#).

It [\[r38\]](#) is not just about pendency but also about how much money the Government would gain. It is also a fact that individuals are very happy to have this National Tax Tribunal.

There is one last point that I want to put forth. It was very rightly pointed out by the hon. Minister that a lot of times there are differences in the view taken by Judges. We know how the Judges and we know about the wisdom that they have. For instance, in the Bombay High Court, taking a view of a business interest, the Judge would give a judgement; and in a similar sort of a case, when it comes to Delhi or Kolkata, they take a different view. So, if there is going to be a National Tribunal, one view would spread; all the Benches would know what view has been taken and would go by that same view. This way, I feel, the National Tax Tribunal would go a long way in sorting out problems.

I feel that this Bill is in the national interest. So, we, from the Opposition side also, support you.

SHRI K.S. RAO Sir, I welcome this Bill. I support it wholeheartedly. I am happy that unlike the normal practice, where all hon. Members sitting in the Opposition criticise and oppose all the Bills, here is our friend Mr. Badnore, who, in spite of belonging to the BJP, has supported this Bill.

SHRI B. MAHTAB You are just repeating the original Bill of 2003. That is why we are supporting it.

SHRI K.S. RAO : In spite of that, there have been occasions where you have opposed and criticised us.

I wish today that a large number of Members, more particularly their senior leaders, were available. If they were to be here, I would have been happier to see the thinking of those other

Members.

It is not merely a question of finding fault with the party in government on some count or the other, creating sensation and finding a place in newspapers and media. Primarily, it must be the interests of the people and the nation that must be in the minds of every Member of Parliament. I do not find any reason in raising issues like the ones which they raised yesterday. ... (*Interruptions*)

MR. DEPUTY-SPEAKER: Do not go into yesterday's events.

SHRI K.S. RAO : I am not finding fault. The function of the Opposition is to find fault with the Ruling Party wherever it goes wrong. I do not find fault in it. My only point is that primarily we must see what is required for the people and the nation and what is to be done to improve their standards of living and to meet their requirements.

After looking into the needs of the people, we must find time to discredit the Ruling Party if it had done something wrong. But without caring for the basic needs of the people and the basic responsibilities of this House and its Members, they suddenly jump at matters which could, in their opinion, discredit the Government.

Anyway, I am happy that our hon. friend has straightway supported this Bill. He has not merely supported it but also made some observations about the eligibility of the Members and Chairman. The Bill states that only sitting and retired Judges are eligible. At a time when there was total honesty in the Judiciary, no selfishness, total integrity, devotion to job, and non-exposure to various ills of the society, one could have thought of having only sitting and retired Judges, as if they were far different from all of us [\[r39\]](#).

You say: 'we are not fair, they are fair. They are honest, they are men with integrity and we are not'. That is all right. But the situation is different today. As my colleague has said, it is not necessary that for everything we need to consider only the judiciary. There are eminent people who are very knowledgeable, more than so-called judges in various subjects. Today we require more persons who are knowledgeable in a particular subject, not merely in law. As my colleague told that even eminent people in this profession, in the taxation, could be preferred to be on the Board. But while doing so, we

can certainly see their performance, their integrity, their results which they have achieved earlier, and their decision-making capacity also. So, all these factors can be taken into account.

I wish to add something more to what my friend has said. They say that he must be a person, a retired Chief Justice of High Court or Supreme Court, by which time he must have crossed 65 years. That means that at the fag end, we are taking a 65 years' old person to do justice to this issue, to recover the money at the earliest so that it can be put to use for the nation's development and growth. It is a common knowledge that a person at the age of 65 years will not have as much ambition as a youngster who wants to build up his career by working hard and by showing results. Yes, for certain works experienced people can be selected but for certain works it is not necessary. Today the age is not merely the guide for experience. Experience need not necessarily brings awareness and knowledge. There are certain people who attain the age of 60 but remain with zero knowledge. There are certain other people who may be having everything but they will not have any motivation to work. They will not have any commitment to nation or the people. So, every time speaking about experience or age will not do the work. I think, there must be a change in our thinking, looking into the aspects that are going on in the entire world.

Sir, up to 1990 we never opened our economy to the world. We have ourselves restricted everything to the nation's boundaries but later on we have seen how other nations are growing. Then only we felt that we must globalise. We have also seen the results. If that was to be the case and if there were to be a change in our thinking and adopted globalisation, can we not change our ideas even in these domestic matters?

So, I fully support my colleague who said that the Government must consider in terms of thinking of competent youngsters also. It is not necessary that one must reach the age of 65 years. We can see his past record, whether he has established integrity, ability and knowledge; and whether he is capable of delivering of goods or not.

Similarly, the statistics reveal it, though I am not very confident that the statistics given by various newspapers is correct or not. On many occasions the Government has also expressed it. When we went as Members of various Committees of Parliament and when we have put so many questions to them, they expressed their inability to give immediate answers because they were not ready with the answers in spite of computerisation coming in a big way. A number of departments were not equipped with knowledge and good statistics; only the statistics are given or preferred and no decision can be

taken correctly. Today, if the Planning Commission were to take a decision and prioritise the needs of the nation, as to which area they must allocate the money, in large quantity or not, they cannot take a decision unless the statistics are available. However, from the records or from the information that is available, it says 34,030 cases are pending somewhere and somewhere else it is said that 52,877 cases are pending in High Courts alone. Today's statistics reveal that they could dispose of only 6,000 cases per year. Obviously, to dispose of 52,000 cases today pending in the High Court, it takes nine more years[R40].

What about the amount of loss to the nation? The amount involved is said to be Rs. 1,03,000 crore. That means, even if an amount of Rs. 1,03,000 crore were not to be collected in spite of the best efforts and the best legislation that we enact here, even if it were to be Rs. 20,000 crore, if it were to be an amount of Rs. 20,000 crore, you see the situation. If an amount of Rs. 20,000 crore were to be available today and we start linking of rivers, we can bring 30 lakh acres of land into cultivation. By bringing 30 lakh acres of land into cultivation, we can increase the production of the various crops by a value of at least Rs. 15,000 crore. What is required? It is money. Money is only a catalyst to motivate a person to work, add his sweat and then create an asset. If we were to say America is rich or some other country is rich, it is only because of the assets that they have. How did the assets come? The assets have not come merely by printing pound or sterling or dollar. Instead of bartering commodities earlier, now the dollar or the currency is only a commodity for transaction. But this motivates the people to work and create asset. Unless the people work, unless the people acquire knowledge, unless people acquire skills, nothing comes out.

If this amount of Rs. 20,000 crore were to be collected in this year, that could have irrigated 30 lakh acres of land and created a production of Rs. 15,000 crore. What would be the advantage of this? That could have given, even by the present statistics, 10.5 per cent as revenue collected by the Government on the GDP. That means we could have got Rs. 1,500 crore as extra tax revenue only on the basic produce. If value addition were to be added it would have been double or triple. It could have produced 30 lakh jobs.

Today we break our heads here and we all claim from this side that we have brought a revolutionary Bill on Employment Guarantee Scheme. It is good. We have brought in a revolutionary Bill. It is for providing employment to those unfortunate and poor people living in villages who did not have work, to sweat. They want work. They are not beggars. They are not asking anything from us. They want us to show them the work. That is why the Government has enacted the Employment Guarantee legislation. In its place, suppose we were to collect money immediately by this legislation and send it for cultivation of land, that could have created employment. Then, there is no need for us to provide employment. There is no need to allocate Rs. 40,000 crore or Rs. 20,000 crore in the Budget only for providing employment, that too for one member in a family and for 100 days only.

My point here is that if things were to happen quickly without any delay, without any red tapism, we can take the nation to greater heights and our country will excel most developed nations in the world in no time. Are we lacking intelligence? Are we lacking motivation? Are we lacking capacity? Are we lacking knowledge? We have everything. But there must be an act to motivate, to make me work which is lacking.

The Law Commission, in 1986 itself, suggested that this kind of a Bill has to be brought in. It took long years. Anyway, the NDA Government has brought an ordinance but which could not take the shape of an Act. Now, immediately, the UPA Government has taken up this Bill. The Opposition is also supporting. Every Member is supporting this. I am very happy. The Bill will do very good help to the nation instead of causing delay for years and years to settle these matters.

In this aspect, I want to say a few words. There are apprehensions. Some people have said on it. Even as Members of Parliament when we called some people as witness, they said – Sir, please ensure, please see and take care that this will not be an extra cause for delay [[krr41](#)].

Already we have the Assessment Officer. The Assessment Officer makes the assessment that one has to pay so much of tax. Then, there is question of natural justice. When the tax-payer feels that the tax is unjustifiably more, then he must have the opportunity to go in for an appeal. So, we had created the post of Commissioner of Income Tax for appeals. In spite of giving powers to

Commissioner of Income Tax for appeals for deciding the matters in judicious manner, we were not satisfied and still found delays. Then, we brought ITAT, Income Tax Appellate Tribunal. We have seen that even after having ITAT, there are lot of delays. Now, we are going to the High Courts. The statistics reveal that High Courts are also taking at least three years' time and sometimes more. So, we want to bring it and save money and time. Than is why, we are bringing this Bill.

I want to say to the hon. Minister that there is no clause mentioning the minimum period by which a case must be settled. We are setting National Tax Tribunal because the Commissioner of Income Tax takes three years and High Court takes another three years. Tomorrow if the National Tax Tribunal is also to take more time, then the purpose of setting it up would be lost. It is not that I want to stop this Bill today, but he may please see that if necessary, amendment should be brought. No Bill can be made foolproof in the first instance itself, but after seeing the performance and results, he should not hesitate to bring amendments to it at the earliest, without waiting for years and decades, as we did earlier. So, he may please ensure that there is no delay at least now in collecting the tax, giving justice to the tax-payers and creating confidence in it. I think, it is justified to set up this special body which is said to be dedicated to tax - direct and indirect - matters and to settle the litigation early, but this time aspect must be taken care of.

In this body, technical members must also gain prominence. We bring the retired judge who will not have any knowledge of taxation. It is said by the Minister himself. Also, we are aware that in the High Courts and Supreme Court, there are not many judges who are thorough in tax matters.

SHRI TATHAGATA SATPATHY So, do you oppose putting retired judges in these situations?

SHRI K.S. RAO : I am not opposed. I am asking that technical members must also be given enough importance.

SHRI TATHAGATA SATPATHY : Do you want to bring retired ones back after they have spent their whole useful life?

SHRI K.S. RAO : I am not against the aged people. I am not against the youngsters. There should be a blend of people with competence, knowledge and experience.

SHRI TATHAGATA SATPATHY : Once they have used up their existing life span, you want to bring them back again.

SHRI K.S. RAO : It is for you to say. So, I only say that technical members must be given enough importance and mere age should not be the criteria of this aspect.

I appreciate that the hon. Minister has brought this Bill with a view to reduce the time. I also wanted to bring to the knowledge of the Law Minister that this must be applied to general courts also. Justice must be available at a speedy level. Today we find several cases lying in the courts, with adjournment over adjournment for decades. That means people are losing faith in the Judiciary ... (*Interruptions*) So, the judgement should come early.

By virtue of our commitment and love for democracy, definitely Judiciary is an integral part of our system. We admire and respect it, but we want some changes. We want speedy justice. So, I want the Law Minister to take that aspect into other matters also, not only tax matters. He should also look at the amount of energy and manpower that is lost on account of these delays. Eminent people have to go and wait for getting justice from them, wasting their time and knowledge which they could have utilised for other purposes, creative purposes [[reporter42](#)].

That time limit must be there in this matter and the hierarchy for delivering justice must be like a pyramid. All the cases that were referred to the Commissioner of Income Tax or the Income Tax Appellate Tribunal should not be allowed to go to the National Tribunal. That means as many cases as possible must be reduced and whenever the cases are referred, they must follow the pyramid way.

When the hon. Minister brings the amendments next time, I want him to think as to whether there must be a limit on the magnitude or the size of the case that is to be referred to the National Tribunal. If that is mentioned, instead of referring every case to the National Tribunal, then justice can be done much earlier.

MR. DEPUTY-SPEAKER: Your Party was allotted 30 minutes and you have already taken 18 minutes. Please conclude now.

SHRI K.S. RAO : Then, Sir, it is common experience that we make the Acts and the judiciary has to take decisions based on these Acts. On the same issue and in a similar situation, different High Courts have given different judgments. That means, interpretation is varying from Judge to Judge, from person to person. Here, this Bill is expected to bring uniformity in the judgment because there is only one Tribunal. Once they give a judgment on a particular matter, there cannot be variation in any judgment given by any other Bench on the same matter. There is such a provision for settling the matter. That is another advantage in this Bill and I am very happy about it.

I am not a lawyer, so I cannot find fault with the provision...

SHRI TATHAGATA SATPATHY : But you are a tax-payer.

MR. DEPUTY-SPEAKER: Do not give running commentary please.

SHRI K.S. RAO : The Writ jurisdiction of the High Court has not been taken out. It may not be taken out because of various provisions and various Acts. Once again, some conditions must be laid down under which cases can be referred to any High Court, and they must be minimal.

While specifying the qualifications of the people, the clause should have also mentioned about the integrity, honesty and past performance of the person concerned. By merely passing a Bill, our responsibility is not over. We are making excellent Acts after careful consideration by all sections of the society and thinking it over from different angles. But then how is it being implemented is also to be monitored. The problem is coming only in the implementation of the Act that is being made here. If that is taken care of properly, the purpose for which we are making these Acts will be served. I want the hon. Minister to think of some mechanism to monitor the implementation regularly and not look at it after ten years or fifteen years.

There is another point mentioned here. The moment this Act comes into force, all the cases that are now lying in the High Court will be transferred to this Tribunal. There may be some cases where the

hearing is almost in the final stages and the judgment is awaited very soon. If those cases were to be transferred to this Tribunal, then, once again, they will have to start from the beginning and it will take a long time. I just wish for some way to be found out to see that those cases which are the in the final stages of hearing and where judgment is awaited can be dealt with by them without delaying them once again.

