

जो खतर बिहारी बाबूजी : अध्यक्ष महोदय, झाहरा के दंगे की जांच हो गई है, हमने कहा कि रिपोर्ट मेज पर रख दी जाये लेकिन वह नहीं रखी जा रही है। मेरठ में जो दंगा हुआ है उसकी भी जांच होनी चाहिये।

Bill, 1973, which was passed by the Lok Sabha at its sitting held on the 6th December, 1973."

12.56 hrs.

RE ALLEGED FAILURE OF U.P. GOVERNOR TO SUMMON THE LEGISLATIVE ASSEMBLY

12.56 hrs.

PAPER LAID ON THE TABLE

NOTIFICATION UNDER ALL-INDIA SERVICES ACT.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND IN THE DEPARTMENT OF PERSONNEL (SHRI RAM NIWAS MIR-DHA):

I beg to lay on the Table:—

A copy of Notification No. G.S.R. 1278 (Hindi and English versions) published in Gazette of India dated the 1st December, 1973, containing Corrigenda to Notification No. G.S.R. 433(E) dated the 9th October, 1972, under sub-section (2) of section 3 of the All India Services Act, 1951. [Placed in Library. See No. LT-5973/73].

12.55½ hrs.

MESSAGE FROM RAJYA SABHA

SECRETARY-GENERAL: Sir, I have to report the following message received from the Secretary-General of Rajya Sabha:—

"In accordance with the provisions of rule 127 of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I am directed to inform the Lok Sabha that the Rajya Sabha, at its sitting held on the 10th December, 1973 agreed without any amendment to the Burn Company and Indian Standard, Wagon Company (Taking over of Management)

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): Having considered the points raised by hon. Members yesterday with regard to the alleged failure of the Governor of UP to summon the ssembly within a period of six months, I have to make this submission that there has been no contra-vention or no violation of any constitutional provision.

Two articles are directly concerned in our coming to a decision on this matter. One is article 174(1) and the other is article 356. Both will have to be read together and in harmony. Article 174(1) does two things. It enjoins on the Governor to call the Assembly, and it also enjoins that the Assembly should be called within a specified period of six months, the period beginning from the last day of the last session and the beginning of the first day of the next session. But as I had said, article 174 also confers a power on the Governor to summon the Assembly, without which power he could not have summoned the Assembly. That is where article 356 in my submission comes in for consideration.

It is not necessary to refer to the whole of article 356 because amongst other matters there are two matters which are important and relevant for the present purpose. One is that by the Presidential Proclamation under article 356, he can declare that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament, and secondly

[Shri H. R. Gokhale]

he can make such incidental and consequential provisions including the provisions for suspending in whole or in part the operation of any provisions of the Constitution relating to any body or authority of the State. Any body or authority of the State would also include the legislature of the State.

In this particular case, a Proclamation was issued under article 356. It is not necessary again to refer to the whole Proclamation because we are concerned only with one point. The two relevant portions of the Proclamation are that the President first of all declared that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament, and he also declared that he was making the following incidental and consequential provisions suspending the application of provisions of the Constitution, one of them being clause 1 of article 174.

Therefore, it is clear that as soon as the Proclamation was issued under article 356, clause 1 of article 174 which gives the power to the Governor to summon the Assembly had been brought under suspension, with the result that during the period of the Proclamation, the Governor could not have summoned the Assembly, for two reasons, firstly because his power was in abeyance since article 174 itself as under suspension and secondly because Parliament had assumed the powers of the State Legislature and the President had to exercise those powers by authority of Parliament, and, therefore, the legislative authority during that period was only Parliament and the President exercising power under the authority of Parliament.

Now, it is known that when a certain period is prescribed within which an authority or a person has to act, if that authority itself is disabled from acting during that period, the period during which it is so disabled has to be excluded from the calculation of the

original injunction within which it expired. That is the normal principle of interpretation accepted in law. Therefore, my submission is that when you calculate the six months' period as laid down in article 174(1), the period during which the Proclamation was in force when article 174(1) was under suspension and the Governor could not have summoned the Assembly has to be excluded from calculation, and if it is so excluded, the six months' period is not over, and my submission is that this is the correct interpretation which I am putting forward for the consideration of the House, and the period of six months not having been over and still being left, there could be no violation or contravention of the provisions of the Constitution.

13. hrs.

श्री मधु लिमये (वांका) : अध्यक्ष महोदय, मन्त्री महोदय के उत्तर में मेरा बिल्कुल सन्तोष नहीं हुआ है। मैं मिमाल के तौर पर कहता हूँ कि यदि यह कानून है कि 25 साल की नोकरी के बाद पेंशन मिलेगी। एक आदमी को 18 महीने के लिए सस्पेंड किया जाता है और बाद में री-इंजॉन समाप्त होता है, तो क्या सरकार यह कह सकती है कि चूंकि वह आदमी 18 महीने तक सस्पेंडिड रहा है, इस लिए उस समय को 25 साल में नहीं गिना जायेगा और उस को पेंशन नहीं मिलेगी ?

