

₹5-47 lacs.

**COMPANIES (AMENDMENT) BILL
(OMISSION OF SECTION 90)—Contd.**

MR. DEPUTY-SPEAKER : We take up further consideration of the following motion moved by Shri Madhu Limaye on the 21st March 1975 :

"That the Bill further to amend the Companies Act, 1956, be taken into consideration".

Shri Madhu Limaye may continue his speech.

(SHRI DINESH CHANDRA GOSWAMI IN THE CHAIR).

श्री मधु लिमये (बांका) : इस विधेयक का उद्देश्य है कि 1956 का जो कम्पनी कानून है उसकी दफा 90 को हटा दिया जाए। यह विधेयक मुझे इसलिए रखना पड़ा क्योंकि संवधान 90 का दुरुपयोग करके सरकार ने राजनीतिक और दलीय कारणों से प्रेरित होकर कापड़िया ग्रुप के हाथ में नेशनल रेओन कारपोरेशन को दे दिया। नेशनल रेओन कारपोरेशन 1956 के पहले की कम्पनी है और दफा 90 के अनुसार इस कम्पनी के जो प्रेफरेंस शेयरहोल्डर हैं उनको मतदान का अधिकार मिल जाता है। लेकिन 1956 के कम्पनी कानून की यह मंशा थी कि चूंकि प्रेफरेंस शेयरहोल्डर कोई जोखिम नहीं उठाते, प्रेफरेंस शेयर्स पर उनको जो रिटर्न है वह तो बराबर मिलता रहता है लेकिन जिन लोगों ने साधारण शेयर खरीदे हैं अगर कम्पनी घाट में चली जाती है तो उनको कोई डिविडेंड नहीं मिलता और इसीलिए कम्पनी कानून है कुछ पुरानी कम्पनियों का अपवाद किया गया था और कहा गया था कि उन कम्पनियों में प्रेफरेंस शेयरहोल्डरों को वोट का अधिकार रहेगा और जिनको नई कम्पनियां बनेंगी उन में प्रेफरेंस शेयरहोल्डर्स को वोटिंग का अधिकार नहीं होगा। इसके पीछे जो सिद्धान्त है उसके ऊपर स्वयं कम्पनी ला बोर्ड ने नेशनल रेओन कारपोरेशन के बारे में अपना फैसला देते हुए कहा है :

"On the question of the right of the majority shareholders to manage

the affairs of the company through their chosen directors, the Company Law Board pointed out to the Counsel appearing for the intervenors that the Kapadia are not the majority whose voice deserves predominance in the conduct of the management of the company".

"In this context it was noted by the Company Law Board that the so-called majority claim by Kapadia Group was because of the historic chance of voting rights being allowed in this company to preference shareholders and not because the Kapadia Group has majority of equity holding. From the breakup of the equity holding of the company as on 11 May 1973, the date of the annual general meeting, it was noted that out of 3,99,985 ordinary shares the Kapadia family owned only 146 shares..."

Out of four lakh shares, only 146 shares.

"...Even taking into account the holdings of Messrs. B. B. Petroleum Company and Maganlal Chaganlal Private Company, they controlled only 3263 shares, which was even less than one per cent of the total equity share capital of the company. The basic democratic principle underlying the Companies Act is that the right to manage a company vests in the equity shareholders and not in the preference shareholders. It is because of this basic concept that it has been provided in section 87 of the Act that preference shareholders could exercise voting rights only in very limited situations. Preference shareholders undertake no risk unlike equity shareholders and that is why preference shareholders have no voice in the election of directors."

यह मैंने लम्बा उद्धरण इसलिये दिया कि बारबार कानून मंत्रालय ने इस सदन की आज्ञासन दिया था, मेरे द्वारा यह प्रश्न उठाये जाने पर कि प्रेफरेंस शेयर होल्डर्स को नेशनल रेओन कारपोरेशन और दूसरी इन्वैस्टिगिनी कंपनियों में जो वोट का अधिकार है उसको हम समाप्त करेंगे। मेरे सुझाव को तो आपने माना, लेकिन नेशनल रेओन कारपोरेशन के बारे में आपने जो निर्णय बिगत संसद

[श्री मधु सिन्घे]

किया है, सदन को जो आपने आश्वासनादिया था, वह उसका बिल्कुल उल्लंघन है। क्योंकि कापडिया के बारे में कंपनी ला बोर्ड ने इस तरह अपनी राय व्यक्त की थी—

“It is apparent therefore that the Kapadia Group did indulge in unhealthy practices with the avowed object of acquiring controlling voting power to dislodge the present management. The means employed by them were of a speculative character. Their interest in the large block of shares acquired in the name of benamidars, brokers and financiers is to secure proxies while their nominees also have no genuine interest in those shares. The background and antecedents of the Kapadia group and the way they set about securing voting power in the National Rayon Corporation are not such as to inspire the fullest confidence in their own competence to manage the affairs of the National Rayon Corporation in the best interests of the company and its shareholders and there is room for doubt whether the interest of the company would be their primary consideration if they secure full management control.”

मामला बम्बई हाई कोर्ट में भी गया था। जस्टिस रेने ने अपने फैसले में कहा था कि यह वह जो कापडिया ग्रुप है, ये डाउटफुल एंटी-सीडेट्स वाले ग्रुप के लोग हैं, उनलिये इस कंपनी का नियंत्रण उनके हाथ में नहीं जाना चाहिये। तो कंपनी ला बोर्ड वा यह फैसला हुआ, हाई कोर्ट का यह फैसला हुआ, और हम लोगों के आग्रह पर आपने सरकारो डायरेक्टर्स नियुक्त किये। लेकिन मैं जानना चाहता हूँ कि विगत साल कौनसो ऐसी बात हुई कि हम लोगों के कहने के बावजूद, आप कौमो ने कापडिया के हाथ में नेशनल रेयन कार्पोरेशन को दिया? कंपनी ला बोर्ड और हाई कोर्ट के निर्णय के बाद इस सदन को आपने अभिबचन दिया कि प्रेफरेंस शेयर होम्बर्ग. वाला जो संस्थान है, उसको हम नियंत्रण दे रहे हैं। मैं जानना चाहता हूँ कि

कापडिया ग्रुप को नेशनल रेयन कार्पोरेशन का नियंत्रण आपने क्यों दिया?

