

12.26 hrs.

BUSINESS ADVISORY COMMITTEE
Forty-Sixth Report

THE MINISTER OF PARLIAMEN-
 TARY AFFAIRS (SHRI K. RAGHU
 RAMAIAH): I beg to move:

"That this House do agree with
 the Forty-Sixth Report of the Busi-
 ness Advisory Committee presented
 to the House on the 14th August,
 1974."

MR. SPEAKER: The question is:

"That this House do agree with
 the Forty-sixth Report of the Busi-
 ness Advisory Committee presented
 to the House on the 14th August,
 1974."

The motion was adopted.

12.36½ hrs.

**SUPPLEMENTARY DEMANDS FOR
 GRANTS (PONDICHERRY), 1974-75**

THE MINISTER OF STATE IN
 THE MINISTRY OF FINANCE (SHRI
 K. R. GANESH): I beg to present a
 statement showing Supplementary
 Demands for Grants in respect of the
 Union territory of Pondicherry for the
 year 1974-75.

12.37 hrs.

**COMPANIES (TEMPORARY RES-
 TRICTIONS ON DIVIDENDS) BILL***

THE MINISTER OF FINANCE
 (SHRI YESHWANTRAO CHAVAN):
 I beg to move for leave to introduce
 a Bill to provide, in the interests of
 national economic development, for
 temporary restrictions on the power
 of certain companies to declare divi-
 dends out of profits and for matters
 connected therewith or incidental
 thereto.

12.37½ hrs.

(MR. DEPUTY SPEAKER in the Chair).

MR. DEPUTY-SPEAKER: Motion
 moved:

"That leave be granted to intro-
 duce a Bill to provide, in the inter-
 ests of national economic develop-
 ment, for temporary restrictions on
 the power of certain companies to
 declare dividends out of profits and
 for matters connected therewith or
 incidental thereto."

SHRI SEZHIYAN (Kumbakonam):
 On a point of order....

MR. DEPUTY-SPEAKER: I find
 that his name is already there for
 opposing the introduction.

SHRI SEZHIYAN: I have made two
 requests, one to raise points of order
 and the other to oppose the Bill on
 grounds of constitutionality.

The point of order that I want to
 raise is regarding a basic procedural
 aspect. Regarding the present Bill,
 namely the Companies (Temporary
 Restrictions on Dividends) Bill, the
 ordinances have been issued on the
 6th July, 1974 and the 15th July, 1974,
 and the Bill has been dated 9th
 August, 1974. We have been present-
 ed with a corrigendum on the 14th

*Published in Gazette of India Extraordinary, Part II, Section 2, dated
 16-8-74.

[Shri Sezhiyan]

August, 1974. I want to invite your attention and that of the House to the fact that there are three items given in the corrigendum. A corrigendum can be to correct a small mistake. But under the guise of a corrigendum, they cannot try to introduce a substantial amendment.

Item No. 2 in the corrigendum says:

"Page 4, line 31, after 'Committee' insert 'by a Company and it is proved that the offence has been committed'."

The third item is:

"Page 4, line 38, after 'Act' insert 'other than the power conferred by section 12'."

If you see the original ordinance, you will find that the words sought to be introduced now or inserted now by the corrigendum dated the 14th August, 1974 have not been contemplated either in the ordinance or in the Bill that has been dated the 9th August. Therefore, my first plea is that in the name of corrigendum, Government are not entitled to bring forward amendments of a substantial nature.

They can bring in an amendment in a regular way. By way of corrigenda, small mistakes can be corrected. For example in No. 1, they say in page 4, line 7 for 'or a Mutual' say 'or Mutual'. I can accept this one. But they cannot try to push in regular amendments by way of corrigenda. This is a very obnoxious and surreptitious way of introducing amendments of a substantial nature in the guise of corrigenda. When the next Bill is taken up, I will quote more number of instances. Therefore, I seek your firm ruling on this one, how an amendment of a substantial nature could be moved in the guise of corrigenda. They have tried to do this. Therefore, when the Bill is sought to be introduced, it should be introduced without the

corrigenda, items 2 and 3. The House will not accept them, should not accept them, as corrigenda. The hon. Minister has tried to introduce them as amendments. The House can consider them when the Bill is taken into consideration; but they should not be introduced through a corrigenda at this stage.

Then I come to my second point.

MR. DEPUTY-SPEAKER: It relates to the same?

SHRI SEZHIYAN: The same Bill but of a different nature. It has been stated in the Financial Memorandum:

"But in the administration of the provisions of the Act, which will be done by the Department of Company Affairs, some additional staff will be needed and such additional staff is likely to entail a recurring expenditure of Rs. 1,27,400 per annum, provision for which will be made in the budget of the Department of Company Affairs".

I find that the Bill is deemed to have been implemented on the appointed day, that is, 6th July, 1974. That means, the scheme has been implemented from 6th July, 1974. More than a month and half has elapsed. If they have implemented the scheme, some expenditure should have been incurred by Government. Under what head has it been incurred, because as per the Constitution, art. 115(1)(a), they cannot incur expenditure on a new scheme without sanction of Parliament. The article says:

"The President shall if the amount authorised by any law made in accordance with the provisions of art. 114 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure

upon some new service contemplated in the annual financial statement for that year....".

This scheme was not contemplated in the annual financial statement. Therefore, it is a new scheme for implementing which no expenditure can be incurred unless you take the grant of Parliament. Without that, money spent on a new scheme will not be accounted for.

Here I would also invite attention to the PAC's 39th Report of 1904 (Third Lok Sabha) wherein their opinion was sought. They made a reference to the Attorney General who expressed the opinion that nowhere under the Constitution can amount spent on a new scheme be sanctioned *ex post facto*. This is a new scheme and some expenditure should have been incurred from 6 July till date. I want to know under what head or sanction it has been incurred. If they contend that no amount has been spent till date, that means, the scheme has not been implemented. That means the Ordinance need not have been promulgated on 6th July.

