

on the recommendations contained in their Seventy-seventh Report relating to Ministry of Railways.

- (2) Hundred and tenth Report on action taken by Government on the recommendations contained in their Seventy-sixth Report relating to Ministries of Home Affairs Information and Broadcasting and Department of Agriculture.

12-20 hrs.

PRESIDENTS ORDER IN REGARD TO AUTHORISATION OF EXPENDITURE OUT OF CONSOLIDATED FUND OF PONDICHERY—laid on the Table.

MR. SPEAKER: Shri K. R. Ganesh
SOME HON. MEMBERS rose—

श्री बच्चू लिमये (बाका) अध्यक्ष महोदय, मेरा प्वाइंट ऑफ़ ऑर्डर है। मैंने लिख कर बाकायदा नोटिस दिया है।

MR. SPEAKER: I will listen to you. I have this from Shri Vajpayee, Shri Limaye, Shri Samar Guha and Shri Viswanathan.

SHRI SHYAMNANDAN MISHRA (Begusarai): My submission is that it should not be confined to them only. This is our right. It is not a question of submitting something in advance with regard to a point of order one wants to raise.

MR. SPEAKER: I am allowing it; I am not denying it.

SHRI INDRAJIT GUPTA (Alipore): Have you allowed him to lay it on the Table?

MR. SPEAKER: Yes.

You can raise a point of order. The other day, when he was about to lay it, I said, for the present he cannot lay it. We discussed it in the Committee also. My main point was that they could not bypass the procedures, that they should come

through an Appropriation Bill and then, in that way, they could regularise it. They have come with that. What is the objection left?

SHRI INDARJIT GUPTA: An Appropriation Bill is entirely a separate thing.

MR. SPEAKER: After all, your objections are against that Order. How can you discuss it unless it is before the House?

श्री बच्चू लिमये : से करने का तो कोई सवाल ही नहीं है, प्वाइंट ऑफ़ ऑर्डर नं० 8 पर है, यह हॉना ही नहीं चाहिए।

अध्यक्ष महोदय : आप उस दिन तो प्रयोग से मिस सकते थे।

श्री अटल बिहारी वाजपेयी (ग्वालियर): उस दिन जो चर्चा हुई वह तो गवर्नमेन्ट ऑफ़ इण्डिया के गवर्नर से जो ऑर्डर निकला था उस पर हुई और हम ने यह कहा था कि इस तरह का राष्ट्रपति को आदेश नहीं निकालना चाहिए। राष्ट्रपति को इस प्रकार का आदेश निकालने की सलाह दे कर सरकार ने संविधान के विरुद्ध काम किया है . .

अध्यक्ष महोदय पहले आप कहते हैं कि गलत किया है, अब उस को ठीक करते हैं तब आप कहते हैं कि ठीक क्यों करते हैं।

श्री बच्चू लिमये : आप ने एनाऊ किया है तब आप पहले हम लोगों की बातों का मुन नीजिए।

श्री अटल बिहारी वाजपेयी : अध्यक्ष महोदय, मैं यह समझ कर प्रारम्भ कर रहा हूँ कि अभी तक श्री यशोश ने उस ऑर्डर की प्रॉन सभा-पटल पर नहीं रखी है . . (अव्यवधान) . . अब हमें सुनने के बाद आप फैसला करेंगे।

अध्यक्ष महोदय : बसिए, आप सुनाइये।

श्री अटल बिहारी वाजपेयी : यह हमारे लिए बड़े आश्चर्य और खेद का विषय है कि आप ने स्वयं जिस प्रादेश को सभा पटल पर रखने से रोक दिया था

अध्यक्ष महोदय : फार-द प्रजेन्ट ।

श्री अटल बिहारी वाजपेयी : श्रीर जिस के बारे में आप ने कहा था कि आप सब से चर्चा कर के कोई निर्णय करेंगे, उस प्रादेश को आप सभा पटल पर रखने के लिए सूची में शामिल कर दिया गया । मैं उन सब कारणों का और संवैधानिक आपत्तियों की दोंड़गना नहीं चाहता जिन के आधार पर हम ने यह कहा था कि विधान सभा का विघटन होने के बाद सरकार का सदन के सामने आ कर भारत की समेतिष्ठ निधि में से खर्च के लिए खपया निकालना चाहिए । वित्तीय मामलों में संसद सर्वोपरि है । इस सदन की मत्ता को कोई चुनौती नहीं दे सकता । राष्ट्रपति महोदय इस सदन का स्थान नहीं ले सकते । सरकार के पाम समय था कि वह वहां बिल ले कर आ सकती थी, राज्य सभा की बैठक को भी बुलाया जा सकता था । यह मामला इस सदन में उठाया भी गया किन्तु सरकार ने ध्यान नहीं दिया । बैठक में भी यह मुझाव दिया गया था कि जो संवैधानिक गतिरोध पैदा हो गया है, उस को हल करने के लिए कोई रास्ता निकालना चाहिए, लेकिन ऐसा लगता है कि सरकार इसे प्रतिष्ठा का प्रश्न बना कर झड़ी हुई है । संविधान के साथ खिलवाड़ करने पर तुली हुई है । आज यह मामला फिर राष्ट्र-पति के प्रादेश के रूप में सदन के सामने आ गया ।

अध्यक्ष महोदय, क्या आप सरकार को ऐसे कारणों को सभा पटल पर रखते की इजाजत देंगे जो संविधान के प्रतिकूल है ?

