

12.40 hrs.

STATUTORY RESOLUTION RE :
DISAPPROVAL OF COMMIS-
SIONS OF INQUIRY (AMENDMENT)
ORDINANCE, 1986
AND
COMMISSIONS OF INQUIRY
(AMENDMENT) BILL, 1986

[English]

MR. DEPUTY-SPEAKER : The House will now take up items 12, 13 and 14 together.

Shri Sode Ramaiah.....Not here. Dr. A.K. Patel.....Not present. Shri Vijoy Kumar Yadav.....Not present. Prof. Satyagopal Misra.....Not here. Shri Narayan Choubey.....Not here. Shri Indragjit Gupta.....Not present. Shri C. Janga Reddy.....Not present. Shri Ananda Pathak... ..Not here. Shri Amal Datta..... Not present. Prof. Madhu Dandavate.

PROF. MADHU DANDAVATE (Rajapur) : Mr. Deputy-Speaker, Sir, in fact what I had to say, I anticipated this and I have already said all that when the introduction of the Bill was going on.

The most important aspect of this problem is that the entire philosophy and attitude of the Government has been extremely anti-democratic. It is not merely that the Constitution has to be accepted, but the spirit of the Constitution has to be accepted. When article 123 lays down certain procedures, when the Commissions of Inquiry Act prescribes certain limitations for presentation of the Report before the House of the People, the entire idea is that there should be some restraint and constraint on the Government while promulgating Ordinances. I do not want to repeat what I said while opposing the introduction of this particular Bill, but I would only say that, if you carefully go through the document prepared by the Secretariat of the Lok Sabha on Ordinances, you will find rulings right from the First Lok Sabha upto the present Lok Sabha : you find the ruling of Shri G.V. Mavalankar, you find the ruling again of Dr. G.S. Dhillon, again you find two succeeding observations by the Speaker....

[Translation]

SHRI GIRDHARI LAL VYAS (Bhilwara) : They are quite old now.

PROF. MADHU DANDAVATE : If you cannot grasp an old thing, what can we do ?

[English]

Again, coming to Dr. Bal-Ram Jakhar, he has made it clear on two occasions. Then you have the correspondence between the first Prime Minister of India, Pandit Jawaharlal Nehru, and Shri G.V. Mavalankar. All this correspondence and all the rulings of the Speakers, including the ruling of the present Speaker made it explicitly clear that Ordinances are a weapon that has to be used sparingly; it cannot be used indiscriminately. You will be shocked and surprised to know that, on one occasion in the inter-Session period, ten Ordinances were promulgated and the Minister for Parliamentary Affairs came before this House and sought permission to see that they were endorsed. Dr. Dhillon was sitting in the Chair; he was Speaker then, and even at this stage he can contradict me if I am making any wrong statement. He made it explicitly clear, "I agree with my predecessors; this particular weapon of Ordinance cannot be used; I express my displeasure". These precedents and the correspondence between the first Speaker of the Lok Sabha and the first Prime Minister Pandit Jawaharlal Nehru being explicitly clear, really speaking, the present Government ought to have taken cognizance of the fact that they should not try to indulge in this exercise. They may say that exigencies of the situation demanded that they should bring in such an Ordinance. I do not want to repeat those dates. In fact, I took it for granted that, since so many names were preceding mine, somebody would surely put forward the entire case and, therefore, I did not bring all these documents giving dates on which ordinances were promulgated, the day on which Lok Sabha was actually adjourned, the date on which it was prorogued, the day on which the Rajya Sabha was prorogued.

One of the former Secretary Generals of the Lok Sabha Shri S.L. Shakhder had

[Prof. Madhu Daddavate]

already made an observation that though it is said that when the two Houses of the Parliament are not in session in that inter-session period ordinances can be actually promulgated if the President is convinced that the situation warrants it. Taking advantage of the technicality that when two Houses are not in session—they found that the Lok Sabha is already adjourned and prorogued, Rajya Sabha is adjourned but not prorogued—taking only the cover behind this technicality they tried to utilise the Constitution but not its spirit. They accepted the Constitution and rejected its spirit. It is like accepting the bottle and rejecting its content. That is what they did. Therefore, Mr. Shakhder had publicly suggested in one of the seminars that they could have actually, since Rajya Sabha was not prorogued, convened the session, placed the matter before them and could have said that since the Lok Sabha is not in session we move a motion that the ordinance may be promulgated. That way democratic conventions could have been accepted.

