

सिचुएशन क्रीएट करता है। इसलिये प्रोपेम्ब्रल और बिल दोनों कंटाडिक्टरी हैं और इसलिये यह बिल अशुद्ध है।

SHRI SRINIBAS MISRA : I am not raising any point of order. Let it be understood that the other points of order that we wanted to raise could not be raised because of the circumstances. Some of them were important points of order.....

MR. DEPUTY-SPEAKER : We do not reopen any issue. There are only two points about which I have already said.

SHRI SRINIBAS MISRA : I am not reopening. My request to you is that, when different clauses come, before they are taken up, we may be permitted to raise the points of order.

MR. DEPUTY-SPEAKER : That is a different matter. How can I hypothetically say whether you have some point of order under Clause 5 or whatever it is? You have a right to raise a point of order.

SHRI SRINIBAS MISRA : We will raise all of them. We want your permission to raise them again when the relevant clauses come.

SHRI NAMBIAR : About your ruling about not recording the speeches of Mr. Fernandes and Mr. Lakkappa for eight days...

MR. DEPUTY-SPEAKER : I will consider that, but not now. I will consider it.

SHRI TENNETI VISWANATHAM : What has been done to my point of order? I raised a point of order which was very good. What did you do about that?

MR. DEPUTY-SPEAKER : About two motions being taken up at the same time?

SHRI TENNETI VISWANATHAM : Yes.

MR. DEPUTY-SPEAKER : As I said, I want to follow the practice. I do not go into the merits whether it is right or wrong. I have already said that. You said that I should not just give a ruling. I have only quoted the practice, and I am adhering to it. Beyond that, there is nothing.

Shri Shantilal Shah rose—

MR. DEPUTY-SPEAKER : You want to say something?

SHRI SHANTILAL SHAH : I wanted to speak on the merits of the Bill.

MR. DEPUTY-SPEAKER : You can speak tomorrow. Now we have to take up another item.

16.57 hrs.

MOTION RE: MODIFICATION TO CIVIL DEFENCE RULES—Contd.

MR. DEPUTY-SPEAKER : Now we take up further consideration of the following motion moved by Shri Srinibas Mishra on the 20th November, 1968, namely:—

“This House resolves that in pursuance of section 20 of the Civil Defence Act, 1968, the following modification be made in the Civil Defence Rules, 1968, published in the Gazette of India by Notification No. G. S. R. 1277, dated the 10th July, 1968 and laid on the Table on the 26th July, 1968, namely:—

In rule 13, after ‘The Central Government’ insert ‘or the State Government.’

This House recommends to Rajya Sabha that Rajya Sabha do concur in this resolution.”

Mr. Srinibas Mishra.

SHRI SRINIBAS MISRA (Cuttack) : The other day while I was moving this motion you asked the Government to see whether the rule to be modified was beyond the Statute. My contention was that this was discriminatory. In addition to what I have already submitted, I want to prove how this is beyond the Act which authorised the Government to make the rules...

MR. DEPUTY-SPEAKER : I remember, I had held it over for that purpose. On that day Mr. Ramaswamy was here and I had asked him to come prepared and explain the Government's position because I was not myself sure. If the Minister wants to explain, let him explain and then we can continue the debate...

SHRI SRINIBAS MISRA : I agree. Let him first explain.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI VIDYA CHARAN SHUKLA) : The Law Minister will explain.

THE MINISTER OF LAW SHRI GOVINDA MENON : Mr. Deputy-Speaker, Sir, I have gone through the papers because I understand that you suggested that I might be available for elucidation at 5 P. M. today...

MR. DEPUTY-SPEAKER : I said, if they think so.

17 hrs.

SHRI GOVINDA MENON : Yes.