अध्यक्ष महोदय : आप लोग ही उस दिन मानेंगे, उस दिन कमेटी में यही बात आई थी ।

श्री अटल बिहारी वाजपेयी : अध्यक्ष महोदय, मात्र कीजिए, मैं उस दिन कमेटी में नहीं था ।

अध्यक्ष महोदय : बात तो इस बात पर टूट गई थी ...

श्री इश्वरभक्त मिश्र : हम लोगों ने उस को लीगल कभी नहीं करार दिया—मीटिंग में ।

श्री अटल बिहारी वाजपेयी : जो प्रादेश गैरकानूनी है, संविधान के प्रतिकूल है, क्या कोई बैठक उस को कानूनी बना सकती है ?

श्री इश्वरभक्त मिश्र : नहीं बनाया है ।

श्री अटल बिहारी वाजपेयी : मेरे सहयोगी कह रहे हैं कि बैठक ने इस बात को स्वीकार नहीं किया ।

अध्यक्ष महोदय : आप कहिए, जो कहना हो कहिए, जो बात है वह है ।

श्री अटल बिहारी वाजपेयी : मैं आपको सूचना देना चाहता हूँ कि मैंने एक प्रस्ताव दिया है, उस दिन भी यह बात कही गई थी कि यह एक संवैधानिक प्रश्न है, इस पर सदन चर्चा करे, इस समय एटर्नीजनरल का सलाह देने के लिये बुलाया जाना चाहिए । मैंने इस आशय का एक औपचारिक प्रस्ताव भी आपके पाम भजा है और जब तक इस पर चर्चा नहीं हो जाती, एटर्नीजनरल की सलाह नहीं ली जाती तब तक आप मंत्री महोदय के यह प्रादेश सभा पटल पर रखने की इजाजत न दें ।

यह सारा मामला प्रदासत में पहुंच गया है । हमारे सहयोगी भी संस्थान ने आपको इस आशय का एक पत्र भी लिखा है । जब

[श्री अटल बिहारी वाजपेयी]

सब दरवाज बन्द हो गए तब उन्होंने अदालत का दरवाजा खटखटाया है। मैं समझता हूँ कि अगर संसद में श्री न्यायालय में किसी प्रकार के संघर्ष को रोकना है तो इस प्रश्न को मानता हूँ कि जहाँ तक कानून बनाने का सवाल है, बजट पास करने का सवाल है, संसद के अधिकार सर्वोपरि है लेकिन अगर आप बहुमत के आधार पर यह फैसला करेंगे कि कानून का कदम कानून एवं संविधान के अनुकूल है तो मेरा निवेदन है कि संविधान की रक्षा नहीं हो सकती। यह प्रश्न कानून और संविधान की बारीकी का है, ममदीय लोकतंत्र की मान्यता और परम्परा का है। क्या इस सदन की ताक में रख कर विर्त्तिय मामलो में सरकार कोई फैसला कर सकती है? मैं समझता हूँ कि यह फैसला करने की इजाजत सदन नहीं दे सकता। यह पार्टी का भा प्रश्न नहीं है। सदन का विर्त्तिय मामलो में अपनी सर्वोपरिता का इस समय प्रातिष्ठित करना होगा और इसलिए मैं नहीं समझता कि यह मामला इस समय बहुमत पर छाड़ा जा सकता है। इस सम्बन्ध में आप हमारे अधिकारों को रक्षा करे और सरकार को कोई गैर-कानूनी काम करने का इजाजत न दे।

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श्री मधु लाल शर्मा अध्यक्ष महोदय मैं इस आदेश में और जो विधेयक आप के सामने आते हैं उनमें मिला करना चाहता हूँ। अब विधेयक के बारे में आक्षेप किया जाता है कि यह अनवधानिक है या लेजिस्लेटिव कर्प्सटम नहीं है तो आप सब लोगों को सुन लेते हैं लेकिन अन्त में आप कहते हैं कि इसका निर्णय मेरे हाथ में नहीं है। यह निर्णय अब न के हाथ में है। आप अदालत में जाइए। लेकिन यह विधेयक नहीं है। यह अप्रातिष्ठित के बारे में राष्ट्रपति का आदेश है। अब इस

बारे में सारे अधिकार इस सदन को और सदन के अध्यक्ष के नाम आपको प्राप्त है। इसलिये मैं स्पष्ट शब्दों में आपसे निर्णय चाहता हूँ कि राष्ट्रपति जी का यह आदेश संविधान उल्लंघन करना है, पांडिचेरी असेम्बली और जितने अधिकार लोक सभा को प्राप्त हुये हैं उन अधिकारों का उल्लंघन करता है इसलिये इस इल्मीगल आदेश को सभा पटल पर रखने की इजाजत नहीं देना क्योंकि अगर इल्मीगल आदेश सभा पटल पर रखा जायगा तो यह टेबल डिफाइन्ड हो जायगा इन लोगों का यहाँ पर ईडना मुश्किल हो जायगा।

नीमरा, मुद्दा मेरा यह है कि अगर आप निर्णय करने में अपने को असमर्थ पाते हैं तो सदन को इस की इन्वीर्मेन्ट, पर निर्णय करने का आप माँका दाजिए। मैंने एक प्रस्ताव इस बारे में दिया है। वह एक लाइन का प्रस्ताव है —

“That it is the sense of the House that the Presidential Order sanctioning the appropriation of Rs. 5 crores from the Consolidated Fund of India is without of the authority of law and encroaches upon the powers of the Pondicherry Assembly and Lok Sabha in financial matters.”

