

SHRI BHAGWAT JHA AZAD : All of us have given notice under rule 193 about Moily tape issue.

(Interruptions)

[Translation]

MR. SPEAKER : We are doing that. Today the meeting of the Business Advisory Committee will be held.

(Interruptions)

[English]

MR. SPEAKER : Mr. Acharia you are exceeding all the limits.

(Interruptions)

SHRI BASUDEB ACHARIA : Will you consider ?

MR. SPEAKER : I have already said so.

(Interruptions)

MR. SPEAKER : I am replying to the Hon. Member and you are interjecting.

SHRI S. JAIPAL REDDY (Mahbubnagar) : I want to know...

MR. SPEAKER : You will know in time but let me answer them.

(Interruptions)

MR. SPEAKER : Can you not have some manners ?

(Interruptions)

MR. SPEAKER : Mr. Azad, I am having Business Advisory Committee meeting this afternoon and we are going to decide that.

(Interruptions)

MR. SPEAKER : Now you please sit down.

(Interruptions)

MR. SPEAKER : You do not even sit down when I am on my legs. Why can you not behave properly ?

12.04 hrs.

QUESTION OF PRIVILEGE

[English]

MR. SPEAKER : On 9th April, 1987 Prof. Madhu Dandavate gave notice of a question of privilege against Shri Brahm Dutt, Minister of State for Finance, for allegedly deliberately misleading the House while replying to the discussion on the question of engaging the Fairfax Group of the United States by the Ministry of Finance on 31st March, 1987. Prof. Dandavate had objected to the following statement made by the Minister of State for Finance :

“An allegation has been made that some cases had been withdrawn. In the history of this country, one case was withdrawn in 1979.. A person calling himself a newspaper proprietor who is also having some other business, had floated a bogus firm and the Income Tax officers had prosecuted that bogus firm. CBI had also filed a case of forgery against the firm. But what happened ? He filed a petition before the Income Tax Settlement Commission and he was granted immunity by the Commission but the CBI said that the immunity could be granted in relation to tax evasion but not in relation to forgery. But it is our misfortune that you had appointed such a person as the Solicitor General - I am referring to 1979 During that period he gave this opinion that the immunity was in relation to Income Tax evasion as well as in relation to the criminal case of forgery...”

Prof. Dandavate enclosed a copy each of two statements purported to have been issued by two former solicitors General, namely Sarvashri Soli J. Sorabjee on 6th April, 1987 and S. N. Kacker on 7th April, 1987. Both are marked “To whomsoever it may concern” and have been duly authenticated by Prof. Madhu Dandavate Shri Sorabjee has categorically stated : “I did not give any advice whatsoever of any kind in the above matter”. Shri Kacker too has stated : “It is not correct at all that I ever gave any opinion recommending any immunity from the charge of forgery in connection with income tax settlement or any other matter”.

On the strength of the above affirmations, Prof. Dandavate has contended that "Shri Brahm Dutt, the Minister of State for Finance, made baseless allegations against the Solicitors General during the tenure of Governments headed by Shri Morarji Desai and Chaudhary Charan Singh".

I called for the comments of the Minister of State for Finance in the matter. He has stated *inter alia* as follows :

"Shri Dandavate has tried to prove that I was wrong with the facts. He has based his arguments on the copies of two letters from Shri S. Sorabji and from Shri S. N. Kacker who were holding the post of Solicitor General in 1979.

It is apparent from my reply that I had referred to one person as Solicitor-General ..

On 7.4.1975, I.T.O. Bombay made a complaint against Shri R. N. Goenka, some of his firms and some other individuals. On the basis of this complaint, C.B.I. registered a case on 21st April, 1975 U/S 120-B, r/w 420, 466, 468, 471, 477-A, I.P.C. AND 420 r/w Section 5(II) I.P.C. and 420, 468, 466, 471, 477-A IPC and Section 5(2) r/w section 5(1) (D) of the P.C. Act. It was alleged that Shri Goenka and his firm entered into a criminal conspiracy around April, 1971 and floated a firm under the name and style of 'Express Traders', by ante-dating partnership deed and committing forgery in the records of Income-Tax Departments and the Stamp Office of Maharashtra to indicate that the firm came into existence on 1.10.1970. The motive was that this firm suffered a loss of about Rs. 85,62,665/- and the loss was sought to be set-off against the benefit made by other firms of Shri R. N. Goenka.

