

there is no question of advanced and backward areas. Really speaking, the concept of backward areas has been evolved to see that certain special concessions and facilities can be made available to help industrial development to those areas. That is the main object. I have no doubt the House will go into it, but you will have to evolve some sort of common criteria for this matter because once we accept the concept for the purpose of planning, then it must be applicable for all purposes. You cannot say that for the purpose of income-tax facilities, one area is a backward area and for agricultural and other development some other area is a backward area. We cannot have that distinction.

I know the backward area concept has been evolved by the Planning Commission taking into consideration many criteria, such as, what is the urbanisation of the area, what is the spread of industry in the area, what are the infra-structure facilities available there, communications and other things. These matters have been taken into consideration. Certainly the Select Committee can call some one from the Planning Commission to advise it on this matter.

These are some of the things I wanted to say. When I say I am agreeable to reference to a Select Committee, I do not mean to say that I have accepted many of the criticisms levelled against the Bill. It is on the basis that I say that certainly the Select Committee can consider this Bill.

AN HON. MEMBER: You have an open mind.

SHRI YESHWANTRAO CHAVAN: I have normally an open mind, but not open at both ends and therefore

there is nothing in the mind at all. I am prepared to listen to all points of view. Therefore, I hope the House will accept my Motion.

MR. DEPUTY-SPEAKER: The question is:

“That the further debate on the Direct Taxes (Amendment) Bill, 1973 be adjourned to next week”.

*The motion was adopted.*

16. 26 hrs.

[SHRI K. N. TIWARY in the Chair]  
FOREIGN AWARDS (RECOGNITION  
AND ENFORCEMENT) AMEND-  
MENT BILL

THE MINISTER OF COMMERCE  
(PROF. D. P. CHATTOPADH-  
YAYA): Sir, I beg to move:

“That the Bill to amend the Foreign Awards (Recognition and Enforcement) Act, 1961, as passed by the Rajya Sabha, be taken into consideration.”

Sir, this Bill seeks to amend section 3 of the Act so as to bring it out clearly that it is intended to implement fully Article II of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

The Foreign Awards (Recognition and Enforcement) Act, 1961 was enacted by Parliament in order to give effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on the 10th June, 1958. Its object was speedy settlement of disputes arising in the course of international trade through arbitration. Article II of the Convention reads as follows:

“1. Each Contracting State shall recognise an agreement in writing under which the parties undertake

[Prof. D. P. Chattopadhyaya]

to submit to arbitration all or any differences which have arisen or which may arise between them in respect of defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The Court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed."

This Article and other Articles of the Convention are set out in the Schedule to the Act.

Article II of the Convention is sought to be given effect to by Section 3 of the Act which reads as follows:—

"Notwithstanding anything contained in the Arbitration Act, 1940 or in the Code of Civil Procedure, 1908, if any party to a submission made in pursuance of an agreement to which the Convention set forth in the Schedule applies, or any person claiming through or under him commences any legal proceedings in any Court against any other party to the submission or any person claiming through or under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time after appearance and before filing a written statement or taking any other step in the proceedings, apply to the Court to stay the proceedings and the Court unless satisfied that

the agreement is null and void, inoperative or incapable of being performed or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings".

It is clear from Paragraph 3 of Article II that the Convention contemplated that the Court of a contracting State would refer the parties to an agreement to arbitration in case any proceedings are taken before it in respect of a matter which is referable to arbitration. The Government of India ratified the whole Convention and the 1961 Act was enacted to give effect to the various Articles of the Convention including Article II. However, the question has arisen as to whether Section 3 of the Act as it is worded now actually gives effect to Article II of the Convention. The controversy has arisen because of the use of word "submission" in Section 3 of the Act. The Supreme Court of India has read into the word "submission" occurring in Section 3 of the Act the following implications:—

- (i) there should be reference to the arbitral body;
- (ii) the reference should precede the institution of the civil suit.

In other words, the Supreme Court has interpreted Section 3 to mean that Court can grant stay of proceedings only if there is an actual arbitration pending at the time its jurisdiction is invoked. Though the Convention contemplated a stay of proceedings when there is an arbitration clause in the Commercial Agreement, the Supreme Court did not consider the existence of an arbitral clause itself as sufficient grounds for stay of the proceedings.

