

constructed. Amount of Rs. 80 lakh has already been spent. However, the work in this regard has been discontinued at the instance of the Ministry of Home Affairs and the Ministry of forests and Environment. I would urge upon the Minister of Water resources to construct the dam so that the water for irrigation in Vidisha district may be utilized.

17.02hrs.

[English]

#### ANNOUNCEMENT BY SPEAKER -Cont

#### Postponement of Half an Hour Discussion

MR. SPEAKER : I have to make an announcement please. I have to inform the House that the Minister of Power has requested that Half-an-Hour Discussion about the reservation for Scheduled castes and Scheduled Tribes in Delhi Electric Supply Undertaking after privatisation listed for today may be postponed because he is not well; and the Member who wanted to raise this also has agreed to the postponement.

The discussion is accordingly postponed and it will be taken up after some time.

#### STATEMENT BY THE ATTORNEY GENERAL OF INDIA EXPRESSING HIS OPINION ON

17.03 hrs.

[English]

- (i) Scope and extent of disciplinary authority of the Election Commission in respect of officer and staff deployed for election work ;and
- (ii) Scope and extent of authority in the matters of deployment of forces to maintain law and order to ensure free and fair elections, keeping in view

the constitutional and legal position that maintenance of law and order is primarily the State subject.

ATTORNEY GENERAL OF INDIA (SHRI MILON KUMAR BANNEJEE): Hon. Speaker and Members of the House.

Pursuant to the request made by the hon. Speaker to furnish my opinion on two specific points. I have taken the liberty of making a statement. which, I believe, is based on some precedents with regard to these points. Thereafter subject to whatever decision the hon. Speaker may take, clarifications may be asked for.

with the permission of the Chair, my I read the statement. It is an honour and privilege to address this august assembly. I have been asked to give my opinion on two issues that have been referred to me by this House. I have been asked to give my opinion, firstly, as regards the scope and extent of disciplinary authority of the Election Commission in respect of officers and staff deployed for election work and, secondly, about the scope and extent of authority in the matter of deployment of forces to maintain law and order to ensure free and fair elections, keeping in view the constitutional and legal position that maintenance of law and order is primarily a State subject.

Before taking up the first issue on the scope and extent of the disciplinary authority of the Election Commission, it seems necessary to indicate what sort of role the founding fathers of our Constitution expected the Election Commission to play. Dr. K.M. Munshi had this to say in the Constituent Assembly about the Election Commission. I quote:

17.05 hrs.

"We must remember one thing, that after all an Election Depart-

[Sh. Milon Kumar Banerjee]

ment is not like a judiciary, a quasi-independent organ of Government. It is the duty and the function of the Government of the day to hold the elections. The Huge electroates which we are putting up now, the voting list which will run into several crores all these must necessarily require a large army of election officers, of clerks, of persons to control the booths and all the rest of them. Now, all this army cannot be set up as a machinery independent of Government. It can only be provided by the Central Government, by provincial Government or by the local authorities as now. It is not possible nor advisable to have a kingdom within a kingdom, so that the election matters could be left to an entirely independent organ of the Government. A machinery, so independent, cannot be allowed to sit as a kind of super Government to decide which Government shall come into power. There will be great political danger if the Election Tribunal becomes such a political power in the country. Not only it should preserve its independence, but it must retain impartiality. Therefore, the Election Commission must remain to a large extent an ally of the Government; not only that, but it must to a considerable extent be subsidiary to Government expect in regard to the discharge of functions allotted to it by law."

It is in this background that I wish to make my opinion.

It is quite clear that Article 324 of the

Constitution of India nowhere gives any disciplinary jurisdiction to the Election Commission Article 324(6) merely provides, and I may for the benefit of the Members of this House read out the provisions of Article 324, Sub-clause 6:

"The President, or the Governor of a State, shall when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by Clause(1)."

