

**PROF. MADHU DANDAVATE :** The Prime Minister has said that in the heat of the moment, the Minister may have said something. If this is so, then, he should have issued a statement saying that this was not correctly reported.

**SHRI SHYAMNANDAN MISHRA :** The hon. Prime Minister said that it was in the heat of the moment that the Minister reacted. I ask you, Sir, to consider whether sending a private army of 5,000 to invade the city of Poona had been done in the heat of the moment.

*(Interruptions)*

**MR. SPEAKER :** We pass on to the next item.

13 hrs

**STATEMENT RE PRESIDENT'S ORDER  
IN REGARD TO THE AUTHORISATION  
OF EXPENDITURE OUT OF CONSOLIDATED  
FUND OF PONDICHERRY**

**MR. SPEAKER :** Shri Gokhale will now reply to the points raised yesterday.

**THE MINISTER OF LAW, JUSTICE  
AND COMPANY AFFAIRS (SHRI H. R.  
GOKHALE) :** Sir, I heard yesterday with great care and attention the comments made by hon. members on the other side with regard to both the legality and the propriety of the two notifications issued by the President under the Union Territories Act. I will deal with both the aspects which are clearly involved in considering this matter.

The situation with which we were concerned was both unprecedented and somewhat peculiar. We had to act in a legal way and in a proper way. Hon. Members will remember that President's rule was invoked in Pondicherry on 28th March 1974 and the Assembly was dissolved. They were to pass the Vote on Account but they

did not, as a result of which the Government fell. The budget and financial statement was forwarded by that Government to the Central Government on the 29th. It reached here sometime in the forenoon of 29th when Parliament was in session. The following of the procedure which is incumbent for laying financial matters before the House was practically impossible on the same day, because it is not a question of merely bringing a Bill for vote on account. We have to place the financial statement before the House, bring the full budget and for a shorter duration bring a vote on account Bill also in the form of an Appropriation Bill which is to be passed by Parliament. 29th March was the last working day for Parliament in March as Parliament was not sitting on 30th and 31st March and 1st April. So, if the vote on account had to be passed by the House, it had to be passed on the 29th, which for reasons I mentioned just now, was not practicable at all. When it was forwarded from there, it is not as if we accept mechanically all the proposals which had been made by the Union Territory for incorporation in the financial statement to be laid before the House. The proposals have to be scrutinised and a proper financial statement has to be prepared and a full budget has to be laid before the House, and for the interim period, in order that expenditure from the Consolidated Fund may be incurred, a vote on account Bill has to be placed before the House. Doing it on the 29th would have meant printing of at least 1600 copies if both Houses were in session. If only one House was in session, it would have meant printing of at least 600 copies for distribution among the members, which was a physical impossibility on the 29th. But before the 31st action had to be taken to see that the administration of the Union Territory does not come to a standstill. Money had to be spent from the Consolidated Fund to carry out the day-to-day

administration. Government has to spend money every day for one reason or the other. Even for one day, unauthorised expenditure cannot be permitted.

References were made to the precedents, particularly Orissa. I have carefully looked into the facts which prevailed then when the Rajya Sabha had to be summoned for passing the Vote on Account Bill as well as the budget in the case of Orissa. The facts relating to Orissa cannot be comparable at all with the facts prevailing in the present situation. If I might remind this House, some of these facts which were stated by the hon. Members on the other side were taken from a source which is my source also namely the book of Shri Shukdher, where the dates etc. have been given. But from an interpretation of the facts it is very clear that the Orissa situation is not at all on par with the situation that is prevailing at this time.

It is true that the Orissa Governor had promulgated an Ordinance on the 23rd February 1961. On the 25th February 1961 the President issued a proclamation under article 356 for President's Rule. It was conceded by the then Home Minister that the promulgation of the Ordinance was not proper without having the supplementary grants passed by the Parliament. On the 6th March 1961 the Finance Minister presented a statement regarding the supplementary demands for grants. In deference to the objection and in view of the advice given that the ordinance should not have been promulgated, it was withdrawn by the President on the 10th March 1961. On the 14th March 1961 the Appropriation Bill was introduced and passed. On the 18th March 1961 the Rajya Sabha adjourned. It was summoned to meet on the 27th March 1961. The budget was presented to the Lok Sabha on the 27th March 1961. The Demands for Grants on Account were

taken on the 28th March 1961 and adopted. The Orissa Appropriation (Vote on Account) Bill, 1961 was introduced, considered and passed by the Lok Sabha on the 28th March 1961 and it was transmitted to the Rajya Sabha on the same day. The Rajya Sabha passed it on the 30th March 1961.

Now the difference in the situation is clear. In Orissa the situation has arisen as early as on the 23rd February, or at any rate on the 25th February 1961, that is, quite some weeks before the financial year came to an end on the 31st March 1961. So it was proper and right that the Ordinance was considered to be a wrong step to be taken at that time, and Government decided the matter to be brought before the House which was in session, and it was passed by this House. Since the Rajya Sabha was not in session by the time it had to be transmitted to the Rajya Sabha, as there was enough time for the summoning of it, the Rajya Sabha was summoned and the proper procedure was followed and it was passed by the Rajya Sabha just on the last day, on the 30th March 1961, before the financial year came to an end.