Therefore, my point is very categorical. If the scheme has been implemented from 6 July as a result of the Ordinance, for the urgency of which they have been pleading, then under what head has the expenditure on the new scheme has been incurred without the pre-sanction of Parliament?

Any amount spent on a new scheme without parliamentary sanction is illegal. I want a ruling from the Chair on these two points before we take up the regular motion and oppose the introduction of the Bill by the Finance Minister.

SHRI SOMNATH CHATTERJEE (Burdwan): We do not find any endorsement with regard to compliance with article 117.

MR. DEPUTY-SPEAKER: I am hearing his point of order; if you have comments on that point of order, you may place them before the House.

SHRI SOMNATH CHATTERJEE: Under the guise of introducing a correction by way of a corrigenda, considerable changes are being made in the body of the Bill. It cannot be done. Provisions with regard to amendments have to be followed. Presidential sanction has not been taken under article 117(1). The financial memorandum says: provisions for meeting recurring expenditure will be made in the budget. Is it to be made in the future when it is already met out of the sanctioned amount of the Department of Company Affairs? We must know under which head of the Company Affairs Department this money had been spent. They will have to bring demands for supplementary grants or additional grants for meeting this expenditure.

SHRI SHYAMNANDAN MISHRA (Begusarai): On the first point raised by the hon. Member Mr. Sezhayan, I agree with the hon. Member Shri Somnath Chatterjee that if an amendment had to be introduced in the Bill, it could be done only by the promulgation of an Ordinance by the President. The original Bill was an Ordinance; any amendment to that Ordinance could be introduced only by the promulgation of another Ordinance by the President. It could not be done in the way the Government seeks to do.

श्री जयु लिंगदे (बांका) : अध्यक्ष महोदय, सबसे पहले मैं आपके कार्यालय से यह जानना चाहूंगा कि इस विधेयक की जो नोटिस आपको मिली थी वित्त मंत्री की ओर से क्या उसमें कारिजेंडा की जो बातें हैं वह भी ओर केवल आपने में गलती हुई है ? आपके पास जो विधेयक था या उसके बहि में सब कर्ते हैं, केवल आपने में कोई गलती होती है तब तो कोई प्राजेप उठाने की गुंजायश नहीं है लेकिन इनकी मूल

[श्री सधु लिखये]

नोटिस में अगर कार्रजेन्डा में दी गई बात नहीं है तो किसी भी हालत में वह कार्रजेन्डा के रूप में नहीं आ सकती है। तो यह जानकारी आप अपने सचिवालय से हासिल करके हमें दें। नयी बात जोड़ने का प्रयास तरीक़ा या संशोधन के रूप में ही हो सकता है। इस तरह पीछे के दरवाज़े, बैकडोर के मेबड से यह नहीं होना चाहिए।

जहाँ तक कम्पनी कानून मंत्रालय के खर्च का सवाल है, संविधान की धारा 115 बिल्कुल साफ़ है। संविधान की इस धारा का दूसरा हिस्सा इस प्रकार है

"When the need has arisen during the current financial year for supplementary or additional expenditure by some new service not contemplated in the annual financial statement for the year...."

यह न्यू सर्विस है। जो बजट इन्होंने फरवरी में पेश किया उसमें इसका उल्लेख भी नहीं था, हो भी नहीं सकता था क्योंकि बाद में इसके बारे में सोचा गया है। तो पूरक मांगें प्रथम आनी चाहिए थीं।

दूसरे फाइनेंस बिल के बारे में संभाषित के द्वारा यह निर्णय दिया गया है कि वह चलती हुई है और उस चलती को पूरा करना चाहिये। वह दूसरी चलती क्यों की जा रही है इसके बारे में तो कड़ाई आप बरतें। यह आप कहिए कि इस बिल पर अभी विचार किया जाएगा जब सप्लीमेंटरी डिमांड्स हों, जो नई सर्विस हैं, सेवाएँ हैं, उनके सम्बन्ध में वे भी सदन के सामने लाए जाएंगी। इस बारे में तो आप कड़ाई से अपना फैसला दें।

श्री जयलक्ष्मी बाबूबाई (आक्षेप):
एक बात मुझे कहनी है। वह अध्यादेश 15 जुलाई को पहले निकाला गया। लेकिन

यह जल्दबाजी में निकाला गया। इस वास्ते एक संशोधन 15 जुलाई को निकाला गया। नौ अगस्त को बिल पेश किया गया। वह बिल भी जल्दी में पेश किया गया। इसलिए 14 अगस्त को उसमें संशोधन किया गया। यह बात स्पष्ट है कि शुद्धि के द्वारा संशोधन नहीं हो सकता है, इसके द्वारा बिल में संशोधन नहीं हो सकता है। लेकिन संशोधन किया जा रहा है। पहले प्राइमरिस में संशोधन किया गया। दूसरा निकाला गया। फिर पेश कर दिया गया। बिल में अब शुद्धि के नाम पर संशोधन किया जा रहा है। यह बहुत गंभीर बात है। ऐसा लगता है कि विधि मंत्रालय की सलाह नहीं ली जाती है और वित्त मंत्रालय ठीक तरह से बिल नहीं बनाता। जल्दबाजी में अध्यादेश जारी किये जाते हैं, जल्दबाजी में बिल पेश किये जाते हैं। सदन के साथ इस तरह का व्यवहार बहुत अप्रतिजनक है।

SHRI YESHWANTRAO CHAVAN:
Two issues have been raised. One is procedural, about the corrigendum and the other is about the financial statement. Rule 71(1) says:

"Whenever a Bill seeking to replace an Ordinance with or without modification is introduced."

So, we can certainly introduce a Bill with or without modification. Now the question is whether we can introduce corrigenda. I think this is the practice of this House that before a Bill is introduced, certainly corrigenda have been made and they have been accepted by the House. Only after the introduction of the Bill nothing can be introduced by way of corrigenda and only amendments can be introduced. So, what we have done is completely consistent with the practice of the House. There is nothing procedurally wrong.