MR. DEPUTY-SPEAKER: Please conclude your speech.

SHRI K.S. RAO : I am just concluding, Sir. We are dealing with cases which were dealt with by the Commissioners of Income Tax and by Assessing Officers. But there are some erratic assessments which were made by some officers. While taking evidence of the Departments concerned, we used to get shocks. In one of the cases, which I wish to bring to the knowledge of my colleagues here, one Customs Commissioner in Kolkata, after due assessment of tax and penalty put together, asked the company concerned to pay Rs. 1,952 crore [\[R43\]](#).

Duty and penalty on what? On a demurrage charge levied by the port of Rs.170 crore on imported crude oil? Who imported it? The Indian Oil Corporation imported it. See the eccentricity of the officer! The delay was caused because of congestion in the port. It is not IOC's mistake. Because of the delay in clearing, not for his fault, demurrage was levied as per the rules and conditions of Rs.170 crore. Now, this man adds duty and penalty and makes it Rs.1950 crore.

We read in newspapers and statistics given to us that the tax arrears in this country are to the tune of Rs.1,03,000 crore. Maybe such items are there in a large number in that figure, we do not know. So, there must be a provision for taking action on such officers also who make erratic assessments, either motivated or non-motivated. Maybe the person here wanted to get his name published in the newspapers saying that this is the officer who levied a tax like this. I, therefore, request the hon. Minister to see that erratic decisions are not taken by officers in various Departments.

This case was subsequently referred by the Government to the High Court and the High Court dismissed it. They appealed to the Supreme Court and the Supreme Court also dismissed it. That explains what kind of an assessment was made by that officer. Has he been punished? Was he taken to task so that such things are not repeated? Those things also must be taken care of.

Similarly, if we are to provide incentives to the honest officers who are doing their duty exceedingly well with commitment and devotion, and disincentives to those officers who lack integrity and who are incapable of delivering the goods in a way, there will be motivation for people to work. That motivation is lacking now. We only consider the age of the officer and a man is given benefit if he is a senior. This must also be taken into account.

We must take care that the provisions of this Act would not be misused by the officers concerned. That also has to be monitored regularly. With these words expressing my happiness, I wholeheartedly support this Bill. I wish the Finance Ministry will make use of the provisions of this Bill and collect revenues in a big way and utilise them for developmental activities so that the poor people can also get work and the GDP can increase substantially.

SHRI VARKALA RADHAKRISHNAN Mr. Deputy-Speaker, Sir, the National Tax Tribunal Bill was introduced in the Thirteenth Lok Sabha to replace an Ordinance. That Bill was referred to the Standing Committee on Law and Justice. Before the Committee submitted its report to the House, the Thirteenth Lok Sabha was dissolved. Subsequently the Bill was again introduced in this House and it is referred to the Standing Committee on Law and Justice, and Personal Grievances. It is a Rajya Sabha Committee.

I am one of the members of the Committee. I would now like to give you some details with regard to the Bill. I cannot support this Bill. But I will not oppose it. I will tell you the reasons. We examined the Bill in detail. We have come to a definite conclusion which I will read [\[KMR44\]](#).

A unanimous decision has been taken by the Standing Committee. The purpose of the Bill is to provide some assignment to top bureaucrats who are on the verge of retirement. That is the main reason, and not for tax collection at all.

Now, I would take the House into confidence and state as to what was the purpose of the Bill. The Bill aims to establish a national level Tribunal known as the National Tax Tribunal, which will have an all-India jurisdiction to decide disputes with respect to both the direct and indirect taxes so that the Government's revenue is checked. Revenue of Government is deadlocked at present. Cases are pending before the High Court for long. The purpose of the Bill is to take all the cases which are now pending before the High Court to the National Law Tribunal. This is the gist of the Bill. We examined the Bill and we came to the conclusion. I shall read the conclusion. ... (*Interruptions*)

SHRI VISHVENDRA SINGH (BHARATPUR): What has happened in the Standing Committee is never discussed in the House. This is being discussed. What transpired in the Standing Committee never comes up in the House. Only its recommendations can be discussed but not what transpired there.

SHRI VARKALA RADHAKRISHNAN : Sir, I am only referring to it. I am not reading the Report. I submit that the Standing Committee has recommended not to proceed with the Bill. Now, it has been specifically stated. The Committee feels that establishing a National Law Tribunal will entail huge expenditure in terms of salary, infrastructure, etc. The jurisdiction of the High Court will not be taken away in this respect. The party which is aggrieved by the wrath of the Tribunal can invoke this jurisdiction. This would result in delay in the final disposal of cases which would defeat the very purpose of the Bill. This is what they have to say. This jurisdiction is there.

There are 21 High Courts in the country. In all the High Courts, cases are pending. I do agree with this. But they are going to establish only one Tribunal throughout India. Will not the cases accumulate there? All these cases will have to be filed before one centre. Now, it is dealt by 21 centres. Twenty-one High Courts are dealing with the cases. Now, cases are judged by the Judges in 21 High Courts. The pending cases in 21 High Courts will be taken to one Tribunal. It is humanly impossible to conclude that appeals will not accumulate. It will accumulate. Not only that, there is no provision to the effect that against the decision of the National Law Tribunal, appeal will lie to the Supreme Court. That provision is there. But earlier, decision can be taken to the High Court in the form of writ application. What is the difference? I do not understand. Anybody can take the decision

to the High Court in the form of jurisdiction. Only thing is that the question of law will have to be alleged. Then, what is the remedy? All these cases will go to the High court. Now, all the cases which have [R45]been returned from the High Court to the National Law Tribunal will again go to the High Court in the form of writ applications. Who can prevent this? It is a constitutional provision. We cannot take away the jurisdiction of the High Court. So, all the cases which are now pending before the 21 High Courts will be taken to a National Law Tribunal. It is quite natural that an aggrieved party can appeal to the Supreme Court, not to the High Court. But in the meanwhile, any decision taken by the National Law Tribunal can be preferred before the High Court in the form of jurisdiction[R46].

That is why, the Standing Committee has unanimously recommended that there is no need for the continuance of this Bill. The Committee has given in clear terms its recommendations opposing it. For what purpose, is the Government proceeding further? The Benches will be constituted throughout India. It will entail a huge expenditure by way of travelling allowances and so many other things. Two Judges or members will be enough for constituting a Bench. There can be Benches anywhere in India. What is the purpose of this? We can do this in the same way by giving additional Benches in every High Court only for dealing with tax cases. Is it not a good thing? That is the recommendation of the Committee. The Committee specifically recommended that there must be additional Benches in every High court specially meant for tax cases only. This way, no additional expenditure is required.

The Committee also recommended that all pending vacancies in the High Court must be filled. The reason for the delay is non-filling of vacancies in the High Court as also in the Supreme Court. They should first fill the vacancies and then constitute a new Bench for dealing with the tax cases only. Some Judges can be trained in tax matters to hear the cases. Why is this tribunal? I have no doubt that the person heading the tribunal will be a judicial man. But the other members will be bureaucrats, not just bureaucrats but those bureaucrats who are on the verge of retirement. They are making the age limit as 65 years. I do not understand why in the 21st century, this Government is bringing such a vexatious Bill. I challenge the hon. Law Minister that no purpose will be served by this. Can he give an assurance in the House that the expenditure will be reduced? No. Not only that.

There will be separate Benches – one for the East, one for the South, one for the North and one for the West. When such a thing is done, that will also entail a huge expenditure. What is the purpose? This could be done in a simple way. They can consult the Supreme Court and make provision for the appointment of Special Benches to deal with the tax cases. Why do you accommodate these top bureaucrats who are on the verge of retirement? What is the purpose that will be served by this? We have so many recommendations saying that the Government should not proceed with this Bill. That is why, we have taken a decision in the Committee not to oppose it. If the Government is eager enough to proceed with this, if the Government is very particular in going ahead with this, we will not oppose it. That is why, I said at the outset that though I strongly oppose it yet I will not oppose it. Since it is the decision taken by the Committee, I will abide by the decision of the Committee. If the Government is eager enough to proceed with the Bill, we will have no objection.

We made certain suggestions also to the various clauses of the Bill. There are other things to be done. When the execution of the orders of the High Court or the appellate tribunal comes, that would not be done [\[p47\]](#).

16.00 hrs.

So, infrastructure development is the need of the hour. Now, all efforts will be made to make ultramodern infrastructure development so that the records can be maintained up to date and the pendancy can be reduced. That is what the Committee had recommended. But they are not prepared to hear that; they are not prepared to fill up the vacancies pending in the High Court; they are not prepared to assign the tax assessment to a separate bench. They are very much interested to support the bureaucrats who are on the verge of retirement... (*Interruptions*) They are not looking after the national interest. This way, the national interest will not be served.

Therefore, we are definitely of the opinion that there is no need for this Bill. If the Finance Minister is very particular of giving appointments to some bureaucrats, let him find some other way.

SHRI K.S. RAO : Finance Minister or the Law Minister!

SHRI VARKALA RADHAKRISHNAN : The Law Minister is only making the laws. He is not directly responsible for this.... (*Interruptions*) If the Finance Ministry coupled with the Law Ministry is very particular of accommodating some people who are on the verge of retirement, let them find some other way, not at the expense of the exchequer. Otherwise, we would be losing lakhs and crores of rupees. Moreover, if the Government is very particular about the pendancy work related with tax laws, we have recommended that there must be a condition that 25 per cent of the amount that is assessed will have to be deposited before filing the appeal. That is the Committee's recommendation.

But with all humility and respect to my Law Minister, I would again request him not to proceed with the Bill. Why to incur so much money unnecessarily? Money is very dear to us. The country is facing natural calamities, tsunami, earthquake, drought and floods in different parts. And, we need so much of money to meet all these requirements. So, why should they go and accommodate these bureaucrats in a different way? Everybody knows, Tamil Nadu is facing one of its worst floods these days, and they need thousands and thousands of crores of rupees for their rehabilitation and settlement. Their Chief Minister has already demanded money; the whole Tamil Nadu needs money. So, I would request the hon. Minister to allot the money to those people and not for the bureaucrats. By accommodating bureaucrats no purpose would be served.

Sir, it is very unfortunate that the Government has decided to proceed with the Bill to safeguard the interest of the top bureaucrats, who are in the hierarchy. I am not opposing... (*Interruptions*) The Committee had taken a view that if the Government is eager to proceed with the Bill, we would definitely go on with it. We have no objection... (*Interruptions*) But by this Bill, no purpose would be served. The pendancy would not be reduced and the revenue would not be increased. So long as the writ jurisdiction is there, no remedy is possible by this Bill.

With these few words, I conclude and I expect the Hon. Law Minister, who is a very efficient and learned man, will rise to the occasion and see that the public money is not wasted. So, I would request him, as recommended by the Standing Committee, to please do not proceed with the Bill. (*Interruptions*)

SHRI KHARABELA SWAIN You oppose the Bill but do not oppose its passage... (*Interruptions*)

MR. DEPUTY-SPEAKER: Kindly listen to me. The hon. Law Minister has to go to the Rajya Sabha also. That is why I would request all the hon. Members who want to speak on this very Bill that they should restrict themselves only for four or five minutes. We want this Bill to be passed before 5 o' clock.

SHRI B. MAHTAB : Sir, this is a very important Bill. If the Minister is preoccupied in Rajya Sabha, let it be deferred till tomorrow [\[k48\]](#).

Why should we curtail our speeches to five minutes? This is not fair. You cannot restrict a Party to five minutes.

SHRI PRAKASH PARANJPE (THANE): We will not do like the earlier speaker; oppose in the House but otherwise support. This is nothing but adjustment for the retired bureaucrats... (*Interruptions*)

MR. DEPUTY-SPEAKER: Nothing will go on record.

(Interruptions) ...*

SHRI PRAKASH PARANJPE : We will oppose it. The previous speaker is opposing orally. For popularity alone do not make speeches in the august House. You may tell your stand in the House. If the Bill is wrong, oppose it totally. Do not say that you oppose it in your speech but at the time of voting you will support it. We want sufficient time to give justice to our tax-payers whose money will be looted by this tribunal. This tribunal will be looting the money of the tax-payers.

MR. DEPUTY-SPEAKER: Nothing will go on record.

(Interruptions) ...*

* Not Recorded.

THE MINISTER OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ): Sir, could you not restraint him?... (*Interruptions*) May I make a brief submission? I do not think there is a need for this kind of acrimony. We all remember, this was an Ordinance brought by the earlier NDA Government, and it lapsed. We have again brought it to this House. On this matter, all Members are free to express their opinions. On such a matter I am for full debate because I am carrying forward a Bill which was approved by the Cabinet earlier in Shri Vajpayee Government. This is regarding the tax matters and Members are entitled to express themselves as much in detail as they like. Therefore, free and frank discussion should be there. I am not in a hurry. What I am saying is, this is not a controversial matter. Tax reform is a very serious matter. You can have a debate as much as you like. It is for the Chair to decide. If I go for voting, I will come back within five minutes.

MR. DEPUTY-SPEAKER: BAC has allotted two hours' time for its discussion.

श्री शैलेन्द्र कुमार माननीय उपाध्यक्ष जी, आपने मुझे राष्ट्रीय कर अधिकरण विधेयक, 2004 पर चर्चा करने का मौका दिया, इसके लिए मैं आपका आभार व्यक्त करता हूँ। मैं इस विधेयक का समर्थन करने के लिए खड़ा हुआ हूँ। मैं स्टैंडिंग कमेटी आन पर्सनैल, पब्लिक ग्रिवेंसिस, लॉ एंड जस्टिस, जो राज्य सभा की कमेटी है, उसका मैम्बर होने के नाते भी बोलने के लिए विवश हूँ। स्टैंडिंग कमेटी में तमाम इस प्रकार के मसले आते रहे हैं, जिनके बारे में हम लोगों को हमेशा चिंता रहती है। यहां खास तौर से राष्ट्रीय कर अधिकरण एक ट्रिब्यूनल अलग से बनाने की बात कही जा रही है। मैं इस विषय में भी कुछ कहना चाहता हूँ।

16.09 hrs.