Before filing the complaint by the C.B.I., I.T.O. of Sector. 22 (Central Range-2 Bombay) had filed a complaint in the court of Additional Chief Metropolitan Magistrate-XIX Bombay against Shri R. N. Goenka

and others u/s 277, 278 Income Tax Act (case No. 140/S of 1974).

× × ×

One of the accused, a firm M/s Express Traders, filed a petition before the Settlement Commission for the settlement of the Income Tax cases. In this they requested immunities from the Settlement Commission U/S 245-H of the I.T. Act, 1961. While the case was posted for appearance of the accused, the Settlement Commission issued orders dated 3.12.1977 staying the proceedings going on in the court of Additional Chief Metropolitan Magistrate, Bombay in both the C.B.I. charge-sheet and the complaint filed by the I.T.O. Settlement Commission on 27.2.1978 accepted the offer of settlement and granted immunity to Shri Goenka and some others u/s 245-H of I.T. Act.

The order of Settlement Commission was examined in consultation with the legal advisers of C.B.I. They were of the opinion that the Commission was not competent to grant immunity in the C.B.I. case.

On 9.5.1978, opinion of the Ministry of Law was sought which was sent to the then Solicitor General of India, Shri S. N. Kacker, on 8.9.1978.

Shri Kacker gave his opinion in two letters, first dated 6th October, 1978, and second dated 12th December, 1978. Shri Kacker held that the Commission was competent to grant the immunity in respect of Income-Tax as well as all other Central Acts including I.P.C. and no further action can be taken in respect of those matters in any court of law.

On the opinion of the Solicitor General, the Ministry of Law advised D.P. & T. to concede the defence and not to agitate into the matter.. C.B.I. had to concede and the Additional C.M.M. discharged the accused on 7th March, 1979".

The Minister of State for Finance has enclosed authenticated copies of Shri Kacker's opinion dated 6th October and 12th December, 1978. I would like to quote from the opinions given by Shri S. N. Kacker. In his opinion dated 6th October, 1978, Shri Kacker had stated *inter alia* as follows :

".. I do not agree with the objections taken by the CBI that no immunity under Section 245-H can be granted in respect of prosecutions which have been initiated before proceedings under Chapter XIXA had been commenced. I am also of the view that paragraph 9.9, when properly construed, purported to grant a complete immunity in respect of all prosecutions whether under Income Tax Act or under Indian Penal Code or under any other Central law for the time being in force..."

In his opinion dated 12th December, 1978, Shri Kacker further stated as under :

"The direction or order granting immunity made by the Settlement Commission will apply to the C.B.I. cases also."

On a perusal of the records produced by the Minister, particularly the detailed and categorical answers given by Shri S. N. Kacker on 6th October, 1978 and 12th December, 1978, I find that the statement purported to have been issued by Shri Kacker on 7th April, 1987, and relied upon by Prof. Madhu Dandavate appears to contradict the opinion given by Shri Kacker in October and December, 1978 on a reference made to him in this regard. Reference to the statement purported to have been issued by Shri Sorabjee on 6th April, 1987, is not relevant as his opinion was never sought by the Government in the matter.

In view of the above, I find that the notice of question of privilege lacks factual basis. In this connection, I may add that certain other allegations made by Prof. Madhu Dandavate during his speech in the House had been categorically refuted by the Minister in his reply. In the circumstances, I consider that the Member should have checked up the facts carefully by writing to the Minister, if necessary, rather than seeking to

raise the issue as one of privilege on the basis of newspaper reports.

While ruling out the question of privilege, I would urge upon the Members to refrain from raising privilege issues unless they are sure of the facts.

(Interruptions)

SHRI A. CHARLES (Trivandrum) : He should apologise, Sir.

(Interruptions)

MR. SPEAKER : I have given my Ruling.

PROF. MADHU DANDAVATE (Rajapur) : Sir, I want a clarification. You have relied on the documents given by the Minister.

MR. SPEAKER : Authenticated copies.

PROF. MADHU DANDAVATE : Have you obtained clarification from Mr. Kacker ?

(Interruptions)

MR. SPEAKER : I gave it to you I gave the copies to you.

PROF. MADHU DANDAVATE : No.

(Interruptions)

MR. SPEAKER : I sent authenticated copies to you.

PROF. MADHU DANDAVATE : I did not get.

*(Interruptions)***

MR. SPEAKER : Nothing to be discussed on my Ruling. Now, Papers Laid—
Shri H. K. L. Bhagat.

*(Interruptions)***

— — —

**Not recorded.