Secondly, it has been said that additional expenditure will be incurred if additional staff is to be appointed. Naturally when we will have to spend on additional staff, we will have to come to the House. So far my information is, we have not met any expenditure, and even if expenditure has to be met, it can certainly be met by withdrawals from the contingency fund.

SHRI SEZHIYAN: Has it been met by withdrawals from contingency fund?

SHRI YESHWANTRAO CHAVAN: So far we have not done it.

SHRI SEZHIYAN: They must have spent something, may be Rs. 100 or 200 or whatever it is, for the last 1½ months, and this is a new service.

SHRI H. N. MUKERJEE (Calcutta—North-East): Corrigenda and addenda are not synonymous terms. This is what the Finance Minister should know.

MR. DEPUTY-SPEAKER: With regard to the corrigenda, I have ascertained from the Secretariat that the mistake occurred at the stage of printing and all these corrections which have been incorporated are there in the Bill sent by the ministry.

SHRI ATAL BIHARI VAJPAYEE: Is the Secretariat so inefficient?

MR. DEPUTY-SPEAKER: These things have come too suddenly and I was totally unprepared, before I came to the Chair. But here in my hand is the Ministry's copy of the Bill, the Bill as sent by the Ministry to our Secretariat for printing, where these corrections are there.

SHRI SOMNATH CHATTERJEE: Are they in manuscript?

MR. DEPUTY-SPEAKER: They are in the body of the Bill.... (Interruptions) Let me ascertain it from the

office. I have told you that I was totally unprepared for this until I came to the Chair. I have not been able to satisfy even myself as to what the position is and from what hurriedly an officer was telling me, I was under that impression. I would like to know the position.

SHRI SEZHIYAN: I am quoting from page 474, *Kaul and Shakhder*:

"Two authenticated proof copies of a Bill, except in the case of a secret Bill, are received from the Ministry of Law about a week before the day on which the Bill is proposed to be introduced in Lok Sabha."

It is being proposed to be introduced on the 16th. That means, before the 9th August two authenticated proof copies should have been received by the Lok Sabha. This corrigenda relates to the 14th August. Therefore, on the 9th August these proof copies could not have contained the corrigenda.

SHRI SOMNATH CHATTERJEE: How could it be done without an amendment?

MR. DEPUTY-SPEAKER: Now the position, as I could ascertain from our officers, is this. The Law Ministry sent a printed copy of the Bill.

SHRI SHYAMNANDAN MISHRA: How many days before?

MR. DEPUTY-SPEAKER: I do not know. Soon after we got it from the Law Ministry, we distributed it to the members. That was done well in time, according to the rules. I was told that it was done immediately, on the same day.

SHRI ATAL BIHARI VAJPAYEE: Which day?

MR. DEPUTY-SPEAKER: I do not remember the date. It does not matter. We can find it out. The day after the printed Bills have been circulated to the members—the day we can find

[Mr. Deputy-Speaker]

out—immediately they sent another copy of the same Bill, which they have sent to us, which has been distributed, and they wanted certain corrections to be added, to be made, and those corrections are those which Shri Sezhiyan has pointed out.

SHRI ATAL BIHARI VAJPAYEE: These are amendments; these are not corrections.

MR. DEPUTY-SPEAKER: Well, they say they are corrections.

SHRI ATAL BIHARI VAJPAYEE: It is for you to decide. Can they move amendments at that stage?

14.00 hrs.

MR. DEPUTY-SPEAKER: There is no question of amendment at that stage.

Now, the position is that the whole Bill together with the corrections is before the House. Here is a point on which, of course, I would like to have some elucidation from the Minister. A correction is to make the meaning clearer without changing the meaning. That will be a correction. The meaning being the same, in order to make the position clearer than what it is, you make a correction. But if by this correction, something more is added, then I do not know what the position is. I have not gone into these corrections with the idea of finding out whether anything is added or it is only to make the position clearer that the corrections are made. I think, that is where the Minister can help me.

श्री सधु सिक्खे : चाप उहें यह बिबेक
बापिस लेने का मौका दीजिए।

MR. DEPUTY-SPEAKER: As far as the rules are concerned, they are very clear that the Bill need not be just an exact reproduction of the Ordinance. The Bill can make modifications; the Bill can make changes.

Now, the main point is that after the copies of the Bill have been circulated to the Members, certain corrections have been made and these are also properly circulated to the Members in time, quite well in time, two days before the matter is taken up. That has been done. As far as I am concerned, the only question is whether the circulation of the Bill, including the corrections, has been made in time according to our rules. The Bill along with the corrections is before the House. That is the position.

Now, what the Members worry about is, whether these corrections have made any fundamental change in the meaning. To me, this appears to be academic. Even if they want to make some changes, they have come before the House with all these changes in time. I do not see how it will stand in the way of the Bill being introduced.

SHRI ATAL BIHARI VAJPAYEE: This cannot be taken as a correction. If they want to move an amendment, they are free to do so. But in the name of correction, they cannot be allowed to make amendments to the Bill.

MR. DEPUTY-SPEAKER: These are not amendments.

SHRI ATAL BIHARI VAJPAYEE: They seek to make substantial changes in the Bill.

SHRI H. N. MUKERJEE: Sir, you yourself have made a distinction between corrigenda and addenda, that is to say, purely grammatical corrections—verbal corrections, and substantial additions which will be ruled out according to your earlier formulation....

MR. DEPUTY-SPEAKER: I did not go that far. I made a distinction between corrigenda and addenda.

SHRI H. N. MUKERJEE: My earlier understanding was that you did succeed in making a differentiation between the two concepts. Now, if you are agreeable to permitting addenda in addition to corrigenda, you can tell us. But addenda, additions of any substantial nature cannot be permitted since it is not permitted to private Members who are put to all kinds of trouble, balloting, this and that. If private Members are precluded from adding to their Bills, why allow it to Government to add whatever they want to their Bills?

MR. DEPUTY-SPEAKER: I think, the position is very clear.