अब उसके बाद हम यह देखना चाहेंगे कि जो कुछ खुलकर संविधान के खिलाफ काम है क्या बहुमत के आधार पर उस काम को रोकना चाहेंगे? इसलिये अगर आप निर्णय देने के लिये तैयार नहीं हैं तो सदन को माँका दीजिए ताकि सदन अपने अधिकारों की फाईने शियल मेंटेन्समेंट में उसके जो अधिकार हैं उन की रक्षा कर सके। उसके बाद और मेरा जो आक्षेप है वह यह है कि 8-9 के जाँच जो गैर कानूनी काम हुआ है उसके क्वोर करने के बारे में सरकार और सदन क्या करने जा रहे हैं इसकी कोई तर्बीर हमारे सामने नहीं आई है। जिस अनौपचारिक बैठक की बार बार बात आयी है जिसका हवाला दिया जाता है उसमें भी सभी विरोधी दल शामिल

ने यह कहा कि इस इन्वीटिडि को कैसे स्वीकार किया जायगा ? उस के बारे में कहा गया था कि कानून संघी विचार कर रहे हैं, वह उस के बारे में कुछ कहेंगे। लेकिन आज यह आदेश रखने के लिये वह आ रहे हैं और कानून संघी ने कोई वक्तव्य नहीं दिया। तों जब तक इस इन्वीटिडि को दूर करने का तरीका सदन नहीं ढूँढ निकालेगा, सरकार नहीं ढूँढ निकालेगी तब तक इस आदेश के बारे में हम विचार भी नहीं कर सकते, बल्कि बजट के बारे में भी विचार नहीं कर सकते। हमसिधे इन मुद्दों के ऊपर आप अपना निर्णय दीजिए। अगर आप इस को गैर कानूनी नहीं करार देना चाहते हैं तो सदन का मौका दीजिए। उसके बाद चम्पण साहब का ज़ा बजट रखना है वह रखने का काम करें। इन्वीटिडि को कैसे बुझाया जायगा उसके बारे में भी आप गोखले साहब ने यहाँ एक वक्तव्य दिलवाइए।

SHRI SAMAR GUHA (Contai): Mr. Speaker, Sir, I consider it one of the most unprecedented constitutional crises. It is no less important than the breakdown of the law and order situation. My reason is this. If we allow this, if we permit this, it may be used as a subterfuge to scuttle, so to say, the right and the supremacy of the legislature over the executive. Today, Sir, it may be a tiny State of Pondicherry. Tomorrow, by issuing an ordinance, the Budget of Gujarat may be passed. And, day after tomorrow they may pass the Supplementary Budget if not the General Budget, by issuing an ordinance like this. Therefore, if we now permit Mr. Ganesh or Mr. Chavan to lay the notification on the Table, what does it mean, Sir? It means this. This is your proposition and you have upheld our contention, at least you have expressed doubt about the legality of issuing the ordinance and approving the ordinance. You have yourself expressed such doubt, Sir, that doubt still has not been cleared as yet. You convened a meeting of the opposition leaders. Did you come to any decision whatsoever?

ever? The position remains as it was before when you yourself, in your wisdom, Sir, expressed your doubt about the validity of that notification. This being the position, if this is so, what does this mean, Sir? The question of doubt regarding legality remains as it then was. Therefore, if we allow this to be laid, what does it actually mean? It means that we also indirectly become a party to illegal appropriation of the Consolidated Fund of the Government of India. That would be the case if we permit this to be laid on the Table of the House.

Therefore, first the matter has to be decided whether it was legal or not. Is it the case that it is not illegal, but improper, I don't know? But that matter has got to be decided first. What is the machinery by which it should be decided? Is it by your ruling? Is it by discussion in the House? Or is it to be done by some other means? Because, Sir, as I said, a most unprecedented constitutional crisis has been created. Therefore, Sir, before those issues are settled, namely, whether it was legal or illegal, this cannot be laid on the Table, the statement cannot be made. It is incumbent on you, Sir, to decide as to the except *modus operandi* how the issue of legality or illegality should be decided upon.

That should be decided first and then this can be permitted. This is my respectful submission. Thank you.

SHRI SHYAMNANDAN MISHRA (Begusarai): Mr. Speaker, Sir, my respectful submission is this.

Number one. The question is, whether any paper which is inconsistent with the provisions of an Act (which gives power to a legislature) can be placed on the Table of the Legislature or not. Is there not a clear case that the paper that is being sought to be now laid on the Table of the House is inconsistent with the provisions of the Act which gives power to a legislature, the power which now has been transferred to Parliament?