मैं मानता हूँ कि सस्पेंशन की अवधि में एसेम्बली को बुलाने का सवाल नहीं उठता है। लेकिन सस्पेंशन के समाप्त होते ही री-इंजॉन नोटिस दे कर विधान सभा को बैठक बुलाना अनिवार्य है। मन्त्री महोदय अपनी राय के पक्ष में आर्टिकल 356 में से एक वाक्य या एक शब्द भी निकाल कर नहीं दे सकते हैं।

इस लिए मैं इस महत्वपूर्ण मामले पर बहस की मांग करता हूँ। मैंने इस बारे में सवस्टेटिव मोशन का नोटिस दिया है। इस सदन में पश्चिमी बंगाल के गवर्नर को

हटाने पर चर्चा ही चुकी है। उसी तर
 उत्तर प्रदेश के गवर्नर को हटाने के
 बारे में मेरे प्रस्ताव को तत्काल
 ले लिया जाये।

SHRI SHYAMNANDAN MISHRA
 (Begusarai): I have to make one or
 two submissions with regard to this
 because I had raised this matter even
 yesterday.

MR. SPEAKER: He has made a
 statement.

SHRI SHYAMNANDAN MISHRA:
 We as Parliament have exercised cer-
 tain powers during that period and we
 are directly involved.

My submission is brief. The hon.
 Law Minister has said that the period
 during which art. 174 was suspended
 has to be excluded. Then the ques-
 tion arises as to how is the computa-
 tion to be made, with regard to this
 six-month period; or is the computa-
 tion with regard to the six-month
 period now completely irrelevant in
 the circumstances?

SHRI H. R. GOKHALE: Not at all.

SHRI SHYAMNANDAN MISHRA:
 Is it that there cannot be any computa-
 tion about the six-month period? So
 there must be a certain calculus deter-
 mining the six-month period in the
 given circumstances. How? My con-
 tention is that the Assembly has
 ceased to exist and I can establish
 it. The Assembly has ceased to exist
 because within the six-month period
 the Assembly has not been called.

The hon. Law Minister said, rightly
 quoting from the Proclamation, that
 174(1) has been suspended. But
 174(2) has not been suspended. Arti-
 cle 174 has two clauses; one relates

to the summoning of the Assembly and
 also summoning it within a particular
 period. The other, 174(2) relates to
 the prorogation and the dissolution of
 the Assembly. What is the reason that
 174(1) has been suspended and but
 174(2) has not been? Of the same
 article of the Constitution, one clause
 is suspended and the other is not.

Now, what I am trying to argue is
 that there is a rationale behind it. If
 174(2) has not been suspended, it
 means that the act of prorogation has
 either been exercised or it has not been
 exercised. I really do not know what
 is the position—whether the President
 has prorogued the Assembly or not.
 If the President has prorogued the As-
 sembly, then a certain consequence
 flows from it. If it has not been proro-
 gued, another consequence flows. If
 it has been prorogued, the table has
 been swept clean the proceedings
 of the Constitution? My argu-
 ment before the house had been swept
 clean. The question that arises is,
 that for what the former Assembly was
 seeking to do and what it was in the
 midst of doing should one have to
 wait indefinitely for that to be re-
 vived. Is it not a very extraordinary
 situation that we as Parliament seek to
 do something, and find ourselves in the
 midst of doing something, and then
 those things are taken away from the
 Table and we are asked indefinitely
 to wait? Could that be the in-
 tention of the Constitution? My argu-
 ment is that the Constitution would
 require that the earliest possible op-
 portunity should be given to the legis-
 lature for reviving those proceedings
 before it.

This is the most important point.
 to consider. Place yourself in the
 position of the legislature.

MR. SPEAKER: I am not going to controvert you; I am not going to argue that. Please sit down.

SHRI SHYAMNANDAN MISHRA: I am asking for clarification. Therefore, the six months period would apply because the earliest opportunity has to be given to the legislature to revive those very proceedings.

The second reason is that the President passed certain legislations during this period. Those legislations were not even passed by Parliament though certain legislations were passed by the President. What is the duty indicated in those circumstances? The Presidential Acts must be placed before the State legislature.

For the ordinance, there is a specific provision that the ordinance has to be placed before Parliament and approved by Parliament within a particular period. Similarly the Presidential Acts will have to be placed before the State legislature at the earliest opportunity.

Therefore, on both these grounds, the Assembly must be convened at the earliest. When the hon. Minister says that the limitation of six months period would not apply, I would ask, where is the provision in the Constitution that the limitation of six months would not apply. He says it is according to the normal interpretation of the law. But the constitutional law would not go by that. So far as the Constitution is concerned, we would not go by the normal interpretation of the law. We would go by the specific provision in the Constitution.

MR. SPEAKER: Kindly conclude.

SHRI SHYAMNANDAN MISHRA: Only one thing more. The Assembly was continuing, and they felt that the Assembly should remain suspended and within the six months period it should not operate. But the revocation was

done within the six months period. Now the proclamation was approved by the Lok Sabha; and it become effective on 9-8-1973. The proclamation was revoked on 8-11-1973. So, it was only a three month period. If the period of six months fell within the period, the proclamation was in vogue it would begin operating. And then, the life of the Assembly was revived. And then, there is no specific provision in the Constitution which permits the computation to be based on the exclusion of the period during suspension. So, I think that the Assembly has ceased to exist.