(Shri Giridhar Gamang in the Chair)

डॉयरेक्ट और इनडॉयरेक्ट टैक्स की अधिनियमिताओं के अधीन उच्च न्यायालय में हम अपील करने के लिए जाते हैं, जबकि उच्च न्यायालय में तमाम ऐसे मुकदमे आज भी लंबित हैं। उनका फैसला नहीं हो पाया है, इसमें बरसों लग जाते हैं। यह बात किसी से छिपी हुई नहीं है कि चाहे लोअर कोर्ट्स हों, या हाई कोर्ट हो या सुप्रीम कोर्ट हो, वहां राजस्व से संबंधित या क्रिमीनल मुकदमे या टैक्सेज़ से संबंधित मुकदमे धरे के धरे रह जाते हैं। इसलिये राष्ट्रीय कर अधिकरण विधेयक की जरूरत आ गई और यहां यह बिल लाया गया है। हमने यह भी देखा है कि लोअर कोर्ट्स, हाई कोर्ट और सुप्रीम कोर्ट में पिछले

10-15-20 साल से भारी मात्रा में राजस्व के मुकदमें लम्बित हैं। मुकदमों का समय पर निस्तारण नहीं होने के कारण सभी न्यायालयों में उनका बोझा बढ़ता जा रहा है। आज आवश्यकता है कि राष्ट्रीय कर अधिकरण की स्थापना हो ताकि इनकम टैक्स, सीमा शुल्क या सेवा कर से संबंधित ऐसे मामले, जो लम्बित हैं, उनका निस्तारण समय पर हो सके। मैं आंकड़े देना चाहूंगा कि उच्चतम न्यायालय में ऐसे मामलों की संख्या 2051 है जिसमें 3221.98 करोड़ रुपये और उच्च न्यायालय में 8564 मामले हैं, जिनमें 3561.10 करोड़ रुपये इन वाल्व हैं। हालांकि समय समय पर फास्ट ट्रेक कोर्ट का गठन किया गया ताकि मामलों का शीघ्र निस्तारण हो सके लेकिन आज इस बात की जरूरत समझी गई। माननीय सदस्य श्री राधाकृष्णन ने भी कहा कि मामले तो आते रहेंगे, कोर्ट का गठन होता रहेगा लेकिन ये कब तक पूरे हो पायेंगे।

सभापति जी, मैं इलाहाबाद से चुनकर आया हूँ जहाँ मैंने हाई कोर्ट में देखा है कि आज भी 20-20 जजों के पद रिक्त हैं जिन्हें भरा नहीं जाता है। मुझे अफसोस है कि जजों की रिक्तियां न भरने से मुकदमे ज्यादा हो रहे हैं जिनका निस्तारण भी नहीं हो पा रहा है। इसी प्रकार तमाम राज्यों की हाई कोर्ट में जजों के कई स्थान रिक्त हैं। मेरा आग्रह है कि इन जजों की रिक्तियां भरी जायें ताकि लम्बित मामलों का शीघ्र निस्तारण हो सके। लम्बित मामलों के कारण राष्ट्रीय अर्थ-व्यवस्था पर सीधा असर पड़ता है, इससे समय बरबाद होता है और तमाम खर्चे बढ़ते हैं। माननीय मंत्री जी यह बिल लेकर आये हैं, इसकी मंशा अच्छी है कि पैसे से संबंधित तमाम लम्बित मामलों का शीघ्र निस्तारण हो। इस अधिकरण की स्थापना संविधान के अनुच्छेद 323बी के तहत करने की बात कही गई है। कई माननीय सदस्यों ने अपने विचार इस संबंध में रखे हैं। मेरा सुझाव है कि सुप्रीम कोर्ट या हाई कोर्ट के न्यायाधीश या जो चीफ जस्टिस रह चुका हो, उसे अगर इस अधिकरण का अध्यक्ष बनाया जायेगा तो मेरा ख्याल है कि अच्छा रहेगा। हमने देखा भी है कि तमाम जब आयोग बनाये जाते हैं, उनके अध्यक्ष रिटायर्ड जज ही होते हैं। मेरा सुझाव है कि रेवेन्यू से संबंधित जितने इंडियन रेवेन्यू सर्विसेज के अधिकारी हैं, उनकी उपयोगिता इसमें ली जा सकती है। अगर उन्हें इस अधिकरण में समावेश कर लिया जायेगा तो मेरा ख्याल है कि उन मामलों का जल्दी ही निस्तारण हो सकेगा। न्यायाधीशों को 60-62-65 वा की आयु में रिटायर किया जाता है तो हम उनके अनुभवों से लाभ ले सकते हैं। मेरे ख्याल में फास्ट ट्रेक कोर्ट की अवधारणा पूरी नहीं होती। यह तभी पूरी होगी, जब देश के तेज तर्रार रेवेन्यू से संबंधित अधिकारियों को चाहे, वे सेल्ज टैक्स के हों, इनकम टैक्स के हों, सैट्रल एक्साईज या कस्टम के हों, उन नौजवान अधिकारी की सेवायें ली जायें तो मेरे ख्याल से अच्छा रहेगा [\[RB50\]](#)।

इन मुकदमों की संख्या के बारे में मैंने आपको बताया है। यह सत्य है कि इन मुकदमों की बढ़ती संख्या के कारण आज तमाम तरह की शिकायतें अक्सर आती रहती हैं कि हमारे ऊपर अधिक टैक्स लगाया गया है, चाहे वह सीमा शुल्क हो, इंकम टैक्स हो, सेल्स टैक्स हो, उत्पाद शुल्क हो या सेवा कर हो, इन सबके बारे में तमाम तरह की शिकायतें मिलती रहती हैं। मेरी माननीय मंत्री जी से गुजारिश है कि जो राष्ट्रीय कर अधिकरण आप बना रहे हैं, इसे पूरा स्वायत्तता मिलनी चाहिए, यह निष्पक्ष होना चाहिए। इसमें किसी तरह से भी बेईमानी की गुंजाइश न रहे, ताकि कोई अपीलकर्ता जब अपील करने के लिए जाए तो उसे सही समय में न्याय मिल सके, हमारी ऐसी मंशा इस अधिकरण के द्वारा होनी चाहिए।

इन्हीं शब्दों के साथ मैं अधिक कुछ न कहते हुए माननीय मंत्री जी जो राष्ट्रीय कर अधिकरण विधेयक, 2005 सदन में लाये हैं, उसका समर्थन करते हुए अपनी बात समाप्त करता हूँ।

श्री राम कृपाल यादव माननीय सभापति महोदय, मैं माननीय मंत्री जी के प्रति आभार व्यक्त करता हूँ, जिन्होंने राष्ट्रीय कर अधिकरण विधेयक, 2005 सदन में लाकर एक बड़ा ही सकारात्मक कदम उठाया है। यू.पी.ए. सरकार का यह एक स्वागतयोग्य कदम है। इसके लिए माननीय मंत्री जी और यू.पी.ए. सरकार की जितनी प्रशंसा की जाए, कम है। जैसा हम सब लोगों को विदित है कि देश के विभिन्न न्यायालयों में हजारों ऐसे मुकदमे लम्बित पड़े हैं, जिनका निपटारा नहीं हो सका है। इन मुकदमों का निस्तारण न होने के कारण जो हजारों करोड़ रुपये सरकार के खजाने में आने चाहिए थे, वे सरकारी खजाने के बाहर हैं। इस कारण देश के विकास में बाधा आती है। यदि यह पैसा सरकार के पास आयेगा तो देश के विकास में लगेगा, देश की जनता को उससे बहुत फायदा मिलेगा तथा विकास की गति भी बढ़ेगी।

महोदय, हमारा देश गरीब है। देश में आज भी ऐसे गांव और कस्बे हैं, जहां छोटी छोटी चीजें, जैसे पानी, बिजली, सड़क, पुल, पुलिया आदि की आवश्यकताओं की पूर्ति अर्थात्भाव के कारण नहीं हो पा रही है। आज हमारा देश आर्थिक संकट के दौर से गुजर रहा है। मैं समझता हूँ कि इस कानून के माध्यम से सरकार एक बड़ा ही उचित कदम उठा रही है। सरकार इस राष्ट्रीय कर अधिकरण के माध्यम से मुकदमों का त्वरित निस्तारण करके एक तरफ देश के व्यापारी वर्ग और आम लोगों को राहत देने का काम करेगी, वहीं इस बिल के माध्यम से दूसरी तरफ अर्थव्यवस्था को सुदृढ़ करने में सकारात्मक सहयोग भी करेगी। इसलिए मैं इस बिल का समर्थन करता हूँ और सीमा शुल्क, उत्पाद शुल्क, सेवा कर आदि के जो केस लम्बित पड़े हुए हैं, इस कानून के माध्यम से उनके निस्तारण हेतु त्वरित कार्रवाई की जायेगी और सरकार लोगों को निश्चित तौर पर बहुत राहत देने का काम करेगी। लेकिन मुझे एक आशंका भी है, इसलिए जब माननीय मंत्री जी अपना जवाब दें तो उसमें इसके निदान का अवश्य जिक्र करें। देश में बिल आते हैं, अधिकरण तथा आयोग बनते हैं और उन्हें समुचित ताकत भी दी जाती है [\[R51\]](#)। उसके बावजूद भी जो कार्य उनको सौंपा जाता है, वह त्वरित गति से हो, इसकी तरफ निश्चित तौर पर ध्यान देने की आवश्यकता है। अगर सुचारु रूप से कार्य नहीं किया जाएगा तो सरकार की इस विधेयक द्वारा जो मंशा बताई गई है कि त्वरित गति से केसों का निपटारा करेंगे और लंबित मुकदमों को जल्दी निपादित करेंगे, वह कैसे पूरी होगी? हम कोई शंका नहीं कर रहे हैं मगर माननीय मंत्री जी से निवेदन करेंगे कि कानून के माध्यम से जो कर-अधिकरण कायम करें, वह काम का जल्दी से निपटारा करे, इसके लिए ठोस कदम उठाने की आवश्यकता है और एक समय-सीमा बांधने की आवश्यकता है। आप उनको जो कार्य दे रहे हैं, अगर उस कार्य के प्रति वे जागरूक नहीं रहेंगे तो आपकी मंशा पूरी नहीं हो पाएगी। इसलिए इस विधेयक के उद्देश्यों की पूर्ति के लिए निश्चित तौर पर ठोस कदम उठाए जाएँ और समय-सीमा बांध दें जिसके कारण मामलों को निपटाने की गति में जो अवरोध आ रहा है, वह दूर हो सके। हमारे यहां बहुत से न्यायालय हैं। कई सदस्यों ने चर्चा की है कि कर के मामलों में और दूसरे मामलों में हजारों मुकदमे निचली अदालतों में तथा उच्च न्यायालयों में लंबित पड़े हुए हैं जिनके अंतर्गत कई लोग आज भी जेल में पड़े हुए हैं। उनमें डिले हो रही है जिसकी वजह से उनको न्याय नहीं मिलता। इसके लिए सरकार को ठोस कदम उठाने चाहिए।

मैं सरकार को एक सुझाव और देना चाहूंगा। इस विधेयक में 65 वा की आयु के न्यायाधीशों को कर-अधिकरण में नियुक्त करने की बात की गई है। किसी व्यक्ति के काम करने की क्षमता निर्धारित कर सरकार किसी पद की आयु-सीमा निर्धारित करती है,

मगर 65 वीं के बाद जब आदमी शारीरिक और मानसिक रूप से निश्चित तौर पर थक जाता हो, वह कितना काम कर सकेगा, यह भी विचार करने की बात है। माननीय मंत्री जी इस संबंध में विचार करें और युवा लोगों का समावेश भी इसमें करने के संबंध में विचार करें। इससे उनकी कार्यक्षमता बढ़ेगी, अधिक से अधिक काम का निपटारा वे कर सकेंगे और अधिकरण के माध्यम से आपके उद्देश्यों की पूर्ति हो सकेगी।

अंत में इस विधेयक का समर्थन करते हुए मैं माननीय मंत्री जी के प्रति पुनः इस विश्वास के साथ आभार व्यक्त करता हूँ कि जिन उद्देश्यों को लेकर आप यह विधेयक लाए हैं, उनकी पूर्ति कराने में आप सफल होंगे और जिनको आप कार्यभार देने का काम करेंगे, वे भी अपनी कार्यक्षमता के अनुरूप इस काम को करेंगे। इससे सरकार का जो हज़ारों करोड़ रुपया कई मामलों में फंसा हुआ है, वह मुकदमों के निपटारे के बाद सरकार के खजाने में आएगा और हमारे देश की अर्थव्यवस्था सुदृढ़ होगी। इससे गांवों और गरीबों का विकास हो सकेगा। इसलिए इस बिल के माध्यम से आपका जो सकारात्मक उद्देश्य है, उसका स्वागत करते हुए तथा आपके प्रति आभार व्यक्त करते हुए मैं अपनी बात समाप्त करता हूँ।

SHRI SURESH PRABHAKAR PRABHU Sir, we have a serious problem in hand to handle in India wherein on the one hand, our GDP is rising rapidly and the economy is growing at almost 8 per cent a year and on the other hand, taxes to the GDP ratio are not rising. Rather they are to a great extent declining. And that is why, it is a matter of serious concern as to how we should be able to raise the required resources to finance our infrastructure and make sure that our social sectors are developed adequately. At the same time, it is important to know how the Government is going to collect various taxes from the tax payers who are paying now and how to bring those who are not in the tax net into the tax net[[bru52](#)].