[Shri Shyamraddan Mishra]

Secondly, Sir, the general question is whether any paper which divests Parliament of its power—now I am going beyond the Union Territories Act—can be placed on the Table of Parliament and Parliament can be expected to be a party to or agree to a death-warrant

Sir, if there is any paper issued by the President to the effect that Parliament is divested of certain powers, then, would that paper be allowed to be laid on the Table of the House or not? This is my second point

My third point is this Under which rule is this paper sought to be laid on the Table of the House? The rule speaks of papers laid under the Constitution, papers laid under the statutes, papers laid under the rules of procedure papers laid under directions of the Speaker and also papers quoted have to be laid on the Table Now, this one does not come, so far as I see, Sir, under any one of these headings This does not conform to the order that has been mentioned in the Rules of Procedure

Fourthly, this matter is *sub judice* and this House should be lending it self to a procedure which will be very unhealthy You have already decided in earlier cases too that a matter, which is *sub judice* cannot be discussed in this House or any paper relating to that cannot be laid on the Table of the House

Now the only question is whether—the matter has been admitted? Before its admission the paper can be laid on the Table of the House and this is what Shri Shakti's book says But a matter which has been admitted and is returnable on the 22nd of this month can it be discussed here? It is clear that this matter is now being dealt with by the court of law and it is now under judicial adjudication May's *Parliamentary Practice* is also quite clear on this point and I would like to quote it because this is a very important case on which we should not allow anything that

is not proper It says on page 342

'Matters pending judicial decisions' A matter awaiting or under adjudication by a court of law, should not be brought before the House by a motion or otherwise This rule applies to motions for leave to bring in Bills but not to other proceedings on Bills "

Then again, on page 416, May's *Parliamentary Practice* has made it absolutely clear that matters awaiting the adjudication of a court of law should not be brought forward in debate following the First Report of the Select Committee It says

"The ban also applies in the case of any judicial body to which this House has expressly referred a specific matter for decision and report from the time when the Resolution of the House is passed "

Now, the House could not get any protection from the House itself in protecting or preserving its rights So an Hon Member has gone to the court Any citizen can go to the court for the protection of the rights of the Legislature in this matter It is for your consideration—I have not gone *in extenso* in greater details, so far as May's *Parliamentary Practice* goes I do not want to weary the House with all the details—whether the Chair should permit a matter which is under judicial adjudication and whether any paper relating to this can be placed on the Table of the House It is clearly a matter, pending judicial adjudication So, how can we be a party to its being laid on the Table of the House? It has been amply established to the satisfaction of the rules in the matter that it is not legal I would not like to go into the legality of the matter just now because I am taking my stand primarily on the issue that a matter which is pending before the court of law should not be allowed to be discussed or any paper relating to it should not be placed on the Table of the House I am not going into the merits of the case

SHRI G. VISWANATHAN (Wandiwash Mr. Speaker, Sir the President's Order on Pondicherry is a deliberate violation and encroaches on the financial powers of this House Government represented by the hon. Law Minister could not convince the House that the President's Order is valid or constitutional. He mainly replied upon Section 51 of the Union Territories Act under which the President gets powers to suspend certain provisions of the Act. There are two Sections—Sec. 29 (3) and Section 47(2)—which are specifically mentioned as to how the consolidated fund should be appropriated. Let me quote rule 47 (2):

"No monies out of the consolidated fund of a Union Territory shall be appropriated except in accordance with and for the purpose and in the manner provided in this Act."

The other section is Sec. 51. The President has not suspended specifically this particular Section as well as Sec. 29 (3).

Hence the President has no powers to encroach upon the financial powers of this House.

Again, the legality of this has been challenged before the Madras High Court. The Court has admitted the petition and has referred it to a Bench of the Court. The matter now being *sub-judice* and its legality being challenged before a court of law, I think it is proper for the House to keep it pending and I request you that this Order, which is neither legally valid nor constitutionally sound, should not be allowed to be laid on the Table.

SHRI INDRAJIT GUPTA (Alipore): I just want to make one submission for your consideration.

Apart from the other arguments which have been adduced here about the matter being *sub-judice*, I do not want to repeat them though they are weighty arguments—I want you particularly as the Speaker to consider one specific point. You called a meeting on the 5th of this

month and you announced it in the House. Now, what was the purpose of that meeting? The purpose of that meeting was to find a way out, a way out of the impasse which had been created. If such a situation had not been created, there would have been no need for you to call a meeting and there would have been no need for the Government and its representatives to agree that they would also participate in that meeting. The meeting was called in order to find a way out because it was accepted by everybody here—I do not think anybody is trying to controvert it now—that in matters financial, the powers of the legislature are supreme and those powers cannot be arrogated by the executive to itself. This is number one. Number two is that in the context of that, it was felt by you, at least on that day, that the Presidential Order of the 29th March, 1974 was unacceptable, and therefore, you had directed that it should not be laid on the Table until this meeting was held to find a way out.

Now in that meeting—I was not present myself in that meeting—Prof Hiren Mukerjee was there and what I have understood is that no agreed solution could be found. Many proposals were made, suggestions were given, but no agreement could be reached. There the meeting ended. I want to know from you now that today you are permitting Shri Ganesh to lay this Order, a copy of it, on the Table of the House, what has transpired between the end of that meeting in which no agreed solution could be found as to how to resolve this crisis, this impasse, and today, what has taken place since then to justify you now to permit this Order to be laid on the Table? It means that the Government—I am sorry to have to say this—after that meeting has now made up its mind that by virtue of the majority it has here it will insist on this position that the Presidential Order is legally valid and constitutionally sound. They will pass it here by majority.