मेरी जानकारी के अनुसार कापडिया ग्रुप ने इनके चुनाव लड़ने के लिये 30 लाख रुपये दिये। कुछ बोगी का तो कहना है कि और ज्यादा दिये। एक तो मेरा आरोप यह है।

कंपनी कानून मंत्रालय पर दूसरा मेरा आरोप यह है कि चूँकि कापडिया ग्रुप की कंपनी ने मारुति लिमिटेड में शेयर खरीदे हैं और इसके लिये कंपनी कानून का उल्लंघन भी किया था। 10 परसेंट से अधिक शेयर नहीं लेने चाहिये—यह नियम था। इस नियम का उल्लंघन किया गया और बाद में इसके ऊपर चादर बिछाने के लिये आपने और इक्विटी शेयर इश्यू करने के लिये मारुति को छूट दी। यह नये शेयर इश्यू करने के बाद जो 10 परसेंट का कानून टूटा, उसे आपने नियमित बना दिया, उसे रेगुलराइज कर दिया।

दो आरोप हैं कि इस बिल्कुल सभा। ट्रोहिंग्ट के हाथ में आपने उतनी बड़ा कंपनी दी, उनमें चुनाव के लिये 30 लाख रुपये लिये और चूँकि इनके ग्रुप की कंपनी ने मारुति में पैसा लगाया है इनलिये आप उनका संरक्षण दे रहे हैं।

यह कापडिया ग्रुप कैसा है, उसके बारे में कंपनी ला बोर्ड ने क्या कहा है, अगर मैं यह सब पढ़ने लगू तो इसमें बहुत समय लग जायेगा। लेकिन मैं आपसे कहना चाहता हूँ कि उसने कम-से-कम 9 उदाहरण दिये हैं कि कापडियाज ने कौसी इर्रेगुलैरिटीज की हैं। कंपनी ला बोर्ड ने 9 इर्रेगुलैरिटीज का जिक्र किया है लेकिन फिर भी आप उन पर मेहरबान हैं, आखिर क्यों?

यह जो कापडिया ग्रुप है, इसके हाथ में कुछ टैक्सटाइल इंडस्ट्री का भी हिस्सा है, कोहिनूर आदि मिल है। आप जानते हैं, टैक्सटाइल इंडस्ट्री के बारे में सरकार ने कानून बनाया था कि मिलों को अपने उत्पादन का एक बंध कंट्रोल क्लॉथ, निर्धारित कपड़े के रूप

में निकाशना पड़ना और अगर वह नियंत्रित कंपनी नहीं पैदा करते हैं तो उन पर जुर्माना लग किया गया था।

अब नये विधेयक के अनुसार और नये नियम के अनुसार तो आपने जुर्माना बढ़ा दिया है। लेकिन पुराने जुर्माने के बारे में क्या स्थिति है? एक लेख में से एक हिस्सा मैं पढ़कर सुनाता हूँ:—

"It is interesting to know that the Kapadia group of mills are the worst defaulters in this regard. Not only they do not produce their requisite percentage of controlled cloth, but they also default in the payment of fines imposed on them for this default."

एक माननीय सदस्य: रिपोर्ट किस का है?

श्री मधु लिनये: यह एक लेख है, सत्य है, सरकारी आंकड़ों के आधार पर लेख लिखा गया है।

"Over 50 percent of the arrears of unpaid fine stands in the name of the Kapadias."

यह जो समाज और राष्ट्र के हित के खिलाफ काम करने वाली कंपनी है, इनको आप क्यों मदद करते हैं? नेशनल रेयन कार्पोरेशन में आई० सी० आई० सी० आई०, यूनिट ट्रस्ट आफ इंडिया आदि जो पब्लिक फाइनेशियल इंस्टीट्यूट्स के बड़े पैमाने पर हिस्से हैं, शेयर होल्डिंग हैं और इन दोनों संस्थाओं ने कहा था कि कार्पाइया ग्रुप के हाथ में नेशनल रेयन कार्पोरेशन का नियंत्रण नहीं जाना चाहिये। मेरे पास इनके द्वारा लिख गये पत्रों की नकल है।

लेकिन एक और पब्लिक फाइनेशियल इंस्टीट्यूट्स लाज (अर्गुमेंट) बिल, जो आज एक संयुक्त समिति के सामने विचारार्थी है, उसमें हम लोग चर्चा कर रहे हैं कि इंडस्ट्रियल डेवलपमेंट बैंक आफ इंडिया का पुनर्गठन कर के उसको कारगर ढंग से कैसे बनाया जाय, और सरकारी संस्थाओं के जो हिस्से विभिन्न कंपनियों में हैं और उन विभिन्न

फायनेशियल इंस्टीट्यूट्स की और से कंपनियों के नामोनिश डायरेक्टर बने हैं, उनको कैसे काम करना चाहिये, उसके बारे में कुछ मार्ग-दर्शक सिद्धान्त तय किये गये हैं।

ये गाइडलाइन्स हम लोगों की कमेटी में मिली थीं। मेरे पास पहले से उसकी कापी थी। उसमें कहा गया है कि नामिनी डायरेक्टर्स का यह कर्तव्य होगा कि कम्पनी में जो गलत काम, मैलप्रैक्टिसज होते हैं, वे उन पर रोक लगाये। उनको यह जिम्मेदारी भी दी गई है कि कम्पनी के कारोबार, कम्पनी के मैनेज-मेंट के क्रिया-कलापों, के बारे में वे सारी जानकारी हासिल कर सकते हैं, और उनको वह जानकारी हासिल करना चाहिए।

16 hrs

इन नामिनी डायरेक्टर्स के लिए चैंक पायंट्स के रूप में एक सूची दी गई है। जब कभी किसी कम्पनी का विस्तार होता है, उसमें नई मशीनरी लगाई जाती है या फारेन कोलेबो-रेशन का एग्रीमेंट होता है, तो उस समय नामिनी डायरेक्टर्स को यह जिम्मेदारी होती है कि वे ठीक तरह से देखें कि सारा काम सार्वजनिक हितों को मटे-नजर रखते हुए किया जा रहा है या नहीं।

आगे चल कर इन गाइडलाइन्स में यह भी कहा गया है कि अगर मैनेजमेंट ने, बोर्ड आफ डायरेक्टर्स ने, कम्पनी कानून के तहत कोई अपराध किया है, और अगर नामिनी डायरेक्टर्स ने उठ कर उस का विरोध नहीं किया है, उसके बारे में सरकार को रिपोर्ट नहीं की है, तो उन नामिनी डायरेक्टर्स के खिलाफ भी कार्र-वाही हो सकती है।