The Civil Defence Act is an Act passed in exercise of the defence power which is only vested in the Union Government. This is a matter with respect to Defence and this is in exercise of the defence power which is solely located in the Union List according to the Constitution; and the rules framed also will be part of the law. And wherever the Union Government has to exercise its executive power which is derived from the subjects enumerated in List I to the Seventh Schedule, they cannot do it in vacuum. They have to do it in the territory of India which is apportioned between different States, except in the Union Territory. Therefore, exercise of Union

power would have to be in the States also. No State can take objection to the exercise of the Union power. To give a simple example, it is within the union power to establish post offices. It has to be established at the States. So also, it is within the Union power to make provisions regarding the Defence of India. This is Civil Defence.

MR. DEPUTY-SPEAKER : I may point out to you that your analogy is wrong. Post Office is not in the concurrent list. If you go to Section 4, I would draw your attention to that; there are certain things which are concurrent. So, don't give false analogies. Shall I read it out ?

SHRI GOVINDA MENON : I have got it with me. (*Interruption*)

श्री रवि राय (पुरी) : मन्त्री महोदय तैयार होकर नहीं आते है ।

SHRI GOVINDA MENON : I have got Section 4 with me. I am sorry that you did not understand me properly.

MR. DEPUTY-SPEAKER : I have followed you.

SHRI GOVINDA MENON : It is true that Section 4 deals with the State Government being enabled to constitute defence Corps. It does not mean that it is in the concurrent list. That is an act of delegation by the Central Government and that is provided for in one of the articles of the constitution. I remember, it is Article 259. The entire Bill is with respect to the power with respect to defence, which is situated in the Union. The rules also will be likewise. If you go through this Act you will see now, what are the matters with respect to which the power can be executed. Take for example the references in the section saying, the owner or occupier of any building, structure or premises should make or carry out such arrangements as may be necessary for the purpose of detection and prevention of fire. This is what is stated in Section 3, sub-section (t). It says :

"The legislation enacted in exercise of the defence power can enable the Union

Government to require the owner or occupier of any building, structure or premises to make or carry out such arrangements as may be necessary for the purpose of detection and prevention of fire."

The house may belong to an individual owner, and the house may be in a State. But still, because this is in exercise of defence power, that power is there. Also, please consider Section 3 (o) (4). It ensures the safety of sources and systems of water supply. It refers to works for the supply of water, gas and electricity and all other works for public purposes.

In most cases, this must be with respect to State Governments.

Then again, if you go to (P) in that page, control of any road or pathway, waterway, ferry or bridge, river, canal or other source of water supply...

MR. DEPUTY-SPEAKER : He is going in a different direction. I will read out section 4, if he likes. The scheme of the Act is that the Central Government and the State Governments are jointly to work. Under section 4, independently they can appoint for any area a body of persons to be called civil defence workers. It is not by any grace of the Central Government. The scheme is such that both the authorities must work in co-operation. This is the scheme. Therefore, I say there are concurrent powers. Only in rules 12 and 13, the 'State' is omitted. I raised the point to be enlightened or have the benefit of their opinion. An Under-Secretary has submitted a note on the Minister's behalf. Even assuming that under sec. 3, you are empowered, you have admitted there might be duplicate machinery. If the Centre think fit, it can be done by entrustment under art. 258. But at the present juncture, I must say that the Central Government have shown a certain amount of distrust. I say this because the scheme of the Act presupposes joint co-operation. This is a sensitive area of defence activity, enforcing civil defence by means of a joint measure. In this House a sense of suspicion has been expressed. In such a posi-

tion, he has also admitted that there might be a little feeling on this. I shall read out the whole thing if he wants.

SHRI GOVINDA MENON : I have seen it.

MR. DEPUTY-SPEAKER : Here you have conceded on grounds of propriety that it would be proper to associate the States in these rules. But now defending, he cannot go by the letter of the law, quoting sections 3 or 2. He has got to go to the whole scheme. It is for him to decide. But so far as the interpretation is concerned and the scheme of civil defence is concerned, I am not satisfied as to why the State was not associated while making the rules under 12 and 13. Nor has his Ministry given me a satisfactory explanation. Section 4 makes the position very clear. It is a concurrent power given to State Governments, not at the Centre's mercy. They can appoint officers. They can do it. On grounds of propriety he has conceded that it should be done. But if he is going by legal nicety on this point, it is for him to decide.