However, it is worthy of note that even the majority judgement does

not dispute the proposition that the 1961 Act has been enacted to give effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10th June, 1958 to which India is a party.

The effect of this amendment would be that the mere existence of an arbitration agreement would be enough to stop Court proceedings. This amendment would cover all legal proceedings which are yet to be instituted (including cases in which no dispute has arisen and also cases in which proceedings have not yet been instituted although a dispute has arisen), whether the cause of action for such proceedings has arisen before the date of the amendment or whether the agreement containing an arbitration clause was entered into prior to, or after, the date of the amendment.

Sir, I now beg to move that the Bill to amend the Foreign Awards (Recognition and Enforcement) Act, 1961, as passed by Rajya Sabha, be taken into consideration.

MR. CHAIRMAN: Motion moved:

"That the Bill to amend the Foreign Awards (Recognition and Enforcement) Act, 1961, as passed by the Rajya Sabha, be taken into consideration."

SHRI BIREN DUTTA (Tripura West): There is nothing objectionable in this Bill. But I want to draw the attention, of the Minister that the acceptance of this convention sometimes may go against the people of our country and it may, in fact, weaken the people of our country. There are some instances where people from developed countries are in a better position to bargain through these conventions. Sometimes when people from foreign countries are involved, a person from our country becomes the weaker partner and cannot contest in

a better way. So before effecting these measures, Government should assure us that after acceptance of this convention the parties in India will not, in any way, be jeopardised. If this particular aspect is taken care of there is nothing to oppose in this Bill and, therefore, I support it.

\*(SHRI S. A. MURUGANANTHAM) (Tirunelveli): Sir, I would like to say a few words on the Foreign Awards (Recognition and Enforcement) Amendment Bill, 1973. A convention on recognition and enforcement of foreign arbitral awards was adopted in 1958 and it came to be known as New York Convention. This convention was ratified by our Government and to give effect to the Articles of the Convention an Act was passed by the Parliament in 1961.

Sir, the hon. Minister while moving this Amendment Bill in the Rajya Sabha had stated that this Amendment Bill became necessary as a result of a different interpretation given to the word "submission" by the Supreme Court. This has been restated by the hon. Minister just now. I would like to know when the Supreme Court gave the judgment in regard to the interpretation of the word "submission" and if there had been a long time-lag between the date of judgment and the date of introduction of the Bill in Parliament, I would like to know the reasons for the delay in getting this amendment Bill passed.

It is a matter of our experience that many parties in our country and notably public sector units enter into various commercial agreements with parties in Western countries for the supply of machinery and the spare parts. It is also common knowledge that some of the machinery supplied by the Western countries were defective and were not conformity with the specifications laid down in the order for supply of such machinery. This

\*The original speech was delivered in Tamil.

[Shri S. A. Muruganatham]

kind of situation has put the public sector unit into all kind, of difficulties. The reports of the Commission on Public Undertakings give any number of instances of this nature.

Sir, I think it is pertinent to ask what action was taken by the Public Sector Units taking advantage of the provisions of the Foreign Awards (Recognition and Enforcement) Act,

To cite an instance, a West German firm supplied a boiler and spare parts to the Cochin Division of FACT. It was expected then that that unit would produce thousand tonnes of urea but it turned out that the machinery supplied by the firm could produce only four hundred tonnes. The Western Capitalist countries supply third rate machinery and inferior technical know how inspite of the specifications enumerated clearly in the agreements. It is a pity that no concrete action was taken or contemplated against such offending foreign monopoly firms.

It is an admitted fact that the socialist countries are careful in ensuring that the machinery supplied to our country are according to the specifications given in the agreements. Take the case of Bhilai Steel Plant which has been erected with the assistance of the USSR. Today Bhilai Steel plant stands out as the most efficient steel plant and there have been no complaints of defects in the plant and machinery. Now, let us contrast it with the position obtaining in the Rourkela steel plant which has been set up in a collaboration of West German firms. Rourkela steel plant has come to be known as a sick steel plant and its production is very low thanks to the defective plant and machinery by West Germany companies.

Sir, to quote another instance, I would refer to the Modern Bakeries Ltd., which is a public sector undertaking. This undertaking entered into

an agreement with an Italian firm for a specified machinery. The Italian firm in total disregard of the specifications mentioned in the agreement supplied entirely a different machinery to the Modern Bakeries Ltd. This is the state of affairs now prevailing in our country.