ये सारे मार्ग-दर्शक सिद्धान्त आपने तब किये, लेकिन जब यूनिट ट्रस्ट आफ इंडिया और आई० सी० आई० सी० आई० आदि संस्थाओं आपसे कहती हैं कि इन लोगों के हाथ में नेशनल रेयन कार्पोरेशन और इस कम्पनी का नियंत्रण न जाने दोषिए, तो आप नहीं सुनते हैं। आप कारण यह देते हैं कि यह कम्पनी-ला बोर्ड को रिपोर्ट है, और कम्पनी ला बोर्ड

[श्री मधु तिलक]

क्या स्थापन संस्था है। इन संस्थाओं की क्या स्वायत्तता है, यह मैं जानता हूँ। गोखले साहब की आदिवा निकलता है, वह इशारा करते हैं कि ऐसा निर्णय दीजिए, और कम्पनी ला बोर्ड वाले अपना निर्णय बदलने के लिए तैयार हो जाते हैं।

जब कार्पाइया के हाथ में कम्पनी का नियंत्रण चला गया, तो हमको बताया गया कि जो लेजिटिमेट मनेजमेंट है, अगर उसके हाथ में कम्पनी का संचालन चला गया है, तो उसमें मत क्या है। तो फिर कम्पनी ला बोर्ड क्या कर रहा है? उसको पता है कि यह लेजिटिमेट मनेजमेंट नहीं है, यह लेजिटिमेट कंट्रोल नहीं है, क्योंकि उनका ईक्विटी में एक परसेंट भी हिस्सा नहीं है। ऐसी हालत में येरी समझ में नहीं आता है कि सरकार ने ये-वारे निर्णय कैसे किये।

और बातें मैं मंत्री महोदय का जवाब सुन कर कहूंगा। इस समय मैं केवल इतना ही कहना चाहता हूँ कि वह तत्काल कम्पनी कानून के तहत कार्यवाही करें, और यह जो कार्पाइया गूट इस देश को, और देश को अर्थ-व्यवस्था को, चौपट करने का काम कर रहा है, उस पर रोक लगाये।

यह कार्पाइया ग्रुप कहां से हो गया? इन लोगों के हाथ में क्लिक निक्सन ग्रुप को कम्पनी कैसे आई? इस बारे में कोई जांच नहीं की गई है। जब वर्तमान राष्ट्रपति, श्री फल्लूचौन उसी अहमद, उद्योग मंत्री थे—यह 1968 की बात है—तो इस कार्पाइया ग्रुप के खिलाफ मैंने एक मेमोरेण्डम दिया था। उसमें मैंने कहा था कि ड्रम और सैरलूब के लिए इस कम्पनी को स्टोल का क्वीटा दिया गया, हस्टील का क्वीटा बेच कर उन्होंने पूंजी इकट्ठी की। बाद में उन्होंने बी० बी० पेट्रोसियम कम्पनी पर कब्जा किया, और इस कम्पनी के रिजर्व का हस्तांतरण कर के क्लिक निक्सन ग्रुप की कम्पनी को अपने कब्जे में ले लिया। फिर क्लिक निक्सन ग्रुप और कोहेनूर मिल का

पैसा ले कर वे सोम नैशनल रेयन कार्पोरेशन पर स्पेशलिसन, सर्ट, के आधार पर कब्जा करने लगे।

लेकिन ये जितने भी अभियोग लगाये गये हैं आपने उनमें से एक भी जांच नहीं की। केवल इसलिए कि आपकी हिम्मत ही नहीं है। जब प्रधान मंत्री के बेटे की कम्पनी में इन के शेयर लगे हुए हैं, तो आपकी क्या हिम्मत होगी?

आपने सदन को यह अभिवचन दिया था कि हम प्रिफरेंस शेयरहोल्डर्स के वोट के अधिकार को समाप्त करने जा रहे हैं। आपने इस मुद्दा को कुबूल भी किया, और उस पर अमल करने की बात भी सोची। लेकिन इस बीच मैं आप ने नेशनल रेयन कार्पोरेशन का नियंत्रण और संचालन इन लोगों के हाथों में देकर बहुत घलत काम किया है। इसको छिन लेना चाहिए, क्योंकि कम्पनी ला बोर्ड की यह निश्चित राय है कि नेशनल रेयन कार्पोरेशन में जो माल पैदा होता है, उसको ये ब्लॉक में बेचते हैं, और अगर प्रकलर के विस्तार के लिए किसी को कंट्रेक्ट देने की बात होती है, तो टेंडर नहीं मंगाने हैं, और टेंडर मंगाने के बाद, जिन्होंने टेंडर भरा नहीं, उनको कंट्रेक्ट देते हैं, और उस पर कमीशन लेते हैं। वहां उद्योग के लिए जो रा मेटोरियल पैदा होता है, वह ब्लॉक में बेचा जाता है, प्रोमियम पर बेचा जाता है। सरकार के करों को भी चोरी होती है। उरकारो खजाने में जो पैसा आना चाहिए, वह नहीं आता है। लेकिन यह बड़े अकसोउ की बात है कि आप चुप-चाप सब देख रहे हैं।

इस कार्पोरेशन को बचाने के लिए आप ठोस कार्यवाही कीजिए और इस प्रदन को आश्वस्त कीजिए कि इस संस्था को हटाने के पीछे जो संशा थी, आप उसी के अनुसार सारा काम करेंगे, और उसके खिलाफ काम नहीं करेंगे।