SHRI SHYAMNANDAN MISHRA: The first thing that you have to consider is this. Whether as the hon'ble members had contended earlier, under the guise of a corrigenda, an amendment could be introduced?

The Hon'ble Member Prof. Mukerjee has introduced another concept which is probably synonymous with amendment. He speaks of 'addenda'. But 'addendum' and 'amendment', could be the same thing, I am not quite clear in my mind. However, I am quite clear in my mind as to what constitutes an amendment. So, my point is whether any deception could be perpetrated on the House under the guise of corrigendum when the house knows that it is a corrigendum but an amendment. It is a kind of deception which is perpetrated on the House; maybe, not wilfully, unwittingly, but that is something else.

My second point is with regard to modification. Here we want a clear ruling from the Chair whether there could be a modification of the Ordinance to any extent. I place it before you for your very close consideration. Take for example, an Ordinance which seeks to impose a tax of the order of 50 per cent and the tax has already been in operation. Can the Government, in the modification, raise it from 50 to 75

per cent? Would the Government be competent to introduce that modification? There must be a limit to the modification. It requires a clear ruling from the Chair whether the modification can be of any magnitude or it had to be limited only to certain peripheral things. That is the basic thing. Therefore, we cannot accept the argument that Government is competent to introduce any modification of any nature or extent. I repeat, this requires a clear ruling from the Chair.

श्री नम्रु लिख्ये : : उपाध्यक्ष महोदय, यह मामूली प्रोसीजरल मामला नहीं है, यह केवल प्रक्रिया का सवाल नहीं है। आप इस को इस ढंग से न कीजिए। यह सरकार इतनी अयोग्य है, इसकी डाफ्ट्समैनशिप इतनी खराब है कि वह हर दिन हमारे सामने जो विधेयक लेकर आती है, हमें उस के बारे में आक्षेप करना पड़ता है। इस आर्डिनेंस के बारे में क्या हुआ? पहले आर्डिनेंस में नेट प्राफ़िट नहीं था। इन लोगों ने कहा कि ऐसा प्रनब्रधान से, ओवरसाइट से हो गया, और इस लिए ये नया आर्डिनेंस लाये। सरकार की इनकम्पीटेस, खराब डाफ्ट्समैनशिप और जल्दबाजी के बारे में आप को कोई आलोचना करनी चाहिए। इस से हम लोगो की भी देश में बदनामी होती है। आप इस को हल्के ढंग से न लीजिए। लोग हम से पूछते है कि यह कैसी पालियामेंट है, जो इस तरह के बाहियात लेजिस्लेशन पास करती।

MR. DEPUTY-SPEAKER: I am not taking it lightly.

SHRI SOMNATH CHATTERJEE (Burdwan): It is very clear. It seems to be a subsequent thought by the Government because the ordinance

[Shri Somnath Chatterjee]

has been copied in the Original Bill. The first Bill that was first submitted and circulated is almost a verbatim copy of the ordinance and this is obviously a subsequent thought on the part of the Government and they wanted to introduce changes in the ordinance.

Now, after having submitted the Bill, is it the duty or is it not the duty of the Secretariat to circulate the Bill as was submitted? As a private Member, if I submit a Bill, can I have the right in the garb of corrigenda to send in new provisions in the Bill even before its introduction? If, as a private Member, I have not got that power, I would like to know from you as a ruling whether the Government can in the name of corrigenda add to provisions which they could have done by way of amendments after the Bill is introduced, with the Presidential sanction.

SHRI SEZHIYAN: I want to make a submission because in the next Bill also I have noted 13 corrigenda and I do not want to take the time of the House then...

SHRI MADHU LIMAYE: We will have sufficient time. I also want to raise some more points.

SHRI SEZHIYAN: I have quoted Kaul and Shakhder that two authenticated true copies should be given to the Lok Sabha Secretariat a week earlier. Today is 16th. That means on the 9th they should have given. The Bill is dated the 9th and signed by the Finance Minister. Therefore, I presume that the Bill was prepared on the 9th and he has signed it and sent it on the same day. But the corrigenda is dated the 14th. That means that it has not been received by the Lok Sabha Secretariat within the one week that has been mentioned there. They have said very clearly that seven days should have been there for introduction of a Bill and two

authenticated proof copies should have been sent to the Lok Sabha Secretariat. On the 9th August, I understand, it could have come to the Lok Sabha Secretariat. That is within the time prescribed. On the 14th August how could it have come? That means that it has not come within the time. As you yourself will see, the period has not been observed. That itself shows that it has not come under our purview....

SHRI SOMNATH CHATTERJEE: The Government should not be permitted to adopt ad hoc procedures.

SHRI SEZHIYAN: Therefore, this is a procedural one. Now, if under the guise of corrigenda they push in amendments, will it not violate the regular procedure laid down for an amendment? One week's notice has not been there. Two authenticated copies giving one week's notice could not have been there because the Bill is dated the 9th August and the corrigenda is dated 14th August. We are now on the 16th. I concede that the Bill could have come one week earlier, that is, on the 9th. I do not think without the signature it could have come. But the corrigenda could not have come to the Lok Sabha Secretariat within the one week, time. Therefore, I strongly urge on you to give a clear ruling. If you want to take time, you can have the time. But if we go on with this, it will be setting a bad precedent because under the guise of corrigenda they can entirely change the shape of a Bill.

MR. DEPUTY-SPEAKER: There is no need of further argument. First of all, let me give you the facts as I now have from the Secretariat.

The printed copies of the Bill were received by our Secretariat at 2 a.m. on the 13th....

SHRI SOMNATH CHATTERJEE
2 a.m.?

MR. DEPUTY-SPEAKER: Yes, 2 a.m. in the morning. You see how much our Secretariat works.

SHRI ATAL BIHARI VAJPAYEE: Why not the Finance Ministry?

MR. DEPUTY-SPEAKER: They also work very hard.

THE MINISTER OF FINANCE (SHRI YESHWANTRAO CHAVAN): We also work till late in the night.

