

BUSINESS ADVISORY COMMITTEE

Fortieth Report

THE MINISTER OF PARLIAMENTARY AFFAIRS, AND SHIPPING AND TRANSPORT (SHRI RAGHU RAMAIAH) : I beg to move :

"That this House do agree with the Fortieth Report of the Business Advisory Committee presented to the House on the 19th November, 1969."

MR. CHAIRMAN : The question is :

"That this House do agree with the Fortieth Report of the Business Advisory Committee presented to the House on the 19th November, 1969"

The motion was adopted.

14.33 hrs.

COMMISSION OF INQUIRY
(AMENDMENT) BILL*

THE MINISTER OF HOME AFFAIRS (SHRI Y. B. CHAVAN) : I beg to move for leave to introduce a Bill to amend the Commissions of Inquiry Act, 1952.

MR. CHAIRMAN : The question is.....

SHRI SHRI CHAND GOYAL (Chandigarh) : Sir, I went to oppose it.

MR. CHAIRMAN : I may say from my long experience of legislatures that normally the introduction of a Bill is not opposed. Because, in that case, no private Members' Bill can be introduced.

श्री मधु लिमये (मुंघेर) : अपना निर्णय देने में पहले मुझे भी व्यवस्था के प्रश्न पर सुनियेगा।

MR. CHAIRMAN : We should establish good conventions so that Private Members' Bills can be introduced.

श्री मधु लिमये : कन्वेंशन के उपर ही मुझे बोलना है।

SHRI SHRI CHAND GOYAL : This Bill violates certain constitutional provisions and it is the right of every member to oppose such a Bill at the introduction stage. I have already given in writing the reasons for my opposing the Bill. I shall not go into the merits of the Bill at all. I shall deal only with the infirmities from which this Bill suffers. Section 4 of the Bill says :

"In section 5 of the principal Act, in sub-section (2), the word and figures' and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 of the Indian Penal Code" shall be inserted at the end."

This provision contemplates that if the Commission instructs any person to supply any information, that instruction of the Commission will be binding on him and there is no way out for a person from whom it has sought information to withhold it. This provision is opposed to article 20(3) of the Constitution.

Clause 3 of Article 20 says :

"No person accused of any offence shall be compelled to be a witness against himself."

That is what our Constitution guarantees. Nobody can be compelled to despose against himself and give either oral or documentary evidence. The adoption of this clause will mean violation of clause (3) of article 20 of the Constitution which is one of the fundamental rights of a citizen not to be compelled to give evidence against himself or furnish documents against himself.

In this connection I will refer you to Basu's Commentary on the Constitution which says at page 54 of volume II under the heading "Effect of contravention of article 20, clause (3)" :

"If a statute directly authorises the extraction of answer or the production of documents from an accused which will incriminate him, it is obvious that the statute will be void."

So, according to Basu, if a particular provision of a Bill authorises the production of evidence against the person himself, to that extent it will be void.

*Published in Gazette of India Extraordinary Part II, section 2, Dated 21.11.69.

[Shri Shri Chand Goyal]

I shall also invite the attention of the House to the Twentyfourth Report of the Law Commission which forms the basis of this Bill. At page 10 in clause 7 this report says :

"At one stage we were inclined to include in the new provision acts likely to lower the authority of the Commission or its members.

Before taking up the second objection, I would like to deal with clause 6 which incorporates new section 6A saying :

"Nothing in this Act shall be deemed to compel any person giving evidence before the Commission to disclose any secret process of manufacture of any goods."

This means that protection is being afforded in order to save a person from disclosing any secret regarding the process of manufacture while, on the other hand, the very fundamental right of a citizen which is enshrined and guaranteed in the Constitution is being violated.

Now, kindly refer to clause 9 which says :

"After section 10 of the principal Act, the following section shall be inserted, namely :

"10A. (1) If any person, by words either spoken or intended to be read, makes or publishes any statement or does any other act, which is calculated to bring the Commission or any member thereof into disrepute, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both."

Up till now the position was the Contempt of Court Act did not apply to the Commission of Inquiry Act. Now feeling this difficulty and to solve the problem this provision is being made to empower the Commission to deal with persons who commit contempt of the Commission of Inquiry or of any member of the Commission. But the provision is that he shall be punishable with imprisonment for two years. As a lawyer you must be well aware, Sir, that the Contempt of Court Act limits the punishment to six months. Section 4 of the Contempt of Court Act says :

"Save as otherwise expressly provided by any law for the time being in force, a contempt of court may be punished with simple imprisonment for a term which may extend to six months."