But more than that, knowing fully well that only a few days are left for the Lok Sabha to adjourn and actually the six months period after the submission of the report—Thakkar Commission report for instance—would be completed, before the adjournment of the Lok Sabha they did not come before the Parliament: At that time even Rajya Sabha also was in session. It could have been possible for them to bring the contents of this ordinance before the Lok Sabha and the Rajya Sabha. To do that, it needs democratic spirit, not merely democratic pretensions. What is needed is democratic spirit. That spirit is lacking with this Government. So, actually we found that they allowed the Lok Sabha to adjourn its session, they allowed the Rajya Sabha also to adjourn and then tried stealthily. Most of the sins that this Government have committed, they have always committed in stealth.

It was not a surprise that many ordinances during the emergency were promulgated in the darkness of the night when people were asleep, when the Parliament was not meeting and when many Members

of Parliament were in jail. In the darkness of the night they committed the sin of bringing and promulgating many ordinances. Mid-night rule—that was how this Government was described. Again they want to carry on the same tradition.

Therefore, I feel that it is not just a technicality. They knew it very well that actually six months period would be completed only a few days after the Lok Sabha was over and before the adjournment of the Lok Sabha it would have been possible for this Government to bring a legislation and try to explain to the Members of Parliament after all they have a majority but they are afraid even of the democratic discussions. They know that with the convincing majority at their disposal, whatever they want to pass, they can get it passed in this Lok Sabha. *(Interruptions)...*

Not at all. The young gentleman has not gone through the proceedings of this House. Only last week we discussed the problem of communalism. I initiated the discussion and Sir, I do not say it in my praise, the Home Minister who actually concluded the debate said that the opposition and the ruling party carried on this debate cutting across the party line and tried to evolve a consensus.

We do not consider every problem from a partisan angle. For instance when there was a bonus law which said that 8.33% bonus should be granted and that had been the demand of the working class, did you find the opposing coming forward and saying that we do not accept this 8.33% bonus because we belong to opposition? We have never taken that attitude. No party worth its salt, which is a democratic party does that. More than that, we stand for the interest of the common man. So we have never taken the anti-people attitude. But the ruling party is indulged in that attitude.

They know that the entire press condemned this ordinance and the tendency to promulgate ordinances day in and day out. Even those journals which were always supporting this Government wrote strong editorials condemning this Govern-

ment and pointing out what Shri Mavalankar, Shri Dhillon and the present Speaker has said. They reminded the correspondence between the first Prime Minister and the first Speaker of Lok Sabha. But they have become so immune to the criticism that whatever the Members may say and whatever the Members of the Opposition may say, they say, you may say whatever you want to say but we shall go the way we want to go" and that is how they are proceeding further. That is some sort of insensitivity that they have developed.

Sir, the democracy does not depend merely on minority and majority. Democracy depends on the vigilance of the Opposition and the sensitivity of the ruling party. That is how combining the blend of these two qualities builds the democracy in the country. Unfortunately they have completely lost this sensitivity to the public criticism, press criticism and whatever is happening. (*Interruptions*)

[*Translation*]

SHRI GIRDHARI LAL VYAS : I was saying what your Government had done when you were in power.

[*English*]

PROF. MADHU DANDAVATE : Not only we did not issue such Ordinance but also the Ordinances which were converted into disastrous laws we got them annulled. The famous 42nd Constitution amendment which was nothing else but a tyrannical Ordinance converted into law we got it annulled and many procedures which were detrimental to democracy we got them removed. Sir, only his memory is weak. I am not blaming him. He is an old member of the young Congress.

Therefore, I want to point out that it is on the basis of these violations of democratic traditions and conventions and even rulings and observations of the Speaker that we are totally opposing this ordinance. It is not the question of only one Ordinance. Take, for instance, the Thakkar Commission's report. I have no

the least doubt. Why do they want to take the liberty of keeping these reports away from the Parliament ?

While making these observations the hon. Minister for State for Internal Security said that we are not taking the absolute powers to ourselves. "Even this notification which is issued has to be approved by the Parliamentary majority in this House and, therefore, ultimately there is a safety valve. I want to point out to him one significant event. They had promulgated the Emergency and when they wanted the Emergency to be continued a resolution was brought in this House and this House—when we were in jail—by majority decided that the darkest Emergency should be continued. That was done technically with the majority vote in this Parliament. But was it justified? They themselves realised that it was not justified and it was not for nothing that in the very first debate that took place on the Motion of Thanks to the President to which Prime Minister, Shri Rajiv Gandhi replied that "we did not feel the pulse of the people in 1977 and, therefore, we went out of office." Then he said that Janata Party did not understand the pulse of the people in 1980 and, therefore, they went out of office. He said, "we will not commit the mistakes of the past." So impliedly he had admitted that it was a mistake committed in promulgating the Emergency then. But that Emergency was continued with the vote of this very Parliament. Of course, by keeping many of us in jail and gagging our voice but the voice gagged is not the voice destroyed. Even a gagged voice has its own vibrancy and that voice rose to a crescendo in 1977 and we tried to see that even the procedures and the Constitutional provisions of the Emergency were changed.