SHRI SEZHIYAN: What about one week's notice? If it was received on the 13th, it could not be introduced before the 20th.

MR. DEPUTY-SPEAKER: I am giving the facts.

The printed copies were received from the Law Ministry on the 13th at 2 a.m. The same night they were circulated and members got the copies in the morning.

Now, on the 13th again at 8 p.m., that is, on the evening of the 13th we got the corrections from the ..

SHRI ATAL BIHARI VAJPAYEE: Additions.

MR. DEPUTY-SPEAKER: Whatever it is, from the Ministry at about 8 p.m. and these corrections were circulated to the members on the next morning, that is, on the 14th, which you all got.

These are the facts. There cannot be any dispute about the facts.

SHRI SEZHIYAN: You say about printed copies. I want to know when the two authenticated proof copies were received by the Lok Sabha Secretariat, as mentioned here.

MR. DEPUTY-SPEAKER: These are all printed copies.

SHRI SEZHIYAN: Prior to that, two authenticated proof copies should

have been received by the Lok Sabha Secretariat a week earlier.

MR. DEPUTY-SPEAKER: I do not know when the proof copies came. These are the printed Bills. These corrections were also endorsed by the Ministry on these printed Bills. Endorsements of the corrections are there. Those are the facts as they are.

SHRI SOMNATH CHATTERJEE: Now, in their corrigendum...

MR. DEPUTY-SPEAKER: They are checking the facts.

Now, it was on the 14th that our Secretariat got the copies of the printed Bills, at 2 a.m. Then, they were circulated that very same morning, on the 14th, to the Members. Now, on 14th evening, at 8 p.m. they got the copies of this Bill with corrections. On that very night the papers were circulated to the Members and they got them on the 15th morning.

SHRI SEZHIYAN: That itself is wrong. Two days of clear notice should have been given for circulation of the Bill. From your statement two days' notice is not given. The Bill cannot be taken up.

MR. DEPUTY-SPEAKER: Members are very alert. I know that. I myself benefit a lot because it is wit against wit and all that. .

SHRI MADHU LIMAYE: But Government does not seem to benefit...

इनके दो दो बिलों की दंगल हो गई, ये कोई बैनिफिट डिराइव नहीं करते। इन पर कोई असर नहीं होना है।

SHRI ATAL BIHARI VAJPAYEE: How is it that when the Finance Minister signed on the 9th, this was received on the 14th?

MR. DEPUTY-SPEAKER: It has to come from the Law Ministry. It has to go through the procedure. It has to be vetted by the Law Ministry, etc. Before I go on let me say this...

SHRI SEZHIYAN: Two days' notice is not there.

MR. DEPUTY-SPEAKER: Don't be in a hurry. I will come to that. In the first place let me say this: Despite the fact that they were all very much harassed by various kinds of things...

SHRI ATAL BIHARI VAJPAYEE: By whom?

MR. DEPUTY-SPEAKER: By people and work. We work under high pressure; I work under high pressure; they all work under high pressure, yet perhaps things could have been done more efficiently, more quickly and all this confusion could have been avoided if we had done it in time; certain shortcomings could have been avoided. But with regard to Bill itself I would like to refer Members to the rules. I will read them again for you. Rule 71 says this very clearly. I will base everything on this. This is what it says:

"Whenever a Bill seeking to replace an Ordinance with or without modification..."

That means, the Bill can modify the Ordinance...

SHRI SHYAMNANDAN MISHRA: But, to what extent?

MR. DEPUTY-SPEAKER: That is a big question. The rule only says that the Bill can modify the Ordinance. To what extent—that is another question, which I cannot go into now.

"...with or without modification is introduced in the House, there shall be placed before the House along

with the Bill a statement explaining the circumstances which had necessitated immediate legislation by Ordinance."

The Bill was circulated well in time, that is, two days before this was introduced. I am talking about the Bill itself. It was circulated on the 14th morning. Now, you have pointed out to me certain observations made by Kaul and Shukdher. I cannot go into them now, but whatever they are, whatever is said there, cannot override what is said in the Rules and in the Directions of the Speaker. The Directions of the Speaker are very clear. He gave notice on the 7th about this. The rule says, the Bill should be circulated two days in advance before it is introduced. Here the only snag is this. The concept of amendment in this House is very well-known and well-established. When a Bill is taken up for consideration, you give due notice of an amendment; that is considered by the House and if the House accepts it then it is amended, and therefore there is no question of amendment here.

The only thing here is that the Government has chosen to correct itself and sent that correction to us and the Bill, as corrected by the Government, is now before all of us. We should take it that way.

The point that Shri Sezhiyan has raised is a very technical point, that these corrigenda also should be circulated to us two days in advance, which we have not been able to do because, from the facts, they were circulated on the 15th, and so, we have not been able to do that. That is a different question whether corrigenda should also be circulated two days in advance or they can be at a shorter notice. I do not know whether we are very clear about it. The House has not made it clear; the Speaker has not given any direction; there are no rules on that. Now, in view of all this, and this being a very technical-

cal point, we should not go very much by technicality. There should not be any objection to the Bill being introduced. This point of order I cannot uphold.

Now, with regard to the second point of order about expenditure, I think the Finance Minister has made it clear. He said that there has not been any expenditure on this. That is what he has said and, even if there has been an expenditure, there is provision for withdrawing some amount from the Contingency Fund. That is what he said. I think that the Speaker has already given a ruling the other day in connection with Finance (No. 2) Bill that during the session itself the Government should come forward with supplementary demands and all that sort of thing. I hope they will incorporate all these things there if necessary. That should be enough.

SHRI SEZHIYAN: There are two points. On the basic issue I am fighting out in a court. In this case, when there is a new scheme no amount can be withdrawn from another item which has been voted. Even though the amount is available under some other head, it cannot be taken to be spent under the new scheme. The second thing is this. I have got the opinion of the Attorney General himself in the year 1964, with the help of the Public Accounts Committee, wherein he says:

'A post sanction for a new scheme is not admissible under the Constitution. No amount of resolution or action by the House to a post sanction will help solve the situation'.

