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Title: Discussion on the motion for consideration of the Statutory Resolution regarding Disapproval of Arbitration and Conciliation (Amendment) Ordinance, 2015 (No. 9 of 2015) and Arbitration and Conciliation (Amendment) Bill, 2015 (Discussion not concluded).

HON. DEPUTY SPEAKER: Now, the House will take up Item No.24 and 25 – Statutory Resolution and Arbitration and Conciliation (Amendment) Bill.

Shri N.K. Premachandran to move your Statutory Resolution.

THE MINISTER OF URBAN DEVELOPMENT, MINISTER OF HOUSING AND URBAN POVERTY ALLEVIATION AND MINISTER OF PARLIAMENTARY AFFAIRS (SHRI M. VENKAIAH NAIDU): Sir, I wish that everybody like the hon. Member, Shri N.K. Premachandran studies the Bill, does the homework and comes to the House and spends this much time so that we can have an enlightened debate. I am really happy. We may agree or we may disagree with him but I should appreciate the hard work done by him in studying all this. This should be a model to us, and Parliament is meant for that purpose only.

Sir, that is why you have seen that almost all the recommendations made by the Law Commission and then by the Standing Committee were agreed. But still we discuss it for hours together. That is the beauty of democracy. That spirit has to be kept in mind by all. I thought that I should at least compliment this one hon. Member. It is not that there are not other Members, there are also many Members. But particularly I mentioned about him.

SHRI N.K. PREMACHANDRAN (KOLLAM): I thank Shri Venkaiah Naidu, the hon. Parliamentary Affairs Minister. ...(*Interruptions*) Thank you very much for the observation made.

HON. DEPUTY SPEAKER: Let the hon. Minister move the Resolution.

SHRI N.K. PREMACHANDRAN : I beg to move:

"That this House disapproves of the Arbitration and Conciliation (Amendment) Ordinance, 2015 (No.9 of 2015) promulgated by the President on 23 October, 2015."

THE MINISTER OF LAW AND JUSTICE (SHRI D.V. SADANANDA GOWDA): I beg to move:

"That the Bill to amend the Arbitration and Conciliation Act, 1996, be taken into consideration."

Mr. Dy. Speaker, Sir, this is another landmark Bill that this Government is placing before the Parliament. Most of the commercial agreements between Indian national/ companies and between Indian nationals and foreign nations/ companies usually contain an arbitration agreement where parties agree to settle any prospective dispute through arbitration instead of going to court. The Arbitration and Conciliation Act, 1996 is the governing law regarding arbitration proceedings and enforcement of foreign arbitral awards.

Our Government has under its active consideration proposals for making Arbitration as a preferred mode for settlement of disputes by making it more user-friendly, cost effective and for expeditious disposal of cases. The Law Commission of India in its 246th Report and Supplementary Report has recommended various amendments in the Arbitration and Conciliation Act, 1996, so that India may become a hub of International Commercial Arbitration.

Taking into consideration the Law Commission's recommendations and suggestions received from other stake holders we have decided to amend the Arbitration and Conciliation Act, 1996.

Urgent steps were required to be taken due to the large pendency of cases in courts and slow process of dispute resolution through arbitration. Due to this, India does not enjoy a good position in contract enforcement in the World Bank Doing Business Report and has been ranked at 178 out of 189 countries in enforcing contracts. Quick enforcement of contracts, easy recovery of monetary claims and award of just compensation for damages suffered are absolutely essential to encourage investment and economic activity. Hence, as Parliament was not in Session and immediate steps were to be taken with a view to reduce the said pendency, taking into consideration the Law Commission's recommendations and after considering other suggestions received, the Arbitration and Conciliation (Amendment) Ordinance, 2015 was promulgated on 23rd October, 2015.

The Arbitration and Conciliation (Amendment) Bill, 2015 has been introduced in this House to replace the Arbitration and Conciliation (Amendment) Ordinance, 2015. The salient features of the Bill are as follows:

The Arbitral Tribunal shall make its award within a period of 12 months from the date it enters upon the reference. Parties may however extend such period up to six months. Thereafter, it can only be extended by the Court on sufficient cause. Further, if the award is made within a period of six months, the arbitral tribunal shall be entitled to receive additional fees, as the parties may agree, which will be an incentive to promote quick disposal of cases.

Parties to dispute may at any stage agree in writing that their dispute be resolved through fast track procedure. Award in such cases shall be given in six months period.

A Model Fee Schedule is inserted in the Act for guidance of the High Court for the purpose of determination of fees of arbitral tribunal, where the High Court appoints arbitrator.

