

MR. CHAIRMAN: Therefore, it will be resumed on Monday. 17.40 hrs.

SHRI SOMNATH CHATTERJEE: 10 minutes of the Half-an-hour discussion have been wasted.

MR. CHAIRMAN: What could be done as Members from your side speak.

[English]

SHRI V. SOBHANADRESWARA RAO VADDE: The submissions may be allowed on Monday.

SHRI SRIBALLAV PANIGRAHI: There are two types of submissions. One is daily submission during Zero Hour and another one is submission made once a week. After the statement made by the hon. Minister about the next week business, we make submissions that the following items may be included in the next week business. That should be allowed on Monday.

MR. CHAIRMAN: When you take up Matters under rule 377, then submission for the coming week business would not be there. Both will not be there.

SHRI SRIBALLAV PANIGRAHI: Let us have submissions on Monday and Notices for receiving matters under rule 377 may be extended upto Monday.

MR. CHAIRMAN: That means, from Tuesday onwards, there will be Matters under Rule 377. Is it clear now?

HALF-AN-HOUR DISCUSSION Delegation of Powers to CCI & E

[English]

MR. CHAIRMAN: Now it is clear. I think. We will take up Half-an-Hour Discussion. Dr. Laxmi Narayan Pandeya to speak.

[Translation]

DR. LAXMI NARAYAN PANDEYA: Mr. Chairman, Sir, I had asked a question on 22nd February from the Minister of Commerce.

[English]

"Whether the Union Government had delegated the powers to make provision for controlling imports and exports under Section 3 of the Import and Export Control Act, 1947."

[Translation]

The reply I have received is:

[English]

"The matter regarding delegation of powers under Section 3 of Imports and Exports Control Act, 1947 to the Chief Controller of Imports and Exports is under active consideration."

[Translation]

After that I had asked the same question on 12th July. I got the same answer again. I am reading it out.

[English]

"Refer to the reply given on 22nd February, 1991 to Unstarred Question 132 regarding Delegation of Powers."

[Dr. Laxmi Narayan Pandeya]

The reply was that—

[English]

“The matter is still under active consideration and as soon as a decision is taken, the same will be placed on the Table of the House.”

[Translation]

After that, today also I had asked one question. In his reply, the hon. Minister has tried to conceal the facts. This became obvious from his vague answer.

Mr. Chairman, Sir, I would like to submit to you that the Import and Export Control Act was enacted in 1947. It has become so irrelevant and obsolete that it has become absolutely necessary to amend it. Even the Commerce and Textile Secretaries, the final authorities so far as imports and exports are concerned, agreed before the Subordinate Legislative Committee that the act had become so obsolete that it needed to be amended. It also needs to be amended from the point of view that the Government's decision regarding delegation of powers is faulty and incorrect. I would like to draw the attention of the hon. Minister, towards the definition of Chief Controller, as given in the Import Export Act, 1947.

[English]

“Chief Controller means the Chief Controller of Imports and Exports.”

[Translation]

The Government later on wanted to replace and amend some sections of the said Act, through a Government order, but the Attorney-General opined that it was not within the Government's jurisdiction. Even then it was amended. In the executive order of 1955, the Government has enlarged the definition of the Chief Controller

of Imports and Exports. The relevant Section of the 1955 orders says that:

[English]

“1955 Order:

Chief Controller of Imports and Exports includes Additional Chief Controller of Imports and Exports; Exports Commissioner in the Office of Chief Controller of Imports and Exports; the Joint Controller of Imports and Exports; the Deputy Chief Controller of Imports and Exports and, Deputy Iron and Steel Controller.”

[Translation]

My submission is that the Government had no authority to alter the definition through an executive order. It was wrong on the part of the Government and it has created problems. As a result, they were no more in a position to hear disputed matters. Those unauthorised persons became authorised through this order. Later on, when this came to the notice of the Government, it admitted its mistake and amended its earlier order through another executive order. However, even then it didn't think of amending the Act through proper legislation. I would like to submit that through the 1955 order the definition of ‘an authorised officer’, which till then was the Chief Controller of Imports and Exports, was altered and enlarged to include a couple of other officials too. It says:

[English]

“An authorised officer means an officer not below the rank of Deputy Chief Controller of Imports and Exports authorised by Chief Controller of Imports and Exports.”

[Translation]

The definition of the Chief Controller has been given earlier. What is incoherent is that the Chief Controller is authorising somebody else on his behalf.

[English]

Subordinate Legislation Committee Report (7th Report) presented on 2nd May, 1986. Page 22 Para 26:—

“The Committee notes with satisfaction the valuable opinions of Attorney General, November, 1983 tendered by the Attorney-General for India on certain points referred to him by the Secretariat of the Committee, on 30th November, 1985 when a statement of the case dated 31st October, 1985 was referred to him by the Ministry of Law & Justice.”