Now see the difference between the situation at that time and the situation now. Here on the 28th March the Assembly is dissolved. The budget papers from the Union Territory came to the Central Government on the 29th March, sometime about 12 O'Clock, in the forenoon. The Government had practically no time to examine the budget proposals made by the Union Territory, to prepare the financial statement, to move the budget in the House and within a short duration to move a Vote on Account Bill. I submit that, under the circumstances, the practical difficulties were so insurmountable that on the 29th in any case the Parliament could not have passed the Appropriation Bill.

[Shri H. R. Gokhale]

I want to emphasize the point that even from the legal action taken by the Government it is very clear that there was not, and nor is, any intention to by-pass Parliament. If we go through the proclamation which was issued, that itself makes this point clear. As hon. Members know, this proclamation was issued by virtue of the powers given to the President under section 51 of the Union Territories Act. Before I go to those provisions to deal with the legal aspect, I want to invite the attention of the hon. Members to article 239A. Before I read the relevant part of the article, I might mention that in the case of the Union Territories mentioned in the article, in which Pondicherry is also included, the Act which is passed in respect of the Union Territories is in a way a Constitution by itself, so far as the governance of the Union Territories is concerned. It is not merely a parliamentary legislation but it is a constitutional provision under article 239A. That article says :

"Parliament may by law create for any of the Union territories of . . ."

—all the Union territories are indicated here, including Pondicherry

"(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union territory, or

(b) a Council of Ministers, or both with such constitutions, powers and functions, in each case, as may be specified in the law." But what is more important is the second part of the article which says :

"Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends

or has the effect of amending this Constitution."

The importance of this is that, by making an explicit provision in the Constitution, it has been provided that, when parliament passes a law in respect of the governance or administration of a Union territory, that law, even though it might contain provisions that are inconsistent or repugnant to the other provisions of the Constitution, will not be regarded as an amendment and it will not be attacked on the ground that it is unconstitutional. I am giving this prefatory statement for the reason that references were made in the course of the debate to various provisions of the Constitution.

There are provisions which are not exactly similar in respect of the financial business in the State Legislatures; in respect of Parliament they differ to a certain extent, but definitely differ from the position which is obtainable in the Union territories for which specific provision has been made in the Union Territories Act.

With this background I would like to submit that, what we have to look to for finding out whether what has been done by the President is legal or not, is not anything else but the Union Territories Act which, for all legal and practical purposes, is the Constitution which governs the administration of a Union territory. In the Union Territories Act, there are three or four sections which are important. I am sure, you are aware of these sections. Two sections, at any rate have been invoked by the President for exercising his power in this particular case.

Section 51, while it might appear apparently to be somewhat similar to article 356 of the Constitution, is not *pari materia* with the provision in the Constitution; and I submit that article 51 is much wider

in scope so far as the powers of the President are concerned. I may be permitted to read it, Sir. It is a small section. I think, it is relevant and important because the legality of the order has been challenged and I do not want to leave anything unsaid which will, according to me, fully justify the legality of the order passed by President Section 51 says :

"If the President, on receipt of a report from the Administrator of a Union territory or otherwise is satisfied —

(a) that a situation has arisen in which the administration of the Union territory cannot be carried on in accordance with the provisions of this Act, or

(b) that for the proper administration...."

This is important.

"(b) that for the proper administration of the Union territory it is necessary or expedient so to do "the President may, by order, suspend the operation of all or any of the provisions of this Act for such period as he thinks fit and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the Union territory in accordance with the provisions of article 239."

Therefore, two or three things emerge from this section. One is, the President has the power in a particular situation which he thinks requires the taking over of administration under him, to issue a proclamation and proclaim his rule so far as the Union territory is concerned. In order that the administration may be carried on properly, he has also been given the power under section 51 to suspend the

operation of all or any of the provisions of the Act for such period as he thinks fit and to make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the Union territory in accordance with the provisions of article 239. Therefore, he can certainly suspend certain provisions of the Act. He can also make incidental and consequential provisions for the good administration of the Union territory.

In passing I want to point out that the provision in article 356 is different, because the power which the Legislature of a State, for example, exercises and which is given to Parliament under article 356 is not regarded as a consequential power. There is an express provision so far as Union territories are concerned. Whenever you deal with a situation which arises in a State, that situation is not the same as it arises in a Union territory where, under specific provisions of the law, the President can say that this is a consequential or incidental provision which is necessary and these are the provisions of the Act which are to be suspended. Now, by virtue of this power, the President as in fact suspended some provisions of the Act in his Proclamation. It is not relevant to refer to all the other provisions, but it is important to notice and that is why I mentioned that, that there was never any intention or is there any intention to by-pass the Parliament because even there the President in his Proclamation did say that whenever there is any reference made to the Union Territory legislature, that reference will mean a reference to Parliament. The objective clearly is that Parliament is not to be by-passed. When anything is to be done for the Union Territory during the President's rule, the Parliament, being substituted for the State Legislature, is still recognised and I submit



[Shri H. R. Gokhale]

respectfully, quite rightly the President has regarded that as necessary, by saying that the Parliament will take the place of the Union Territory legislature.

But then Section 29 of the Union Territories Act which is very relevant deals with financial matters which is important. Section 29 says :

"As soon as may be, after the grants under Section 28 have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the Union Territory, of all monies required to meet the grants so made by the Assembly to the expenditure charged on the Consolidated Fund of the Union Territory, but not exceeding in any case, the amount shown in the statement previously laid before the Assembly."

