

SHRI H. M. PATEL (Dhandhuka):
 In each High Court.

SHRI VASANT SATHE: Imagine this delay of 10, 15, 20 years. You are also a lawyer. You know that in civil matters if the litigant dies, you have to bring on record his heirs, legal representatives. If the LR dies, the LR's LR has to be brought on record. Is this law or mockery? Civil matters get decided only at the time of the grandson though the fight may have started in the grandfather's period. We have had this luxury during those times of the British rule because they were more interested in creating the impression that British justice is so blind that it weighs on a blind scale. It does not matter how long it takes. The law and procedure of the courts must run its due course. That was all right then, but not now.

SHRI SOMNATH CHATTERJEE:
 You have imposed court fees.

SHRI VASANT SATHE: When you want justice for the people, what is the spirit in which you must proceed? We do not seem to be aware of it even now. Our senses have got deadened. Justice delayed for 10, 15 and 20 years does not seem to stir us at all. At least in this field, let there be a fresh thinking; let everything be done to have more judges, more courts and let them be spread out. And let us have also, as I said yesterday, people's courts so that many of the cases could be dealt with there. Divert the Supreme Court and the High Courts of some of the powers. Do that and lessen their burden. Why don't you do something at least as far as the *vires* is concerned? Two or three or five judges. . .

13 hrs.

MR SPEAKER: It is one O'clock

SHRI VASANT SATHE: I am concluding in one or two minutes .or

fore let the decision about *vires* not decide the spirit in which a law was made by the representatives of the people. 500 representatives of the people? Therefore let the decision about *vires* not be left to them. That means that much of the burden of the High Court and the Supreme Court will be reduced

SHRI H.M. PATEL: You need 500 judges to decide?

SHRI VASANT SATHE: Therefore it should be the Parliament which should be the final authority to decide about the *vires*.

MR. SPEAKER: DR SEYID MUHAMMAD. He may continue after lunch.

13.02 hrs.

The Lok Sabha adjourned for lunch till Fourteen of the Clock.

The Lok Sabha re-assembled after Lunch at Fourteen of the Clock.

[MR. DEPUTY-SPEAKER in the Chair]

HIGH COURT AT PATNA (ESTABLISHMENT OF A PERMANENT BENCH AT RANCHI) BILL—Contd

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DR. V. A. SEYID-MUHAMMAD): Mr. Deputy-Speaker, Sir, I am grateful to those hon. Members who participated in the discussion and debate. Except for the dissent of Mr. Daga, there was unanimous support for the Bill and I am grateful for the same. Certain apprehensions and misapprehensions have been expressed regarding the way the Government is going about in establishing Benches and not establishing Benches of the High Court on various grounds. I shall state that the main consideration for the Government in this matter is based on the report of the Law Commission and also Justice Shah's report on the arrears in

[Dr. V. A. Seyid Muhammad]

High Courts. Mr. Daga was kind enough to read at length the reasons given by the Law Commission in its report and he also made other comments. Some of them are very sound in this regard. The basic principle which the Government has accepted after taking into consideration the weighty arguments and recommendations of the Law Commission and the Justice Shah's report, is that by and large the Government is against establishing multiplicity of Benches in the same State. But that is not a very rigid principle. As and when circumstances and conditions exist, and they justify the establishment of two Benches in the same State it will be done and it has been done before. Not only at Lucknow and Allahabad but in Nagpur also we have a Bench. In Madhya Pradesh there are two Benches. The first consideration is, the establishment of a Bench must be held to serve the ends of justice where it is found that by establishing a Bench justice can be attained more effectively, in addition to other circumstances like backwardness of the areas, volume of litigation and other local conditions, the principle that not more than one Bench should be established in one State is relaxed. It is not done simply because there is some pressure or demand from certain areas. As the debate has shown, if we relax the principle too many demands for Benches in many other States and even districts will be coming. Trivandrum, Pondicherry and various other places have been mentioned as deserving to have Benches. So far as Assam is concerned, if one can establish that the conditions there justify the establishment of another Bench, Government will not be reluctant to consider it.

SHRI SOMNATH CHATTERJEE : Is the Government not aware of the conditions there ? One Bench is serving the needs of 5 States and it consists of 5 judges. Why do you preface it by if?

DR. V. A. SEYID MUHAMMAD : These facts are well known to the government. We will certainly examine whether the sum total of the conditions justify the establishment of another Bench in that State.

Allegations have been made that the subordinate judiciary is being neglected. It is not correct. A committee has been examining this matter and recommendations have been made. Whatever the Centre can do, using the good offices with the States, we certainly propose to do that. It is not as if we are not aware of it.