SHRI GOVINDA MENON : I entertain the highest respect for you, but I should say that no concurrent power can be created by a legislation. The question is whether with respect to civil defence, there is anything in the Constitution which gives a concurrent power to the State with the Union. When you interpret points of law, it is not enough if you accuse the lawyer who interprets by saying that he is sticking to the letter of the law. That is my job. It is my job to say that when you legislate on defence matters, you are exercising the Union power of defence, defence power located only in the Union List. You cannot say that because section 4 is here couched in these terms, a concurrent power is created. Concurrent power can be created only by an amendment of the Constitution by entering something in the Concurrent List.

MR. DEPUTY-SPEAKER : The basic principle of interpretation of law is—he, as an eminent lawyer, knows; I am not a

[Mr. Deputy-Speaker]
practising lawyer in that sense--harmonious construction.

If there is disharmony in interpretations of the various Clauses, how is it to be interpreted? You concede that Clause 4 has given independent power to the States to appoint certain officers and all that. Simultaneously you feel that it is your job to stick to the letter of the law. This stickiness of the lawyers I know, but I go by the spirit.

SHRI B. SHANKARANAND
(Chikodi) : On a point of order.

MR. DEPUTY-SPEAKER : No point of order.

SHRI B. SHANKARANAND : But I have a point of order.

MR. DEPUTY-SPEAKER : Not now.

You concede that there will be duplicate machinery and even then you say you stick to your first reaction of sticking to the letter of the law because section 3 empowers Government, and then you want to have recourse under 250 for the President to do it. This is not in keeping with the spirit of interpretation of the scheme of things.

SHRI B. SHANKARANAND : On a point of order. May I know whether the Deputy-Speaker can force an interpretation of his own on a statute or a point of law on the Minister?

MR. DEPUTY-SPEAKER : It is not a question of forcing. He is free to stick to his opinion, but I am clear in my mind that so far as interpretation is concerned propriety demands it. If you do not accept it, it is for the House to take a decision.

SHRI K. NARAYANA RAO (Bobbili) : On a point of order. Mr. Misra has come forward with an amendment of the rules. The Chair has been pleading with the Government, if I may put it that way to accept a particular interpretation. Why they have omitted the expression "State", whether the omission is proper, whether that omission is beyond the scope of the

Act, these are all matters which we have to discuss and ultimately we have to come to a conclusion. From that point of view, the question of propriety, co-operation, concurrent sphere of the State and Centre, all these things are not called for at this stage. So I plead with you not to prolong this matter. He has come forward with an amendment. Therefore, let us not go into policy and all these things.

MR. DEPUTY-SPEAKER : Government thought it fit to give me an advance copy, otherwise I would not have known.

SHRI K. NARAYANA RAO : Please hear me.

MR. DEPUTY-SPEAKER : Please resume your seat. I will not call you again. You never obey the Chair.

SHRI K. NARAYANA RAO : I am the first man to obey the Chair.

MR. DEPUTY-SPEAKER : I will not permit you like this. Every time you defy the Chair.

As I said, the decision is left to the House. If he wants to stick to his interpretation, he is free, but I wanted to save the time of the House. Otherwise, I am going to call him and others who want to participate. That is all.

SHRI GOVINDA MENON : I would now refer to the matter of propriety.

As I said, it is under article 258 and only under article 258 that certain powers which are with the Centre under the Constitution are given to the States. The objection is with respect to rule 13. You raised the question of propriety. I just want you to pause for a moment. What does rule 13 say and what does Mr. Misra want? The rule as it says :

"The Central Government may by order require the owner, manager or agent of any mine or any occupier or manager of any factory" to do certain things.

This amendment comes under the Rule. It would read like this. The Central Government or the State Government may, by order, require the owner, manager or agent, etc., to do certain things. Suppose conflicting orders are issued...