Neutrality of the arbitrators is ensured. When a person is approached in connection with possible appointment of arbitrator, he shall disclose in writing regarding existence of any relationship or interest of any kind which is likely to give rise to justifiable doubts. Further, if a person is having specified relationship, he shall be ineligible to be appointed as an arbitrator.

18.00 hours

The next one is to restrict the term 'public policy' because on the ground of public policy, the parties used to go to the court and there were inordinate delays. So, to restrict the term 'public policy' as a ground for challenging the award is also there.

HON. DEPUTY SPEAKER: Hon. Minister, just stop for a minute.

Now, it is 6 o'clock. If the House agrees, we can extend the time of the House until the Minister's remarks and thereafter, the speech of Shri N.K. Premachandran is over.

SEVERAL HON. MEMBERS: Yes.

SHRI M. VENKAIHA NAIDU: Today, let us conclude the Minister's remarks and then, the speech of Shri N.K. Premachandran. The Bill can be discussed tomorrow.

SHRI D.V. SADANANDA GOWDA: An application to challenge the award is to be disposed of by the court within one year.

Mere filing an application for challenging the award would not amount to automatic stay of execution of the award. An award can only be stayed where the court passes a specific order on an application filed by the party.

The court, while considering any application for appointment of an arbitrator, shall examine only the existence of a *prima facie* arbitration agreement and not otherwise.

The amendments proposed in the Bill will ensure that the arbitration process becomes more user-friendly, cost effective and also leads to expeditious disposal of cases.

Hence, I seek that the Bill may be taken for consideration.

SHRI N.K. PREMACHANDRAN : Sir, the main reason behind my disapproving resolution is that it is a well established constitutional position that an Ordinance legislation under Article 123 can be promulgated only in an extraordinary situation or in extraordinary circumstances. It is an independent legislation promulgated by the Executive and not by the Parliament or the Legislature under Article 123. Also, a very interesting fact to be noted is that as per Article 123, there is no provision in the Constitution to replace an Ordinance by an Act of Parliament, but it is only by means of parliamentary conventions and precedents, we are replacing an Ordinance by means of an Act of Parliament.

Sir, this Ordinance route of legislation is not a good sign for good governance. Recurrent promulgation of Ordinance is not good as far as parliamentary democratic system of governance is concerned, but I do concede with the Government that in certain extraordinary situations, inevitable situations, the Government is forced to promulgate Ordinances in order to meet the urgent situations.

As far as this Bill is concerned, that urgent situation is lacking. There is no urgent situation in regard to this Bill. What was the urgent necessity of promulgating an Ordinance with regard to the Arbitration and Conciliation (Amendment) Bill of 2015? There is no urgency and nothing is there because this Bill has been pending in Rajya Sabha for the last 12 years. The case of this Bill is the same as that of the Commercial Courts Bill.

Sir, if you go through the aims and objects of the Bill, it is very clear that this is also as per the recommendations contained in the 176th Report of the Law Commission.

SHRI D.V. SADANANDA GOWDA: Sir, I have no objection as far as the arguments of Shri Premachandran are concerned, but there are precedents that when a resolution to disapprove an Ordinance is tabled before the Parliament, usually this will be debated along with the deliberations. There are so many precedents. I will just take one minute to read out this.

A resolution seeking to disapprove an Ordinance cannot bar the progress of a Government Bill which seeks to replace that Ordinance. It was in the year 1957 itself. From then onwards, so many precedents have been there in Parliament. The Speaker ruled out the point of order and observed:

"It is true that when once an Ordinance is promulgated, it has to be placed on the Table of both Houses of Parliament soon after Parliament assembles and it expires at the end of six weeks, even earlier if a resolution disapproving of it is passed. The bringing of a Bill before the House is one of the rights conferred under the Constitution. Therefore, a Bill can be introduced in the House as soon as the Ordinance is placed on the Table of the House, after the House re-assembles."

"The further question is whether a Bill, which can be introduced ought not to be taken up until the Resolution is disposed of on the Bill, one has got a greater opportunity to discuss this matter than even on a Resolution. Hon. Members may say whatever they have to say from all points of view, whether the Ordinance should be passed at all or in what respect it should be improved and so on. After all, the Bill is only an extension of the Ordinance. Whatever can be said on a Resolution, to throw out or disapprove the Ordinance, possibly all the arguments can be made out here. In these circumstances, I do not think that this House is not competent to proceed with the Bill "

So, whatever is there, he can argue about it during the deliberations or debate, but at this stage it is not ...(*Interruptions*)

HON. DEPUTY SPEAKER: No, he says that at this stage it has to be mentioned, and if necessary you can answer it. This is what I have to say on this issue.

