

CHIEF ELECTION COMMISSIONER
(CONDITIONS OF SERVICE) BILL

SHRI CHITTA BASU (Barasat): I beg to move for leave to introduce a Bill to regulate certain conditions of service of the Chief Election Commissioner.

MR. DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill to regulate certain conditions of service of the Chief Election Commissioner."

The motion was adopted.

SHRI CHITTA BASU: I introduce the Bill.

15.50 hrs.

INDIAN POST OFFICES (AMENDMENT) BILL

(Amendment of Section 26)—Contd.
by Shri Atal Bihari Vajpayee

MR. DEPUTY SPEAKER: Now we take up further consideration of the motion moved by Shri Atal Bihari Vajpayee on 30th April 1982,

The Minister may now reply.

THE MINISTER OF COMMUNICATIONS (SHRI C. M. STEPHEN): Mr. Deputy Speaker, Sir, during the last Session, we had a similar a Bill. The only difference is that whereas this one is with regard to the Post Office Act and the other one was about the Telegraph Act. The question as the same in substance. At that time, I had put forth my arguments as to why any such amendment as has been sought, is not called for.

Now, there is one important aspect to the postal operations which I want to bring to the notice of the hon. House. The post offices are well-known as a very vast organisation with facilities to send communications far and wide. The rates are fairly subsidised. It is accepted everywhere throughout the world that the type of articles, postal articles that can take recourse to these facilities, cannot be unrestricted. It is not every type of postal article that will be allowed the facility of postal transmission.

1551 hours.

[SHRI CHANDRAJIT YADAV in the Chair]

The facility of transmission through the postal organisation is given in our Post Office Act itself. There are Sections 19, 19A, 20 and 21 which specifically say that such and such type of articles will not be allowed to be transmitted. Section 19 says any sort of dangerous thing or filthy thing will not be allowed. Section 19A says any literature that relates to any lottery, which is not a Government lottery, will not be allowed. Section 20 says, any obscene stuff or any seditious or provocative sort of stuff, photographs and all that will not be allowed to be transmitted. Section 21 says that the Government can from time to time specify such types of articles which will not be allowed to be transmitted by the postal organisation. I point out this to emphasise that nobody need get away with the impression that any type of literature or letter or any stuff can have the facility that the postal organisation offers. It is not only in India that this restriction is provided but in many other countries also which are acclaimed as democratic.

It was stated that this provision was brought in by England to put us under subjugation and all that. Well, Sir, the position is that even today in England, under their Postal Act, the Post-Master General or the Secretary of State has got the power to order that the postal articles at transmission may be intercepted. As in our Act, they too say that no postal article can be opened and all that with a proviso that nothing in this Section shall extend to opening, detaining or delaying of a postal packet or article under the authority of this Act or in obedience to a warrant in writing by the Secretary of State. This question came up before the Parliament of England and then the Home Secretary—not when we were under subjugation—on June 7, 1957, made a statement and answered the questions. He said that this power was one which the Parliament had always recognised to be essential for the protection of society. It is only used solely in cases involving the security of the State, or for the purpose

[Shri C. M. Stephen]

of detecting serious crime. That information from this source was jealously guarded and it was a settled principle that it was not disclosed to persons outside the public service.

Again, in that year, a committee was appointed to examine and report upon whether the power to exercise this must be there or not. The Committee consisted of Sir Norman Birkett, Lord Monckton and Mr. Patrick Cordon Walker—very eminent people constituted the Committee. The Committee reported:

"The origin of the power of the Executive to intercept communications could only be surmised, but the power had been exercised from very early times and had been recognised as lawful by a succession of statutes covering the last 200 years or more...."

"The manner of its exercise had from time to time been the subject of public discussion and in 1844 had been the subject of investigation by two secret committees, one of each House of Parliament which inquired into the law respecting the detaining and opening of letters at the General Post Office, but both these committees had recognised the power as lawful."