श्री अटल बिहारी वाजपेयी (ग्वालियर):
अध्यक्ष महोदय, मुझे तीन बात कहनी हैं। विधि मन्त्री महोदय ने अनुच्छेद 356 की जो व्याख्या की है, वह विवाद का विषय है। अनुच्छेद 174 के अनुसार विधान सभा का सत्तावसान हो सकता है, विधान सभा भंग की जा सकती है। लेकिन हमारे देश में अनुच्छेद 356 का सहारा ले कर सस्पेंडेड एनिमेशन की जो एक नई खोज हुई है, और जिस का प्रयोग किया जा रहा है, वह संविधान के निर्माताओं के दिमाग में नहीं थी। अगर संविधान की धाराओं के अनुसार किसी राज्य का शासन नहीं चलता है, तो विधान सभा भंग की जा सकती है और नये चुनाव कराये जा सकते हैं। लेकिन राजनैतिक कारणों से किसी विधान सभा को सस्पेंडेड एनिमेशन में डाल देना और फिर उस को पुनर्जीवित करना, यह एक ऐसा प्रश्न है, जिस पर सर्वोच्च न्यायालय की राय ली जा सकती है।

अनुच्छेद 143 में कहा गया है :

"If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may

refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon."

मेरा निवेदन है कि यह मामला सुप्रीम ट की राय के लिए बहुत उपयुक्त मामला है।

दूसरी बात मैं यह कहना चाहता हूँ कि उत्तर प्रदेश की विधान सभा ने 1970 में सर्व-सम्मति से एक प्रस्ताव पारित किया था जिस में कहा गया था कि विधान सभा की बैठक साल में 90 दिन होनी चाहिए। वह प्रस्ताव विधान सभा पर लागू होता है।

अध्यक्ष महोदय : कांस्टीट्यूशन की बात करिए न।

श्री श्याम नन्दन मिश्र : तब फिर इन का नार्मल इंटर प्रेजेशन आफ ला कैसे लागू होगा ? इन का जो इंटरप्रेशन है वह कैसे लागू होगा ?

अध्यक्ष महोदय : कांस्टीट्यूशन का इंटरप्रेजेशन और है। यह किसी ह उस का रेजोलूशन और है। वह उसे और राइड नहीं कर सकता।

श्री छटल बिहारी बाजपेयी : तीसरी बात यह है कि एक संवैधानिक प्रोचिच्य का प्रश्न है। उत्तर प्रदेश में नई सरकार बनी है उस के मुख्य मंत्री ऐसे सज्जन हैं जो लोक सभा से गए हैं। संविधान के अनुसार वह जा सकते हैं। 6 महीने वहां रह सकते हैं। लेकिन एक बात हमें नहीं भूलनी चाहिए कि वह विधान सभा की बैठक बुलाने में कतरा क्यों रहे हैं ? इसी विधान सभा का चुनाव वह हार चुके हैं। यह उन का नैतिक दायित्व है कि सभा संभालने के बाद विधान सभा का सामना करें, यह दिखाएं कि उन के साथ बहुमत है। यह 6 महीने का बहाना बनाया

जाएगा तो चुनाव तक विधान सभा बुलाने की जरूरत नहीं है। फिर सरकार बनाने की क्या जरूरत है ?

श्री मधु सिन्घे : कमला पति जी की भी कोई राय है इस पर ?

श्याम नन्दन मिश्र : उन का तो एलेक्शन हो जायगा क्यों कि इस अवैध असेम्बली को श्री कमलाति त्रिपाठी को एलेक्ट करने का कोई अधिकार नहीं था।

MR. SPEAKER: I allowed the gentlemen who brought this motion; that is all. I did not allow others.

श्री छटल बिहारी बाजपेयी : इमलिये मेरा निवेदन है कि केवल विधि मंत्राबक की व्यवस्था पर्याप्त नहीं है। इस संबंध में सुप्रीम कोर्ट की राय ली जानी चाहिए।

अध्यक्ष महोदय : कहां हैं कहां से कहां तक पहुंच गए ?

श्री छटल बिहारी बाजपेयी : यह वहीं तक पहुंचने की बात है। जहां यह खत्म नहीं होगी।

श्री श्याम नन्दन मिश्र : इस पर एक पुरो बहस हो जाने दीजिए।

SHRI P. G. MAVALANKAR (Ahmedabad): Why don't you, Sir, allow a discussion at an early date?

श्री मधु सिन्घे : इस पर सभी लोग बोलना चाहते हैं। विभिन्न किस्म की राय है। कमलापति जी भी कुछ कहेंगे। इस पर बहस हो जाय। बहुगुणा इतने डरते क्यों हैं। असेम्बली से ? कमलापति जी उन की मदद नहीं करोगे क्या ? श्री चन्द्रजीत यादव की राय और मेरी राय इस बारे में एक है।