We need to work on it in a very comprehensive manner. We need to take various steps to do that. One of the first steps that is required is to make sure that the internal accounting system of the country is brought to such a level where any person who is earning any income is not made to escape the tax net. That is a pre-requisite of that and that needs to be done. We also need to ensure that tax laws are simplified to a great deal. If you make more complicated laws, Shri Bharadwaj's fraternity and my own colleagues in the profession will be very happy because they will get adequate work. But it should not be to the despair of the tax payers. We will have to make sure that the tax system, the tax administration and tax laws are made in such a manner that they are totally simple and very easy to implement. We have a problem here. Any law which is made is a challenge because it is not simple. If

you make simple laws, then probably the need for a tribunal will not be felt. Any law is bound to be interpreted in two different ways by two different stakeholders -- one by the Government and the other by the tax payer. Therefore, there is a need for a reconciliation of such conflicting views. So, we have a system wherein the appeals go up to the Income Tax Appellate Tribunal and in case of excise, customs and service tax to their Tribunals. Thereafter, it goes to High Courts and it can also go to the Supreme Court. This Bill envisages that those matters which are heard by the Income Tax Appellate Tribunal or other Tribunals, rather than the High Courts, will be heard now by this new Tax Tribunal that is created. Therefore, this will obviously obviate, to a great deal, the adversities that are being faced by the tax payers. It is because High Courts hear all types of matters. They are hearing matters pertaining to criminal law, civil law, and commercial law. Therefore, an exclusive Tribunal dealing with only tax laws will definitely go a big way in helping the tax payers. Therefore, it is a welcome measure. While it is true, there are several areas in which, I think, we need to apply our mind a little more.

I would like to make a small suggestion. I would request the Minister to agree to that. Normally we call income tax as 'tax' whereas we call customs and excise as 'duties'. We are calling this Tribunal as 'National Tax Tribunal'. Probably, it could have been more appropriate to call it the 'National Tax and Duties Tribunal' because that would have appropriately covered more area.

In any case, if you are planning to amend the Income Tax Act, Wealth Tax Act, Excise Act, Customs Act, Service Tax Act, probably you can bring in an amendment to call them customs tax instead of customs duty. Then, it could not have been felt. But calling this Tax Tribunal as just "Tax Tribunal" would probably confuse the issue.

My second point is related to location. You have said that this Tribunal will be located in New Delhi. I still do not understand why everything has to be located in New Delhi. Of course, New Delhi is the political Capital of India. But that does not mean that every entity that is created in India has to be, by law, located in New Delhi. In fact, more than 26 per cent of the tax revenue of the country are collected from Mumbai city. If at all the location has to be selected on the basis wherein it will obviate the difficulties of various types of tax payers, then it will be more appropriate to locate it in Mumbai than in New Delhi. In any case, locating it in New Delhi does not really make any sense. Probably the draftsman always insists that everything should be located in New Delhi. I do not know for what reason. Then, we always tell the Ministry of Urban Development to tell the Ministries which are going to locate their offices that there is no place available in New Delhi and so you probably please go out.

Why are you, by law, asking a Tribunal to be located in New Delhi? I would really request that it should be located ideally in a place like Mumbai.

There are issues regarding administration. One issue is about the appointment of members and Chairman of this Tribunal. In fact, we are replacing the system. Those appeals which were heard by the High Courts will now be heard by this Tax Tribunal. So, the same system which is applicable to the appointment of High Court Judges should be applicable here also. We should appoint them in the same manner to ensure their independence and to inspire confidence in the system. Therefore, I would strongly urge the Minister that he should insist on the same manner of appointment as is applicable to the appointment of High Court Judges[r53].

Therefore, it should not be done in a manner that is stipulated, that the Central Government will appoint a Committee and they will make the appointment. That would only mean that the bureaucracy will actually make the appointment. This will really vitiate the desired purpose. (*Interruptions*) Sir, please give me time. I know, he is telling you to stop me because I will stop here only. All the time, I speak for only two minutes. This is not fair.... (*Interruptions*)

MR. CHAIRMAN : They have distributed time according to the Party.

SHRI SURESH PRABHAKAR PRABHU : There is a regional party debate as the Minister said. It is not a party debate. It is a national debate on which we all should participate. The issue of appointment is very important. Therefore, I feel it should be done in this manner.

The other issue is related to the Administration, that is, the transfer of members. It is also mentioned that the transfers should be effected in such a way as will be decided. Transfers of High Court Judges are also governed by a system which is prevalent in the country. The same system should be applicable because now, we are actually creating a system parallel to the High Courts and, therefore, I would urge the Minister to make sure that this is done in a proper manner.

In case of selection, it is not just the appointment but even the selection procedures itself, as prescribed in clause 12(4) should be in conformity with, as I just mentioned.

Clause 8 deals with the tenure of the members. It is already stipulated at what age they will superannuate. Having decided that, to again mention that a member will have only 5 years' tenure, this is, in fact, going against the spirit of the Bill. Like the High Court Judge when he is appointed, he continues to hold an office till he retires or attains the age of superannuation or alternatively, there are provisions made in this law wherein how he will have to vacate his office in a situation which is prevalent like mentioned in this particular Act. Therefore, I suggest that there should not be this 5 years' tenure system as mentioned. It should be totally excluded from this.

About the matters which will be heard as per clause 15, I think, the Minister is aware that in this case they are only replacing that those matters which are decided by the Appellate Tribunal either of Income-tax, Service Tax, Excise or Customs would come before this National Tax Tribunal. But there are several issues pertaining to all these four laws which are coming to the High Courts even when the matters are not decided by the Tribunal. For example, there could be a matter of law where article 226 of the Constitution can be directly invoked and the matter can directly come before the High Court. In such cases, even if it is possible, that is, the National Tax Tribunal should not be hearing only the matters which have been disposed of by the Appellate Tribunal but should also be hearing the matters to this original jurisdiction, as has happened in case of High Court. Probably, the Minister must apply the mind. Otherwise, it will again defeat the purpose because some tax matters still will be heard by the High Courts whereas some other tax matters as are already disposed of by the Tribunal will come to this new Tax Tribunal. Therefore, this is important. You may have to change the jurisdiction of this. Otherwise, this will really defeat the purpose for which it is meant.

You have mentioned that 25 per cent of the disputed amount will have to be deposited before the Tribunal before the appeal is filed. What would happen with the 75 per cent amount? Does it mean that the balance 75 per cent amount is stayed by virtue of this provision? As you know, the present provision of the Income-tax Act says that there are amounts of money once it is paid, when this is demanded. There is a procedure for collection of that amount of money. Therefore, that procedure of collection goes on parallelly. Here, you are saying that 25 per cent of the amount is deposited and the appeal is entertained. But if an appeal is entertained, they are paying 25 per cent amount. What happens with the 75 per cent amount? I would like to know whether a similar system is applicable for recovery of money. It is not mentioned whether it will get stayed automatically or not. This will again create confusion. Probably, many appeals would be filed to only dispose of this particular thing. Probably, this needs to be clarified in a proper manner.

It is stated that the Civil Procedure Code will not be applicable. This new Tax Tribunal will be able to work in a manner on the basis of natural justice. Is there any particular reason as to why the Government is thinking like this? I would like to know. Normally, any court or *quasi*-judicial authority like the Tribunal is functioning on the basis of what is stipulated in the Civil Procedure Code. Is there any particular reason why the Government is thinking of exempting this and saying that this new Tax Tribunal will be operating on the basis of natural justice? I would really be willing to know.

Sir, any appeal which is filed before them should be disposed of in a specific timeframe. Otherwise, you will not get any benefit out of this. You can say one year, nine months, six months or ninety days, etc. But there has to be a specific time limit prescribed. Then only, it will really happen. There is no time limit that has been prescribed in it[[mks54](#)].

Therefore, I also strongly feel that this should be done in this manner.

The second point is, probably, I am thinking that we have missed out something. There are some minimum numbers that are prescribed for the Bench. Whereas, in this particular law, it has been mentioned that in the case of any matter which is related to legal matter, probably they will be able to form a Special Bench like a Constitution Bench; that Bench will have minimum five members. But you are not mentioning how many minimum numbers of members will be there on the Bench. So, I think, probably, we will have to mention that there would be at least five or more than five members. If you do not mention that, then, how can the minimum five members be there on this Constitution Bench? Without mentioning that, how many minimum members will form the Bench? Therefore, again I think that is the point which the Minister must really take into consideration.

I am just trying to quickly conclude. There are two more matters. One is relating to transfer of cases. Once the Tribunal is notified, all the cases which are now before the High Courts will automatically get transferred to the new Tribunal. That is what the procedure is. I think this is what you have mentioned. Probably, what needs to be done is that the partly-heard matters need not be transferred at all. Otherwise, an assessee will be put to a severe injustice because, probably, some matters would have been partly-heard. They will be heard again here. So, the partly-heard matters should be heard in the High Court itself. Then, the remaining matters in which hearing has not started, should be transferred.

The last matter is this. If you are going to make appointments only on the basis of Government's consideration, then, probably, you are missing out on a point. The point is that an assessee's interest also has to be taken into consideration. The revenue interest will be represented by the Government. But there is a country interest, the interest of an assessee which will not get reflected at all. So, if the appointment is made only from the panel which is only sponsored by the Government, then it will not be really representing the interests of the tax-payers. Therefore, it really needs to be done in that particular manner.

With these words, I conclude.

SHRI B. MAHTAB Sir, I thank you for giving me an opportunity to speak on this Bill. I stand here to discuss the National Tax Tribunal Bill proposed by the Government.

The Government says that it is a very positive step. Under the Direct and Indirect Tax enactments, an appeal lies in the domain of the High Court on a substantial question of law. We cannot avoid it. Due to pendency of a large number of cases in the High Courts, the litigants suffer. Say, for example, by 3rd September, 2004, around 28,000 cases were pending in various High Courts in this country with an average annual disposal of 6000 cases.

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16.38 hrs.

(Shri Devendra Prasad Yadav *in the Chair*)

The point which the Government has been making, which the previous NDA Government also made, is that a huge revenue is being blocked in such litigations. Tax arrears, as on 1st of April, 2004, were estimated to be around Rs.103,000 crore. It must have increased by now. As has been stated, the Direct Tax arrears amounted to Rs.87,800 crore and the Indirect Tax arrears amounted to Rs.15,200

crore. The Finance Ministry must be targeting the recovery of tax arrears every year. But the information goes that each year, the arrears held up in courts mount up in comparison to the recovery of tax arrears.

As has been suggested, by creating the National Tax Tribunal, the Government is going to expedite the cases. For speedy trial – please mark the words “speedy trial” – around 25 Benches are to be set up though it is not mentioned in the Bill. In some quarters, they say – as Shri Radhakrishnan has said just a little while ago – that there will be four Tribunals in four parts of this country. I will come to that aspect a little later [\[R55\]](#).

As per the proposal, each Bench of the Tribunal will have a Chairman and two Judicial Members. The Judge will hold office for five years, as has been stated, and will continue till the age of 68, and the Members will retire at the age of 65. As I have stated earlier, Sir, that there are 182,000 tax appeals pending. This was the situation by the end of last year, by September, 2004 when the Bill was placed in the House. On an average, it takes two years to dispose of an appeal. One appeal takes at least two years. A person who has delved into the rigmarole of the tax law will find that the situation is so complicated that there are several cases in different High Courts which have ruled in a different way on essentially similar cases. There is a need to design the tax system in such a way that it is less onerous for the honest taxpayers and to be hassle-free. I come to the crux of the problem. Right now, as has been stated by my predecessor speaker, that India's tax to GDP ratio is under 10 per cent whereas in Brazil, it is around 25 per cent and in Argentina, it is 25 per cent.

Coming to the tax arrears, Sir, one is aware that quantum of tax arrears is growing year after year. As I have just stated, indirect tax arrears are estimated to be Rs. 15,000 crore. But with this Rs. 15,000 crore, undisputed arrears, as has been stated by the Finance Ministry, are Rs. 3,000 crore. That was the position in September, 2004. I do not have the figures of this year. In direct taxes, around Rs. 87,000 crore are pending. It stands a little over Rs. 87,000 crore, including undisputed arrears, which are around Rs. 17,000 crore. This was the position in September, 2004.

I would like to pose a question to the Government. What is the problem of collecting the undisputed amount which goes up to more than Rs. 5,000 crore taking together the direct and indirect taxes? What is the problem of collecting that amount? Why is this amount pending? Has the Settlement Commission helped in any manner to recover the arrears? I do not deny, Sir, that the new Dispute Resolution Procedures would provide prompt and efficient resolution of disputes and help

avoid expensive litigation. This is my hope that through this mechanism which is going to be in place after this Bill is passed. As regards clarity in tax law, the onus is with the Ministry of Law and Justice. The design of withholding systems that would limit the potential for non-compliance can alone (i) introduce transparency (ii) reduce litigation (iii) usher in speedy justice and (iv) prevent a build up of arrears. These are the four guidelines for which law has to be changed. There is a need to build up a proper database. Here, I would like to refer to the Kelkar Committee Report – the Task Force was formed. It had suggested that you build up a proper database. He had named it ‘Risk Intelligence Network’. This was proposed there so that you can track the non-compliance. Other than accelerating the settlement of justice on complicated tax matters, the other significant aspect which the National Tax Tribunal is going to look after is the much-needed reform in the adjudication system. Under the current scheme of Dispute Settlement, the taxpayers have the option to either seek administrative redressal or a judicial remedy. These are the two options which a citizen or a taxpayer of this country has. The Income Tax Act specifies the categories of orders in respect of which a judicial remedy can be availed[\[a56\]](#).