He suggested that the Constitution itself should be amended to go through that thing. If some amount has been spent, he should convince the House for the amount already taken from the Contingency Fund without touching the existing amount allotted. You please make sure before giving your

ruling. Let him furnish you with particulars of the amount spent for the new scheme or the amounts that they have withdrawn from the Consolidated Fund. Let him give full particulars about the withdrawals from the consolidated fund. Otherwise it may become illegal and unconstitutional. No amount of post sanction will help. In the case of a new scheme, I do not want to take the time of the House, you can go into the 39th Report of the P.A.C. as also the opinion given by the Attorney General, Shri Daphtary on 17-2-1964. On that point, I would implore you to postpone the ruling. Let him give the full particulars of the amounts that have been withdrawn from the contingency fund. If the amounts have been withdrawn and spent, that means there is another situation. So, you should give a clear ruling for the future of Parliament.

MR. DEPUTY-SPEAKER: Well, the limited question now is whether the Bill can be introduced or not. That is the only question. As I said, just now the Minister has said that no additional expenditure on this has been incurred. Also, he has put a hypothetical situation that even, if necessary, there is a contingency fund of India from which it can be drawn. I think that this contingency fund is just for these particular purposes. Otherwise, what is the contingency fund for?

SHRI SEZHIYAN: I want to know whether he has done that.

MR. DEPUTY-SPEAKER: Well, he has made a statement.

SHRI ATAL BIHARI VAJPAYEE: But, he has qualified it by saying that 'as far as I know'.

MR. DEPUTY-SPEAKER: He may not have the ready figures

SHRI SEZHIYAN: Let him come later. The House is entitled to know it.

SHRI YESHWANTRAO CHAVAN: This is a very simple point. Unnecessarily, with the great wisdom that the hon. Member has got, he has tried to make it more complicated.

Sir, the question is this. The financial statement says that the additional expenditure will be required for additional staff. No additional staff has so far been appointed. So, there was no question of making any expenditure either through supplementary demands or contingency fund. But I mentioned contingency fund in the sense that suppose if it were necessary to make the expenditure now, I will make use of the contingency fund.

MR. DEPUTY-SPEAKER: It is very clear now. The question is....

श्री मधु लिमये : ठहरीये, उपाध्यक्ष महोदय, अभी तो फर्स्ट स्टेज पूरी हुई है, अभी तो और भी बहुत में मुद्दे हैं। अब हमारा रूल 72 के अन्तर्गत विरोध शुरू होगा।

श्री अटल बिहारी वाजपेयी : अभी तो प्वाइन्ट आफ आर्डर पर बहस खत्म हुई है हम ने रूल 72 के अन्तर्गत भी नोटिस दिये हुए हैं।

उपाध्यक्ष महोदय, मैं इस विधेयक का विरोध करने के लिये खड़ा हुआ हूँ। मेरे विरोध के आधार मुख्यतः दो हैं। प्रथम—सदन की बैठक के आरम्भ होने के कुछ ही दिन पूर्व अध्यादेश के द्वारा राज्य करने का तरीका आपत्तिजनक है, संसदीय लोकतन्त्र की परम्पराओं से मेल नहीं खाता। केवल यही अध्यादेश जारी नहीं किया गया है, बल्कि अध्यादेशों की श्रृंखला देश के सम्मुख आई है। अध्यक्ष महोदय ने यह कहा था कि वे स्वयं इस बात को देखें कि अध्यादेश

जारी करना कहाँ तक जरूरी था और वे मंत्री महोदय से वक्तव्य चाहते थे। अच्छा होता अध्यक्ष महोदय के विचार हमारे सामने आ जाते; लेकिन अध्यादेश जारी करना, संसद की बैठक के लिये प्रतीक्षा न करना, इस का कोई औचित्य नहीं है।

दूसरी बात यह है कि यह विधेयक सरकार को असाधारण अधिकार देता है। जल्दबाजी में अध्यादेश निकालना, जल्दबाजी में विधेयक बनाना, फिर जल्दबाजी में उस में शुद्धि के नाम पर संशोधन लाना, इस से ही सरकार का सन्तोष नहीं हुआ है, आप इस के क्लॉज 15 को देखें इस में कहा गया है—

"If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty."

कानून बनाने का यह कोन सा तरीका है? कोन सी काल्पनिक कठिनाइयों पर विल मंत्री विचार कर रहे हैं...

श्री यशवन्तराव चव्हाण : काल्पनिक?

श्री अटल बिहारी वाजपेयी : जी हा, काल्पनिक। आप ने कहा है—

"If any difficulty arises in giving effect to the provisions...."

इस विधेयक को अमल में लाने में जो भी कठिनाइयाँ पैदा होंगी, उनका आदेश द्वारा निराकरण कर दिया जायगा। हम जानना चाहते हैं कि वे कौन सी कठिनाइयों का विजुलाइज कर रहे हैं, किन कठिनाइयों का

उन्हें आभास हो रहा है ? क्या वे पार्लि-
 यामेंट से ब्लैक पावर चाहते हैं—जो भी कठि-
 नाइयां आयें, उन्हें अधिकार होना चाहिये कि
 आदेश के द्वारा उन कठिनाइयों को दूर कर दें ।
 उस कठिनाई का स्वरूप क्या होगा ? आदेश
 सदन के सामने नहीं आयेगा, सदन की स्वीकृति
 नहीं ली जायगी—इस दृष्टि से यह विधेयक अधूरा
 है, नुटिपूर्ण है और मैं इस आधार पर इस
 विधेयक का विरोध करता हूँ ।

SHRI SEZHIYAN: I am opposing
 the introduction of this Bill on the
 basis of its unconstitutional nature.

It has been said that in the interests
 of national economic development,
 some temporary restrictions on the
 power of certain companies to de-
 clare dividends have to be imposed,
 and this has been sought to be im-
 plemented by the ordinance and now
 by this Bill.