In fact, the only possible claim to disciplinary jurisdiction of the Election Commission could arise only, if at all, from Section 13CC of the Representation of the People Act, 1950 and section 28a) of the Representation of the People Act, 1961. These were introduced into the above Acts by way of amendments in 1989. The said provisions provide that the staff shall be "deemed to be on deputation" and would be subject to "the control, super intence and dicipline" of the Election Commission. These are the words of some importance. The only question that arises is whether in view of these provisions, the Election Commission can institute disciplinary proceedings. In my opinion for the reasons given below, the Election Commission has no authority to initiate disciplinary proceedings.

The staff who are temporarily with the Election Commission are, in the language of the Act, "deemed to be on deputation". The concept of deemed deputation is not the same as deputation proper. Normally, the borrowing authority pays the salary of the Officer brought on deputation. However, in the case of officers who are deemed to be on deputation with the Election Commission, the salaries are not paid by the Commission. These officers do not cease to be Govern-

ment officers and become officers of the Elections Commission.

The question is whether Section 13CC of the Representation of the people Act, 1950 and Section 28A of the Representation of the people Act, 1951, intend to confer disciplinary jurisdiction of the Election Commission in respect of officers who are deemed to be on deputation with the Commission or otherwise. It is well known is service jurisdiction that the borrowing authority does not exercise disciplinary jurisdiction in respect of officers who are on deputation with it except with the approval of, or in consultation with, the parent department. If this be so, it is unreasonable to assume that the aforesaid Sections intend to confer disciplinary jurisdiction on the Election Commission in absolute terms. The confusion in this regard has arisen on account of the use of the word "discipline" in the aforesaid Sections.

The concept of 'discipline' relates to the performance of the election duties by the officers who are deemed to be on deputation with the commission. It does not refer to the exercise of disciplinary jurisdiction by the Commission. This is the distinction.

In fact, to interpret 'discipline' otherwise would be to make unconstitutional the relevant Sections under consideration. The officers deemed to be on deputation with the Election Commission are subject to specific enactments or rules in respect of their service discipline. To interpret the aforesaid Sections as conferring upon the Election Commission some sort of disciplinary authority would be to make these sections unconstitutional, being contrary to articles 309 and 311 of the Constitution.

The second question on which I have been invited to give my opinion is as regards the deployment of force to maintain law and

order to ensure free and fair elections. As is well known, the subject of public order is in the State List in the Seventh Schedule to the Constitution. It is, therefore, for the State authorities to assess the law and order situation and to decide upon the requirement and deployment of police or other forces to maintain law and order to ensure free and fair elections. The Election Commission is always free to make suggestions in this regard. It is expected that the State Government will act reasonably in responding to such situations as to the requirement of forces for maintaining law and order. The Central Government cannot be directed by the Chief Election Commissioner to send to a State Central Forces contrary to the desire of the State Government and without any request being made for the same. The working of the federal Constitution does not contemplate such a situation save in the exceptional situations provided for in the Constitution. We are not here to go into those questions.

The Elections Commission cannot draw any authority from Article 324 in support of the proposition that it is solely for the Election Commission to decide as to which staff is required by it. Nor can it impose its demands on the Government. The Constitution demands consultation and not confrontation and it is expected that the constitutional authorities would act in a spirit of cooperation and not bring about a crisis situation by any confrontationist approach.

SHRI SOMNATH CHATTERJEE (Bolpur): We express our thanks to the Attorney-General for a very clear and lucid opinion that he has given which will help everybody. At least the Treasury Beneches will learn some law. (Interruptions)

MR. SPEAKER : Well, the procedure which we have to follow in this matter is laid down by my predecessors. One or two questions and not more than one or two

questions— otherwise the will be a plethora of questions — which will be decided by the Speaker.

SHRI SOMNATH CHATTERJEE: One or two relevant questions.

MR. SPEAKER : One or two relevant questions, which will be decided by the Speaker> Whether the question is relevant or not will be decided by the Speaker, as usual. So, I will allow questions.

S hri Mohan Singh. Please be brief.

[Translation]

SHRI MOHAN SINGH (Deoria): Mr. Speaker, Sir, I would like to know whether the Election Commissioner or Election Commission has got any right to postpone the election for an indefinite period when the election process has already started, without taking the State Government or the Central Government into confidence. It is to be noted that the above institutions are to assist the election Commission by means of providing staff, para-military force or police force.