Are we realising the big anomaly which we will give rise to by incorporating clause 9 in this Bill? We are by this clause, placing the Commission of Inquiry on a higher pedestal than even the Supreme Court, the High Courts and the subordinate courts. If someone commits even the contempt of the highest judiciary in the country, the punishment provided is six months. But if someone, a journalist or any person, writes something about the Commission of Inquiry arising out of the proceeding going on there, he will be punishable for two years. I would say, we cannot put the Commission of Inquiry at a higher pedestal than the highest judiciary in the country. I think, this is a big anomaly which will make the provision void. It will not be able to stand the scrutiny of the law courts. Perhaps, this has not come to the notice of the Government. Otherwise they would not have made a provision of punishment for two years imprisonment for the contempt of the Commission of Inquiry when, in respect of the contempt of the highest judiciary, the Supreme Court, and other High Courts, it only contemplates a simple imprisonment of six months. I feel this provision is liable to be declared void.

As vigilant legislators, it is our duty to see that no provision in the Act is allowed to go which is likely to violate the provisions of either the Constitution or other Acts or which is likely to create an anomalous position.

On these grounds, I oppose the introduction of the Bill.

श्री शिव लाल झा (सधुबनी) : सभापति जी, मैं इस विधेयक का विरोध करता हूँ। संविधान के मुताबिक पहली बात तो यह है कि विधेयक मनी बिल है। इस के स्टेटमेंट ऑफ म्याजेक्ट्स और रीजन्स में बताया जा रहा है कि यह कमिशन जो होगा उस पर मोटे तौर पर एक लाख ६० प्रति साल का

खर्चा धारयेगा और यह रु० कन्सालीडेटड फंड से निकाला जायगा। संविधान के अनुच्छेद 117(1) के अनुसार मनी बिल को इंट्रोड्यूस करने के लिये राष्ट्रपति की रिकमन्डेशन जरूरी है। ऐसा इस बिल के बारे में नहीं किया गया है। साथ ही आप देखेंगे कि इस बिल के साथ कोई बुलेटिन नहीं निकाला गया है। चूंकि मनी बिल होने की वजह से राष्ट्रपति की रिकमन्डेशन नहीं है अतः स बिल को पेश नहीं किया जा सकता है।

दूसरी बात यह है जैसा माननीय श्रीचन्द गोयल ने कहा है, मैं उन से सहमत हूं कि यह बिल फंडामेंटल राइट जो अनुच्छेद 20 में दिया गया उस का खंडन करता है। इस बिल के क्लॉज (५) में कहा गया है कि :

"If any person, by words either spoken or intended to be read, makes or publishes any statement or does any other act, which if calculated to bring the Commission or any member thereof into disrepute, he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both."

यह फ्रीडम ऑफ एक्सप्रेशन के खिलाफ जाता है। हम भारत के नागरिक इस कमीशन की नुस्ताचीनी नहीं कर सकते हैं, इस के खिलाफ बोल नहीं सकते, लिख नहीं सकते हैं। लेकिन किन्हीं कन्स्टिट्यूटरी सिचुएशन में कमीशन पड़ जाता है इस को जरा आप देखें। क्लॉज 5 के सब-सेक्शन (2) में कहते हैं कि, जो गवाह धारयेगा जो अफसर धारयेगा काम करने के लिए, उन की गवाही कहां तक ऐक्जुसली सही है उस की जांच और उन अफसरों की भी जांच करने का हक कमीशन को है : जैसे कहा जाता है कि :

"...The Commission may make such inquiry (including the examination of the person or persons who conducted, or assisted in the investigation) as it deems fit."

लीगल सैक्टिटी का खुद खारजा कर रहे हैं। एक तो कमीशन की नुस्ताचीनी हम नहीं कर सकते हैं। लेकिन कमीशन में जो गवाही अफसर देने धारयेगा उस के फ्रीडम और राइट का खुद खंडन करते हैं। यह चीज हमारे अधिकारों के खिलाफ पड़ती है।

अतः अनुच्छेद 117(1) के मुताबिक चूंकि राष्ट्रपति की रिकमन्डेशन नहीं है, और दूसरे जो जम्हूरियत की बुनियादी बात है उस पर कूठाराघात कर रहे हैं, और विधेयक की शब्दावली कन्स्टिट्यूटरी है, इस कारण से मैं इस का विरोध करता हूँ।

MR. CHAIRMAN : Does Mr. Kanwar Lal Gupta want to say something ?