Then,

"No amendments of the proposed...."

With this we are not concerned. Then sub-section (3) is important. It says :

"Subject to the other provisions of this Act, no money shall be withdrawn from the Consolidated Fund of the Union Territory except under appropriation made by law passed in accordance with the provisions of this Section."

Now this is quite in conformity with the idea that the Parliament shall not be by-passed. Section 29, much less 29(3), was suspended. It was not suspended. The idea was that the Parliament should exercise the financial powers in place of the legislature of the Union Territory. But the Section says :

"Subject to the other provisions of this Act...."

This injunction that no money will be spent from the Consolidated Fund is a

general injunction but is subject to the other provisions of the Act. Now, what are the other provisions of the Act?

We may refer to Section 31 which is another provision of the Act. We may refer to Section 32. Section 32 is an analogy and although it does not strictly apply in this case, it is very important because Section 32 specifically confers powers on the Government to direct appropriation from the Consolidated Fund when the Fund was first created on the formation of a Union Territory.

Therefore granting of powers to the President for appropriation of monies is not unusual so far as the scheme of the Act is concerned. But the other provisions of the Act, of course, refer to Section 51 and, in my submission, to Section 56 also. Now, Section 56 was specifically meant, in my submission, for a situation which had actually arisen on this occasion. Every one knows and everyone conversant with the law and the constitutional provisions knows that there is a provision generally for a clause or a section which deals with the removal of difficulties because all difficulties are not always anticipated and in case difficulties come, there is a provision and a power given in an authority so that that difficulty which has arisen can be removed.

Now, Section 56, in terms, says that for removal of difficulties, the President could exercise the power. Section 56, I will read with your permission. It says :

"If any difficulty arises...."

The whole of it is not relevant to the present situation, but a part of it is relevant.

"If any difficulty arises in relation to the transition from the provisions of any of the laws repealed by this Act...."

We are not concerned with this

"... or in giving effect to the provisions of this Act and in particular, in relation to the constitution of the legislative assembly of any Union Territory, the President may, by order, do anything not inconsistent with the provisions of the Act which appears to him to be necessary or expedient for the purpose of removing the difficulty"

Now, two things which are relevant for our purpose in this connection, are that he can do anything to remove a difficulty for the purpose of carrying out the provisions of this Act. The other thing which it says is that in the removing of the difficulty he can do everything excepting that which is inconsistent with the provisions of this Act. Now Section 29, having in terms, said that it is subject to the other provisions, being subject to Section 56, it cannot be said that the action taken here is inconsistent with Section 29, because Section 29, in terms, permitted action to be taken under Section 56 and 59 by the President to remove the difficulty.

Now, I would respectfully submit that a difficulty of this nature, as I said in the beginning, was unprecedented and of a special type. There has been no precedent, when practically at the end of the financial year, when the Union Territory administration has to be carried out, and the President exercises his power to remove the difficulty.

This power is given to the President under Section 29 read with Section 51 and 56. I submit that the action taken by the President was perfectly legal action and fully justified under the circumstances of the case. I am fully convinced that what Government had done is not only correct under the circumstances, but is also legal and constitutional. The Presidential Order itself takes into account the fact that

Parliament has to deal with this matter. He has said, 'Pending the sanction by Parliament' That is to say, this is only an interim order for removal of difficulties and not to by-pass Parliament. This has been made perfectly clear in the Presidential order. Let us test this, Sir, by considering what would have happened if the Assembly had to dissolve on the 31st. The Assembly dissolved on the 28th. What would have happened if it dissolved on the 31st? It cannot be reasonably argued, that because the Assembly dissolved on the 31st, from 1st April the Administration of the Union Territory cannot go on. This is the only way of testing the provisions. In this case it dissolved on the 28th. It would have dissolved as well on the 31st. And if it dissolved on the 31st, the only remedy, the legal remedy was this, that is, under Section 51, read with Section 56. This is my respectful submission and I wish to point out that the action of the President was legal and constitutional and under the circumstances, it was an action which I submit, Sir, was a proper action.

The views of the Government have been put before the honourable house. We have put our views quite candidly and frankly. But in the matter of financial business, we do submit, we will go by the wishes of the honourable House.

SHRI SF7HIYAN (Kumbakonam)  
I heard the Minister with rapt attention. First let me proceed with the points he has raised one by one. He said that the Assembly got dissolved on the 28th, and that the Budget of the Union Territory of Pondicherry was received here in the Forenoon on 29th. I think by that time at about 1 O'clock we raised the question here based on our apprehensions that the Constitution has been by-passed, and Parliament which has been entrusted with the work of a State Legislature, has been by-passed. There is no Constitutional provi-

[Shri Sezhiyan]

sion or a statutory provision for any contemplation by the President or the Executive to withdraw the amounts. If moneys are not appropriated properly it is only misappropriation of public funds. Therefore we raised the question here at about 1 O' clock and the Chair shared our misgivings. And the hon. Minister now comes to the House and says that the Budget was received in the forenoon of the 29th.

What prevented the Minister or the Government to come the House at least before 6 O' clock on the same day and explain the position? He could have told us that he received it only at 12 O'clock and he required some time or we may give some solution. That is why he has come up before the House.