While concluding Sir, I would once again urge the hon. Minister to ensure that the Foreign Awards (Recognition and Enforcement) Act is taken advantage of by the Indian Parties and see that the foreign monopoly companies get away by supplying third rate machinery in violation of the specifications mentioned in the Agreements. With these words I conclude.

**श्री हुकम चन्द कछवाय (मुरेना) :**

सभापति महोदय, मंत्री महोदय जो विधेयक लाये हैं, मैं उस का स्वागत करता हूँ।

हमारे देश के लोग बाहर से जो मशीनें मंगते हैं, उन में नाना प्रकार की त्रुटियाँ रहती हैं। वे मामूले बहुत दिनों तक ठुलसे रहते हैं, जिस से हमारे देश को बहुत हानि होती है। जिस प्रकार की चीजों का मंगवाने का करार किया जाता है, विदेशों से वे चीजें नहीं भेजी जाती हैं। ऐसी परिस्थिति में हमें क्या करना चाहिए? क्या हमें केवल बातचीत में लगा रहना चाहिए, या त्रुटिपूर्ण मशीनों आदि के भेजे जाने से हमारी जो हानि होती है, उस के लिए मुआवजे के सम्बन्ध में पहल करनी चाहिए? यदि मुआवजे के लिए कुछ पग उठाये जा सकते हैं, तो वे जरूर उठाये जाने चाहिए।

यह भी देखा गया है कि विभिन्न मशीनों आदि के लिए करार में जो दाम तय किये जाते हैं, बिलम्ब के कारण या कुछ अन्य कारणों से उन दामों में वृद्धि कर दी जाती है, जिस से हमें अधिक विदेशी मुद्रा देनी पड़ती है और हमारे देश को आर्थिक हानि होती है।

इस बात की उचित व्यवस्था करनी चाहिए कि हम या के और देशों को अपना सामान भेज सके और वहाँ से सामान मंगा सकें।

यह विधेयक सर्वोच्च न्यायालय के निर्णय का पालन करने के उद्देश्य से लाया गया है। पता नहीं, सरकार ने इसमें बिलम्ब क्यों किया है। इस विधेयक को बहुत पहले ही लाया जाना चाहिए था। मैं समझता हूँ कि इस बिल पर किसी को आपत्ति नहीं होगी। मैं इस का समर्थन करता हूँ।

\*SHRI J. MATHA GOWDER (Nilgiris): Mr. Chairman, Sir, on behalf of my party, the Dravida Munnetra Kazhagam, I wish to say a few words on the Foreign Awards (Recognition and Enforcement) Amendment Bill, 1973 which has been moved by the hon. Minister of Commerce, Dr. Chatopadhyaya.

I read through the speech of the hon. Minister of Commerce in the Rajya Sabha when this Bill was piloted by him there. I agree that this is a very small legislative measure. But I would like to point out that the implementation of the provisions of the parent Act has got international implications. I would also like to say that, unless the provisions of the parent Act are understood and implemented properly, our public sector undertakings have no chance of becoming profitable and successful undertakings.

I am a member of the Public Undertakings Committee of this House and I know how the public undertakings are deprived of up-to-date technical know-how and machinery from the suppliers in the foreign countries. I will give you one or two examples here. The Modern Bakeries of India entered into an agreement with a firm in Italy for the supply of specified

bun-making machinery. But the firm in Italy supplied an entirely different machinery. The name of the machinery was different and the capacity of the machinery was also different from the one required by the Modern Bakeries. The Modern Bakeries, without even a mild protest, accepted the machinery, solely guided by the contention of the firm in Italy that the machinery supplied was no different from the one desired by the undertaking. Similarly, the machinery supplied to the Hindustan Photo-films Company, another public sector undertaking, located in my constituency, The Nilgiris, was also defective and outdated. I know personally that this undertaking is now in the process of replacing the entire machinery. In these circumstances, how do you expect the public sector undertakings to function effectively, efficiently and profitably?

As has been pointed out by the hon. Member who preceded me, if today Rourkela Steel Plant happens to be beset with manifold problems, it is mainly due to the third rate machinery and technical know-how supplied by West Germany. If you go through the Reports of the Public Undertakings Committee, you will come across such instances in plenty.