The Committee, therefore, desire the Ministry of Commerce/Textiles to undertake a thorough re-appraisal of the whole matter in the light of the advice of the Attorney-General for India in order that the various Control Orders, Public Notices, Annual Import-Export Policies, etc. that have a bearing on the imports and exports of the country, could be brought harmoniously within the parameters of the law as laid down in the Imports and Exports (Control) Act, 1947.”

[Translation]

One thing that is clear from all this is that the action being taken by the Ministries under the Import Export order is invalid. If anyone takes recourse to the judicial process and challenges the decisions taken so far, then it would give rise to innumerable disputes. Even today, the reply given by the hon. Minister is evasive. His reply is that:

[English]

The powers of the Chief Controller of Imports and Exports, Additional Chief Controller of Imports and Exports to hear appeal against the decision of the order passed under the Imports and Exports Act, 1947 have not been delegated.....”

[Translation]

Some cases had come to the notice of the Attorney-General in which objections were raised and he was of the opinion that whatever had taken place was not correct.

I would like to read out a portion of the Report presented by this committee. On page number 38, it is mentioned.

“The Committee observe that the Government has made in clause 2 of the Exports (Control) Order, 1977 unauthorised alteration/enlargement of the definitions...”

[Translation]

As I said earlier, they enlarged the Original definition of the Chief Controller to include Deputy Chief Controller, Additional Chief Controller, the Steel Controller etc. To quote it:

[English]

Chief Controller means Deputy Chief Controller. Additional Chief Controller, Steel Controller...” Again, I quote:

“The Committee observe that the Government has made in clause 2 of the Exports (Control) Order, 1977 unauthorised alternation/enlargement of the definitions of the terms ‘Chief Controller’ and ‘Deputy Chief Controller’ as given in section 2 of the Imports and Exports (Control) Act, 1947. During evidence before the Committee, the Secretary (Commerce) agreed that it would have been better and more elegant to have amended the Act itself instead of putting a different definition in the ‘Order’.”

[Translation]

Even after this, they issued another ‘order’. The hon. Minister has said in his reply that

[English]

“The matter is still under consideration.”

[Dr. Laxmi Narayan Pandeya]

[Translation]

I feel that the hon. Minister has not been properly briefed about it, otherwise, he would not have given such an answer. Through you, I would like to raise this important matter. It is stated at the end of page number 71 of the Committee's Report that—

[English]

"I am of the view that a subordinate legislative authority cannot enlarge the definition. A definition in an Act can be enlarged or amended by an amendment of the Act alone. The statute may confer powers upon authorities mentioned and defined under the Act..."

[Translation]

Now that the position is clear, I would like to know from the hon. Minister as to under which Act or legislation, the concerned cases were dealt with, so far? The Attorney-General is of the opinion that the Government was not empowered to issue orders and it obviously means that the Government had no power to delegate powers and authorise some officials. By doing so, the Government has made the matter an illegal one.

I would like to submit that now it is the year 1991. 44 years have passed since 1947 but no one seems to be interested in amending it to meet the present needs. They have all along been saying that the matter is under the consideration of the Government. They said the same thing two years ago and repeated it some months earlier also. Even today the same thing is being repeated. How many more years will you take to consider it to plug the loopholes and make it relevant? Decision on many appeals were taken by unauthorised officials who were authorised against the provisions of the Act. If those decisions are challenged in courts of law, then I am certain that the Government would face rough weather and would suffer for its past mistakes. The whole

matter may be reopened and a never ending process may start.

I understand that the Government still has time to take a decision in the matter making up for all the discrepancies that have crept into this Act and remove them and update the Act that has become outdated.

With these words I urge the hon. Minister to take an immediate decision in the matter, and answer the questions, points etc. raised.

[English]

THE MINISTER OF STATE OF THE MINISTRY OF COMMERCE (SHRI P. CHIDAMBARAM): Sir, I am obliged to Dr. Pandeya for raising this discussion. (*Interruptions*)

MR. CHAIRMAN: Gangwarji, after this, you can seek clarification.

SHRI P. CHIDAMBARAM: If anyone wants to say anything, he should say now, I think, before I reply.

MR. CHAIRMAN: There are four Members to speak.

SHRI P. CHIDAMBARAM: They should all speak first.

MR. CHAIRMAN: All right. Then I will call them first.

Shri Santosh Kumar Gangwar to speak.

[Translation]

SHRI SANTOSH KUMAR GANGWAR (Bareilly): Mr. Chairman, Sir, everything has been said in detail and I do not want to repeat the same. I just want to say one thing. When there could not be proper application in the last 44 years, will the Government review the decisions taken during this period? Obviously the decisions taken with the approval

and consent of and verification by the Minister incharge will be valid and cases decided by others will not be considered valid. I want to submit that you could not do anything in the past 44 years. Have you considered the fall out on the numerous cases so decided in the past and the effect on the department and all the concerned parties. Will the hon. Minister review all the decisions taken during the past 44 years and see that such a thing does not happen in future. Will he make a categorical statement in this regard?