There are several orders for which there is no judicial remedy today and the administrative redressal mechanism is ineffective. As a result, we have considerable dissatisfaction among the tax payers. The present dispute settlement mechanism has eroded the confidence of the tax payers. The tax payers do not have much confidence in the neutrality of the adjudicating officer and this is the reason why there are so many litigations. I hope the National Tax Tribunal will help to reform the existing system of quasi-judicial adjudication and will minimise the incidence of litigation. But the problem before us is how to shorten the judicial process. In the case of an indirect tax dispute the National Tax Tribunal will actually add another layer of judicial intervention and this is one of the major fault with the National Tax Tribunal. I think the Government should look into that.

Sir, under the current law, indirect tax disputes are heard by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) and then by the Supreme Court, in the case of an appeal. What will happen once the National Tax Tribunal comes into force? So, what is the job of the National Tax Tribunal in the case of an indirect tax dispute? Even if the National Tax Tribunal has ruled in a case that has been dealt by CESTAT, a citizen can still appeal to the Supreme Court. In the case of direct tax, since the first appeal is at the level of High Court, the National Tax Tribunal can theoretically change things since the appeal will be heard by it in a different court across the country. But since the right of

writ cannot be taken away, as has been mentioned in a specific article of the Constitution, there is no reason why aggrieved parties will not go to various High Courts first and then to the Supreme Court.

Now I come to the other aspect about the CESTAT. My basic question to the Government is this. Is it not a fact that majority of the cases in the CESTAT are decided against the Government? The hon. Member from the Ruling Party had mentioned an incident about the Kolkata case. I need not go into that. But it is an accepted fact that the Government is the greatest litigator in this country relating to tax law.

Sir, the major objective which the Minister has stated here and also in his statements outside is that he wants to achieve three things through this Bill. First of all, he wants to speed up the disposal of cases relating to direct and indirect taxes. Secondly, the National Tax Tribunal will introduce an All India perspective in the matter of interpretation of tax law. Thirdly, this special body will acquire both speed and consistency in the views. These are the three things which this Bill is going to achieve, he said.

Now, I will deal with these three things within a very short time. I have my doubts. First of all, in many High Courts there are a number of posts of judges that are lying vacant. In Orissa, in the Cuttack High Court more than 10 posts of judges are lying vacant. As a result, an agitation is going on there for the last two weeks and the courts are not functioning. Similarly, in the Allahabad High Court also there are a number of vacancies. Recently, the Minister of Law and Justice has also mentioned, in a meeting and also in different statements made to the Press, about the problem as to why these posts of judges are not being filled up, but the cases are mounting. Here, the Government is going to appoint retired judges and

some members from other services like the Indian Revenue Service or from the bureaucracy in the National Tax Tribunal[k57].

Money [r58] will be spent, about which Shri Varkala Radhakrishnan, the hon. Member from Kerala, has also mentioned. I need not go into all that. But the Standing Committee, in detail, has dealt about that. We would rather like to understand the Government's point of view. Once the Standing Committee has given the suggestion that you increase the number of judges in different High Courts,

you specify a specific Bench for tax determination. Why are you going in for creating a separate tribunal ?

We have seen how the tribunals relating to administrative matters have functioned. When that Bill came in the House, similar assurance were given. But records have shown that those administrative tribunals have not given us the desired results, rather more cases have gone into the Administrative Tribunal in different States and also in the Central Administrative Tribunal. It has not lessened the cases in the High Courts.

Similarly, once you just try to shift all the tax cases to another tribunal, how can you say that you will speedily determine these cases? You will lessen the burden of cases. There will be more delay. This is my anxiety which I just want to mention. The Standing Committee has given a suggestion that you try to create specific Benches for tax to determine these tax cases.

MR. CHAIRMAN : Please conclude now.

SHRI B. MAHTAB : These are all relevant points. The manner in which the Bill is drafted, it has given ample scope to say that the High Courts have given different views, different judgements on similar cases. This is what the Bill says.

In the statement of the hon. Minister, I think, he can clarify that. If this is the reason, if he wants to have a tribunal then how does he expect that these

tribunals will also bring in consistency in views? If the High Courts have failed, how can you say that these tribunals will bring in consistency in view and uniformity? This is my anxiety. Can you convince us?

Thirdly, I have my reservations regarding the speed, as has been said. We have seen how the NTT had functioned during the Ordinance regime. I think, Mr. Chairman, you were also there. We all have been witness to it and we know what was the result. The Minister has not clarified how that tribunal had functioned in 2003-04, before the Bill came into the Parliament and after that it was again withdrawn and again it has been introduced under this regime of UPA Government's time. What

happened during the NDA period? How has that NTT determined certain cases? I need not go into the details. You are much aware about it.

But I would only say that Special Tribunals have not helped in speedy adjudication of cases. Yes, as I have said, in case of direct tax, this may help to a certain extent. I am of the opinion that the Government has to be better geared up in modern techniques and infrastructure to speed up the execution proceedings. The Government has to set up Risk Intelligence Network as suggested by the Kelkar Task Force.

I conclude by saying that the problem today is in the administration of law rather than uniformity or certainty in these matters. The major Parties, sitting in the Opposition and in the Ruling side, have agreed. It is only the middle, that is, the Left Front and we also in this side, do not agree to this proposal. They both have agreed. Of course, Mr. Chairman, the RJD, has also agreed, but I only hope that NTT will be able to do what is desired.

SHRI C.K. CHANDRAPPAN Mr. Chairman, Sir, the new legislation has a good intent. That legislative intention has to be supported but then the fears expressed during the course of the discussion have to be clarified by the Government.

If the Standing Committee has recommended that there are other ways by which the Government could administer the tax regime much better, then why has the Government not accepted it? The Government did not also say as to why it was rejected.

Now, one of the suggestions that they have made was that there could be special benches to deal only with taxes. It would mean that the existing judges could do that. It does not incur any more expenditure. The Minister was telling that there are vacancies. If these vacancies could be filled up and more benches could be constituted exclusively to deal with the problems of taxes, then probably without much additional expenditure we could have achieved the same ends for which this Bill has been brought. That was the recommendation of the Standing Committee but the Government turned it down.

So many facts regarding the tax arrears have been marshalled here. It varies from Rs. 1,30,000 crore to Rs. 1,80,000 crore. These are the tax arrears. These tax arrears are accumulating on the one side. It is agreed by everyone that India is a country where the tax ratio in relation to GDP is much less than most of the countries in the world. So, if we have to have more tax revenue, we have to tax properly. There should be a tax regime by which all the incomes are taxed and then there should also be methods of administration by which you could see that the tax arrears are not accumulated. Here it seems that the taxation itself is a low level of taxation and then the tax arrears accumulation is much bigger. Now to collect this, one of the fears again expressed by the Standing Committee was that by constituting this new tribunal, more retired judges and more bureaucrats who are at the fag end of their service would be provided with *kursi* and comfortable jobs at the end of their days. I would like to know why such a measure should be taken when other methods are there.

While the legislative intention is laudable, I would like to know whether this legislation is the only way by which that intention could be achieved. Why did the Government not agree with the recommendations of the Standing Committee? I think, the Government owes an explanation to this House.

Now, you are saying that to achieve a certain very laudable end you are constituting such a machinery, which will be a den of all the retired bureaucrats, and their number will not be small. The Bill says that there will be tribunals and then there will be a number of benches. The number has not been stipulated. If all these are coming, then it will be another white elephant. That would be very expensive for this country to shoulder [\[lh59\]](#).

17.00 hrs.

So, I would like to know what explanation the Government will give on this matter. Otherwise, we support the legislative intention. But is the new system of Tribunal necessary? Is it not more proper to accept the recommendation of the Standing Committee? I hope the Minister will explain this.

श्री बची सिंह रावत 'बचदा' सभापति महोदय, अभी तक जो माननीय सदस्यों की ओर से विचार आये हैं, उसमें शुरू से चिन्ता व्यक्त की गई है। यह जो इसका फ्रेमवर्क है, इसके संबंध में चिन्ता व्यक्त की गई है। यह बड़े आश्चर्य का विषय है कि स्टैंडिंग कमेटी को

2003 में यह रैफर किया गया था। तब 6 फरवरी 2004 को पार्लियामेंट डिजॉल्व होने के कारण वह बिल लैप्स हो गया और स्टैंडिंग कमेटी की भी रिपोर्ट नहीं आई है। पुनः नवम्बर, 2004 में यह बिल पेश हुआ और बिल दुबारा स्टैंडिंग कमेटी में गया। उस बिल पर पांच सिटिंग में सारा विचार-विमर्श हुआ और उसके बारे में सारी रिकमेंडेशंस आई हैं। हम लोग सिफारिश के अनुकूल सोचते थे कि संशोधन आना चाहिए था। काफी महत्वपूर्ण सुझाव और रिकमेंडेशंस समिति ने स्वीकार की हैं लेकिन केवल 2004 का 2005 किया जाए, 55वें का 56वां किया जाए। केवल यह अमेंडमेंट सरकुलेट हुआ है। कोई और अमेंडमेंट गवर्नमेंट की ओर से नहीं आया है। अब या तो यह कर दिया जाए कि स्टैंडिंग कमेटी की सिफारिशों की आवश्यकता नहीं है। इससे स्टैंडिंग कमेटी पर भी प्रश्नचिह्न लगता है। दूसरा तरीका यह है कि हम इसीलिए डिबेट को पार्लियामेंट में इनवाइट करते हैं कि इस संबंध में माननीय सदस्यों के विचार आए और उन्हीं विचारों के अनुरूप सरकार की ओर से एक बिल आए और जो व्यवस्था- सैट-अप हम बनाने जा रहे हैं, एक तरह से हम कोडिफाइ करने जा रहे हैं कि उसके फंक्शंस क्या हैं, राइट्स क्या हैं, टर्म क्या हैं और उसकी क्वालिफिकेशंस क्या हैं। माननीय सदस्यों की ओर से यह भी विाय आया है कि उसकी कोई उपयोगिता ही नहीं है। लेकिन स्टैंडिंग कमेटी का व्यू था कि हाइकोर्ट में जो पेंडेंसी है, वह जजेज की कमी के कारण है और जजेज की कमी पूरी की जाए तो उसका एडजुडिकेशन हो सकता है।

दूसरा विाय इसी से जुड़ा हुआ है कि हाइकोर्ट में इसकी अपील हो सकती है। उसके बाद अपील के लिए रिट पेटिशन से सुप्रीम कोर्ट में जा सकते हैं और वहां से भी जस्टिस मिला है। इसका उदाहरण हमारे सामने है। पार्लियामेंट में एक ऑर्डिनेंस लाया गया था, *Indian Tobacco Company Limited vs. Commissioner of Central Excise, New Delhi and others*. दस सितम्बर 2004 को इसका फैसला हुआ और 803 करोड़ रुपया जो एक्साइज ड्यूटी का वसूल होना था, उसकी रिलीज सुप्रीम कोर्ट में एज अपील वहां जाने पर हुई और अब चूंकि हम ऑर्डर फाइनल करने जा रहे हैं, ट्रिब्यूनल का ऑर्डर फाइनल होगा और केवल थोड़ा सा बचेगा तो रिट का ज्यूरिसडिक्शन बचता है। इसलिए इस पर ज्यादा गंभीरता से सोचने की आवश्यकता है। हमारे माननीय विधि मंत्री जी बहुत ही विद्वान तथा अनुभवी हैं, मेरा उनसे यह अनुरोध होगा कि जो सुझाव उनके पास आए हैं, उन पर गंभीरता से विचार करके यदि फिर इसे संसद में ला सकेंगे तो इससे एक तो यह बात है कि इससे पार्लियामेंट में हम भी अपनी ड्यूटी पूरी कर रहे हैं। इसलिए उनकी ओर से भी इस बारे में कुछ सुझाव आने चाहिए। कुछ सुझाव मैं अपनी ओर से प्रस्तुत कर रहा हूं। अब इसमें परिस्थिति समझ में नहीं आती। क्लॉज 5 का सब क्लॉज 2 जो है, उसमें आपने कहा कि:

“The Benches of the National Tax Tribunal shall ordinarily sit at any place in the National Capital Territory of Delhi or such other places as the Central Government may, in consultation with the Chairperson, notify.”

और उसके आगे प्रोविजन दिया है। *With consultation, “The Chairperson may for adequate reasons permit a Bench to hold its temporary sitting for a period not exceeding fifteen days at a place other than its ordinary place of seat.”* यानी दिल्ली से बाहर कहीं होगा तो पन्द्रह दिन के लिए होगा लेकिन उसी क्लॉज का जो सब-क्लॉज 5 है, उसमें आपने दे दिया

है:

“The Central Government may in consultation with the Chairperson transfer a Member from headquarters of one Bench in one State to the headquarters of another Bench in another State or to the headquarters of any other Bench within a State.”

यानी जो उसका फ्रेमवर्क है, उसे देखे जाने से यह मालूम पड़ता है कि आप नेशनल टैक्स ट्राइब्यूनल बना रहे हैं। उसकी ऑर्डिनरी प्लेस ऑफ सिटिंग नेशनल कैपिटल ऑफ दिल्ली में है और यदि बाहर सिटिंग करवानी है तो पन्द्रह दिन के लिए बाहर सिटिंग करवाएंगे और उसी सब-क्लॉज 5 में यह देखा जा सकता है कि इसमें क्या विसंगति है [\[R60\]](#)।

श्री हंस राज भारद्वाज : इसके विषय में आप जो बात कह रहे हैं, वह जहां रेगुलर बेंच नहीं होगी, वहां टेम्पररी सिटिंग के लिए है। जहां रेगुलर बेंच होगी, वहां पूरी बेंच बैठेगी। अगर बाहर जाकर किसी स्थान पर कुछ दिन काम करना है तो वह टेम्पररी सिटिंग है। कोर्ट्स को यह पावर होती है कि अगर अपनी जगह के अलावा कहीं बाहर भी सर्किट में जाना चाहें तो जा सकती हैं। फाइनेंसियल मेमोरेंडम में 25 बेंचों का प्रावधान है। इसके अतिरिक्त स्पेशल बेंच और दो व्यक्तियों की डिवाजन बेंच की जगह पांच व्यक्तियों की बेंच बनाने संबंधी प्रावधान इसमें हैं, लेकिन आप यह जो बता रहे हैं कि यह विसंगति है, यह विसंगति नहीं है। टेम्पररी सिटिंग के लिए, जहां पर बेंच है, वहां के अलावा भी बैठ सकते हैं। मान लीजिए अगर इन्दौर में बेंच है तो वे रतलाम में भी बैठ सकते हैं।

श्री बची सिंह रावत ‘बचदा’ : जो बात मेरी समझ में आई थी, वह यह कि क्लॉज 2 में लिखा गया है - "Benches of the National Tax Tribunal will sit in Delhi."