First of all there has been a contempt—a callous contempt—of the proceedings of this House. When we raised this point, nobody took care to explain the position to the House. The House is the proper forum. This should have been done first. Before I make other observations, I would like to be enlightened on one thing. The law Minister began his submission by saying that what he did was legal and proper. I do not know why he thinks that this is legal and proper. By saying this, does he presume that to do something proper he can do something illegally? We are arguing about what is legal and not what he thinks as proper. Here it is illegal. You may think it is proper you may think it is practical. But, why don't you come before the House and say that this is our difficulty.

Then, Sir, he says that 29th being the last day, he had no other go. 30th was there and 31st was also there. It is not the February of a leap year with only 29 days allotted in a calendar. This was the month of March there were

still two days less—30th and 31st. Did he come before the House and ask the house that this was a situation and this was their difficulty that they received the budget only at 12 O'clock and so they required some time. If he had said that this House should meet on 30th or 31st March, we would have been very glad to oblige the Government. I want to make one thing very clear that it is not our intention to deny the monies to Pondicherry Government; it is also not our intention to scuttle the functioning of the Government. Our intention is to see that Parliament, in this process, should not be by-passed. And an unconstitutional law should not be made by the highest forum of the Government and that too by the highest executive head of this country.

Therefore, what prevented them to utilize the opportunity of 30th and 31st March? I think that suggestion was made by Shri Bosu also that we could sit on Saturday. But, no reply came. The only reaction that we had was from the Deputy Speaker when he made a suggestion that there is a livewire that will convey the message. I think due to power failure and power crisis that livewire did not act on 29th.

Regarding Orissa incident which we quoted, the hon. Minister made a mention and said that he went to the same source. He being a legal luminary and also he had been a judge of the high court

I do concede that I am not a lawyer by learning or by profession and I am just a layman. In this case he says that it is different from Pondicherry. I do agree that Orissa is a State but Pondicherry is a union territory and Orissa is a big state of about 500 miles in size geographically. Nobody denies all that. You please read page 536 of the book by Shri Shastri. No body is going to equate Pondicherry with Orissa by any stretch of imagination. What does that say?

It says :

"For the appropriation of the money for the State, the administration of which has been taken over by the President on the Proclamation issued by him the budget of the State, according to existing practice is not certified by an Ordinance, the underlying principle is that no money can be spent out of the Consolidated Fund without the sanction of Parliament."

Therefore, the emphasis should be on this. That is the underlying principle whether it is for Pondicherry or for Orissa or for U.P. or for Tamil Nadu. The principle behind that is that no money can be appropriated without the due process of the law that has been laid down in the Constitution.

In this one he says that contingency arises for passing the Appropriation Bill. Rajya Sabha is not in session and so that House has to be summoned for this purpose. There was time between 29th and 31st. No time factor was involved here. Did you approach the House and explain the difficulties? You simply go away in a cavalier way. You simply say that you received the budget in the forenoon and then you come to the House after three or four days and say that you did not have time. Was any attempt made on the date to explain to us that there is a difficulty? The difficulty was not that of the Executive nor of the President. If at all there was a difficulty, that should have been experienced by this House. And this is the House which has got the power. Why should you arrogate to yourself the position, the power and authority of this House. Why did not you come to the House and say that this was your difficulty? The House would have appreciated the difficulty or felt it and would have devised ways to meet it. Therefore, my submission is that Government have appropriated to

themselves the power of this House. Even if there be difficulty, we do not want to share it with them and we do not want to throw the burden on them. That is the main point. The principle underlying it is this. If any amount has not been withdrawn by the due process of law under the constitutional provision, that is a clear case of misappropriation. Whosoever has done it, it is a misappropriation of the highest order.

Then, the hon. Minister has said that on that day he did not have the figures etc. I submit that on the same day, namely the 29th of last month, they had issued the Presidential order where the amount had been indicated as Rs. 5,00,38,000. So, it is not a token lump amount which has been indicated, but they have calculated this amount and mentioned it. Why should they not have come forward with the same calculations before the House and said that they required so much? On the 29th March, they were able to prepare the statement giving the figures. Nothing had prevented them from coming before the House on the 29th; if not on the 29th, at least on the 30th they could have come, or even on the 31st. After all, the House has been very obliging. On one occasion, the Members were called for a session at 10.00 p.m. and we all came hurriedly in in order to make the Finance Bill proper. We had obliged them on that occasion.

Similarly, we would have obliged them in this case also. Even if anybody had refused, the sense of the House would have prevailed, because they have got a majority, a very conciliatory and helpful majority. From this side also we would have helped in this situation, and nobody would have prevented it. If only they had come forward before the House, the House also would have been responsive enough. Therefore, I do not know why they wanted to resort to this procedure.

(Shri Sezhiyan)

Then, the hon. Minister has made use of section 51. The other day itself I had quoted this section. Today he made two points. He first took up article 239 A and then article 51: Of course, even in section 51 of the Act itself it is clearly said that it has to be read with article 239. The text of section 51, itself says: 'In accordance with the provisions of article 239...' So, section 51 has to be read with article 239. Article 239 says in the very opening words:

"Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President, acting..."

Then, we have article 239 A which relates to the creation of the legislature etc. I would like to emphasise the opening words of article 239 namely 'Save as otherwise provided by Parliament by law'. If Parliament provides by law, then that can become the exclusive of the Jurisdiction of the President under article 239.