[English]

SHRI SOBHANA DRESWARA RAO VADDE (Vijayawada): Mr. Chairman, Sir, Shri Pandey has mentioned about the position of the Act and the discrepancies that have arisen out of the Government order issued some time back. I will not repeat what he has already said. But I would like to seek a clarification from the hon. Minister.

The Government had given the same answer in reply to questions dated 22nd February and 12th July 1991. That means, the Government is also under confusion.

While taking the necessary steps to bring forward an amendment, if necessary, to remove the discrepancies which were earlier crept in, let the Government also come forward in the near future, simplifying the export-import policy to tide over the present balance of payments critical position. The hon. Minister is well aware that the procedure are very stringent now. At present nearly 25 preshipment export documents have to be prepared by exporters for every export transaction to fulfil the demands of different Government departments. Let the Government come forward with a new proposal simplifying the procedure and also to give encouragement to the exporters for increasing our export and meet the present si-

uation. The role of the Chief Controller of Imports and Exports should be that of a guide and a friend and not of a regulator. I hope, the hon. Minister will make necessary changes for the betterment of the economic situation of this country. I seek a clarification from the hon. Minister in this direction.

[Translation]

PROF. PREM DHUMAL (Hamirpur): Mr. Chairman, Sir, forty four years have passed. I do not want to say much on this. I could have read it out for the hon. Minister, but the time is short. As such I would like to ask a direct question on paragraph 17 of the report of the Committee on Subordinate Legislation because it is a very important subject. The hon. Minister may kindly state:

[English]

Whether the power to hear appeal under Section 4M of the Act can be delegated to an officer subordinate to the Additional Chief Controller of Imports & Exports and, if so, whether is the authority for the same. Copies of such delegation orders may please be placed on the Table of the House.

Thank you.

SHRI E. AHAMED (Manjeri): Mr. Chairman, Sir, I do not want to take much of the valuable time of this House, in view of the opinions given expression to by the hon. Members. But may I submit here Sir, that this Act of 1947, many of the provisions of this Act have now become redundant in view of a new policy announced by the hon. Minister. I would like to request the hon. Minister to bring in some amendments wherever it is necessary, especially with a view to simplifying the present cumbersome procedure which stands in the way of promotion of exports. Even now our exporters are finding it extremely difficult and

[Sh. E. Ahamed]

they have to do a lot of paper work. There should be some limit or where there should be some "cutting the edges" of this delay. I hope, the Minister would clarify the position and as to what he would like to say in this matter. I would also make a suggestion that any amendment or any decision in this respect, whether for amending the orders already passed or modifying, may also be consulted with the Attorney-General of India, in the light of views expressed by the hon. Member Dr. Pandey.

SHRI P. CHIDAMBARAM: Sir, I am grateful to Dr. Pandey and other hon. Members for raising this brief discussion, arising out of an answer furnished first to an unstarred question No. 132 and which I find, I have repeated on the 12th of July, 1991. I must confess at the outset that on the 12th of July, 1991, I was advised that the matter is under consideration and therefore, I should tell the House truthfully that the matter is under consideration. It was under consideration by the officers, by the legal Advisor and by others. But since then Sir, I have applied my mind to it and I am still not clear what the problem is. But I am afraid, I have to first convince my officers that what I am saying is correct before I can come here and carry out that assurance. As I understand the scheme of the Act, it seems to me fairly straight forward and simple and I am quite confident that the views that I will record eventually after taking the benefit of your questions and comments, will be upheld by the Law Officers of the Government. But whatever view is finally taken by the Government, I shall place it before the House. You would kindly permit me to just explain it as I see it. There is an Import and Export (Control) Act of 1947. That Act, under Section 2 defines Chief Controller and the Deputy Chief Controller. But those definitions are for the purposes of certain sections of the Act. The crucial section of the Imports & Exports

(Control) Act, 1947, is Section 3 and Section 3 enables the Central Government by order published in the official Gazette to make provision for prohibiting, restricting or otherwise controlling in all cases or any specified classes of cases and subject to such exceptions, if any, as may be made by or under the order, the import/export etc of goods of any specified description.

18.00 hrs.

The orders made under Section 3 are the Imports (Control) Order and the Exports (Control) Order. The orders currently in force is the Imports (Control) Order of 1955 as amended from time to time and the Exports (Control) Order of 1988 which has repealed the Exports (Control) Order of 1977. These two control orders are pieces of subordinate legislation. There is no gain-saying the fact that they are pieces of subordinate legislation. But these orders confer powers upon a large number of officers. For example, if you will kindly see the Imports (Control) Order, 1955 as amended, Clause 3, which is the crucial clause, says:

"Save as otherwise provided in this order no person shall import any goods of the descriptions specified in Schedule 1 except under and in accordance with the licence or a customs clearance permit granted by the Central Government or by any officers specified in Schedule 2."