इसमें स्टेट्स का कहीं जिक्र नहीं था। चूंकि हम इस एक्ट को कोडीफाई कर रहे हैं, इसीलिए मेरा यह हम्बल सन्निधान था कि हम उस पर विचार करके उसमें और कितना सुधार हम कर सकते हैं। हम इसके सपोर्ट में हैं। शुरू में यह कहना आवश्यक है कि हम उसके विरोध में नहीं हैं। लेकिन अगर यह स्टैंडिंग कमेटी में जाता और उसकी स्क्रीनिंग होती, उस पर डिबेट होती, तो डिबेट में अगर माननीय सदस्यों से अच्छे सुझाव आते, तो उनके अनुसार हम और सुधार कर सकते हैं। इस तरह हम संसद सदस्य के रूप में हमारी जो ड्युटी है, उसी को कम्प्लीट करते हैं।

इसके अलावा इसमें दो सदस्यों की बेंच की बात आई है। इसमें लिखा गया है : "The Central Government shall determine the number of Benches and each Bench shall consist of two members. "

लेकिन जब किसी बेंच में दो ही मेम्बर्स होते हैं तो सामान्यतः यह पाया जाता है कि डिफरेंस ऑफ ओपिनियन की स्थिति में कठिनाई होती है। इसलिए इसके क्लॉज 18 में यह प्रावधान है कि डिफरेंस ऑफ ओपिनियन होने की स्थिति में वह मामला चेयरपर्सन को रेफर किया जाएगा जो उससे हायर बेंच का निर्माण करेगा और फिर उसके सामने वह पूरा मामला लाया जाएगा।

इससे अच्छा हो कि शुरू में ही यह जो असंगति है उसे दूर करते हुए अगर यह संख्या तीन या पांच कर लें तो पुनः क्लॉज 18 की आवश्यकता नहीं रहेगी और यह आसानी से सुधर सकता है।

क्लाज 6 में कहा गया है कि सुप्रीम कोर्ट का भूतपूर्व न्यायाधीश या हाईकोर्ट का चीफ जस्टिस उसका चेयरपर्सन होगा, उसके आयु के विषय में कहा गया है कि वह 68 वर्ष से अधिक आयु का नहीं होगा। लेकिन भारतीय संविधान का अनुच्छेद 124 कहता है कि सुप्रीम कोर्ट के न्यायाधीश 65 वर्ष की आयु तक कार्य कर सकेगा। अब केवल तीन साल बचते हैं। चूंकि व्यवस्था यह है कि ट्रिब्यूनल के सदस्य का कार्यकाल पांच वर्ष या 68 वर्ष की आयु तक होगा। इस स्थिति में पांच वर्ष का कार्यकाल तो किसी भी कीमत पर पूरा नहीं होना है। इसलिए यह कहना आवश्यक नहीं है कि कार्यकाल पांच वर्ष या 68 साल तक होगा।

इसी के साथ स्टैंडिंग कमेटी ने यह सुझाव भी दिया था और मेरा भी यह सुझाव है कि मान लीजिए कहीं पर जज उपलब्ध नहीं होते हैं या यह भी हो सकता है कि कोई जज कहे कि हमको ट्रिब्यूनल में नहीं आना है। इसे आप एक तर्क के रूप में देखिए कि मान लें, जज कहे कि ट्रिब्यूनल में नहीं आना है। प्रायः इतने कमीशनर्स ऑफ इन्क्वायरी बनते हैं, कई बार उन्हीं में जजों की कमी हो जाती है। इसलिए हमें इसके लिए कोई न कोई सेफगार्ड रखना चाहिए। जजों के समकक्ष जो लोग टैक्सेशन के एक्सपर्ट हैं और जिनके पास उनके समकक्ष सेवा का अनुभव है, जजों के उपलब्ध न होने पर उन्हें भी ट्रिब्यूनल में नियुक्त किया जा सके। मैं यह इसलिए कह रहा हूँ क्योंकि इस बिल में यह मैण्डेटरी प्रॉविजन है कि ट्रिब्यूनल का चेयरमैन वही व्यक्ति होगा जो हाईकोर्ट का चीफ जस्टिस रहा हो या सुप्रीम कोर्ट का न्यायाधीश रहा हो। इसके विषय में स्टैंडिंग कमेटी का सुझाव था कि इनकम टैक्स के चीफ कमिश्नर, जो इण्डियन रेवेन्यू सर्विस में इतने वर्षों से वादों का निस्तारण करते आते हैं, उनके अनुभव को देखते हुए, जहां हमने लिखा है कि इनकम टैक्स एपेलेट ट्रिब्यूनल या सर्विस टैक्स एपेलेट ट्रिब्यूनल के सदस्य, जिन्होंने कम से कम सात साल की सेवा पूरी की हो, उनको भी चेयरपर्सन नियुक्त किया जा सके। अगर हम ऐसा करते हैं तो हमें जजों की कमी नहीं होगी।

सभापति महोदय : प्लीज, कंकलूड कीजिए।

श्री बची सिंह रावत 'बचदा' : महोदय, ये लीगल प्वाइंट्स हैं, अगर उनको नहीं कहेंगे तो क्या कहेंगे। मुझे उम्मीद है कि माननीय मंत्री जी इनको ध्यान से देखेंगे, हो सकता है कि कोई संशोधन आ जाए।

सभापति महोदय : आपकी पार्टी के अन्य तीन-चार माननीय सदस्यों को अभी बोलना है।

श्री बची सिंह रावत 'बचदा' : महोदय, मैं सिर्फ दो मिनट लूंगा। मेरी पार्टी का काफी समय बचा है। अभी तक हमारी पार्टी से केवल एक ही सदस्य बोले हैं [\[R61\]](#)। क्लोज 10 वनमें एक चीज दे दी गई है कि जजेज को हम चेयरपर्सन बनाएंगे, सब कुछ करेंगे, लेकिन उन्हें छुट्टी नहीं देंगे। हमारी गुजारिश है कि जहां पर उन्हें सैलरी आदी देने की बात आए और कहें कि छुट्टी नहीं देंगे, तो छुट्टी देनी चाहिए। आपने उस केस के लिए व्यवस्था की है कि जो सीनियर नम्बर आफ ट्रिब्यूनल होगा, वह एक्टिंग चेयरपर्सन के रूप में रहेगा। क्लोज 10 में यह उल्लेख आया है। उसकी आखिरी लाइन है,

Clause 10 (1) states:

“same as applicable to a sitting Judge of the Supreme Court, but no vacation shall be allowed.”

एक प्रकार से यह हो गया कि आपको काम ही काम करना है, छुट्टी नहीं देंगे। इसलिए अगर वह बीमार हो जाए, कुछ और बात हो जाए, तो वह देखना चाहिए। आपने आगे प्रोविजन दिया है कि वे रहेंगे। अगर इस पर थोड़ा सा देख लें, इसे ओमित कर सकें तो अच्छा होगा। जो सबस्टीट्यूशन है आर्टिकल 15 वन का,

Clause 15 (1) says:

“An appeal shall lie to the National Tax Tribunal ... if the National Tax Tribunal is satisfied that the case involves a substantial question of law.”

अब इसमें जितने केस टैक्सेशन के हैं, छापामारी से, असेसमेंट से और सर्वे से लेकर, केवल लॉ का ही पाइंट नहीं, बल्कि सबस्टेंशियल क्वेश्चन आफ लॉ के साथ जहां फेल्योर आफ जस्टिस हो या एब्यूस आफ प्रोसेस हो, उसे भी ज्यूरिस्ट्रिक्शन में रखें। जहां हम उसे आगे फिर रिट के रिवीजन का अधिकार दे रहे हैं, तो हम कह दें कि केवल लीगल साइड देखेंगे, फैक्ट्स के आधार पर भी उसे अपील का अवसर मिलना चाहिए। जहां एब्यूस आफ प्रोसेस भी हो या फेल्योर आफ जस्टिस हुआ हो।

जो क्लाज 16 है, उसमें एक बात दी गई है।

Clause 16 says:

“The National Tax Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.”

यानी हम एक एक्ट प्रोवाइड करने जा रहे हैं, बिल में सारे प्रावधान दे रहे हैं। हमने आगे कहा कि उसे पावर वही मिलेगी जो सुप्रीम कोर्ट की हैं यानी सम्मन वगैरह की। लेकिन प्रोसिजर कौन सा होगा, प्रोसिजर से बाउंड नहीं है। नेचुरल जस्टिस का प्रोसिजर रहेगा कि उसी तरीके से हीयरिंग करेंगे, मुद्दे तय करेंगे, उसके बाद आर्ग्यूमेंट होंगे और एफिडेविट होगा। इसे यहीं नहीं छोड़ा जाना चाहिए। यह उसके भीतर आना चाहिए। यह नियमों में लेकर आएंगे। अगर एक्सप्रेस प्रोविजन आता है कि इसे फालो करेंगे तो मैं समझता हूँ ज्यादा उचित होता।

एक प्रावधान की ओर मैं आपका ध्यान आकृष्ट करना चाहूंगा। जब हम भारत के राष्ट्रपति का उल्लेख करते हैं या संसद सदस्य का करते हैं, सबके लिए जहां आपने कहा है कि दिवालिया न हो, conviction, moral turpitude, etc. ... has become physically or mentally handicapped ... 'shall be a citizen of India' आदि-आदि दिया है। उसके लिए हम लोगों के लिए एक शब्द होता है कि भारत का नागरिक हो। यह इसके भीतर हर संवैधानिक पदों के लिए आवश्यक तत्व है कि भारत का नागरिक हो, जिसकी भारत की नागरिकता समाप्त न हो गई हो। वह क्वालिफाइड है या नहीं है, यह बिल इस मामले में साइलेंट है। इस बारे में भी मंत्री जी ध्यान देंगे, तो काफी कुछ हित होगा।

जो एल. चन्द्र कुमार बनाम यूनियन आफ इंडिया केस था, जो हाई कोर्ट या सुप्रीम कोर्ट की ज्यूरिस्डिक्शन पर असर नहीं करेगा। लेकिन यह इस बिल के अंदर सीधे-सीधे यह कर दिया है कि इसका जो आर्डर है, "That shall be final and that cannot be challenged in any civil court." यह जो रूलिंग है, जिसमें सुप्रीम कोर्ट ने कहा था कि ऐसा ट्रिब्यूनल बनाकर उसके अधिकार कम न करें इसलिए इसका स्पटीकरण इसके भीतर आ सके, तो सही रहेगा। स्टैंडिंग कमेटी की भी ऐसी सिफारिश थी। इसलिए स्टैंडिंग कमेटी को भी महत्व मिलना चाहिए। वरना उसका कोई अर्थ नहीं रहेगा। इसलिए स्टैंडिंग कमेटी की एकाध सिफारिश को माना जाना चाहिए।

सभापति महोदय, बिल की जो स्प्रिट है, जो भावना है, मैं उसका समर्थन करता हूँ, क्योंकि हम लोग ही यह बिल लेकर आए थे। इसीलिए मैं इसमें सुधार की बात कह रहा हूँ कि गुंजाइश हो तो जो स्टैंडिंग कमेटी ने सिफारिश की है, वह मानी जानी चाहिए।

इसके साथ ही मंत्री जी ने जो विधेयक यहां प्रस्तुत किया है, मैं उसकी भावना और स्प्रिट का पूरा-पूरा समर्थन करता हूँ।

SHRI S.K. KHARVENTHAN Sir, I thank you very much for the opportunity.

First of all, I would like to thank and congratulate our hon. Minister of Law and Justice to bring forward this Bill to constitute the National Tax Tribunal, to pave way to dispose of cases speedily. There is a long list of pending cases in 21 High Courts throughout the country. It is not helping the departments and it is also not helping the taxpayers also. In these 21 High Courts, a lot of vacancies are pending. The civil appeals are pending, criminal appeals are also pending and original jurisdiction

cases are pending. In the same way, the tax cases are also pending. So, to avoid this problem, our Government has come forward to bring this Bill to constitute the National Tax Tribunal. It is not a new proposal.

Here I would like to mention before this august House that when our hon. Prime Minister was the hon. Minister of Finance during 1992-93, he mentioned in his Budget Speech and I quote:

“The Government was planning to set up the National Court of Direct Taxes in order to ensure that litigation in direct tax matters is settled expeditiously.”

Also, the Law Commission of India in its 115th Report also favoured to form this kind of a National level Appeal Tribunal.

In this present Bill I want to mention only certain provisions. First of all, Clause 5 (1) deals with the constitution and jurisdiction of the Benches. Wherever these Benches of the National Tax Tribunal are going to attend any of the State, the time is given only 15 days, sitting for a period not exceeding 15 days. This restriction has to be removed and the time has to be given according to the convenience of the Chairperson. A lot of cases are pending in 21 High Courts. When the Bill is passed and the National Tax Tribunal is constituted, all the cases will be transferred to it. But instead of constituting one Tribunal at Delhi, I request the hon. Minister of Law to consider at least four Benches, that is,

Chennai, Mumbai, Kolkata and Delhi, instead of taking the Benches there. ... (*Interruptions*) This is my humble suggestion. ... (*Interruptions*)

SHRI K.S. RAO : In Hyderabad also.