Clause 3 defines the categories of
 companies to which this measure
 will apply. There, significantly—I
 do not want to go through the entire
 thing—if you take the definition of
 companies given in the Companies
 Act and the Income-tax Act and the
 definition given in this Bill, you will
 find that they seek to omit the fol-
 lowing categories, namely companies
 in which public are not substantially
 interested. If you take all the limi-
 ted companies, they have been di-
 vided into public and private compa-
 nies. The public companies have
 again been divided into two
 categories, those in which the pub-
 lic are substantially interested and
 those in which public are not sub-
 stantially interested. Clause 3 (a)
 says:

“a company in which the public
 are substantially interested, as de-
 fined in clause (18) of section 2 of
 the Income-tax Act, 1961”.

This measure will apply to such
 companies. This means that com-
 panies in which the public are not
 substantially interested are excluded;
 private companies are excluded and
 foreign companies which do not dis-
 tribute dividends in India are also
 excluded.

But, if you take the other provi-
 sions of the Bill you will see that it
 is not as if only temporary restric-
 tions are sought to be made on divi-
 dends. Clause 7 says:

“For a period of two years from
 the appointed day, no company to
 which this Act applies shall, ex-
 cept with the previous approval
 of the Central Government, by
 general or special order,—

- (a) make any distribution out
 of its assets;
- (b) assume, whether condition-
 ally or otherwise, any obli-
 gation to make distribution
 out of its assets;
- (c) grant any loan to any share-
 holder of the company”.

Therefore, those companies which
 come within the purview of this
 measure will be prevented from mak-
 ing any distribution out of their as-
 sets, accepting obligations on behalf
 of somebody else and also granting
 any loan to any shareholder. There-
 fore, my point is that there is a dis-
 crimination which has been shown.
 A foreign company which declares
 dividends in India will come under
 this measure, but a foreign company
 which does not declare dividends in
 India can give any amount of loan
 to any shareholder whereas a simi-
 lar company which declares divi-
 dends in India cannot do so. So the
 Bill has been heavily loaded in favour
 of an Indian shareholder of a foreign
 company which does not declare divi-
 dend in India, as compared to an Indian
 shareholder who has got some shares
 in a company which the public are
 substantially interested.

[Shri Sezhiyan]

Therefore, making the basic assumption that the companies included in the classification should all belong to a group having intelligent differentiation and there must be a rational nexus between the group and the objectives of the legislation, namely national development, I submit that the companies should have been treated on a par. But we find that the shareholder of an Indian company in which the public are substantially interested will be discriminated against as compared to an Indian shareholder of another company which does not declare dividends in India.

On the basis of this, article 14 of the Constitution is attracted and this Bill becomes unconstitutional. Therefore, this House should not give leave for the introduction of this Bill and should not consider this Bill.

श्री मधु लिखते : उपाध्यक्ष महोदय, इस बिल के जो उद्देश्य दिए गए हैं उसमें कहा है :

"...and promote saving in the economy."

अगर बचत का ही सवाल है तो विदेशी कम्पनियों का जो डिबीटेंड बाहर जायेगा क्या उसमें बचत करने की आवश्यकता नहीं है ? और जब बचत का सवाल आता है तो देशी कम्पनियों में और विदेशी कम्पनियों में कोई फर्क नहीं किया जायेगा । क्या किसी भी एक स्वतन्त्र देश के लिए यह शोभा की बात है कि जो विदेशी शयरहोल्डर्स हो उनको आप विशेष सुविधायें दें, जबकि विदेशी मुद्रा बाहर जाने का खतरा हो, और जो इस देश के रहने वाले हों उनके हाथ विषम व्यवहार, स्क्रिमिन्टरी ट्रीटमेंट किया जाये ?

मेरा दूसरा आक्षेप यह है कि इनका डेलीगेटेड लेजिस्लेशन के सम्बन्ध में जो ज्ञापन है वह मेरी राय में अधूरा और गुमराह करने वाला है । आप देख लीजिए, मैं क्लॉज (6) की ओर आपका ध्यान दिलाना चाहता हूँ :

"For a period of two years from the appointed day, no company to which this Act applies shall, except with the previous approval of the Central Government and subject to such conditions and limitations as may be specified by that Government..."

तो यह सरकार को कडीशनस बाद में स्पेसिफाई करने का, लिमिटेड शन्स स्पेसिफाई करने का अधिकार दिया गया है, क्या यह डेलीगेटेड लेजिस्लेशन नहीं है ? जब एक विधेयक में आपको नयी बात बाद में करने का अधिकार दिया गया है वह डेलीगेटेड लेजिस्लेशन में आता है । लेकिन इनका जो डेलीगेटेड लेजिस्लेशन का मैमोरेण्डम है वह आप देख लें, क्लॉज (6) का इन्होंने उल्लेख नहीं किया है । तो गुमराह करने के लिए इस तरह का मैमोरेण्डम दिया जाता है । क्या इनका यह कर्तव्य नहीं है कि इस विधेयक के तहत नियम आदि बनाने की जितनी शक्ति इनको मिला है उसमें इन मनी क्लॉज के का उल्लेख किया जाये ? क्या इनका यह कर्तव्य नहीं है ? ऐसी हालत में मेरा व्यवस्था का प्रश्न इसके विरोध में बनता है और यह विधेयक चल ही नहीं सकता है जब तक कि डेलीगेटेड लेजिस्लेशन वाले ज्ञापन में परिवर्तन नहीं हो जाता । तब तक आप यह विधेयक बोट के लिए रख ही नहीं सकते हैं ।