[Shri Indrajit Gupta]

SHRI ATAL BIHARI VAJPAYEE:
Brute majority.

SHRI INDRAJIT GUPTA: I am not worried about that....*(Interruptions)*

I am surprised at this, although the Minister of Law, Shri Gokhale, had responded very favourably, I thought to your suggestion for a meeting and had said, 'I place myself in the hands of the House and in your hands'. Was not the fact that the Government participated in that meeting an admission that they also felt that difficulty, crisis, impasse, had arisen, which should be solved somehow or other? Today nothing new has happened except that Shri Sezhiyan has gone to the Madras High Court, making the matter *sub judice* in the bargain. Nothing else has happened. Now today they are coming forward in order to put this thing on the agenda, as though it has suddenly become legally valid and constitutionally sound. I cannot understand for the life of me, with all my respect to you, how you are permitting this, in view of what you had said on that day, in view of the meeting called at your instance to find a solution, in view of the fact that at that meeting no solution could be found. In view of this, how are you allowing this Presidential Order to be laid on the Table today? It just passes my comprehension.

You should tell us what has in the meanwhile prompted you to reverse your earlier decision. Why have you done it? On what grounds? On the basis of what new evidence. There is nothing before us.

Of course, the budget has to be passed and the estimates have to be presented; there is no doubt about it; the Appropriation Bill has to come and the Rajya Sabha should have been summoned earlier for that. But anyway, it has been delayed. But I really think that this particular order—the legal and constitutional validity of it—cannot be decided by a majority in this House under any circumstances.

It cannot be decided. Who is the arbiter in this matter?

Therefore, I would beg of you to consider this matter very coolly and calmly and not to precipitate matters which may lead to a further crisis and an intensification of the constitutional crisis later on. This matter should be held over until an authoritative pronouncement either of the court or the attorney-General is given. Even the advice of the Attorney-General has not been taken or is not being given to the House. Nothing has been done. Let them go ahead with the presentation of their budget estimates. We do not mind that, but this particular order should be held over, as you were very correctly disposed to do earlier on, and nothing should happen to justify the reversal of your orders, today.

SHRI H. N. MUKERJEE (Calcutta—North—East): Sir, I would not have intervened after my friends have spoken, but having been present at the last meeting, I think perhaps I ought to say something. What disturbs me is Government's utter lack of humility—humility is supposedly a Gandhian virtue—because at the last meeting, it was very clear that apart from Government's spokesman, everybody else was positive that something wrong, perhaps unavoidably wrong, had been committed and some sort of rectification process should be evolved by a consensus. It could not be evolved because Government took a very rigid and obstinate stand.

Now if they do intend to stand on ceremony everywhere and assert their majority, formidability and all that sort of thing, it is a different proposition. But I could have understood it if they had done what Mr. Madhu Lunaye suggested, namely, that a statement was prepared by the Law Minister on behalf of Government, explaining the difficulties of the position, explaining how the difficulties are being sought to be surmounted from their point of view, and alongside that they could have asked for

permission from you and the House to have this paper laid on the Table. They do nothing of that sort. This is going a little too far. You had on the earlier occasion stopped that paper from being laid on the Table of the House. And now you say that since you want a solution for a very serious problem let us proceed and therefore let the paper be laid on the Table. But how can that be done, Sir, without an express elucidation of the problem by the Government showing that an unprecedented problem has arisen and for that purpose unprecedented remedies perhaps are being taken recourse to. Therefore, they should come in all humility before Parliament, but they do not do so.

Suggestions were made into which I need not enter now, which might have helped a rectification of the anomalous situation that had taken place. Those suggestions were brushed aside; they want to stick to their own time-table or whatever procedure they have in mind and they want the House to swallow it. I have seen repeatedly this phenomenon of Government, because it has the majority, brute or otherwise; they come before the House and expect the House to swallow whatever they have decided behind the scenes in their own way, and even after a parliamentary discussion took place, in the presence of the Speaker they completely disregard the entire proceedings and they try to stick to their own hectoring authoritarian way of doing things.

I am not interested in those little details of legalistic refinement. I suppose in spite of this document—presidential order or something—being in question in court, there may be perhaps no conceivable harm in having it laid on the Table of the House; it can be made infructuous later on by any kind of judicial pronouncement, but there is no harm, because after all we cannot hold our hands for ever and for ever. We are a sovereign body. I am not going to enter into that. But the main idea that strikes me—and that goes to the root of the function-

ing in any kind of parliamentary democracy—is that Government behaves in an utterly hectoring fashion.

Government did not take note of the seriousness of the objections raised last time. The Government are dishonest in saying that they do realise that some sort of a mistake might conceivably have been committed because if they did have any sense of having committed something wrong or having done something which they ought not to have done, they would have taken the posture of humility and told the House in an explanatory statement why it is that they are putting this order before the House and leave it to the House to determine what should be done; they did not do so. It would be a pity if you permit yourself to be more or less bludgeoned into allowing this thing to be laid on the Table of the House when it cannot be laid on the Table of the House without an explanatory memorandum to begin with, and without a statement which it should be open to the House to discuss.