SHRI SOMNATH CHATTERJEE
(Burdwan) : Mr. Chairman, Sir
this is a very short bill, with a very

object. If we see the Statement of Object and Reasons—Mr. Limaye has said that as far as pre-1956 companies were concerned, the Companies Act 1956, by Section 90, has saved the rights of preference shareholders and put them on par with the rights of equity shareholders. This is an absolute provision and is doing a lot of harm. Sir, my friend is right, that prior to the very recent amendment of the Companies Act, the pre-1956 preference shareholders were free from the restriction of Sections 87 of the Companies Act which had provided for different types of voting rights with regard to preference shareholders and equity shareholders; but, Sir, in 1973-74, we have passed a bill by which necessary changes have been enacted. I believe Limaye Ji has seen that. Sub-section (3) of Section 70 has now brought it into the same position, so far as the pre-1956 shares are concerned. Therefore, one of the main objects of the bill has been fulfilled. No doubt about that; but I am sure Mr. Limaye does not wish to press it so far as sub-section (d) of old Section 90 is concerned, because he has not either said anything about it. But Section 80 also includes private limited companies which are, I believe, not intended to be brought within the scope of this amendment bill. But, Sir, I very strongly support Mr. Limaye on what he has said about the general functioning of the Company Law Board and of Central Government, so far as the Ministry of Company Affairs is concerned. Sir, the last amendment bill, you will remember, had brought about various changes so far as the jurisdiction of the court is concerned. In very important matters, in spite of opposition, the court's jurisdiction has been taken away and now that power has been vested in the Company Law Board. For that purpose, the new amendment bill had provided for increasing the strength of the membership of the Company Law Board. And it is surprising—unless I am wrong, for which I may be corrected—that there have been no new appointments in the Company Law Board and the old band is still there; although it was given to us to understand that persons with a judicial background, at least a legal background, or persons who have held judicial posts or of that stature, would be appointed in the Company Law Board, so that the Company Law Board might apply a judicial approach in dealing with very important matters which will now come before them, this jurisdiction having been taken away from

the High Court. But nothing has been done. For months, this Government cannot appoint members of the Company Law Board. The court's jurisdiction has been taken away in regard to Section 70; the court's jurisdiction has been taken away in so many matters. Now you do not have the time even to appoint the new members to the Company Law Board. I do not know when this will be done. Sir, so far as these preference shareholders are concerned, in view of the fact that they have been conferred certain additional rights by the Act itself, this should not have been misused. Now, how this misuse is to be stopped? Who is to supervise that these companies are functioning properly? It is completely and has almost become, a moribund organization; and I agree with Mr. Limaye that with so many nods and head-shakings in important quarters, the Company Law Board decides matters. When public money is involved in public companies—by public companies I mean the public companies within the meaning of the Act—if public interest has to be protected, then the powers of the Company Law Board and the Central Government should be utilized properly.

So far as the functioning of the National Rayon, which Shri Madhu Limaye has referred to, is concerned, I cannot but very strongly support him, so that Government may institute a proper enquiry. Although these misdeeds have been referred to on the floor of the House from time to time, brought to the notice of the Government, the Government seems oblivious. I believe this is not the only occasion when a company, in spite of its misdeeds, escapes the provisions of the Companies Act and other Acts and flourishes, because of Government support obviously, which is being given as a *quid pro quo*.

I submit that the object of the Bill has been more than substantially achieved by reason of the amendment which has been passed by this House in section 90 of the Act but the underlying object of this Act should be accepted by the Government, and the Government should take up this matter very seriously and try to stop the misutilisation of the provisions of the Companies Act so that the various companies may not utilise this Act because of the apathy on the part of the Government and either complete uselessness or lack of power, on the part of the Com-

[Shri Somnath Chatterjee]

pany Law Board in dealing with such matters.

Therefore, I strongly support the object of the Bill. I would request the hon. Minister to give an assurance to this House that these malpractices would not be tolerated, would be immediately gone into, so that in future these provisions of the Act may not be misutilized.

श्री राम रत्न शर्मा (बादा): सभापति जी, श्री मधु लिमये जी ने जो बिल इन्ट्रोड्यूस किया है, वह बहुत छोटा है, लेकिन इसको इन्ट्रोड्यूस करते समय उन्होंने इसके लिये जो रीज़न्स दिये हैं, मैं उनके बारे में इस सदन का ध्यान आकर्षित करना चाहूंगा। उन्होंने कहा है कि—

"This provision is particularly being exploited by unscrupulous businessmen. The so-called house of Kapadias has sought to capture the National Rayon Corporation by exploiting section 90 although the total financial interest of the Kapadias was only 8 per cent. Because of the malpractices indulged in by the Kapadias, the Company Law Board had to intervene in the affairs of the Corporation several times. Even the Bombay High Court has had to pass strictures on the ways of the Kapadias. It is therefore necessary to do away with this evil once for all."

सभापति जी, जब कम्पनी ला का अमेण्ड-मेन्ट हो रहा था, तो एक ज्वाइन्ट सिलेक्ट कमेटी बनी थी और उस जाइन्ट सिलेक्ट कमेटी में मैं भी एक सदस्य की हैसियत से था। उस ज्वाइन्ट सिलेक्ट कमेटी की जो रिपोर्ट आई थी, उस रिपोर्ट को मैं आपके सामने रखना चाहूंगा। अगर मैं गलत नहीं हूँ तो वह रिपोर्ट श्री मधु लिमये जी के आब्जक्ट्स एण्ड रीज़न्स से बिलकुल मेल खाती है। मैं उस ज्वाइन्ट सिलेक्ट कमेटी की रिपोर्ट के पेज 10 परा 23 को कोट करना चाहता हूँ—

"New Clause 10. The Committee feel that the distinction made by the existing Act between preference shares issued by a public company before and after the commencement of the

Companies Act, 1956, should be removed and all the preference shares should be placed on the same footing so that no extra voting right is enjoyed by the preference shares which are issued before the 1st day of April 1956. Accordingly, section 90 of the principal Act has been substituted by a new section."

लेकिन जब इस रिपोर्ट के बाद नया एक सामने लाया गया तो ज्वाइन्ट सिलेक्ट कमेटी की रिपोर्ट को ध्यान में नहीं रखा गया और उसमें एक सेविंग कर दी गई—जो सब-क्लाज बो है—मैं इसको भी उद्धृत करना चाहता हूँ—

"90. Nothing in sections 85 to 89 shall,...

(b) apply to a private company, unless it is a subsidiary of a public company."