[English]

ATTORNEY GENERAL OF INDIA (SHRI MILON KUMAR BANERJEE): There is power under section 153 of the Representation of People's Act.. if I have understood the question, Sir, about extension of time for completion of election or postponement. The election Commission has such power. But if postponement of elections does not come under section 153, the Election Commission, for good reasons and on reasonable grounds, having a nexus with the grounds for postponement, can certainly postpone it for a reasonable time. But that must bear some nexus to the situation prevailing.

SHRI GUMAN MAL LODHA (Pali): Sir,

I would like to know whether the Election Commission can postpone the elections on the grounds which are not specified in the Representation of People's Act. The grounds for postponement of the poll are specified. I would like to know whether the Election Commission have got any residuary powers to postpone the elections, as it has done during the last one year or so in the case of Punjab or later on. Is there any power in the Constitution for that?

ATTORNEY GENERAL OF INDIA (SHRI MILON KUMAR BANERJEE): Sir, I would hesitate at this point of time to go into a question which is today before the Supreme Court.

MR. SPEAKER: Yes, I think if the issue is before the Supreme Court, it is sub judice and we will not discuss it.

SHRI SHARAD DIGHE (Bombay North Central): Mr. Speaker, Sir, I would like to know on a point from the Attorney-General. If the Election Commission consists of the more than one members and if it is made multi-member Election Commission, article 324 provides that Chief Election Commissioner shall be the Chairman of that Election Commission. So, I would like to know whether the decision of the Commission will be by majority or the Chief Election Commissioner will have any over-riding authority in that Commission.

ATTORNEY GENERAL OF INDIA (SHRI MILON KUMAR BANERJEE): The answer to this question will depend upon what rules are framed after a decision is taken, if at all, to appoint two or more Commissioners. This matter has been a subject matter of interpretation by the Supreme Court in Dhanoa's case which is reported.

(Interruptions)

[Translation]

SHRI GEORGE FERNANDES (Muzaffarpur) : Mr. Speaker, Sir, I would like to comment on one thing before I ask for a clarification. The Attorney General of India had quoted the speech made by Shri K.M. Munshi in the Constituent Assembly.

[English]

MR. SPEAKER : May I explain to you? We do not debate or discussion opinion given by him. If you have any doubt, you may put it please and it will be explained by him.

[Translation]

SHRI GEORGE FERNANDES : That is why I have an objection. The extract of the speech of Mr. Munshi quoted here states that the Election Commission should not become subordinate to any Government.

[English]

MR. SPEAKER : He will not be discussing what he has said. You may accept it, you may not accept it. You may evaluate in whatever fashion you like. We are not going to dispute it or discuss it. If you have any legal doubt, please put it and he will explain.

[Translation]

SHRI GEORGE FERNANDES : I will discuss it later on. But I am objecting to be speech made here.

Mr. speaker, Sir, the overall responsibility of holding elections rests with the Election Commissioner under Article 324 (1) of the Constitution, and in accordance with the provisions of Article 324 (6)

[English]

I quote Article 324(6) :

"The President, or the Governor of a state, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge."...

[Translation]

So, we see that nothing has been mentioned in the constitution that the President, or the Governor of a State, shall contemplate whether a need of such staff is there or not. It is your Constitutional duty to provide whatever is asked for by the Election Commission. It is your responsibility. They law and order responsibility remains with the State Governments. We are not discussing law and order presently. If there has been a deterioration of law and order situation in any State, it has no concern with holding of elections. The Election Commission is concerned with the situation prevailing only at that place where the polling is to be held. It has no concern as to what is happening in the State. If the Election Commission arrives at a conclusion that they need help from the Centre at a place where elections are to be held, then it is the duty of the President, or the Governor i.e. the duty of the Central Government and the State Government to provide whatever is asked for by the Election Commission. I would like to know the views of the Attorney General of India on this point.