SHRI KANWAR LAL GUPTA (Doshi Sadar) : I do not want to say anything on this.

MR. CHAIRMAN : The hon. Minister.

SHRI Y. B. CHAVAN : Only two points have been raised. One is that Clause 4 of the Bill is in contravention of article 20. The hon. Member, Shri Goel, is a very well known lawyer. But, I am afraid, he has misread the Constitution. If one even superficially studies the article, one will find that article 20 is meant for the courts. If any person is charged against any offence where he is liable to be convicted, there he is not supposed to make any statement against himself. The Inquiry Commission is not a court. This is a basic difference. Once we say that this is not a court, then article 20 does not apply at all. He raised certain objection about the provision which is made for any statement written or intended to be written, etc., which will bring the Commission of Inquiry into disrepute. He has certainly his own views about it : he has entitled to have his own views about it and he can certainly oppose the clause on merits when we discuss that clause. I do not know how it comes under 'Constitutional objection'.

The third objection has been raised by my hon. friend there. He thinks that it requires the recommendation of the President because it is a Money Bill. I have never

[Shri Y. B. Chavan]

seen a more fantastic statement than this. Article 110 gives a clear definition of what a 'Money Bill' is. He says this because the Bill requires certain Financial Statement and Memorandum. If every Bill that requires a Financial Memorandum is to be treated as a Money Bill, then there will be Constitutional or legislative anarchy in this House.

Therefore, all the objections are absolutely superficial and baseless, and I would not accept them.

MR. CHAIRMAN : The question is :

"That leave be granted to introduce a Bill to amend the Commissions of Inquiry Act, 1952,"

The motion was adopted

SHRI Y. B. CHAVAN : I introduce the Bill.

14.17 hrs.

INTERNATIONAL MONETARY FUND AND BANK (AMENDMENT) BILL—Contd.

MR. CHAIRMAN : Now we take up further consideration of the International Monetary Fund and Bank (Amendment) Bill. The Hon. Minister to reply.

THE MINISTER OF STATE IN THE
MINISTRY OF FINANCE (SHRI P. C.
SETHI) : *rose*—

SHRI H. N. MUKERJEE (Calcutta North East) : Before the Minister replies, could I say a few words.

MR. CHAIRMAN : On what ?

SHRI H. N. MUKERJEE : On this Bill on which the discussion is to be replied to by the Minister.

MR. CHAIRMAN : Let the Minister reply. At the Third Reading stage, you can speak.

SHRI H. N. MUKERJEE : The Third Reading stage is one which will be different.

If you say that the time limit is being so rigidly adhered to by the Chair, then I would not mind.

MR. CHAIRMAN : I will give you two or three minutes after the reply.

SHRI H. N. MUKERJEE : I do not believe in improper proceedings. I do not want to speak. I do not want the proceedings to be conducted improperly.

MR. CHAIRMAN : Can he.

SHRI P. C. SETHI : I have no objection.

SHRI H. N. MUKERJEE : Is the opportunity to speak conditional upon the Minister yielding ? I do not understand the proceedings of this House. I do not wish to take part in the proceedings.

SHRI P. C. SETHI : Perhaps the Chair had called me and that is why you asked.

(Shri H. N. Mukerjee then left the House)

SHRI P. C. SETHI : The hon members who spoke on the Bill were generally in agreement with me that the proposal for which the approval of this House is now sought is fairly simple. However, several of them raised questions generally on matters such as foreign aid and trade, as also on certain aspects of SDRs. It will be appropriate from me to deal with the general points briefly at this stage.

I should like to say at the very outset that I am in agreement with the hon. members who said that to the maximum extent possible, our economic development should come from our own effort ; that we should develop our own resources for this purpose ; that we should increase our exports as much as we can ; that we should use our resources, whether generated internally or received from external sources, in the best manner possible for economic growth and that we should follow such policies as will strengthen our economy. The Government is in fact making efforts in all these directions.

Shri Shiva Chandra Jha referred to our dependence on external aid I may say in