This is the power which is existing in England. There is no condition at all—any type of article in accordance with the discretion of the executive authority, whether it can be detained or opened. The matter came up for consideration and they came to the conclusion that the power has got to continue to be exercised.

I have got before me the provisions in quite a number of other countries. Take, for example, Canada. It says:

"Whenever the Post-master General believes on reasonable grounds that any person—

(a) is, by means of the mails,—

(i) committing or attempting to commit an offence, or

(ii) aiding, counselling or procuring any person to commit an offence, or

(b) with intent to commit an offence, is using the mails for the purpose of accomplishing his object, the Post-Master General may make an interim order prohibiting the delivery of all mail directed to that person or deposited by that person in a post office."

There is a similar provision in the Australian Post Office Act. There is a similar provision in the New Zealand Post Office Act. It is a very sweeping one. It says:

"The Governor-General may, by Warrant under his hand, direct the Post-master General or any officer to detain or open any postal article for any purpose mentioned in the Warrant."

A complete permission is given there.

As far as the United States is concerned, the type of articles which can be detained runs into a very large number. They have specified what are the articles. It would be of interest to see that one of the articles which can be detained is:

"Mail matters, except sealed letters, originating, etc. in a foreign country and determined by the Secretary to the Treasury to be "Communist political propaganda" shall be detained by the Post Master General, and the addressee notified. If the addressee does not desire delivery within a reasonable time (not exceeding 60 days), it is disposed of as the Post Master General directs."

There are quite a number of such provisions in other countries also.

What I am saying is that the power to refuse the facility of postal organisation to types of articles which the Government feel are not good is a principle accepted in all the democratic countries. As far as the countries which are not democratic are concerned, there need be no special provision about it. It is not allowed at all. So, it is in this context that we have got to look at it. It cannot be said that a provision like this is a

violation of the fundamental right or the basic right of anybody. The question is whether one can make use of this organisation in furtherance of activities of dissension in the country. Dissensions are there; secessionist movements are there; communal tensions are there; subversive movements are there. They are free to do it as they choose. But the question is, whether I should be compelled to pay for all that and to carry the connected mail which will enable the concerned activists to communicate with their comrades far and wide in the country and outside.

I am simply saying, you may do whatever you choose. But if you come into this postal organisation and if there are certain types of mail which are treated as non-mailable, that will not be carried. If that is not to be transmitted, it presupposes that I must have the freedom to look into the letters to see whether the mail contains letters of this type or not. If these letters are not of this type, no danger will be done. They will be sealed and transmitted. If they are of this type, then, of course, they will be intercepted and appropriately dealt with. It is all this that is provided for, nothing more than that.

Mr Vajpayee's Bill asks for a very deterrent punishment in the case of anybody detaining or opening the mail and all that. I would only tell him that there is already a provision in the Post Office Act, Mr. Vajpayee's Bill says that six months imprisonment must be given. But the provision here is:

"Whoever, being an officer of the Post Office, contrary to his duty, opens or causes or suffers to be opened, any postal article in course of transmission by post, or wilfully detains or delays, or causes or suffers to be detained or delayed, any such postal article, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both."

Shri Atal Bihari Vajpayee wants only six months. Under the Postal Act the punishment provided is two years and even seven years.

"Whoever, being an officer of the Post Office, commits theft in respect of, or dishonestly misappropriates, or, for any purpose whatsoever, secretes, destroys or thrown away, any postal article in course of transmission by post or anything contained therein, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be punishable with fine."

Drastic provisions are already there with the proviso that —

"Nothing in this section shall extend to the opening, detaining or delaying of any postal article under the authority of this Act or in obedience to the order in writing or of the Central Government or the direction of a Competent Court."

16 hrs.

Does Vajpayeeji want to reduce the punishment to six months? This Bill concedes that there can be contingencies in which the interception must be done. It is not his case that under no circumstances should postal articles be intercepted. That is not his case. He says that during a proclamation of emergency it can be intercepted and that if it is necessary in the interests of the security of the State, it can be intercepted. The implication of the submission is that interception is permissible.