Then he has quoted section 51 again to say that the President has got the power to suspend certain Provisions and the President can make such incidental or consequential provisions as may appear to him to be necessary. We have conceded this. But what is the meaning of suspension? As I said earlier, he has not suspended very many sections which I had read out the other day, such as sections 27 to 31 which deal mainly with financial questions. Of Course, I concede one thing here, and this was a point which was raised by Shri Somnath Chatterjee also the other day, namely where suspension creates any difficulties, the incidental or consequential things would flow out of the suspension, but it cannot touch those sections which remain in fact. Even then, I do not think that he is going to consider the withdrawal of money, which is a basic power of Parliament

or of the legislature concerned, as incidental or consequential.

Then, he referred to section 32 in a passing way. He stated that there had been specific cases where the statute gave powers to the President. I had quoted this section also the other day. It says:

"The Administrator may authorise such expenditure from the Consolidated Fund of the Union territory as he deems necessary for a period of not more than six months beginning with the date of the constitution of the Consolidated Fund of the Union territory. . . ."

So, this was only for the transitional period. At the time of the constitution of the Consolidated Fund of the Union territory, for six months they gave this power. I want to know whether there is any provision giving such a power to the President for any subsequent period. If he can quote me some specific provision where he has the power subsequently also, i.e. after six months, say, on the dissolution of an Assembly, or if he can point out any law which has been passed by Parliament giving that power, then I could understand it and it would be quite valid.

Therefore, quoting this one in passing is only cloud the issue before us.

Then 56—removal of difficulties. In regard to this case of removal of difficulties, he concedes that it should not be inconsistent with the provisions of this Act. Then there are 29 and 31. These are two very important provisions. There again I rely on this:

"Subject to the other provisions of this Act"—

'Other provisions' means the other financial provisions—

"no money shall be withdrawn from the Consolidated Fund".

There is a vote on account and other things. I do not think we can stretch this. If we did so, we would be caught in a vicious circle. You go from section 29 to 56; again you come to 29. And you are caught in a vicious circle. Here 'subject to the other provisions' is very explicitly clear. Then we have 31, which is more reliable.

"Notwithstanding anything in the foregoing provisions of this Act, the Legislative Assembly of the Union Territory shall have power to make any grant in advance...."

This *Non-obstante* clause means that it is exclusive by itself. That means, only the Legislative Assembly here substituted as Parliament, has got the power to do this.

He poses another question : What would happen if the Assembly had got dissolved on 31st March? Our law is not based on hypothetical question. If there is a hypothetical question he should have come before the House and taken its advice and consent before doing this.

I feel that this fundamental power to grant or withhold grant to the executive, which has been acclaimed as the basic feature of Parliamentary democracy, has been given a go-by by what has been done. Parliament loses its significance, democracy loses its meaning if the power is taken for appropriating amounts without adopting the proper procedure. Such a course only amounts to misappropriation. A misappropriation of the highest order is being committed by the highest executive of the state in the country in the federal set-up. We will resist it.

My point is very basic. I appeal to the

Prime Minister and others also. This is not a party question.

MR. SPEAKER : Let me know what is the remedy.

SHRI SEZHIYAN : Let them first accept the position that the President has not got this power and only Parliament has this Power. Then I am prepared to sit with them and discuss as to what we should do. They should not do anything which is unconstitutional, *ultra vires* and illegal. An illegal act cannot be justified. Probably the Law Minister may think that it is proper (*Interruptions*). I appeal to the Prime Minister. This is not a party issue-DMK ADMK, CPI or any other. We are not involved in this. It is a question of the power of Parliament, the power of the legislature.

SHRI INDRAJIT GUPTA : I do not agree with that. All this proclaimed concern for a vote on account could have been avoided if the vote on account was allowed to be passed there. But there was unseemly haste to topple the Ministry and from that followed these unseemly things.

SHRI SEZHIYAN : What was done there was constitutional ; what is now being done here is unconstitutional and illegal.  
SHRI INDRAJIT GUPTA : Felony is compounded.

SHRI SEZHIYAN : I would request Shri Gupta not to mix the political issue with this. This is a constitutional issue. It may happen tomorrow in Kerala; it can happen anywhere. This is a point concerning the supremacy of the legislature to grant funds. That has been eroded. It is not a question of this Government or that Government falling.

Therefore, I want your ruling on this. The haste displayed by Government has not only been indecent; it has been undemocratic and unconstitutional. I look forward



[Shri Sezhiyan]

to you and to the Leader of the House to uphold the power, supremacy and dignity of the Legislature, I am not saying Parliament alone but legislature in general over the executive. Once you refuse to concede this point, you can take it from me that the Parliamentary system has no meaning at all in this country.

श्री मधु लिमये (बांका) : अध्यक्ष महोदय, मैं 6 मुद्दों पर बोलना चाहता हूँ और आप को दो निर्णय देने हैं।

(1) क्या यह असंवैधानिक और गैर-कानूनी आदेश आप टेबल पर रखने की इजाजत देंगे और (2) इन्होंने पार्लियामेंट के अधिकारों के ऊपर जो आक्रमण किया है क्या उसके बारे में आप अपना निर्णय स्पष्ट शब्दों में देंगे ?