श्रीमन्, जो ईविल उस एक्ट में था, वह आज भी कायम है। इस लिये मेरा यह निवेदन है कि श्री मधु लिमये जी के संशोधन को स्वीकार किया जाय और इस बिल को यूनिमसलो पास किया जाय।

आज प्रातः ही एक तारांकित प्रश्न सं० 700 पूछा गया था, जिसे श्री जगन्नाथराव जी जोशी ने पूछा था, जिसमें 30 कम्पनियों का हवाला दिया गया है, 30 ऐसे समूहों का हवाला दिया गया है। ये कम्पनियाँ किस तरह से बढ़ती हैं उसी तरह से बढ़ती हैं जैसे श्री मधु लिमये जी ने कापडिया का हवाला दिया है। ऐसे बहुत सी कम्पनियों के समूह हैं जो इस तरह से बढ़े हैं और उनका दिग्दर्शन इस लिस्ट से हो जाता है, जिनमें टाटा से लेकर बृकबोण्ड तक का उल्लेख है। 1971 में जो उनको पोजीशन थी, 1973 में उससे इयोड़ी और दुगनी पोजीशन हो गई है, जबकि उत्पादन नहीं बढ़ा है, लेकिन उनकी सम्पत्ति बढ़ी है, आमदनी बढ़ी है। इन सब बातों को ध्यान में रखते हुए मैं सदन से अनुरोध करता हूँ कि श्री मधु लिमये जी के बिल को अवश्य स्वीकार किया जाय।

*SHRI J. MATHA GOWDER (Nilgiris) : Mr. Chairman, Sir, I rise to express my views on the Companies (Amendment) Bill of my hon. friend Shri Madhu Limaye. The objective of this Bill is that Section 90 of the Companies Act, 1956 must be deleted. This Section 90 of the Companies Act lends to much exploitation, as it gives equal rights in the matter of voting to both the Equity Share-holders and the Preference Share-holders. Taking advantage of this loophole in the legislation, the House of Kapadias has acquired National Rayons Corporation, with only 8% financial interest in the Corporation. The Company Law Board intervened on several occasions in this nefarious activity of Kapadias. The Bombay High Court passed strictures on the affairs of the House of Kapadias. This only has prompted Shri Madhu Limaye to bring forward this small piece of legislation with the laudable objective of deleting Section 90 of the Companies Act which seems to be the source of all mischief by Kapadias and others like them. The Government should have no hesitation in extending their approval to this Bill though it has come from an Opposition Member.

Sir, it is common knowledge that the private sector monopoly industrialists create artificial scarcity of essential commodities by producing only 50% of the installed capacity. They derive the maximum benefit from the rise in prices on account of this artificial scarcity. The monopoly industrialists through such devious means strengthen their stranglehold on the economy of the country. Their main concern is the personal gains; they are not bothered whether their action affects adversely the economy or not. I say this because Section 90 of the Companies Act seems to be a convenient handle for them and it helps in the growth of monopolies in the country.

As on 31st March 1974 there are 3347 companies in the private sector with an authorised capital of Rs. 510 crores. The private sector takes up industrial activities which yield them the maximum return. Out of this, as many as 2153 companies with an authorised capital of Rs. 381 crores are engaged in processing and manufacture of all kinds of commodities needed by the society. You will be surprised to know that only 89 companies with an authorised capital of Rs. 5 crores only

are engaged in agricultural industrial activities. This clearly proves my contention that the private sector is not interested in the industrial activities which do not benefit them greatly.

As the ruling Congress Party is taking to unconstitutional means to perpetuate its power, the private sector industrialists are adopting devious means taking advantage of the loopholes in the law for multiplying their wealth. As the ruling Congress Party does not hesitate to practise political tricks, the monopoly industrialists do not hesitate to play ducks and drakes with the economy of the country. In between these two the common people are being grinded. As the political life of the country is being paralysed by the ruling Congress Party, the economy of the country is being crippled by these vested interests.

From the fact that the Government on their own have not come forward to plug the loophole in the law by deleting Section 90 of the Companies Act, one can legitimately construe that the Government would not like to annoy Kapadias who have also purchased substantial shares in Maruti Ltd. If the people outside are not to get this impression, instead of just putting forth some counter-arguments to the legitimate pleas of Shri Madhu Limaye for deleting Section 90, the Government should agree to this legislative proposal. This is necessary because the Company Law Board as also the Bombay High Court have adversely commented upon Kapadias. The hon. Law Minister who was a Judge of the Bombay High Court should have no hesitation in honouring the comments of the Bombay High Court by agreeing to the deletion of this Section 90. It is not that the country's bright and prosperous future and the people's welfare are the exclusive prerogatives of the ruling Congress Party only. These are also dear to the Opposition Political Parties which are the breath of democracy. Just because this Bill has been moved by the Opposition Member, Shri Madhu Limaye, it should not be rejected by the Government.

With these words, I extend my support to this Bill.

SHRI P. G. MAVALANKAR (Ahmedabad) : Shri Madhu Limaye's Bill is obviously of a minor nature. But

*The original speech was delivered in Tamil.

[Shri P. G. Mavalankar]

it does involve some major considerations.

Much of the legal ground has already been very ably and competently covered not only by the mover.

Shri Madhu Limaye himself but also by my friends, Shri Somnath Chatterjee, Shri Sharmaji and Shri Gowder. So, I do not wish to repeat those points in detail, but I would like to ask a couple of questions, if I may, of the Law Minister. I am sorry Shri Gokhale himself is not present to listen to this debate and reply himself. But the point is that, instead of the Government themselves coming forward for deletion of this Section—Section 90—it is a strange and significant commentary on the state of affairs that one of the Opposition Members has to come forward through the agency of a Private Member's Bill to tell the Government what they should have done of their own accord. I say this because this Section 90 of the Companies Act really, lends itself to considerable misuse and if I may also say, exploitation by the so-called monopolistic interests in the country.

In the House today, in reply to Shri Atal Bihari Vajpayee and Shri Jagannathrao Joshi, Government gave information this morning about certain big houses—thirty houses or so. Now, I would ask the Government whether its intention is to see that these houses are further encouraged and perpetuated in terms of their hold on the economy or whether the idea is to see that their hold, on economy is progressively lessened if not eliminated altogether. I ask this question because I believe that Government talks in all seriousness about socialism and removal of monopolistic agencies' interference and intervention in the economy.

Now, Shri Madhu Limaye has told us in so many details how the house of Kapadias though they have only 89% preference shares yet because of this provision, namely the preference shareholders being on par with equity shareholders for the purpose of voting rights having a smaller percentage of investment can still interfere in a proportionately much larger way and in an abusing manner. Is that right? I want to ask that of the Minister because, if you want to let preference shareholders have equal voting

rights and thereby let them intervene in company affairs, it will not only distort but make nonsense of everything that should normally go into company administration. Where, then, is justice left?