If interception is permissible, how would you do it? You intercept those of the letters which you think are suspect of that character and, therefore, you will have to open a large number of letters and only in a few the type of this, will come. This implies that letters which do not contain this type of material may also be opened. Shri Atal Bihari Vajpayee has stated that interception is permissible. Once he concedes that interception is permissible then he concedes that interception of postal articles which may not come in this category but which could be suspected of coming in this category also, is permissible.

Now look at what he stated. He says it can be done only in the event of a declaration of emergency. We know the am-

[Shri C. M. Stephen]

ended provisions of the emergency. Only in the event of a war or only in the event of an armed rebellion, the proclamation of emergency takes place. Is that all the danger that we have? Does he say that? Does he not concede that there is secessionist movement in the country without being an armed rebellion and is there no situation for me to come into the picture although there is no declaration of emergency? Does he say that even if communal tension or communal conflict takes place and hundreds of people are killed and even if it spreads out without there being an armed rebellion or danger to the security of the State even in such a national situation there should be no interception of the mail of the suspects?

Would you say that if a letter by the secessionist movement, for example, is sent I should not go into any but carry the letter faithfully to the agents of those people, hand it over to them and give my own assistance to carry out that movement? Would you say this? Different types of situations in the country are possible. That is not a question of security of the country. That is a question of internal situation which we have to resist.

Assuming there is a conspiratorial gang working and carrying on offensive activities, they send their letters across. They send their letters across for smuggling and for so many other things. I know these things are going on. Is it my duty to carry it faithfully from criminal to criminal and be permitted to carry it on? Do I not have the freedom to curb it? Do I not have freedom to suspect the person and to say that these letters must be intercepted and the offenders must be identified?

Once you say that he concedes that interception is permissible under such situation, then the only question is: what is the situation?

You cannot have greater freedom than the fundamental rights provide for in the Constitution. You have the right to freedom of expression and all that and yet that fundamental right is subject to certain provisions:

"Nothing in sub-clause(a) of clause(1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, . . ."

"...friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

I would submit to you that I will be coming to the House very shortly with an Amendment Bill which will amend the particular clause that he seeks to amend. The Amendment that I will be bringing forward—I could read it out now—contains exactly the same provisions which are in article 19:

"The Central Government or the State Government or any officer specially authorised in this behalf by the Central or the State Government, may, if satisfied that it is necessary or expedient so to do in the interests of the public safety or tranquility, the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any offence, by order in writing direct that any postal article....." may be intercepted.

This Amendment will make it a justiciable order. An order will have to be given specifying why that order is given and on what ground that order is given. This is the Amendment that I will be bringing forward shortly. It covers up whatever lacuna there is now. And this is in accordance with the Report of the Law Commission; they have told us that we could intercept but we must intercept only so far as the proviso to article 19 permits us to intercept. That proviso I am incorporating into the Amendment which I propose to bring before the House. There must be a written order giving the reason why that order has been issued, and it will be open to the affected parties, if they think so, to take the mat-

ter to the court of law and challenge that it is not coming under any of those things mentioned in the proviso. Arbitrary and cantankerous orders can be challenged. The court can ask me to bring forth the order which I passed and ask why it was passed, and I will have to justify it before the court of law. The court of law can tell me that this provision is not satisfied, and from that moment I will not be allowed to intercept the articles or letters any more.