गोखले साहब ने अभी जो बातें कही हैं उसमें उन्होंने 6 बातों का उल्लेख किया। उन्होंने कहा कि 28 तारीख को हम लोगों ने पांडिचेरी विधान सभा को बरखास्त करके राष्ट्रपति के हाथ में शासन दिया। इस बात का उन्होंने खुलावा नहीं किया कि क्या राष्ट्रपति का शासन जारी करने समय उन्होंने अभी पहलुओं का विचार किया था ? अभी जो यह बात कह रहे हैं उससे स्पष्ट होता है कि 28 तारीख को सरकार ने वोट आन एकाउंट का क्या होने वाला है इस के बारे में कोई विचार नहीं दिया यह सरकार की पहली असफलता है।

(2) इन्होंने यह कहा कि एन्युअल फाइनेंशियल स्टेटमेंट देना पड़ना; वह जल्दी तैयार नहीं होता और इस लिए हम लोग वोट आन एकाउंट यहां पर नहीं रख सके। मैं आप को याद दिलाना चाहता हूँ कि वोट आन एकाउंट साधारण तौर पर बजट सदन के सामने आने पर पास होता है, लेकिन 1967 में आप को मालूम होगा कि बजट पेश करने के पहले ही हम लोगों ने तीन चार महीने के लिए वोट आन एकाउंट पास किया था और मई के अंत में जो सदन का सत्र हुआ उस में बजट पास हुआ था। इस लिए इन की यह दलील कि एन्युअल फाइनेंशियल स्टेटमेंट के बिना वोट आन एकाउंट नहीं रख सकते थे वे-बुनियाद और वेमनलव है।

तीसरी बात यह है कि अगर 29 तारीख को इन के लिए यह रखना संभव नहीं था तो 30 या 31 को भी लोक सभा की बैठक हो सकती थी।

चौथी बात कही कि कापियां हम नहीं दे सकते थे। तो आप से सलाह मशविरा कर के और इस सदन की राय से कापियों को उपलब्ध करने के बारे में जो नियम हैं उन को स्थगित करने का काम इस सदन की रजामन्दी से किया जा सकता था और आप की अनुमति से इसमें कोई दिक्कत नहीं आ सकती थी।

पांचवी बात उन्होंने कही कि सेक्शन 29 में ही हम को यह अधिकार दिया गया है। इसके बारे में सेक्शन 29 आप देख लीजिए। इस की परिभाषा में और संविधान की परिभाषा में थोड़ा फर्क है और वह क्यों है वह एक सेक्शंस में मैं आप के सामने रखना चाहता हूँ। सेक्शन 29, सब-सेक्शन (3) इस प्रकार है :

“Subject to the other provisions of this Act, no money shall be withdrawn from the Consolidated Fund of the Union territory except under appropriation made by law passed in accordance with the provisions of this section.”

और कांस्टीट्यूशन की धारा 114(3) इस प्रकार है :

“Subject to the provisions of articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.”

इस में सिर्फ 115 और 116 धाराओं का इसलिए उल्लेख है क्योंकि हमारे संविधान में सेक्शन 32 की तरह कोई प्रावधान नहीं है और सेक्शन 32 में शुरू में ऐडमिनिस्ट्रेटर को यह अधिकार दिया गया था कि छः महीने की अवधि तक वह संचित निधि से पैसा खर्च कर सके इसलिए इस में अंदर प्राविजन्स आफ दि ऐक्ट यह शब्दावली जोड़ी गई है जो कि धारा 114 में आप को नहीं मिलती है। तो गोखले साहब का यह कहना कि अंदर प्राविजन्स आफ दि ऐक्ट इस शब्दावली के तहत उन को राष्ट्रपति के आदेश से 5 करोड़ रुपये खर्च करने का अधिकार मिलता है बिल्कुल वे-बुनियाद है कोई धारा वह नहीं दिखा सके जिस के अंदर राष्ट्रपति को यह अधिकार है।



MR. SPEAKER : He quoted section 56 of Union Territory Act

श्री लक्ष्मी मिश्र : 56 पर मैं था रहा हूँ। 56 विक्कन के बारे में है।

मैं पहले यह बताने पर रहा था कि 29(3) और 114(3) में फर्क इसलिए है कि यूनियन टैरिटरीय ऐक्ट में सेक्शन 12 के तहत सचिव लिखित में 6 महीने की अवधि तक लेजिस्लैटिव का पैसा निबामने का अधिकार दिया गया था। प्रारम्भ में दिया गया था। हमारे संविधान में इस तरह का प्रावधान नहीं है। इसलिए हमने सेक्शन 115 और 116 प्रांग का उल्लेख किया गया है।