So Schedule 1 specifies the goods and Schedule 2 specifies the officers. If you will kindly see Schedule 2 to the Control Order, you will find a list of officers starting with the Chief Controller of Imports and Exports and includes any officer authorised by the Central Government and includes an Assistant Chief Controller of Imports and Exports.

In my opinion there is no conflict between the provisions of the piece of subordinate legislation, namely

the Imports (Control) Order of 1955 and Section 3 of the parent Act.

Similarly, kindly see the Exports (Control) Order of 1988 which repealed the Exports (Control) Order of 1977. For example, the hon. Member referred to Page 71 of the committee's report; but that dealt with the Exports (Control) Order of 1977. There was perhaps some problem with the Exports (Control) Order of 1977 and the learned Law Officer whom we had asked for his opinion did point out that perhaps the order travelled beyond the section. But today the Exports (Control) Order of 1988, as far as I am able to see it, does not travel beyond the section. The Exports Control Order once again says in Clause 3:

"Save as otherwise provided in this order, no person shall export any goods of the descriptions specified in Schedule 1 except under and in accordance with the licence granted by the Central Government or by any officer specified in Schedule 2."

So while Schedule 1 specifies the list of goods, Schedule 2 specifies the list of officers. If you will kindly see the list, it starts with the Chief Controller of Imports and Exports and includes a large number of officers who fall under 15 categories.

Sir, in my humble opinion there is no conflict between the Imports (Control) Order of 1955 as amended and the Exports (Control) Order of 1988 with any provision of the parent Act. If the hon. Member wishes to have this recorded in writing, I shall certainly record it in writing, get it confirmed by the Law Officers and I shall send it to him.

The other point that was raised was, where do they have the authority to hear the appeals and adjudicate matters. The power to hear and adjudicate upon matters, in my humble opinion, arises out of Sec-

tion 4 k of the Imports and Exports Control Act which confers powers to adjudicate upon the Chief Controller or where he so directs by a general/special order, by the Additional Chief Controller and then subject to such limits as may be specified in this behalf by such other officer not below the rank of Deputy Chief Controller as the Central Government may notify.

The power to hear appeals arises out of Section 4(M) which confers appellate powers upon the Central Government and upon the Chief Controller. Since Section 4(K) and 4(M) occur in the Parent Act made by Parliament, there is no question of subordinate legislation coming into conflict with the Parent Act.

The last question which I believe the hon. Member raised was about the Apparel Export Promotion Council levying fees, which is entirely a different matter. That really does not arise out of the provisions we are dealing with.

I know that the Apparel Export Promotion Council is levying fees and collecting certain charges. If there is any problem as pointed out by the Committee on Subordinate Legislation, it is now under the purview of the Ministry of Textiles and I am quite sure my colleague in the Ministry of Textiles is seized of the matter. But I shall certainly convey your views to my colleague and if he has not yet taken note of the views of the Committee on Subordinate Legislation, I will request him to do so.

As far as matters fall within the province of the Ministry of Commerce, Sir, I am fairly and reasonably confident in my mind that there is no conflict between the Parent Act and any order; there is no transgression of the principles of subordinate legislation; there is no lacuna in

[Sh. P. Chidambaram]

hearing adjudication or appeals. But since I cannot be the Law Officer advising myself, I shall certainly refer this question to the Law Officer and I shall get his confirmation. If my position is wrong; I will stand corrected and if I am right, I will get it confirmed; and I will convey this answer to the hon. Members.

If I would have to fulfil an assurance, I will fulfil that assurance in a very short period of time. I have applied my mind since I gave the answer on 12th July and I am clear in my mind that there has been no violation. Thank you.

DR. LAXMI NARAYAN PANDEYA: Can any definition be changed by an order after it is passed?

SHRI P. CHIDAMBARAM: With great respect I would say this. I think, the hon. Member is once again referring to the Exports (Control) Order of 1977 which according to the Late Mr. Kakkar, the Law

Officer travelled beyond the definition in the Act. But Export (Control) Order of 1977 has been repealed and it has been replaced by the Export (Control) Order of 1988. In the Exports (Control) Order of 1988, I have not seen any definition travelling beyond the definition in the Parent Act, nor have you brought to my notice today any definition travelling beyond the definition in the Parent Act. If there is any definition travelling beyond the definition in the Parent Act, please write to me. I shall look into the matter.

MR. CHAIRMAN: The House stands adjourned to meet again on 29th July at 11 a.m.

18.07 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Monday, July 29, 1991/Sravana 7, 1913 (Saka)