Assuming that a letter comes under any of these things mentioned in the proviso, should I or should I not be permitted to intercept it? That is the simple question. If any letter intervenes with the sovereignty of India or the integrity of India or the law and order situation or our relations with foreign nations, if any letter comes under any of these things that are mentioned here, then I would put it to Mr. Vajpayee to answer, whether he would be agreeable that the Government's machinery or the nation's machinery should be used for the purpose of transmitting those articles. This is the simple question that is before us, and if he looks at it that way, then I am absolutely sure that he will agree that this sort of power will have to be retained. It is a question as to under what conditions. There we have a difference of opinion. He says: limit it to the declaration of Emergency and to the security of the State; and I say that I am limiting it within the provisions of the Constitution, the conditions stipulated under article 19. As the provision stands today, it is not limited that way; it is stated that, if there is an Emergency, then any type of article can be intercepted. I am now saying 'No; it should not be so; I must be convinced that these purposes are satisfied; and then alone I can issue the order'. This Amendment, I can assure Mr. Vajpayee, I am bringing forth very shortly.

Another clause of his Bill is that one part of the present clause should be deleted. There is a provision now which says:

"If any doubt arises as to the existence of a public emergency, or as to

whether any act done under sub-section (1) was in the interest of the public safety or tranquility, a certificate of the Central Government or, as the case may be, of the State Government shall be conclusive proof on the point."

He wants this provision to be deleted. I can tell him that, in the Amendment that I will be bringing forward, this provision will stand deleted. That part of his Bill is accepted, but the only thing is that I will bring it by an official amendment. This particular provision which gives me a blanket power above the reach of the judicial process. I am deleting and that will be subject to the judicial scrutiny.

With this assurance, I think, Mr Vajpayee will agree that in substance I have accepted whatever amendments he wanted to bring forward and I hope he will not press his amending Bill.

I want to say one thing more. I am not entitled to reveal anything at all here. But if Mr. Vajpayee will consult the then Home Minister when he was in power, that Home Minister will very secretly tell him that at that period quite a number of letters were intercepted, orders were issued and interception did take place. This he will say.

Last time when I said about West Bengal, I said that interception is taking place and I would like to make one clarification. The parties whose letters they are now asking us to intercept and which we are intercepting—I absolutely have no quarrel with the West Bengal Government—are the type of parties whose letters do deserve to be intercepted. The point is that interception is taking place.

In Tripura what happens is that every day for 2 hours the representative of the State Government comes to our office, sits there and intercepts whatever letters he might choose and take away the letters he wants. They have not even issued an order which they are supposed to issue. This is the position which came to my knowledge and this is not permitted under

[Shri C. M. Stephen]

the law. Therefore, I am writing a letter to the Tripura Government that if they want to intercept, whose letters they want to intercept they must tell me and they must give me a letter for that. This is happening in Tripura.

Every Party when it comes to power will realise that there is the need for interception. After all nobody has got any pleasure in looking into somebody else's letters. Perhaps it may be interesting to go through love letters which I hope will not be forthcoming from Vajpayeeji. Apart from that, there will be no pleasure for us, no pleasure for the officers also. Millions of letters are going across. It is not a question of pleasure. It has got two purposes to serve: one is to decide as to whether non-mailable articles are going or not and (2) the investigative jurisdiction of the Government can go into that. If you carry a letter, a Police Officer can come and say, 'Let me see the letter.' He has got the power in the process of investigation. Merely because it is going through the postal service, although he knows that this letter is going through it, it is not that he cannot seize it. If I carry it can be seized but if the postal man carries, it cannot be seized—this sort of distinction is an unreasonable distinction altogether and post office cannot be, while a Gurudwara or temple may be, a sanctuary to protect the offenders for the time being. Temple or Gurudwara may be beyond the bounds of policemen and anybody can go there and anybody can do whatever he thinks in the sanctum sanctorum. But that sort of a position cannot be permitted in the postal organisation. Postal organisation cannot be converted into a sanctum sanctorum where impermissible things can be permitted to be conducted. Therefore, interception does take place and will take place. Throughout the world every country has this provision. To anybody who wants to send a letter across, this is the warning by the post office. Let him not send the letter across with the feeling that nobody will intercept. Interception