It has also been said that in a number of High Courts vacancies have been lying unfilled and because of this, the arrears have gone up. Various figures, 1 lakh, 2 lakhs etc.—were quoted. It is not correct to say that the government has not done anything in the matter. In the course of the last three years, recommendations have been made for the appointment of 100 judges. 349 judges are already there. Filling up the posts of judges is not like buying something from the market. Mr Chatterjee and other members of Bar are fully aware of the difficulties in getting a proper person to fill the post. Some are not willing to come as judges for various reasons. Some may have good practice but there may be other drawbacks disqualifying them from being considered. So, to make a sweeping statement that the government is indifferent to the problem is not correct. We are doing our best. As I had stated, in the last three years, we have created... (Interruption) About its being inadequate, it is a matter of opinion. We are trying to remove that inadequacy as far as possible; and we will do our best.

SHRI VASANT SATHE : What is the number of lawyers in the country, practising in the High Courts and the Supreme Court?

DR. V.A. SEYID MUHAMMAD : I think the figure in 1973 was 80,000. I do not know whether it is correct now.

SHRI VASANT SATHE : It will be a sad commentary if we say that 100 men cannot be selected from 80,000 lawyers.

DR. V.A. SEYID MUHAMMAD : I did not say that out of the 100 posts created, we have not found anybody; but in some places we find difficulty. As my colleague is aware and as Mr. Chatterjee is aware, there are some difficulties. I did not say that we created 100 posts and that we did not find anybody but as one of the difficulties felt, I gave the instance of the difficulty in finding proper persons. Having said that, I may say a few words about the proposed amendment to Clause 2, by Mr. Horo, I oppose the amendment. I oppose it for two reasons. This is with reference to the proviso to Clause 2. The proviso says :

"Provided that the Chief Justice of that High Court may, in his discretion, order that any case arising in any such district shall be heard at Patna"

It has been suggested that it is giving a wide elbow-space or a wide loop-hole for the High Court Judge to withdraw all cases, or the majority of the cases from the new Bench. I do not think it is the correct position.

MR. DEPUTY SPEAKER : The amendment has not been moved.

DR. V.A. SEYID MUHAMMAD : What he wants from the proviso, and what he intends to say is that it is the experience of the Members and particularly Members who are lawyers, that situations may arise where, by reason of the technicality and complexity or speciality of the law, any one of the three judges or 4 judges...

MR. DEPUTY SPEAKER : Why don't you wait until he moves this amendment, when you can reply to it ?

DR. V.A. SEYID MUHAMMAD : I thought it was moved. I don't know.

Then I will reserve it.

MR. DEPUTY SPEAKER : It can be moved only when we take up clause-by-clause consideration.

DR. V.A. SEYID MUHAMMAD : He spoke on that point. But if you direct so, I will reply later.

MR. DEPUTY SPEAKER : You have already gone on it.

DR. V.A. SEYID MUHAMMAD : He spoke. What I spoke may be taken as either a reply to the amendment or to the speech. But if you think that it would be appropriate to reply at the time of his moving it, I will do it.

MR. DEPUTY SPEAKER : That job has been done.

DR. V.A. SEYID MUHAMMAD : I will reserve it. I will abide by your Command and will reply as and when the amendment is moved. Now, having said that, I do not propose to say anything more. I think I have made the points sufficiently, and I move.

MR. DEPUTY SPEAKER : You have already moved.

DR. V.A. SEYID MUHAMMAD : move that the bill be passed.

MR. DEPUTY SPEAKER : The stage has not come yet. That stage will come a little later.

Now the question is :

"That the Bill to provide for the establishment of a permanent bench of the High Court at Patna at Ranchi, be taken into consideration."

The motion was adopted.

MR. DEPUTY-SPEAKER : We take up clause-by-clause consideration. Clause 2, Mr. Horo, are you moving that amendment?

MARCH 9, 1976

[Mr. Deputy Speaker]

I think you are moving.

Clause 2—(Establishment of a permanent bench of High Court at Patna at Ranchi)

SHRI N. E. HORO: Yes, Sir. I beg to move :

"Page 1,—

omit lines 12 to 14." (1)

MR. DEPUTY-SPEAKER: Dr. Seyid Muhammad, let us take up the amendment of Mr. Horo. Are you not accepting it? What have you got to say?

DR. V. A. SEYID MUAHMMAD: I don't accept the amendment, and what I propose to say, I will say at this stage, with your permission.

MR. DEPUTY-SPEAKER: You have already replied.

DR. V. A. SEYID MUHAMMAD: I did not reply. I started replying.

MR. DEPUTY-SPEAKER: Okay; you can reply now.