SHRI PILOO MODY (Godhra). I should like first of all to recall to you and to the House the historic origins of Parliament. Parliaments were created to keep a check on the expenditure of the State, in this case the Government. Over a period of time Parliaments have been evolved with complete control over the expenditure of a State. That is why in our Constitution powers to vote money had been left to Parliament, not to Government. The fact is that Government functions by majority and these powers can be used by Governments through Parliament by exercising its majority. But at no time can it short-circuit the process and start using the funds of this country in the manner in which it has been prescribed.

For a change I have to agree with Prof. Mukerjee and the solution that Prof. Mukerjee had put forward. As a reasonable man I will always accept a particular difficulty. I realise that the Government, because of the folly of its own constituents in Poudicherry,

(Shri Piloo Modi)

had been put in very tight corner and therefore it was necessary for them to find a way out. But the way out cannot be by virtue of exercise of its majority or by exercise of arbitrary powers which it does not have. Therefore, I would have accepted the compromise solution suggested by Prof. Mukerjee that they should have come forward with an explanation saying that this has happened; we are very tight of time and this must be done by 31st March; would you please help us in getting this through? May be by tacit consent by accepting the apology and the difficulty we might have all agreed to do so. However this Government for reasons that Prof. Mukerjee has described too well has decided to do this arbitrarily. I and my party at any rate do not think that we can be a party to the violation of the very fundamental principles of Parliament, unless of course this is merely a little curtain-raiser, a sneak preview of the limited dictatorship which is being so loosely talked about all over the place. In the end I agree with Prof. Mukerjee that this may even be total abandonment of Gandhian humility and replaced by what might be called Gandhi's arrogance.

SHRI ATAL BIHARI VAJPAYEE:

You mean Mrs. Gandhi's?

SHRI PILOO MODY: Even you understood

SHRI S. A. SHAMIM (Srinagar):

You have heard the spokesman of various parties; you may now listen to an independent voice.

Sir, I have nothing to ask from the Government. I know the Government's case and the Government themselves say that their case is very weak. They have no case. I am not interested in hearing the judgement of the High Court to which some of my friends have gone. But, I am only interested in knowing your ruling and just to elucidate your views, I would like to refresh your memory.

You remember, Sir, when you returned from a tour, some leaders of parties met you in your Chamber, and I happened to be one of them, though without representing a party. You, on that particular day, though I will not divulge the whole of the discussion, gave the impression that you were convinced that we had a case where as the Government had none. You discussed this and you allowed us to raise this matter in the House and in the House, leaders of the various parties and myself, Sir, convinced you that this Order is not a Presidential Order, but, it is a Presidential disorder, and that it is not legal. The result was, you asked the Law Minister to reply to the points that we had raised. The Law Minister realising that we had a very strong case, asked for time. You, in your wisdom and we, in our generosity, gave time. The Law Minister, after having worked for the whole of the night, on the second day, came with a large number of books and tried to put forward the Government's case. Sir, again, you, after hearing the Law Minister, obviously, were not impressed by what he has said. You, on that day, did not allow him. I have to seek some clarifications from you. That is why, I am reminding you.

MR. SPEAKER: While doing so, do not put many things in my mouth.

SHRI S. A. SHAMIM: From the fact that after hearing the Law Minister, you did not allow the Government to place that Order on the Table of the House, it is clear to us that you were not convinced. Then, Sir, you convened a meeting of the Opposition Parties and Government and about the version of that meeting, you gave one version and the Government and Opposition leaders another.

MR. SPEAKER: You forget what I said at the end; what was my ruling at the end. You omitted that, because, that does not suit you.

SHRI S. A. SHAMIM: The reason why we had raised this question before you, Sir, is we want to hear what you have to say. My friend, Mr. Indrajit Gupta has pointedly asked about this. The last meeting in the series was a meeting of the Opposition leaders and the Government about which the report was, nothing was agreed upon. So, in my humble capacity, I would like to know, as Mr. Indrajit Gupta has asked, what exactly had happened? When we had come to listen to your views, whether this Order is a legal Order or an illegal Order, you, in your wisdom, have chosen to be silent on this issue. Mr. Sezhiyan has gone to the High Court. The Government, by implication, have taken it for granted, that you have given them permission thereby meaning that this is legal. We would like to know I at least would like to know, your ruling. If you give a ruling that after having listened to the speeches and hearing the case of the Government put forward by the Law Minister 'it is my considered opinion that this is a legal Order', then we will take it that the Speaker had given a ruling and therefore we had to accept it, whether it is right or not. Willy-nilly, I have to accept it. You cannot have it both ways. Having sided with us that 'you have a very good case, I am not allowing the Government to place the Order on the Table of the House' now today, by implication and by maintaining golden silence, you are allowing them to place the Order on the Table of the House. I as an Independent Member, who is not an interested party, would like to know from you, what is your personal opinion and what exactly had happened in between. I would like to know, what is your considered ruling, so that this can be cited as a precedent in future.