I begin to doubt whether the managements of our public sector undertakings are even aware of the New York Convention on recognition and enforcement of foreign arbitral awards convened in 1958, the Act that the Government of India passed in acceptance of this Convention and how to invoke the provisions of this Act when they are faced with non-compliance of contractual obligations by the foreign firms. I would suggest that the Declaration made at this Convention and the subsequent Act that the Government of India formulated later must be made available to all the public sector undertakings. The pro-

\*The original speech was delivered in Tamil.

[Shri J. Matha Gowder]

visions of this Act also must be implemented vigorously. Unless this is done, I am afraid that the public sector undertakings will continue to go on the path of annihilation. While speaking in the Rajya Sabha, the hon. Minister stated that in international dealings there should be the policy of give and take. I do not agree with him in this matter. This give and take policy should not be detrimental to the interests of our public sector undertakings.

Before I conclude, I would say that it is not enough that the parent Act is sought to be amended through this amending measure just to clarify the situation as a result of certain interpretation by our Supreme Court. It should be ensured that this Act is implemented in right earnest to secure the interests of our public sector undertakings. The foreign suppliers from rich capitalist countries should not be allowed to exploit our nascent public sector undertakings. You know, Sir, that there are so many collaboration agreements entered into by the Government of India and also by the public sector undertakings. I would conclude by saying that there should be no hesitation on the part of the Government to invoke the provisions of this Act wherever necessary.

**SHRI K. NARAYANA RAO (Bobbili):** Mr. Chairman, I have no desire to make any elaborate speech on a subject which is very simple, as the hon. Minister has said. I want a clarification as to the understanding by the contracting parties of the content and meaning of article 3 of the Geneva Convention. If it is amended in conformity with the understanding of the other parties, then it is all right. Otherwise, I think it may amount to a departure from article 3 of the Convention. I want this to be clarified.

**SHRI D. D. DESAI (Kaira):** Sir, we have to live in the international

community and have two-way traffic. Of late we are entering into a large number of contracts on either Government to Government basis or between private parties. We are also having disputes and the awards are declared sometimes in the Indian courts and sometimes in courts outside India. Laws differ from country to country and sometimes it is difficult to enforce the decision or judgment given by the courts of one country in another country. When we enter into contract there is usually a tussle whether the contract should confirm to Indian laws or the laws of the other contracting party. At a time when speed and efficiency are the need of the hour in establishing projects or undertaking some activity in some sphere of life, this does not either save time or cost. Therefore, while welcoming this Bill, I would request the Minister to consider whether it would not be in the better interests of the country to have enacted standards which are accepted now in the international field. Today the socialist and capitalist countries have a substantial exchange of goods, services and also collaborations in certain projects. To that extent, we have here a good beginning.

While welcoming this beginning, I would make an earnest appeal to the Government that still much are requires to be done to expedite the activities. In fact, our country when it became independent inherited laws which were substantially of the last century. The last century was not intended for Indian development. It was, in fact, intended to enslave the country and to keep it that way. The present tempo that we have in mind or the tempo that we want to develop in the country today does not provide such delays or such sort of out-dated ways of operating on international plane. So, while welcoming the Bill and enable the Awards which have been declared in the courts to be enforced, I would also suggest that reciprocity is maintained.

With the institutional growth, and with the econometrics of the modern world, it would also need a certain amount of looking back into the existing and projected operations and existing laws as applied to existing operations. To be specific, I would say that in any collaboration that the Government may enter, either it is in respect of obtaining technological services of individuals or corporations, there is always a tussle whether the law of India would be applicable or of other countries. Somehow or other, if we can put an end to this sort of wrangling by uniform practices, particularly, as some of the countries, even in the eastern part of the world, have done including the Soviet bloc and China, that would be better. In fact, recently, I was told that it is very pleasant and worthwhile to deal with China than with India. This is something which is unusual because we are a free country and it should not be difficult to deal with India as compared to China. But the fact remains that the things got more complicated in India or sometimes they feel that the deals cannot be interpreted properly or the results would be detrimental to the contracting parties.

With these words, I welcome the Bill and, I trust, the Government will take into consideration a few suggestions that I have made.

THE MINISTER OF COMMERCE (PROF. D. P. CHATTOPADHYAYA): Mr. Chairman, Sir, I must thank the hon. Members who have participated in the discussion of the Bill. As I have said already, the scope of the Bill is very limited.