SHRI SRINIBAS MISRA : The hon. Law Minister has not read the Rules. The Central Government is there.

SHRI GOVINDA MENON : I have read that. Rule 12 and 13 deal with very important matters. It would be most improper to entrust the jurisdiction to the State Government. It may lead to complications. That is the reason.

SHRI VASUDEVAN NAIR (Peeraide) : You do not trust the State Government.

SHRI GOVINDA MENON : It is not a question of trusting.

Suppose the State Government issues certain direction and the Central Government issues certain other direction, there will be conflict. Rule 12 deals with ports and Rule 13 deals with mines. These are the most vulnerable aspects.

MR. DEPUTY--SPEAKER : The overriding authority is there in case of conflict, when there is no question of conflict, what is the position ? *(Interruptions)*

SHRI GOVINDA MENON : Therefore, the Government's position is that it is not proper to amend Rules 12 and 13 and the matter may be left to the House. *(ends.)*

SHRI SRINIBAS MISRA : The hon. Minister has come out with a theory which has been discarded everywhere. He says this legislation comes under the defence jurisdiction of this House. It is not in the vacuum. This defence jurisdiction has to be exercised according to law. That law is the Defence Act. Under the Defence powers the Civil Defence

Act has been passed and the Government has to frame rules under that. My first contention is that Rule 13 exceeds the powers given to the Government. It encroaches upon a power which is there.

SHRI GOVINDA MENON : Then it will be struck down.

SHRI SRINIBAS MISRA : You wait till then. The hon. Minister wants that we should commit an illegality. They will commit the illegality and we will be washing all their sins. Section 3 is the section which gives them power to frame rules. Under Section 3, sub-section (1) the Central Government may, for securing the civil defence, by notification make rules providing for all or any of the following matters. The list as given. It has to be considered, as it has already been stated, that this is a rule for the benefit of the people. In case there is an attack or there is a commotion, for benefiting the people such an Act is passed. It is a beneficial legislation. It enables the Central Government to make laws. In sub-section (2) of Rule 3, it is said 'may provide'. I am underlining 'may provide' for order with regard to matters specified there in, which may be made by the State Government.

My submission is that this 'may' is mandatory. It means 'must' and any rule made under sub-section (1) may provide for orders with regard to the matters specified therein. I have stated that it is a beneficial legislation enabling the Central Government to make laws. I will not say in my own words; I will quote before this House only. Maxwell's interpretation on this matter.

I am quoting from Maxwell on *Interpretation of Statutes*, 10th edition, at page 239. It says :

'Statutes which authorise persons to do acts for the benefit of others, or, as it is sometimes said, for the

[Shri Shrinibas Misra]

public good or the advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory."

Then, it goes on to say:

"In enacting that they "may" or "shall", if they think fit," or, "shall have power," or that "it shall be lawful" for them to do such acts, a statute appears to use the language of mere permission, but it has been so often decided as to have become an axiom that in such cases such expressions may have—to say the least—a compulsory force (d), and so would seem to be modified by judicial exposition. On the other hand, in some cases, the authorised person is invested with a discretion, and then these expressions seem divested of that compulsory force, and probably that is the *prima facie* meaning."

Then, it continues to say:

"In an early case, where it was contended that the Poor Relief Act, 1662.....in enacting that the churchwardens and overseers "shall have power and authority".....the court held that it was obligatory on them to make it....."

It goes on further and says:

"Though section 9 of the Indictable Offences Act, 1848 enacted that justices "may" issue a summons on an information laid before them only "if they shall think fit," it was held that they were not yet at liberty to refuse it on any extraneous considerations, such as....."

"So, in *Backwell's Case*, Lord Keeper North held, and of the same opinion were all the judges, that the statute which enacted that the Chancellor "should have full power" to issue a commission of bankruptcy against bankrupt trader on the petition of his creditors imperatively required its issue, declaring that "may" was in effect "must".