Now, the Bombay High Court, as has been pointed out, has also passed stricture. But the Company Law Board makes no mention of these strictures in its Report and the Company Law Board also does not make any detailed references to its own failures in regard to the location of the guilt. The point is that, as on 31st March 1974, according to my information, there were 3947 companies in the private sector with a total authorised capital of Rs. 510 crores and, out of these, 2153 have an authorised capital of 381 crores. Will the Minister give the information to the House as to what is the percentage of preference shares held by various monopolistic interests and companies in these various private commercial companies, because, only by getting this information can the House and the country know how these fewer people, with this monopolistic hold over the economy through this agency of preference shares control, dominate, abuse and make nonsense of many of the normal happenings and functions of the companies?

Therefore, I feel that Shri Madhu Limaye's Bill ought to be supported and I hope the Government will themselves come forward, with the view of bringing up their own Bill if necessary, suggesting this deletion. If they cannot be sporting enough to accept Shri Madhu Limaye's Bill today, they can say that they accept the principle behind it, and then come forward with their own Bill. I have no specific, detailed or concrete information as Shri Madhu Limaye obviously seems to be having about some of these monopoly houses giving large sums of money to the Congress Party for political activity and for election funds. It is no use an political party saying that they are not receiving money from this or that company. It is equally not realistic of Government or the ruling party saying that they are not receiving any money. Unfortunately, the influence of money in our elections and the influence of money in our public life is such that all standards of decency, all norms of civilised behaviour in our public and political life have already been thrown over-board.

My objection, apart from the facts which Shri Madhu Limaye gave, and I suppose they are right facts, because until they are contradicted by the Government, we have to accept what Shri Madhu Limaye says specifically, is : should we really allow commercial houses, monopoly houses and companies to interfere with our political and public life processes ? For a small and short-term advantage of the party in power, should Government really indulge in letting the companies have certain advantages over other units and companies thereby making the nonsense of everything ? It is from this angle that I feel that Shri Madhu Limaye's Bill needs to be supported.

I have already referred to the ineffectiveness of the Company Law Board. Now, I do not say that the Company Law Board and the monopoly houses are acting in collusion, but unless you clear the air affectively, sincerely and in time, I am afraid, this suspicion will not only linger on, but as days and weeks and months pass by, such a suspicion will be further strengthened. In the absence of categorical and clear-cut information from the Government, and in the absence of the straightway correct and absolutely decent behaviour by the political parties, particularly the ruling party, I am afraid, the people in general and particularly those people who read newspapers and are knowledgeable, well-informed and well-educated will go on feeling strengthened in their minds with regard to certain doubts and suspicions about the motives and bonafides of the Government. I would not like such a state of affairs to continue, because, it does not augur well, whether it is this party or that party, for our country, to have this kind of climate, where suspicions are allowed to grow, because the ruling party records, or the Government records are neither clean nor correct. It is from this angle that I wish to support Shri Madhu Limaye's Bill.

THE DEPUTY MINISTER IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI BEDABRATA BARUA) : Sir, I thank the hon. Members who have taken part in this discussion, particularly the mover for various points that have been raised on this important issue of the preference share holders' right to company management. In fact, this matter was very much discussed at the time the Companies Act was

introduced in 1956 and at that time, the system was regularised and the preference share-holders were defined and they were given certain very limited rights to vote but they did not have any control over the management of the Companies. However, a transitional provision was made for the companies which had come into being before the Act was passed, and which had provided either through their Articles or otherwise voting rights or the preference share holders that there need not be disturbed. The hon. mover had really drafted this Bill before the Companies Amendment Act was passed. The Government itself had decided to do away with these preference share-holders rights, although Shri Mavalankar was under the impression that Shri Limaye's amendment is yet to be accepted. In fact the Government took the initiative long ago in the Joint Select Committee. It was not there in original proposal, it was in the Select Committee itself that the Government proposed this amendment and wanted to do away with this right so that under no set of circumstances the preference shareholders would have any right to vote.

SHRI MADHU LIMAYE : The Minister did it at my insistence ; not on his own.

SHRI BEDBRATA BARUA : Thank you very much. It was not as if suggestions were not taken into consideration. Certain suggestions were made and they were incorporated in the Act. Therefore, we have no quarrels on the main point and I think as far as the objective of the Bill is concerned we are all agreed. Mr. Chatterjee wanted to know why we are not expanding the company Law board. All these qualifications including members of the Company Law Board have to be laid down and since all these powers have to be exercised the Board will have to be expanded as and when those powers have to be exercised. They must be given adequate powers and they must exercise these powers and there is no question about delaying this matter at all. As at present constituted we have only 4 members Three of them are members with legal qualifications. But it will have to be expanded and we will take all measures and we will get formal sanction etc. There is no question of fixing any date because it is a question of having enough work for the Board. It all depends upon the amount of work which they have.

[Shri Bedabrata Barua]

We have to see how to cope up with the expanded amount of work which will be coming in any case as soon as these matters come up before the Government or Company Law Board as the case may be.

Then, certain other matters not strictly connected with this Bill have been mentioned. Regarding control on monopoly houses we have made the position clear in reply to several questions in regard to various issues, that so far as MRTTP Act is concerned, there is control over monopoly houses. Even where monopoly houses are allowed to expand care is taken to see that the convertibility clause is introduced so that the public financial institutions giving any loan may get it converted into equity capital and there are other conditions regarding lowering of equity control etc. All these conditions are laid down everytime the monopoly house asks for licence. All these conditions are there. After nationalisation of banking this position is made clear and in many cases equity control and equity shareholding is slowly passing into the hands of the Government or the public financial institutions in case of some very big companies.

It may be the case of Tata ; it may be the case of even Birla and it may be the case of so many companies and a substantial sections of equity is now held by the public financial institutions and by the government, by the banks, so that we can claim that due to the socialistic policy that has been followed by the government during the last few years, the position to-day is that no body can claim that he is the owner of the company, excepting that he controls a part of the equity shares enabling him to secure the management for the time being. (Interruptions). So far as the shareholding is concerned, Shri Chatterjee may look into the pattern of the shareholding in the companies and he will find that to-day it is vastly different from what it was five years ago. It was due to the expansion of the public financial institutions and various progressive steps that have been taken by Government that to-day, hardly any company is a wholly owned company but is a part of the national sector in the sense that all their financial participation or equity participation is in the public hands to-day. I consider it to be a step in the right direction. And

government has also taken various other measures. The Company Law has been amended; the Monopoly law has been put into operation so that the paternalistic management or whatever it is called is at a very great disadvantage. They can be controlled under various laws that are in operation. I deny the charge that the Government has encouraged monopolies.