SHRI S.K. KHARVENTHAN : Yes, in Hyderabad also.

Sir, with respect to Sections 6 and 7, they deal with the appointment of Chairperson and other Members. Section 8 deals with the terms of office of Chairperson and Members. In the case of Chairperson, the age of 68 years is mentioned for service. They have also given importance to the advocates, legal practitioners and accountants in Clause 13. On behalf of the lawyers of this country, I am thanking the hon. Minister of Law to include this provision.

Here I would like to quote from 13 sub-clause (I):

“... any person duly authorised by him”

It must be removed and only the legal practitioners and Chartered Accountants may be permitted to appear. I am also welcoming the Clause 13(ii). I quote:

“The Government may authorise one or more legal practitioners. ”

So, this opportunity is given for the lawyers. I am welcoming this provision also.

I would like to quote Section 15 sub-clause ii:

“Provided further that the National Tax Tribunal may entertain the appeal within sixty days after the expiry of the said period of one hundred and twenty days. ”

So, this condonation of delay has to be removed and modified.

I am also having a reservation with respect to Section 15 sub-clause (iv). Those who lost the case want to file an appeal before the National Tax Tribunal. The assessee or the aggrieved person, as the case may be, shall not be allowed to prefer appeal unless he deposits at least 25 per cent of such tax or duty payable on the basis of the order appealed against.

Most of the departmental cases are filed by the department people. They are also deciding in favour of the department. So, to pay 25 per cent is not proper on the part of the affected party. Even in this proposed Bill, disputes with respect to the determination of the rates of duties of Customs and Central Excise are also to be decided[\[R62\]](#). [\[R63\]](#)

I want to mention about one case. For example, in Chennai, for a person bringing a watch from abroad, the customs officials fix it at Rs. 30; for the same the DRI fixes it at Rs. 140. For the goods, the customs people fix it at Rs. 3.5 lakh and the DRI people fix it at Rs. 7.5 lakh. For this, the person is arrested and he is put behind the bar and the Government is spending Rs. 150 per day on him. Recently, seven poor, innocent people lost their goods. They were arrested, they were remanded to custody. This

is the mindset of the officials. If the officials are filing false cases against the persons and are asking to deposit 25 per cent of the tax or duty before filing appeal is improper, that has to be removed. That provision has to be cancelled. That is my suggestion.

With respect to the constitution of the National Tax Tribunal, I wholeheartedly welcome it. I request the hon. Minister that the Benches may be constituted in four parts of the country and not in 15 High Courts. The Benches are to be constituted in the four regions of the country. The poor people of Kanyakumari or Kashmir cannot reach Delhi and approach the Tribunal. To avoid the expenses and to help the poor litigants and the taxpayers also, this is to be considered. The Government has to seriously think over the erratic valuation by the departmental people of the property and on filing of the cases. So many innocent people are affected. In these circumstances, a way has to be found out. Some modification has to be made to the Bill.

I welcome this Bill.

PROF. M. RAMADASS Sir, I wholeheartedly welcome this National Tax Tribunal Bill and convey the appreciation of our Party to the hon. Minister for Law and Justice for bringing this long overdue Bill for this country. We welcome this Bill because its objectives are laudable, its relevance to the present day tax reforms is very high and it serves the purpose of resource mobilisation for the country. As you know, the country today requires vast resources to take up the developmental expenditure of the Government. These resources will have to come through the prompt payment and the prompt collection of tax and non-tax revenue to the Government. This Bill will address this issue.

You know that the fiscal situation in the country warrants that we tap more resources from the hidden and non-hidden sources. One of the reasons why, in spite of all our efforts at tax reforms, the tax revenue is not zooming up is because there are large number of cases pending before the courts and these cases have to be expeditiously dealt with. One way of doing it is to appoint a National Tribunal like this. This has been already recommended by the learned Law Commission in its 115th Report. It has also been recommended by Chowky Committee report. I think that they are all well-versed in the settlement mechanisms and, therefore, there are no two opinions that the country today, in the present circumstances, requires this National Tax Tribunal Bill. It will have, in my view, at least five important, distinct advantages. Firstly, it will reduce the time involved in litigation. Secondly, it will expedite

adjudication of tax cases. Thirdly, it will bring about uniformity in the decision-making process. Fourthly, this mechanism will give scope for judicial scrutiny.

The present settlement mechanism is giving lot of powers to the Tax Tribunal authorities which are headed by the Tax Commissioners. They have their own whimsical fancies of fixing the rates, fixing the levies, assessments etc. There are large number of open complaints against the method of valuation, the method of assessment made by these non-judicial officers heading the Tax Tribunal.

Therefore, by establishing this National Tax Tribunal we are combining both the judicial and non-judicial processes and that is one great advantage of this [\[krr64\]](#) Bill.

Finally, it will also reduce the work load of High courts because all the cases pending there will now be transferred to the Tribunal. That will expedite the cases pending in the High Courts. Therefore, I agree that this Bill contains lot of merit.

At the same time, I would like to counter one or two points raised by our CPI(M) colleagues. They said that this will be a white elephant and this is providing a place for the retired bureaucrats to seek asylum in these tribunals etc. I would feel that going by the estimates given by various committees on the constitution of National Tax Tribunal Bill, even if you assume that you are going to have 28 benches throughout the country, the total expenditure would amount to only eight crores of rupees whereas if these tax arrears are properly cleared, the Government is expected to get the revenue of more than rupees one lakh crore. How is this going to be a white elephant? After all, the bureaucrats have accumulated knowledge. They have their own wisdom and experience of judicial scrutiny. So, there is nothing wrong in utilising their services even after their retirement. After all, we need persons with wisdom, persons with knowledge and persons with experience. If it can come from retired bureaucrats, there is nothing wrong in appointing them. That is one point I wanted to tell you.

There was a question on the naming of the Bill. One of the learned Members said that this tribunal would deal with both taxes and duties. Therefore, he suggested that this Bill should be called as the National Tax and Duties Tribunal Bill. I would feel that it can be called as the National Revenue Tribunal Bill because out of the total revenue - tax revenue and non-tax revenue - that the Government gets, the non-tax revenue constitutes only five to six per cent of the total revenue and remaining revenue comes from taxes only. Therefore, instead of calling it only National Tax Tribunal Bill, you may call it National Revenue Tribunal Bill.

The second suggestion that I would like to give is about section 15. Section 15 may go contrary to our WTO regime. I am mentioning only those points which have not been touched by others. The WTO regime says that all kinds of disputes with regard to valuation of sales tax, customs duties and other things must be done only by a prompt single mechanism. If this provision is taken, it provides that whatever appeal that can be made, it can be made to the National Tax Tribunal. That means you are bringing in a two-tier mechanism which is not warranted.

Another thing is with regard to appointment of members to the Committee. This Bill says that either he should be a judge or he should be a member of Income Tax Appellate Tribunal for at least seven years. The implicit assumption of this provision is that the members as well as the chairman should have either judicial or non-judicial knowledge, but what about the technical persons? Why are the technical persons not included in this provision to be there in the Commission? After all, tax is a technical matter. There is the concept of tax rate, concept of tax incidence, concept of tax impact and concept of equity in taxation. Therefore, somebody who levies it may not know the principles of taxation. Tax being a technical subject, some technical experts must also be included in this. I would feel that the persons retired from Indian Economic Service may also be considered along with judicial officers and persons from Income Tax Appellate Tribunal etc.

The Bill does not mention anything about the number of benches. It should be specifically mentioned. Also, the number of members is not properly quoted here. That should also be done. With regard to section 13, I would say that it should include 'a party to an appeal other than Government may either appear in person or authorise one or more company secretaries, cost and works accountants, chartered accountants or advocates.' Only that will give a wider coverage to the Bill.

With these modifications, I support the Bill. This Bill should be passed unanimously by this House.

SHRI P.S. GADHAVI Sir, thank you very much for giving me the opportunity to participate in the debate on this Bill. First of all, I rise to support this Bill.

I would like to invite the attention of the hon. Minister to clause 8 dealing with the Terms of office of Chairperson and Members. The term of office of Chairperson and Members is for five years. Normally, what happens is that retired persons are appointed as Chairperson and Members and this is

the tendency everywhere. They should not appoint retired persons. If retired persons are appointed -- in case of High Courts, the Judges retire at the age of 62 years -- they can serve only for a period of three years. When they are appointed at the age of 66 years or 67 years, then they will be serving for a period of only one year. Therefore, a retired person will not be able to do justice to his service as he should. If they are appointed, they may have the qualifications, they will serve only for a few months. It is also seen in places like Delhi that retired persons would like to be appointed in such Tribunals for the sake of retention of their official accommodation or on the grounds of their children studying in such places. In that case, precaution is required to be taken to see that this type of persons are not accommodated.

Clause 13 deals with 'Appearance before National Tax Tribunal'. According to this clause:

"A party to an appeal other than Government may either appear in person or authorise one or more chartered accountants or legal practitioners or any person duly authorised by him or it to present his or its case before the National Tax Tribunal."

Anybody can be appointed and we do not know whether he is having the legal knowledge or not. Here, you have to put a restriction that persons who have got the knowledge of law alone will be appointed.

Substantial appeals come before the National Tax Tribunal involving substantial questions of law. As per the present clause, anybody authorised by a party can appear before the Tribunal. There is also an apprehension of people engaging an intermediary in these cases. Therefore, there should be a restriction that persons who have got some legal knowledge only will be appointed.

Clause 15 deals with 'Appeal to National Tax Tribunal'. Clause 15 (1) says:

"An appeal shall lie to the National Tax Tribunal from every order passed in appeal by the Income-tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal, if the National Tax Tribunal is satisfied that the case involves a substantial question of law."

Many times, there are other questions which may also require to be appealed: for example, there may be gross irregularities or a question of fact which require to be agitated. As per clause 15 (1), an appeal shall lie to the National Tax Tribunal from every order passed in appeal by the Income-tax Appellate Tribunal and the Customs, Excise and Service Tax Appellate Tribunal, if the National Tax Tribunal is satisfied that the case involves a substantial question of law. In that case, clause 15 goes

beyond the Preamble of the Bill and makes the orders passed by the Customs, Excise and Service Tax Appellate Tribunal appealable to the National Tax Tribunal, including orders on anti-dumping matters, subsidy, counter-veiling measures, etc. Moreover, the World Trade Organisation Agreement on Customs, Anti-Dumping, etc., to which we are signatories, requires only one level of prompt judicial review of administrative action. Anti-dumping measures which are required to protect the domestic industries must be decided quickly. If we provide for such matters to be decided by the National Tax Tribunal, it will be a one more tier of appeal which will delay the prompt review required under the clause[R65].

The Committee agrees with the view and suggests that this aspect should be taken care of. My only request to the hon. Minister is that he should take into consideration all the suggestions made by the Committee.

SHRI KHARABELA SWAIN Thank you, Sir, for giving me this opportunity. As per your instruction, I shall be very brief.

I support this Bill because this is actually our baby. It was introduced during the time of the NDA Government. I will only seek some clarifications from the hon. Minister.

Will the hon. Minister be able to say what is the number of this type of cases pending in all the High Courts in India put together? I think it would have been better if he had mentioned this number in his introductory speech. I would like to know if the Government had made any study with regard to this.

What is the experience of the Government with regard to other such tribunals that have been set up in the past? The Government has many other specialised tribunals set up on the same lines. Has the Government succeeded in achieving the purpose for which each of those tribunals was set up? Have cases been disposed of in a quicker way in the case of those tribunals?

My third point relates to eligibility. Clause 6 lays out the qualification for appointment of Chairperson and other members of the Tribunal. It says, 'A person shall not be qualified for appointment as a member unless he is eligible to be a judge of a High Court'. So, not only a retired

judge, but a person who is eligible to become a judge of the High Court also can be made a member of this Tribunal. I would just like to know what the eligibility criterion for becoming a High Court judge is. Also, does the Minister not think that a situation may emerge in which all the members of this tribunal will be only people from the judiciary in India without holding any specialisation in taxation law? Is it not going to create a situation like this?

My next point relates to Clause 8, which lays down the criteria for appointment and retirement. It has been mentioned in Clause 8 that the Chairperson or any other member shall hold office for a term of five years. Here it says that in the case of the Chairperson, he can continue up to the age of 68 years. A High Court judge retires at the age of 65 years. If you are going to appoint a retired High Court judge to the post of Chairperson, are you not going to restrict his term as the Chairperson to a three-year term?

Clause 11 talks of removal of the Chairperson and other members. In (1) (d) it is mentioned that one could be removed who has acquired such financial or other interest as is likely to affect prejudicially his functions as Chairperson or a member of the National Tribunal. The clarification I would like to seek from the hon. Minister is, what could be that financial or other interest which is likely to prejudice his function as the Chairperson [\[KMR66\]](#).

Clause 4 provides for composition of the National Tax Tribunal. This Tribunal consists of the Chairperson and such number of Members as the Central Government deem fit. Why did you not fix the number in the Bill itself? Why have you left it to the Government? I want to seek the clarification from the Minister on this point.

Clause 7(3) provides that no appointment of the Chairperson or any other Member shall be invalidated merely by reason of any vacancy or any defect in the constitution of the Selection Committee. Why should there be any defect in the Selection Committee? You have clearly mentioned in the Bill that we are going to form this Selection Committee with the Chief Justice of the Supreme Court or another Judge nominated by him, Secretary in the Ministry of Law and Justice, and Secretary in the Ministry of Finance. You have very categorically mentioned as to who would be the Members of the Selection Committee but still you have made a provision that there could be any defect. I do not understand as to how could there be any defect. Hon. Minister may kindly answer this question.