may take place. If you want to send something which must be kept away from the knowledge of anybody, then better make some other arrangement to send it rather than resort to the postal organisation. It will be intercepted. This is the system in to-day's communication. You speak about sending your message through the stellite. When the message goes through the radio wave, anybody can intercept. Anybody can intercept the message which is coming across in the air. That is susceptible to interception. I am talking about the modern system of communication. So secrecy cannot be guaranteed. As far as we are concerned, we are a public organisation run by the nation for its own purpose and it cannot be permitted that this huge organisation will give sanctuary to criminals, to thugs, to saboteurs, to subverters and to anti-national elements and to elements which are against the integrity of the country and which are carrying on secessionist activities. This cannot be a sanctuary for them and this cannot be a Lifeline to carry out their nefarious activities. I cannot be a messenger to carry out their nefarious activities.

Therefore, this provision is there. But, that is being made in full conformity with the provisions of the Constitution. Mr. Vajpayee's Bill I accept in half and and may kindly withdraw the other half of it.

MR. CHAIRMAN: A good compromise.

SHRI C. M. STEPHEN: He wants to delete sub-caused (2). I am agreeing to delete. He wants the punishment to be given to be six months. I say that two or seven years' imprisonment is already provided. He wants interception in the interest of security of State. There I only add the other provisions in Article 19, besides, the security of State also.

Having done, that with the satisfaction that he has provoked the debate on this particular matter, I hope he will agree to withdraw the Bill and wait for the introduction of the amendment which I will be bringing forward.

Sir, let us have some faith in the *bona fide* of one another. I refuse to place on the table of the House or divulge whose letters were intercepted at a particular time. This is a question of secrecy which I have got to maintain. For the political purpose, I shall not violate the secrecy which has got to be maintained. The acceptance of a *bona fide* be must concede to us also. The objection is not to the provision of the Act but it is to the misuse of the Act and to provide against the misuse of the Act. I will be bringing in a bill with a provision which will give you the right to go to the court to challenge this order which I have issued. The court will have the power to issue a writ to me to see that such and such an interception is not permissible, if one or two writs succeed, then I shall be much more careful and any government will be careful to see that the misuse does not take place. With these observations, I accept the bill half of it and I request him to withdraw the other half of it. I hope he will withdraw the Bill.

MR. CHAIRMAN: Mr. Arakal, you want to seek clarifications.

SHRI XAVIER ARAKAL: (Ernakulam): Very important one. Without obtaining the order from the Central Government or the State Government official, is interception of the mail possible?

AN HON. MEMBER: Why not?

MR. CHAIRMAN: Let him put the question.

SHRI XAVIER ARAKAL: What is the position of the Central Government in relation to this matter? Suppose my mail is intercepted by the Government without obtaining the prior order from the Central Government or the competent authority. What action is the Government going to take—I would like to know that.

SHRI C. M. STEPHEN: Well, Sir, both the Central Government and the State Governments are competent authorities to issue the order. The postal service will carry out the order. If it comes from the appropriate authorities, we cannot look further into that.

As I said, nobody can come to the post office and ask for searching all sorts of letters. This is something which is reported to me now, I shall take up the matter. This will not be permitted.

श्री अटल बिहारी वाजपेयी (नई दिल्ली): सभापति जी, मुझे खुशी है कि मेरे विधेयक ने संचार मंत्री महोदय को स्वीकार करने के लिए प्रेरित किया है। उनका कहना है कि उन्होंने 50 फीसदी बात मान ली है, मुझे लगता है कि 50 फीसदी से थोड़ा कम उन्होंने माना है।

बहस के दौरान मैंने यह मुद्दा उठाया था कि पब्लिक सेटी पब्लिक ट्रांक्वीलिटी, पब्लिक इमरजेंसी, ये शब्दावली पुरानी शब्दावली है। उन्होंने जो संशोधन लाने का सुझाव रखा है, उसमें उन्होंने पुराने बिल की शब्दावली और संविधान में मूलभूत अधिकारों के अन्तर्गत जो सीमा लगाने की बात है—उन दोनों को मिला दिया है। देश की सोवरेनिटी के लिये, टैरीटोरियल इन्टीग्रिटी के लिये, पब्लिक सिक्योरिटी के लिये वे बंधन लगाने की बात करते हैं।