However, coming to the other thing, some charges are made that this Congress Party, to which I have the privilege to belong, has taken advantage of these things. It is not true, particularly when Shri Limaye has himself stated that it is on his suggestion that we have brought about this amendment. And, as the hon. Member knows, this amendment was introduced and passed last year or previous year. It came up before the Select Committee. At that time it was very clearly known that it would certainly affect the controlling interest of Kapadias in National Rayon Corporation.

I now feel that the Government has done it because they wanted to do away with these shareholders' controlling the company. In the same Act, Government proposed another amendment that when under Sec. 408 it is found that the company is not being properly managed, Government can appoint not two but any number of directors.

SHRI MADHU LIMAYE : Most of them are sitting tight.

SHRI BEDABRATA BARUA : I would not like to comment on this. When we appoint directors, we give directions, as Mr. Limaye, has rightly pointed out I do not venture to say that they have functioned well in all cases. We have to deal with the human material that is at our command. (Interruptions).

SHRI SOMNATH CHATTERJEE : How is the public trustee functioning? The officer should be brought to book.

SHRI BEDABRATA BARUA : Mr. Chatterjee wants me to answer every question. I know about the public trustee. We have an official who is appointed as a public trustee. This matter has not been raised in the House previously. But, the public trustee functions not under the direction of the government but

independently. So long, no issue has been raised about it.

SHRI VASANT SATHE (Akola) : We cannot send our vigilante officer there.

SHRI BEDABRATA BARUA : I would not like to say that. So far as I know, the public trustees have functioned honestly. There is no doubt about it. What happened was this. The public trustee to-day is very important. In companies like Bird and Company and others, he has got a very important place. If we are to relate his voting power with the voting power of the public financial institutions, that is a matter for discussion. Whether the voting power of the trustees and the public sectors of the Government and financial institutions could be combined is a matter which may be considered and discussed by the members or others. So far as public trustee himself manages the company it is part of his job. The present practice is either the trustee authorises somebody to attend or the trustee himself attends and where necessary exercises the power of the voting in the general body. The hon. Member need not impute any motive to this.

SHRI SOMNATH CHATTERJEE : He is a non-functioning person and he never bothers to function.

SHRI BEDABRATA BARUA : Let me explain the position. When the Company Law was last passed in 1956 the dominant thinking was that the company had a right to function independently of every other consideration. The idea is changing and Government has come into greater and greater control over the companies. But the public trustee does not interfere with the companies. We have done all these things and so far as the National Rayons is concerned the whole thing came up in 1971. It was the Company Law Board which decided to appoint two Directors on the Board. A number of allegations were made and the Company Law Board found some substance in those allegations. The consequence of this was that there could be no change of the Board of Directors till 1973. In 1973 again the Company Law Board extended the term by one year, that is, 1974 when the application was made that Company Law Board should appoint Directors. The Company Law Board

found that this was not possible since on the same charges action under Section 408 cannot be taken. When certain charges are made and on those charges action is taken, everytime the Company Law Board cannot take action and appoint Directors on the same charges. It was on this ground and no other ground that the application of the UTI was rejected. It is a fact that Kapadias came in control of the company. The company was not controlled by the Government at any stage. It was controlled by a set of managers with Mr. Tata as the Chairman and there were other people.

Sir, I may assure the hon. Members that the action was taken because the Company Law Board had to take a legal view of the thing and since no fresh points were raised the question of action under Section 408 did not arise. I would further like to assure the hon. Members that if a fresh occasion arises and allegation of mismanagement is made and the Company Law Board finds it to be so then action under Section 408 will be taken. Today Government has more power under Section 408 than it used to have earlier.

Sir, I would not like to take much time of the House. I will only say that it has been a very good discussion and the Members have thrown much light on this important point. It is on account of the valuable suggestions given by the hon. members that these actions have been taken and it is a progressive step which has led to the removal of a great evil, at least in relation to some companies.

Sir, Mr. Mavalankar wanted to know the position in the case of other companies. I may say that National Rayon was a conspicuous case because the company was started in 1948 and the shares were issued before the new Act of 1956 came into being. The preference share were purchased by Kapadias. We have received some complaint againsts them and we have taken action under Section 408 and Government will not hesitate to take further action when found necessary. As long as a company is managed by share-holders we can proceed only under Company Law provisions. And there have been charges against so many companies. Government cannot but take a judicial view, and it cannot simply come forward and go on appointing Directors in every company because there are charges. In fact, I

[Shri Bedabrata Barua]

would make no secret of the fact that there are a number of companies which are very well managed and there have also been some managements which have not functioned properly and when we find that, we inspect the companies and we proceed under different sections. But, it should be considered not strictly in accordance with Company Law or justice to jump to a conclusion and take over a company by appointing any number of directors as soon as there is an allegation. Now, so long as the corporate sector exists as it is, it will not be possible to do it. But, within the limits imposed by Company Law and by the legal system in our country, Government have, over the years, taken a number of measures which have made the companies responsible to the community because, today, the theory is that a Company or a Corporation is a partnership of the community, of labour of the shareholder and the consumer. So, this is what we have been implementing through the various Acts that we have passed. We have rejected the idea that the shareholder or the management is the complete controller of the company because, since his liabilities are limited, his rights are bound to be limited. It is on this basis that we have proceeded and all the legislations have been enacted on this basis. We do not consider it an inalienable right of the management to mis-manage a company and whatever action has been taken is in relation to that. I would again thank all the hon. Members and I would like to dispel the impression that the Government has not taken any action in regard to this thing.

So far as his Bill is concerned we have taken all the action that is necessary. Therefore, I would request the mover to withdraw this. There is no point in trying to amend something which has already been amended. This is redundant. I hope he will withdraw it. Otherwise, we will have to oppose it.