Lastly, I would like to make an appeal to the hon. Minister. As a Member of the Standing Committee on Finance, I have just found that it is not in the High Court, it is actually in the other

Tribunals of Customs and Income-tax where there are a very large number of cases which are pending. What are you going to do about that? I would also like to make an appeal to the hon. Minister. When you constitute the National Tax Tribunal, would you kindly make a suggestion to the Tribunal that all the high value cases should be tried on priority basis? We really would save a lot of money, as a lot of money has been blocked. Not all the cases involve a lot of money. There are a few cases which involve a lot of money and the same should be tried on priority basis. What is being done on a regular basis is that such cases are tried by the courts periodically and that is why not many cases have not been resolved.

I do not agree with what Shri Varkala Radhakrishna said that there could be additional Benches in every High Court, which could try everything. I do not agree with that because most of the High Court Judges lack specialisation in such topics involving income-tax law or customs law. Rather, I would say that constitution of the Debt Recovery Tribunal had in a great way been instrumental in reducing the NPA. I am again making an appeal to the Minister that he should make a suggestion to the effect that while constituting the new Tribunal, high value cases should be tried first.

With these words, I support this Bill and request the Minister to give clarifications to the question raised by me.

SHRI P.C. THOMAS I have been allotted one minute. But I would end my speech within that time limit because hon. Minister is ready to start his reply. .

MR. CHAIRMAN : There is a time constraint.

SHRI P.C. THOMAS : This Bill has been good and it has been brought with very good perspectives and objectives. I support the Bill. I would urge upon the Minister to take into consideration the recommendations and suggestions which have been forwarded by the Standing Committee.

The other aspect of the Bill is that normally in all these cases, the delay is occurred with respect to the constitution of the Tribunals and implementation thereof. I would like to say that the implementation should not be delayed in this regard. I would also like to appeal to the Minister in

regard to the family courts. There is a provision for family courts and the Government of India has also taken steps to set up family courts in various parts of the country. But the allocation of funds for setting up of the same is not made in accordance with the objectives with which we really want the family courts to be set up [\[R67\]](#). I would like to say that the implementation aspect must be looked into with urgency.

I was commenting about the family courts. I urge upon the hon. Minister that in my parliamentary constituency Muvattupuzha, a family court may be set up immediately in the town of Muvattupuzha and the amount may be given urgently. SHRI KHARABELA SWAIN : What is the necessity of transferring the Chairman or any Member? Kindly reply to this question.

SHRI H.R. BHARDWAJ: Sir, I am very grateful to all the hon. Members – Shri K.S. Rao, Shri Singh, Shri Radhakrishnan, Shri Shailendra Kumar, Shri Ram Kripal Yadav, Shri Mandal, Shri Chandrappan, Prof. Ramadass, Shri Swain, Shri Bachi Singh Rawat, Shri Thomas and a few other friends – who have contributed very important points. I appreciate their points. I would like to point out that they have missed some provisions of the Bill.

Let me clarify that this National Tax Tribunal which is likely to be set up is primarily to deal with the appeals that arise out of the two Tribunals already set up – one under the jurisdiction of the Finance Ministry, that is, on the Customs and Excise and Service Tax and the other is under the jurisdiction of my Ministry, the Income-Tax Appellate Tribunal. Hon. Members will appreciate that both the Tribunals are doing very well at their levels. But the matters go to the High Court.

A very senior Member of this House – I have tremendous respect for him – raised a very valid point. He said that the Standing Committee wanted that instead of having this Bill, we should straightaway constitute Special Benches in High Court to hear tax matters. I know, there was a time when the High Courts could provide two Judges as tax specialists to sit together in the Division Bench to decide exclusively on tax matters. Having worked as the Law Minister for three times in this country, I know that there is dearth of tax specialists. The qualifications for the appointment of High Court

judges do not make any mention of specialization as criminal, civil or revenue. My experience is that mostly the lawyers practising on civil side come to the Bench and they lack that expert knowledge on tax matters. If there are tax lawyers, tax judges available, I could agree with the recommendations and the suggestions. But the House will appreciate that except in one or two cases, I have written letters after letters to High Courts asking them to constitute Special Benches for tax matters. But they have said that they do not have expert judges and they can provide judges out of the judges available with them.

The NDA Government went into this issue and they wisely brought this Bill by providing that in the matter of tax, they would like to have expert people to deal with appeals also. Now, under article 323B of the Constitution, these matters are now being transferred to the Special Benches of tax in appeal. Appeals of both the Tribunals will go to this National Tax Tribunal. We have carried forward this Bill. We are applying our mind fully as this provision is necessary in the interest of the revenue.

Most of the hon. Members have expressed that a weak treasury means a weak Government. So, the treasury has to be strengthened. Therefore, money has to be paid to the treasury otherwise, a welfare State like India will suffer. This has been shared by all the Members.

Now, let me be very clear about the peripheral issues. In the Financial Memorandum, there is a provision for 15 Benches for Direct Taxes and 10 Benches for Indirect Taxes [\[p68\]](#).

In the Financial Memorandum and in the Financial Expenditure also, it is mentioned there. It is also mentioned in clauses of the Act, particularly about the Division Bench that 'a Bench shall be a Division Bench ordinarily of two people.' Let me again remind you, because I am working also on the Income Tax Appellate Tribunal, that in the Income Tax Appellate Tribunal also the Benches is of two – one Technical Member; and one Judicial Member.

Similarly, clause 5(4) provides that a Bench will consist of two Members. Here also, it will be the same way with two Members who have been selected out of the two sources of recruitment. That shows what is the source of recruitment. Not many retired people have any scope to come into. Those who are serving in the Income Tax Appellate Tribunal or CEGAT will be appointed to the National Tax Tribunal. Therefore, there is no scope except the Chairman. The Chairman may be a person who has retired from the High Court as a Chief Justice or a Judge of the Supreme Court because the retirement age to the Supreme Court is 65 years, and so, you have, at least, to give him three years. Otherwise,

nobody would come. For High Court, the retirement age is 62 years, and so we are giving him, to be a Member or a Chairman, five years. And, he will retire at 68 years. This is one position where the High Court Judge will come. Otherwise, direct recruit people will be derived from two sources of recruitment. One is, these two Tribunals. They are the Members, who are technical as well as judicial, and who go to the Income Tax Appellate Tribunal. All the Chartered Accountants are the Technical Members. The Chartered Accountants are fully aware of the tax provisions. Similarly, Judicial Members are Judges. So, both will be recruited to the National Tax Tribunal, and the direct recruitment means, a few advocates. I cannot annoy my legal community. Otherwise, they will say, "You have barred us from being appointed." Advocates of 10 years standing under the Constitution can be appointed as Judge of the High Court, and similarly, of 10 years or 15 years standing to the Supreme Court.

So, I am leaving room for their selection. The selection will be made by a foolproof system, which exists even today for all the Tribunals, and which is very well accepted. You know, the Government cannot straightaway appoint. For High Court Judges, we consult the Chief Justice of India, and here also, we consult the Chief Justice of India or his nominees. So, it will constitute a Committee of three people in which the Law Secretary and an independent person will be there.

Let me tell you that we are giving more autonomy and independence in this Tribunal because we are not associating the Government, that is, the Finance Ministry. The Finance Ministry is interested in revenue. Their view is not independent and they are an interested party. So, this Tribunal will be exclusively under the domain of an independent Ministry, namely, the Law Ministry, and that inspires more confidence of the litigants. There is always a pressure from the Finance Ministry to recover more and more, but here, we do not have any interest. We are fair; we are fair for both. The Government revenues must come and the

clients must get independent justice. The quality of justice cannot be diluted whatever considerations may be. So, this will be a most independent Tribunal and a Division Bench is provided here.

There is a further provision that in matters where there is a difference of opinion like it happens in the court, the third Judge or the Chairman will decide. This happens in the High Courts also. If two Judges sit in the Division Bench and there is a difference of opinion, it is referred to the third Judge, or the Chief Justice himself decides. So, the same provision has been bodily lifted and put into the Bill.

Similarly, there are special Benches. Suppose, there is a big case and very intricate questions are raised before the Bench. There, instead of a Bench of two, there will be a Bench of five, as we do in the Constitutional Benches in the High Courts. Therefore, all eventualities, which happen in the courts, have been taken care of and they have been provided in this Bench also.

Now, about the selection, let me say that our selection process is foolproof. All Tribunals' selection is now being done, whether it is a Company Law Tribunal or a Competition Law Tribunal. The Supreme Court and the Chief Justice are invariably in the picture. Even the last Government tried to have that Company Law and the Competition Law, but the Supreme Court stayed them^[k69].

We do not want that situation to take place so that the selection is quick and good people are selected. We have kept the component of judicial consultation at a very high level. So, there should be no apprehension in anybody's mind about the quality, Division Bench and Special Bench.

I now come to the qualification. There was an argument. I am surprised how could it be said that retired persons are being brought into it. Sitting members who are in the Income Tax Tribunal and CEGAT will be promoted if they are found suitable by the Committee. They will invite applications. Let me tell you

frankly, there was a recommendation. The Standing Committee did recommend, why do you not consider Chief Commissioners. There is a consensus opinion that they are almost executive members of the Finance Ministry. They do not consider them. They are considered as Income Tax Commissioners. In the first instance they are inducted in the Income Tax Appellate Tribunal. If they are selected there, then we will elevate them in the highest tribunal which is equivalent to almost the High Court. Therefore, if we have differed with the Standing Committee's recommendation, we have done so in the interest of the institution. This is the recommendation we have not agreed to.

The third point was about age. I have submitted that we cannot really keep the age less than 68 because Supreme Court judges would not come. We cannot keep less than 65 because High Court

judges will not come. Even the Chief Justice of the High Court retires at the age of 65. You have to give him three years. He can be re-appointed until the age of 68. These are wholesome provisions. With full respect I may say that for all the tribunals the scheme of retirement and appointment is the same. So, there is nothing new in this.

A question was asked about the total pendency in the High Courts. I am informed that as on the 1st of April, there are about 41471 cases which are pending in different High Courts. They will be transferred to these tribunals. I may also allay the apprehensions of the hon. Members that when these 25 Benches will be constituted, it has to be provided that the Principal Bench will sit in Delhi and then they will spread out according to the location of work. Out of 41,000 cases, we will find how many are in Chennai. So, we will have to make a provision for Chennai, Mumbai and Kolkata separately. Principally the money comes from Mumbai and Chennai. We will have to provide one or two benches there. It is the prerogative of the Chairman. After studying the workload it will be distributed

The temporary arrangement of a Circuit Bench before 15 days is also provided. Suppose there is a special case which is to be held in a place not in Chennai, not in Andhra Pradesh but somewhere in Madurai, they can be sent there like a circuit court to decide the case. These are all enabling provisions. As the experience will be gained, things can be modified. This is the inception of the tribunal. We can increase Permanent Benches if the workload is such but our desire is, let the tax experts deal with the tax matters. Those who rise from the income tax go to the Income Tax Appellate. Seven years is the qualification. A big safeguard is there. Only those members who have seven years experience in the Tax Tribunal will be appointed in the National Tax Court.

High Courts are over-occupied. You may see every day now, there are vacancies in the High Court. When I took over as Minister in 2005, in the initial years, there were vacancies to the tune of more than 300 in the High Court, which is the half of its strength. I am grappling with those vacancies. I have not been able to fill these vacancies more than half[R70].

18.00 hrs.

It is because as you fill the vacancies, more vacancies occur on the retirement of judges. So, we will not take chance in distributing the workload between the Tribunal as well as the High Court. It is a very valid concept according to the Constitution. Therefore, I seek your support. You allow me to do this and as it progresses if there are shortcomings, we will come back to you. I have noted all the points.

I once again request you to support. You are a senior Member and you please be kind to me. I am very grateful to you. I assure you that I have a very high regard for your views. There should always be an exception to the general rule. You may be an exception to the intellectual standards of this House and I accept it. So, please agree on this and support it so that it is passed.

MR. CHAIRMAN : The question is:

“That the Bill to provide for the adjudication by the National Tax Tribunal of disputes with respect to levy, assessment, collection and enforcement of direct taxes and also to provide for the adjudication by that Tribunal of disputes with respect to the determination of the rates of duties of customs and central excise on goods and the valuation of goods for the purposes of assessment of such duties as well as in matters relating to levy of tax on service, in pursuance of article 323B of the Constitution and for matters connected therewith or incidental thereto, be taken into consideration.”

The motion was adopted.

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

The question is:

“That clauses 2 to 30 stand part of the Bill.”

The motion was adopted.

Clauses 2 to 30 were added to the Bill.

The Schedule

Amendments made:

Page 10, line 9,-

for “2004”

substitute “2005” (3)

Page 10, line 13,-

for “2004”

substitute “2005” (4)

Page 10, line 26,-

for “2004”

substitute “2005” (5)

Page 10, line 46,-

for “2004”

substitute “2005” (6)

Page 11, line 15,-

for “2004”

substitute “2005” (7)

Page 11, line 44,-

for “2004”

substitute “2005” (8)

Page 12, line 14,-

for “2004”

substitute “2005” (9)

Page 12, line 21,-

for “2004”

substitute “2005” (10)

Page 12, line 30,-

for “2004”

substitute “2005” (11)

Page 12, line 41,-

for “2004”

substitute “2005” (12)

(Shri H.R. Bhardwaj)

MR. CHAIRMAN: The question is:

“That the Schedule, as amended, stand part of the Bill. ”

The motion was adopted.

The Schedule, as amended, was added to the Bill.

Clause 1 Short title, extent and
commencement

Amendment made:

Page 1, line 5,-

for “2004”

substitute “2005” (2)

(Shri H.R. Bhardwaj)

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.

Enacting Formula

Amendment made:

Page 1, line 1, -

for “Fifty-fifth”

substitute “Fifty-sixth” (1)

(Shri H.R. Bhardwaj)

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 H.R. BHARDWAJ: 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[\[r71\]](#).