मेरा कहना यह है कि जो संविधान में है, उसको रखिये और किसी पुराने कानून के अंश को कायम रखने की चिन्ता मत करिये। पब्लिक आर्डर को डिफाई किया जा सकता है, लेकिन पब्लिक ट्रांक्वीलिटी को नहीं।

SHRI C. M. STEPHEN: It is in the Constitution.

SHRI ATAL BIHARI VAJPAYEE: You are trying to amalgamate both the things retaining something from the old act and including the remaining from the Constitution. Why not take entirely from the provisions of the Constitution?

SHRI C. M. STEPHEN: I entirely agree.

SHRI ATAL BEHARI VAJPAYEE:
You see what you read out.

SHRI C. M. STEPHEN: I read friendly relations, public order.

SHRI ATAL BEHARI VAJPAYEE:
Public order is not public tranquility.

SHRI C. M. STEPHEN: It says: public order, decency or morality or in relation to contempt of court, defamation, or incitement to an offence. Any type of letter will be intercepted. It is permitted here. When that comes, you can put amendments I am bringing that.

MR. CHAIRMAN: He is offering this—even if you want to suggest something before he brings out the amendment, you can do it. If you agree to withdraw it, you will have another opportunity to discuss it.

SHRI ATAL BIHARI VAJPAYEE:
Sir, he is alive to the misuse of the provisions of the Act.

SHRI C. M. STEPHEN: Possibility of misuse.

SHRI ATALBEHARI VAJPAYEE:
The Act has been misused.

SHRI C. M. STEPHEN: It is your apprehension.

SHRI ATAL BIHAR VAJPAYEE: It is my apprehension and your apprehension also. You have before you the list. Why some Members of Parliament have been included? Members of Parliament are included.

MR. CHAIRMAN: Mr. Vajpayee, the Minister said that during the Janata party Government, this was misused. (*Interruptions*) It is the same experience on this side also.

SHRI ATAL BIHARI VAJPAYEE:
With one difference. When we are in the opposition, we are alive to the situation. But when they were in the opposition they decided to keep mum. They did not fight for this amendment.

SHRI C. M. STEPHEN: We did not, because, we know it is necessary. Sir, merely because we are there, we don't change our stand, when we know it is necessary, we support it.

MR. CHAIRMAN: He wanted to be constructive opposition at that time.

SHRI ATAL BIHARI VAJPAYEE:
Not constructive, Sir; they were not performing as the Opposition party.

SHRI C. M. STEPHEN: Our attitude has remained the same there and here, both. Their attitude changes.

SHRI ATAL BIHAR VAJPAYEE:
No, that is not correct. Sir, I am glad that he has agreed to bring forward an amendment. Since fifty per cent has not been conceded, I reserve my right to vote against that. And in the mean time, I don't want the debate to be prolonged. I don't press my Bill.

MR. CHAIRMAN: Do you want to withdraw it?

SHRI ATAL BIHARI VAJPAYEE:
Yes.

SHRI HARIKESH BAHADUR: (Gorakhpur): My mail is being censored every day. Letters are being intercepted. I am getting only envelopes. Letters are being removed. (*Interruption*)

MR. CHAIRMAN: The question is:

"That leave be granted to withdraw the Bill further to amend the Indian Post Office Act, 1898".

The motion was adopted.

SHRI ATAL BIHARI VAJPAYEE:
I withdraw the Bill.

MR. CHAIRMAN: You must compliment him for his reasonableness.

SHRI CHANDRA SHEKHAR SINGH (Banka): We congratulate him for his reasonableness and constructive attitude.