SHRI N. E. HORO: I still stick to my gun and say that this proviso is defeating and will defeat the entire purpose of the bill. What happens is that now most of the cases in the Patna High Court are coming from the area of South Bihar. There are interested parties. There are lawyers, members of the bar, who are interested that those cases arising in those districts, in Chotanagpur, should be heard at Patna. Invariably, what happens is that the Chief Justice will decide to hear those cases at Patna. The

result is that the parties to the case will suffer monetarily and otherwise. So, the entire purpose of this Bill will be defeated once you give this latitude to the Chief Justice. That is why I still, as I said, stick to the gun by moving this amendment.

DR. V. A. SEYID MUHAMMAD: I have already given one reason. In a Bench of three or four Judges, as the case may be, there may not be Judges who may be fully conversant with special laws or technicalities. In that case, the Chief Justice would think that it would be more appropriate to bear the case in Patna to meet the ends of justice.

A second situation may be that some of the Judges themselves may be interested in the case, in the sense that at some stage they might have appeared in it as advocates, or some of their relatives may be parties to the case, or there may be some personal reasons which may preclude the Judges from hearing the cases. If such a situation arises, then also the Chief Justice may think it better, in the interests of justice, to hear the case at Patna.

So, unless we have such a proviso, it would be impossible to meet such a situation. That is why this proviso is introduced.

MR. DEPUTY-SPEAKER: The question is:

"Page 1,—

omit lines 12 to 14." (1)

The Lok Sabha divided:

AYES

Gowder, Shri J. Matha
 Horo, Shri N.E.
 Mehta, Shri P. M.
 Mohanty, Shri Surendra
 Radhakrishnan, Shri S.
 *Shastri, Shri Sheopujan
 Sinha, Shri Satyendra Narayan

NOES

Agrawal, Shri Shrikrishna
 Ahirwar, Shri Nathu Ram
 Arvind Nefam, Shri
 Barman, Shri R. N.
 Barupal, Shri Panna Lal
 Basappa, Shri K
 Basumatari, Shri D.
 Bhagat, Shri H. K. L.
 Bhargava, Shri Basheshwar Nath
 Bhattacharyya, Shri Chapalendu
 Chandrakar, Shri Chandulal
 Chandrika Prasad, Shri
 Chaudhary, Shri Nitraj Singh
 Chikkalingaiah, Shri K.
 Daga, Shri M. C.
 Das, Shri Dharnidhar
 Dhamankar, Shri
 Dhillon, Dr. G. S.
 Dhusia, Shri Anant Prasad
 Doda, Shri Hiralal
 Dumada, Shri L. K.
 Ganesh, Shri K. R.
 Ganga Devi, Shrimati
 Garcha, Shri Devinder Singh
 Gautam, Shri C. D.
 George, Shri A. C.
 Gopal, Shri K.
 Gowda, Shri Pampan

Hansda, Shri Subodh
 Horo, Shri N. E.
 Kadam, Shri J. G.
 Kamakshalah, Shri D.
 Kamla, Kumari, Kumari
 Kapur, Shri Sat Pal
 Kinder Lal, Shri
 Kisku, Shri A. E.
 Kotoki, Shri Liladhar
 Kotrashetti, Shri A. K.
 Kureel, Shri B. N.
 Mahajan, Shri Vikram
 Mandal, Shri Yamuna Prasad
 Mirdha, Shri Nathu Ram
 Mishra, Shri Jagannath
 Mohan Swarup, Shri
 Mohapatra, Shri Shyam Sunder
 Munsii, Shri Priya Ranjan Das
 Nahata, Shri Amrit
 Oraon, Shri Tuna
 Painuli, Shri Paripoornanand
 Pandey, Shri Damodar
 Pandey, Shri Narsingh Narain
 Pandit, Shri S. T.
 Pant, Shri K C
 Paokai Haokip Shri
 Patil, Shri T.A.
 Peje, Shri S.L.
 Purty, Shri M. S.
 Raghu Ramaiah, Shri K.
 Rai Shrimati Sahodrabai
 Ram Singh Bhai, Shri
 Ramji Ram, Shri
 Ranabhabadur Singh, Shri
 Reddy, Shri P. Narasimha
 Reddy, Shri Sidram
 Roy, Shri Bishwanath
 Rudra Pratap Singh, Shri
 Saini, Shri Mulki Raj

*Wrongly Voted for AYES.