श्री मधु लिनये : समापति जो मंत्री जी का जवाब मैंने गौर से सुना। यह बात सही है कि प्रेकरेंस सेयर होल्डर्स को जो वोट देने का अधिकार है उसको समाप्त करने के बारे में मेरा सुझाव इन्होंने माना था। यह तो मैंने शुरू से ही कहा था। लेकिन मेरे प्रश्न का कोई संतोषजनक जवाब मंत्री महोदय न नहीं दिया।

इन्होंने कहा है कि जो अनियोज्य कर्तव्य गये, उनको जांच करने की है। तो मैंने कई प्रश्नों को उठाया। यह कहकर आप भाग नहीं सकते कि यह कर्तव्य कानून मंत्रालय के तहत नहीं आता। यह सरकार एक है, सामूहिक दायित्व के सिद्धान्तों पर चलती है। अगर कोई मामला उद्योग मंत्रालय के तहत आता है, कोई मामला वित्त मंत्रालय या कानून मंत्रालय के तहत आता है, तो यह सुविधा के लिये बटवारा है। लेकिन जहातक कपाडिया का सवाल है, आपने यह स्वयं कबूल किया कि कंपनी सा बोर्ड ने उनके हाथ में मैनेजमेंट देने से इन्कार कर दिया और उसके लिये उन्होंने कुछ आधार बताये।

जैसा कि मैंने कहा, इनके खिलाफ 8 मील-प्रक्रिटमेज के आरोप थे। मैं पैर 17 से कोर्ट कर रहा हूँ—

"Shri Kapadia does not deny that this party that is, Jeevan Tools

" was blacklisted. If the tenderers were ignored for giving a contract to a party, whose conduct was such that it had to be blacklisted it is not a happy reflection on those who brought this party in, on the plea of breaking the cartel."

17 hrs.

जी ब्लैकलिस्टेड फर्मों को भी कंट्रैक्ट देते हैं—यह खुद जम्पनी ला बोर्ड वह रहा है—वे एक साल में कुछ कैसे हो गये? आपने कहा कि क्या कुछ अपराधों का लेकर उनका हमेशा के लिए बाहर रखा जा सकता है। लेकिन ये कोई लोकतांत्रिक सिद्धान्त के आधार पर कंपनी का संचालन नहीं ले रहे हैं। आपने स्वयं माना है कि लोकतांत्रिक सिद्धान्तों के अनुसार इनके हाथ में कंपनी जानी ही नहीं चाहिए, क्योंकि ईक्विटी में कपाडिया और उनकी कंपनियों का एक प्रतिशत भी सेयर-होल्डिंग नहीं है।

ऐसी हालत में मैं मंत्री महोदय के उत्तर को संतोषजनक नहीं मानता हूँ। केवल उनके इन्कार करने से मेरा आरोप खरब नहीं होता है। इस लिए मैं जानना चाहता हूँ कि

कौन से राजनीतिक और वलीय कारण थे, जिनको लेकर आपने यह अपवाद किया, और मेरे सिद्धान्त को जानने के बाद भी इनके हाथ में यह कम्पनी दे दी। असल में आपके साथ मेरा यही झगड़ा और विवाद है। लेकिन आपने इस का कोई संतोषजनक उत्तर नहीं दिया है।

इस और बँरल के बारे में उन्होंने मंत्रियों और अफसरों के आशोर्वाट में स्टोल कोर्ट प्राप्त किया, और वह क्वोटो ब्लैक में बेच कर क्लिक निक्सन गूट को कम्पनियों को अपने कब्जे में ले लिया। 1968 में मैंने जो मॉमोरेडम भेजा था, उसके ऊपर कार्य-वाही क्यों नहीं की गई? उसी तरह आपने स्वयं यह कबूल किया है—यह आपके मंत्रालय के तहत आता है—कि कापड़िया ग्रुप को कम्पनियों मादति में शौर-होर्डस है। और जो 10 परसेंट को पाबन्दी थी, उसका—10 परसेंट रूल का—एक समय पर आपने उल्लंघन किया था।

SHRI BEDBRATA BARUA : The Matter was explained in the House. It was only for a few weeks that the investment exceeded 10 per cent of the paid up capital of Maruti Ltd. It was the shareholding, so far as I remember, of a small company, Filtrona or some company, a small company.

SHRI MADHU LIMAYE : I am referring to that.

SHRI VASANT SATHE : It has nothing to do with Maruti shareholdings. The shareholding of the other company was 10 per cent.

SHRI MADHU LIMAYE : That was a violation. जो नियम था उसका उल्लंघन किया गया।

SHRI BEDBRATA BARUA : It was under the law. Everything was completely regular so far as that matter was concerned.

17.04 hrs.

[SHRI VASANT SATHE in the Chair]

SHRI MADHU LIMAYE : It was a violation. You regularised it.

आपने स्वतः राज्य सभा में एडमिट किया है कि आप यह नहीं कर सकते। बाद में आपने इसको रेगुलराइज किया, क्योंकि मादति और कापड़िया का सवाल था।

अभी मैंने आप के सामने नियंत्रित कन्ड का प्रश्न रखा। आप कहेंगे कि यह उद्योग मंत्रालय में आयेगा। मैं आपके सामने इस तथ्य को रखना चाहता हूँ कि कापड़िया ग्रुप क्या जोड़ है।

आप स्वयं इसके पक्ष में हैं कि मिलों पर नियंत्रित कपड़ा पैदा करने का जो दायित्व दिया गया है, उसको बँ पूरा करें। ऐसा न करने पर जुर्माना होता है। कुछ कम्पनियाँ शलती तो करती हैं, लेकिन कम से कम जुर्माना तो देती हैं। पहली बात तो यह है कि कुल जितना जुर्माना मिलों पर लगाया गया है उसका पचास प्रतिशत अकेले कापड़िया का है। दूसरे, यह कम्पनी शलती भी करती हैं, और उसने जुर्माना भी नहीं दिया है।

इस लिए मेरी यह निश्चित राय है कि कापड़िया गूट के साथ आपने पक्षपात किया है। लेकिन चूँकि मेरे बिल के सिद्धान्त को आप ने पहले ही मान लिया है, इसलिए मैं इस पर वोटिंग नहीं कराना चाहता हूँ।

MR. CHAIRMAN : The question is :

“That leave be granted to withdraw the Bill further to amend the Companies Act, 1956.”

The motion was adopted.

मधु लिमये : मैं इस बिल को वापिस लेता हूँ।

17.05 hrs.

HINDU MARRIAGE (AMENDMENT) BILL

(AMENDMENT OF SECTIONS 13 AND 15)

श्री मधु लिमये (बाँका) : समापति सहोदय, मैं प्रस्ताव करता हूँ कि हिन्दू विवाह अधिनियम, 1955 का और संशोधन करने वाले विधेयक पर विचार किया जाए।