SHRI DINEN BHATTACHARYYA (Serampore): Sir, after a discussion on the issue, and after hearing several opposition leaders, you, in your wisdom, did not allow the Govern-

ment to lay the Order on the Table of the House, and then a meeting was held in your Chamber, where also no immediate decision was taken. Today also, when the Government has come forward to legalise that illegal Order, you have not reversed that day's decision that 'I do not allow you to lay this on the Table of the House'. So, you must categorically state that this Order is valid and the procedure that has been adopted by the Government is valid. If there is such a statement from you, then we may consider it

15 hrs

THE MINISTER OF LAW JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): Sir, I am grateful to you for giving me an opportunity to make a brief statement. I say brief because an elaborate statement as to the legality of the Order was made by me the other day. From the speeches which I heard this morning, I find no new point with regard to what they call an illegal Order has been made. The House will recollect that I justified or the order on the ground that the order was passed fully legally in accordance with the provisions of the Union Territories Act, which I submitted was for the purpose of Union Territories a Constitution by itself looking at the provisions of article 239A. Even in the meeting which was held in which I and the Finance Minister were present, I had at the outset made it clear that the fact that we have met here for a discussion does not at all mean that the Government is conceding that the order is illegal. On the contrary Government is reiterating the position that the order is legal. But inasmuch as a matter about a financial matter has arisen, I ended my speech that day by saying that I am prepared to go according to the wishes of the House, and we are prepared to come before the House with such measures as are necessary in order to see if there is any doubt—according to me there is no doubt—that whatever has been done is rectified.

[Shri H. R. Gokhale]

It has been said today that since the matter is in court, it should not be discussed. Yet, everyone on the other side is discussing the legality of it! I do not know how they are doing it. I want to reiterate that the Government's position is that the order is legal and Government will establish it before the court when the time comes. The question has been raised as to why it is sought to be placed on the Table of the House. Firstly it is a statutory order under the Union Territories Act passed by the President and even on the basis of the objections raised, it is clear that it is an order on a very important issue. It would have been unfair if Government had not placed it on the Table of the House. Secondly, even in the order passed by the President, he has said that it is pending sanction by the Parliament. It is a sort of commitment made in the Presidential Order itself that this would be taken to the House. Thirdly, it is the normal practice that on all matters of such importance the House should be taken into confidence. It is therefore but right that the Government should place this order on the Table of the House.

Without repeating what I said earlier, I submit that the Union Territories Act does give ample power to the President to issue such an order. After this is laid on the Table with your permission, the Finance Minister, following the procedure prescribed in the Union Territories Act, will present a statement of estimated receipts and expenditure of the Union Territory. That was what I meant when I said that Parliament was never intended to be by-passed. It was made clear in the order itself. I submit that for all these reasons which are important and to which I have made reference, the order should be allowed to be laid on the Table of the House.

MR. SPEAKER. I have heard with careful attention the points raised by hon. members from the opposition,

and the independent member. He is also sitting in the opposition. The main object of my observation is less in the spirit of a ruling or in any spirit of scoring a point than explaining my point of view in the background of what I consider should be in the nature of observations of the Speaker.

The other day when hon. Members met me in my chamber for a few minutes or half a hour before I came to the House they explained to me that this Order by the President is not proper. I then told them that it will not be allowed to be laid on the Table that day, I will carefully examine it and study it. I then told the Law Minister that he cannot lay it on the Table "for the present" because I wanted to be more sure about the position. I thought I will study it in detail and, if necessary, discuss it with you and then make my point of view clear to the House.

When the hon. Minister tried to lay it on the Table a second time on another day, many questions were raised in this House, like today, and the hon. Members were very excited. They pointed out that the procedure adopted is not very proper either under the law or under the Constitution. I said again that I am not going to allow it to be laid on the Table "for the present" till we discussed it in the meeting of the Leaders' Committee.

I called both the Ministers, the Law Minister and the Finance Minister, to the Leaders' Committee. All the parties were represented there either by their leaders or by their nominees. I must say that the spirit in that meeting was more for rectifying the position rather than scoring any point. Whatever might be the attitudes adopted later on, either by the Ministers or the leaders of parties, the discussion in the meeting and the background helped me in forming my own views about it.

Now the point raised is why we could not reach any agreement on that day. Everything was discussed

threadbare in the meeting—I need not go into the details, because all of you are sitting here today—and we agreed on the procedure that it will be laid on the Table today.

SHRI SHYAMNANDAN MISHRA: Not about the order.

MR. SPEAKER: He can contradict me later on. It was also agreed that the Bill would come up on the 15th. I did not find any disagreement on that.

SHRI SHYAMNANDAN MISHRA: That is not correct, with all respect.

MR. SPEAKER: The disagreement started when you wanted the Rajya Sabha to be called earlier and the Government said that it is not possible because it is already fixed for the 22nd. Then all of you left the meeting. In the original of the note which Shri Sezhiyan gave me he stated that in the Appropriation Bill, which is brought before this House, or in the statement this Order by the President must be mentioned and there must be another clause, rectifying the mistake, by giving it retrospective effect from the date it became effective, so that doubts could be removed. This was given to me in the meeting and one copy was given to the Law Minister.

SHRI SHYAMNANDAN MISHRA: We are not bound by that.