Samanta, Shri S. C.
Sankata Prasad, Dr.
Sathe, Shri Vasant
Saipathy, Shri Devendra
Savant, Shri Shankerrao
Savitri Shyam, Shrimati
Shahnawaz Khan, Shri
Shailani, Shri Chandra
Shambhu Nath, Shri
Shankaranand, Shri B.
Sharma, Shri A. P.
Shivnath Singh, Shri
Shukla, Shri B. R.
Shukla, Shri Vidya Charan
Sinha, Shri R. K.
Sohan Lal, Shri T.
Suryanarayana, Shri K.
Tiwary, Shri D.N.
Tulsiram, Shri V.
Yadav, Shri Karan Singh

MR. DEPUTY-SPEAKER: The result*
of the division is: Yes: 7, Noes: 87.

The motion was negatived.

DR. V. A. SEYID MUHAMMAD: I
beg to move:

Page 1, line 13,—

after "any case" insert—

"or class of cases" (2)

MR. DEPUTY-SPEAKER: He gave
the amendment today. The only thing
that he wants is to add the words "or
class of cases" after "case" in line 13
on page 1.

SHRI SOMNATH CHATTERJEE:
Why?

DR. V. A. SEYID MUHAMMAD:
The proviso to clause 2 as it stands
now reads:

"Provided that the Chief Justice
of that High Court may, in his dis-
cretion, order that any case arising
in any such district shall be heard
at Patna."

The amendment proposes to add after
the word "case", the words "or class
of cases". The Chief Justice may
think it necessary not only in a single
case, but a class of cases, for example
income-tax cases. So, he must have
the power to have them heard at the
Patna High Court, the class of cases
not only a single case.

SHRI DINEN BHATTACHARYYA:
You have allowed it to be moved to-
day

SHRI SOMNATH CHATTERJEE:
It should have been moved before
Mr. Horo's amendment. Then I would
have voted for Mr. Horo's amendment.
Why should he move it after Mr.
Horo's amendment?

MR. DEPUTY-SPEAKER: He gave
notice of it today at 12.08 and it has
been allowed by the Speaker. Because
it is an amendment which has not
been circulated, I took the trouble of
telling the House what the amendment
was, and I also allowed the hon.
Minister to move it and explain it.
Now it is for you to oppose or accept
it.

With regard to the amendment of
Mr. Horo, if that had been accepted,
this would not have arisen because that
part of the clause would not have been
there at all. Because Mr. Horo's amend-
ment has been rejected and this provi-
sion of the clause remains, it can be
amended.

*The following Members also recorded their votes;

AYES: Shri D. N. Singh;

Girdhar Gamango, and Shri S. K.

NOES: Shri Sheopujan Shastri, Shri
Rai.

SHRI SOMNATH CHATTERJEE:
 If Mr. Horo's amendment had been taken up later on, we could have decided whether we would agree to the transfer of one case or a class of cases. Now it becomes different. The Minister's amendment should have come first. Now, on principle, the whole scheme has been changed and he is doing it without prior notice. We do not know whether there was any such amendment before Mr. Horo's amendment was voted for.

MR. DEPUTY-SPEAKER: If you want to oppose it, you can do so.

(Interruptions)

SHRI SOMNATH CHATTERJEE:
 I am raising a question of procedure. Mr. Horo's amendment would have deleted the entire clause. But, we did not know because it provides only 'any case.' Now, it is a question of all clauses. Now, the Minister says that a particular type of cases may be transferred together.

(Interruptions)

MR. DEPUTY-SPEAKER: You are known for persuasiveness and for logic.

(Interruptions)

SHRI SOMNATH CHATTERJEE:
 I find that logic and procedure has been thrown to the wind. This Government does not believe in any procedure.

MR. DEPUTY-SPEAKER: You are a new person today. Now, with regard to procedural irregularity I do not see any irregularity at all. First, this amendment comes second and secondly, if Mr. Horo's amendment had been accepted, this proviso would not have formed part of the Bill at all; and because Mr. Horo's amendment was rejected, the proviso stands part of the Bill, is still part of the Bill and because it is a part of the Bill speci-

can be amended. How can you amend something which does not exist?

(Interruptions)

MR. DEPUTY-SPEAKER: The question is:

"Page 1, line 13,—
 after 'any case'

insert—

'or class of cases'"

The motion was adopted.

(Interruptions)

MR. DEPUTY-SPEAKER: The question is:

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill

MR. DEPUTY-SPEAKER: I was feeling sleepy all the time. I thank Mr. Chatterjee for putting a little energy in me and I wake up to my work.

MR. DEPUTY-SPEAKER: The question is:

"that clause 1, the Enacting Formula and the Title stand part of the Bill."

The motion was adopted.

Clause 1, the Enacting Formula and the Title were added to the Bill.

DR. V. A. SEYID MUHAMMAD: I beg to move:

"That the Bill, as amended, be passed."

MR. DEPUTY-SPEAKER: The question is:

"That the Bill as amended, be passed."

The motion was adopted.