Therefore, all that I am pointing out to you is that this particular argument of the Minister of State that even if notifications are issued they will come before this House and it is only with democratic vote of this Parliament that ultimately the confirmation takes place. But I would say there can be parliamentary majorities which can accept wrong things. That is why even in Kesava Nand Bharati's case the

Prof. Madhu Dandavate]

judgement had said that no doubt according to Article 368 any Clause of the Constitution can be amended but they said that amending Constitution is one thing and destroying it is another and, therefore, even with two-third majority the basic features of the Constitution cannot be obliterated. That is the saving phase for our democracy.

SHRI C. MADHAV REDDI (Adilabad):
Sir, are we not discussing the three motions together? There is only one motion before the House.

PROF. MADHU DANDAVATE :
Therefore, on the basis of all the arguments that I have put forward, I would strongly plead for the Statutory Resolution disapproving the tyrannical and disastrous Ordinance which would be the darkest and the blackest Ordinance that has ever been promulgated.

I hope and trust that whatever be the sins, omissions and commissions of the Ministry, this House by majority will pass this Statutory Resolution and reject the Ordinance. With these words, I beg to move :

“That this House disapproves of the Commissions of Inquiry (Amendment) Ordinance, 1986 (Ordinance No. 6 of 1986) promulgated by the President on the 14th May, 1986.”

THE MINISTER OF STATE IN THE
MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCES AND PENSIONS AND
MINISTER OF STATE IN THE MINISTRY
OF HOME AFFAIRS (SHRI P. CHIDAM-
BARAM) : On behalf of S. Buta Singh,
I beg to move that the Bill further to
amend the Commissions of Inquiry Act,
1952, be taken into consideration.

Sir, this Bill seeks to replace the Commissions of Inquiry (Amendment) Ordinance, 1986 promulgated on the 14th May, 1986. We seek to insert two sub-sections, sub-section (5) and sub-section (6) in Section 3 of the Act.

When the Bill was first passed by this Parliament in 1952, it did not contain sub-section (4). Sub-section (4) was introduced in 1971. I have gone through the proceedings of the Select Committee which advised the introduction of sub-section (4). I find that what prevailed upon the Select Committee was only that if so much money is spent on a Commission of Inquiry, it is but proper that the report should be placed before Parliament and Government should tell the Parliament what action has been taken on the Report. There does not seem to have been any greater discussion beyond this one principle which the Select Committee has put in its Report.

13 hrs.

For the last 15 years we have worked this Act after sub-section (4) was introduced. Based upon our experience on the working of the Act, Government now feels that we should have sub-section (5) and sub-section (6). Hon. Members would have read sub-sections (5) and (6) and I will answer specific points after they have made their valuable observations. But let me once again state this. It is true that there has been immediately after the Ordinance was promulgated some amount of criticism but may I say with great respect that the criticism was based upon an inadequate appreciation of the provisions of sub-section (5) and sub-section (6). My hon. friend is an eminent lawyer and I am sure he has read it very carefully. What do sub-sections (5) and (6) say? Sub-section (5) is an example of a claim made by Government to something akin to privilege, which is something very well known in a court of law. A claim of privilege made in a court of law is an executive claim disposed of by a judicial determination.(interruptions) Here we make a claim that for these reasons we cannot place this part of the report or the whole of the report before Parliament and we come to Parliament invoking one of the four grounds.

Each one of these grounds has its reflection in the Constitution itself and I will be able to show the Articles in the constitution. Each one of them is a well-defined phrase. Each one of them has a content and each

one of them has received judicial interpretation. And these are not flimsy or frivolous grounds which we may invoke. These grounds are grounds which are found in Article 19 of the Constitution. On these grounds, when we make a claim, when the Executive makes a claim, it is the Parliament which decides, I, Sir, am far far junior than Prof. Madhu Dandavate on the question of how Parliament shall work, but I know of no Parliament which will decide on the basis of a parliamentary minority. All I know is that Parliament will decide only on the basis of parliamentary majority.

PROF. MADHU DANDAVATE : Allow me for a second Sir. There are histories in the parliamentary democracy in which not by majority or minority, decisions have been taken. Sometimes a single voice which has raised a question by reason is enough. You see, even the ruling party in the House of Commons have responded and the measures have been withdrawn. There have been enough instances.

SHRI P. CHIDAMBARAM : This assumes that there will be no voice of reason on the side of the majority, an assumption which I cannot accept. We have come forward and said, "If Parliament has to know, yes, Parliament will know." But Parliament will decide whether the notification is valid or not. That is all what Sub-section 6 says. I will most humbly urge hon. members to kindly read once again with me, Sub-section 5 and Sub-section 6, to see the spirit of the two sub-sections. It is not a case where matters are being kept away from Parliament. On the contrary, it is a case where we will have to come to Parliament and subject ourselves to the wisdom and judgment of the Parliament.