अब जहाँ तक प्रांग 56 का मतलब है 56 की परिभाषा में स्पष्ट शब्दों में कहा गया है कि प्रांग या प्रावधान है इन अधिनियमों के उन के विरोध में कोई काम नहीं किया जायगा। अब प्रांग 29 है 30 है, 31 है, इनके रखे हुए प्रांग 44 में यह अब पैसा निकाल सकते हैं? 27 और 31 इन प्रांगों के रखे हुए 56 प्रांग का कभी यह भाव्य नहीं हो सकता है कि राष्ट्रपति को सचिव लिखित में 5 करोड़ रुपये निकालने का इस के तहत अधिकार मिलना है। यह तो भाव्य नहीं है, यह संविधान की विडम्बना है। इसलिए अध्यक्ष महोदय, इस के ऊपर आप को ही निर्णय देना है और इसलिए मैं आप के हा निर्णय चाहता हूँ कि क्या गोखले माहल का यह बकाया आप को मनोपजनक लगता है? अगर नहीं लगता है तो आप को यह कहना चाहिए कि यह बकाया लचर में रखने की इजाजत नहीं मिलेगी। इन्होंने जो काम किया है वह चलन किया है। अब यह मतलब उठाया गया कि धाने क्या किया जाय। तो धाने नहीं किया जाय कि इस के पास अधिकार है। यह जो पैसा कौनों और अलैगैन्सिक काम है इस के बारे में संविधान में कुछ परिशर्त कर के इस को रेगुलर करने का काम हो सकता है बसकि यह यह साम्बानन में कि अधिक में इस तरह की बचती वह नहीं करेगी। नहीं तो मुझे लगता है कि ऐसा संवैधानिक लजोशन भी नहीं पास करले की इजाजत नहीं मिली देना।

SHRI SHYAMNANDAN MISHRA (Bogusra): Sir, my submission is, that the hon. Law Minister has tried to create

an illusion that the Union Territories function in a world of their own and no financial rules and procedures, as applied to the States or the Centre, apply to them. This is indeed not fair. This indeed is not correct. This is the overwhelming impression which the hon. Law Minister has tried to create that they function in a universe of their own, and that the financial rules and procedures do not apply to the Union Territories. Now if he did not mean that, then, I take it the same rules and procedures apply to the financial administration of the union territory, as applied to the States and the Centre. That being so all those powers which belong to the Union territory's legislature are now transferred to this Parliament and those rules and procedures are also transferred to the Centre, that is to the Parliament of India. Since the relevant clauses in the Union Territories Act had not been suspended those powers come with added confirmation to the Parliament. Otherwise, if the President had thought those powers should not apply those financial rules and procedures should not apply then, the President in his wisdom, would have suspended those clauses of the Union Territories Act. Since the President did not think it fit to do so, those rules and procedures now come to us for administration and application. That being so why have those rules and procedures been waived in the present case?

Now the hon. Law Minister has tried to say that there was an un-precedented situation created in the given set of circumstances. I do concede that there was an un-precedented situation. But, to my mind the un-precedented situation called for extraordinary steps, for passing the legislation that is contemplated under the Act. We should have taken extraordinary steps for putting the Vote on Account through this House and through the other House. This is clearly demanded by the Constitution. Extraordinary step—

[Shri Shyam Nandan Mishra]

not an illegal step, but a legal step—should have been taken. He should have taken extraordinary steps by calling for the sittings of the House even on the holidays. If the Government came before us to get assent to such a measure, then we as the House of the People would have been in a position to give the assent. After securing the assent of the House of the people, the Government would have issued an Ordinance which would have had the force of a legislation. They have tried to do it through an order and the enormity of passing an order cannot be ignored by Parliament. Ordinance is a form of legislation and that this would have to be regularised later on.

MR. SPEAKER : Your previous arguments have been negated by this new suggestion.

SHRI SHYAMNANDAN MISHRA : No Sir.

MR. SPEAKER : This is what happened in Orissa. The ordinance had to be withdrawn.

SHRI SHYAMNANDAN MISHRA : After the assent of the House, I say. As I said yesterday, it is the House of the People and not Parliament which is mentioned in article 357(c).

If it is granted that the same rules and procedures apply to the Union Territories also, Parliament would bring to bear the relevant article of the Constitution.

It would not be right to submit that the Parliament in exercising its functions under the Union Territories Act would be freeing itself from the fundamental constraints imposed by the Constitution. Do you think that Parliament, which has to protect and defend the Constitution and also to apply

the Constitution to various aspects of the administration will go outside the scope of the Constitution? Parliament has a dual role which is not extinguished since the minister says that it is only the Union Territories Act which will govern the Parliament in administering the Union Territory. Parliament will function under the fundamental constraints of the Constitution. Parliament cannot divert itself from them. So, the Law Minister in urging before the House that an unprecedented situation had arisen and therefore an illegal act had to be resorted to has not been fair to the House. There could have been a legal act for the same purpose. The legal act was that the assent of the House of the People could have been taken and then an ordinance issued. I concede that this is not wholly desirable. If the vote on account requires to be passed that would require the approval of both the Houses. Since the other House was not in session, I suggested this half-way measure—that the assent of this House taken even on a holiday and then an ordinance could have been issued, which at least is a form of legislation. But the order is not legal, it is something arbitrary. It does not require to be passed again by the House. But the ordinance would require to be passed by the House later. So, there was a proper step indicated in this matter which they did not take. But my further submission to the Chair would be, if the Chair was indulgent enough to the hon. Law Minister yesterday to give one day's time the Chair should be indulgent enough to us also to give further time to consider this matter, so that we can come forward with some constructive proposals to find a way out of the *cat-ar-se* in which we find ourselves.

SHRI H.N. MUKERJEE (Calcutta—North East) : Could I very shortly suggest

that since Government avoidably or unavoidably, concede that they have disregarded Parliament to the extent of not having come before us on the 29th, Government should submit it with an appropriate word of apology to this House, and then meetings could be held, not necessarily in this House but in some other forum, to find a way out of this imbroglio. That could be done very easily with some handsome word or whatever you call it.