17.23 hrs.

[SHRI VASUDEVAN NAIR in the Chair]

The quotation continues:

"Under the provisions of section 5, Arbitration Act, 1889 that, where a submission provides that the reference shall be to a single arbitrator and all parties do not concur in appointing an arbitrator, any party may serve the other parties with a written notice to appoint, and if the appointment is not made in seven clear days the court "may", on the application of the party who gave the notice, appoint an arbitrator, it is obligatory on the court to make an appointment if applied to (o)."

So, here "may" also means "must". In the second para also, "may" means "must".

Then comes the crucial decision:

"An Act which empowered a vestry to make a paving rate and provided that, when it appeared to the vestry that the rate was not incurred for the equal benefit of the whole parish, it "might" exempt the party not benefited, was held to impose a duty, and not merely to confer a power, on the vestry to apportion the burden when the case arose (s)."

When "may" means "must" because it is a beneficial legislation, it imposed an obligation on the Government to do it.

SHRI HIMATSINGKA (Godda): Sometimes it means so; not always.

SHRI SRINIBAS MISRA: The hon. Member, I think, heard me when I was reading it. "May" means "must" when it empowers somebody to do something. Then and then alone it is "must"; I did not say that everywhere it means "must".

"But an enactment that churchwardens "may" make a rate for the reimbursement

of constables, or the Chancellor "may" issue a commission in a case of bankruptcy, or one conferring power on the courts to direct that a person entitled to cost should recover them, is no more permission to do such acts, with a corresponding liberty to abstain from doing them."

So, the Central Government cannot say that they are at liberty not to associate the State Government in enacting or making the rules.

"The Supreme Court of the United States similarly laid it down that which public officers are empowered to do for a third person the law requires shall be done whenever the public interest or individual rights call for the exercise of the power, since the latter is given, not for their benefit, but for his"

This power to make rules has been given not for their benefit but for the benefit of the people. Therefore, it is obligatory on them. "May" in this case means "must".

The next point is the question of propriety. Government has admitted that it is not proper. On this admission alone, it should have been graceful on the part of the Minister to accept this amendment. But instead of that, they brought the Law Minister to plead that it is concurrent power. Concurrent power cannot be created by statute. They have gone beyond the power given to them. They have negatived the power this House gave them. The concurrent power is that of the House, not of the Government. There are provisions in the Constitution, as the Law Minister knows, under which this House can say that this law will be passed by the State Legislature.

MR. CHAIRMAN : How much more time will he require ?

SHRI SRINIBAS MISRA : About 10 to 12 minutes.

MR. CHAIRMAN : The hon. member will continue his speech when this is taken up next time, whenever it comes.

17.32 hrs.

HALF-AN-HOUR DISCUSSION MAPS ON KACHCHATIVU ISLAND PUBLISHED BY THE SURVEYOR GENERAL OF CEYLON

MR. CHAIRMAN : Shri Kameswar Singh.

SHRI R. D. BHANDARE (Bombay Central) : Sir, before the discussion is raised, I would like to appeal to the member and to the House that since the Kachchativu matter has been discussed both by the Ceylon Prime Minister and by our Prime Minister and the matter is likely to be settled amicably, this may not be raised at this stage. It can be raised at any time later.

SHRI RANDHIR SINGH (Rohtak) : The matter is pending.

MR. CHAIRMAN : The appeal has been heard by the mover. It is for the mover to do whatever he likes.

श्री कामेश्वर सिंह (अगरिया) : सभापति महोदय, हम लोग ऐसी बहुत सी अपीलें सुनते आये हैं। सरकार तो चाहती है कि बहुत सी महत्वपूर्ण बातें इसी तरह खत्म कर दी जायें।

सबसे पहले यह मामला सन ने रिपोर्ट किया था।

"The morning daily, the 'Sun' reported today at its main story under the headline 'Ceylon Government takes over Katchchativu' that the Ceylon Government had assumed full ownership of the island."