We live in a world where we have to enter into commercial agreements with other countries. As you will find, it has been made clear in Section 3 or article 2 of the Convention that once we enter into an agreement, whether it is an individual or a firm or a corporation of India with an individual or a firm or a corporation of another country, this Convention applies. It has been stipulated that when this thing is referable to a particular

arbitration, then it should not be taken to a particular court.

Now, the whole controversy is whether a particular case of action should be taken to a court of this or that State, wherein the individual or the firm is or is acting. Now we are in a difficult position here: if we accept the Supreme Court judgment which interprets that, if there is an actual submission of a case, of an action, before a particular tribunal, then the Convention is not applicable; but the Convention to which we are a party and which we have ratified is abundantly clear that, whether it is actually taken to arbitration or not, whether it is actually submitted or not, mere existence of arbitration clause in the agreement between the contracting parties is enough to keep the cause of action outside the court proceedings. So, unless we endorse the view of the New York Convention to which we are a party and which we have ratified, it will create avoidable complications in our international agreements—in the agreements which we ourselves individually or as a corporate body enter into with other countries. So, to avoid these complications, this Amendment Act has been brought before the House. Its object is limited.

Suggestions have been made by the hon. members to see that the qualities—either exported or imported—conform to a certain standard. We shall look after that; that is actually looked after in terms of some other Acts. This Bill has a very limited purpose. Since we are committed to it in principle and, secondly, since we will be in a difficulty if we do not adhere to the Convention because similar action may be taken by other States, other parties, taking all these things into account, we should not hesitate to approve the Bill as every hon. member has agreed.

With these words, I suggest that the Bill may be passed.

SHRI K. NARAYANA RAO: I want to seek clarification. What is the understanding by the other parties to the Convention?

PROF. D. P. CHATTOPADHYAYA: Every party who is a contracting party to this Convention is subject to the clauses and provisions of the Convention. (*Interruptions*)

MR. CHAIRMAN: The question is:

"That the Bill to amend the Foreign Awards (Recognition and Enforcement) Act, 1961, as passed by the Rajya Sabha, be taken into consideration."

*The motion was adopted.*

MR. CHAIRMAN: There are no amendments at all. So, I shall put Clause 2, Clause 1, the Enacting Formula and the Title together to the vote of the House.

The question is:

"That Clause 2, Clause 1, the Enacting Formula and the Title stand part of the Bill."

*The motion was adopted.*

Clause 2, Clause 1, the Enacting Formula and the Title were added to the Bill.

PROF. D. P. CHATTOPADHYAYA: Sir, I move:

"That the Bill be passed."

MR. CHAIRMAN: The question is:

"That the Bill be passed."

*The motion was adopted.*

16.55 hrs.

#### STATE BANK LAWS (AMENDMENT) BILL

MR. CHAIRMAN: Now we take up the State Bank Laws (Amend-

ment) Bill. Three hours have been allotted for this Bill. Shrimati Sushila Rohatgi.

THE DEPUTY MINISTER IN THE MINISTRY OF FINANCE (SHRIMATI SUSHILA ROHATGI): I move:

"That the Bill further to amend the State Bank of India Act, 1955 and the State Bank of India (Subsidiary Banks) Act, 1959, as passed by Rajya Sabha, be taken into consideration."

This Bill seeks to amend certain provisions in the two Statutes governing the State Bank of India and its Subsidiaries. I shall, at this stage, mention the relatively more important amendments embodied in the Bill.

As the House is aware, we have appointed two representatives of employees, one from among the workmen and the other from among the officers, on the Board of Directors of each of the 14 nationalised banks. We propose to provide for similar representation in the Central Board of the State Bank of India and the Board of Directors of each of its seven Subsidiaries, by having two additional Directors on each of those Boards, one to represent the workmen and the other the officers of the bank concerned. These employee directors are proposed to be appointed by following the same procedure as was done in the case of the nationalised banks. The procedure for appointment of employee directors in the case of the nationalised banks is laid down in the Scheme framed under the Nationalisation Act. In the case of the State Bank of India and its subsidiaries, we propose to lay down similar procedure in the rules and, accordingly, we propose to amend the Act to take powers to frame the rules for this purpose. The provision regarding the term of office of an employee director on the State Bank or a Subsidiary Bank will be on the same lines as in the case of an employee director on a nationalis-