[English]

ATTORNEY GENERAL OF INDIA : As I understand the question, it is -who has to ultimately decide upon the request of the Election Commission. The decision as to what staff is required is - as I have already pointed out- a matter to be sorted out by discussions between two high constitutional functionaries and the framers of the Constitution did not expect that there should be any

rancour or dispute with regard to this. But, in case there is any divergence of views, the final authority lies with the President- in my respectful submission - to decide whether the request is a reasonable one or not. Unbridled power cannot be given to any one single person and the Government, as a whole, has to decide.

SHRI GEORGE FERNANDES : Mr. Speaker, Sir, this is not the proper clarification. (*Interruptions*)

[*English*]

SHRI SOMNATH CHATTERJEE (Bolgur) : Sir, may I seek a clarification on this from the hon. Attorney General?

Article 324(6) of the Constitution puts a duty on the president or the Governor to make such staff as may be necessary for the discharge of the functions conferred on the Election Commission available. The function of the Election Commission is not to maintain law and order. Therefore, no staff can be required by the Election Commission for the purpose of maintaining law and order. He can only - I take it - ask for such staff which will be assigned the duty of election process - presiding officers, polling officers, counting officers and so on and so forth. Therefore, does Article 324(6) deal with assignment of staff for maintenance of law and order which is not the duty or function of the Election Commission?

ATTORNEY GENERAL OF INDIA : This - I would confess - is a slightly complicated question. But, in my view, the word 'staff' - I would agree with my friend would basically refer to election-related functions.

But in order that the Election Commission can fulfil its duties under Article 324(1) read with Article 324 (6), for the superintendence, direction, control and conduct of election, it will certainly be open to the

Election Commission to make suggestions to the State Government that the law and order situation in a particular given area or a constituency is such that police and other force will have to be placed there in order to aid that conduct of election. This is how I would answer this question.

MR. SPEAKER: Thank you.

SHRI INDRAJIT GUPT (Midnapore) : Mr. Speaker, Sir, arising out of this last question, we have all had the opportunity to read Mr. Seshan's note in the course of which, from what the honourable Attorney-General said just now, he had made a specific reference to certain constituencies or parts of certain constituencies where, in his opinion, a serious law and order situation exists and on that basis he had suggested or proposed or whatever way you would like to call it, that certain para-military forces even including how many companies in his opinion were adequate, should be deployed. Now, since it is a law and order situation, I take it that the State Government is not bound to follow his advice in this matter. Who will decide— the state Government or the Election Commissioner? Here he has taken umbrage to the fact that they did not deploy para-military forces to the extent which he considered essential for maintaining law and order in those constituencies. Who will decide?

MR. SPEAKER : I think this point is explained already, but you can repeat it if you like.

ATTORNEY-GENERAL OF INDIA (SHRI MILON KUMAR BANNERJEE): I have already said that between high constitutional functionaries a confrontationist approach is not expected and in the past during the last 40 years the requirements as suggested by the Chief Election Commissioner had been more or less met by the State Government. Law and order and public

order is essentially a State subject within List II of the Seventh Schedule of the Constitution and therefore, in case there is a difference of opinion, the view of the State Government will prevail as the hon. Speaker has already said or answered. The law and order being a state problem, the views of the State Governments will prevail subject, of course, to other factors, the emergency situation which the constitution takes note of.

MR. SPEAKER: Thank you very much.

SHRI LAL K. ADVANI (Gandhi Nagar): So far as the Statement is concerned, Mr. Speaker, Sir, You have said that we have to accept it as it is. But I do think that it is unfortunate that a quotation should have been cited from the Constituent Assembly debate which seeks to project the Election Commission either as an ally of the Government, of the Executive, or as a subsidiary of the Executive which is certainly not what any interpretation by any court till now of the Election Commission's role under Article 324 has ever been made. But that apart, apart from this Article 326(6) on which the learned Attorney General has tried to explain to us, I would think that when the word discipline was introduced in the Representation of people Act by Section 13CC or by Section 28A, — and as far as I recall, Shri Shankaranand was the Law Minister at that time and he had brought him in that time — the debate did suggest that because the Election Commission did not have disciplinary authority over those who function for the purpose of holding free and fair elections, therefore, the Election Commission is seriously handicapped.