SHRI H.R. GOKHALE : Everyone of these arguments was made yesterday and I do not see any single new point, and everyone of them I have dealt with in my opening speech. I would like to mention only two things now.

A reference was made that I, as it were, gave the impression that so far as the Union Territories are concerned, they are not to be governed by a procedure which applies to financial matters. I did not say anything like that. How can any such impression arise? All that I clearly said was that the powers of the Assembly of the Union Territory are not to be exercised by Parliament, when the Parliament functions as an Assembly and follow the same procedure which the Assembly follows, and that procedure is elaborately given in the Union Territories Act, which I concede will have to be followed by Parliament before the Financial Bill is passed.

I am not dealing with the whole ground again. I am dealing with only one or two points.

SHRI SHYAMNANDAN MISHRA : Sir, you would be pleased to recall that the hon. Law Minister has said that article 239 gives powers which may be inconsistent with the provisions of the Act, may be inconsistent with the Constitution itself. He did say that while interpreting article 239. Therefore, he was trying to point out that

article 368 would not apply. But the Article 368 relates only to the procedure for the amendment of the Constitution.

SHRI BHOGENDRA JHA (Jainagar) : After hearing the Law Minister one gets the impression that in spite of all the labour that he has made, he has actually no case to defend but he lacks the courage to admit the mistake. There is no party question here. This is a clear cut case of disregarding Parliament. If we accept this position, then it would be a bad precedent for the future. So, I would request you, Sir, not to allow the Government to lay the papers on the Table. It would be better for the Government to have the courage to admit the mistake.

MR. SPEAKER : After listening to the points raised yesterday and after listening to the reply given by the Law Minister, my view is that the financial procedures and money grants are purely within the jurisdiction of this Parliament. The Law Minister, after saying everything in defence of the action of the Government, said very appropriately at the end of his speech that if he is not correct in any way, he is in the hands of Parliament.

14 hrs.

Secondly, I am not going to allow this order to be laid on the Table of the House at present. As suggested by Shri Sezhiyan, Shri Shyamnandan Mishra, Prof. Mukerjee and some other friends, we have to find a way-out, if there was some lapse or some omission, we shall have to find a remedy. I think, it is better that the Law Minister and the Finance Minister join us at our meeting which I may call . . . . .

SHRI S.M. BANERJEE (Kanpur) : what about calling the Attorney-General ?

MR. SPEAKER : Whatever be the lapses, we must find a way-out. After all,

[Mr. Speaker.]

Pondicherry is in India. On broader considerations, I will call a meeting of the leaders of parties in which the Finance Minister and Law Minister may participate. Do you want the meeting to be held today? Let us meet the day after tomorrow at 4.00 p.m.

SHRI S.M. BANERJEE : Tomorrow is a holiday.

MR. SPEAKER : The holidays have played havoc on him. If there were no holidays, there would have been no difficulty.

Now we pass on to the next business.

#### **Re PROPOSED STRIKE BY GENERAL INSURANCE EMPLOYEES**

SHRI S. M. BANERJEE: (Kanpur): Sir, I want your permission to make a submission.

MR. SPEAKER : Kindly give something in writing.

SHRI S. M. BANERJEE : This is about the proposed strike by the General Insurance Employees; they are going on strike from 8th April, 1974.

The General Insurance employees are agitated over the attitude of the Government who have not accepted the agreement reached between the All India General Insurance Employees' Association and the Corporation. You had allowed a question here, Sir, where the Finance Minister replied that negotiations were going on. I am told today that the negotiations have failed because of the rigid attitude of the Finance Ministry. The General Insurance Employees' Association have given a call and have also written a letter to the Finance Minister that, if no negotiated settlement is reached, they would be at liberty to go

on strike from the 8th April, 1974. This is purely a Central matter. The Finance Minister and the Deputy Minister are here. I am surprised that an agreement reached with the Corporation is not being accepted by the Finance Ministry. I would request you to ask the Finance Minister to make a statement on the 5th April, to avoid the impending strike. If the strike takes place, they will be solely responsible for that. On behalf of the Association, I request you, Sir, to ask the Finance Minister to make a statement. Otherwise, there will be an all India strike.

14.04 hrs.

#### **DISCUSSION RE : PROCUREMENT AND PRICING POLICY OF WHEAT FOR 1974-75 SEASON**

MR. SPEAKER : There is a motion by Shri B.V. Naik and Shri Madhu Limaye to raise a discussion on the statement made by the Minister of agriculture in the House on the 28th March, 1974, regarding the procurement and pricing policy of wheat for the 1974-75 season. The time allotted is five hours.

Shri B.V. Naik.

SHRI B.V. NAIK (Kanara) : The pricing policy for wheat and also the policy in regard to procurement which the Hon. Minister for Food and Agriculture has laid on the Table, after a considerable amount of experience which he has gained in the course of the last many years, while in brief it can be described as a sort of a realistic step may also be considered as a sort of a compromise with the realities that have been prevailing in this sub-continent.

And one of the hardest realities is the violence, the violent in the sub-continent which has erupted right from Gujarat to Maharashtra and many urban centres in the country.