Sir, I would commend this Bill for the consideration of this august House.

MR. DEPUTY SPEAKER : Motions moved :

"This House disapproves of the Commissions of Inquiry (Amendment) Ordinance, 1986 (Ordinance

No. 6 of 1986) promulgated by the President on the 14th May, 1986."

"That the Bill further to amend the Commissions of Inquiry Act, 1952 be taken into consideration."

SHRI SAIFUDDIN CHOWDHARY (Katwa) : What about Item No. 14 ?

SHRI P. CHIDAMBARAM : All that is together.

MR. DEPUTY SPEAKER : If you want to, you can move Item No. 14.

SHRI C. MADHAV REDDI : We have no objection if Item No. 14 is discussed separately. This item can be taken up, once the Bill is passed. There is no hurry about it. It is mentioned that all the items should be taken up together. That is not correct. What we should do is this. First we discuss these items 12 and 13 and after the Bill is passed, we can take up Item No. 14. That is the logical consequence.

SHRI P. CHIDAMBARAM : To me also it appears more logical.

(Interruptions)

But I am entirely in your hands Sir. If you want me, I will move it.

MR. DEPUTY SPEAKER : You move it.

SHRI SAIFUDDIN CHOWDHARY : How can he move it? I am opposing it. Before he moves, I have to oppose it.

(Interruptions)

SHRI P. CHIDAMBARAM : I would submit that we discuss items 12 and 13 first. For Item No. 14 you will see in the preamble that Sub-section 6 of Section 3 of the Commissions of Inquiry Act, assumes that the Act has been passed.

SHRI SOMNATH CHATTERJEE : (Bolpur) : No, no. The Act of 1952 is already amended by the Ordinance... (Interruptions)

SHRI INDRAJIT GUPTA (Basirhat) : How can item 14 be taken up, till 12 and 13 are disposed of ?

SHRI P. CHIDAMBARAM : That is what I am saying. Item 12 and 13 may be discussed first and then Item 14 may be taken up.

MR. DEPUTY SPEAKER : The House will now adjourn for Lunch.

13 04 hrs.

The Lok Sabha then adjourned for Lunch till Fourteen of the clock.

The Lok Sabha re-assembled after Lunch at three minute past Fourteen of the Clock.

[MR. SPEAKER *in the Chair*]

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM) : May I say that the Home Minister will come to this House shortly ? He is still answering the clarifications in the Rajya Sabha. With your kind permission may I read the two statements ?

On behalf of the Home Minister, may I make the statement regarding the situation in Punjab ?

14.03½ hrs.

STATEMENT RE : KILLING OF SOME PERSONS TRAVELLING BY BUS FROM MUKTSAR TO CHANDIGARH ON 25.7.1986

[*English*]

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM) : My colleague informed the House on 25th July, 1986 about the

ghastly killing of innocent persons travelling in a bus which left Muktsar for Chandigarh at 5.00 A.M. on 25th July, 1986. On getting the information about this incident I immediately left for Punjab for visiting the scene of the incident. Now more facts about the incident have become available. The ill-fated bus started from Muktsar for Chandigarh at 5.00 A.M. on 25th July, 1986 carrying about 75 passengers. Four armed terrorists boarded the bus from the starting point. When the bus reached near village Labaniawali, the terrorists hijacked the bus towards Kaniawali village. The terrorists shot at 21 passengers resulting in death of 14 persons and injury to 7 persons belonging to two communities. After committing the crime the culprits escaped in a tractor. Police Officers rushed to the scene of the incident. Combining operations by para-military forces and the police were started to apprehend the culprits. All the police stations in the State have been alerted and intensive police patrolling is being conducted. Raids are also being carried out on the possible hide outs of extremists. The neighbouring States have also been alerted for apprehension of the culprits.

The State Government have announced an ex-gratia grant of Rs. 20,000/- to the next of kin of the persons killed and Rs. 1,000/- plus medical expenses to each person injured in the incident.

I have discussed the matter with the Chief Minister of Punjab and have asked him to take immediate steps to track down the terrorists involved in this case.

At the request of the State Government a Flag March by the Army is being arranged at Amritsar, Gurdaspur, Pathankot, Fategarh Churian, Batala and Tarn Taran.

All efforts are being made to nab the culprits involved in this incident. The Government is fully determined to curb terrorist activities and to bring such elements to book. Under no circumstances will such activities be tolerated. I request the Hon'ble Members and Leaders of various parties and organisations to cooperate in maintaining peace and harmony in the State.