And it is in order to remove this handicap that Shri Shankaranandji and the then Government had brought in this Amendment to the Representation of the People

Act, 1951. (*Interruptions*)

You mean to say that Shri Shankaranandji could not understand.

[*English*]

I would presume that when the Parliament, in its wisdom, brought in this particular word "discipline, it was not merely the superintendence and direction, but also the discipline of the Election Commission. That fact that we did not say that they will be deputed to the Election Commission and that the Election Commission will pay them. I do not think that is very relevant and when the word "discipline" is used, I think, it has a significance. And therefore, even though I am inclined to agree with the learned Attorney General about his interpretation of Article 324(6) that it relates to officers who are demanded in connection with the elections, if, for example, the Election Commission says: "I want a Returning Officers here, I want a Presiding Officer here and I want three Presiding Officers for three booths", then the State Government has no authority to say that one Presiding Officer is sufficient for those three booths. I agree with this.

As far as the law and order question is concerned, it is for the State Government to decide, or in special circumstances, the Election Commission may also approach the Central Government. But, in so far as the other aspect is concerned, I am afraid that legally the Election Commission is on a sounder footing than.

MR. SPEAKER: Advanji, we are at liberty to hold any legal opinion on my part. Now the opinion given by the Attorney General is before us. That is not to be disputed or discussed. If there is any doubt on any point, we can ask explanation and we are free to accept or not to accept the opinion given by the Attorney General.

SHRI LAL K. ADVANI : I accept your ruling. All that I am saying is, even if there had been no dispute between the Attorney General's opinion and the election Commission, the Parliament has the right to understand from the Attorney General, if there is any issue of law arising and in that context years I am trying to understand. Here is the Parliament which, two or three years back at the instance of the present Government itself, framed a law in which the word "discipline" was brought in and suddenly, they are trying to limit that word and saying that though he is under the discipline of the Election Commission.

MR. SPEAKER : Advaniji, this is a vast subject. There is a difference between discipline and punishing. There is a constitutional law which says about appointing authority, disputing authority, etc.

SHRI LAL K. ADVANI : I am not going into the details. Otherwise, the details that have been given about Tripura are certainly intriguing. But, I am not going into the details of that entire episode. I am merely trying to understand the law as to how, even after the incorporation of Sections 13(c) (c) and 29(c), we can take the stand that he has no authority in that regard (*Interruptions*)

MR. SPEAKER : The point that Advaniji is trying to understand is, if, in the Representation of the People Act, there are Sections 13(c) (c) and 28 (a) and the word "discipline" is used, how can we say that he has not right to discipline?

ATTORNEY GENERAL OF INDIA : The hon. Member for Gandhi Nagar has couched his cross-examination as a clarification, but I will answer it.

MR. SPEAKER : No, it is a genuine question.

ATTORNEY GENERAL OF INDIA : I have already stated, in my written note, the difference between discipline and disciplinary proceedings. That is there already.

Because the word "discipline" has been brought in, since read with two other words, control, discipline, etc. Of the Election Commission that phrase does not necessarily and in my submission, does not bring in the concept of the Election Commission being the disciplinary authority. The distinction is quite clear. The distinction has not only been made by me but also by my learned predecessor, the then Attorney General of India. It is an old standing distinction, that the word "discipline" cannot be equated to disciplinary authority.

When in 1989, these two sections were brought in into the Amendment Act, there is nothing to support the hon. Member from Gandhi Nagar in the notes of clauses or in the explanatory statement of the Amendment to say that the disciplinary authority is the Commission.

MR. SPEAKER : We thank the Attorney General of India.

He has the permission, if he wants, to leave.

ATTORNEY GENERAL OF INDIA (SHRI MILON KUMAR BANERJEE) : I am grateful to the Speaker for the opportunity given to me and to the hon. Members of the House for the patient indulgence.

17.37hrs.

BETWA RIVER BOARD (AMENDMENT)  
BILL -CONTD.

[English]

MR. SPEAKER : Hon. Minister, Mr. P.K. Thungon May reply to the discussion.