SHRI N.K. PREMACHANDRAN: Sir, I am fully agreeing with the hon. Minister. Yes, from 1957 onwards, there have been precedents to replace Ordinance with a Bill. But what I am saying is that there is no specific provision in the Constitution to replace an Ordinance by an Act. This is the only point that I am suggesting. There are lots of precedents from day one, and I am not disputing it and raising a point of order also. The point that I would like to make is that this Bill is pending in the Rajya Sabha for the last 12 years.

In the 178th Report of the Law Commission, it recommended that the Arbitration and Conciliation Act has to be amended. It is because the original Act was of 1996. After the implementation of the 1996 Act, the experience shows that it was intended for speedy disposal of cases relating to arbitration with least court intervention. Actually, this was the purpose of the 1996 Act. Unfortunately, after the experience, it has come to light that most of the provisions of the Arbitration and Conciliation Act of 1996 were interpreted by the court and it was delayed. So, the very purpose of the Act was defeated. Hence, the Law Commission has recommended that a new amendment is required for having speedy and expeditious disposal of arbitration cases so as to meet the ends of justice. Hence, this Bill was introduced in the Rajya Sabha in 2003.

The point here is that this Bill was referred to the Standing Committee in 2003. ...(*Interruptions*)

SHRI D.V. SADANANDA GOWDA : No, no Bill is pending in the Rajya Sabha.

SHRI N.K. PREMACHANDRAN: No, not now. I will tell. Please bear with me. In 2003, the Bill was referred to the Standing Committee, and for two years the Standing Committee has conducted detailed and in-depth scrutiny of the Bill and the Standing Committee had reported that it would be better to withdraw the Bill as there were so many contentious provisions in the Bill. So, the Standing Committee, which involves both Lok Sabha and Rajya Sabha, itself has reported to the Rajya Sabha that you withdraw the Bill. In the year 2005 the Bill is withdrawn as per the recommendation of the Standing Committee.

This Government, after coming to power and after assuming office, has again referred the matter to the Law Commission, and the Law Commission has submitted its 246th Report – amendments to the Arbitration and Conciliation Act, 1996. This was submitted in August 2014, that is, during the time of this NDA Government. This Government has drafted this Bill.

What is the right course of action? This is my point because a Bill that was introduced in the Rajya Sabha; sent to the Standing Committee; the Standing Committee had a thorough legal scrutiny of the Bill; and then they said that it would be better to withdraw the Bill. When a new Bill is introduced, then definitely that Bill ought to have been brought before the Rajya Sabha. It is a question of propriety and it is not legal as it can be presented in any of the Houses, but unfortunately it was not done and this Bill has come for consideration of this House. Definitely, we agree with the provision, but the thing is this. What is the urgency for it? This is the question that is to be answered by the Government. On the basis of the recommendation of this Bill, now it is before the Lok Sabha.

I strongly oppose the promulgation of Ordinance on the following grounds. Firstly, there is no urgency as this matter is pending since 2003. The conditions stipulated in Article 123 are not applicable as far as this Ordinance is concerned. Further, you may also kindly see that this matter is a very important matter, but by bypassing the Parliament and without sending the Bill to be scrutinized by the Parliament you are promulgating an Ordinance.

There is no exigency, there is no urgency, there is no extraordinary situation. So, merely bypassing the Parliament promulgating an Ordinance is not a sign of good governance. That is the point on which I would like to oppose the promulgation of Ordinance.

Secondly, as I just mentioned, as a matter of courtesy and propriety, it should have been brought in the other House. Though there is no provision restricting placing of the Bill in the other House, ordinarily when a Bill is withdrawn as per the recommendation of the Standing Committee in the other House, this Bill ought to have been presented in the other House. That is the second point based on which I would like to oppose this.

Regarding the contents of the Bill also I would like to make a few points. The main aim and objective is that India stands at 178th position out of 189 nations in the world in the enforcement of contracts. So, definitely I do appreciate the motive of the Government in having such a legislation because quick enforcement of contracts is required, and easy recovery of monetary claims or award or compensation for damages suffered, reduce the pendency of cases in courts, speed up the process of dispute resolution through arbitration so as to encourage investment and economic activity.

What is the present situation in respect of arbitration cases? In the present arbitration cases, whenever the matter is getting delayed, the arbitrators as well as the claimants are being benefited. I have the experience of five years as the Minister in Water Resources Ministry in Kerala. I could see, whenever a matter is referred to arbitration, the burden is upon the Government to pay ten times or hundred times more than the contract amount. This is actually a loot by the contractors in connivance with the officials and in connivance with the arbitrators also. My point is, why this arbitration? Some other dispute redressal mechanism has to be followed. Most of the retired Chief Engineers and other experts will be nominated as arbitrators and it is delaying matters.