तीसरे—श्री माननीय सदस्य श्री
अटल बिहारी वाजपेयी जी ने आपका ध्यान
15 वें अनुच्छेद की ओर खींचा। मैं जानता
हूँ तकरीबन सभी विधेयकों में रिमूवल आफ
डिफिकल्टीज का क्लोज रहता है। यह मैं
मानता हूँ लेकिन इस विधेयक को लेकर मेरे
मन में शंका है कि रिमूवल आफ डिफिकल्टीज
के नाम पर कहीं बुनियादी परिवर्तन तो आप
इस कानून में नहीं करेंगे क्योंकि इस कानून
के बारे में आप ने शुरू से ही ऐसी जल्द-बाजी
की है, लगातार प्रॉब्लेम्स को अग्नेय कर ले
जा रहे हैं। आज कारिजेन्डा पर लम्बी चोड़ी
बहस हुई है। तो मैं जानना चाहता हूँ कि क्या
श्री महोदय इसके बारे में सदन को स्पष्ट
आश्वासन दें कि रिमूवल आफ डिफिकल्टीज
क्लोज, जो माघारणतः सभी बिलों में आता
है, उसका दुरुपयोग करके इनमें बुनियादी
परिवर्तन करने और संशोधन करने का बे
प्रयास नहीं करेंगे।

SHRI SHYAMNANDAN MISHRA:
Certain elements of discrimination
have been pointed out by my hon.
friend, Shri Sezhiyan. I have
also my misgivings whether this
legislation would not be considered
to be a discriminatory legislation
and on that account whether it would
stand Judicial scrutiny.

I would like to bring to your notice
one concrete instance. The total
number of companies in the
country is 34,878. Out of these, 6,846
are public companies and 28,032
private limited companies. This
legislation is restricted to 6,846.
Amongst them also, this applies only
to those public companies in which
the public are substantially interested.
Their number therefore, might be still
less, but is of the order of 3,000 or so.

So out of 34,000 companies, only 3,000
companies are going to come within
the ambit of this legislation. Hence the
gross discrimination that has been
brought in is highlighted. This is
a point I would like you to consider
in the context of the issue of constitu-
tionality of this measure.

SHRI YESHWANTRAO CHAVAN:
Two or three point have been raised
and I will try to deal with them very
briefly. One is about the constitu-
tional aspect of the Bill. I do not
accept the contention that it is dis-
criminatory. According to my advice,
constitutional advice, and also my
understanding of the Constitution, I
am confident in making the state-
ment that there is no discrimination
in this matter. The point raised by
Shri Madhu Limaye in this context
is: how is it that we are allowing
foreign companies to get completely
out of the operation of this particular
Bill? I can understand the political
content of his argument, Constitu-
tionally we cannot operate; it
means outside the country to be con-
trolled here. It stands to common-
sense that it cannot be done.

SHRI MADHU LIMAYE: Profits
originate in this country; you can con-
trol them here.

SHRI YESHWANTRAO CHAVAN:
That declaration is not made in India;
that is the basic point.

SHRI MADHU LIMAYE: Foreign
companies incorporated in India.

SHRI YESHWANTRAO CHAVAN:
Those who are declaring their divi-
dends in this country have been
brought under this operation.

SHRI SEZHIYAN: What about the
notes?

SHRI YESHWANTRAO CHAVAN:
That is a separate matter. We have
defined what companies are involved.
The second point raised was whether

the House can go into the constitutionality of this matter. I personally feel that we can take a view. The hon. Member is fond of that; he is free to do that.

SHRI SHYAMNANDAN MISHRA: So far as the domestic companies are concerned, out of 34,000 companies you are taking care of only 6,000. Even among the 6,000 you are probably going to take only 3,000 and odd. You are thus discriminating.

SHRI YESHWANTRAO CHAVAN: It is not the number of companies that matters; it is the type of companies that matters. You are talking about it from the point of view of the Constitution. We have mentioned specific categories of companies and I do not think there is any ground for discrimination. The other point is about delegated powers. Whatever delegations have been made have been clearly indicated in the statement;

SHRI MADHU LIMAYE: What about clause 6?

SHRI YESHWANTRAO CHAVAN: According to me it is not delegation and so we have not mentioned it. He asks whether I could give an assurance on whether we will make any fundamental change in the Bill. When he asks an assurance from me, he presumes lack of bona fides in this matter. Even then I should like to tell the House that it is not the intention of the Government.

MR. DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill to provide in the interests of national economic development, for temporary restrictions on the power of certain companies to declare dividends out of profits and for matters connected therewith or incidental thereto."

The motion was adopted.

SHRI YESHWANTRAO CHAVAN: Sir, I introduce the Bill.

14.43 hrs.

STATEMENT RE COMPANIES
(TEMPORARY RESTRICTIONS ON
DIVIDENDS) ORDINANCE, 1974 AND
COMPANIES (TEMPORARY RES-
TRICCTIONS ON DIVIDENDS) AM-
ENDMENT ORDINANCE, 1974

**THE MINISTER OF FINANCE
(SHRI YESHWANTRAO CHAVAN):** I beg to lay on the Table an explanatory statement (Hindi and English versions) giving reasons for immediate legislation by the Companies (Temporary Restrictions on Dividends) Ordinance, 1974 and the Companies (Temporary Restrictions on Dividends) Amendment Ordinance, 1974 as required under rule 71(1) of the Rules of Procedure and Conduct of Business in Lok Sabha. [Placed in Library. See No. LT-8201/74].

**SHRI ATAL BIHARI VAJPAYEE
(Gwalior):** I wanted to have a copy of the statement from the Table Office.

MR. DEPUTY-SPEAKER: It will be given now.

SHRI ATAL BIHARI VAJPAYEE: Now? How can I comment on it then?

श्री मधु लिमये (बाँका): जब यह अध्यादेश इस सदन के सामने 22 जुलाई को रखा गया उसी समय मैंने यह सुझाव दिया था कि 71 नियम के अन्दर यह जो वक्तव्य अभी दे रहे हैं उसी दिन यह वक्तव्य जाना चाहिये था। यह मैंने इसलिए कहा था कि अध्यादेश जब आप 123 संविधान की धारा के तहत निकालते हैं तो उसकी यह शर्त है कि राष्ट्रपति का संतोख होना चाहिये कि तत्काल कार्रवाई आवश्यक है, "इमीडिएट एक्शन इज निसेसेरी"। जब तक इसका स्पष्टीकरण