SHRI MADHU LIMAYE: We are not bound by that.

MR. SPEAKER: I am not scoring any point. I am not talking in that spirit. It is said that that order was illegal, unconstitutional and all that. It has always been the practice in this House that the Speaker of the House does not give his pronouncement about the legality or constitutionality of a case. I did not give any ruling on the legal side or the constitutional side of it.

जी मधु लिमये यह ठीक है कि आप रिजर्व के बारे में कलिय नहीं देते हैं, लेकिन, बूकि यह फिनांसल मामला है, इस लिये आप को कलिय देना चाहिए, वरना सबक को बैकल करना चाहिए। - -

MR. SPEAKER: Now, you raised the question that I should determine whether this is legal or not, whether this is constitutional or not. It has not been the practice in the House, when the Papers are laid on the Table, that I should determine whether they are legal or not.

जी मधु लिमये . यह प्रनप्रिसिपल है ।

MR. SPEAKER: Anybody can go to the court. They are part of the business of the House and they are laid on the Table. About the legal or constitutional side of it, I deliberately did not and I cannot pass any pronouncement whether this is illegal or unconstitutional. All I can do is to make my observation about the procedures. At the end, I said that it was a question of procedures and the Government could not bypass certain procedures. This was my ruling.

SHRI SHYAMNANDAN MISHRA: You are changing your ruling.

MR. SPEAKER: You can call for the proceedings.

I was disallowing it because they were bypassing certain procedures.

Then, when we discussed everything in the meeting, I saw your spirit of accommodation and your spirit of understanding. Stage by stage you reached certain decisions which collapsed at the point of calling the Rajya Sabha. That confirmed my views also. That was the background of my views also.

SHRI SHYAMNANDAN MISHRA: It cannot be rectified like this. I had expressed by views in the meeting.

MR. SPEAKER: Your views was in favour of issuing an Ordinance. Shri Sezhiyan said that we could rectify it through an Appropriation Bill. Your view was about the Ordinance.

Now, as regards the matter being sub judice and the Bill coming up—I have seen relative provisions in the various books on Procedures—this very matter was referred by the Presiding Officers to a Committee known.

[Mr. Speaker]

as the Page Committee of which we have the report here. That Committee after very careful examination, after many sittings and examination of many subjects, came to a conclusion that as regards the matter being sub judice, of course, it may not be referred to in the debate so that it may not affect certain decisions of the court but where a legislation has to be brought, the law-making has to be done, the rule of sub judice does not apply.

SHRI SHYAMNANDAN MISHRA: Is it law-making?

MR. SPEAKER: It is coming in the form of a Bill.

SHRI MADHU LIMAYE: Our objection is to the Preidential Order.

MR. SPEAKER: The Presidential Order has to be rectified only to remove doubts. I do not go into the legality or illegality of it.

SHRI SHYAMNANDAN MISHRA: How can that be rectified like this?

MR. SPEAKER: Any matters which are to be referred to this House, which are to be the basis of any discussion, have to be laid on the Table of the House. That is why I have allowed it today.

SHRI SHYAMNANDAN MISHRA: That is *prima facie* inconsistent with the provisions of the Act passed by Parliament. It is the Parliament which has passed the Union Territories Act.

MR. SPEAKER: The Budget will be presented; then the Bill also will be coming.

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI K. R. GANESH): I beg to lay on the Table a copy of Notification No. S.O. 222(E) (Hindi and English versions) published in Gazette of India dated the 29th March, 1974, containing the President's Order in regard to the authorisation of expenditure out of the Consolidated Fund of the Union territory of Pondicherry. [Placed in Library. See No. LT-6681/74].

SOME HON. MEMBERS: No, no.

SHRI SHYAMNANDAN MISHRA: Is any Budget preceded by a Presidential Order?

MR. SPEAKER: Unless it is placed before the House, how can we discuss it? All those objections about procedure have been met.

AN HON. MEMBER: On a point of order.

MR. SPEAKER: No point of order, after my ruling.

SHRI SHYAMNANDAN MISHRA: What is your ruling?

MR. SPEAKER: You cannot prevent its being laid on the Table. How can we proceed without its being laid on the Table?

SHRI SHYAMNANDAN MISHRA: Can an impugned order be laid on the Table?

MR. SPEAKER: Laying on the Table does not affect its legality or illegality.

श्री मधु लिमये : अध्यक्ष महोदय, आप गैर कानूनी कामों को बढ़ावा दे रहे हैं। कल प्रेजिडेंशियल ऑर्डर में यूनियन बजट भी पाम हो जाएगा। यह तो पार्लियामेंट को समाप्त करने का काम हो रहा है और तानाशाही के के लिये रास्ता खोला जा रहा है। इतिहास में यह शोक दिवस मनाया जायेगा। यह लिमिटेड डिक्टेटरशिप का प्रारम्भ है इसके बाद अनलिमिटेड डिक्टेटरशिप आयेगी।

SOME HON. MEMBERS: On a point of order.

MR. SPEAKER: No point of order, after I have given my ruling. I am sorry.

SHRI SHYAMNANDAN MISHRA: Why can you not wait till it is decided by the court?

MR. SPEAKER: Laying it on the Table does not affect its legality or otherwise.